REPORT OF THE FISCAL YEAR 1999 BUDGET REQUEST OF THE DISTRICT OF COLUMBIA COURTS—MESSAGE FROM THE PRESIDENT—PM–112

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs.

To the Congress of the United States:

In accordance with the District of Columbia Code, as amended, I am transmitting the District of Columbia Court's FY 1999 budget request.

The District of Columbia Courts has submitted a FY 1999 budget request for $133 million for its operating expenditures and authorization for multiyear capital funding totalling $58 million for courthouse renovation and improvements. My FY 1999 Budget includes recommended funding levels of $121 million for operations and $21 million for capital improvements for the District Courts. My transmittal of the District Court's budget request does not represent an endorsement of its contents.

I look forward to working with the Congress throughout the FY 1999 appropriation process.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 16, 1998.*

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BYRD:

S. 1761. A bill to provide that the performance of duties by Federal officers of certain vacant offices of the Federal Government shall comply with the requirements of sections 3345 through 3349 of title 5, United States Code (commonly referred to as the ''Vacancies Act''), and for other purposes; to the Committee on Governmental Affairs.

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1762. A bill to amend the Agricultural Market Transition Act to authorize the Secretary of Agriculture to extend the term of marketing assistance loans; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WELLSTONE:

S. 1763. A bill to restore food stamp benefits for aliens; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. THURMOND (for himself and Mr. LOTT):

S. 1764. A bill to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the ''Vacancies Act'') to clarify statutory requirements relating to vacancies in certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

By Mr. THOMPSON:

S. 1765. A bill to suspend temporarily the duty on the chemical DEMT; to the Committee on Finance.

By Mr. MCCAIN:

S. 1766. A bill to amend the Communications Act of 1934 to permit Bell operating companies to provide interstate and intrastate telecommunications services within one year after the date of enactment of this Act; to the Committee on Commerce, Science, and Transportation.

By Mr. DODD:

S. 1767. A bill to amend the Federal Food, Drug and Cosmetic Act to require notification of recalls of drugs and devices, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself and Mr. BURNS):

S. 1762. A bill to amend the Agricultural Market Transition Act to authorize the Secretary of Agriculture to extend the term of marketing assistance loans; to the Committee on Agriculture, Nutrition, and Forestry.

THE EMERGENCY MARKETING ASSISTANCE ACT

Mr. BAUCUS. Mr. President, I rise today to introduce the Emergency Marketing Assistance Act of 1998. I am pleased to be joined in this effort by the rest of the Montana delegation—Senator BURNS and Congressman HILL. The Emergency Marketing Assistance Act is the product of cooperation between our Montana delegation, local communities, and agricultural producers in our state.

Farming is never easy. It is a challenge that requires work, knowledge, faith and courage. But this year has been a particularly difficult time for producers. A large number of wheat growers in our state and across America are facing a bleak market year.

Many have not even sold their 1997 crop. Instead, they have taken out nine-month USDA Marketing Assistance Loans which will soon come due. But unless there is a dramatic upsurge in our current prices, they will be forced to sell at a low price, inadequate to cover their debts.

Currently, the total volume of grain under loan in Montana is 43.5 million bushels. This is not an unusual figure during normal marketing years when farmers know they'll get a fair price for their product.

Two years ago we could get over five dollars a bushel for our wheat. But today the current price languishes under the three dollar mark. Couple that with our abnormally high shipping rates, and it is no wonder our farmers are reluctant to sell. They would a serious hit. And some might lose the farm.

However, it is important to remember, Mr. President, this difficult situation is temporary. In time, prices will rebound and wheat producers will be able to sell their grain at a fair price. That is why we are asking the Secretary of Agriculture to extend these loans for up to six months. Our producers would be able to weather the storm of these dreadful prices.

For many of our farmers, this is a make-it or break-it year. They have survived tough winters and dry summers. They compete with the monopolistic practices of the Canadian Wheat Board. They struggle to overcome the high cost of shipping. And they are completely shut out of China's market.

But we expect them to somehow go into the field day after day, season after season, to make certain that we have an abundant supply of food at a fair price. A six-month marketing assistance loan extension is a partial solution to the problems our farmers are facing. And that is why I am speaking here today.

We also need to take immediate action to ensure that this price depression does not happen again. As we give our producers this tool to stay on their farms, we must also work to improve markets and stimulate prices. I am constantly reminded that many of our producers got behind the Freedom to Farm bill with the express understanding that the U.S. Department of Agriculture would aggressively seek export markets.

Clearly, we need to do a better job of moving our products, especially wheat. I believe that by using a combination of the Export Enhancement Program, food aid and credit programs available through the USDA, we can assist our farmers during this difficult period. If we do not take action now, the results will be disastrous in farm country.

I would like to thank my Montana colleagues for their assistance in this endeavor. I also want to recognize the efforts of our producers back home who have worked hard to make ends meet this past winter and brought this idea forward. You do a good job, and we are pulling for you.

Mr. President, I strongly encourage my fellow senators to join me in supporting this important effort.

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

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

S. 1762

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

SECTION 1. EXTENSION OF MARKETING ASSISTANCE LOANS.

Section 133 of the Agricultural Market Transition Act (7 U.S.C. 7233) is amended by striking subsection (c) and inserting the following:

''(c) EXTENSION.—The Secretary may extend the term of a marketing assistance loan made to producers on a farm for any loan commodity for 1 6-month period.''.

