Alaska (Mr. MURKOWSKI) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 2869, a bill to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

S. 2896

At the request of Mrs. HUTCHISON, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 2896, a bill to enhance the operation of the AMBER Alert communications network in order to facilitate the recovery of abducted children, to provide for enhanced notification on highways of alerts and information on such children, and for other purposes.

S. 2935

At the request of Ms. LANDRIEU, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2935, a bill to amend the Public Health Service Act to provide grants for the operation of mosquito control programs to prevent and control mosquito-borne diseases.

S. 3018

At the request of Mr. BAUCUS, the names of the Senator from Utah (Mr. HATCH), the Senator from Minnesota (Mr. WELLSTONE) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 3018, a bill to amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program, and for other purposes.

S. 3031

At the request of Mr. THOMAS, his name was added as a cosponsor of S. 3031, a bill to amend title 23, United States Code, to reduce delays in the development of highway and transit projects, and for other purposes.

S. 3031

At the request of Mr. ENZI, his name was added as a cosponsor of S. 3031, supra.

S. 3031

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 3031, supra.

S. 3034

At the request of Mr. JOHNSON, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 3034, a bill to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

S. 3058

At the request of Mr. BINGAMAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 3058, a bill to amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to provide benefits for contractor employees of the Department of Energy who were exposed to toxic substances at Department of Energy facilities, to provide coverage under subtitle B of that Act for certain additional individuals, to establish an ombudsman and otherwise reform the assistance provided to claimants under that Act, and for other purposes.

S. 3096

At the request of Mr. KOHL, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 3096, a bill to amend chapter 44 of title 18, United States Code, to require ballistics testing of all firearms manufactured and all firearms in custody of Federal agencies.

S. 3102

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 3102, a bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of broadcast transmission facilities, and for other purposes.

S. 3103

At the request of Mr. LEAHY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 3103, a bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of personal wireless services facilities, and for other purposes.

S. 3105

At the request of Mr. FRIST, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 3105, a bill to amend the Public Health Service Act to provide grants for the operation of enhanced mosquito control programs to prevent and control mosquito-borne diseases.

S. 3126

At the request of Mr. KERRY, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 3126, a bill to amend the Internal Revenue Code of 1986 to allow an income tax credit for the provision of homeownership and community development, and for other purposes.

S.J. RES. 49

At the request of Mr. AKAKA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S.J. Res. 49, a joint resolution recognizing the contributions of Patsy Takemoto Mink.

S. RES. 334

At the request of Mrs. CLINTON, the names of the Senator from Ohio (Mr. DEWINE), the Senator from New Mexico (Mr. DOMENICI) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. Res. 334, a resolution recognizing the Ellis Island Medal of Honor.

S. RES. 339

At the request of Mrs. MURRAY, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. LEVIN), the Senator from Washington (Ms. CANTWELL) and the Senator from Missouri (Mrs. CARNAHAN) were added as cosponsors of S. Res. 339, A resolution designating November 2002, as ''National Runaway Prevention Month''.

S. CON. RES. 136

At the request of Mr. BAUCUS, the names of the Senator from South Carolina (Mr. HOLLINGS), the Senator from North Carolina (Mr. HELMS), the Senator from Georgia (Mr. CLELAND) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. Con. Res. 136, a concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the International Association of Fish and Wildlife Agencies.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. FITZGERALD):

S. 3127. A bill to amend the Safe Drinking Water Act to provide assistance to States to support testing of private wells in areas of suspected contamination to limit or prevent human exposure to contaminated groundwater; to the Committee on Environment and Public Works.

Mr. REED. Mr. President, today I am proud to be joined by my colleague Senator FITZGERALD in introducing the Private Well Testing Assistance Act of 2002. This legislation seeks to protect the health of our Nation's rural families by providing Federal assistance to State health and environmental agencies for sampling of drinking water wells near suspected areas of groundwater contamination.

More than 15.1 million households are served by private drinking water wells in the United States. At times, these wells are affected by serious groundwater contaminants, including industrial solvents, petroleum, nitrates, radon, arsenic, beryllium, chloroform, and gasoline additives such as MTBE.

While private well owners generally are responsible for regular testing of drinking water wells, cases of serious or potentially widespread groundwater contamination often require State agencies to conduct costly tests on numerous wells. Many of these sites are included in the Environmental Protection Agency's Comprehensive Environmental Response, Compensation, and Liability Information System, or CERCLIS, for which Federal funding is available for initial site assessments, but not for subsequent regular sampling to ensure that contaminants have not migrated to additional household wells.

With many State budgets across the country in fiscal crisis, State governments often do not have the resources to provide regular, reliable testing of wells in proximity to suspected areas of contamination. By authorizing EPA

to provide up to $20 million per year to assist State well testing programs, subject to a 20 percent State match, the Private Well Testing Assistance Act will create an incentive for states to improve well monitoring near both new and existing areas of groundwater contamination.

I urge my colleagues to help ensure the health and safety of American families that rely on groundwater for their drinking water needs by supporting this legislation.

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. 3127

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 ''Private Well Testing Assistance Act''.

SEC. 2. ASSISTANCE FOR TESTING OF PRIVATE WELLS.

Part E of the Safe Drinking Water Act (42 U.S.C. 300j et seq.) is amended by adding at the end the following:

''SEC. 1459. ASSISTANCE FOR TESTING OF PRIVATE WELLS.

''(a) FINDINGS.—Congress finds that—

''(1) more than 15,100,000 households in the United States are served by private drinking water wells;

''(2) while private well owners generally are responsible for regular testing of drinking water wells for the presence of contaminants, cases of serious or potentially widespread groundwater contamination often require State health and environmental agencies to conduct costly tests on numerous drinking water well sites;

''(3) many of those sites are included in the Comprehensive Environmental Response, Compensation, and Liability Information System of the Environmental Protection Agency, through which Federal funding is available for testing of private wells during initial site assessments but not for subsequent regular sampling to ensure that contaminants have not migrated to other wells;

''(4) many State governments do not have the resources to provide regular, reliable testing of drinking water wells that are located in proximity to areas of suspected groundwater contamination;

''(5) State fiscal conditions, already in decline before the terrorist attacks of September 11, 2001, are rapidly approaching a state of crisis;

''(6) according to the National Conference of State Legislatures—

''(A) revenues in 43 States are below estimates; and

''(B) 36 States have already planned or implemented cuts in public services;

''(7) as a result of those economic conditions, most States do not have drinking water well testing programs in place, and many State well testing programs have been discontinued, placing households served by private drinking water wells at increased risk; and

''(8) the provision of Federal assistance, with a State cost-sharing requirement, would establish an incentive for States to provide regular testing of drinking water wells in proximity to new and existing areas of suspected groundwater contamination.

''(b) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency, acting in consultation with appropriate State agencies.

''(2) AREA OF CONCERN.—The term 'area of concern' means a geographic area in a State the groundwater of which may, as determined by the State—

''(A) be contaminated or threatened by a release of 1 or more substances of concern; and

''(B) present a serious threat to human health.

''(3) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

''(4) POLLUTANT OR CONTAMINANT.—The term 'pollutant or contaminant' has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

''(5) SUBSTANCE OF CONCERN.—The term 'substance of concern' means—

''(A) a hazardous substance;

''(B) a pollutant or contaminant;

''(C) petroleum (including crude oil and any fraction of crude oil);

''(D) methyl tertiary butyl ether; and

''(E) such other naturally-occurring or other substances (including arsenic, beryllium, and chloroform) as the Administrator, in consultation with appropriate State agencies, may identify by regulation.

''(c) ESTABLISHMENT OF PROGRAM.—Not later than 90 days after the date of enactment of this section, the Administrator shall establish a program to provide funds to each State for use in testing private wells in the State.

''(d) DETERMINATION OF AREAS OF CONCERN.—Not later than 30 days after the date of enactment of this section, the Administrator shall promulgate regulations that describe criteria to be used by a State in determining whether an area in the State is an area of concern, including a definition of the term 'threat to human health'.

''(e) APPLICATION PROCESS.—

''(1) IN GENERAL.—A State that seeks to receive funds under this section shall submit to the Administrator, in such form and containing such information as the Administrator may prescribe, an application for the funds.

''(2) CERTIFICATION.—A State application described in paragraph (1) shall include a certification by the Governor of the State of the potential threat to human health posed by groundwater in each area of concern in the State, as determined in accordance with the regulations promulgated by the Administrator under subsection (d).

''(3) PROCESSING.—Not later than 15 days after the Administrator receives an application under this subsection, the Administrator shall approve or disapprove the application.

''(f) PROVISION OF FUNDING.—

''(1) IN GENERAL.—If the Administrator approves an application of a State under subsection (e)(3), the Administrator shall provide to the State an amount of funds to be used to test private wells in the State that—

''(A) is determined by the Administrator based on—

''(i) the number of private wells to be tested;

''(ii) the prevailing local cost of testing a well in each area of concern in the State; and

''(iii) the types of substances of concern for which each well is to be tested; and

''(B) consists of not more than $500 per well, unless the Administrator determines that 1 or more wells to be tested warrant the provision of a greater amount.

''(2) COST SHARING.—

''(A) IN GENERAL.—The Federal share of the cost of any test described in paragraph (1) shall not exceed 80 percent.

''(B) NON-FEDERAL SHARE.—The non-Federal share of the cost of any test described in paragraph (1) may be provided in cash or in kind.

''(g) NUMBER AND FREQUENCY OF TESTS.—

''(1) IN GENERAL.—Subject to paragraph (2), in determining the number and frequency of tests to be conducted under this section with respect to any private well in an area of concern, a State shall take into consideration—

''(A) typical and potential seasonal variations in groundwater levels; and

''(B) resulting fluctuations in contamination levels.

''(2) LIMITATION.—Except in a case in which at least 2 years have elapsed since the last date on which a private well was tested using funds provided under this section, no funds provided under this section may be used to test any private well—

''(A) more than 4 times; or

''(B) on or after the date that is 1 year after the date on which the well is first tested.

''(h) OTHER ASSISTANCE.—Assistance provided to test private wells under this section shall be in addition to any assistance provided for a similar purpose under this Act or any other Federal law.

''(i) REPORT.—Not later than 1 year after the date of enactment of this section, the Administrator, in cooperation with the National Ground Water Association, shall submit to Congress a report that describes the progress made in carrying out this section.

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2003 through 2006, to remain available until expended.

''(2) MINIMUM ALLOCATION.—The Administrator shall ensure that, for each fiscal year, each State receives not less than 0.25 percent of the amount made available under paragraph (1) for the fiscal year.''.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 3128. A bill to authorize the Pyramid of Remembrance Foundation to establish a memorial in the District of Columbia and its environs to honor members of the Armed Forces of the United States who have lost their lives during peacekeeping operations, humanitarian efforts, training, terrorist attacks, or covert operations; to the Committee on Energy and Natural Resources.

Mr. VOINOVICH. Mr. President, nearly ten years ago, a group of students at Riverside High School in Painesville, OH watched with horror as a U.S. soldier in Somalia was dragged through the streets of Mogadishu. The students, concerned that there was no memorial in our Nation's capital to honor members of our armed forces who lost their lives during peacekeeping missions such as the one in Somalia, felt compelled to take action.

This group of motivated young people spearheaded a campaign to establish a Pyramid of Remembrance in Washington, DC to honor U.S. servicemen and women who have lost their lives during peacekeeping operations, humanitarian efforts, training, terrorist attacks, or convert operations. The students not only proposed the memorial, they created a private non-

profit foundation to raise the money to construct the memorial. The community pulled together, providing legal counsel for the students and private donations to help fund the project. Thanks to their hard work, the proposed Pyramid of Remembrance would be built at no cost to the taxpayer.

In April 2001, the National Capital Memorial Commission, charged with overseeing monument construction in Washington, DC, held hearings about the proposed Pyramid of Remembrance. The Commission recommended that the memorial be constructed on Defense Department land, possibly at Fort McNair. The commissioners also noted that such a memorial would indeed fill a void in our Nation's military monuments.

On May 6, 1999, I spoke on the Senate floor in honor of two brave American soldiers, Chief Warrant Officer Kevin L. Reichert and Chief Warrant Officer David A. Gibbs, who lost their lives when their Apache helicopter crashed into the Albanian mountains during a routine training exercise on May 5, 1999, as U.S. troops joined with our NATO allies in a military campaign against Slobodan Milosevic. As I remarked at that time, the United States owes David, Kevin and so many other service members a debt of gratitude that we will never be able to repay, for they have paid the ultimate sacrifice. As the Bible says in John chapter 15:13, ''Greater love has no man than this, that a man lay down his life for his friends.''

I support the vision of the students at Riverside High School and applaud the work they have done to make the Pyramid of Remembrance a reality. I believe it is our duty to honor American men and women in uniform who have lost their lives while serving their country, whether in peacetime or during war.

I am pleased to introduce in the Senate a companion measure to H.R. 282, introduced in the House of Representatives by Congressman STEVE LATOURETTE, which would authorize the Pyramid of Remembrance Foundation to establish a memorial in the District of Columbia or its environs to soldiers who have lost their lives during peacekeeping operations, humanitarian efforts, training, terrorist attacks, or covert operations.

A monument honoring members of our Armed Forces who have lost their lives in peacetime deserves a place of honor in our Nation's capital. I commend and thank the students in Painesville, their parents, and the teachers and community leaders who have supported them for their hard work and dedication to this cause. The proposed Pyramid of Remembrance would fill a void among memorials in Washington, DC. I encourage my colleagues to support their worthy endeavor and to join me in support of this bill.

I ask unanimous consent 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. 3128

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

SECTION 1. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map referred to in section 2(e) of the Commemorative Works Act (40 U.S.C. 1002(e)).

(2) MEMORIAL.—The term ''memorial'' means the memorial authorized to be established under section 2(a).

SEC. 2. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—The Pyramid of Remembrance Foundation may establish a memorial on Federal land in the area depicted on the map as ''Area II'' to honor members of the Armed Forces of the United States who have lost their lives during peacekeeping operations, humanitarian efforts, training, terrorist attacks, or covert operations.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the establishment of the memorial shall be in accordance with the Commemorative Works Act (40 U.S.C. 1001 et seq.).

(2) EXCEPTION.—Subsections (b) and (c) of section 3 of the Commemorative Works Act (40 U.S.C. 1003) shall not apply to the establishment of the memorial.

SEC. 3. FUNDS FOR MEMORIAL.

(a) USE OF FEDERAL FUNDS PROHIBITED.—Except as provided by the Commemorative Works Act (40 U.S.C. 1001 et seq.), no Federal funds may be used to pay any expense incurred from the establishment of the memorial.

(b) DEPOSIT OF EXCESS FUNDS.—The Pyramid of Remembrance Foundation shall transmit to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of the Commemorative Works Act (40 U.S.C. 1008(b)(1))—

(1) any funds that remain after payment of all expenses incurred from the establishment of the memorial (including payment of the amount for maintenance and preservation required under section 8(b) of the Commemorative Works Act (40 U.S.C. 1008(b))); or

(2) any funds that remain on expiration of the authority for the memorial under section 10(b) of that Act (40 U.S.C. 1010(b)).

By Mr. VOINOVICH (for himself and Mr. FEINGOLD):

S. 3131. A bill to balance the budget and protect the Social Security Trust Fund surpluses; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

Mr. VOINOVICH. 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. 3131

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Truth in Budgeting and Social Security Protection Act of 2002''.

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

TITLE I—GENERAL REFORMS

SEC. 101. EXTENSION OF THE DISCRETIONARY SPENDING CAPS.

(a) IN GENERAL.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking paragraphs (7) through (16) and inserting the following:

''(7) with respect to fiscal years 2004 through 2009 an amount equal to the appropriated amount of discretionary spending in budget authority and outlays for fiscal year 2003 adjusted to reflect inflation;''.

(b) EXPIRATION.—Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 note) is amended by striking subsection (b).

(c) ADDITIONAL ENFORCEMENT.—Section 205(g) of H. Con. Res. 290 (106th Congress) is repealed.

SEC. 102. EXTENSION OF PAY-AS-YOU-GO REQUIREMENT.

Section 252(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking ''enacted before October 1, 2002,'' both places it appears.

SEC. 103. AUTOMATIC BUDGET ENFORCEMENT FOR MEASURES CONSIDERED ON THE FLOOR.

