Whereas, separation of powers is fundamental to the United States Constitution and the power of the federal government is strictly limited; and

Whereas, under the United States Constitution, the states are to determine public policy; and

Whereas, it is the duty of the judiciary to interpret the law, not to create law; and

Whereas, federal district courts, with the acquiescence of the United States Supreme Court, continue to order states to levy or increase taxes to comply with the federal courts' interpretation of federal law; and

Whereas, the federal courts have strayed from the intent of our founding fathers and the United States Constitution through inappropriate judicial tax mandates; and

Whereas, these mandates by way of judicial decision have forced state governments to serve as the mere administrative arm of the federal government; and

Whereas, these court actions violate the United States Constitution and the legislative process; and

Whereas, the time has come for the people of this great nation and their duly elected representatives in state government to reaffirm, in no uncertain terms, that the authority to tax under the United States Constitution is retained by the people who, by their consent alone, do delegate such power to tax explicitly to themselves or those duly elected representatives being directly responsible and accountable to those who have elected them; and

Whereas, several states have petitioned the United States Congress to propose an amendment to the United States Constitution; and

Whereas, the amendment was previously introduced in the United States Congress; and

Whereas, the amendment seeks to prevent federal courts from levying or increasing taxes without representation of the people and against the people's wishes: Now, therefore, be it

Resolved by the Senate of the 2nd session of the 46th Oklahoma Legislature, the House of Representatives concurring therein, That the United States Congress prepare and submit to the several states an amendment to the United States Constitution to add a new article providing as follows:

''Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or a political subdivision thereof, or an official of such a state or political subdivision, to levy or increase taxes.''

That the Secretary of State is hereby directed to distribute copies of this resolution to the President and Vice President of the United States, the Presiding Officer in each house of the legislature in each of the states of the Union, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate and to each member of the States of Oklahoma Congressional Delegation.

POM–480. A resolution adopted by the Legislature of the Commonwealth of Pennsylvania; to the Committee on Labor and Human Resources.

HOUSE RESOLUTION NO. 443

Whereas, it is estimated that 26,800 new cases of ovarian cancer developed in the United States in 1997; and

Whereas, ovarian cancer caused approximately 14,200 deaths in 1997; and

Whereas, ovarian cancer ranks second among gynecological cancers in the number of new cases each year and causes more deaths than any other cancer of the female reproductive system; and

Whereas, approximately 78% of ovarian cancer patients survive longer than one year after diagnosis and more than 46% of these patients survive longer than five years after diagnosis; and

Whereas, if diagnosed and treated before the cancer spreads outside of the ovary, the five-year survival rate is 92%, but approximately only 24% of all cases of ovarian cancer is detected at this stage; and

Whereas, ovarian cancer research is desperately needed to serve as encouragement to more women to undergo screening tests earlier as well as to reduce the medical costs associated with later discovery; and

Whereas, H.R. 953 in the House of Representatives of the United states, to be known as the Ovarian Cancer Research and Information Amendments of 1997, would authorize $90 million to conduct ovarian cancer research; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the President of the United States and the Congress of the United States to enact H.R. 953, the Ovarian Cancer Research and Information Amendments of 1997; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

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. ALLARD (for himself, Mr. BROWNBACK, and Mr. DEWINE):

S. 2170. A bill to amend the Internal Revenue Code of 1986 to eliminate the temporary increase in unemployment tax; to the Committee on Finance.

By Mr. BUMPERS:

S. 2171. A bill to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas; to the Committee on Energy and Natural Resources.

By Mr. GREGG (for himself and Mr. STEVENS):

S. 2172. A bill to authorize the National Fish and Wildlife Foundation to establish a whale conservation fund, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BOND:

S. 2173. A bill to amend the Rehabilitation Act of 1973 to provide for research and development of assistance technology and universally designed technology, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ABRAHAM:

S. 2174. A bill to amend the Wagner-Peyser Act to clarify that nothing in that Act shall prohibit a State from using individuals other than merit-staffed of civil service employees of the State (or any political subdivision thereof) in providing employment services under that Act; to the Committee on Labor and Human Resources.

By Mr. CRAIG:

S. 2175. A bill to safeguard the privacy of certain identification records and name checks, and for other purposes; to the Committee on the Judiciary.

By Mr. THOMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. LOTT, and Mr. ROTH):

S. 2176. 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 and appointments to certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

By Mr. INOUYE:

S. 2177. A bill to express the sense of the Congress that the President should award a Presidential unit citation to the final crew of the U.S.S. INDIANAPOLIS, which was sunk on July 30, 1945; to the Committee on Armed Services.

By Mr. KOHL (for himself and Mr. D'AMATO):

S. 2178. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission to certify such facilities for such insurance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. MOSELEY-BRAUN:

S. 2179. A bill to amend the International Emergency Economic Powers Act to clarify the conditions under which export controls may be imposed on agricultural products; to the Committee on Banking, Housing, and Urban Affairs.

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

S. 2180. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated;

By Ms. MOSELEY-BRAUN (for herself and Mr. DURBIN):

S. Res. 249. A resolution to congratulate the Chicago Bulls on winning the 1998 National Basketball Association Championship; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLARD (for himself, Mr. BROWNBACK, AND MR. DEWINE):

S. 2170. A bill to amend the Internal Revenue Code of 1986 to eliminate the temporary increase in unemployment tax; to the Committee on Finance.

LEGISLATION TO REPEAL TEMPORARY UNEMPLOYMENT TAX

Mr. ALLARD. Mr. President, today I introduce legislation to repeal the ''temporary'' 0.2 percent Federal Unemployment Tax (FUTA) surtax.

The ''temporary'' surtax was enacted by Congress in 1976 to repay the general fund of the Treasury for funds borrowed by the unemployment trust fund. While the borrowings were repaid in 1987, Congress has continued to extend the surtax in tax bill after tax bill.

Since 1987, Congress has used extension of the surtax to help pay for tax packages. In fact, the surtax was most recently extended to help pay for the 1997 tax bill.

This is unfair to small business which has been told repeatedly that the surtax was temporary and would be

repealed when it was no longer needed to finance the unemployment tax system.

The reason for the FUTA surtax no longer exists. The economy is experiencing the highest level of employment in decades, and all state unemployment funds have surpluses.

It is inappropriate for the government to continue to raise surplus unemployment taxes and use those surpluses for purposes totally unrelated to the unemployment tax system.

The FUTA surtax hits small businesses hardest because they are often labor intensive. Any payroll tax is added directly to the employer's payroll costs, and payroll taxes must be paid whether the business has a profit or loss.

Mr. President, prior to my election to the House of Representatives in 1990, I ran a small business. I am well aware of payroll taxes and the burden that they can place on a business.

The unemployment surtax was in place when I ran my small business.

I suspect that my view of the surtax is similar to the view of most small business owners. It is one thing to have a surtax when unemployment is high. It is totally unjustified when unemployment is at the lowest level in three decades.

What really upsets small business owners is the fact that the government is breaking its commitment that the surtax would be temporary. This is not the way the federal government should do business.

Repeal of the 0.2 percent surtax will reduce the tax burden on employers and workers by $6 billion over the next five years.

Lower payroll taxes mean higher wages for workers. While the employer appears to fully pay the unemployment surtax and other payroll taxes, the economic evidence is strong that the cost of payroll taxes is passed on to workers in form of lower wages.

Consistent tax relief will help to ensure that our economy remains the strongest and most competitive in the world. Low taxes reduce unemployment and help ensure that future surtaxes are unnecessary.

Mr. President, I ask that the text of the bill be printed in the RECORD along with several charts showing the level of State Unemployment System Reserves from 1991–1997.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2170

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

SECTION 1. REPEAL OF TEMPORARY UNEMPLOYMENT TAX.

Section 3301 of the Internal Revenue Code of 1986 (relating to rate of unemployment tax) is amended—

(1) by striking ''2007'' in paragraph (1) and inserting ''1998'';and

(2) by striking ''2008'' in paragraph (2) and inserting ''1999''.

STATE UNEMPLOYMENT COMPENSATION SYSTEM RESERVES AND RATIO OF RESERVES TO TOTAL WAGES BY STATE AND YEAR, 1991–1995

State	Net reserves as of Dec. 31 of each year (thousands)					Ratio of year-end reserves to total wages (percent)				
	1995	1994	1993	1992	1991	1995	1994	1993	1992	1991
Alabama	$534,470	$551,842	$570,118	$550,280	$585,725	1.61	1.77	1.94	1.96	2.24
Alaska	201,017	210,563	227,911	232,320	243,155	3.56	3.81	4.32	4.57	4.98
Arizona	534,640	432,449	368,782	372,423	437,667	1.48	1.33	1.26	1.36	1.71
Arkansas	200,866	169,795	134,432	81,340	103,629	1.12	1.02	0.87	0.55	0.76
California	2,104,220	2,092,695	2,450,402	2,786,713	4,190,197	0.68	0.72	0.87	0.99	1.52
Colorado	480,582	434,482	390,435	339,246	312,036	1.22	1.21	1.15	1.10	1.09
Connecticut	116,692	3,311	1,062	(653,215)	(353,767)	0.27	0.01	0.00	0.00	0.00
Delaware	271,807	244,013	225,943	218,719	223,685	3.24	3.14	3.05	3.04	3.20
District of Columbia	68,636	41,141	5,937	(19,286)	12,465	0.57	0.35	0.05	0.00	0.12
Florida	1,806,432	1,621,614	1,505,570	1,443,603	1,691,814	1.53	1.47	1.45	1.47	1.84
Georgia	1,453,118	1,281,507	1,094,999	965,870	962,324	2.03	1.95	1.79	1.68	1.81
Hawaii	213,496	232,859	310,155	362,123	420,991	2.07	2.26	3.01	3.57	4.39
Idaho	243,090	245,096	247,823	240,141	243,573	2.88	3.14	3.49	3.67	4.09
Illinois	1,629,210	1,247,066	851,918	847,622	1,172,283	1.22	0.99	0.71	0.74	1.08
Indiana	1,228,070	1,132,343	1,024,658	941,632	899,139	2.16	2.11	2.05	1.99	2.02
Iowa	725,149	708,450	655,066	615,474	594,626	3.10	3.23	3.20	3.16	3.27
Kansas	704,008	735,717	658,053	605,827	571,904	2.77	3.20	3.03	2.89	2.91
Kentucky	470,826	425,682	402,311	364,287	357,940	1.61	1.55	1.57	1.49	1.58
Louisiana	1,003,378	868,819	689,382	600.917	559,975	3.15	2.92	2.47	2.22	2.15
Maine	95,289	74,621	51,403	35,108	77,553	1.06	0.87	0.62	0.44	1.01
Maryland	605,415	408,994	219,071	145,839	224,970	1.36	0.96	0.54	0.37	0.59
Massachusetts	527,273	184,933	(115,987)	(379,918)	(234,742)	0.70	0.26	0.00	0.00	0.00
Michigan	1,497,688	866,906	364,530	(72,492)	(166,509)	1.45	0.90	0.42	0.00	0.00
Minnesota	459,621	369,776	257,584	224,091	309,473	0.94	0.80	0.59	0.54	0.80
Mississippi	551,318	490,392	410,259	345,352	348,593	3.19	2.98	2.74	2.48	2.69
Missouri	196,933	118,466	(7,749)	3,101	199,473	0.40	0.26	0.00	0.01	0.30
Montana	122,242	110,910	104,415	96,370	91,119	2.08	1.95	1.91	1.87	1.91
Nebraska	194,283	188,365	171,938	160,713	146,184	1.45	1.51	1.49	1.46	1.42
Nevada	297,866	289,804	238,398	233,667	295,919	1.69	1.70	1.68	1.79	2.46
New Hampshire	250,884	211,580	164,455	129,582	127,995	2.25	2.06	1.71	1.38	1.46
New Jersey	1,987,790	1,947,033	1,965,236	2,439,970	2,564,278	2.06	2.12	2.23	2.86	3.16
New Mexico	354,874	317,264	271,194	238,999	220,932	3.25	3.13	2.91	2.77	2.73
New York	248,978	190,467	129,409	213,914	1,191,450	0.12	0.10	0.07	0.12	0.69
North Carolina	1,531,117	1,555,329	1,514,674	1,387,170	1,373,719	2.27	2.49	2.60	2.52	2.70
North Dakota	57,415	58,641	56,267	50,306	50,914	1.41	1.55	1.59	1.51	1.64
Ohio	1,600,533	1,166,837	845,054	602,464	647,410	1.46	1.13	0.88	0.65	0.74
Oklahoma	521,683	474,866	437,800	418,907	426,398	2.32	2.21	2.13	2.10	2.24
Oregon	905,985	994,533	1,096,695	1,054,524	1,043,810	3.21	3.86	4.63	4.71	4.98
Pennsylvania	1,914,777	1,518,999	1,105,425	807,828	1,155,988	1.78	1.48	1.12	0.84	1.26
Puerto Rico	634,291	674,663	730,873	749,255	750,020	6.71	7.54	8.39	9.05	9.64
Rhode Island	110,086	119,262	119,294	104,498	143,617	1.33	1.51	1.56	1.41	2.03
South Carolina	556,650	502,237	467,494	433,442	455,097	1.84	1.79	1.77	1.73	1.92
South Dakota	51,622	51,208	49,773	50,416	49,701	1.09	1.16	1.23	1.34	1.45
Tennessee	822,821	747,477	672,261	603,130	612,653	1.66	1.62	1.58	1.50	1.67
Texas	584,866	480,322	445,633	586,472	942,734	0.34	0.30	0.30	0.41	0.69
Utah	468,030	411,411	366,524	342,146	327,893	2.93	2.86	2.82	2.83	2.96
Vermont	206,720	195,418	183,025	180,730	192,675	4.51	4.51	4.37	4.49	5.05
Virginia	788,787	658,588	553,441	506,641	591,166	1.27	1.13	1.01	0.97	1.19
Virgin Islands	40,064	40,843	51,575	47,416	43,241	6.86	6.67	6.60	7.32	7.31
Washington	1,417,701	1,565,417	1,743,146	1,766,006	1,707,604	2.93	3.45	4.05	4.18	4.40
West Virginia	164,036	161,671	154,512	140,517	157,124	1.44	1.47	1.49	1.38	1.62
Wisconsin	1,503,641	1,400,119	1,241,918	1,194,553	1,171,822	3.06	3.03	2.87	2.90	3.07
Wyoming	142,310	136,755	127,332	109,826	98,952	4.22	4.15	4.08	3.71	3.48
Total	35,403,296	31,343,551	28,187,816	27,111,772	31,494,605	1.40	1.32	1.25	1,25	1.49

Difference between detail and totals due to rounding 1995 data subject to revision. Ratio of reserves to wages not calculated for States with negative balances.