Mr. BURNS. Mr. President, I rise today and join with my colleague from Montana, Senator BAUCUS, to introduce an amendment to the current farm program. The amendment will assist our farmers in Montana. I think we have sort of an isolated circumstance in Montana. But I think it will also help others, too, because of the depressed price in wheat.

This bill is not a fix. It doesn't do everything maybe that we want to do. But it will assist many of our farmers in getting back in the fields this season, and it will also allow a little time to deal with some of the pressures that

we are experiencing along the Canadian border.

As we enter a week commemorating agriculture and celebrate what agriculture provides for us, I am glad to come to the floor and help in the introduction of this bill.

America and the general public need to learn more about this great industry. It is the largest industry in our country—and again, with insight into the role that agriculture plays in our everyday lives—not only from an economic standpoint, but at least three times a day for most of us, and some of us more, for the role that it also plays.

Two years ago we passed the freedom-to-farm bill—the Federal Agricultural Improvement and Reform Act. We anticipated at that time that it would give us the flexibility on the farm to do some things that we want to do. That was only a year ago. Now, with that flexibility, of course, farmers operate on a big calendar called a year. Sometimes that flexibility takes a little bit longer than planned. We have some circumstances that are beyond the control of our grain farmers. Everything that we had hoped would occur has not happened. One is the Canadian situation. Prices have continued to drop, making it very difficult for our operators to meet their commitments on time.

So this amendment would not give them anything extra. It will just give them a chance to make those payments in a timely manner.

Today, Senator BAUCUS and I, with our colleague in the House, Representative HILL, are moving forward to correct a portion of that contract we made with our agricultural producers. We are seeking a minor adjustment in the law that passed Congress and was signed by this President. The portion that we seek to correct is the timeframe for repayment on marketing loans. We are not seeking a major change in that portion of the contract—just a minor adjustment. This adjustment will provide farmers with a slightly larger window in which to repay their marketing loans—an extension of only 6 months; nothing major; just enough for the producers to contract with purchasers to move their grain into the market.

A large number of our producers have not yet priced their 1997 wheat crop—the one harvested last fall. Many have taken out loans with the Commodity Credit Corporation and USDA-sponsored programs to assist farmers with marketing their wheat. A large number of these loans are coming due in May and June of this year. With the world wheat market already being depressed due to additional grain on the domestic market, it will do nothing but really compound the whole problem. The farmer deserves just this little bit of assistance. They will provide us with a reliable, safe, and inexpensive food supply all around this country, and now I think they need just a little relief.

This is a minor step that we are making today with the introduction of this bill. The legislation will help a little, but it will not solve the major problem that we face in agriculture. The plain and simple fact is we need to move our grain into world markets.

Unfortunately, the Department of Agriculture seems determined not to assist our producers in this endeavor. In 1996 Congress made a contract with the farmer in exchange for reducing the amount of money they receive from the Government for their crops. We contracted with them to move grain into the market—namely, the world market.

So the farmer in Montana and across the Nation accepted this contract. They have done their part. Now it is time for Congress and the Department of Agriculture and this administration to live up to their end of the deal.

As a member of the Subcommittee on Agriculture Appropriations, I have made my thoughts known to the committee and to the administration. However, this past week, while I visited with the wheatgrowers in Montana, I learned one thing that would ease the burden. Today, we stand before the Senate, and I call for the administration to move at least 100 million tons of grain as soon as possible. This will not solve the problem we face on the farm. But it will ease the pressure and allow farmers to think about the future. Today they think only about the future and about how it would be like without the farm.

So, I call on President Clinton, the Secretary of Agriculture Glickman, and the U.S. Trade Representative to make an effort to assist the man and woman on the ground, to do something to show that you are concerned about them.

We had a situation last fall that was not the making of our producers. In the railroad industry, Houston was tied up so badly that it left us without any way to ship grain. We still received tons and tons of grain from Canada in this country. We have to deal with these measures.

The legislation will allow us some time to do that and also will allow our farmers to get back in the fields. It is my hope that the legislation that we introduce today will assist in some little measure to give the farmer the hope to continue. I also hope that the administration will see their role in this and move forward in providing what they can to make life a little more bearable for our agricultural producers in our country.

There is also another situation that was not created by us or the farmers; that is, we are not allowed to access about 11 percent of the world market due to embargoes—by governments and countries that probably have some problems in the area which the State Department usually handles. And, denied that market, there are other producers in other nations taking advantage of that. They get a premium for their grain and then dump the rest of theirs onto the world market for which we have to compete at a lower price. We have to address that problem also.

Mr. President, I join with my colleague in introducing this legislation.

By Mr. WELLSTONE:

S. 1763. A bill to restore food stamp benefits for aliens; to the Committee on Agriculture, Nutrition, and Forestry.

THE FOOD STAMP BENEFITS FOR ALIENS RESTORATION ACT OF 1998

Mr. WELLSTONE. Mr. President, the bill I offer today will restore food stamps for all legal immigrants who lost eligibility under the 1996 welfare reform law. Representative GUITERREZ and I began developing this legislation last fall, and in the second week of March he introduced an identical bill in the House. Today I introduce our legislation in the Senate.