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 is amended by inserting at the end the following:

''BUDGET EVASION POINT OF ORDER

''SEC. 316. (a) DISCRETIONARY CAPS.—It shall not be in order to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that waives or suspends the enforcement of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 or otherwise would alter the spending limits set forth in that section.

''(b) PAY-AS-YOU-GO.—It shall not be in order to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that waives or suspends the enforcement of section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 or otherwise would alter the balances of the pay-as-you-go scorecard pursuant to that section.

''(c) DIRECTED SCORING.—It shall not be in order in the Senate to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that directs the scorekeeping of any bill or resolution.

''(d) WAIVER AND APPEAL.—This section may be waived or suspended in the Senate only by an affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.''.

(b) TABLE OF CONTENTS.—The table of contents for the Congressional Budget Act of 1974 is amended by inserting after the item for section 315 the following:

Sec. 316. Budget evasion point of order.''.

SEC. 104. POINT OF ORDER TO REQUIRE COMPLIANCE WITH THE CAPS AND PAY-AS-YOU-GO.

Section 312(b) of the Congressional Budget Act of 1974 (2 U.S.C. 643(b)) is amended to read as follows:

''(b) DISCRETIONARY SPENDING AND PAY-AS-YOU-GO POINT OF ORDER IN THE SENATE.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, it shall not be in order in the Senate to consider any bill or resolution or any separate provision of a bill or resolution (or amendment, motion, or conference report on that bill or resolution) that would—

''(A) exceed any of the discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985; or

''(B) for direct spending or revenue legislation, would cause or increase an on-budget deficit for any one of the following three applicable time periods—

(i) the first year covered by the most recently adopted concurrent resolution on the budget;

(ii) the period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget; or

(iii) the period of the 5 fiscal years following the first five fiscal years covered in the most recently adopted concurrent resolution on the budget.

''(2) POINT OF ORDER AGAINST A SPECIFIC PROVISION.—If the Presiding Officer sustains a point of order under paragraph (1) with respect to any separate provision of a bill or resolution, that provision shall be stricken from the measure and may not be offered as an amendment from the floor.

''(3) FORM OF THE POINT OF ORDER.—A point of order under this section may be raised by a Senator as provided in section 313(e) of the Congressional Budget Act of 1974.

''(4) CONFERENCE REPORTS.—If a point of order is sustained under this section against a conference report the report shall be disposed of as provided in section 313(d) of the Congressional Budget Act of 1974.

''(5) ENFORCEMENT BY THE PRESIDING OFFICER.—In the Senate, if a point of order lies against a bill or resolution (or amendment, motion, or conference report on that bill or resolution) under this section, and no Senator has raised the point of order, and the Senate has not waived the point of order, then before the Senate may vote on the bill or resolution (or amendment, motion, or conference report on that bill or resolution), the Presiding Officer shall on his or her own motion raise a point of order under this section.

''(6) EXCEPTIONS.—This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.''.

SEC. 105. DISCLOSURE OF INTEREST COSTS.

Section 308(a)(1) of the Congressional Budget Act of 1974 (2 U.S.C. 639(a)(1)) is amended—

(1) in subparagraph (B), by striking ''and'' after the semicolon;

(2) in subparagraph (C), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(D) containing a projection by the Congressional Budget Office of the cost of the debt servicing that would be caused by such measure for such fiscal year (or fiscal years) and each of the 4 ensuing fiscal years.''.

SEC. 106. EXECUTIVE BRANCH REPORT ON FISCAL EXPOSURES.

(a) IN GENERAL.—The President shall submit to the Committees on Appropriations, Budget, Finance, and Governmental Affairs of the Senate, and the Committees on Appropriations, Budget, Government Reform, and Ways and Means of the House of Representatives, not later than 2 weeks before the first Monday in February of each year, a report (in this section referred to as the ''report'') on the fiscal exposures of the United States Federal Government and their implications for long-term financial health. The report shall also be included as part of the Consolidated Financial Statement of the United States Government.

(b) CONTENTS.—

(1) IN GENERAL.—The report shall include fiscal exposures for the following categories of fiscal exposures:

(A) DEBT.—Debt, including—

(i) total gross debt;

(ii) publicly held debt; and

(iii) debt held by Government accounts.

(B) OTHER FINANCIAL LIABILITIES.—Other financial liabilities, including—

(i) civilian and military pensions;

(ii) post-retirement health benefits;

(iii) environmental liabilities;

(iv) accounts payable;

(v) loan guarantees; and

(vi) Social Security benefits due and payable.

(C) FINANCIAL COMMITMENTS.—Financial commitments, including—

(i) undelivered orders; and

(ii) long-term operating leases.

(D) FINANCIAL CONTINGENCIES AND OTHER EXPOSURE.—Financial contingencies and other exposures, including—

(i) unadjudicated claims;

(ii) Federal insurance programs (including both the financial contingency for and risk assumed by such programs);

(iii) net future benefits under Social Security, Medicare Part A, Medicare Part B, and other social insurance programs;

(iv) life cycle costs, including deferred and future maintenance and operating costs associated with operating leases and the maintenance of capital assets;

(v) unfunded portions of incrementally funded capital projects;

(vi) disaster relief; and

(vii) others as deemed appropriate.

(2) ESTIMATES.—Where available, estimates for each exposure should be included. Where reasonable estimates are not available, a range of estimates may be appropriate.

(3) OTHER EXPOSURES.—Exposures that are analogous to those specified in paragraph (1) shall also be included in the exposure categories identified in such paragraph.

(c) FORMAT.—The report shall include a 1-page list of all exposures. Additional disclosures shall include descriptions of exposures, the estimation methodologies and significant assumptions used, and an analysis of the implications of the exposures for the long-term financial outlook. Additional analysis deemed informative may be provided on subsequent pages.

(d) REVIEW WITH CONGRESS.—Following the submission of the report on fiscal exposures to the Senate and the House of Representatives, the Comptroller General shall review and report to the committee reviewing the report on the report, discussing—

(1) the extent to which all required disclosures under this section have been made;

(2) the quality of the cost estimates;

(3) the scope of the information;

(4) the long-range financial outlook; and

(5) any other matters deemed appropriate.

(e) DEFINITIONS.—In this section:

(1) LIABILITIES.—The terms ''liabilities'', ''commitments'', and ''contingencies'' shall be defined in accordance with generally accepted accounting principles and standards of the United States Federal Government.

(2) RISK ASSUMED.—The term ''risk assumed'' means the full portion of the risk premium based on the expected cost of losses inherent in the Government's commitment that is not charged to the insured. For example, the present value of unpaid expected losses net of associated premiums, based on the risk assumed as a result of insurance coverage.

(3) NET FUTURE BENEFIT PAYMENTS.—The term ''net future benefit payments'' means the net present value of negative cashflow. Negative cashflow is to be calculated as the current amount of funds needed to cover projected shortfalls, excluding trust fund balances, over a 75-year period. This estimate should include births during the period and individuals below age 15 as of January 1 of the valuation year.

SEC. 107. BUDGET COMMITTEE SETS 302(b) ALLOCATIONS.

The Congressional Budget Act of 1974 (2 U.S.C. 621 et seq.) is amended—

(1) in section 301(e)(2)(F) (2 U.S.C. 632(e)(2)(F)), by striking ''section 302(a)'' and inserting ''subsections (a) and (b) of section 302''; and

(2) in section 302 (2 U.S.C. 633), by striking subsection (b) and inserting the following:

''(b) SUBALLOCATIONS FOR APPROPRIATIONS COMMITTEE.—The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include suballocations of amounts allocated to the Committees on Appropriations of each amount allocated to those committees under subsection (a) among each of the subcommittees of those committees.''.

SEC. 108. LONG-TERM COST RECOGNITION POINT OF ORDER.

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''LONG-TERM COST RECOGNITION POINT OF ORDER

''SEC. 318. (a) CONGRESSIONAL BUDGET OFFICE ANALYSIS.—

''(1) IN GENERAL.—CBO shall, in conjunction with the analysis required by section 402, prepare and submit to the Committees

on the Budget of the House of Representatives and Senate a report on each bill, joint resolution, amendment, motion, or conference report reported by any committee of the House of Representatives or the Senate that contains any cost drivers that CBO concludes are likely to have the effect of increasing the cost path of that measure such that the estimated discounted cash flows of the measure in the 10 years following the 10th year after the measure takes effect would be 150 percent or greater of the level of the estimated discounted cash flows of the measure at the end of the 10 years following the enactment of the measure.

''(2) PROJECTIONS.—Where possible, CBO should use existing long-term projections of cost drivers prepared by the appropriate Federal agency.

''(3) LIMIT.—Nothing in this section requires CBO to develop cost estimates for a measure beyond the 10th year after the measure takes effect.

''(b) COST DRIVERS.—Cost drivers CBO shall consider under subsection (a) include—

''(1) demographic changes;

''(2) new technologies; and

''(3) environmental factors.

''(c) POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that CBO determines will increase the level of the estimated discounted cash flows of that measure as reported in subsection (a) by 150 percent or more.''.

SEC. 109. PROTECTION OF SOCIAL SECURITY SURPLUSES BY BUDGET ENFORCEMENT.

(a) REVISION OF ENFORCING DEFICIT TARGETS.—Section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 903) is amended—

(1) in subsection (a), by striking ''(if any remains) if it exceeds the margin'';

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

''(b) EXCESS DEFICIT.—The excess deficit is the deficit for the budget year.'';

(3) by striking subsection (c) and inserting the following:

''(c) ELIMINATING EXCESS DEFICIT.—Each non-exempt account shall be reduced by a dollar amount calculated by multiplying the baseline level of sequesterable budgetary resources in that account at that time by the uniform percentage necessary to eliminate an excess deficit.''; and

(4) by striking subsections (g) and (h).

(b) MEDICARE EXEMPT.—

(1) AMENDMENTS.—The Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in section 253(e)(3)(A), by striking clause (i) and inserting the following:

''(i) the medicare program specified in section 256(d) shall not be reduced; and'';

(B) in section 255(g)(1)(A), by inserting ''Medicare (for purposes of section 253)'' after the item relating to ''Medical facilities''; and

(C) in section 256(d)(1), by striking ''sections 252 and 253'' and inserting ''section 252''.

(2) EXEMPTION.—Medicare shall not be subject to sequester under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by this section.

(c) ECONOMIC AND TECHNICAL ASSUMPTIONS.—Notwithstanding section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(j)), the Office of Management and Budget shall use the economic and technical assumptions underlying the report issued pursuant to section 1106 of title 31, United States Code, for purposes of determining the excess deficit under section 253(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as added by subsection (a).

(d) APPLICATION OF SEQUESTRATION TO BUDGET ACCOUNTS.—Section 256(k) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(k)) is amended by—

(1) striking paragraph (2); and

(2) redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively.

(e) STRENGTHENING SOCIAL SECURITY POINTS OF ORDER..—

(1) IN GENERAL.—Section 312 of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended by inserting at the end the following:

''(g) STRENGTHENING SOCIAL SECURITY POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget (or any amendment thereto or conference report thereon) or any bill, joint resolution, amendment, motion, or conference report that would violate or amend section 13301 of the Budget Enforcement Act of 1990.''.

(2) SUPER MAJORITY REQUIREMENT.—

(A) POINT OF ORDER.—Section 904(c)(1) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(B) WAIVER.—Section 904(d)(2) of the Congressional Budget Act of 1974 is amended by inserting ''312(g),'' after ''310(d)(2),''.

(3) ENFORCEMENT IN EACH FISCAL YEAR.—The Congressional Budget Act of 1974 is amended in—

(A) section 301(a)(7) (2 U.S.C. 632(a)(7)), by striking ''for the fiscal year'' through the period and inserting ''for each fiscal year covered by the resolution''; and

(B) section 311(a)(3) (2 U.S.C. 642(a)(3)), by striking beginning with ''for the first fiscal year'' through the period and insert the following: ''for any of the fiscal years covered by the concurrent resolution.''.

(f) EFFECTIVE DATE.—Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 note) is amended by striking ''253,''.

TITLE II—REFORM OF BUDGETARY TREATMENT OF FEDERAL INSURANCE PROGRAMS

SEC. 201. FEDERAL INSURANCE PROGRAMS.

(a) IN GENERAL.—The Congressional Budget Act of 1974 is amended by adding after title V the following new title:

''TITLE VI—BUDGETARY TREATMENT OF FEDERAL INSURANCE PROGRAMS

''SEC. 601. SHORT TITLE.

''This title may be cited as the 'Federal Insurance Budgeting Act of 2002'.

''SEC. 602. BUDGETARY TREATMENT.

''(a) PRESIDENT'S BUDGET.—Beginning with fiscal year 2008, the budget of the Government submitted pursuant to section 1105(a) of title 31, United States Code, shall be based on the risk-assumed cost of Federal insurance programs.

''(b) BUDGET ACCOUNTING.—For any Federal insurance program—

''(1) the program account shall—

''(A) pay the risk-assumed cost borne by taxpayers to the financing account; and

''(B) pay actual insurance program administrative costs; and

''(2) the financing account shall—

''(A) receive premiums and other income;

''(B) pay all claims for insurance and receive all recoveries; and

''(C) transfer to the program account on not less than an annual basis amounts necessary to pay insurance program administrative costs; and

''(3) a negative risk-assumed cost shall be transferred from the financing account to the program account, and shall be transferred from the program account to the general fund;

''(4) all payments by or receipts of the financing accounts shall be treated in the budget as a means of financing.

''(c) APPROPRIATIONS REQUIRED.—(1) Notwithstanding any other provision of law, insurance commitments may be made for fiscal year 2006 and thereafter only to the extent that new budget authority to cover their risk-assumed cost is provided in advance in an appropriation Act.

''(2) An outstanding insurance commitment shall not be modified in a manner that increases its risk-assumed cost unless budget authority for the additional cost has been provided in advance.

''(3) Paragraph (1) shall not apply to Federal insurance programs that constitute entitlements.

''(d) REESTIMATES.—

''(1) IN GENERAL.—The risk-assumed cost for a fiscal year shall be reestimated in each subsequent year. Such reestimate can equal zero. In the case of a positive reestimate, the amount of the reestimate shall be paid from the program account to the financing account. In the case of a negative reestimate, the amount of the reestimate shall be paid from the financing account to the program account, and shall be transferred from the program account to the general fund. Reestimates shall be displayed as a distinct and separately identified subaccount in the program account.

''(2) APPROPRIATIONS.—There are appropriated such sums as are necessary to fund a positive reestimate under paragraph (1).

''(e) ADMINISTRATIVE EXPENSES.—All funding for an agency's administration of a Federal insurance program shall be displayed as a distinct and separately identified subaccount in the program account.

''SEC. 603. TIMETABLE FOR IMPLEMENTATION OF ACCRUAL BUDGETING FOR FEDERAL INSURANCE PROGRAMS.

''(a) AGENCY REQUIREMENTS.—Agencies with responsibility for Federal insurance programs shall develop models to estimate their risk-assumed cost by year through the budget horizon and shall submit those models, all relevant data, a justification for critical assumptions, and the annual projected risk-assumed costs to OMB with their budget requests each year starting with the request for fiscal year 2005. Agencies will likewise provide OMB with annual estimates of modifications, if any, and reestimates of program costs.

''(b) DISCLOSURE.—When the President submits a budget of the Government pursuant to section 1105(a) of title 31, United States Code, for fiscal year 2005, OMB shall publish a notice in the Federal Register advising interested persons of the availability of information describing the models, data (including sources), and critical assumptions (including explicit or implicit discount rate assumptions) that it or other executive branch entities would use to estimate the risk-assumed cost of Federal insurance programs and giving such persons an opportunity to submit comments. At the same time, the chairman of the Committee on the Budget shall publish a notice for CBO in the Federal Register advising interested persons of the availability of information describing the models, data (including sources), and critical assumptions (including explicit or implicit discount rate assumptions) that it would use to estimate the risk-assumed cost of Federal insurance programs and giving such interested persons an opportunity to submit comments.

''(c) REVISION.—After consideration of comments pursuant to subsection (b), and in consultation with the Committees on the Budget of the House of Representatives and the Senate, OMB and CBO shall revise the models, data, and major assumptions they would

use to estimate the risk-assumed cost of Federal insurance programs.