Source: U.S. Department of Labor. Prepared by the National Foundation for U.C. & W.C., June 1997.

FINANCIAL INFORMATION BY STATE FOR CY96.4, 1996

State	Revenue (12 mos) (in thousands)	TF Balance (in thousands)	Mos. in TF	Total loans (in thousands)	Loans/ cov. employee
United States	$23,009,990	$38,631,922	21.3	$0	$0.00

FINANCIAL INFORMATION BY STATE FOR CY96.4, 1996—Continued

State	Revenue (12 mos) (in thousands)	TF Balance (in thousands)	Mos. in TF	Total loans (in thousands)	Loans/ cov. employee
Alabama	134,029	483,472	27.3	0	0.00
Alaska	109,089	194,188	19.8	0	0.00
Arizona	223,143	627,059	46.3	0	0.00
Arkansas	169,670	202,784	13.0	0	0.00
California	3,590,823	2,877,452	11.7	0	0.00
Colorado	187,897	510,956	32.5	0	0.00
Connecticut	592,538	277,861	7.4	0	0.00
Delaware	68,409	258,468	31.9	0	0.00
Dist. of Colum.	133,380	99,368	12.2	0	0.00
Florida	677,796	1,947,557	35.2	0	0.00
Georgia	382,294	1,634,073	67.0	0	0.00
Hawaii	179,540	211,267	13.3	0	0.00
Idaho	105,900	266,228	32.1	0	0.00
Illinois	1,199,050	1,638,560	15.2	0	0.00
Indiana	238,343	1,273,086	58.0	0	0.00
Iowa	133,905	718,845	45.9	0	0.00
Kansas	42,487	651,074	52.6	0	0.00
Kentucky	234,997	501,304	25.7	0	0.00
Louisana	204,469	1,131,052	94.7	0	0.00
Maine	122,601	112,122	12.5	0	0.00
Maryland	421,722	690,786	22.9	0	0.00
Massachusetts	1,130,136	914,631	14.0	0	0.00
Michigan	1,233,803	1,830,928	21.8	0	0.00
Minnesota	386,523	513,033	16.4	0	0.00
Mississippi	99,520	553,222	50.0	0	0.00
Missouri	381,576	307,507	12.8	0	0.00
Montana	58,841	125,900	24.9	0	0.00
Nebraska	41,748	195,210	44.8	0	0.00
Nevada	177,064	348,278	28.6	0	0.00
New Hampshire	41,781	268,011	91.7	0	0.00
New Jersey	1,448,896	2,028,818	18.1	0	0.00
New Mexico	85,729	385,531	59.6	0	0.00
New York	2,211,440	470,400	2.8	0	0.00
North Carolina	113,075	1,335,565	39.6	0	0.00
North Dakota	24,364	50,072	19.1	0	0.00
Ohio	781,640	1,750,968	28.8	0	0.00
Oklahoma	128,728	563,895	64.3	0	0.00
Oregon	384,046	941,419	28.9	0	0.00
Pennsylvania	1,612,406	2,031,947	14.9	0	0.00
Puerto Rico	149,262	595,703	31.8	0	0.00
Rhode Island	184,004	116,240	7.4	0	0.00
South Carolina	208,829	603,410	36.2	0	0.00
South Dakota	12,291	49,542	39.9	0	0.00
Tennessee	284,220	826,526	30.8	0	0.00
Texas	1,014,460	642,233	7.7	0	0.00
Utah	96,262	523,880	89.2	0	0.00
Vermont	48,595	218,259	49.5	0	0.00
Virginia	260,890	897,198	55.4	0	0.00
Virgin Islands	9,345	42,069	51.5	0	0.00
Washington	644,606	1,332,508	19.7	0	0.00
West Virginia	130,182	157,345	12.8	0	0.00
Wisconsin	445,248	1,556,922	37.2	0	0.00
Wyoming	28,401	147,087	54.0	0	0.00

FINANCIAL INFORMATION BY STATE FOR CYQ, 1997

State	Revenues, last 12 months (in thousands)	TF balance (in thousands)	TF as percent of total wages [1]
Alabama	$140,978	$451,425	1.21
Alaska	131,645	202,416	3.46
Arizona	224,651	741,050	1.70
Arkansas	183,101	204,319	1.03
California	3,367,845	3,737,815	1.05
Colorado	198,748	574,413	1.22
Connecticut	637,125	532,692	1.06
Delaware	75,692	279,173	2.86
District of Col.	132,481	135,627	0.94
Florida	685,668	2,090,222	1.55
Georgia	350,964	1,797,102	2.13
Hawaii	186,510	216,658	2.04
Idaho	99,412	280,382	3.00
Illinois	1,226,328	1,742,968	1.16
Indiana	268,016	1,362,463	2.15
Iowa	144,156	727,327	2.79
Kansas	46,633	606,735	2.16
Kentucky	269,075	571,366	1.71
Louisiana	213,963	1,275,668	3.55
Maine	118,089	136,019	1.35
Maryland	349,967	720,552	1.42
Massachusetts	1,222,144	1,446,164	1.64
Michigan	1,184,719	2,222,714	1.93
Minnesota	398,707	564,628	0.98
Mississippi	166,992	563,901	2.95
Missouri	381,802	417,706	0.75
Montana	65,306	135,604	2.11
Nebraska	57,932	205,727	1.33
Nevada	224,837	387,888	1.79
New Hampshire	26,426	278,296	2.16
New Jersey	1,459,837	2,384,916	2.21
New Mexico	99,244	431,159	3.61
New York	2,402,806	990,176	0.43
North Carolina	253,942	1,301,184	1.67
North Dakota	26,246	38,057	0.83
Ohio	719,622	1,874,943	1.53
Oklahoma	107,585	608,942	2.36
Oregon	462,961	1,068,843	3.13
Pennsylvania	1,587,542	2,253,703	1.87
Puerto Rico	203,816	586,659	5.30
Rhode Island	248,423	160,044	1.78
South Carolina	219,733	687,060	2.02
South Dakota	14,186	48,939	0.91
Tennessee	296,749	847,842	1.52
Texas	1,014,596	706,577	0.35
Utah	97,876	572,849	2.97

FINANCIAL INFORMATION BY STATE FOR CYQ, 1997—Continued

State	Revenues, last 12 months (in thousands)	TF balance (in thousands)	TF as percent of total wages [1]
Vermont	50,047	233,537	4.59
Virgin Islands	7,693	45,434	6.82
Virginia	222,448	979,376	1.35
Washington	810,440	1,447,195	2.42
West Virginia	139,030	165,917	1.37
Wisconsin	475,595	1,632,214	2.95
Wyoming	31,217	158,573	4.26
United States	23,731,544	43,833,157	1.51

[1] Based on estimatd wages for the most recent 12 months.

By Mr. BOND:

S. 2173. A bill to amend the Rehabilitation Act of 1973 to provide for research and development of assistance technology and universally designed technology, and for other purposes; to the Committee on Labor and Human Resources.

ASSISTIVE AND UNIVERSALLY DESIGNED TECHNOLOGY IMPROVEMENT ACT FOR INDIVIDUALS WITH DISABILITIES

Mr. BOND. Mr. President, today I am introducing a bill which will improve assistive and universally designed technology research and development and increase access to this technology for all Americans with disabilities.

Assistive and universally designed technology provides a disabled individual the means to function better in the workplace or the home. Assistive and universally designed technology is technology that aids the millions of Americans with physical or mental disabilities. For example, assistive technology can mean a computer that can be used by an individual with Cerebral Palsy, a hearing aid for an aging individual or enhanced voice recognition for someone with Multiple Sclerosis, while universally designed technology can mean closed captioning for the deaf or for patrons in crowded restaurants and accessability ramps for individuals in wheelchairs or mothers with strollers.

A year ago my office was approached by a small business owner and Missouri's United Cerebral Palsy asking for support for testing of a breakthrough in Voice Recognition technology. During my search to find an appropriate place for funding for this voice recognition technology, my staff and I became familiar with the overall government efforts in this area.

There are many significant problems in the federal government's efforts in assistive technology research and development. My finding's were validated by a recent report from the National Academy of Sciences' Institute of Medicine, ''Enabling America: Assessing the Role of Rehabilitation Science and Engineering,'' which stressed that the federal government's efforts in this area are lacking awareness, funding, and coordination.

My distinguished colleague in the House, Congresswoman CONNIE MORELLA, Chairwoman of the House Science's Subcommittee on Technology, joins me today in introducing the Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities.

The Act provides federally supported incentives in all areas of assistive and universally designed technology, including need identification, research and development, product evaluation, technology transfer, and commercialization. These incentives achieve the goal of improving the quality, functional capability, distribution, and affordability of this essential technology.

This legislation does several things.

First, the bill includes an improved peer review process at the National Institute on Disability Research and Rehabilitation (NIDRR) at the Department of Education. This provision requires standing peer review panels and clarifies the evaluation of applications for funding of assistive and universally designed technology. These improvements provide more assistive and universally designed technology products to the marketplace, increase small business involvement in research and development, and assure research and development efforts cover all disability groups including persons with physical and mental disabilities as well as the aging and rural technology users.

Second, the legislation augments technology transfer through improving the role of the Interagency Committee on Disability Research (ICDR) by increasing its authority, accountability and ability to coordinate. Provisions are included for increased usage of the Federal labs to improve coordination with all Federal agencies involved in assistive and universally designed technology research and development and for providing public and private sector partnerships for assistive and universally designed technology research and development.

Third, to increase the market for assistive technology, the bill clarifies Title III of the Tech Act for the Microloan program. This microloan program assists disabled persons in obtaining assistive and universally designed technology.

Fourth, funds are authorized for the Interagency Committee on Disability Research to hire staff and for operating costs associated with issuing surveys and reports. Additionally, $10 million in funds are authorized for the National Institute on Disability Research and Rehabilitation to provide for assistive and universally designed technology research and development.

Finally, to increase access to assistive and universally designed technology, tax incentives are included to provide businesses a tax credit for the development of assistive technology, to expand the architectural and transportation barrier removal deduction to include communication barriers, and to expand the work opportunity credit to include expenses incurred in the acquisition of technology to facilitate the employment of any individual with a disability.

These tax incentives and micro loans will assist individuals with disabilities to obtain assistive and universally designed technology in order to improve their quality of life, to secure and maintain employment, and to assist small businesses in complying with Americans with Disabilities Act requirements, which in effect, results in lessened financial burdens on society.

As technology increasingly plays a role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the transforming of employment, and in the provision of education, it also greatly impacts the lives of the more than 50 million individuals with disabilities in the United States.

An agenda, including support for universal design, represents the only effective means for guaranteeing the benefits of technology to all persons in the United States, regardless of disability or age, in addition to assuring for United States industry the continued growth in markets that will warrant continued high levels of innovation and research.

This legislation has the support of many organizations, including: The Missouri Assistive Technology Advisory Council, the United Cerebral Palsy Association, the Rehabilitation Engineering and Assistive Technology Society of North America, the National Easter Seal Society, and the Association of Tech Act Projects.

The bill also has broad bipartisan and bicameral support. My colleagues, Senator JEFFORDS, Senator HARKIN, Senator GRASSLEY, and Congresswoman CONNIE MORELLA have been very helpful in my efforts to improve the role of the federal government in assistive and universally designed technology.

Let me conclude by taking special note of the help of the National and Missouri United Cerebral Palsy, as well as the Missouri Assistive Technology Project, the Federal Laboratory Consortium, and the numerous assistive and universally designed technology and disability community advocate organizations, for their assistance in developing and advocating this legislation.

Mr. President, I ask unanimous consent that the bill, the amendment I submit today, and letters of support be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2173

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 ''Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The area of assistive technology is greatly overlooked by the Federal Government and the private sector. While assistive technology's importance spans age and disability classifications, assistive technology does not maintain the recognition in the Federal Government necessary to provide important assistance for research and development programs or to individuals with disabilities. The private sector lacks adequate incentives to produce assistive technology, and end-users lack adequate resources to acquire assistive technology.

(2) As technology has come to play an increasingly important role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the conduct of commerce, in the transformation of employment, and in the provision of education, technology's impact upon the lives of the more than 50,000,000 individuals with disabilities in the United States has been comparable to technology's impact upon the remainder of our Nation's citizens. No development in mainstream technology can be imagined that will not have profound implications for individuals with disabilities.

(3) In a technological environment, the line of demarcation between assistive and mainstream technology becomes ever more difficult to draw, and the decisions made by the designers of mainstream equipment and services will increasingly determine whether and to what extent the equipment and services can be accessed and used by individuals with disabilities.

(4) A commitment to assistive technology, while remaining important, cannot alone ensure access to technology and communications networks by individuals with disabilities. An agenda, including support for universal design, represents the only effective means for guaranteeing the benefits of technology to all persons in the United States, regardless of disability or age, and for assuring for United States industry the continued growth in markets that will warrant continued high levels of innovation and research.

(5) The Federal Government needs to make improvements to peer review processes that affect assistive technology research and development.

(6) There are insufficient links between federally funded assistive technology research and development programs and the private sector entities responsible for translating research and development into significant new products in the marketplace for end-users.

(7) The Federal Government does not provide assistive technology that is universally designed and targets older and rural assistive technology end-users.

(8) The Federal Government does not coordinate all Federal assistive technology research and development.

(9) Small businesses, which provide many innovative ideas for assistive technology and provide the vast majority of research and development efforts that lead to viable commercial assistive technology products, are not utilized in Federal assistive technology research and development efforts to the extent that small businesses may play a key role in assistive technology research and development. In addition, small businesses lack access to the resources of the Federal laboratories and would benefit from partnerships with the Federal laboratories.