This bill is more comprehensive than the proposal included by the President in his budget request for FY 1999. I commend the President for making the effort to address this problem, but his proposal does not go far enough. It overlooks 100,000 immigrants who were formerly eligible. It seems to me wholly unreasonable to leave these people out, given their relatively small number.

I say we must go further. It was a mistake to deny food stamp eligibility in the first place, and now is the time to make amends. The legislation Congressman GUTIERREZ and I have developed will restore eligibility for all legal immigrants. While the President proposes spending $2.43 billion dollars over the next 5 years, the cost of our bill would be only marginally higher—closer to $3 billion.

The 1996 welfare bill denied legal immigrants the means to meet basic nutritional needs in order to save some money. But I believe that, in the end, this provision will not save us any money at all. In the long run, we as a society will have to pay this bill, and pay it in full. We will pay with more family conflict, more medical problems, and lower student achievement. The cost of this mistake will far outweigh the money saved. Indeed, I believe we are already paying the price.

In searching for ways to save money, Congress conveniently chose to target a group of people who do not vote. On one level, it is easy to understand the politics of this decision. But on another level, I find it incomprehensible. Consider how much these hard-working people contribute to our society and our economy. They pay taxes and often perform jobs that American citizens refuse to do. The fact that they have no right to vote should not mean that we single them out for this kind of treatment.

It was especially irresponsible to deny eligibility knowing that two thirds of those affected would be children. Denying basic nutrition to children is not what this country is about, nor should it be. But that is essentially what Congress did in 1996. An estimated 900,000 legal immigrants lost

their eligibility with passage of welfare reform. Another 600,000 children—children who are American citizens but whose parents are legal immigrants—have seen their family's food stamps reduced. Denying nutrition to parents will affect these children. Nutrition is a basic need which, if denied or reduced, has enormous negative effects on a family. This is no way for a country with a proud history of compassion and community to go about reducing the deficit.

Today I offer legislation that would recognize this mistake and correct it. Ending hunger, whether among legal residents or anybody else, should remain a national responsibility. It cannot be done on a piecemeal basis. As of today, only three states have provided full eligibility for legal immigrants. A total of eleven states are providing coupons or the equivalent for some or all legal immigrants. Two states have set up independent programs to serve some of the legal immigrant population. But each of these thirteen states has the option and ability to change or terminate these commendable efforts at any time. That's not good enough.

In my own state of Minnesota, food stamp cuts have had a major impact on our immigrant communities. While the state has offered temporary and partial food assistance for legal immigrants to make up for the loss of federal benefits, it has not been enough. Food banks have experienced a noticeable increase in demand for their services, especially in the Hmong and Somali communities. In fact, all across this nation the need for food assistance is on the rise, especially among immigrants.

We can alleviate at least some of this problem by passing the bill I offer today. I believe we have a responsibility to both the children suffering under this new law who are American citizens, and to the legal immigrants who lost coverage. If we reinstate food stamp eligibility, these immigrants will once again be able to provide adequate nutrition for themselves and for their children. I believe this is what we must do to meet our responsibility, and it is the right thing to do.

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

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

S. 1763

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 ''Food Stamp Benefits for Aliens Restoration Act of 1997''.

SEC. 2. LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR CERTAIN FEDERAL PROGRAMS.

(a) IN GENERAL.—Section 402(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)) (as amended by section 5301, 5302(a), 5303(a), and 5304 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 597, 598, 600)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking clause (ii);

(ii) by striking ''ASYLEES.—'' and all that follows through ''paragraph (3)(A)'' and inserting ''ASYLEES.—With respect to the specified Federal program described in paragraph (3)''; and

(iii) by redesignating subclauses (I) through (IV) as clauses (i) through (iv) and indenting appropriately;

(B) in subparagraph (D)—

(i) by striking clause (ii); and

(ii) in clause (i)—

(I) by striking ''(i) SSI.—'' and all that follows through ''paragraph (3)(A)'' and inserting the following:

''(i) IN GENERAL.—With respect to the specified Federal program described in paragraph (3)'';

(II) by redesignating subclauses (II) through (IV) as clauses (ii) through (iv) and indenting appropriately;

(III) by striking ''subclause (I)'' each place it appears and inserting ''clause (i)''; and

(IV) in clause (iv) (as redesignated by subclause (II)), by striking ''this clause'' and inserting ''this subparagraph''; and

(C) in subparagraphs (E) through (H), by striking ''paragraph (3)(A)'' each place it appears and inserting ''paragraph (3)''; and

(2) in paragraph (3)—

(A) by striking ''means any'' and all that follows through ''The supplemental'' and inserting ''means the supplemental''; and

(B) by striking subparagraph (B).

(b) CONFORMING AMENDMENTS.—

(1) Section 402(b)(2)(F) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)(F)) (as added by section 5305(b) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 601)) is amended by striking ''subsection (a)(3)(A)'' and inserting ''subsection (a)(3)''.

(2) Section 403(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(d)) (as added by section 5303(c) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 600)) is amended by striking ''subsections (a)(3)(A)'' and inserting ''subsections (a)(3)''.

SEC. 3. FIVE-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFIT.

Section 403(c)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(c)(2)) is amended by adding at the end the following:

''(L) Assistance or benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq).''.