''(d) DISPLAY.—

''(1) IN GENERAL.—For fiscal years 2005, 2006, and 2007 the budget submissions of the President pursuant to section 1105(a) of title 31, United States Code, and CBO's reports on the economic and budget outlook pursuant to section 202(e)(1) and the President's budgets, shall for display purposes only, estimate the risk-assumed cost of existing or proposed Federal insurance programs.

''(2) OMB.—The display in the budget submissions of the President for fiscal years 2005, 2006, and 2007 shall include—

''(A) a presentation for each Federal insurance program in budget-account level detail of estimates of risk-assumed cost;

''(B) a summary table of the risk-assumed costs of Federal insurance programs; and

''(C) an alternate summary table of budget functions and aggregates using risk-assumed rather than cash-based cost estimates for Federal insurance programs.

''(3) CBO.—In the second session of the 108th Congress and the 109th Congress, CBO shall include in its estimates under section 308, for display purposes only, the risk-assumed cost of existing Federal insurance programs, or legislation that CBO, in consultation with the Committees on the Budget of the House of Representatives and the Senate, determines would create a new Federal insurance program.

''(e) OMB, CBO, AND GAO EVALUATIONS.—(1) Not later than 6 months after the budget submission of the President pursuant to section 1105(a) of title 31, United States Code, for fiscal year 2007, OMB, CBO, and GAO shall each submit to the Committees on the Budget of the House of Representatives and the Senate a report that evaluates the advisability and appropriate implementation of this title.

''(2) Each report made pursuant to paragraph (1) shall address the following:

''(A) The adequacy of risk-assumed estimation models used and alternative modeling methods.

''(B) The availability and reliability of data or information necessary to carry out this title.

''(C) The appropriateness of the explicit or implicit discount rate used in the various risk-assumed estimation models.

''(D) The advisability of specifying a statutory discount rate (such as the Treasury rate) for use in risk-assumed estimation models.

''(E) The ability of OMB, CBO, or GAO, as applicable, to secure any data or information directly from any Federal agency necessary to enable it to carry out this title.

''(F) The relationship between risk-assumed accrual budgeting for Federal insurance programs and the specific requirements of the Balanced Budget and Emergency Deficit Control Act of 1985.

''(G) Whether Federal budgeting is improved by the inclusion of risk-assumed cost estimates for Federal insurance programs.

''(H) The advisability of including each of the programs currently estimated on a risk-assumed cost basis in the Federal budget on that basis.

''SEC. 604. DEFINITIONS.

''For purposes of this title:

''(1) The term 'Federal insurance program' means a program that makes insurance commitments and includes the list of such programs as to be defined by the budget concepts commission, as required by title IV of the Truth in Budgeting and Social Security Protection Act of 2002.

''(2) The term 'insurance commitment' means an agreement in advance by a Federal agency to indemnify a non-Federal entity against specified losses. This term does not include loan guarantees as defined in title V or benefit programs such as social security, medicare, and similar existing social insurance programs.

''(3)(A) The term 'risk-assumed cost' means the net present value of the estimated cash flows to and from the Government resulting from an insurance commitment or modification thereof.

''(B) The cash flows associated with an insurance commitment include—

''(i) expected claims payments inherent in the Government's commitment;

''(ii) net premiums (expected premium collections received from or on behalf of the insured less expected administrative expenses);

''(iii) expected recoveries; and

''(iv) expected changes in claims, premiums, or recoveries resulting from the exercise by the insured of any option included in the insurance commitment.

''(C) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of the insurance commitment, and the current estimate of the net present value of the remaining cash flows under the terms of the insurance commitment as modified.

''(D) The cost of a reestimate is the difference between the net present value of the amount currently required by the financing account to pay estimated claims and other expenditures and the amount currently available in the financing account. The cost of a reestimate shall be accounted for in the current year in the budget of the Government submitted pursuant to section 1105(a) of title 31, United States Code.

''(E) For purposes of this definition, expected administrative expenses shall be construed as the amount estimated to be necessary for the proper administration of the insurance program. This amount may differ from amounts actually appropriated or otherwise made available for the administration of the program.

''(4) The term 'program account' means the budget account for the risk-assumed cost, and for paying all costs of administering the insurance program, and is the account from which the risk-assumed cost is disbursed to the financing account.

''(5) The term 'financing account' means the nonbudget account that is associated with each program account which receives payments from or makes payments to the program account, receives premiums and other payments from the public, pays insurance claims, and holds balances.

''(6) The term 'modification' means any Government action that alters the risk-assumed cost of an existing insurance commitment from the current estimate of cash flows. This includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of existing insurance commitments.

''(7) The term 'model' means any actuarial, financial, econometric, probabilistic, or other methodology used to estimate the expected frequency and magnitude of loss-producing events, expected premiums or collections from or on behalf of the insured, expected recoveries, and administrative expenses.

''(8) The term 'current' has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

''(9) The term 'OMB' means the Director of the Office of Management and Budget.

''(10) The term 'CBO' means the Director of the Congressional Budget Office.

''(11) The term 'GAO' means the Comptroller General of the United States.

''SEC. 605. AUTHORIZATIONS TO ENTER INTO CONTRACTS; ACTUARIAL COST ACCOUNT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $600,000 for each of fiscal years 2002 through 2007 to the Director of the Office of Management and Budget and each agency responsible for administering a Federal program to carry out this title.

''(b) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay the insurance financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supersede or override the authority of the head of a Federal agency to administer and operate an insurance program. All the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

''(c) APPROPRIATION OF AMOUNT NECESSARY TO COVER RISK-ASSUMED COST OF INSURANCE COMMITMENTS AT TRANSITION DATE.—(1) A financing account is established on September 30, 2007, for each Federal insurance program.

''(2) There is appropriated to each financing account the amount of the risk-assumed cost of Federal insurance commitments outstanding for that program as of the close of September 30, 2007.

''(3) These financing accounts shall be used in implementing the budget accounting required by this title.

''SEC. 606. EFFECTIVE DATE.

''(a) IN GENERAL.—This title shall take effect immediately and shall expire on September 30, 2009.

''(b) SPECIAL RULE.—If this title is not reauthorized by September 30, 2009, then the accounting structure and budgetary treatment of Federal insurance programs shall revert to the accounting structure and budgetary treatment in effect immediately before the date of enactment of this title.''.

(b) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 507 the following new items:

''TITLE VI—BUDGETARY TREATMENT OF FEDERAL INSURANCE PROGRAMS

''Sec. 601. Short title.
''Sec. 602. Budgetary treatment.
''Sec. 603. Timetable for implementation of accrual budgeting for Federal insurance programs.
''Sec. 604. Definitions.
''Sec. 605. Authorizations to enter into contracts; actuarial cost account.
''Sec. 606. Effective date.''.

TITLE III—BIENNIAL BUDGETING AND APPROPRIATIONS

SEC. 301. REVISION OF TIMETABLE.

Section 300 of the Congressional Budget Act of 1974 (2 U.S.C. 631) is amended to read as follows:

''TIMETABLE

''SEC. 300. (a) IN GENERAL.—Except as provided by subsection (b), the timetable with respect to the congressional budget process for any Congress (beginning with the One Hundred Eighth Congress) is as follows:

''First Session

''On or before:	Action to be completed:
First Monday in February	President submits budget recommendations.
February 15	Congressional Budget Office submits report to Budget Committees.
Not later than 6 weeks after budget submission	Committees submit views and estimates to Budget Committees.
April 1	Budget Committees report concurrent resolution on the biennial budget.
May 15	Congress completes action on concurrent resolution on the biennial budget.
May 15	Biennial appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last biennial appropriation bill.
June 30	House completes action on biennial appropriation bills.
August 1	Congress completes action on reconciliation legislation.
October 1	Biennium begins.

''Second Session

''On or before:	Action to be completed:
February 15	President submits budget review.
Not later than 6 weeks after President submits budget review	Congressional Budget Office submits report to Budget Committees.
The last day of the session	Congress completes action on bills and resolutions authorizing new budget authority for the succeeding biennium.

''(b) SPECIAL RULE.—In the case of any first session of Congress that begins in any year immediately following a leap year and during which the term of a President (except a President who succeeds himself) begins, the following dates shall supersede those set forth in subsection (a):

''First Session

''On or before:	Action to be completed:
First Monday in April	President submits budget recommendations.
April 20	Committees submit views and estimates to Budget Committees.
May 15	Budget Committees report concurrent resolution on the biennial budget.
June 1	Congress completes action on concurrent resolution on the biennial budget.
July 1	Biennial appropriation bills may be considered in the House.
July 20	House completes action on biennial appropriation bills.
August 1	Congress completes action on reconciliation legislation.
October 1	Biennium begins.''.

SEC. 302. AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

(a) DECLARATION OF PURPOSE.—Section 2(2) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621(2)) is amended by striking ''each year'' and inserting ''biennially''.

(b) DEFINITIONS.—

(1) BUDGET RESOLUTION.—Section 3(4) of such Act (2 U.S.C. 622(4)) is amended by striking ''fiscal year'' each place it appears and inserting ''biennium''.

(2) BIENNIUM.—Section 3 of such Act (2 U.S.C. 622) is further amended by adding at the end the following new paragraph:

''(11) The term 'biennium' means the period of 2 consecutive fiscal years beginning on October 1 of any odd-numbered year.''.

(c) BIENNIAL CONCURRENT RESOLUTION ON THE BUDGET.—

(1) CONTENTS OF RESOLUTION.—Section 301(a) of such Act (2 U.S.C. 632(a)) is amended—

(A) in the matter preceding paragraph (1) by—

(i) striking ''April 15 of each year'' and inserting ''May 15 of each odd-numbered year'';

(ii) striking ''the fiscal year beginning on October 1 of such year'' the first place it appears and inserting ''the biennium beginning on October 1 of such year''; and

(iii) striking ''the fiscal year beginning on October 1 of such year'' the second place it appears and inserting ''each fiscal year in such period'';

(B) in paragraph (6), by striking ''for the fiscal year'' and inserting ''for each fiscal year in the biennium''; and

(C) in paragraph (7), by striking ''for the first fiscal year'' and inserting ''for each fiscal year in the biennium''.

(2) ADDITIONAL MATTERS.—Section 301(b)(3) of such Act (2 U.S.C. 632(b)) is amended by striking ''for such fiscal year'' and inserting ''for either fiscal year in such biennium''.

(3) VIEWS OF OTHER COMMITTEES.—Section 301(d) of such Act (2 U.S.C. 632(d)) is amended by inserting ''(or, if applicable, as provided by section 300(b))'' after ''United States Code''.

(4) HEARINGS.—Section 301(e)(1) of such Act (2 U.S.C. 632(e)) is amended by—

(A) striking ''fiscal year'' and inserting ''biennium''; and

(B) inserting after the second sentence the following: ''On or before April 1 of each odd-numbered year (or, if applicable, as provided by section 300(b)), the Committee on the Budget of each House shall report to its House the concurrent resolution on the budget referred to in subsection (a) for the biennium beginning on October 1 of that year.''.

(5) GOALS FOR REDUCING UNEMPLOYMENT.—Section 301(f) of such Act (2 U.S.C. 632(f)) is amended by striking ''fiscal year'' each place it appears and inserting ''biennium''.

(6) ECONOMIC ASSUMPTIONS.—Section 301(g)(1) of such Act (2 U.S.C. 632(g)(1)) is amended by striking ''for a fiscal year'' and inserting ''for a biennium''.

(7) SECTION HEADING.—The section heading of section 301 of such Act is amended by striking ''annual'' and inserting ''biennial''.

(8) TABLE OF CONTENTS.—The item relating to section 301 in the table of contents set forth in section 1(b) of such Act is amended by striking ''Annual'' and inserting ''Biennial''.

(d) COMMITTEE ALLOCATIONS.—Section 302 of such Act (2 U.S.C. 633) is amended—

(1) in subsection (a)(1) by—

(A) striking ''for the first fiscal year of the resolution,'' and inserting ''for each fiscal year in the biennium,'';

(B) striking ''for that period of fiscal years'' and inserting ''for all fiscal years covered by the resolution''; and

(C) striking ''for the fiscal year of that resolution'' and inserting ''for each fiscal year in the biennium'';

(2) in subsection (f)(1), by striking ''for a fiscal year'' and inserting ''for a biennium'';

(3) in subsection (f)(1), by striking ''first fiscal year'' and inserting ''each fiscal year of the biennium'';

(4) in subsection (f)(2)(A), by—

(A) striking ''first fiscal year'' and inserting ''each fiscal year of the biennium''; and

(B) striking ''the total of fiscal years'' and inserting ''the total of all fiscal years covered by the resolution''; and

(5) in subsection (g)(1)(A), by striking ''April'' and inserting ''May''.

(e) SECTION 303 POINT OF ORDER.—

(1) IN GENERAL.—Section 303(a) of such Act (2 U.S.C. 634(a)) is amended by striking ''first fiscal year'' and inserting ''each fiscal year of the biennium''.

(2) EXCEPTIONS IN THE HOUSE.—Section 303(b)(1) of such Act (2 U.S.C. 634(b)) is amended—

(A) in subparagraph (A), by striking ''the budget year'' and inserting ''the biennium''; and

(B) in subparagraph (B), by striking ''the fiscal year'' and inserting ''the biennium''.

(3) APPLICATION TO THE SENATE.—Section 303(c)(1) of such Act (2 U.S.C. 634(c)) is amended by—

(A) striking ''fiscal year'' and inserting ''biennium''; and

(B) striking ''that year'' and inserting ''each fiscal year of that biennium''.

(f) PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET.—Section 304(a) of such Act (2 U.S.C. 635) is amended—

(1) by striking ''fiscal year'' the first two places it appears and inserting ''biennium'';

(2) by striking ''for such fiscal year''; and

(3) by inserting before the period ''for such biennium''.

(g) PROCEDURES FOR CONSIDERATION OF BUDGET RESOLUTIONS.—Section 305(a)(3) of such Act (2 U.S.C. 636(b)(3)) is amended by striking ''fiscal year'' and inserting ''biennium''.

(h) COMPLETION OF HOUSE ACTION ON APPROPRIATION BILLS.—Section 307 of such Act (2 U.S.C. 638) is amended—

(1) by striking ''each year'' and inserting ''each odd-numbered year'';

(2) by striking ''annual'' and inserting ''biennial'';

(3) by striking ''fiscal year'' and inserting ''biennium''; and

(4) by striking ''that year'' and inserting ''each odd-numbered year''.

(i) COMPLETION OF ACTION ON REGULAR APPROPRIATION BILLS.—Section 309 of such Act (2 U.S.C. 640) is amended—

(1) by inserting ''of any odd-numbered calendar year'' after ''July'';

(2) by striking ''annual'' and inserting ''biennial''; and

(3) by striking ''fiscal year'' and inserting ''biennium''.

(j) RECONCILIATION PROCESS.—Section 310(a) of such Act (2 U.S.C. 641(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''any fiscal year'' and inserting ''any biennium''; and

(2) in paragraph (1) by striking ''such fiscal year'' each place it appears and inserting ''any fiscal year covered by such resolution''.

(k) SECTION 311 POINT OF ORDER.—

(1) IN THE HOUSE.—Section 311(a)(1) of such Act (2 U.S.C. 642(a)) is amended—

(A) by striking ''for a fiscal year'' and inserting ''for a biennium'';

(B) by striking ''the first fiscal year'' each place it appears and inserting ''either fiscal year of the biennium''; and

(C) by striking ''that first fiscal year'' and inserting ''each fiscal year in the biennium''.

(2) IN THE SENATE.—Section 311(a)(2) of such Act is amended—

(A) in subparagraph (A), by striking ''for the first fiscal year'' and inserting ''for either fiscal year of the biennium''; and

(B) in subparagraph (B)—

(i) by striking ''that first fiscal year'' the first place it appears and inserting ''each fiscal year in the biennium''; and

(ii) by striking ''that first fiscal year and the ensuing fiscal years'' and inserting ''all fiscal years''.

(3) SOCIAL SECURITY LEVELS.—Section 311(a)(3) of such Act is amended by—

(A) striking ''for the first fiscal year'' and inserting ''each fiscal year in the biennium''; and

(B) striking ''that fiscal year and the ensuing fiscal years'' and inserting ''all fiscal years''.