(10) Many more individuals with disabilities could secure and maintain employment and move from income supports to competitive work if given the ability to purchase assistive technology. Tax incentives for businesses to purchase assistive technology for

their employees, and micro loans for individuals to purchase assistive technology, help individuals with disabilities improve their quality of life. Such incentives and loans lead to more productive lives, while lessening the financial burdens on society.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to improve the quality, functional capability, distribution, and affordability of assistive technology and universally designed technology, through federally supported incentives for all the participants in need identification, research and development, product evaluation, technology transfer, and commercialization, for such technologies, to enhance quality of life and ability to obtain employment for all individuals with disabilities;

(2) to clarify the role of the National Institute on Disability and Rehabilitation Research at the Department of Education so as to provide for better peer reviews;

(3) to improve coordination of Federal assistive technology research and development by strengthening the Interagency Committee on Disability Research;

(4) to prioritize assistive technology research, development, and dissemination efforts to match the needs of the underserved assistive technology end-users such as older and rural end-users;

(5) to increase the use of universal design in the commercial development of standard products;

(6) to incorporate the principles of universal design in the development of assistive technology;

(7) to increase usage of the Small Business Innovative Research Program as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

(8) to improve coordination between the Federal laboratories and the members of the Interagency Committee on Disability Research;

(9) to improve the transfer of technology from mission-oriented applications in Federal laboratories to assistive technology applications in research and development programs, and to transfer prototype assistive technology products from federally sponsored programs to the private sector;

(10) to increase the availability of assistive technology products and universally designed technology products in the marketplace for the end-users; and

(11) to create tax incentives and micro loans to assist individuals with disabilities to obtain assistive technology and universally designed technology in order to improve their quality of life and to secure and maintain employment.

SEC. 4. PEER REVIEW PROCESS.

Title II of the Rehabilitation Act of 1973 (29 U.S.C. 761a et seq.) is amended by adding at the end the following:

''SEC. 206. PEER REVIEW PROCESS.

''(a) PEER REVIEW PANELS.—

''(1) COMPOSITION.—

''(A) IN GENERAL.—The Director shall establish a peer review process, involving peer review panels composed of members appointed by the Director, for the review of applications for grants, contracts, or cooperative agreements under this title for research and development of assistive technology and universally designed technology.

''(B) DURATION.—The members of such a peer review panel shall serve for terms of 3 years, except that the members initially appointed may serve for shorter terms.

''(C) MEMBER TERMS.—Members of a peer review panel shall serve staggered terms so as to provide for institutional memory and experience at all times.

''(D) SELECTION AND APPOINTMENT.—

''(i) IN GENERAL.—Members of peer review panels shall be selected and appointed based upon their training and experience in relevant scientific or technical fields, taking into account, among other factors—

''(I) the level of formal scientific or technical education completed or experience acquired by an individual;

''(II) the extent to which the individual has engaged in relevant research, the capacities (such as principal investigator or assistant) in which the individual has so engaged, and the quality of such research;

''(III) the recognition of the individual, as reflected by awards and other honors received from scientific and professional organizations outside the Department of Education; and

''(IV) the need for a panel to include experts from various areas or specializations within the fields of assistive technology and universally designed technology.

''(ii) SPECIAL RULES.—To the extent practicable, the peer review panels shall have, collectively, a significant number of members who are individuals with disabilities, and the members of the panels shall reflect the population of the United States as a whole in terms of gender, race, and ethnicity.

''(E) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—Not more than ¼ of the members of any peer review panel may be officers or employees of the Federal Government. For purposes of the preceding sentence, an individual who is a member of a peer review panel shall not, by virtue of such service, be considered to be an officer or employee of the Federal Government.

''(2) CONFLICT OF INTEREST.—

''(A) IN GENERAL.—No member of a peer review panel may participate in or be present during any review by the peer review panel of an application for a grant, contract, or cooperative agreement, in which, to the member's knowledge, any of the following has a financial interest:

''(i) The member of the panel or the member's spouse, parent, child, or business partner.

''(ii) Any organization with which the member or the member's spouse, parent, child, or business partner is negotiating or has any arrangement concerning employment or any other similar association.

''(B) DISQUALIFIED PANEL.—In the event any member of a peer review panel or the member's spouse, parent, child, or business partner is currently, or is expected to be, the principal investigator or a member of the staff responsible for carrying out any research or development activities described in an application for a grant, contract, or cooperative agreement, the Secretary shall disqualify the panel from reviewing the application and ensure that the review will be conducted by another peer review panel with the expertise to conduct the review. If there is no other panel with the requisite expertise, the Secretary shall ensure that the review will be conducted by an ad hoc panel of members of the peer review panels, not more than 50 percent of whom may be from the disqualified panel.

''(C) PROHIBITION.—No member of a peer review panel may participate in or be present during any review under this title of a specific application for a grant, contract, or cooperative agreement for an activity for which the member has had or is expected to have any other responsibility or involvement (either before or after the grant, contract, or cooperative agreement was awarded for the activity) as an officer or employee of the Federal Government.

''(3) AVAILABILITY OF INFORMATION.—Transcripts, minutes, and other documents made available to or prepared for or by a peer review panel shall be available for public inspection and copying to the extent provided in section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'), the Federal Advisory Committee Act (5 U.S.C. App.), and section 552a of title 5, United States Code (commonly known as the 'Privacy Act of 1974').

''(4) EVALUATION OF APPLICATION.—A peer review panel shall—

''(A) evaluate applications for grants, contracts, or cooperative agreements under this title with respect to research and development of assistive technology and universally designed technology to assure duplication of such research and development does not occur across Federal departments and agencies; and

''(B) evaluate the applications with respect to meeting immediate needs for research and development of assistive technology and universally designed technology in the disabled community (as identified in data collected by the Interagency Committee on Disability Research), through criteria that will ensure the effectiveness of the priorities of the Interagency Committee for such research and development.

''(5) APPLICATION REVIEW CRITERIA.—In carrying out a review of an application for a grant, contract, or cooperative agreement with respect to research and development of assistive technology or universally designed technology under this section, the peer review panel, among other factors, shall take into account—

''(A) the need for research and development of assistive technology and universally designed technology that facilitates individuals with disabilities obtaining employment;

''(B) the need to allocate amounts of assistance through grants, contracts, or cooperative agreements for research and development of assistive technology and universally designed technology in a manner proportionate to need for assistive technology and universally designed technology, and proportionate to the population of disability groups, including individuals with physical disabilities, individuals with cognitive disabilities, older individuals with disabilities, and rural assistive technology and universally designed technology end-users;

''(C) the significance and originality from a scientific or technical standpoint of the goals of the proposed research and development;

''(D) the adequacy of the methodology proposed to carry out the research and development;

''(E) the qualifications and experience of the proposed principal investigator and staff for the research and development;

''(F) the reasonable availability of resources necessary to the research and development;

''(G) the reasonableness of the proposed budget and the duration in relation to the proposed research and development;

''(H) if an application involves activities that may have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects;

''(I) the extent to which appropriate measures will be taken to advance the cause of universal design through proposed assistive technology research and development, including the extent to which the applicant has reviewed a variety of existing measures (as of the date of the review) on the part of the designers and producers of assistive technology and the providers of related services to produce universally designed technology;

''(J) the extent to which efforts shall be made to include small businesses in the proposed research and development of assistive

technology or universally designed technology through increased usage of the Small Business Innovative Research Program as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e));

''(K) the extent to which the proposed research and development of assistive technology or universally designed technology will result in the production of actual products for the marketplace for assistive technology or universally designed technology end-users;

''(L) the extent to which the applicant identifies secondary benefits or applications of the assistive technology or universally designed technology involved, or agrees to make matching contributions (in cash or in kind, fairly evaluated) toward the cost of the research and development, in partnership with representatives of industry, government, and educational institutions; and

''(M) the extent to which proposed research and development of universally designed technology will result in a change in design of standard products, so that the products are more usable by a broad range of individuals with disabilities or older individuals.

''(6) COMPENSATION.—Each member of a peer review panel who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the panel. All members of the panel who are officers or employees of the Federal Government shall serve without compensation in addition to compensation received for their services as officers or employees of the Federal Government.

''(7) TRAVEL EXPENSES.—The members of the panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the panel.

''(8) TERMINATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the peer review panels.

''SEC. 207. DEFINITIONS.

''In this title:

''(1) ASSISTIVE TECHNOLOGY.—The term 'assistive technology' means technology designed to be utilized in an assistive technology device or assistive technology service.

''(2) ASSISTIVE TECHNOLOGY AND UNIVERSALLY DESIGNED TECHNOLOGY END-USER.—The term 'assistive technology and universally designed technology end-user' means any individual with a disability who uses assistive technology or universally designed technology to improve the quality of life of the individual or to obtain employment, including an individual with a physical disability, a cognitive disability, or a sensory disability, or an older individual.

''(3) TECHNOLOGY TRANSFER.—The term 'technology transfer' means the transmittal of developed ideas, products, and techniques—

''(A) from a research environment to an environment of practical application; or

''(B) from application in a prototype invention to mass production in a commercial product.

''(4) UNIVERSAL DESIGN.—The term 'universal design' means the design, development, fabrication, marketing, and technical support of products, services, and environments designed to be usable, to the greatest extent possible, by the largest number of persons, including individuals with disabilities and individuals without disabilities. No product, service, or environment shall be considered to have a universal design if use of the product, service, or environment is substantially limited or prevented by reason of—

''(A) a disability related to hearing, vision, learning, strength, reach, or movement; or

''(B) the existence of any other limitation of a major life function.''.

SEC. 5. TECHNOLOGY TRANSFER.

(a) AMENDMENTS TO PROVISIONS RELATING TO THE INTERAGENCY COMMITTEE ON DISABILITY RESEARCH.—Section 203 of the Rehabilitation Act of 1973 (29 U.S.C. 761b) is amended—

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

''(3) Each member of the Committee shall attend all meetings of the Committee or delegate the responsibility for attending the meetings to a designee with the authority to commit the department or agency represented to participate in a joint project, the authority to comment on issues on behalf of the department or agency, and the expertise to participate in Committee discussions.'';

(2) in subsection (b)—

(A) by inserting ''(1)'' before ''After receiving''; and

(B) by adding at the end the following:

''(2) The Committee shall—

''(A) monitor the range of research and development of assistive technology and universally designed technology carried out by the Federal departments and agencies represented on the Committee;

''(B) ensure that the highest quality research and development of assistive technology and universally designed technology (through methods such as peer review) is carried out by the departments and agencies;

''(C) identify and establish clear research priorities for research and development of assistive technology and universally designed technology that will benefit individuals with disabilities, and permit joint ventures concerning research and development of assistive technology and universally designed technology among the department needs and agencies;

''(D) ensure interagency collaboration and joint research activities and reduce unnecessary duplication of effort by the departments and agencies;

''(E) develop effective technology transfer activities for the departments and agencies, including activities resulting from increased supply of assistive technology and universally designed technology or increased demand of assistive technology and universally designed technology end-users;

''(F) help establish and maintain the use of consistent definitions and terminologies among the departments and agencies, which definitions shall contribute to the production of comparable research and to the development of reliable statistical data across departments and agencies;

''(G) optimize the productivity of the departments and agencies through resource sharing and other cost-saving activities;

''(H) identify gaps in needed research and development and make efforts to ensure that the gaps are filled by a Federal department or agency represented on the Committee; and

''(I) collaborate with member agencies on specific projects that need additional funding beyond the capacity of 1 Federal department or agency represented on the Committee.'';

(3) by redesignating subsection (c) as subsection (d);

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

''(c)(1) The Director shall establish special task forces and subcommittees of the Committee for research and development of assistive technology and universally designed technology, including task forces and subcommittees related to medical rehabilitation, technology (including universal design), and the employment of individuals with disabilities.

''(2) The Director shall appoint 2 full-time staff members to assist the Director in the operation of the Committee.'';

(5) in subsection (d) (as redesignated by paragraph (3))—

(A) by inserting ''(1)'' before ''The Committee''; and

(B) by adding at the end the following:

''(2) The Director shall issue a biannual report announcing the availability of the grants, contracts, or cooperative agreements made available through Federal departments and agencies represented on the Committee for research and development of assistive technology and universally designed technology.

''(3) The Director shall submit to the Commissioner for inclusion in the annual report to Congress described in section 13—

''(A) the results and an analysis of the activities conducted under grants, contracts, or cooperative agreements awarded by departments and agencies represented on the Interagency Committee on Disability Research for research and development of assistive technology and universally designed technology;

''(B) a detailed summary of the activities and the effectiveness of the Committee in expanding research opportunities that lead to direct development of assistive technology devices and assistive technology services; and

''(C) results of periodic surveys of manufacturers and suppliers of assistive technology and universally designed technology, and of assistive technology and universally designed technology end-users.''.

(b) AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—Section 11(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (I), by striking ''and'' after the semicolon;

(B) in subparagraph (J), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(K) develop and disseminate, including through accessible electronic formats, to all Federal, State, and local agencies and instrumentalities involved in assistive technology and universally designed technology, in order to maximize research and development of assistive technology and universally designed technology, information that indicates—

''(i) the extent of all activities undertaken by the Federal laboratories in the previous year having an intended or a recognized potential impact upon individuals with disabilities;

''(ii) the degree to which ongoing or projected activities of the Federal laboratories are expected to have an impact upon the available range of, or applications for, assistive technology and universally designed technology;

''(iii) the extent to which expert resources within the Consortium are made available or can be accessed for the purpose of meeting needs related to assistive technology and universally designed technology in the communities where the Federal laboratories operate; and

''(iv) the extent to which each Federal laboratory has attempted to involve, and succeeded in involving, individuals with disabilities in the development of priorities, plans, and prototypes with respect to assistive

technology and universally designed technology.''; and

(2) by adding at the end the following:

''(8)(A) The Director of the National Institute on Disability and Rehabilitation Research shall participate annually in the national meeting and interagency meeting of the Consortium.

''(B) The Director, in collaboration with other members of the Interagency Committee on Disability Research, where appropriate, shall coordinate the activities of the Federal laboratories, with respect to research and development of assistive technology and universally designed technology.

''(C) In conjunction with members of the Interagency Committee on Disability Research, the Director shall utilize the resources of the Consortium to identify potential public and private sector partners for research and development collaboration regarding assistive technology and universally designed technology.

''(9) In this section:

''(A) The terms 'individual with a disability' and 'individuals with disabilities' have the meanings given the terms in section 3 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202).