SEC. 4. AUTHORITY FOR STATES TO PROVIDE FOR ATTRIBUTION OF SPONSORS INCOME AND RESOURCES TO THE ALIEN WITH RESPECT TO STATE PROGRAMS.

Section 422(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1632(b)) is amended by adding at the end the following:

''(8) Programs comparable to assistance or benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq).''.

SEC. 5. DERIVATIVE ELIGIBILITY FOR BENEFITS.

Section 436 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1646) (as added by section 5305(a) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 601)) is repealed.

SEC. 6. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT.

Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(B), by striking ''(as defined in subsection (e) of this section)''; and

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

''(g) MEANS-TESTED PUBLIC BENEFIT DEFINED.—In this section, the term 'means-tested public benefit' does not include assistance or benefits provided under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq).''.

SEC. 7. STATUS OF CUBAN AND HAITIAN ENTRANTS.

Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended in the first sentence by inserting before the period at the end the following: ''; or (G) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 8 U.S.C. 1522 note))''.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall be effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

By Mr. THURMOND (for himself and Mr. LOTT):

S. 1764. A bill to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the ''Vacancies Act'') to clarify statutory requirements relating to vacancies in certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

THE VACANCIES CLARIFICATION ACT OF 1998

Mr. THURMOND. Madam President, I rise today to introduce legislation to address a serious, ongoing problem between the Executive and Legislative branches of our government. I am pleased to do so on behalf of myself and our distinguished majority leader, Senator LOTT.

The issue is the advice and consent role of the Senate under the Constitution, and the failure of the Administration to properly respect this authority in Presidential appointments. Too often, when an official holding an advice and consent position leaves the Administration, the President or lesser officials will appoint someone to serve in the vacancy on an acting basis for a long period of time without submitting a nomination to the Senate. The Administration routinely disregards the advice and consent role of the Senate in this manner.

The Framers of the Constitution surely would not be pleased. The Appointments Clause of Article II, Section 2, of the Constitution is one of the fundamental checks and balances included within our great system of government. As Justice Scalia stated for the Supreme Court last year, ''[T]he Appointments Clause . . . is more than a matter of etiquette or protocol; it is among the significant structural safeguards of the constitutional scheme.''

The Congress has long recognized the danger of the Executive Branch ignoring its role. The Vacancies Act was enacted to prevent this problem, and it has existed with few revisions since at least 1868. The Act sets forth limitations on acting appointments. It sets forth a logical procedure whereby the first assistant or another confirmed appointee takes over until a new nominee is confirmed. Importantly, it limits the

time this acting person may serve to 120 days unless the President has submitted a nomination to the Senate.

There are two problems with the Vacancies Act today. The first is that it is being ignored. The second is that there is no enforcement mechanism to prevent the Administration from ignoring it.

Today, vacancies in advice and consent positions are a serious problem in this Administration, and many of the people who are serving in these positions in an acting capacity are doing so in violation of the Vacancies Act. Consider the Department of Justice. The President has just nominated someone to head the Criminal Division. That position has been vacant since August 31, 1995, which is for two and one-half years. Also, when the Solicitor General left in June 1996, Walter Dellinger was made Acting Solicitor General without any effort to seek Senate confirmation. He then served for an entire term of the Supreme Court before the President nominated the current Solicitor General.

The issue that has pushed the Vacancies Act into the headlines in recent months is the President's designation of Bill Lann Lee to serve as chief of the Civil Rights Division in an acting capacity. After allowing the position to remain vacant for six months, which itself violated the Act, the President nominated Mr. Lee. The Judiciary Committee could not support sending his nomination to the Senate floor. However, rather than sending a new, consensus candidate for confirmation, the President blatantly circumvented the confirmation process by appointing Mr. Lee in an acting capacity.

I believe it is essential that the Senate act to stop the ongoing abuse of its confirmation role. Today, I am introducing the Vacancies Clarification Act of 1998 to help preserve our role by addressing two primary problems with the Act today: its alleged coverage and its enforcement.

The Administration has an explanation for ignoring the Vacancies Act. The Department of Justice says the Act does not apply to it because of the administrative authorizing statutes that reorganized the Department in the 1950s. In my view, this argument has no merit. These statutes make no mention of vacancies and were certainly never intended to cover what the Vacancies Act already clearly covered. The most obvious flaw in Justice's argument is that all Executive departments have similar authorizing statutes. Therefore, if Justice is not bound by the Act, the other departments are equally free to ignore it, as many of them do. To address this, I propose that the Vacancies Act provide that it is applicable to all advise and consent appointments, unless a different statute provides that the Act is not applicable to a particular position.

The second problem is that the Vacancies Act has no enforcement mechanism. There is no way to force the Administration to comply except to retaliate against it or to sue in court. Thus, I propose that any person who serves in violation of the Vacancies Act may not be paid while they are in violation of the law. This would be a simple but effective way to bring the Administration into compliance.

My bill accomplishes these objectives by rewriting the Vacancies Act. The current language is somewhat intricate and dated. After all, the Act has existed with few revisions since 1868. Thus, I have attempted to rewrite the statute as it currently exists but in language that makes its requirements and exceptions as clear as possible. Hopefully, this will close any loopholes that lawyers have created in the words of the Act in its current form.

It is my hope that this bill can serve as a starting point for bipartisan discussions on reform in this area. It is possible that the Administration may raise legitimate concerns with some of the requirements in the current law, such as that the 120 day period to submit a nomination is not enough time. This is an issue that could be discussed in hearings.