(l) MDA POINT OF ORDER.—Section 312(c) of the Congressional Budget Act of 1974 (2 U.S.C. 643) is amended—

(1) by striking ''for a fiscal year'' and inserting ''for a biennium'';

(2) in paragraph (1), by striking ''first fiscal year'' and inserting ''either fiscal year in the biennium'';

(3) in paragraph (2), by striking ''that fiscal year'' and inserting ''either fiscal year in the biennium''; and

(4) in the matter following paragraph (2), by striking ''that fiscal year'' and inserting ''the applicable fiscal year''.

SEC. 303. AMENDMENTS TO TITLE 31, UNITED STATES CODE.

(a) DEFINITION.—Section 1101 of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

''(3) 'biennium' has the meaning given to such term in paragraph (11) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(11)).''.

(b) BUDGET CONTENTS AND SUBMISSION TO THE CONGRESS.—

(1) SCHEDULE.—The matter preceding paragraph (1) in section 1105(a) of title 31, United States Code, is amended to read as follows:

''(a) On or before the first Monday in February of each odd-numbered year (or, if applicable, as provided by section 300(b) of the Congressional Budget Act of 1974), beginning with the One Hundred Seventh Congress, the President shall transmit to the Congress, the budget for the biennium beginning on October 1 of such calendar year. The budget transmitted under this subsection shall include a budget message and summary and supporting information. The President shall include in each budget the following:''.

(2) EXPENDITURES.—Section 1105(a)(5) of title 31, United States Code, is amended by striking ''the fiscal year for which the budget is submitted and the 4 fiscal years after that year'' and inserting ''each fiscal year in the biennium for which the budget is submitted and in the succeeding 4 years''.

(3) RECEIPTS.—Section 1105(a)(6) of title 31, United States Code, is amended by striking ''the fiscal year for which the budget is submitted and the 4 fiscal years after that year'' and inserting ''each fiscal year in the biennium for which the budget is submitted and in the succeeding 4 years''.

(4) BALANCE STATEMENTS.—Section 1105(a)(9)(C) of title 31, United States Code, is amended by striking ''the fiscal year'' and inserting ''each fiscal year in the biennium''.

(5) FUNCTIONS AND ACTIVITIES.—Section 1105(a)(12) of title 31, United States Code, is amended in subparagraph (A), by striking ''the fiscal year'' and inserting ''each fiscal year in the biennium''.

(6) ALLOWANCES.—Section 1105(a)(13) of title 31, United States Code, is amended by striking ''the fiscal year'' and inserting ''each fiscal year in the biennium''.

(7) ALLOWANCES FOR UNCONTROLLED EXPENDITURES.—Section 1105(a)(14) of title 31, United States Code, is amended by striking ''that year'' and inserting ''each fiscal year in the biennium for which the budget is submitted''.

(8) TAX EXPENDITURES.—Section 1105(a)(16) of title 31, United States Code, is amended by striking ''the fiscal year'' and inserting ''each fiscal year in the biennium''.

(9) FUTURE YEARS.—Section 1105(a)(17) of title 31, United States Code, is amended—

(A) by striking ''the fiscal year following the fiscal year'' and inserting ''each fiscal year in the biennium following the biennium'';

(B) by striking ''that following fiscal year'' and inserting ''each such fiscal year''; and

(C) by striking ''fiscal year before the fiscal year'' and inserting ''biennium before the biennium''.

(10) PRIOR YEAR OUTLAYS.—Section 1105(a)(18) of title 31, United States Code, is amended—

(A) by striking ''the prior fiscal year'' and inserting ''each of the 2 most recently completed fiscal years,'';

(B) by striking ''for that year'' and inserting ''with respect to those fiscal years''; and

(C) by striking ''in that year'' and inserting ''in those fiscal years''.

(11) PRIOR YEAR RECEIPTS.—Section 1105(a)(19) of title 31, United States Code, is amended—

(A) by striking ''the prior fiscal year'' and inserting ''each of the 2 most recently completed fiscal years'';

(B) by striking ''for that year'' and inserting ''with respect to those fiscal years''; and

(C) by striking ''in that year'' each place it appears and inserting ''in those fiscal years''.

(c) ESTIMATED EXPENDITURES OF LEGISLATIVE AND JUDICIAL BRANCHES.—Section 1105(b) of title 31, United States Code, is amended by striking ''each year'' and inserting ''each even-numbered year''.

(d) RECOMMENDATIONS TO MEET ESTIMATED DEFICIENCIES.—Section 1105(c) of title 31, United States Code, is amended—

(1) by striking ''the fiscal year for'' the first place it appears and inserting ''each fiscal year in the biennium for'';

(2) by striking ''the fiscal year for'' the second place it appears and inserting ''each fiscal year of the biennium, as the case may be,''; and

(3) by striking ''that year'' and inserting ''for each year of the biennium''.

(e) CAPITAL INVESTMENT ANALYSIS.—Section 1105(e)(1) of title 31, United States Code, is amended by striking ''ensuing fiscal year'' and inserting ''biennium to which such budget relates''.

(f) SUPPLEMENTAL BUDGET ESTIMATES AND CHANGES.—

(1) IN GENERAL.—Section 1106(a) of title 31, United States Code, is amended—

(A) in the matter preceding paragraph (1), by—

(i) striking ''Before July 16 of each year,'' and inserting ''Before February 15 of each even numbered year,''; and

(ii) striking ''fiscal year'' and inserting ''biennium'';

(B) in paragraph (1), by striking ''that fiscal year'' and inserting ''each fiscal year in such biennium'';

(C) in paragraph (2), by striking ''4 fiscal years following the fiscal year'' and inserting ''4 fiscal years following the biennium''; and

(D) in paragraph (3), by striking ''fiscal year'' and inserting ''biennium''.

(2) CHANGES.—Section 1106(b) of title 31, United States Code, is amended by—

(A) striking ''the fiscal year'' and inserting ''each fiscal year in the biennium'';

(B) striking ''April 11 and July 16 of each year'' and inserting ''February 15 of each even-numbered year''; and

(C) striking ''July 16'' and inserting ''February 15 of each even-numbered year.''.

(g) CURRENT PROGRAMS AND ACTIVITIES ESTIMATES.—

(1) IN GENERAL.—Section 1109(a) of title 31, United States Code, is amended—

(A) by striking ''On or before the first Monday after January 3 of each year (on or before February 5 in 1986)'' and inserting ''At the same time the budget required by section 1105 is submitted for a biennium''; and

(B) by striking ''the following fiscal year'' and inserting ''each fiscal year of such period''.

(2) JOINT ECONOMIC COMMITTEE.—Section 1109(b) of title 31, United States Code, is amended by striking ''March 1 of each year'' and inserting ''within 6 weeks of the President's budget submission for each odd-numbered year (or, if applicable, as provided by section 300(b) of the Congressional Budget Act of 1974)''.

(h) YEAR-AHEAD REQUESTS FOR AUTHORIZING LEGISLATION.—Section 1110 of title 31, United States Code, is amended by—

(1) striking ''May 16'' and inserting ''March 31''; and

(2) striking ''year before the year in which the fiscal year begins'' and inserting ''calendar year preceding the calendar year in which the biennium begins''.

SEC. 304. TWO-YEAR APPROPRIATIONS; TITLE AND STYLE OF APPROPRIATIONS ACTS.

Section 105 of title 1, United States Code, is amended to read as follows:

''§ 105. Title and style of appropriations Acts

''(a) The style and title of all Acts making appropriations for the support of the Government shall be as follows: 'An Act making appropriations (here insert the object) for each fiscal year in the biennium of fiscal years (here insert the fiscal years of the biennium).'.

''(b) All Acts making regular appropriations for the support of the Government shall be enacted for a biennium and shall specify the amount of appropriations provided for each fiscal year in such period.

''(c) For purposes of this section, the term 'biennium' has the same meaning as in section 3(11) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(11)).''.

SEC. 305. MULTIYEAR AUTHORIZATIONS.

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''AUTHORIZATIONS OF APPROPRIATIONS

''SEC. 319. (a) POINT OF ORDER.—It shall not be in order in the House of Representatives or the Senate to consider—

''(1) any bill, joint resolution, amendment, motion, or conference report that authorizes appropriations for a period of less than 2 fiscal years, unless the program, project, or activity for which the appropriations are authorized will require no further appropriations and will be completed or terminated after the appropriations have been expended; and

''(2) in any odd-numbered year, any authorization or revenue bill or joint resolution until Congress completes action on the biennial budget resolution, all regular biennial appropriations bills, and all reconciliation bills.

''(b) APPLICABILITY.—In the Senate, subsection (a) shall not apply to—

''(1) any measure that is privileged for consideration pursuant to a rule or statute;

''(2) any matter considered in Executive Session; or

''(3) an appropriations measure or reconciliation bill.''.

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 313 the following new item:

''Sec. 319. Authorizations of appropriations.''.

SEC. 306. GOVERNMENT PLANS ON A BIENNIAL BASIS.

(a) STRATEGIC PLANS.—Section 306 of title 5, United States Code, is amended—

(1) in subsection (a), by striking ''September 30, 1997'' and inserting ''September 30, 2003'';

(2) in subsection (b)—

(A) by striking ''at least every three years'' and inserting ''at least every 4 years''; and

(B) by striking ''five years forward'' and inserting ''six years forward''; and

(3) in subsection (c), by inserting a comma after ''section'' the second place it appears and adding ''including a strategic plan submitted by September 30, 2003 meeting the requirements of subsection (a)''.

(b) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Paragraph (28) of section 1105(a) of title 31, United States Code, is amended by striking ''beginning with fiscal year 1999, a'' and inserting ''beginning with fiscal year 2004, a biennial''.

(c) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter before paragraph (1)—

(i) by striking ''section 1105(a)(29)'' and inserting ''section 1105(a)(28)''; and

(ii) by striking ''an annual'' and inserting ''a biennial'';

(B) in paragraph (1) by inserting after ''program activity'' the following: ''for both years 1 and 2 of the biennial plan'';

(C) in paragraph (5) by striking ''and'' after the semicolon,

(D) in paragraph (6) by striking the period and inserting a semicolon; and inserting ''and'' after the inserted semicolon; and

(E) by adding after paragraph (6) the following:

''(7) cover a 2-year period beginning with the first fiscal year of the next biennial budget cycle.'';

(2) in subsection (d) by striking ''annual'' and inserting ''biennial''; and

(3) in paragraph (6) of subsection (f) by striking ''annual'' and inserting ''biennial''.

(d) MANAGERIAL ACCOUNTABILITY AND FLEXIBILITY.—Section 9703 of title 31, United States Code, relating to managerial accountability, is amended—

(1) in subsection (a)—

(A) in the first sentence by striking ''annual''; and

(B) by striking ''section 1105(a)(29)'' and inserting ''section 1105(a)(28)'';

(2) in subsection (e)—

(A) in the first sentence by striking ''one or'' before ''years'';

(B) in the second sentence by striking ''a subsequent year'' and inserting ''for a subsequent 2-year period''; and

(C) in the third sentence by striking ''three'' and inserting ''four''.

(e) PILOT PROJECTS FOR PERFORMANCE BUDGETING.—Section 1119 of title 31, United States Code, is amended—

(1) in paragraph (1) of subsection (d), by striking ''annual'' and inserting ''biennial''; and

(2) in subsection (e), by striking ''annual'' and inserting ''biennial''.

(f) STRATEGIC PLANS.—Section 2802 of title 39, United States Code, is amended—

(1) is subsection (a), by striking ''September 30, 1997'' and inserting ''September 30, 2003'';

(2) in subsection (b), by striking ''at least every three years'' and inserting ''at least every 4 years'';

(3) by striking ''five years forward'' and inserting ''six years forward''; and

(4) in subsection (c), by inserting a comma after ''section'' the second place it appears and inserting ''including a strategic plan submitted by September 30, 2003 meeting the requirements of subsection (a)''.

(g) PERFORMANCE PLANS.—Section 2803(a) of title 39, United States Code, is amended—

(1) in the matter before paragraph (1), by striking ''an annual'' and inserting ''a biennial'';

(2) in paragraph (1), by inserting after ''program activity'' the following: ''for both years 1 and 2 of the biennial plan'';

(3) in paragraph (5), by striking ''and'' after the semicolon;

(4) in paragraph (6), by striking the period and inserting ''; and''; and

(5) by adding after paragraph (6) the following:

''(7) cover a 2-year period beginning with the first fiscal year of the next biennial budget cycle.''.

(h) COMMITTEE VIEWS OF PLANS AND REPORTS.—Section 301(d) of the Congressional Budget Act (2 U.S.C. 632(d)) is amended by adding at the end ''Each committee of the Senate or the House of Representatives shall review the strategic plans, performance plans, and performance reports, required under section 306 of title 5, United States Code, and sections 1115 and 1116 of title 31, United States Code, of all agencies under the jurisdiction of the committee. Each committee may provide its views on such plans or reports to the Committee on the Budget of the applicable House.''.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on March 1, 2003.

(2) AGENCY ACTIONS.—Effective on and after the date of enactment of this Act, each agency shall take such actions as necessary to prepare and submit any plan or report in accordance with the amendments made by this Act.

SEC. 307. BIENNIAL APPROPRIATIONS BILLS.

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 (2 U.S.C. 631 et seq.) is amended by adding at the end the following:

''CONSIDERATION OF BIENNIAL APPROPRIATIONS BILLS

''SEC. 320. It shall not be in order in the House of Representatives or the Senate in any odd-numbered year to consider any regular bill providing new budget authority or a limitation on obligations under the jurisdiction of any of the subcommittees of the Committees on Appropriations for only the first fiscal year of a biennium, unless the program, project, or activity for which the new budget authority or obligation limitation is provided will require no additional authority beyond 1 year and will be completed or terminated after the amount provided has been expended.''.

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 313 the following new item:

''Sec. 320. Consideration of biennial appropriations bills.''.

SEC. 308. REPORT ON TWO-YEAR FISCAL PERIOD.

Not later than 180 days after the date of enactment of this subpart, the Director of OMB shall—

(1) determine the impact and feasibility of changing the definition of a fiscal year and the budget process based on that definition to a 2-year fiscal period with a biennial budget process based on the 2-year period; and

(2) report the findings of the study to the Committees on the Budget of the House of Representatives and the Senate.

SEC. 309. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in sections 306 and 308 and subsection (b), this title

and the amendments made by this title shall take effect on January 1, 2003, and shall apply to budget resolutions and appropriations for the biennium beginning with fiscal year 2004.

(b) AUTHORIZATIONS FOR THE BIENNIUM.—For purposes of authorizations for the biennium beginning with fiscal year 2004, the provisions of this title and the amendments made by this title relating to 2-year authorizations shall take effect January 1, 2003.

TITLE IV—COMMISSION ON FEDERAL BUDGET CONCEPTS

SEC. 401. ESTABLISHMENT OF COMMISSION ON FEDERAL BUDGET CONCEPTS.

There is established a commission to be known as the Commission on Federal Budget Concepts (referred to in this title as the ''Commission'').

SEC. 402. POWERS AND DUTIES OF COMMISSION.

(a) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The duties of the Commission shall include—

(A) a review of the 1967 report of the President's Commission on Budget Concepts and assessment of the implementation of the recommendations of that report;

(B) identification and evaluation of the structure, concepts, classifications, and bases of accounting of the Federal budget;

(C) identification of any applicable general accounting principles and practices in the private sector and evaluation of their value to budget practices in the Federal sector;

(D) a report that shall include recommendations for modifications to the structure, concepts, classifications, and bases of accounting of the Federal budget that would enhance the usefulness of the budget for public policy and financial planning.

(2) SPECIFIC AREAS OF CONSIDERATION.—Specific areas for consideration by the Commission shall include the following:

(A) Should part ownership by the Government be sufficient to make an entity Federal and to include it in the budget?

(B) When is Federal control of an entity, including control exercised through Federal regulations, sufficient to cause it to be included in the budget?

(C) Are privately owned assets under long-term leases to the Federal Government effectively purchased by the Government during the lease period?

(D) Should there be an ''off-budget'' section of the budget? How should the Federal Government differentiate between spending and receipts?