''(B) The terms 'universal design' and 'assistive technology' have the meaning given the term in section 207 of the Rehabilitation Act of 1973.''.

SEC. 6. MICRO LOANS.

(a) TERRITORIES.—Section 301 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2281) is amended—

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

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

''(b) AWARD BASIS.—The Secretary shall award grants to States under this section on the basis of the population of the States.''.

(b) MECHANISMS.—Subsection (d) of section 301 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (as redesignated by subsection (a)(1)) is amended to read as follows:

''(c) MECHANISMS.—

''(1) IN GENERAL.—The alternative financing mechanisms shall include—

''(A) an interest buy-down loan program;

''(B) a revolving loan fund program; or

''(C) a loan guarantee program.

''(2) REQUIREMENTS.—Each program described in paragraph (1) shall—

''(A) provide assistance for assistive technology devices, assistive technology services, and universally designed technology products and services; and

''(B) maximize consumer participation in all aspects of the program.

''(3) DEFINITIONS.—

''(A) INTEREST BUY-DOWN LOAN PROGRAM.—The term 'interest buy-down loan program' means a loan program that involves an organization, using the organization's funds, to reduce the interest rate of a loan made by a lending institution to a borrower.

''(B) LOAN GUARANTEE PROGRAM.—The term 'loan guarantee program' means a loan program that provides loans that are backed by a promise or guarantee that, if there is a default on a loan made under the program, the loan will be paid back.

''(C) REVOLVING LOAN FUND PROGRAM.—The term 'revolving loan fund program' means a loan program in which individuals borrow money from a loan fund, loan repayments are dedicated to the recapitalization of the loan fund, and the repayments are used to make additional loans.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 308(a) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2288(a)) is amended by striking ''this title'' and all that follows and inserting ''this title, such sums as may be necessary for each of fiscal years 1999 through 2001.''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended to read as follows:

''(a) There are authorized to be appropriated—

''(1) such sums as may be necessary for each of fiscal years 1999 through 2001, for the purpose of providing for the expenses of the National Institute on Disability and Rehabilitation Research under section 202, which—

''(A) shall include the expenses of the Interagency Committee on Disability Research under section 203, the Rehabilitation Research Advisory Council under section 205, and the peer review panels under section 206; and

''(B) shall not include the expenses of such Institute to carry out section 204; and

''(2)(A) such sums as may be necessary for each of fiscal years 1999 through 2001 to carry out section 204, including providing financial assistance for research and development on assistive technology and universally designed technology at the level of assistance provided for fiscal year 1998; and

''(B) $10,000,000 for each of fiscal years 1999 through 2001, to provide, under section 204, such financial assistance (in addition to the level of assistance provided for fiscal year 1998).''.

AMENDMENT NO. 2708

At the end of the bill add the following:

SEC. 8. TAX INCENTIVES FOR ASSISTIVE TECHNOLOGY.

(a) ASSISTIVE TECHNOLOGY DEVELOPMENT BUSINESS TAX CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following:

''SEC. 45D. CREDIT FOR ASSISTIVE TECHNOLOGY.

''(a) GENERAL RULE.—For purposes of section 38, the assistive technology credit of any taxpayer for any taxable year is an amount equal to so much of the qualified assistive technology expenses paid or incurred by the taxpayer during such year as does not exceed $100,000.

''(b) QUALIFIED ASSISTIVE TECHNOLOGY EXPENSES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified assistive technology expenses' means expenses for the design, development, and fabrication of assistive technology devices.

''(2) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, including any item acquired commercially off the shelf and modified or customized by the taxpayer, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

''(3) INDIVIDUALS WITH DISABILITIES.—The term 'individuals with disabilities'' has the meaning given the term by section 3 of the Technology Related Assistance for Individuals with Disabilities Act of 1988 (29 U.S.C. 2202).

''(c) NO DOUBLE BENEFIT.—Any amount taken into account under section 41 may not be taken into account under this section.

''(d) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2003.''.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following:

''(13) the assistive technology credit determined under section 45D(a).''.

(3) TRANSITIONAL RULE.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transitional rules) is amended by adding at the end the following:

''(9) NO CARRYBACK OF SECTION 45D CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the assistive technology credit determined under section 45D(a) may be carried back to a taxable year ending before January 1, 1999.''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 45D. Credit for assistive technology.''.

(5) EVALUATION OF EFFECTIVENESS OF CREDIT.—The Secretary of the Treasury shall evaluate the effectiveness of the assistive technology credit under section 45D of the Internal Revenue Code of 1986, as added by this subsection, and report to the Congress the results of such evaluation not later than January 1, 2003.

(b) EXPANSION OF ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL DEDUCTION.—

(1) IN GENERAL.—Section 190 of the Internal Revenue Code of 1986 is amended—

(A) by inserting ''and qualified communications barrier removal expenses'' after ''removal expenses'' in subsections (a)(1),

(B) by adding at the end of subsection (b) the following:

''(4) QUALIFIED COMMUNICATIONS BARRIER REMOVAL EXPENSES.—

''(A) IN GENERAL.—The term 'qualified communications barrier removal expense' means a communications barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary and set forth in regulations prescribed by the Secretary. Such term shall not include the costs of general communications system upgrades or periodic replacements that do not heighten accessibility as the primary purpose and result of such replacements.

''(B) COMMUNICATIONS BARRIER REMOVAL EXPENSES.—The term 'communications barrier removal expense' means an expenditure for the purpose of identifying and implementing alternative technologies or strategies to remove those features of the physical, information-processing, telecommunications equipment or other technologies that limit the ability of handicap individuals to obtain, process, retrieve, or disseminate information that nonhandicapped individuals in the same or similar setting would ordinarily be expected and be able to obtain, retrieve, manipulate, or disseminate.'', and

(C) by striking ''**and transportation**'' in the heading and inserting '', **transportation, and communications**''.

(2) CONFORMING AMENDMENT.—The item relating to section 190 in the table of sections for part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking ''and transportation'' and inserting '', transportation, and communications''.

(c) EXPANSION OF WORK OPPORTUNITY CREDIT.—Section 51(c) of the Internal Revenue Code of 1986 (defining wages) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following:

''(4) ASSISTIVE TECHNOLOGY EXPENSES.—

''(A) IN GENERAL.—The term 'wages' includes expenses incurred in the acquisition and use of technology—

''(i) to facilitate the employment of any individual, including a vocational rehabilitation referral; or

''(ii) to provide a reasonable accommodation for any employee who is a qualified individual with a disability, as such terms are defined in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111).

''(B) REGULATIONS.—The Secretary shall by regulation provide rules for allocating expenses described in subparagraph (A) among individuals employed by the employer.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

ASSOCIATION OF TECH ACT PROJECTS,
Springfield, IL, June 5, 1998.

Hon. CHRISTOPHER S. BOND,
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR BOND: On behalf of the Association of Technology Act Projects (ATAP), we are writing to express our sincere appreciation for your interest in making new and emerging technologies available to people with disabilities throughout the nation.

''The Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities'', the legislation you are introducing today, would expand federal support for much needed research and development in this field. ATAP looks forward to working closely with you and your staff as this legislation is considered by the Senate Committee on Labor and Human Resources. We believe the projects funded under the Tech Act that have enjoyed federal support, provide a critical linkage among consumers and service providers. ATAP members share your belief in the power of technology to improve the functional capabilities of individuals with disabilities.

ATAP congratulates you on the introduction of this important legislation and offers our support to your effort to expand the federal investment in assistive technology research and development.

Sincerely,

DEBORAH V. BUCK,
ATAP Co-Chair.
LYNNE CLEVELAND,
ATAP Co-Chair.

UNITED CEREBRAL PALSY ASSOCIATIONS,
Washington, DC, June 8, 1998.

DEAR SENATOR BOND: On behalf of United Cerebral Palsy Associations and our 151 affiliates, we strongly endorse the Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities (UCPA) with general reservation around the legislative directive on peer review which was expressed in our June 5 comments. In particular, we applaud your interest in micro tax incentives for assistive technology, and AT research, development, and dissemination.

UCPA has enjoyed working with your staff through this process. Thank you for the opportunity to comment on the legislation. UCPA believes that this bill will complement the anticipated assistive technology bill expected out of the Senate Labor and Human Resources Committee. UCPA looks forward to working with you and your staff in this effort to bring assistive technology to the forefront.

Sincerely,

PETER KEISER,
Chair, Community Services Committee.

NATIONAL EASTER SEAL SOCIETY,
OFFICE OF PUBLIC AFFAIRS,
Washington, DC, June 9, 1998.

Hon. CHRISTOPHER S. BOND,
U.S. Senate, Russell Building,
Washington, DC

DEAR SENATOR BOND: On behalf of National Easter Seals, I would like to thank you for the opportunity to review the ''Assistive and Universally Designed Technology Improvement Act for Individuals with Disabilities.'' Your leadership in addressing the serious issue of access to assistive technology for people with disabilities is greatly appreciated and we look forward to working with you on furthering the aims of the bill as it moves through the Senate Labor and Human Resources committee.

Particularly notable are your efforts to develop a national loan fund to assure that more people with disabilities have access to the technologies they need to reach goals of equality, dignity and independence. There is a growing population of people with disabilities who may not qualify for federal support, but nonetheless need some assistance in purchasing, maintaining and upgrading their assistive technology.

The proposals in your bill will serve to improve the quality of life for people with disabilities. Your leadership and enthusiasm are greatly appreciated, and Easter Seals looks forward to working with you on this initiative and in the future.

Sincerely,

JENNIFER DEXTER,
Government Relations Specialist.

By Mr. CRAIG:

S. 2175. A bill to safeguard the privacy of certain identification records and name checks, and for other purposes; to the Committee on the Judiciary.

FIREARMS OWNER PRIVACY ACT OF 1998

Mr. CRAIG. Mr. President, I rise to introduce the Firearms Owner Privacy Act of 1998. This bill is aimed at safeguarding the privacy of law-abiding citizens who choose to purchase firearms and therefore undergo the instant background check mandated by the Brady Act.

As many of my colleagues know, the National Instant Criminal Background Check System (NICS) is scheduled to go online on November 30, 1998. After that date, federally-licensed firearms dealers are required to contact NICS before they sell any handgun or long gun, so that a records check can be performed to determine whether the purchaser is prohibited by law from receiving the firearm.

A unique identification number will be assigned by the NICS to each search request in order to identify the transaction. That number is to be kept by the dealer. However, if the sale is approved—that is, if the purchaser is not disqualified from purchasing the firearm—all other records pertaining to that sale are to be destroyed.

This only makes sense. The Brady Act was never aimed at generating records concerning legal firearms sales. It was promoted as a law enforcement tool—a tool to prevent illegal gun sales and prosecute convicted felons or other disqualified persons who attempt to obtain firearms illegally.

More important, Senators who participated in the debate on the Brady bill will remember the concerns that were raised about the federal government retaining records of approved, legal transactions. Simply put, keeping those records is tantamount to registering firearms—something that is far from acceptable to most Americans, not to mention most members of Congress and certainly to this Senator. The federal government has no legitimate reason for keeping track of which Americans own guns. On the contrary, history teaches us that gun registration schemes have been used to pave the way for gun confiscation. It is not unreasonable for citizens to be skeptical of the government's self-restraint—indeed, that is why our Founders built checks and balances into our system of government in the first place.

In fashioning the Brady Act, Congress did not rely on government promises not to compile information on law-abiding gun purchasers. Instead, the law expressly prohibits the federal government from using NICS to establish any system for registering firearms, firearm owners, or transactions involving firearms. It also prevents a de facto registration system by specifically prohibiting the federal government from recording or keeping the records generated by the instant background check.

Again and again during debate on this measure, members of the House and Senate raised concerns about the privacy interests of law-abiding citizens. Again and again, we were assured that these prohibitions would prevent the Brady Act from establishing or promoting any kind of gun registration for law-abiding citizens. Clearly, one of the keys to passing the Brady bill was the absolute assurance that the privacy of law-abiding citizens would be respected, and records of their firearms transactions would be destroyed.

It is worth noting that since enactment of the Brady law, the concern over its potential for promoting gun registration has continued to boil. Like many of our colleagues, I continue to hear from people in my state and around the nation who do not believe this Administration—no friend to law-abiding gun owners—can resist the opportunity to mis-use and abuse the records generated during these background checks.

Mr. President, the Administration just turned up the heat on those boiling fears. Now that we are within months of putting NICS on line, federal agencies are beginning to release the details of how the system is expected to work. My telephones are beginning to ring as firearms dealers, gun collectors, and sportspeople have an opportunity to read the fine print. Among the proposals that concern them the most is that the agency operating NICS intends to keep records of approved firearms transactions for eighteen months.

That's right. The federal government proposes to keep records of legal, approved transactions for a year and a half.

The agency has explained that it needs to keep the records for auditing purposes, to make sure the system is working properly and not being abused. Mr. President, why in the world do they need a year and a half for that purpose? Furthermore, the longer these records sit around, the more potential there is for abuse. How can the agency justify allowing its own administrative convenience to outweigh the serious privacy and civil liberties concerns raised against retaining such records?

Let's not forget that under the current, interim system, records of an approved transaction are destroyed within twenty days. The NICS system is supposed to speed up the entire background check process so that the average contact will take minutes. Even if additional time is required because of problems with the check, the transaction is allowed to go forward within a mere three days, if the dealer does not receive a disapproval. The acceleration in every other part of the NICS system makes this records retention proposal even more incredible.

I am wholly unconvinced that the agency has any legitimate purpose for retaining the records of lawful purchases by qualified citizens as it has proposed. The bill I am introducing today, the Firearms Owner Privacy Act of 1998, simply reinforces the decision that this Congress originally made on this critical issue. It would require information generated by the system on approved, lawful purchases to be destroyed within twenty-four hours. An individual who knowingly retained or transferred that information after that time would face criminal penalties of up to $250,000 or up to ten years' imprisonment.

My bill also deals with transactions that are disapproved because a would-be purchaser is prohibited by federal or state law from receiving a firearm. For those transactions, the bill would permit the agency to retain the records for five years. If a criminal prosecution has been commenced against the purchaser, there would be no restriction at all on the agency's retention of the records. These provisions are aimed at insuring that if our law enforcement agencies intend to pursue a disapproved sale, they have ample opportunity to do so. However, the usefulness of these records past five years is very questionable.