Indeed, I am very pleased that the Governmental Affairs Committee has scheduled a hearing on the Vacancies Act this week. It is important that the Senate study this matter and address the flaws in the current process.

Madam President, this is a matter of great Constitutional significance. We cannot allow the Administration to continue to disregard the advise and consent role of the Senate. By revitalizing the Vacancies Act, we can require the Administration to respect the Senate's Constitutional duty.

At this time, I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 1764

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 ''Vacancies Clarification Act of 1998''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Congress enacted the Act entitled ''An Act to authorize the temporary supplying of vacancies in the executive departments'', approved July 23, 1868 (commonly referred to as the ''Vacancies Act''), to—

(A) preclude the extended filling of a vacancy in an office of an executive or military department subject to Senate confirmation, without the submission of a Presidential nomination;

(B) provide an exclusive means to temporarily fill such a vacancy; and

(C) clarify the role of the Senate in the exercise of the Senate's constitutional advice and consent powers in the Presidential appointment of certain officers;

(2) subchapter III of chapter 33 of title 5, United States Code, includes a codification of the Vacancies Act, and (pursuant to an amendment on August 17, 1988, to section 3345 of such title) specifically applies such vacancy provisions to all Executive agencies, including the Department of Justice;

(3) the legislative history accompanying the 1988 amendment makes clear in the controlling committee report that the general administrative authorizing provisions for the Executive agencies, which include sections 509 and 510 of title 28, United States Code, regarding the Department of Justice, do not supersede the specific vacancy provisions in title 5, United States Code;

(4) there are statutory provisions of general administrative authority applicable to every Executive department and other Executive agencies that are similar to sections 509 and 510 of title 28, United States Code, relating to the Department of Justice;

(5) despite the clear intent of Congress, the Attorney General of the United States has continued to interpret the provisions granting general administrative authority to the Attorney General under sections 509 and 510 of title 28, United States Code, to supersede the specific vacancy provisions in title 5, United States Code;

(6) the interpretation of the Attorney General would—

(A) virtually nullify the vacancy provisions under subchapter III of chapter 33 of title 5, United States Code;

(B) circumvent the clear intention of Congress to preclude the extended filling of certain vacancies and provide for the temporary filling of such vacancies; and

(C) subvert the constitutional authority and responsibility of the Senate to advise and consent in certain appointments;

(7) it is necessary to further clarify the intention of Congress to reject the interpretation of the Attorney General by modernizing the intricate language of the long-standing Vacancies Act; and

(8) to ensure compliance by the executive branch with the Vacancies Act, the Act needs an express enforcement mechanism.

SEC. 3. FEDERAL VACANCIES.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended by striking sections 3345 through 3349 and inserting the following:

''§ 3345. Acting officer

''(a)(1) If an officer of an Executive agency (other than the General Accounting Office) whose appointment to office is by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions of the office, the President may direct a person described under paragraph (2) to perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346.

''(2) The person referred to under paragraph (1) is any person who on the date of death, resignation, or the beginning of inability to perform serves—

''(A) in the position of first assistant to the officer who dies, resigns, or is otherwise unable to perform; or

''(B) in an office for which appointment by the President, by and with the advice and consent of the Senate is required.

''(b) With respect to the office of the Attorney General of the United States, the provisions of section 508 of title 28 shall be applicable.

''§ 3346. Time limitation

''(a) The person serving as an acting officer as described under section 3345 may serve in the office—

''(1) for no longer than 120 days; or

''(2) if any nomination for the office is submitted to the Senate within the 120-day period beginning on the date the vacancy occurs, for the period that the nomination is pending in the Senate.

''(b)(1) If the nomination for the office is rejected by the Senate or withdrawn, the person may continue to serve as the acting officer for no more than 120 days after the date of such rejection or withdrawal.

''(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate during the 120-day period after the rejection or withdrawal of the first nomination, the person serving as the acting officer may continue to serve—

''(A) until the second nomination is confirmed; or

''(B) for no more than 120 days after the second nomination is rejected or withdrawn.

''(c) If a person begins serving as an acting officer during an adjournment of the Congress sine die, the 120-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

''§ 3347. Application

''Sections 3345 and 3346 are applicable to any office of an Executive agency (other than the General Accounting Office) for which appointment by the President, by and with the advice and consent of the Senate, is required, unless—

''(1) another statutory provision expressly provides that such provision supersedes sections 3345 and 3346; or

''(2) the President makes an appointment to fill a vacancy in such office during a recess of the Senate.

''§ 3348. Vacant office

''Subject to section 3347, if an office is not temporarily filled under sections 3345 and 3346 within 120 days after the date on which a vacancy occurs, the office shall remain vacant until a person is appointed by the President, by and with the advice and consent of the Senate.

''§ 3349. Enforcement

''(a)(1) An acting officer who serves in a position in violation of section 3345 or 3346 may not receive pay for any day of service in violation of section 3345 or 3346.

''(2) Pay not received under paragraph (1) shall be forfeited and may not be paid as backpay.

''(3) Notwithstanding section 1342 of title 31, paragraph (1) shall apply regardless of whether such acting officer is performing the duties of another office or position in addition to performing the duties of the vacant office.