(E) Should the total costs of refundable tax credits belong on the spending side of the budget?

(F) When should Federal Reserve earnings be reported as receipts or offsetting receipts (negative spending) in the net interest portion of the budget?

(G) What is a ''user fee'' and under what circumstances is it properly an offset to spending or a governmental receipt? What uses do trust funds have?

(H) Do trust fund balances provide misleading information? Do the roughly 200 trust funds add clarity or confusion to the budget process?

(I) Are there better ways than trust fund accounting to identify long-term liabilities?

(J) Should accrual budgetary accounting be adopted for Federal retirement, military retirement, or Social Security and other entitlements?

(K) Are off-budget accounts suitable for capturing accruals in the budget?

(L) What is the appropriate budgetary treatment of—

(i) purchases and sales of financial assets, including equities, bonds, and foreign currencies;

(ii) emergency spending;

(iii) the cost of holding fixed assets (cost of capital);

(iv) sales of physical assets; and

(v) seigniorage on coins and currency?

(M) When policy changes have strong but indirect feedback effects on revenues and other aggregates, should they be reported in budget estimates?

(N) How should the policies that are one-sided bets on economic events (probabilistic scoring) be represented in the budget?

(b) POWERS OF THE COMMISSION.—

(1) CONDUCT OF BUSINESS.—The Commission may hold hearings, take testimony, receive evidence, and undertake such other activities necessary to carry out its duties.

(2) ACCESS TO INFORMATION.—The Commission may secure directly from any department of agency of the United States information necessary to carry out its duties. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission.

(3) POSTAL SERVICE.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 403. MEMBERSHIP.

(a) MEMBERSHIP.—The Commission shall be composed of 12 members as follows:

(1) Three members appointed by the chairman of the Committee on the Budget of the Senate.

(2) Three members appointed by the chairman of the Committee on the Budget of the House of Representatives.

(3) Three members appointed by the ranking member of the Committee on the Budget of the Senate.

(4) Three members appointed by the ranking member of the Committee on the Budget of the House of Representatives.

(b) QUALIFICATIONS AND TERM.—

(1) QUALIFICATIONS.—Members appointed to the Commission pursuant to subsection (a) shall—

(A) have expertise and experience in the fields or disciplines related to the subject areas to be considered by the Commission; and

(B) not be Members of Congress.

(2) TERM OF APPOINTMENT.—The term of an appointment to the Commission shall be for the life of the Commission.

(3) CHAIR AND VICE CHAIR.—The Chair and Vice Chair may be elected from among the members of the Commission. The Vice Chair shall assume the duties of the Chair in the Chair's absence.

(c) MEETINGS; QUORUM; AND VACANCIES.—

(1) MEETINGS.—The Commission shall meet at least once a month on a day to be decided by the Commission. The Commission may meet at such other times at the call of the Chair or of a majority of its voting members. The meetings of the Commission shall be open to the public, unless by public vote, the Commission shall determine to close a meeting or any portion of a meeting to the public.

(2) QUORUM.—A majority of the voting membership shall constitute a quorum of the Commission, except that 3 or more voting members may conduct hearings.

(3) VACANCIES.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was filled under subsection (a).

(d) COMPENSATION AND EXPENSES.—Members of the Commission shall serve without pay for their service on the Commission, but may receive 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.

SEC. 404. STAFF AND SUPPORT SERVICES.

(a) STAFF.—With the advance approval of the Commission, the executive director may appoint such personnel as is appropriate. The staff of the Commission shall be appointed without regard to political affiliation and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classifications and General Schedule pay rates.

(b) EXECUTIVE DIRECTOR.—The Chairman shall appoint an executive director, who shall be paid the rate of basic pay for level II of the Executive Schedule.

(c) EXPERTS AND CONSULTANTS.—With the advance approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(d) TECHNICAL AND ADMINISTRATIVE ASSISTANCE.—Upon the request of the Commission—

(1) the head of any agency, office, or establishment within the executive or legislative branches of the United States shall provide, without reimbursement, such technical assistance as the Commission determines is necessary to carry out its duties; and

(2) the Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may require.

(e) DETAIL OF FEDERAL PERSONNEL.—Upon the request of the Commission, the head of an agency, office, or establishment in the executive or legislative branch of the United States is authorized to detail, without reimbursement, any of the personnel of that agency, office, or establishment to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the employment status or privileges of that employee.

(f) CBO.—The Director of the Congressional Budget Office shall provide the Commission with its latest research on the accuracy of its past budget and economic projections as compared to those of the Office of Management and Budget and, if possible, those of private sector forecasters. The Commission shall work with the Directors of the Congressional Budget Office and the Office of Management and Budget in their efforts to explain the factors affecting the accuracy of budget projections.

SEC. 405. REPORT.

Not later than _____, the Commission shall transmit a report to the President and to each House of Congress. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative actions as it considers appropriate. No finding, conclusion, or recommendation may be made by the Commission unless approved by a majority of those voting, a quorum being present. At the request of any Commission member, the report shall include that member's dissenting findings, conclusions, or recommendations.

SEC. 406. TERMINATION.

The Commission shall terminate 30 days after the date of transmission of the report required in section 405.

SEC. 407. FUNDING.

There are authorized to be appropriated not more than $1,000,000 to carry out this title. Sums so appropriated shall remain available until expended.

Mr. FEINGOLD. Mr. President, I am pleased to join today with my Colleague from Ohio, Mr. VOINOVICH, to introduce the Truth in Budgeting and Social Security Protection Act of 2002.

This bill collects a variety of budget process ideas to help protect Social Security, promote balanced budgets, and improve government accounting practices. I hope that this effort will help spur greater debate and action to restore fiscal discipline.

Our government's finances have taken a dire turn in the last year-and-a-half. While in January of last year the Congressional Budget Office projected that, in the fiscal year just ended, fiscal year 2002, the government would run a unified budget surplus of $313 billion, now it projects a unified budget deficit of $157 billion.

And not counting Social Security surpluses, the picture is even worse. While in January of last year CBO projected that for fiscal year 2002, the government would run a surplus of $142 billion, without using Social Security surpluses, now it projects a deficit of $314 billion, not counting Social Security.

We must stop running deficits because they cause the government to use the surpluses of the Social Security Trust Fund for other government purposes, rather than to pay down the debt and help our Nation prepare for the coming retirement of the Baby Boom generation.

And we must stop running deficits because every dollar that we add to the Federal debt is another dollar that we are forcing our children to pay back in higher taxes or fewer government benefits. When the government in this generation chooses to spend on current consumption and to accumulate debt for our children's generation to pay, it does nothing less than rob our children of their own choices. We make our choices to spend on our wants, but we saddle them with debts that they must pay from their tax dollars and their hard work. And the government should not do that.

That is why I am joining with my Colleague from Ohio to introduce this bill to improve the budget process today. We need to strengthen the budget process. We need to do more.

Our bill would: extend the discretionary spending caps and the pay-as-you-go rules for 5 years, strengthen the enforcement of those budget rules, help protect Social Security surpluses, institute biennial budgeting, improve accounting for long-term costs of legislation, improve accounting for federal insurance programs, highlight the full expenses, including interest costs, of spending or tax cuts, and create a new commission to study the budget process.

Together, these budget process proposals would go a long way toward increasing the responsibility of the Federal budget. I hope that between now and the beginning of the next Congress, my Colleagues and observers of the budget process will review these proposals, perhaps build on them, and then join with us in a major effort to strengthen the budget process next year.

We must stop using Social Security surpluses to fund other government programs. We must stop piling up debt for our children to pay off. We must enact major reforms of the budget process.

I hope that this effort will contribute to those ends.

By Mr. BAUCUS (for himself, Mr. CRAPO, and Mr. CRAIG):

S. 3132. A bill to improve the economy and the quality of life for all citizens by authorizing funds for Federal-aid highways, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BAUCUS (for himself, Mr. CRAPO, and Mr. CRAIG):

S. 3133. A bill to amend the Internal Revenue Code of 1986 to make funding available to carry out the Maximum Economic Growth for America Through Highway Funding Act; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce two bills, the Maximum Economic Growth for America Through Highway Funding Act'', or ''MEGA FUND ACT''—Parts one and two.

The MEGA FUND ACT is intended to do exactly what its name suggest, increase Federal investment in our Nation's highway system. That is an important objective. Highway investments create jobs, increase the productivity of our economy, and improve the quality of life for all Americans.

In 1998 Congress passed one of the most successful and bipartisan bills in recent memory, the ''Transportation Equity Act for the 21st Century'', better known as ''TEA–21.'' I am honored to have been an author of that piece of legislation.

The MEGA FUND ACT builds on the success of the highway elements of TEA–21, keeping nearly all of its structure in place and increasing funding levels.

There are several major aspects of this legislation.

First, the MEGA FUND ACT significantly increases highway program levels. The principal feature of the bill is its increased funding for the program, something that will help all States and all citizens. Under TEA–21, as amended, the total obligation authority for FY 2003 is $28.485 billion.

Under the 6 years of the MEGA FUND ACT, the comparable program level would grow to $34.839 billion in FY 2004 and to $41.839 billion by FY 2009.

These funding increases will be enabled by enactment of legislation that I have already introduced with Senator CRAPO, S. 2678, the Mega Trust Act and S. 3097, MEGA INNOVATE ACT.

While these program levels represent a substantial increase, the needs of our highway system are even greater. So, the program levels in the bill represent only a down payment on the investment in highways that is needed to improve our economy through commerce and job creation, increase personal mobility and make our roads safer.

Second, the MEGA FUND ACT continues the basic program structure and formulas from TEA–21. The current TEA–21 minimum guarantee formula is extended.

Also, the bill would continue to focus funding on the core programs administered by the States: Interstate Maintenance, National Highway System, Surface Transportation Program, Bridge, Congestion Mitigation and Air Quality Improvement, and the Minimum Guarantee. These key programs would constitute approximately the same proportion of the overall program as under TEA–21.

Third, a new category is added to aid states in overcoming economic and demographic barriers. The bill would create a new program, at $2 billion annually, to assist States in dealing with certain economic and demographic hardships.

This would be a new type of program, not subject to the minimum guarantee. It is not keyed to specific project types but to types of problems facing States. States with very high growth rates, high population density, low population density, or low per capita incomes, for example, face real challenges.

This different approach lets States facing those problems receive funds and pick the projects. Every one of the 50 States would receive significant funding under this program every year.

The MEGA FUND ACT continues firewalls and improves RABA. One of the great contributions of TEA–21 is that it provides the highway program protection under the budget procedures of Congress.

These ''firewall'' provisions enable our citizens to be confident that highway taxes will be invested in highways, not saved or diverted.

TEA–21 also established Revenue Aligned Budget Authority, or RABA. The principle of RABA is that, if funds available for the highway program exceed expectations, then additional money can be put to work in the highway program. This bill would continue those important provisions with improvements.

One key improvement is the elimination of so-called ''negative RABA.'' Under the bill, there are only automatic upward adjustments in obligation levels under RABA. These adjustments would still take place when the Highway Account balance is financially stronger than initially estimated.

Another key reform would focus RABA calculations on the actual balance in the Highway Account, rather than on annual revenues.

This important reform will help ensure that monies in the Highway Account of the Highway Trust Fund are invested and not allowed to build up to a large balance. Today's RABA did not preclude a build up of funds in the

Highway Account, delaying the delivery of needed highway investments to our citizens.

The MEGA FUND ACT increased the stability of distributions to states under the allocation programs. The bill includes proposed revisions to several so-called ''allocation'' programs that will increase funding for all States.

Today, large portions of the program funds that are not apportioned to States are distributed on a discretionary basis. This bill would leave portions of the program subject to discretion, but move the allocation programs, collectively, in a general direction that would provide States greater certainty that they will be participating in allocation program funds.

Specifically, the bill makes modest changes to the Intelligent Transportation System, ITS, program and to the Transportation and Community and System Preservation Pilot, TCSP, program, to ensure that some of those funds find their way into every State.

Another modest change will ensure that each State with a border receives at least some funding under the borders and corridors programs, and that States with significant public lands receive at least some public lands discretionary funding.

Let me say a few things about what is not addressed in this bill. The MEGA FUND ACT sets forth an outline for the highway program. It does not address the transit program that is within the jurisdiction of the Banking Committee, or the highway safety programs within the jurisdiction of the Commerce Committee, or the revenue for the highway program that is within the jurisdiction of the Finance Committee.

My proposals for those issues are in previous bills that I have introduced—MEGA RED TRANS, MEGA SAFE, MEGA STREAM, MEGA TRUST, MEGA INNOVATE and today, MEGA FUND, Part II. Those are important matters that also must be addressed as part of the final overall legislation that will extend and build upon TEA–21.

As for MEGA FUND Part II, this bill although short and simple, actually represents the most important step in any reauthorization bill. MEGA FUND, Part II allows the funding program set forth in MEGA FUND Part I to be spend from the Highway Trust Fund.

Without this important step, Congress can write formulas until Christmas, but no money can actually be sent to the states and spent. The ability to spend this money requires a change to the Internal Revenue Code that makes those Highway Trust Funds available for payment. MEGA FUND PART II takes care of that.

In summary, the MEGA FUND ACT stays close to the successful program structure of TEA–21 and maintains its apportionment formulas. It would significantly increase funding for the program as a whole, continue budgetary firewalls and strengthen RABA, and provide some extra funds to all States through the economic and demographic barriers program and through some innovations in other programs not subject to the minimum guarantee.

I ask unanimous consent that a section-by-section analysis of both bills be printed in the RECORD.

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

S. 3132

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 ''Maximum Economic Growth for America Through Highway Funding Act'' or the ''MEGA Fund Act''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) PROGRAMS SUBJECT TO MINIMUM GUARANTEE.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) INTERSTATE MAINTENANCE PROGRAM.—For the Interstate maintenance program under section 119 of title 23, United States Code, $4,864,000,000 for fiscal year 2004, $5,020,000,000 for fiscal year 2005, $5,176,000,000 for fiscal year 2006, $5,333,000,000 for fiscal year 2007, $5,645,000,000 for fiscal year 2008, and $5,958,000,000 for fiscal year 2009.

(2) NATIONAL HIGHWAY SYSTEM.—For the National Highway System under section 103(b) of title 23, United States Code, $5,836,000,000 for fiscal year 2004, $6,024,000,000 for fiscal year 2005, $6,212,000,000 for fiscal year 2006, $6,399,000,000 for fiscal year 2007, $6,774,000,000 for fiscal year 2008, and $7,150,000,000 for fiscal year 2009.

(3) BRIDGE PROGRAM.—For the bridge program under section 144 of title 23, United States Code, $4,173,000,000 for fiscal year 2004, $4,307,000,000 for fiscal year 2005, $4,442,000,000 for fiscal year 2006, $4,576,000,000 for fiscal year 2007, $4,844,000,000 for fiscal year 2008, and $5,112,000,000 for fiscal year 2009.

(4) SURFACE TRANSPORTATION PROGRAM.—For the surface transportation program under section 133 of title 23, United States Code, $6,809,000,000 for fiscal year 2004, $7,028,000,000 for fiscal year 2005, $7,247,000,000 for fiscal year 2006, $7,466,000,000 for fiscal year 2007, $7,903,000,000 for fiscal year 2008, and $8,341,000,000 for fiscal year 2009.

(5) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program under section 149 of title 23, United States Code, $1,654,000,000 for fiscal year 2004, $1,707,000,000 for fiscal year 2005, $1,760,000,000 for fiscal year 2006, $1,813,000,000 for fiscal year 2007, $1,919,000,000 for fiscal year 2008, and $2,026,000,000 for fiscal year 2009.

(6) APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM PROGRAM.—For the Appalachian development highway system program under section 14501 of title 40, United States Code, $450,000,000 for each of fiscal years 2004 through 2009.

(7) RECREATIONAL TRAILS PROGRAM.—For the recreational trails program under section 206 of title 23, United States Code, $75,000,000 for each of fiscal years 2004 through 2009.

(8) HIGH PRIORITY PROJECTS PROGRAM.—For the high priority projects program under section 117 of title 23, United States Code, $1,000,000,000 for each of fiscal years 2004 through 2009.