Mr. President, I believe my bill imposes reasonable, workable limits that conform to Congressional intent. If someone knows a legitimate reason why the federal government should keep these records longer than my bill allows, I am certainly willing to listen to their arguments. To date, however, the explanations from the Administration have been unpersuasive at best.

Let me point out that a similar effort to limit the retention of these records is underway in the other body, headed by Representative BOB BARR. I hope my colleagues will join me in this effort to protect the privacy and civil liberties of law-abiding citizens.

I ask unanimous consent that a copy of the Firearms Owner Privacy Act of 1998 be printed in the RECORD.

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

S. 2175

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 ''Firearms Owner Privacy Act of 1998''.

SEC. 2. UNLAWFUL RETENTION OF FIREARMS TRANSFER INFORMATION.

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

''§ 1925. Unlawful retention of federal firearms transfer information

(a) DEFINITIONS..—In this section—

''(1) the term 'firearm' has the same meaning as in section 921(a);

''(2) the term 'instant check information'—

''(A) means any information—

''(i) provided to the instant check system about an individual seeking to obtain a firearm; or

''(ii) derived from any information provided as described in clause (i); and

''(B) does not include any unique identification number provided by the instant check system pursuant to section 922(t)(1)(B)(i), or the date on which that number is provided; and

''(3) the term 'instant check system' means the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).

''(b) PROHIBITIONS AND PENALTIES.—

''(1) INFORMATION RELATING TO INDIVIDUALS NOT PROHIBITED FROM RECEIVING A FIREARM.—Whoever, being an officer, employee, contractor, consultant, or agent of the United States, including a State or local employee or officer acting on behalf of the United States, in that capacity—

''(A) receives instant check information, in any form or through any medium, about an individual who is determined, through the use of the instant check system, not to be prohibited by subsection (g) or (n) of section 922, or by State law, from receiving a firearm; and

''(B) knowingly retains or transfers to another person that information after the 24-hour period beginning with such receipt;

shall be fined not more than $250,000, imprisoned not more than 10 years, or both.

''(2) INFORMATION RELATING TO INDIVIDUALS PROHIBITED BY LAW FROM RECEIVING A FIREARM.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), whoever, being an officer, employee, contractor, consultant, or agent of the United States, including a State or local employee or officer acting on behalf of the United States, in that capacity—

''(i) receives instant check information, in any form or through any medium, about an individual who is prohibited by Federal or State law from receiving a firearm; and

''(ii) knowingly retains or transfers to another person that information after the 5-year period beginning with such receipt;

shall be fined not more than $250,000, imprisoned not more than 10 years, or both.

''(B) INAPPLICABILITY TO INFORMATION RELATING TO CERTAIN INDIVIDUALS.—Subparagraph (A) does not apply to any information about an individual if a criminal prosecution has been commenced against the individual on the basis of that information.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 93 of title 18, United States Code, is amended by adding at the end the following:

''1925. Unlawful retention of Federal firearms transfer information.''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on November 30, 1998.

By Mr. THOMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. LOTT, and Mr. ROTH):

S. 2176. 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 and appointments to certain Federal offices, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL VACANCIES REFORM ACT OF 1998

Mr. THOMPSON. Mr. President, on behalf of myself and a bipartisan group of senators, I introduce today the Federal Vacancies Reform Act of 1998. This legislation is needed to preserve one of the Senate's most important powers: the duty to advise and consent on presidential nominees.

The Framers of the Constitution established a procedure for the appointment of all government officers: they were to be nominated by the President and confirmed by the Senate, unless Congress decided that the appointment of specified inferior officers was to be made by the President alone, the courts, or by department heads. The First Congress, however, recognized that vacancies would arise in executive positions, and enacted legislation providing for officials to temporarily exercise the powers of an office even without Senate confirmation. The law was adopted essentially in its current form in 1868, and was last amended in 1988. As amended, the first assistant or another Senate-confirmed individual can serve for 120 days after the vacancy, and, in addition, may serve beyond those 120 days if the President submits a nomination for that office to the Senate within those 120 days.

Unfortunately, the Vacancies Act is honored more in the breach than in the observance. For the past 25 years, administrations of both parties have claimed that the Justice Department is exempt from the Vacancies Act. And since the Reagan Administration, other departments, at the behest of the Justice Department, make the same argument, purportedly based on the authority of the heads of each of the executive departments to delegate their authority to other department personnel. Following this argument to its logical end, none of the departments is bound by the Vacancies Act, so that the act is a dead letter.

Certainly, this Administration has conducted itself as if the Vacancies Act applies to none of the departments. Each department has at least one temporary officer who has served more

than 120 days before any nomination was sent to the Senate. Of the 320 executive department advise and consent positions, 64 are held by temporary officials. Of the 64, 43 have served longer than 120 days before any nomination was submitted to the Congress. The Commerce Department is the worst offender in number and in degree. For instance, the acting head of the Census Bureau is neither the first assistant nor a person who has been confirmed by the Senate, a mind-boggling violation of the law. Nor has a nomination been made, although the prior Census chief announced her departure more than five months ago.

The government's important functions should be carried out by permanent officials. That means that the President must submit nominations and the Senate needs to provide its advice and consent. This administration seems not to want to subject its appointees to such scrutiny. Acting on that desire is unconstitutional and a violation of the Vacancies Act as well. The Appointments Clause is not a technical nicety. As the Supreme Court has stated, the Appointments Clause is designed to keep the Executive and Legislative Branches within their appropriate spheres, so as to better preserve individual liberty.

The Governmental Affairs Committee recently held an oversight hearing on the Vacancies Act. In that hearing, it became apparent that the Administration was regularly acting in violation of the law, but faced no consequence for its actions. The Committee also heard testimony from Senators BYRD and THURMOND, who had each introduced bills designed to ensure compliance with the Vacancies Act through clarifying the scope of agencies covered and providing an enforcement mechanism. Our colleagues owe a debt of gratitude to Senators BYRD and THURMOND for raising these important issues and offering solutions to address them.

I have found the approaches in the Byrd and Thurmond bills to have contributed importantly to the drafting of the legislation I introduce today. It is extremely important to ensure that the Vacancy Act period run from the date of the vacancy, to clarify that it covers all departments, and to impose a sanction for noncompliance. Subsequent to the introduction of the Byrd and Thurmond bills, the United States Court of Appeals for the District of Columbia Circuit issued a decision on the meaning of the Vacancies Act, approving the four year service of an acting head of the Office of Thrift Supervision as appointed by the departing head of the agency. Overruling several portions of that decision have become a priority.

The legislation I introduce today provides that in the event of a vacancy in a position in an executive agency requiring the advice and consent of the Senate, the officer's first assistant is allowed to perform the functions and duties of the office on an acting basis, for up to 150 days. Under current law, the period is 120 days, but the vicissitudes of the modern vetting process appear to require that the time be lengthened, to my regret. Alternatively, the President may direct another person who has already received Senate confirmation to serve as the acting official for 150 days. To prevent these restrictions from being gamed, the bill provides that the acting officer must have been the first assistant for 180 of the 365 days preceding the vacancy.

The length of temporary service can be extended beyond the 150 days if the President submits a nomination to the Senate for the vacant position. If the nomination is withdrawn, or if the Senate rejects or returns it, the acting official can serve only for 150 days after that event.

The bill makes clear that the Vacancies Act applies to all offices in executive agencies for which appointment is required to be made by the President by and with the advice and consent of the President. Nonetheless, we do not write on a clean slate. There are a number of laws already on the books that provide a process by which persons can serve as acting officers when particular offices are vacant. In most instances, these officials can serve until a successor is confirmed, without regard to the Vacancies Act. The bill preserves those specific statutes, but, to clearly reject the position of the Justice Department, it expressly repudiates the contention that a law authorizing the head of a department to delegate or reassign duties among other officers is a statute that provides for the temporary filling of a specific office. For the future, Congress will have to expressly provide that it is superseding the Vacancies Act if it wishes to override the Vacancies Act as to the temporary filling of advise and consent provisions.

The bill also establishes a second enforcement mechanism. If a nominee is not submitted to the Senate within 150 days of the vacancy, then the office is vacant until a nominee is submitted. While the routine functions of the office would be allowed to continue, those functions and duties that are specified to be performed by that official could only be performed by the head of the department. In fact, no specified duty of the officeholder that existed by regulation for the 180 days preceding the vacancy could be diminished in an effort to avoid the bill's vacant office provisions. However, if the President submits a nomination at any point after the 150 days, the acting officer would again be allowed to serve while the nomination was pending in the Senate, until confirmation, or until 150 days after the rejection, withdrawal, or return of the nomination. Actions taken by any acting official in violation of these provisions would be of no effect, and no one would be permitted to ratify the actions of the acting official that were taken in violation of the vacant office provisions.

Enforcement is further enhanced by requiring each executive agency to report to the Comptroller General the existence of vacancies, the names of persons serving as acting officers and when such service began, the name of any nominee and when such nomination was submitted to the Senate, and the final disposition of the nomination. The Comptroller General will then notify the Congress, the President, and the Office of Personnel Management when the 150 day limitations have been reached.

Mr. President, the Framers established a system for appointing important officials in which the President and the Senate would each play a role. Not only did the Framers wish to ensure that more than one person's wisdom was brought to the appointment process, but that the President, in selecting nominees, would be aware that they would face scrutiny. When a vacancy occurs in such an office, it is important to establish a process that permits the routine operation of the government to continue, but that will not allow the evasion of the Senate's constitutional authority to advise and consent to nominations. I am pleased that a number of my colleagues are joining with me to formulate a structure that will achieve these ends. I look forward to the Senate's passage of this legislation in the near future.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2176

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 ''Federal Vacancies Reform Act of 1998''.

SEC. 2. FEDERAL VACANCIES AND APPOINTMENTS.

(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) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

''(1) the first assistant of such officer shall perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346; or

''(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346.

''(b) Notwithstanding section 3346(a)(2), a person may not serve as an acting officer for an office under this section, if—

''(1) on the date of the death, resignation, or beginning of inability to serve of the applicable officer, such person serves in the position of first assistant to such officer;

''(2) during the 365-day period preceding such date, such person served in the position of first assistant to such officer for less than 180 days; and

''(3) the President submits a nomination of such person to the Senate for appointment to such office.

''(c) 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 150 days beginning on the date the vacancy occurs; or

''(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, for the period that the nomination is pending in the Senate.

''(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 150 days after the date of such rejection, withdrawal, or return.

''(2) If a second nomination for the office (of a different person than first nominated in the case of a rejection or withdrawal) is submitted to the Senate during the 150-day period after the rejection, withdrawal, or return 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 150 days after the second nomination is rejected, withdrawn, or returned.

''(c) If a person begins serving as an acting officer during an adjournment of the Congress sine die, the 150-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

''§ 3347. Application

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

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

''(2) a statutory provision in effect on the date of enactment of the Federal Vacancies Reform Act of 1998 expressly authorizes the President, or the head of an Executive department, to designate an officer to perform the functions and duties of a specified office temporarily in an acting capacity; or

''(3) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

''(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) to delegate duties to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(2) applies.

''§ 3348. Vacant office

''(a) In this section—

''(1) the term 'action' includes any agency action as defined under section 551(13); and

''(2) the term 'function or duty' means any function or duty of the applicable office that—

''(A)(i) is established by statute; and

''(ii) is required by statute to be performed by the applicable officer (and only that officer); or

''(B)(i)(I) is established by regulation; and

''(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

''(ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs, notwithstanding any regulation that—

''(I) is issued on or after the date occurring 180 days before the date on which the vacancy occurs; and

''(II) limits any function or duty required to be performed by the applicable officer (and only that officer).

''(b) Subject to section 3347 and subsection (c)—

''(1) if the President does not submit a first nomination to the Senate to fill a vacant office within 150 days after the date on which a vacancy occurs—

''(A) the office shall remain vacant until the President submits a first nomination to the Senate; and

''(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A);

''(2) if the President does not submit a second nomination to the Senate within 150 days after the date of the rejection, withdrawal, or return of the first nomination—

''(A) the office shall remain vacant until the President submits a second nomination to the Senate; and

''(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A); and

''(3) if an office is vacant after 150 days after the rejection, withdrawal, or return of the second nomination—

''(A) the office shall remain vacant until a person is appointed by the President, by and with the advice and consent of the Senate; and

''(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until an appointment is made in accordance with subparagraph (A).

''(c) If the last day of any 150-day period under subsection (b) is a day on which the Senate is not in session, the first day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

''(d)(1) Except as provided under paragraphs (1)(B), (2)(B), and (3)(B) of subsection (b), an action shall have no force or effect if such action—

''(A)(i) is taken by any person who fills a vacancy in violation of subsection (b); and

''(ii) is the performance of a function or duty of such vacant office; or

''(B)(i) is taken by a person who is not filling a vacant office; and

''(ii) is the performance of a function or duty of such vacant office.

''(2) An action that has no force or effect under paragraph (1) may not be ratified.

''(d) This section shall not apply to—

''(1) the General Counsel of the National Labor Relations Board;

''(2) the General Counsel of the Federal Labor Relations Authority; or

''(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate.

''§ 3349. Reporting of vacancies

''(a) The head of each Executive agency (including the Executive Office of the President, and 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, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

''(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 150-day period including the applicable exceptions to such period under section 3346, the Comptroller General shall report such determination to—

''(1) the Committee on Governmental Affairs of the Senate;

''(2) the Committee on Government Reform and Oversight of the House of Representatives;

''(3) the Committees on Appropriations of the Senate and House of Representatives;

''(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

''(5) the President; and

''(6) the Office of Personnel Management.

''§ 3349a. Presidential inaugural transitions

''(a) In this section, the term 'transitional inauguration day' means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

''(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 150-day period under section 3346 or 3348 shall be deemed to—

''(1) begin on the later of—

''(A) the date following such transitional inauguration day; or

''(B) the date the vacancy occurs; and

''(2) be a period of 180 days.

''§ 3349b. Holdover provisions relating to certain independent establishments

''With respect to any independent establishment for which a single officer is the head of the establishment, sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

''(1) after the expiration of the term for which such person is appointed; and

''(2) until a successor is appointed or a specified period of time has expired.