''(b) The head of an affected Executive agency (other than the General Accounting Office) shall submit to the Comptroller General of the United States and to each House of Congress—

''(1) notification of a vacancy and the date such vacancy occurred immediately upon the occurrence of the vacancy;

''(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

''(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

''(4) the date of a rejection or withdrawal of any nomination immediately upon such rejection or withdrawal.

''(c) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 120-day period including the applicable exceptions to such period as provided under section 3346, the Comptroller General shall report such determination to each House of Congress, the President, the Secretary of the Treasury, and the Office of Personnel Management.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the items relating to sections 3345 through 3349 and inserting the following:

''3345. Acting officer.
''3346. Time limitation.
''3347. Application.
''3348. Vacant office.
''3349. Enforcement.''.

SEC. 4. EFFECTIVE DATE AND APPLICATION.

This Act shall take effect on the date of enactment of this Act and shall apply to any office that—

(1) becomes vacant after such date; and

(2) is vacant on such date, except sections 3345 through 3349 of title 5, United States Code (as amended by this Act), shall apply as though such office first became vacant on such date.

By Mr. MCCAIN:

S. 1766. A bill to amend the Communications Act of 1934 to permit Bell operating companies to provide interstate and intrastate telecommunications services within one year after the date of enactment of this Act; to the Committee on Commerce, Science, and Transportation.

THE TELECOMMUNICATIONS COMPETITION ACT OF 1998

Mr. MCCAIN. Mr. President, today I am introducing the Telecommunications Competition Act of 1998. This legislation is aimed at encouraging the development of competition in telecommunications and thus allowing consumers to enjoy the benefits of competition including lower prices, universal availability, increased variety of new services.

The Telecommunications Act of 1996 was enacted two years ago with great promise that increased competition would rapidly emerge on both the local and long distance telecommunications markets. The last two years have instead brought forth rampant litigation challenging everything from the constitutionality of the Act itself to the legality of the Federal Communications Commission's implementation rules. Within that same time frame, consumers have seen prices rise instead of fall, carriers merging instead of competing, and more regulation rather than deregulation.

Mr. President, it is time to consider whether the Telecommunications Act of 1996, particularly section 271 of the Act that keeps Bell Operating Companies (BOCs) from competing in the interLATA telecommunications market prior to their fulfilling a set of market opening requirements, has been a success or failure.

Section 271 requires BOCs to satisfy a detailed fourteen point competitive checklist that claims to guarantee that competitors have access to a BOC's services and facilities at rates, terms, and conditions that are nondiscriminatory. Section 271 also requires that BOCs seek approval for their applications from the Department of Justice, the relevant state commission, and the Federal Communications Commission; each of which may have a different interpretation of the requirements. Finally, beyond all of the other requirements a BOC must satisfy to gain section 271 approval, the Act gives the FCC the ability to reject an application based on a vague and undefined public interest, convenience, or necessity requirement.

It is time to reevaluate whether the regulatory intensive approach to deregulation that was followed in section 271 is the best method for encouraging the development of competition. I realize that in 1996 Congress passed the Telecommunications Act while reacting to pressure from all sides of the telecommunications industry. I understand that any modifications to the Act will require that we seek compromise from those same industry forces. I am thus currently working to find such compromises and hope to introduce a different bill that will further the goal of competition through a framework that will focus on the truly pertinent factors while minimizing current incentives to game the process for anticompetitive ends.

The bill I introduce today is what I believe to be the most deregulatory approach to encouraging competition in telecommunications. This bill takes a straightforward approach to bringing the benefits of competition to consumers by permitting all carriers to enter each others' markets and compete to bring the best and lowest priced services to consumers.

The bill requires that all providers of telecommunications and information services be subject to equivalent regulation. The bill also states that if all providers of telecommunications services do not have the opportunity to provide all telecommunications and information services, it would be in the public interest to remove barriers to entry to intrastate telecommunications services such as telephone exchange service, intrastate intraLATA telecommunications services, and telephone exchange access services.

When barriers to entry to intrastate telecommunications services are removed, all lines of business restrictions should be eliminated for existing providers of these services. The elimination of such restrictions will result in the creation of substantial numbers of new jobs and the deployment of advanced telecommunications services. This will enhance the quality of life and promote economic development, job creation, and international competitiveness.

Advancements in the nation's telecommunications infrastructure will enhance the public welfare by helping to speed the delivery of services such as telemedicine, distance learning, remote medical services, and distribution of health information.

Rural and sparsely populated areas will not receive the benefits of advanced telecommunications services unless all providers of telecommunications services have eliminated the restrictions on the lines of business in which they may engage.

Existing regulatory devices no longer work, and the regulatory asymmetries that exist today are inconsistent with competitive marketplaces. Oversight of the telecommunications industry

should be conducted from the perspective of the antitrust laws by the Department of Justice and from the regulatory perspective by the Commission for interstate telecommunications services and the states for intrastate telecommunications services.

Finally Mr. President, this bill removes the current perverse incentives that some parties have to use the regulatory process to delay BOC entry into long entrance. By permitting all competitors to compete one year from the date of enactment, all parties will have the incentive to bring the benefits of competition to consumers as soon as possible.

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

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

S. 1766

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 ''Telecommunications Competition Act of 1998''.

SEC. 2 FINDINGS.