(b) ASSISTANCE IN OVERCOMING ECONOMIC AND DEMOGRAPHIC BARRIERS.—For the program to provide assistance in overcoming economic and demographic barriers under section 139 of title 23, United States Code, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $2,000,000,000 for each of fiscal years 2004 through 2009.

(c) ADDITIONAL PROGRAMS.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) FEDERAL LANDS HIGHWAYS PROGRAM.—

(A) INDIAN RESERVATION ROADS.—For Indian reservation roads under section 204 of title 23, United States Code, $300,000,000 for each of fiscal years 2004 through 2009.

(B) PUBLIC LANDS HIGHWAYS.—For public lands highways under section 204 of title 23, United States Code, $350,000,000 for each of fiscal years 2004 through 2009.

(C) PARK ROADS AND PARKWAYS.—For park roads and parkways under section 204 of title 23, United States Code, $300,000,000 for each of fiscal years 2004 through 2009.

(D) REFUGE ROADS.—For refuge roads under section 204 of title 23, United States Code, $35,000,000 for each of fiscal years 2004 through 2009.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT PROGRAM.—For the national corridor planning and development program under section 1118 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 161) $100,000,000 for each of fiscal years 2004 through 2009.

(3) COORDINATED BORDER INFRASTRUCTURE PROGRAM.—For the coordinated border infrastructure program under section 1119 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 163) $100,000,000 for each of fiscal years 2004 through 2009.

(4) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—For construction of ferry boats and ferry terminal facilities under section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 129 note; 105 Stat. 2005) $50,000,000 for each of fiscal years 2004 through 2009.

(5) NATIONAL SCENIC BYWAYS PROGRAM.—For the national scenic byways program under section 162 of title 23, United States Code, $30,000,000 for each of fiscal years 2004 through 2009.

(6) HIGHWAY USE TAX EVASION PROJECTS.—For highway use tax evasion projects under section 143 of title 23, United States Code, $40,000,000 for each of fiscal years 2004 through 2009.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—For the Commonwealth of Puerto Rico highway program under section 1214(r) of the Transportation Equity Act for the 21st Century (112 Stat. 209) $130,000,000 for each of fiscal years 2004 through 2009.

(d) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 223) is amended—

(1) by striking ''1999 and'' and inserting ''1999,''; and

(2) by inserting before the period at the end the following: '', and $50,000,000 for each of fiscal years 2004 through 2009''.

(e) NATIONAL HISTORIC COVERED BRIDGE PRESERVATION.—Section 1224(d) of the Transportation Equity Act for the 21st Century (112 Stat. 837) is amended by striking ''2003'' and inserting ''2009''.

(f) SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS.—Section 157(g)(1) of title 23, United States Code, is amended—

(1) by striking ''2002, and'' and inserting ''2002,''; and

(2) by inserting before the period at the end the following: '', and $115,000,000 for each of fiscal years 2004 through 2009''.

(g) RESEARCH PROGRAMS.—The following sums are authorized to be appropriated out

of the Highway Trust Fund (other than the Mass Transit Account):

(1) SURFACE TRANSPORTATION RESEARCH.—For carrying out sections 502, 506, 507, and 508 of title 23, United States Code, $103,000,000 for each of fiscal years 2004 through 2009.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—For carrying out section 503 of title 23, United States Code, $50,000,000 for each of fiscal years 2004 through 2009.

(3) TRAINING AND EDUCATION.—For carrying out section 504 of title 23, United States Code, $20,000,000 for each of fiscal years 2004 through 2009.

(4) BUREAU OF TRANSPORTATION STATISTICS.—For the Bureau of Transportation Statistics to carry out section 111 of title 49, United States Code, $31,000,000 for each of fiscal years 2004 through 2009.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—For carrying out sections 5204, 5205, 5206, and 5207 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 453) $110,000,000 for each of fiscal years 2004 through 2009.

(6) ITS DEPLOYMENT.—For carrying out sections 5208 and 5209 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 458) $140,000,000 for each of fiscal years 2004 through 2009.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—For carrying out section 5505 of title 49, United States Code, $32,000,000 for each of fiscal years 2004 through 2009.

(h) FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM.—Section 104 of title 23, United States Code, is amended by adding at the end the following:

''(m) FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM.—

''(1) DEDUCTIONS.—For each of fiscal years 2004 through 2009, whenever an apportionment is made of the sums made available for expenditure on each of the surface transportation program under section 133, the bridge program under section 144, the congestion mitigation and air quality improvement program under section 149, and the Interstate and National Highway System program, the Secretary shall make proportionate deductions from those programs, in a total amount equal to $75,000,000, to be used to pay the costs of a future strategic highway research program established under paragraph (2).

''(2) PROGRAM.—The Secretary shall establish and carry out a future strategic highway research program.

''(3) FEDERAL SHARE.—The Federal share of the cost of a project carried out under the future strategic highway research program shall be 80 percent (unless the Secretary determines otherwise with respect to a project).

''(4) AVAILABILITY OF AMOUNTS.—The amounts deducted under paragraph (1) shall be available for obligation in the same manner as if the funds were apportioned under this chapter, except that the funds shall remain available until expended.''.

(i) MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM.—Section 322(h)(1)(B)(i) of title 23, United States Code, is amended—

(1) by striking ''2002, and'' and inserting ''2002,''; and

(2) by inserting before the period at the end the following: '', and such sums as are necessary for fiscal year 2004 and each fiscal year thereafter''.

(j) TIFIA.—Section 188 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)(E), by striking ''fiscal year 2003'' and inserting ''each of fiscal years 2003 through 2009''; and

(B) in paragraph (2), by striking ''2003'' and inserting ''2009''; and

(2) in the table contained in subsection (c), by striking the item relating to fiscal year 2003 and inserting the following:

''2003	$2,600,000,000
''2004	$2,600,000,000
''2005	$2,600,000,000
''2006	$2,600,000,000
''2007	$2,600,000,000
''2008	$2,600,000,000
''2009	$2,600,000,000.''.

SEC. 3. OBLIGATION CEILING.

(a) IN GENERAL.—Section 1102 of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 115) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(7) $34,000,000,000 for fiscal year 2004;

''(8) $35,000,000,000 for fiscal year 2005;

''(9) $36,000,000,000 for fiscal year 2006;

''(10) $37,000,000,000 for fiscal year 2007;

''(11) $39,000,000,000 for fiscal year 2008; and

''(12) $41,000,000,000 for fiscal year 2009.'';

(2) in subsection (b)(8), by striking ''through 2007'' and inserting ''through 2009'';

(3) in subsection (c)—

(A) by striking ''For each of fiscal years 1998 through 2003,'' and inserting ''Except as otherwise provided, for fiscal year 1998 and each fiscal year thereafter,'';

(B) in paragraph (1)—

(i) by striking ''Code, and amounts'' and inserting ''Code, amounts''; and

(ii) by inserting before the semicolon at the end the following: ''or, for fiscal year 2004 and each fiscal year thereafter, amounts authorized for the Indian reservation roads program under section 204 of title 23, United States Code''; and

(C) in paragraph (5), by striking ''this Act'' and inserting ''this Act, the Maximum Economic Growth for America Through Highway Funding Act,'';

(4) in subsection (d), by striking ''2003'' and inserting ''2009'';

(5) in subsection (e)—

(A) by striking ''Obligation'' and inserting the following:

''(1) IN GENERAL.—Obligation'';

(B) in paragraph (1) (as designated by subparagraph (A)), by striking ''and under title V of this Act'' and inserting ''under title V of this Act, and under the Maximum Economic Growth for America Through Highway Funding Act''; and

(C) by adding at the end the following:

''(2) LIMITATION FOR FISCAL YEARS 2004 THROUGH 2009.—Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Highway Trust Fund (other than the Mass Transit Account) by section 2(f) of the Maximum Economic Growth for America Through Highway Funding Act, and section 104(m) of title 23, United States Code, shall not exceed $561,000,000 for each of fiscal years 2004 through 2009.'';

(6) in the first sentence of subsection (f), by striking ''2003'' and inserting ''2009'';

(7) in subsection (h)—

(A) by striking ''Limitations on obligations imposed by subsection (a)'' and inserting the following:

''(1) FISCAL YEARS 1998 THROUGH 2003.—Limitations on obligations imposed by paragraphs (1) through (6) of subsection (a)''; and

(B) by adding at the end the following:

''(2) FISCAL YEARS 2004 THROUGH 2009.—

''(A) IN GENERAL.—Limitations on obligations imposed by paragraphs (7) through (12) of subsection (a) for a fiscal year shall be increased by an amount equal to the amount of any increase for the fiscal year determined under section 4(b)(5) of the Maximum Economic Growth for America Through Highway Funding Act.

''(B) DISTRIBUTION OF INCREASES.—Any increase under subparagraph (A) shall be distributed in accordance with this section.''; and

(8) in subsection (i)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(7) $450,000,000 for fiscal year 2004;

''(8) $470,000,000 for fiscal year 2005;

''(9) $490,000,000 for fiscal year 2006;

''(10) $510,000,000 for fiscal year 2007;

''(11) $530,000,000 for fiscal year 2008; and

''(12) $550,000,000 for fiscal year 2009.''.

(b) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—Section 104(a)(1) of title 23, United States Code, is amended—

(1) by inserting ''the lesser of'' after ''in an amount not to exceed'';

(2) in subparagraph (A)—

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and indenting appropriately; and

(B) by striking ''(A) 1⅛ percent'' and inserting the following:

''(A) the sum of—

''(i) 1⅛ percent'';

(3) by striking ''(B) one-third'' and inserting the following:

''(ii) one-third'';

(4) in subparagraph (A)(ii) (as so designated), by striking the period at the end and inserting ''; or''; and

(5) by adding at the end the following:

''(B) the amount specified for the applicable fiscal year in section 1102(i) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 118) for use as described in subparagraph (A).''.

SEC. 4. RELIABLE HIGHWAY PROGRAM LEVELS; REVISIONS TO REVENUE ALIGNED BUDGET AUTHORITY.

(a) SENSE OF THE SENATE RELATING TO REFORM OF REVENUE ALIGNED BUDGET AUTHORITY.—

(1) FINDINGS.—The Senate finds that—

(A) the experience under the Transportation Equity Act for the 21st Century (112 Stat. 107) with respect to revenue aligned budget authority (referred to in this subsection as ''RABA'') has been that, while RABA has produced increases in highway program obligation levels in some fiscal years, RABA also—

(i) has allowed the balance in the Highway Trust Fund (other than the Mass Transit Account) to grow since the date of enactment of the Transportation Equity Act for the 21st Century;

(ii) does not provide a mechanism to allow that balance to be expended for the benefit of the public; and

(iii) has resulted in unexpectedly large annual differences, or estimated differences, in highway program obligation authority as compared with the levels specified in section 1102 of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 115); and

(B) Congress has taken legislative action to reject the implementation of estimates that would have resulted in ''negative'' RABA.

(2) SENSE OF THE SENATE.—It is the sense of the Senate that the provisions of budget legislation pertaining to the highway program should be amended—

(A) to improve predictability and stability in the levels of highway program obligation authority;

(B) to facilitate the expenditure of funds in the Highway Trust Fund (other than the Mass Transit Account); and

(C) to eliminate the possibility of reductions in the levels of highway program obligation authority being imposed automatically, so that any reductions are solely the prerogative of Congress.

(b) RELIABLE HIGHWAY PROGRAM LEVELS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no spending limits other than the spending limits specified in this subsection may be imposed, for any of fiscal years 2004 through 2009, on budget accounts or portions of budget accounts that are subject to the obligation limitations and the exemptions from obligation limitations that are specified in section 1102 of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 115).

(2) AMOUNT OF OBLIGATION AUTHORITY.—For each of fiscal years 2004 through 2009, the limitation on obligation authority for the budget accounts described in paragraph (1) shall be equal to the sum of—

(A) the limitation for that fiscal year specified in section 1102(a) of the Transportation Equity Act for the 21st Century;

(B) all amounts exempt from that limit under section 1102(b) of that Act; and

(C) the amount of any increase for the fiscal year under paragraph (5).

(3) OUTLAYS.—For each of fiscal years 2004 through 2009, the limitation on outlays for the budget accounts described in paragraph (1) shall be the level of outlays necessary to accommodate outlays resulting from obligations for that fiscal year under paragraph (2) and obligations from prior fiscal years.

(4) ANNUAL REPORT ON ESTIMATED BALANCE IN HIGHWAY ACCOUNT.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for each of fiscal years 2005 through 2009, the President shall include an estimate of the balance that will be in the Highway Account of the Highway Trust Fund (as defined in section 9503(e)(5)(B) of the Internal Revenue Code of 1986) at the end of fiscal year 2009.

(5) INCREASE BASED ON FUND BALANCE.—

(A) ESTIMATE FOR FISCAL YEAR 2005.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for fiscal year 2005, if the estimate described in paragraph (4) is that, but for this subparagraph, the balance in the Highway Account of the Highway Trust Fund at the end of fiscal year 2009 will be in excess of $7,000,000,000, the amount specified in section 1102(a)(8) of the Transportation Equity Act for the 21st Century shall be deemed to have been increased by an amount equal to 50 percent of the amount of the estimated excess.

(B) ESTIMATE FOR FISCAL YEAR 2006.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for fiscal year 2006, if the estimate described in paragraph (4) is that, but for this subparagraph, the balance in the Highway Account of the Highway Trust Fund at the end of fiscal year 2009 will be in excess of $6,500,000,000, the amount specified in section 1102(a)(9) of the Transportation Equity Act for the 21st Century shall be deemed to have been increased by an amount equal to 50 percent of the amount of the estimated excess.

(C) ESTIMATE FOR FISCAL YEAR 2007.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for fiscal year 2007, if the estimate described in paragraph (4) is that, but for this subparagraph, the balance in the Highway Account of the Highway Trust Fund at the end of fiscal year 2009 will be in excess of $6,000,000,000, the amount specified in section 1102(a)(10) of the Transportation Equity Act for the 21st Century shall be deemed to have been increased by an amount equal to 50 percent of the amount of the estimated excess.

(D) ESTIMATE FOR FISCAL YEAR 2008.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for fiscal year 2008, if the estimate described in paragraph (4) is that, but for this subparagraph, the balance in the Highway Account of the Highway Trust Fund at the end of fiscal year 2009 will be in excess of $5,500,000,000, the amount specified in section 1102(a)(11) of the Transportation Equity Act for the 21st Century shall be deemed to have been increased by an amount equal to 50 percent of the amount of the estimated excess.

(E) ESTIMATE FOR FISCAL YEAR 2009.—In the submission by the President of the budget of the United States Government under section 1105 of title 31, United States Code, for fiscal year 2009, if the estimate described in paragraph (4) is that, but for this subparagraph, the balance in the Highway Account of the Highway Trust Fund at the end of fiscal year 2009 will be in excess of $5,000,000,000, the amount specified in section 1102(a)(12) of the Transportation Equity Act for the 21st Century shall be deemed to have been increased by an amount equal to the amount of the estimated excess.

(6) NO EFFECT ON BYRD RULE.—Nothing in this subsection affects section 9503(d) of the Internal Revenue Code of 1986.

(c) SENSE OF THE SENATE SUPPORTING RELIABLE PROGRAM LEVELS IN ADDITIONAL BUDGET ACCOUNTS.—It is the sense of the Senate that the Act reauthorizing highway, highway safety, and transit programs for fiscal years beginning with fiscal year 2004 should include, in addition to the budgetary protections for the highway program provided under subsection (b), appropriate budgetary protections for highway safety and transit programs.

(d) CONFORMING AMENDMENTS TO REVENUE ALIGNED BUDGET AUTHORITY.—Section 110 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting ''FOR FISCAL YEARS 2000 THROUGH 2003'' after ''ALLOCATION''; and

(ii) by striking ''fiscal year 2000 and each fiscal year thereafter'' and inserting ''each of fiscal years 2000 through 2003'';

(B) in paragraph (2)—

(i) by inserting ''FOR FISCAL YEARS 2001 THROUGH 2003'' after ''REDUCTION''; and

(ii) by striking ''fiscal year 2000 or any fiscal year thereafter'' and inserting ''any of fiscal years 2000 through 2002''; and

(C) by adding at the end the following:

''(3) ALLOCATIONS FOR FISCAL YEARS 2005 THROUGH 2009.—For any of fiscal years 2005 through 2009, if an increase is made to the level of obligation authority under section 4(b)(5) of the Maximum Economic Growth for America Through Highway Funding Act, the Secretary shall allocate for the fiscal year an amount equal to the amount of the increase.''; and

(2) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by striking ''for'' the second place it appears; and

(ii) by inserting ''(112 Stat. 107), the Maximum Economic Growth for America Through Highway Funding Act'' after ''21st Century'';

(B) in paragraph (2), by striking ''subsection (a)(1)'' and inserting ''paragraph (1) or (3) of subsection (a), as applicable,''; and

(C) in paragraph (4), by striking ''subsection (a)(1)'' and inserting ''paragraph (1) or (3) of subsection (a), as applicable,''.