''§ 3349c. Exclusion of certain officers

''Sections 3345 through 3349b shall not apply to—

''(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

''(A) is composed of multiple members; and

''(B) governs an independent establishment or Government corporation; or

''(2) any commissioner of the Federal Energy Regulatory Commission.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 33 of title 5, United States

Code, is amended by striking the matter relating to subchapter III and inserting the following:

''SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

''3341. Details; within Executive or military departments.
''[3342. Repealed.]
''3343. Details; to international organizations.
''3344. Details; administrative law judges.
''3345. Acting officer.
''3346. Time limitation.
''3347. Application.
''3348. Vacant office.
''3349. Reporting of vacancies.
''3349a. Presidential inaugural transitions.
''3349b. Holdover provisions relating to certain independent establishments.
''3349c. Exclusion of certain officers.''.

(2) SUBCHAPTER HEADING.—The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

''SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS''.

SEC. 3. EFFECTIVE DATE AND APPLICATION.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—This Act shall apply to any office that—

(1) becomes vacant after the date of enactment of this Act; or

(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.

Mr. THURMOND. Mr. President, I rise today as an original cosponsor of the Federal Vacancies Reform Act. This legislation is essential to help preserve and strengthen the advice and consent role of the Senate as mandated in the Constitution.

One of the greatest fears of the Founders was the accumulation of too much power in one source, and the separation of powers among the three branches of Government is one of the keys to the success of our great democratic government. An excellent example of the separation of powers is the requirement in Article II, Section 2 of the Constitution that the President receive the advice and consent of the Senate for the appointment of officers of the United States. As Chief Justice Rehnquist wrote for the Supreme Court a few years ago, ''The Clause is a bulwark against one branch aggrandizing its power at the expense of another branch.''

The Vacancies Act is central to the Appointments Clause because it places limits on the amount of time that the President can appoint someone to an advice and consent position in an acting capacity without sending a nomination to the Senate. However, for many years, the executive branch has failed to comply with the letter of the law. The Vacancies Act has no method of enforcement, so the executive branch just ignores it. When confronted with the act, the Attorney General makes very weak legal arrangements about its inapplicability. This is what the Attorney General did over one year ago when I raised the Vacancies Act at an oversight hearing. At the time, almost all of the top positions at the Justice Department were being filled in an acting capacity. I exchanged letters with her about the Vacancies Act, and detailed the fallacy in her argument. It was to no avail.

I became convinced that legislation to rewrite the vacancies law and provide some remedy for violating it was the only way to get the executive branch to properly respect the advice and consent role of the Senate. Senator LOTT and I introduced legislation earlier this year, and I testified about it before the Governmental Affairs Committee.

I detailed for the Committee some prominent examples of how the Act was being ignored. President Clinton allowed the Criminal Division of the Justice Department to languish for over two and one half years before making an appointment. The Government had an Acting Solicitor General for an entire term of the Supreme Court. Most recently, the President installed an Acting Chief of the Civil Rights Division in blatant disregard of the Judiciary Committee's decision not to support his controversial choice.

However, let me be clear. This bill is not about any one President or any one nominee. It is about preserving the institutional role of the Senate. A Republican President has no more right to ignore the appointments process than a Democrat President.

Today, Senator THOMPSON, Senator BYRD, Senator LOT, and I are introducing a bipartisan bill to address the problem. It gives the President 150 days to send a nomination rather than the current 120 days. If he does not comply, the office must remain vacant and the actions of any person acting in that office after that time are null and void, until a nominee is forwarded to the Senate. The bill also clarifies the application of the Vacancies Act to reject the Attorney General's flawed interpretation.

Mr. President, we must act to preserve the advice and consent role of the Senate. As the Supreme Court has stated, ''The structural interests protected by the Appointments Clause are not those of any one branch of Government but of the entire Republic.'' Reforming the vacancies law is essential in this regard. Let us reaffirm the separation of powers for the sake of the Senate and the entire Republic.

By Mr. INOUYE:

S. 2177. A bill to express the sense of the Congress that the President should award a Presidential unit citation to the final crew of the U.S.S. *Indianapolis*, which was sunk on July 30, 1945; to the Committee on Armed Services.

PRESIDENTIAL UNIT CITATION TO THE USS INDIANAPOLIS

● Mr. INOUYE. Mr. President, today I am introducing a Sense of the Congress bill which calls upon the President to award a Presidential Unit Citation to the final crew of the U.S.S. *Indianapolis* (CA–35) that recognizes the courage, fortitude, and heroism displayed by the crew in the face of tremendous hardship and adversity after their ship was torpedoed and sunk on July 30, 1945.●

By Mr. KOHL (for himself and D'AMATO):

S. 2178. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission to certify such facilities for such insurance, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

CHILDREN'S DEVELOPMENT COMMISSION ACT

● Mr. KOHL. Mr. President, today I introduce the Children's Development Commission Act. I am pleased to be joined in this by my friend, Senator D'AMATO. He brings to this endeavor a deep understanding of the nation's capital markets and a deep concern for the well being of this country's children. In the House of Representatives, Representatives MALONEY and BAKER have already introduced a companion measure, H.R. 3637.

Our legislation is designed to address the credit market's failure to provide sufficient long term financing for the building and renovation of child care centers, after-school care programs, infant care, and family child care homes. Because the profit margin in such centers is very low, and the perceived risk is great, lenders are often unwilling to lend to child care operations. This is true despite the fact that an overwhelming number of studies show a shortage in the supply of quality child care—especially in urban areas, in low income areas, and for certain types of care (infant care, school age care, off-hour care).

The Children's Development Commission Act creates a loan guarantee program through HUD to provide insurance to lenders willing to put up money for child care center mortgages, leases, or renovations. The program is modeled closely on the successful Section 232 HUD program that provides mortgage insurance for elder-care facilities.

The bill also creates a ''Children's Development Commission'' or ''Kiddie Mac'' which: (1) certifies child care development facilities eligible for guaranteed financing; (2) establishes the standards necessary to make such certification; (3) makes small purpose loans to child care facilities for reconstruction and renovation; (4) develops a plan to offer low cost liability and fire insurance to child care providers; and (5) creates a research foundation to support research into child care supply issues, fund pilot programs for improving child care, and publishes material for those interested in getting mortgage insurance through HUD.

Congress will make one $10 million appropriation to fund the Kiddie Mac's incorporation and its micro-loan program; after that, a stock offering will fund Kiddie Mac until its financial activities and fee collection make it self-financing.

The need, and the will, to take this sort of step to increase the supply of quality child care is evident. When I ran for Congress in 1988, I talked about the importance of child care. At best, I received a polite smile of interest, and then the discussion would move on to the pressing issues of the day—the environment, the budget deficit, health care.

Today, child care is being discussed earnestly at dinner tables across the nation and in Committee rooms all over the Capitol. Almost everyone has a personal story about trying to secure good child care, about trying to help an employee find good child care, about the terrible shortage of quality child care in their town or city.

We have always talked about the necessities of life as being food, clothing and shelter. I think it is time we add a fourth—quality child care. It is necessary to give our children the strong start they need. It is necessary if we are going to take advantage of the tremendous ability to learn in the first three years of life.

And quality child care is necessary in order for the growing number of families in which both parents work, for the growing number of single parent families to be able to earn a living, and for businesses that want to attract and retain productive, happy employees.

Unfortunately, by every measure and in every state, quality child care is in short supply. And in most areas of the country, the sweeping welfare reform we passed last year has exacerbated existing shortages. In my State of Wisconsin, the State's welfare reform plan will generate the need for 8000 new child care slots in Milwaukee Country alone. And in New York City, by the year 2001, there will be 30,000 more children who need child care than there are child care spaces for them.

The shortage is not just one of child care slots, but of quality child care slots. One major study showed that seven out of ten child care centers provide mediocre care, while one in eight is so inadequate that the health and safety of the children are threatened. Another survey found that more than half of parents with children in child care worry weekly about whether their children are well-served in their current arrangements.

Kiddie Mac will help address these shortfalls in several ways. It will lower the costs of those setting up child care facilities, home child care, or preschools. By guaranteeing child care facility mortgages and leases, Kiddie Mac lowers the start-up costs to facilities allowing them to pass the savings on to teachers in the form of higher salaries and parents in the form of lower fees. Kiddie Mac will also provide loan guarantees to facilities that want to upgrade and providing micro-loans for small repairs related to licensing. This will allow existing centers and homes, even very small ones, to bring their facilities up to—and beyond—code.

Kiddie Mac is a market-based, small-government approach to moving capital toward a very wise investment in quality child care. Kiddie Mac's services will be available to any organization who can show they will provide quality child care: businesses, non-profits, churches or synagogues, family home providers, or after-school programs. Decisions as to how much and how the care will be provided are left where they belong: with the local providers, with local communities, and with the parents.

Mr. President, I ask unanimous consent that the text of the Children's Development Act be included in the RECORD.

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

S. 2178

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 ''Children's Development Commission Act''.

SEC. 2. CONGRESSIONAL FINDINGS.

Congress finds the following:

(1) The need for quality nursery schools, both full-time and part-time child care centers and after-school programs, after school programs, neighborhood-run mothers-day-out programs, and family child care providers has grown among working parents, and parents who stay at home, who want their children to have access to early childhood education.

(2) All parents should have access to safe, stimulating, and educational early childhood education programs for their children, whether such programs are carried out in a child care center, a part-time nursery school (including a nursery school operated by a religious organization), or a certified child care provider's home.

(3) The number of available enrollment opportunities for children to receive quality child care services is not meeting the demand for such services.

(4) In 1995 there were about 21,000,000 children less than 6 years of age, of whom 31 percent were participating in center-based child care services and 14 percent were receiving child care in homes. Between 1992 and 2005 the participation of women 24 to 54 years of age in the labor force is projected to increase from 75 percent to 83 percent.

(5) In States that have set up a mechanism to provide capital improvements for child care facilities, the demand for services of such facilities still has not been met.

(6) The United States is behind other western, industrialized countries when it comes to providing child care services. In France, almost 100 percent of all children 3 to 5 years of age attend nursery school. In Germany this number is 65 to 70 percent. In Japan 90 percent of such children attend some form of preschool care. In all of these countries early childhood care has proven to increase children's development and performance.

SEC. 3. INSURANCE FOR MORTGAGES ON NEW AND REHABILITATED CHILD CARE AND DEVELOPMENT FACILITIES.

Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following:

''MORTGAGE INSURANCE FOR CHILD CARE AND DEVELOPMENT FACILITIES

''SEC. 257. (a) PURPOSE.—The purpose of this section is to facilitate and assist in the provision and development of licensed child care and development facilities.

''(b) GENERAL INSURANCE AUTHORITY.—The Secretary may insure mortgages (including advances on such mortgages during construction) in accordance with the provisions of this section and upon such terms and conditions as the Secretary may prescribe and may make commitments for insurance of such mortgages before the date of their execution or disbursement thereon.

''(c) ELIGIBLE MORTGAGES.—To carry out the purpose of this section, the Secretary may insure any mortgage that covers a new child care and development facility, including a new addition to an existing child care and development facility (regardless of whether the existing facility is being rehabilitated), or a substantially rehabilitated child care and development facility, including equipment to be used in the operation of the facility, subject to the following conditions:

''(1) APPROVED MORTGAGOR.—The mortgage shall be executed by a mortgagor approved by the Secretary. The Secretary may, in the discretion of the Secretary, require any such mortgagor to be regulated or restricted as to charges and methods of financing and, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not more than $100 such stock or interest in such mortgagor as the Secretary may consider necessary. Any stock or interest so purchased shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

''(2) PRINCIPAL OBLIGATION.—The mortgage shall involve a principal obligation in an amount not to exceed 90 percent of the estimated value of the property or project, or 95 percent of the estimated value of the property or project in the case of a mortgagor that is a private nonprofit corporation or association (as such term is defined pursuant to section 221(d)(3)), including—

''(A) equipment to be used in the operation of the facility when the proposed improvements are completed and the equipment is installed; or

''(B) a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a)) or residential energy conservation measures (as defined in subparagraphs (A) through (G) and (I) of section 210(11) of the National Energy Conservation Policy Act), in cases in which the Secretary determines that such measures are in addition to those required under the minimum property standards and will be cost-effective over the life of the measure.

''(3) AMORTIZATION AND INTEREST.—The mortgage shall—

''(A) provide for complete amortization by periodic payments under such terms as the Secretary shall prescribe;

''(B) have a maturity satisfactory to the Secretary, but in no event longer than 25 years; and

''(C) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, and the Secretary shall not issue any

regulations or establish any terms or conditions that interfere with the ability of the mortgagor and mortgagee to determine the interest rate.

''(d) CERTIFICATION BY CHILDREN'S DEVELOPMENT COMMISSION.—The Secretary may not insure a mortgage under this section unless the Children's Development Commission established under section 258 certifies that the facility is in compliance, or will be in compliance not later than 12 months after such certification, with—

''(1) any laws, standards, and requirements applicable to such facilities under the laws of the State, municipality, or other unit of general local government in which the facility is or is to be located; and

''(2) after the effective date of the standards and requirements established under section 258(c)(2), such standards and requirements.

''(e) RELEASE.—The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as the Secretary may prescribe.

''(f) MORTGAGE INSURANCE TERMS.—The provisions of subsections (d), (e), (g), (h), (i), (j), (k), (l), and (n) of section 207 shall apply to mortgages insured under this section, except that all references in such subsections to section 207 shall be considered, for purposes of mortgage insurance under this section, to refer to this section.

''(g) MORTGAGE INSURANCE FOR FIRE SAFETY EQUIPMENT LOANS.—

''(1) AUTHORITY.—The Secretary may, upon such terms and condition as the Secretary may prescribe, make commitments to insure and insure loans made by financial institutions or other approved mortgagees to child care and development facilities to provide for the purchase and installation of fire safety equipment necessary for compliance with the 1967 edition of the Life Safety Code of the National Fire Protection Association (or any subsequent edition specified by the Secretary of Health and Human Services).

''(2) LOAN REQUIREMENTS.—To be eligible for insurance under this subsection a loan shall—

''(A) not exceed the Secretary's estimate of the reasonable cost of the equipment fully installed;

''(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

''(C) have a maturity satisfactory to the Secretary;

''(D) be made by a financial institution or other mortgagee approved by the Secretary as eligible for insurance under section 2 or a mortgagee approved under section 203(b)(1);

''(E) comply with other such terms, conditions, and restrictions as the Secretary may prescribe; and

''(F) be made with respect to a child care and development facility that complies with the requirement under subsection (d).