The Congress finds that—

(1) competition in telecommunications will encourage infrastructure development, have beneficial effects on the price, universal availability, variety and quality of telecommunications services, and improve our economy, our culture, and our political system;

(2) all telecommunications markets should be open to competition and all providers of telecommunications services should be able to provide such services and be subject to equivalent regulation when offering such services;

(3) all providers of telecommunications should be subject to equivalent regulation;

(5) the elimination of the restraints on the lines of business will result in the creation of a substantial number of new jobs;

(6) if the removal of the restrictions on the lines of business are delayed, the job creation resulting from the removal of these constraints will also be delayed;

(7) advanced telecommunications services can enhance the quality of life and promote economic developments, job creation, and international competitiveness;

(8) advancements in the nation's telecommunications infrastructure will enhance the public welfare by helping to speed the delivery of services such as telemedicine, distance learning, remote medical services, and distribution of health information;

(9) improvements in the telecommunications infrastructure will be greatly enhanced if all providers of telecommunications services are permitted to offer these services on the same basis and subject to equivalent regulatory requirements;

(10) rural and sparsely populated areas will not receive the benefits of advanced telecommunications services unless all providers of telecommunications services have eliminated the restrictions on the lines of business in which they may engage;

(11) existing regulatory devices no longer work, and the regulatory asymmetries that exist today are inconsistent with competitive marketplaces; and

(12) oversight of the telecommunications industry should be conducted from the perspective of the Antitrust Laws by the Department of Justice and from the regulatory perspective by the Commission for interstate telecommunications services and the States for intrastate telecommunications services.

SEC. 3. ONE-YEAR MAXIMUM START DATE FOR BOC INTERSTATE AND INTRASTATE SERVICES.

Part III of title II of the Communications Act of 1934 (47 U.S.C. 271 et seq.) is amended by inserting before section 271 the following:

''SEC. 270. DATE CERTAIN FOR START OF BELL OPERATING COMPANY SERVICES.

''(a) IN GENERAL.—Notwithstanding any provision of this Act to the contrary, on the date that is one year after the date of enactment of the Telecommunications Competition Act of 1998, a Bell operating company, and any affiliate of a Bell operating company, may provide interstate and intrastate telecommunications services.

''(b) STATE LAW SUPERSEDED.—No State or local law may prohibit or prevent a Bell operating company, or an affiliate of a Bell operating company, from providing interstate and intrastate telecommunications services after the date specified in subsection (a).

''(c) APPLICAITON WITH OTHER PROVISIONS.—Any prerequisite established by any other provision of this Act that conditions the right to provide services regulated under this Act in any area upon the satification by a Bell operating company of any requirement under this Act shall be for all purposes of this Act, deemed to have been met on the date specified in subsection (a).''.

By Mr. DODD:

S. 1767. A bill to amend the Federal Food, Drug and Cosmetic Act to require notification of recalls of drugs and devices, and for other purposes; to the Committee on Labor and Human Resources.

THE DRUG AND DEVICE RECALL REPORTING ACT OF 1998

Mr. DODD. Mr. President, I rise today to introduce a critical measure that has the potential to save many lives—''Matthew's Law.'' This bill is named after a very lucky third-grader from Bridgeport, Connecticut, whose life was endangered by the failure of his pharmacy to notify his family that an unsafe medical device had been pulled from the market.

It is both unfortunate and remarkable that no Federal legislation currently exists that requires notification of consumers when unsafe drugs or devices are recalled. State laws also fail to guarantee consumers the right to know of recalls. Although 18 States recommend that pharmacists notify their patients of recalls, as part of professional standards of care, only one State (Vermont) explicitly requires that patients be contacted.

This bill will amend the Federal Food, Drug, and Cosmetic Act to impose the commonsense requirement that when pharmacies are notified of a class I or II recall of a drug or device dispensed by prescription, they must notify their patients that the product has been pulled from the market.

Class I recalls include those drugs and devices that could reasonably cause serious adverse effects on health or death. Class II recalls include drugs and devices that may cause temporary or medically reversible adverse effects on health.

For over the counter drugs and devices, the bill requires that a notice regarding the recall be displayed in the pharmacy. Pharmacies that fail to comply will be subjected to fines of up to $10,000.

Matthew McGarry, for whom this bill is named, has a life-threatening allergy to peanuts. In case he should accidentally eat one, he carries a device with him that injects a drug to counteract an allergic reaction, called an ''EPI–E–Z'' pen.

When it was found that a few of the devices in one batch were leaking the life saving drug, all pharmacies were notified that the product was being recalled. And almost all pharmacies, acting in the best interest of their patients, in turn notified consumers. The McGarry's pharmacy, however, did not contact its patients.

Thanks to the vigilance of his school's nurse, Betty Patterson, Matthew escaped unharmed—the defective device was replaced.

Under current law, consumers have the right to be notified their automobiles are defective or when the toys that their children play with are found to be unsafe. It is only logical that we should have the same peace of mind when it comes to products like drugs and medical devices that directly affect our health.

Most pharmacists do the right thing. Most pharmacists contact their customers when a drug or device is recalled. However, it takes just one incident, like that experienced by the McGarry family, to point out a dangerous loophole in the law.

With Matthew's law, we will close that loophole and protect all American families from the McGarry's frightening experience.

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

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

S. 1767

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 ''Drug and Device Recall Reporting Act of 1998''.