SEC. 5. ASSISTANCE IN OVERCOMING ECONOMIC AND DEMOGRAPHIC BARRIERS.

(a) IN GENERAL.—Title 23, United States Code, is amended by inserting after section 138 the following:

''§ 139. Assistance in overcoming economic and demographic barriers

''(a) DEFINITIONS.—In this section:

''(1) HIGH-GROWTH STATE.—The term 'high-growth State' means a State that has a population according to the 2000 decennial census that is at least 25 percent greater than the population for the State according to the 1990 decennial census.

''(2) HIGH-POPULATION-DENSITY STATE.—The term 'high-population-density State' means a State in which the number of individuals per principal arterial mile is greater than 75 percent of the number of individuals per principal arterial mile in the 50 States and the District of Columbia, as determined using population according to the 2000 decennial census.

''(3) HIGHWAY STATISTICS.—

''(A) IN GENERAL.—The term 'Highway Statistics' means the Highway Statistics published by the Federal Highway Administration for the most recent calendar or fiscal year for which data are available, which most recent calendar or fiscal year shall be determined as of the first day of the fiscal year for which any calculation using the Highway Statistics is made.

''(B) TERMS.—Any reference to a term that is used in the Highway Statistics is a reference to the term as used in the Highway Statistics as of September 30, 2002.

''(4) LOW-INCOME STATE.—The term 'low-income State' means a State that, according to Table PS–1 of the Highway Statistics, has a per capita income that is less than the national average per capita income.

''(5) LOW-POPULATION-DENSITY STATE.—The term 'low-population-density State' means a State in which the number of individuals per principal arterial mile is less than 75 percent of the number of individuals per principal arterial mile in the 50 States and the District of Columbia, as determined using population according to the 2000 decennial census.

''(6) NATIONAL AVERAGE PER CAPITA INCOME.—The term 'national average per capita income' means the average per capita income for the 50 States and the District of Columbia, as specified in the Highway Statistics.

''(7) PRINCIPAL ARTERIAL MILES.—The term 'principal arterial miles', with respect to a State, means the principal arterial miles (including Interstate and other expressway or freeway system miles) in the State, as specified in Table HM–20 of the Highway Statistics.

''(8) STATE.—The term 'State' means each of the 50 States.

''(9) STATE WITH EXTENSIVE ROAD OWNERSHIP.—The term 'State with extensive road ownership' means a State that owns more than 80 percent of the total Federal-aid and non-Federal-aid mileage in the State according to Table HM–14 of the Highway Statistics.

''(b) ESTABLISHMENT.—There is established a program to assist States that face certain economic and demographic barriers in meeting transportation needs.

''(c) ALLOCATION OF FUNDS.—For each of fiscal years 2004 through 2009, funds made available to carry out this section shall be allocated as follows:

''(1) LOW-INCOME STATES.—For each fiscal year, each low-income State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $600,000,000; and

''(B) the ratio that—

''(i) the difference between—

''(I) the national average per capita income; and

''(II) the per capita income of the low-income State; bears to

''(ii) the sum of the differences determined under clause (i) for all low-income States.

''(2) HIGH-GROWTH STATES.—For each fiscal year, each high-growth State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $75,000,000; and

''(B) the ratio that—

''(i) the percentage by which the population of the high-growth State according to the 2000 decennial census exceeds the population of the high-growth State according to the 1990 decennial census; bears to

''(ii) the sum of the percentages determined under clause (i) for all high-growth States.

''(3) LOW-POPULATION-DENSITY STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, each low-population-density State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(i) $625,000,000; and

''(ii) the ratio that—

''(I) the quotient obtained by dividing—

''(aa) the number of principal arterial miles in the State; by

''(bb) the population of the low-population-density State according to the 2000 decennial census; bears to

''(II) the sum of the quotients determined under subclause (I) for all low-population-density States.

''(B) MAXIMUM ALLOCATION.—

''(i) IN GENERAL.—If the allocation for a low-population-density State under subparagraph (A) is greater than $35,000,000, the allocation of the low-population-density State shall be reduced to $35,000,000.

''(ii) USE OF EXCESS ALLOCATIONS.—

''(I) REALLOCATION.—Subject to subclause (II), the funds in addition to the $35,000,000 that would have been allocated to a low-population-density State but for clause (i) shall be reallocated among the low-population-density States that were allocated less than $35,000,000 under subparagraph (A) in accordance with the proportionate shares of those low-population-density States under subparagraph (A).

''(II) ADDITIONAL REALLOCATIONS.—If a reallocation under subclause (I) would result in the receipt by any low-population-density State of an amount greater than $35,000,000 under this paragraph—

''(aa) the allocation for the low-population-density State shall be reduced to $35,000,000; and

''(bb) the amounts in excess of $35,000,000 shall be subject to 1 or more further reallocations in accordance with that subclause so that no low-population-density State is allocated more than $35,000,000 under this paragraph.

''(4) HIGH-POPULATION-DENSITY STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, each high-population-density State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(i) $625,000,000; and

''(ii) the ratio that—

''(I) the quotient obtained by dividing—

''(aa) the population of the high-population-density State according to the 2000 decennial census; by

''(bb) the number of principal arterial miles in the State; bears to

''(II) the sum of the quotients determined under subclause (I) for all high-population-density States.

''(B) MAXIMUM ALLOCATION.—

''(i) IN GENERAL.—If the allocation for a high-population-density State under subparagraph (A) is greater than $35,000,000, the allocation of the high-population-density State shall be reduced to $35,000,000.

''(ii) USE OF EXCESS ALLOCATIONS.—

''(I) REALLOCATION.—Subject to subclause (II), the funds in addition to the $35,000,000 that would have been allocated to a high-population-density State but for clause (i) shall be reallocated among the high-population-density States that were allocated less than $35,000,000 under subparagraph (A) in accordance with the proportionate shares of those high-population-density States under subparagraph (A).

''(II) ADDITIONAL REALLOCATIONS.—If a reallocation under subclause (I) would result in the receipt by any high-population-density State of an amount greater than $35,000,000 under this paragraph—

''(aa) the allocation for the high-population-density State shall be reduced to $35,000,000; and

''(bb) the amounts in excess of $35,000,000 shall be subject to 1 or more further reallocations in accordance with that subclause so that no high-population-density State is allocated more than $35,000,000 under this paragraph.

''(5) STATES WITH EXTENSIVE ROAD OWNERSHIP.—For each fiscal year, each State with extensive road ownership shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $75,000,000; and

''(B) the ratio that—

''(i) the total Federal-aid and non-Federal-aid mileage owned by each State with extensive road ownership according to Table HM–14 of the Highway Statistics; bears to

''(ii) the sum of the mileages determined under clause (i) for all States with extensive road ownership.

''(d) TREATMENT OF ALLOCATED FUNDS.—

''(1) IN GENERAL.—Subject to paragraph (2), funds allocated to a State under this section for a fiscal year shall be treated for program administrative purposes as if the funds—

''(A) were funds apportioned to the State under sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144; and

''(B) were apportioned to the State in the same ratio that the State is apportioned funds under the sections specified in subparagraph (A) for the fiscal year.

''(2) PROGRAM ADMINISTRATIVE PURPOSES.—Program administrative purposes referred to in paragraph (1)—

''(A) include—

''(i) the Federal share;

''(ii) availability for obligation; and

''(iii) except as provided in subparagraph (B), applicability of deductions; and

''(B) exclude—

''(i) calculation of the minimum guarantee under section 105; and

''(ii) applicability of the deduction for the future strategic highway research program under section 104(m).''.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 138 the following:

''139. Assistance in overcoming economic and demographic barriers.''.

SEC. 6. EMERGENCY RELIEF.

Section 125 of title 23, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Not more than $100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980,'' and inserting ''Not more than $100,000,000 is authorized to be obligated in any of fiscal years 1981 through 2003, and not more than $200,000,000 is authorized to be obligated in fiscal year 2004 or any fiscal year thereafter,''; and

(2) by adding at the end the following:

''(g) PROTECTION OF HIGHWAY TRUST FUND.—Effective beginning on the earlier of October 1, 2003, or the date of enactment of this subsection, notwithstanding any other provision of law, if an Act is enacted that provides for an amount in excess of $200,000,000 for any fiscal year for the emergency fund authorized by this section (including any Act that states that provision of that amount in excess of $200,000,000 is 'notwithstanding any other provision of law'), that Act shall be applied so that all funds for that fiscal year for the program established by this section in excess of $200,000,000—

''(1) shall be derived from the general fund of the Treasury, and not from the Highway Trust Fund (other than the Mass Transit Account); but

''(2) shall be administered by the Secretary in all other respects as if the funds were appropriated from the Highway Trust Fund (other than the Mass Transit Account).''.

SEC. 7. INCREASED STABILITY OF DISTRIBUTION UNDER ALLOCATION PROGRAMS.

(a) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT PROGRAM.—Section 1118 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 161) is amended—

(1) by redesignating subsection (g) as subsection (h); and

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

''(g) MINIMUM ALLOCATIONS TO BORDER STATES.—Notwithstanding any other provision of law, in allocating funds under this section for fiscal year 2004 and each fiscal year thereafter, the Secretary shall ensure that not less than 2 percent of the funds made available to carry out the program under this section are allocated to each border State (as defined in section 1119(e)).''.

(b) COORDINATED BORDER INFRASTRUCTURE PROGRAM.—Section 1119 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 163) is amended—

(1) by redesignating subsection (e) as subsection (f); and

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

''(e) MINIMUM ALLOCATIONS TO BORDER STATES.—Notwithstanding any other provision of law, in allocating funds under this section for fiscal year 2004 and each fiscal year thereafter, the Secretary shall ensure that not less than 2 percent of the funds made available to carry out the program under this section are allocated to each border State.''.

(c) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 221) is amended by adding at the end the following:

''(f) MINIMUM ALLOCATIONS TO STATES.—Notwithstanding any other provision of law, in allocating funds made available under this section for fiscal year 2004 and each fiscal year thereafter, the Secretary shall ensure that the total of the allocations to each State (including allocations to the metropolitan planning organizations and local governments in the State) under this section is not less than the product obtained by multiplying—

''(1) 50 percent of the percentage specified for the State in section 105 of title 23, United States Code, for the fiscal year; and

''(2) the total amount of funds made available to carry out this section for the fiscal year.''.

(d) MINIMUM ALLOCATIONS TO STATES FOR ITS DEPLOYMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for fiscal year 2004

and each fiscal year thereafter, in allocating funds made available under section 2(f)(6), the Secretary shall ensure that the total of the allocations to each State using those funds is not less than the product obtained by multiplying—

(A) 50 percent of the percentage specified for the State in section 105 of title 23, United States Code, for the fiscal year; and

(B) the total amount of funds made available under section 2(f)(6).

(2) USE OF FUNDS FOR BOTH TYPES OF PROJECTS.—In administering funds available for allocation under section 2(f)(6), the Secretary shall encourage States to carry out both—

(A) projects eligible under section 5208 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 458); and

(B) projects eligible under section 5209 of that Act.

SEC. 8. HISTORIC PARK ROADS AND PARKWAYS.

(a) IN GENERAL.—Section 202(c) of title 23, United States Code, is amended—

(1) by striking ''(c) On'' and inserting the following:

''(c) PARK ROADS AND PARKWAYS.—

''(1) IN GENERAL.—On''; and

(2) by adding at the end the following:

''(2) HISTORIC PARK ROADS AND PARKWAYS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) NATIONAL PARK.—The term 'national park' means an area of land or water administered by the National Park Service that is designated as a national park.

''(ii) RECREATION VISIT.—The term 'recreation visit' means the entry into a national park for a recreational purpose of an individual who is not—

''(I) an employee of the Federal Government, or other individual, who has business in the national park;

''(II) an individual passing through the national park for a purpose other than visiting the national park; or

''(III) an individual residing in the national park.

''(iii) RECREATION VISITOR DAY.—The term 'recreation visitor day' means a period of 12 hours spent in a national park by an individual making a recreation visit to the national park.

''(B) ALLOCATION.—Notwithstanding paragraph (1), for fiscal year 2004 and each fiscal year thereafter, the first $100,000,000 authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for park roads and parkways for the fiscal year shall be allocated for projects to reconstruct, rehabilitate, restore, resurface, or improve to applicable safety standards any highway that meets the criteria specified in subparagraph (C).

''(C) ELIGIBILITY CRITERIA.—The criteria referred to in subparagraph (B) are that—

''(i) the highway provides access to or is located in a national park;

''(ii) the highway was initially constructed before 1940; and

''(iii) as determined using data provided by the National Park Service averaged over the 3 most recent years for which the data are available, the national park to which the highway provides access or in which the highway is located is used more than 1,000,000 recreation visitor days per year.

''(D) PRIORITY.—In funding projects eligible under subparagraphs (B) and (C), the Secretary shall give priority to any project on a highway that is located in or provides access to a national park that—

''(i) is adjacent to a national park of a foreign country; or

''(ii) is located in more than 1 State.

''(E) FEDERAL-STATE COOPERATION IN PROJECT DEVELOPMENT.—Projects to be carried out under this paragraph shall be developed cooperatively by the Secretary and the State in which a national park is located.

''(F) SUPPORT BY THE SECRETARY.—The Secretary shall provide the maximum feasible support to ensure prompt development and implementation of projects under this paragraph.

''(G) RESERVATION OF FUNDS FOR PROJECTS OUTSIDE NATIONAL PARKS.—

''(i) IN GENERAL.—For each fiscal year, not less than 40 percent of the funds allocated under this paragraph shall be used for projects described in subparagraph (B) on highways that are located outside national parks but provide access to national parks.

''(ii) USE OF EXCESS FUNDS.—If the Secretary determines that funds set aside under clause (i) are in excess of the needs for reconstruction, rehabilitation, restoration, resurfacing, or improvement of the highways described in that clause, the funds set aside under that clause may be used for transit projects that serve national parks with highways (including access highways) that meet the criteria specified in subparagraph (C).

''(H) AVAILABILITY OF AMOUNTS.—Funds allocated under this paragraph shall remain available until expended.

''(I) RELATIONSHIP TO OTHER LAW.—Nothing in this paragraph reduces the eligibility or priority of a project under any other provision of this title or other law.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out projects that—

(1) are eligible for funding under section 202(c)(2) of title 23, United States Code; but

(2) are not fully funded from funds made available under paragraph (1) or (2) of section 202(c) of that title.

SEC. 9. COOPERATIVE FEDERAL LANDS TRANSPORTATION PROGRAM.

(a) IN GENERAL.—Chapter 2 of title 23, United States Code, is amended by inserting after section 206 the following:

''§ 207. Cooperative Federal lands transportation program

''(a) IN GENERAL.—

''(1) ESTABLISHMENT.—There is established the cooperative Federal lands transportation program (referred to in this section as the 'program').

''(2) PROJECTS.—

''(A) LOCATIONS.—Funds available for the program under subsection (d) may be used for projects, or portions of projects, on highways that—

''(i) are owned or maintained by States or political subdivisions of States; and

''(ii) cross, are adjacent to, or lead to federally owned land or Indian reservations (including Corps of Engineers reservoirs), as determined by the State.

''(B) SELECTION.—The projects shall be selected by a State after consultation with the Secretary and each affected local or tribal government.

''(C) TYPES OF PROJECTS.—A project selected by a State under this section—

''(i) shall be on a highway or bridge owned or maintained by the State or 1 or more political subdivisions of the State; and

''(ii) may be—

''(I) a highway or bridge construction or maintenance project eligible under this title; or

''(II) any eligible project under section 204(h).