''(3) INSURANCE REQUIREMENTS.—The provisions of paragraphs (5), (6), (7), (9), and (10) of section 220(h) shall apply to loans insured under this subsection, except that all references in such paragraphs to home improvement loans shall be considered, for purposes of this subsection, to refer to loans under this subsection. The provisions of subsections (c), (d), and (h) of section 2 shall apply to loans insured under this subsection, except that all references in such subsections to 'this section' or 'this title' shall be considered, for purposes of this subsection, to refer to this subsection.

''(h) SCHEDULES AND DEADLINES.—The Secretary shall establish schedules and deadlines for the processing and approval (or provision of notice of disapproval) of applications for mortgage insurance under this section.

''(i) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

''(1) CHILD CARE AND DEVELOPMENT FACILITY.—The term 'child care and development facility' means a public facility, proprietary facility, or facility of a private nonprofit corporation or association that—

''(A) has as its purpose the care and development of children less than 12 years of age; and

''(B) is licensed or regulated by the State in which it is located (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located).

The term does not include facilities for school-age children primarily for use during normal school hours. The term includes facilities for training individuals to provide child care and development services.

''(2) EQUIPMENT.—The term 'equipment' includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and any other items necessary for the functioning of a particular facility as a child care and development facility, including necessary furniture. Such term includes books, curricular, and program materials.

''(3) MORTGAGE; FIRST MORTGAGE; MORTGAGEE.—The term 'mortgage' means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof under a lease having a period of not less than 7 years to run beyond the maturity date of the mortgage. The term 'first mortgage' means such classes of first liens as are commonly given to secure advances (including advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments (if any) secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term 'mortgagor' has the meaning given the term in section 207(a).

''(j) LIMITATION ON INSURANCE AUTHORITY.—

''(1) TERMINATION.—No mortgage may be insured under this section or section 223(h) after September 30, 2005, except pursuant to a commitment to insure issued on or before such date.

''(2) AGGREGATE PRINCIPAL AMOUNT LIMITATION.—The aggregate principal amount of mortgages for which the Secretary enters into commitments to insure under this section or section 223(h) on or before the date under paragraph (1) may not exceed $2,000,000,000. If, upon the date under paragraph (1), the aggregate insurance authority provided under this paragraph has not been fully used, the Secretary of the Treasury shall submit a report to Congress evaluating the need for continued mortgage insurance under this section.''.

''(k) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section. In issuing such regulations, the Secretary shall consult with the Secretary of Health and Human Services with respect to any aspects of the regulations regarding child care and development facilities.''.

SEC. 4. INSURANCE FOR MORTGAGES FOR ACQUISITION OR REFINANCING DEBT OF EXISTING CHILD CARE AND DEVELOPMENT FACILITIES.

Section 223 of the National Housing Act (12 U.S.C. 1715n) is amended by adding at the end the following:

''(h) MORTGAGE INSURANCE FOR PURCHASE OR REFINANCING OF EXISTING CHILD CARE AND DEVELOPMENT FACILITIES.—

''(1) AUTHORITY.—Notwithstanding any other provision of this Act, the Secretary may insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing child care and development facility, the purchase of a structure to serve as a child care and development facility, or the refinancing of existing debt of an existing child care and development facility.

''(2) PURCHASE OF EXISTING FACILITIES AND STRUCTURES.—In the case of the purchase under this subsection of an existing child care and development facility or purchase of an existing structure to serve as such a facility, the Secretary shall prescribe any terms and conditions that the Secretary considers necessary to ensure that—

''(A) the facility or structure purchased continues to be used as a child care and development facility; and

''(B) the facility complies with the same requirements applicable under subsections (d) and (e) of section 257 to facilities having mortgages insured under such section.

''(3) REFINANCING OF EXISTING FACILITIES.—In the case of refinancing of an existing child care and development facility, the Secretary shall prescribe any terms and conditions that the Secretary considers necessary to ensure that—

''(A) the refinancing is used to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of the existing facility;

''(B) the proceeds of any refinancing will be employed only to retire the existing indebtedness and pay the necessary cost of refinancing on the existing facility;

''(C) the existing facility is economically viable; and

''(D) the facility complies with the same requirements applicable under section 257(d) to facilities having mortgages insured under such section.

''(4) DEFINITIONS.—For purposes of this subsection, the terms defined in section 257(i) shall have the same meanings as provided under such section.

''(5) LIMITATION ON INSURANCE AUTHORITY.—The authority of the Secretary to enter into commitments to insure mortgages under this subsection is subject to the limitations under section 257(j).''.

SEC. 5. CHILDREN'S DEVELOPMENT COMMISSION.

Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end (after section 257, as added by section 3 of this Act) the following:

''CHILDREN'S DEVELOPMENT COMMISSION

''SEC. 258. (a) ESTABLISHMENT.—There is hereby established a commission to be known as the Children's Development Commission.

''(b) MEMBERSHIP.—

''(1) APPOINTMENT.—The Commission shall be composed of 7 members appointed by the President, not later than the expiration of the 3-month period beginning upon the enactment of this section, by and with the advice and consent of the Senate, as follows:

''(A) 1 member shall be appointed from among 3 individuals recommended by the Secretary of Housing and Urban Development or the Secretary's designee.

''(B) 1 member shall be appointed from among 3 individuals recommended by the Secretary of Health and Human Services or the Secretary's designee.

''(C) 1 member shall be appointed from among 3 individuals recommended by the Secretary of the Treasury or the Secretary's designee.

''(D) 4 members shall be appointed from among 12 individuals recommended jointly by the Speaker of the House of Representatives, the Majority Leader of the Senate, Minority Leader of the House of Representatives, the Minority Leader of the Senate.

''(2) QUALIFICATIONS OF CONGRESSIONALLY RECOMMENDED MEMBERS.—Of the members appointed under paragraph (1)(D)—

''(A) each shall be an individual who actively participates or is employed in the field of child care and has academic, licensing, or other credentials relating to such participation or employment; and

''(B) not more than 2 may be of the same political party.

''(3) TERMS.—Each appointed member of the Commission shall serve for a term of 3 years.

''(4) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(5) CHAIRPERSON.—The chairperson of the Commission shall be designated by the President at the time of appointment.

''(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

''(7) VOTING.—Each member of the Commission shall be entitled to 1 vote, which shall be equal to the vote of every other member of the Commission.

''(8) PROHIBITION ON ADDITIONAL PAY.—Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

''(c) FUNCTIONS.—The Commission shall carry out the following functions:

''(1) CERTIFICATION OF COMPLIANCE.—The Commission shall collect such information and make such determinations as may be necessary to determine, for purposes of section 257(d), whether child care and development facilities comply, or will be in compliance within 12 months, with—

''(A) any laws, standards, and requirements applicable to such facilities under the laws of the State, municipality, or other unit of general local government in which the facility is or is to be located, and

''(B) after the effective date of the standards and requirements established under paragraph (2), such standards and requirements,

and shall issue certifications of such compliance.

''(2) ESTABLISHMENT OF STANDARDS.—

''(A) STUDY.—Not later than 12 months after the date on which appointment of initial membership of the Commission is completed, the Commission, in consultation with the Secretary of Housing and Urban Development and the Secretary of Health and Human Services, shall conduct a study to determine the laws, standards, and requirements referred to in paragraph (1)(A) that are applicable in each State. Taking into consideration the findings of the study, the Secretary shall establish standards and requirements regarding child care and development facilities that are designed to ensure that mortgage insurance is provided under section 257 and section 223(h) only for safe, clean, and healthy facilities that provide appropriate care and development services for children.

''(B) PUBLICATION.—The Commission shall issue regulations providing for the standards and requirements established under subparagraph (A) to take effect, for purposes of sections 257(d)(2) and 223(h)(2)(B) and paragraph (1)(B) of this section, not later than 18 months after the date of enactment of this section.

''(3) SMALL PURPOSE LOANS.—The Commission shall, to the extent amounts are made available for such purpose pursuant to subsection (i) and qualified requests are received, make loans, directly or indirectly to providers of child care and development facilities for reconstruction or renovation of such facilities, subject to the following requirements:

''(A) Loans under this paragraph shall be made only for such facilities that are financially and operationally viable, as determined under standards and guidelines to be established by the Commission.

''(B) The aggregate amount of loans made under this paragraph to a single borrower may not exceed $50,000.

''(C) A loan made under this paragraph may not have a term to maturity exceeding 7 years.

''(D) Loans under this paragraph shall bear interest at rates and be made under such other conditions and terms as the Commission shall provide.

''(4) NOTIFICATION.—The Commission shall take such actions as may be necessary to publicize the availability of the programs for mortgage insurance under sections 257 and 223(h) and loans under paragraph (3) of this subsection in a manner that ensures that information concerning such programs will be available to child care providers throughout the United States.

''(5) LIABILITY INSURANCE.—Not later than 12 months after the date on which appointment of initial membership of the Commission is completed, the Commission shall establish standards and guidelines, applicable to mortgage insurance under sections 257 and 223(h) and loans under paragraph (3) of this subsection, requiring child care providers operating child care and development facilities assisted under such provisions to obtain and maintain liability insurance in such amounts and subject to such requirements as the Commission considers appropriate.

''(6) RESEARCH FOUNDATION.—Not later than 12 months after the date of enactment of this section, the Commission shall submit a report to Congress recommending a plan for establishing and funding a foundation that is an entity independent of the Commission (but which maintains association with the Commission), the purpose of which shall be—

''(A) to support research relating to child care and development facilities;

''(B) to fund pilot programs to test innovative methods for improving child care; and

''(C) to engage in activities and publish materials to assist persons interested in mortgage insurance under sections 257 and 223(h) and other assistance provided by the Commission.

''(d) NONDISCRIMINATION REQUIREMENT.—

''(1) IN GENERAL.—The Commission may not certify under subsection (c)(1) or carry out any activities of the Commission with respect to any child care and development facility if the provider of the facility discriminates on account of race, color, religion (subject to paragraph (2)), national origin, sex (to the extent provided in title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)), or handicapping condition.

''(2) FACILITIES OF RELIGIOUS ORGANIZATIONS.—The prohibition with respect to religion shall not apply to a child care and development facility which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of this subsection would not be consistent with the religious tenets of such organization.

''(3) CERTIFICATION.—As a condition of certification under subsection (c)(1) and eligibility for a loan under subsection (c)(3), the provider of a child care and development facility shall certify to the Commission that the provider does not discriminate, as required by the provisions of paragraph (1) of this subsection.

''(e) POWERS.—

''(1) ASSISTANCE FROM FEDERAL AGENCIES.—The Commission may secure directly from any department or agency of the Federal Government such information as the Commission may require for carrying out its functions. Upon request of the Commission, any such department or agency shall furnish such information.

''(2) ASSISTANCE FROM GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

''(3) ASSISTANCE FROM DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—Upon the request of the Commission, the Secretary of Housing and Urban Development shall, to the extent possible and subject to the discretion of the Secretary, detail any of the personnel of the Department of Housing and Urban Development, on a nonreimbursable basis, to assist the Commission in carrying out its functions under this section.

''(4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

''(f) STAFF.—

''(1) EXECUTIVE DIRECTOR.—The Commission shall appoint an executive director of the Board, who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level I of the Executive Schedule under title 5, United States Code.

''(2) OTHER PERSONNEL.—In addition to the executive director, the Commission may appoint and fix the compensation of such personnel as the Commission considers necessary, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

''(g) REPORTS.—Not later than March 31 of each year, the Commission shall submit a report to the President and Congress regarding the operations and activities of the Commission during the preceding calendar year. Each annual report shall include a copy of the Commission's financial statements and such information and other evidence as is necessary to demonstrate that the activities of the Commission during the year for which the report is made. The Commission may also submit reports to Congress and the President at such other times as the Commission deems desirable.

''(h) DEFINITIONS.—For purposes of this section, the terms defined in section 257(i) shall have the same meanings as provided under such section.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission to carry out this section $10,000,000 for fiscal year 1999, to remain available until expended, of which not more than $2,500,000 shall be available for administrative costs of the Commission and the remainder of which shall be available only for loans under subsection (c)(3).''.

SEC. 6. STUDY OF AVAILABILITY OF SECONDARY MARKETS FOR MORTGAGES ON CHILD CARE FACILITIES.

(a) STUDY.—The Secretary of the Treasury shall conduct a study of the secondary mortgage markets to determine—

(1) whether such a market exists for purchase of mortgages eligible for insurance under sections 223(h) and 257 of the National Housing Act (as added by this Act);

(2) whether such a market would affect the availability of credit available for development of child care and development facilities or would lower development costs of such facilities; and

(3) the extent to which such a market or other activities to provide credit enhancement for child care and development facilities loans is needed to meet the demand for such facilities.

(b) REPORT.—The Secretary of the Treasury shall submit to Congress a report regarding the results of the study conducted under this section not later than the expiration of the 2-year period beginning on the date of enactment of this Act.●

● Mr. D'AMATO. Mr. President, today I cosponsor the Children's Development Commission Act of 1998. I commend my friend and respected colleague, Senator HERB KOHL for introducing this critical piece of legislation which addresses a serious problem facing American families today—the shortage of affordable, quality child care.

America is facing a shortage of quality child care which is approaching crisis levels. This shortage bears most heavily on working families, including young working single mothers. Every day more than 5 million children under age 13 are left unattended after school. The parents of these children deserve meaningful, affordable child care options.

The high cost of child care impacts directly on families, affecting their ability to pay the rent or mortgage, to put food on the table or to save for their children's education. The lack of decent, high quality child care also impedes the development of critical learning skills these children will need in order to succeed later in life. Social and medical research continues to stress the importance of the first three years of development on a child's well-being and ability to learn.

In New York, the average cost of day care is over $6,000 per year—and many families end up paying nearly $10,000 per year. Many families are unable to locate quality child care at all, as evidenced by the long waiting lists at existing centers. In New York City, approximately 28,000 families are on waiting lists for assistance under the Child Care Development Block Grant Program.

Mr. President, as more families make the difficult transition from welfare to work, waiting lists for affordable care and assistance will likely increase significantly. As a result of welfare reform, by the year 2002, there may be as many as 135,000 additional infants and toddlers in New York who will need affordable quality child care.