SEC. 2. RECALLS.

Subchapter E of chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb et seq.) is amended by adding at the end the following:

''SEC. 564. NOTIFICATION OF RECALLS.

''(a) NOTIFICATION TO CUSTOMERS.—A pharmacy that receives notice from a recalling firm regarding a Class I or Class II recall of a drug or device shall provide notification about the recall to customers that received the drug or device as follows:

''(1) In the case of a drug or device dispensed by the pharmacy to customers on the prescription of a licensed practitioner, by providing, at a minimum, written notification to each of the customers.

''(2) In the case of another drug or device, by public display in the pharmacy of a notice regarding the recall.

''(b) CIVIL PENALTY.—Any pharmacy that violates subsection (a) shall be liable to the United States for a civil penalty in an

amount not to exceed $10,000 for each such violation.

''(c) DEFINITIONS.—In this section:

''(1) CLASS I OR CLASS II.—The term 'Class I' or 'Class II' refers to the corresponding designation given recalls in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation.

''(2) RECALL.—The term 'recall' means—

''(A) a recall, as defined in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation; and

''(B) a recall under section 518(e).

''(3) RECALLING FIRM.—The term 'recalling firm' means—

''(A) a recalling firm, as defined in subpart A of part 7 of title 21, Code of Federal Regulations, or a successor regulation; and

''(B) a person subject to an order issued under section 518(e)(1).''.

ADDITIONAL COSPONSORS

S. 26

At the request of Mr. DASCHLE, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 26, a bill to provide a safety net for farmers and consumers and to promote the development of farmer-owned value added processing facilities, and for other purposes.

S. 61

At the request of Mr. LOTT, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 328

At the request of Mr. HUTCHINSON, the name of the Senator from Idaho (Mr. KEMPTHORNE) was added as a cosponsor of S. 328, a bill to amend the National Labor Relations Act to protect employer rights, and for other purposes.

S. 472

At the request of Mr. THOMAS, his name was withdrawn as a cosponsor of S. 472, a bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes.

S. 606

At the request of Mr. HUTCHINSON, the name of the Senator from Idaho (Mr. KEMPTHORNE) was added as a cosponsor of S. 606, a bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors.

S. 1151

At the request of Mr. DODD, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1151, a bill to amend subpart 8 of part A of title IV of the Higher Education Act of 1965 to support the participation of low-income parents in postsecondary education through the provision of campus-based child care.

S. 1333

At the request of Mr. FRIST, the name of the Senator from Tennessee (Mr. THOMPSON) was added as a cosponsor of S. 1333, a bill to amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges.

S. 1335

At the request of Ms. SNOWE, the name of the Senator from North Carolina (Mr. FAIRCLOTH) was added as a cosponsor of S. 1335, a bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees.

S. 1406

At the request of Mr. SMITH, the names of the Senator from Mississippi (Mr. COCHRAN), the Senator from Georgia (Mr. COVERDELL), and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1406, a bill to amend section 2301 of title 38, United States Code, to provide for the furnishing of burial flags on behalf of certain deceased members and former members of the Selected Reserve.

S. 1464

At the request of Mr. HATCH, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1534

At the request of Mr. TORRICELLI, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1534, a bill to amend the Higher Education Act of 1965 to delay the commencement of the student loan repayment period for certain students called to active duty in the Armed Forces.

S. 1621

At the request of Mr. GRAMS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1621, a bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes.

S. 1677

At the request of Mr. CHAFEE, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1677, a bill to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

S. 1702

At the request of Mr. ROCKEFELLER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1702, a bill to amend the Harmonized Tariff Schedule of the United States to change the special rate of duty on purified terephtalic acid imported from Mexico.

S. 1705

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from California [Mrs. BOXER) was added as a cosponsor of S. 1705, A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools.

S. 1722

At the request of Mr. FRIST, the names of the Senator from Ohio (Mr. DEWINE), and the Senator from North Carolina (Mr. FAIRCLOTH) were added as cosponsors of S. 1722, a bill to amend the Public Health Service Act to revise and extend certain programs with respect to women's health research and prevention activities at the National Institutes of Health and the Centers for Disease Control and Prevention.

SENATE JOINT RESOLUTION 41

At the request of Mr. SARBANES, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of Senate Joint Resolution 41, a joint resolution approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital.

SENATE CONCURRENT RESOLUTION 30

At the request of Mr. HELMS, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of Senate Concurrent Resolution 30, a concurrent resolution expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development.

SENATE CONCURRENT RESOLUTION 65

At the request of Ms. SNOWE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution calling for a United States effort to end restriction on the freedoms and human rights of the enclaved people in the occupied area of Cyprus.

SENATE RESOLUTION 155

At the request of Mr. LOTT, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of Senate Resolution 155, a resolution designating April 6 of each year as ''National Tartan Day'' to recognize the outstanding achievements and contributions made by Scottish Americans to the United States.

SENATE RESOLUTION 176

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma (Mr. INHOFE), and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of Senate Resolution 176, a resolution proclaiming the week of October 18 through October 24, 1998, as ''National Character Counts Week''.

NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Labor and Human Resources will be held on Tuesday, March 17, 1998, 10 a.m., in SD–430 of the Senate Dirksen Building. The subject of the hearing is