These high costs and the overall shortage of quality care are found in all areas of my home State—cutting across urban and rural boundaries. The New York Human Services Administration estimates that more than two-thirds of children in the Morrisania section of the Bronx and more than seventy percent of children in the Brownsville section of Brooklyn are in need of child care.

This shortage extends to rural areas of New York as well—for example, in Allegany, Hamilton, Washington and Yates counties there are no registered programs for school age children. Twenty of my State's sixty two counties have three or fewer registered school-age programs.

The Child Care Development Commission Act will employ a number of cost-effective strategies to increase the availability and affordability of child care throughout the nation.

First, the legislation would reduce lender risk by creating a new insurance authority within the Department of Housing and Urban Development's Federal Housing Administration (FHA). Using this new authority, FHA will provide loan guarantees for child care facilities. This will in turn spur the provision of private capital for the construction of new child care centers, the improvement of existing facilities and the cost of purchasing and installing fire safety equipment.

Second, the Act will create a new streamlined Commission—known informally as ''Kiddie Mac.'' The Commission will provide reasonable low-cost ''micro-loans'' for the renovation and improvement of existing facilities. In addition, the Commission will certify that facilities receiving FHA insurance meet state and local standards, such as licensing and child safety requirements.

Mr. President, The Children's Development Commission Act is an important step in ensuring that child care facilities can gain access to private market credit. Representatives Carolyn Maloney and Richard Baker have introduced companion legislation (H.R. 3637) in the House of Representatives. They deserve our praise for their diligence in addressing this issue.

The Children's Development Commission Act makes an investment in our children, an investment in our families and an investment in our future. I look forward to working with my Senate and House colleagues for its enactment.●

By Ms. MOSELEY-BRAUN:

S. 2179. A bill to amend the International Emergency Economic Powers Act to clarify the conditions under which export controls may be imposed on agricultural products; to the Committee on Banking, Housing, and Urban Affairs.

SELECTIVE AGRICULTURE EMBARGO PROHIBITION ACT OF 1998

Ms. MOSELEY-BRAUN. Mr. President, in January 1980, President Jimmy Carter terminated U.S. shipments of wheat and corn to the Soviet Union in retaliation against the Soviet invasion of Afghanistan. The effect of this embargo on the USSR was limited, but the impact on American farmers was severe, cutting off the market for 17 million tons of U.S. grain and prompting the Soviets to reduce long term reliance on U.S. farm exports.

This action unfairly singled out the agriculture community to shoulder the burden of U.S. foreign policy. Congress quickly responded by limiting the President's power to impose restrictions on agriculture exports. The Export Administration Act, the principal export control statute of the era, was amended to include provisions to prohibit the President from imposing export controls on farm commodities for more than sixty days without Congressional approval.

The Export Administration Act expired August 20, 1994, however, and consequently, the legal protections that prevent the singling out of agriculture exports are no longer in place.

The current statutory vehicle that allows the President to impose economic sanctions is the International Emergency Economic Powers Act, also known by its acronym, IEEPA. The IEEPA allows the President to employ a wide range of sanctions against countries determined to be a threat to U.S. national security, foreign policy, or economy. If the President chooses to act under IEEPA, he can then declare a national emergency, and then is required to report to Congress explaining his actions. Sanctions authorized under IEEPA can continue until the President decides to terminate the emergency, or unless Congress acts to terminate it by joint resolution.

The President enjoys almost unlimited authority under IEEPA. The statute requires the President to consult with Congress on his actions, but this consultation is discretionary, not mandatory. Most importantly, nothing in IEEPA prevents a President from targeting American agriculture as a tool for sanctions or embargos against a foreign nation.

My bill, the Selective Agriculture Embargo Prohibition Act, simply restores the protection against selective embargos that farmers enjoyed before the EAA was allowed to lapse. Under the provisions of my bill, a President who imposes an embargo on agriculture commodities, using the authority provided by IEEPA, must report this action immediately to Congress. The President also must set forth the reasons, in detail, for this action, and specify the period of time, which may not exceed one year, that the agriculture export controls are proposed to be in effect.

My bill allows Congress 60 days after receiving the report to adopt a joint resolution approving the agriculture exports controls. If Congress fails to adopt that resolution within 60 days, then the controls shall cease to be effective upon the expiration of the 60 days.

Entering and expanding into foreign markets is not a simple task. It requires years of extensive work to nurture business relationships, foster consumer confidence and trust, and establish the procedures for effective sales. Destroying foreign markets, by comparison, can occur swiftly and easily, wreaking long-lasting and largely irreparable damage on American industries that have invested the time and money to build a strong consumer base overseas. Those foreign purchasers who cannot rely on American imports will then turn to other sources—our foreign competitors—and shut out American products for good.

That kind of damage was precisely the effect of the 1980 embargo on U.S. agriculture. And given the almost logarithmic increases in U.S. farm exports over the past decade, any sanction or embargo that targets agriculture today would have even greater devastating and permanent effects on the U.S. farm economy. We must ensure that this sort of mistake is never repeated.

There will be critics who argue that my legislation ties the hands of the President. This is not the case. My bill simply ensures that we do not embargo agriculture commodities unless both the President and the Congress are in full agreement. My bill ensures that adequate safeguards are in place so that farm families do not unfairly shoulder the burden of American foreign policy.

This legislation is very similar to the restrictions enacted three times by Congress during consideration of the Export Enhancement Act and later signed into law by President Ronald Reagan. This is a bipartisan bill is also good trade policy, good farm policy, and good economic policy. I urge my colleagues to support the swift passage of this bill in the Senate.

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. 2179

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 ''Selective Agriculture Embargo Prohibition Act''.

SEC. 2. AGRICULTURAL EXPORT CONTROLS.

The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) is amended—

(1) by redesignating section 208 as section 209; and

(2) by inserting after section 207 the following new section:

''SEC. 208. AGRICULTURAL CONTROLS.

''(a) IN GENERAL.—

''(1) REPORT TO CONGRESS.—If the President imposes export controls on any agricultural commodity in order to carry out the provisions of this Act, the President shall immediately transmit a report on such action to Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to subsection (b), approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If Congress, within 60 days after the date of its receipt of such report, fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of that 60-day period.

''(2) APPLICATION OF PARAGRAPH (1).—The provisions of paragraph (1) and subsection (b) shall not apply to export controls—

''(A) which are extended under this Act if the controls, when imposed, were approved by Congress under paragraph (1) and subsection (b); or

''(B) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

''(b) JOINT RESOLUTION.—

''(1) IN GENERAL.—For purposes of this subsection, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 208 of the International Emergency Economic Powers Act, the President may impose export controls as specified in the report submitted to Congress on _____.', with the blank space being filled with the appropriate date.

''(2) INTRODUCTION.—On the day on which a report is submitted to the House of Representatives and the Senate under subsection (a), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on International Relations, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

''(3) REFERRAL.—All joint resolutions introduced in the House of Representatives and in the Senate shall be referred to the appropriate committee.

''(4) DISCHARGE OF COMMITTEE.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

''(5) CONSIDERATION IN SENATE AND HOUSE OF REPRESENTATIVES.—A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

''(6) PASSAGE BY 1 HOUSE.—In the case of a joint resolution described in paragraph (1), if, before the passage by 1 House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

''(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(B) the vote on final passage shall be on the joint resolution of the other House.

''(c) COMPUTATION OF TIME.—In the computation of the period of 60 days referred to in subsection (a) and the period of 30 days referred to in paragraph (4) of subsection (b), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of Congress sine die.''.

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

S. 2180. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions; to the Committee on Environment and Public Works.

THE SUPERFUND RECYCLING EQUITY ACT OF 1998

Mr. LOTT. Mr. President, today, I am pleased to join my colleague, Senate Minority Leader DASCHLE, in introducing legislation which removes an unintended yet troublesome legal obstacle to recycling.

It is not a widely known fact that Superfund is biased against recycling. I am confident that the authors of the statute did not intend to favor new materials over those that have been recycled, but we now live with this unintended consequence.

Mr. President, our bill corrects current law and encourages recycling. It simply recognizes that recycling is not disposal and that recyclables are not wastes. Common sense tells us that recycling something is not the same as disposing of it.

Nonetheless, Mr. President, those who sell materials for recycling are being pulled into Superfund cleanups because, under the law, selling recyclable materials is equivalent to ''arranging for disposal.'' Our bill waives Superfund liability for those who are legitimately recycling these goods. Clearly, recycling is not disposal—it is the opposite.

The Superfund Recycling Equity Act is necessary to correct Superfund's fundamental bias against recycled materials. Under current law, recyclable materials, such as paper, glass, plastic, metals and textiles cannot be competitive with new materials. This bill will help level the playing field between the use of recycled goods and competitive virgin raw materials. Currently, suppliers of virgin raw materials face no Superfund liability for contamination caused by their customer. This bill would provide the same waiver to those who sell recyclable materials.

Mr. President, this bill also contains protections to ensure that sham recyclers are unable to benefit from this exemption. In order for recyclers to be relieved of Superfund liability, they must act in an environmentally sound manner and sell their product to manufacturers with environmentally responsible business practices. Considering that most recyclers are currently operating in a reasonable and conscience manner, this should be an easy test.

Mr. President, the Superfund Recycling Equity Act is the product of lengthy negotiations between the federal and state governments, the environmental community and the scrap recycling industry. These negotiations have resulted in a bill that I believe to be both environmentally and fiscally sound.

Americans nationwide have embraced the benefits of recycling. We know that increased recycling means the more efficient use of our natural resources. By removing the threat of Superfund liability for recyclers, we will encourage more recycling.

I hope that my colleagues on both sides of the aisle will lend their support to this targeted and much-needed reform bill.

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. 2180

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 ''Superfund Recycling Equity Act of 1998''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions.

SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.

(a) CLARIFICATION.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

''SEC. 127. RECYCLING TRANSACTIONS.

''(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d), and (e), a person who arranged for recycling of recyclable material shall not be liable under section 107(a)(3) or 107(a)(4) with respect to the material.

''(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto.

''(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

''(1) The recyclable material met a commercial specification grade.

''(2) A market existed for the recyclable material.

''(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

''(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

''(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

''(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to)—

''(A) the price paid in the recycling transaction;

''(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

''(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

''(d) TRANSACTIONS INVOLVING SCRAP METAL.—

''(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

''(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

''(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

''(C) the person did not melt the scrap metal prior to the transaction.

''(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

''(3) For purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

''(e) TRANSACTIONS INVOLVING BATTERIES.—Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

''(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

''(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

''(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

''(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

''(f) EXCLUSIONS.—

''(1) The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

''(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

''(i) that the recyclable material would not be recycled;

''(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

''(iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not

in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

''(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling;

''(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances); or

''(D) with respect to any item of a recyclable material, the item—

''(i) contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws; or

''(ii) is an item of scrap paper containing at the time of the recycling transaction a concentration of a hazardous substance that has been determined by the Administrator, after notice and comment, to present a significant risk to human health or the environment, or contained that hazardous substance at a concentration at or higher than that determined by the Administrator to present such a significant risk.

''(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

''(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

''(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a). Nothing in this section shall be deemed to affect the liability of a person under paragraph (3) or (4) of section 107(a) with respect to materials that are not recyclable materials as defined in subsection (b) of this section.

''(h) REGULATIONS.—The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.

''(i) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to enactment of this section.

''(j) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

''(k) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

''(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or

''(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.''.

(b) TECHNICAL AMENDMENT.—The table of contents for title I of such Act is amended by adding at the end the following item:

''SEC. 127. Recycling transactions.''.

Mr. DASCHLE. Mr. President, I am pleased to join the distinguished majority leader in introducing this bill to promote the reuse and recycling of scrap materials. There is broad agreement that more should be done to establish a climate in which businesses are encouraged to recycle scrap materials in an environmentally sound manner. We should make every effort to expand the responsible and beneficial use and reuse of this waste as soon as possible.

While I remain hopeful that bipartisan negotiators will be able to work out differences on broad-based Superfund reform, it appears unlikely that Congress will achieve that goal this year. That is particularly unfortunate, because there are many elements of Superfund reform for which there is agreement and for which we should move forward as expeditiously as possible, including establishing greater incentives for brownfields redevelopment, and providing liability relief to deserving municipalities and small businesses.

There are a number of important Superfund issues on which there continues to be significant disagreement. Despite the fact that resolution of these issues is unlikely in the near-term, we should not allow ourselves to adjourn this year without making a strong effort to enact those reforms on which there is broad agreement.

Therefore, I am very pleased that Senator LOTT has taken the initiative to move forward with this important element of Superfund reform. With enactment of this legislation, we will foster additional scrap recycling in America, thereby reducing the stream of waste materials now sent to landfills and other solid waste management facilities. By doing so, we will help to eliminate the fears of many businesses of potential Superfund liabilities even if they pursue legitimate means to recycle scrap materials. By clarifying the liability rules for recycling transactions under Superfund, this legislation will place recyclers on a more even playing field compared with those who produce goods using virgin materials.

In conclusion, Mr. President, I am pleased to cosponsor this timely legislation with Senator LOTT. This is an important step in providing meaningful reform and clarification to the Superfund law and I encourage all my colleagues to support this effort to promote scrap recycling as soon as possible.

ADDITIONAL COSPONSORS

S. 505

At the request of Mr. HATCH, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 505, a bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

S. 603

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 603, a bill to require the Secretary of Agriculture to collect and disseminate statistically reliable information from milk manufacturing plants on prices received for bulk cheese and to provide the Secretary with the authority to require reporting by such manufacturing plants throughout the U.S. on prices received for cheese, butter, and nonfat dry milk.

S. 604

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 604, a bill to amend the Agricultural Market Transition Act to require the Secretary of Agriculture to use the price of feed grains and other cash expenses as factors that are used to determine the basic formula price for milk and any other milk price regulated by the Secretary.

S. 1147

At the request of Mr. WELLSTONE, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1147, a bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

S. 1365

At the request of Ms. MIKULSKI, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1365, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 1482

At the request of Mr. COATS, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1482, a bill to amend section 223 of the Communications Act of 1934 to establish a prohibition on commercial distribution on the World Wide Web of material that is harmful to minors, and for other purposes.

S. 1600

At the request of Mrs. BOXER, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1600, a bill to amend the