''(b) DISTRIBUTION OF FUNDS FOR PROJECTS.—

''(1) IN GENERAL.—

''(A) DETERMINATIONS BY THE SECRETARY.—The Secretary—

''(i) after consultation with the Administrator of General Services, the Secretary of the Interior, and the heads of other agencies as appropriate (including the Chief of Engineers), shall determine the percentage of the total land in each State that is owned by the Federal Government or that is held by the Federal Government in trust;

''(ii) shall determine the sum of the percentages determined under clause (i) for States with respect to which the percentage is 4.5 or greater; and

''(iii) shall determine for each State included in the determination under clause (ii) the percentage obtained by dividing—

''(I) the percentage for the State determined under clause (i); by

''(II) the sum determined under clause (ii).

''(B) ADJUSTMENT.—The Secretary shall—

''(i) reduce any percentage determined under subparagraph (A)(iii) that is greater than 7.5 percent to 7.5 percent; and

''(ii) redistribute the percentage points equal to any reduction under clause (i) among other States included in the determination under subparagraph (A)(ii) in proportion to the percentages for those States determined under subparagraph (A)(iii).

''(2) AVAILABILITY TO STATES.—For each fiscal year, the Secretary shall make funds available to carry out eligible projects in a State in an amount equal to the amount obtained by multiplying—

''(A) the percentage for the State, if any, determined under paragraph (1); by

''(B) the funds made available for the program under subsection (d) for the fiscal year.

''(c) TRANSFERS.—Notwithstanding any other provision of law, a State and the Secretary may agree to transfer amounts made available to a State under this section to the allocations of the State under section 202 for use in carrying out projects on any Federal lands highway that is located in the State.

''(d) FUNDING.—

''(1) IN GENERAL.—Notwithstanding section 202 or any other provision of law, for fiscal year 2004 and each fiscal year thereafter, the Secretary shall transfer for use in accordance with this section an amount equal to 50 percent of the funds that would otherwise be allocated for the fiscal year under the first sentence of section 202(b).

''(2) CONTRACT AUTHORITY.—Funds transferred for use in accordance with this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 207 and inserting the following:

''207. Cooperative Federal lands transportation program.''.

SEC. 10. MISCELLANEOUS PROGRAM IMPROVEMENTS.

(a) FEDERAL SHARE.—

(1) IN GENERAL.—Section 120 of title 23, United States Code, is amended—

(A) in subsection (b), by striking ''the percentage that the area of all such lands in such State'' each place it appears and inserting ''twice the percentage that the area of all such lands in the State'';

(B) in subsection (f)—

(i) by striking ''and with the Department of the Interior'' and inserting '', the Department of the Interior, and the Department of Agriculture''; and

(ii) by striking ''and national parks and monuments under the jurisdiction of the Department of the Interior'' and inserting '', national parks, national monuments, and national forests under the jurisdiction of the Department of the Interior or the Department of Agriculture''; and

(C) by adding at the end the following:

''(m) MULTISTATE WEIGHT ENFORCEMENT IMPROVEMENTS.—The Federal share of the

cost of any project described in section 101(a)(3)(H) shall be 100 percent if the project is to be used, or is carried out jointly, by more than 1 State.''.

(2) HIGH PRIORITY PROJECTS PROGRAM.—Section 117(c) of title 23, United States Code, is amended by striking ''80 percent'' and inserting ''the share applicable under section 120(b)''.

(3) HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM.—Section 144 of title 23, United States Code, is amended by striking subsection (f).

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 162(f) of title 23, United States Code, is amended by striking ''80 percent'' and inserting ''the share applicable under section 120(b)''.

(5) STATE PLANNING AND RESEARCH.—Section 505(c) of title 23, United States Code, is amended by striking ''80 percent'' and inserting ''the share applicable under section 120(b),''.

(6) INTELLIGENT TRANSPORTATION SYSTEM INTEGRATION PROGRAM.—Section 5208 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 458) is amended by striking subsection (f) and inserting the following:

''(f) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall be the share applicable under section 120(b) of title 23, United States Code.''.

(7) COMMERCIAL VEHICLE INTELLIGENT TRANSPORTATION SYSTEM INFRASTRUCTURE DEPLOYMENT.—Section 5209 of the Transportation Equity Act for the 21st Century (23 U.S.C. 502 note; 112 Stat. 461) is amended by striking subsection (e) and inserting the following:

''(e) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall be the share applicable under section 120(b) of title 23, United States Code.''.

(b) INCREASED FLEXIBILITY IN ADDRESSING RAILWAY-HIGHWAY CROSSINGS.—Section 130(e) of title 23, United States Code, is amended by striking the first sentence and inserting the following: ''Funds authorized for or expended under this section may be used for installation of protective devices at railway-highway crossings.''.

(c) FLEXIBILITY IN IMPROVING AIR QUALITY.—Section 149(c) of title 23, United States Code, is amended—

(1) in paragraph (1), by striking ''for any project eligible under the surface transportation program under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would be eligible under this section if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''; and

(2) in paragraph (2), by striking ''for any project in the State eligible under section 133.'' and inserting the following: ''for any project in the State that—

''(A) would be eligible under this section if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.''.

(d) BROADENED TIFIA ELIGIBILITY.—Section 182(a)(3) of title 23, United States Code, is amended—

(1) in subparagraph (A)(i), by striking ''$100,000,000'' and inserting ''$25,000,000'';

(2) by striking ''PROJECT COSTS'' and all that follows through ''to be eligible'' and inserting the following: ''PROJECT COSTS.—To be eligible'';

(3) by striking subparagraph (B); and

(4) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and indenting appropriately.

(e) STATE ROLE IN SELECTION OF FOREST HIGHWAY PROJECTS.—Section 204(a) of title 23, United States Code, is amended by adding at the end the following:

''(7) STATE ROLE IN SELECTION OF FOREST HIGHWAY PROJECTS.—Notwithstanding any other provision of this title, no forest highway project may be carried out in a State under this chapter unless the State concurs in the selection of the project.''.

(f) HISTORIC BRIDGE ELIGIBILITY.—Section 144(o) of title 23, United States Code, is amended—

(1) in paragraph (3), by inserting ''200 percent of'' after ''shall not exceed''; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and indenting appropriately;

(B) by striking ''Any State'' and inserting the following:

''(A) IN GENERAL.—Any State'';

(C) in the second sentence—

(i) by striking ''Costs incurred'' and inserting the following:

''(B) ELIGIBILITY AS REIMBURSABLE PROJECT COSTS.—

''(i) IN GENERAL.—Costs incurred''; and

(ii) by inserting ''200 percent of'' after ''not to exceed''; and

(D) by striking the third sentence and inserting the following:

''(ii) AMOUNT.—If a State elects to use funds apportioned under this section to support the relocation of a historic bridge, the eligible reimbursable project costs shall be equal to the greater of the Federal share that would be available for the construction of a new bicycle or pedestrian bridge or 200 percent of the cost of demolition of the historic bridge.

''(iii) EFFECT.—Nothing in clause (ii) creates an obligation on the part of a State to preserve a historic bridge.''.

SEC. 11. MISCELLANEOUS PROGRAM EXTENSIONS AND TECHNICAL AMENDMENTS.

(a) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION.—Section 104(d)(2)(A) of title 23, United States Code, is amended by striking ''for a fiscal year'' and inserting ''for each of fiscal years 1998 through 2003''.

(b) MINIMUM GUARANTEE.—Section 105 of title 23, United States Code, is amended in subsections (a), (d), and (f) by striking ''2003'' each place it appears and inserting ''2009''.

(c) HIGH PRIORITY PROJECTS PROGRAM.—Section 117 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''The Secretary'' and inserting the following:

''(1) IN GENERAL.—The Secretary'';

(B) by striking ''Of amounts made available to carry out this section,'' and inserting the following:

''(2) AVAILABILITY OF FUNDS FOR FISCAL YEARS 1998 THROUGH 2003.—Of the funds made available to carry out this section for each of fiscal years 1998 through 2003,''; and

(C) by adding at the end the following:

''(3) AVAILABILITY OF FUNDS FOR FISCAL YEARS 2004 THROUGH 2009.—

''(A) IN GENERAL.—For each of fiscal years 2004 through 2009, the Secretary shall allocate the funds made available to carry out this section to each of the 50 States and the District of Columbia in accordance with the percentage specified for each such State and the District of Columbia under section 105.

''(B) USE OF FUNDS.—Funds allocated in accordance with subparagraph (A) may be used for any project eligible under this chapter that is designated by the State transportation department as a high priority project.''; and

(2) in subsection (b), by striking ''For'' and inserting ''With respect to funds made available to carry out this section for each of fiscal years 1998 through 2003, for''.

(d) HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM.—Section 144(g)(1) of title 23, United States Code, is amended by adding at the end the following:

''(D) FISCAL YEARS 2004 THROUGH 2009.—Of the amounts authorized to be appropriated to carry out the bridge program under this section for each of fiscal years 2004 through 2009, all but $100,000,000 shall be apportioned as provided in subsection (e). That $100,000,000 shall be available at the discretion of the Secretary.''.

(e) DISADVANTAGED BUSINESS ENTERPRISES.—Section 1101(b)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 113) is amended by striking ''of this Act'' and inserting ''of this Act and the Maximum Economic Growth for America Through Highway Funding Act''.

(f) PUERTO RICO HIGHWAY PROGRAM.—Section 1214(r)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 209) is amended by inserting '', and funds authorized by section 2(b)(7) of the Maximum Economic Growth for America Through Highway Funding Act for each of fiscal years 2004 through 2009,'' after ''2003''.

SEC. 12. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act take effect on October 1, 2003.

S. 3133

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 ''Maximum Economic Growth for America Through Highway Funding Part II Act'' or the ''MEGA Fund Part II Act''.

SEC. 2. AUTHORIZATION TO MAKE FUNDING AVAILABLE FROM THE HIGHWAY TRUST FUND.

Section 9503(c)(1) of the Internal Revenue Code of 1986 (relating to expenditures from the Highway Trust Fund) is amended—

(1) in the first sentence—

(A) by striking ''2003'' and inserting ''2009'';

(B) in subparagraph (D), by striking ''or'' at the end;

(C) in subparagraph (E), by striking the period at the end and inserting '', or''; and

(D) by adding at the end the following:

''(F) authorized to be paid out of the Highway Trust Fund under the Maximum Economic Growth for America Through Highway Funding Act.''; and

(2) in the second sentence, by striking ''TEA 21 Restoration Act'' and inserting ''Maximum Economic Growth for America Through Highway Funding Act''.

MEGA FUND ACT—SECTION-BY-SECTION ANALYSIS

SECTION 1, SHORT TITLE

This section sets forth the title of the bill.

SECTION 2. AUTHORIZATION OF APPROPRIATIONS

Subsection (a) would authorize the programs subject to the Minimum Guarantee. The 5 principal apportioned programs of TEA–21—Interstate Maintenance, National Highway System, Surface Transportation Program, Bridge, Congestion Mitigation and Air Quality Improvement (CMAQ)—would be significantly increased. Collectively, they would grow from $20.2 billion for FY 2003 to $28.6 billion by FY 2009. Also, they would maintain their current proportion to one anther. The Appalachian Highway program would be continued at present levels of $450 million annually and the Recreational Trails program increased to $75 million annually. A technical and conforming provision in section 11 of the bill would extend the Minimum

Guarantee program—which would grow considerably by operation of its own terms.

The High Priority Projects program would be continued but reduced from nearly $1.8 billion in FY 2003 to a still-generous $1 billion for each of FYs 2004–2009. The bill does not pretend that high priority projects will go away, but tries to set a realistic goal of reducing them, providing States a wider role in administering the program.

Subsection (b) would authorize $2 billion annually for the new economic and demographic barriers program set forth in section 5 of the bill.

Subsection (c) would authorize additional programs. The borders program and the corridors program would be separately authorized, at $100 million annually each. Federal lands highways programs are reauthorized and increased to the following annual levels: Indian Reservation Roads, $300 million; Public Land Highways, $350 million; Park Roads, $300 million; and Refuge Roads, $35 million. The programs for ferry boats and terminals, scenic byways, and highways in Puerto Rico would be reauthorized at increased annual levels of $50 million, $30 million, and $130 million, respectively.

The program to combat highway use tax evasion would be significantly increased, from $5 million today to $40 million annually from FYs 2004–2009. This is an important investment. Improved compliance with highway tax obligations will increase revenues available for the program.

Subsection (d) would double, to $50 million annual, the TCSP program. Subsection (e) would continue the National Historic Bridge Preservation program at $10 million annually. Subsection (f) would continue the program for incentive grants for seat belt use at $115 million annually. Subsection (g) would continue current research programs at current levels. Subsection (h) would authorize $75 million annually for 6 years for a new Future Strategic Highway Research Program (''FSHRP''). Subsection (i) would continue the current authorization for magnetic levitation deployment of such sums as may be necessary. Subsection (j) would continue authorization for the TIFIA program at current levels of $130 million annually.

SECTION 3, OBLIGATION CEILING

This section amends the obligation ceiling provision of TEA–21 to set the obligation limit for FYs 2004–2009 and to make a handful of changes. The non-technical provisions of the section include the following.

Paragraph (a)(1) sets the annual obligation ceilings, starting at $34 billion for FY 2004 and rising gradually to $39 billion for FY 2008 and $41 billion for FY 2009. Paragraph (a)(2) continues current exemptions from the obligation ceiling. Paragraph (a)(3) includes an amendment that would newly provide the Indian Reservation Roads program with obligation authority equal to authorizations. Paragraph (a)(5) would continue the practice of setting a separate obligation limit for research. Paragraph (a)(7) would provide for obligation authority to be increased when called for by the terms of the RABA provision. Paragraph (a)(8) would set a distinct obligation limit on administrative expenses.

SECTION 4, RELIABLE HIGHWAY PROGRAM LEVELS; REVISIONS TO REVENUE ALIGNED BUDGET AUTHORITY

Subsection (a) of section 4 sets forth the Sense of the Senate as to why RABA should be continued but improved. Subsection (a) recites that under current law the balance in the Highway Account has grown, denying the public the benefit of the user taxes paid. It also recites that the RABA calculation mechanism has led to annual program levels that differ widely from prior estimates. In addition, the current law produced an estimate of large ''negative RABA'' for fiscal year 2003, a result that Congress found to be totally unacceptable. Congress proceeded to eliminate FY 2003 negative RABA through enactment of legislation (section 1402 of Public Law No. 107–206).

Subsection (b) would carry forward firewalls and continue and improve RABA. Paragraphs (b)(1)–(3) would continue firewalls. They would make clear that no spending limits may be imposed to limit highway program obligations below the level of the obligation limit for that year, plus amounts exempt from the obligation limit for that year, plus any applicable upward adjustment due to RABA. The provisions would also protect any outlays made pursuant to the protected obligation (and exempt) levels.

Paragraphs (b)(4) and (5) would continue and improve RABA. Under the provisions there would be no negative RABA. As a result, States and the public would be able to count on receiving at least the specified program levels.

The determination of whether additional funding would be automatically provided, above the levels set in the obligation provision, would be based on the balance in the Highway Account, not based on current year revenue. Under current law, with program levels keyed to Highway Account income, the current balance is locked up. One can only access Account income, not the balance, even though the user taxes residing in the Account were paid with the expectation that they would be invested in the highway program.

As to the specifics of potential upward adjustment in obligation authority under this provision, a key point of reference for the calculations is that Congress should attempt to achieve a prudent, though not overly cautious balance in the Highway Account of approximately $5 billion at the end of FY 2009. As the bill properly deletes negative RABA, it takes a cautious approach to allowing positive RABA in the initial years of the bill, not paying out all funds.

Thus, as provided in paragraph (5) if, when the FY 2005 budget is submitted, it is estimated that, but for upward adjustment of obligation levels, the balance in the Account as of the close of fiscal year 2009 would exceed $7 billion, then there would be an upward adjustment in FY 2005 obligation levels of 50% of the estimated excess over that $7 billion balance.

However, as the RABA payments are geared towards the fund balance, the 50% of any calculated ''excess'' for a year that is ''forgone'' in that year is not ''lost'' to the highway program, only delayed in release, if the estimates hold firm over the years. By FY 2009, the provision would pay out as RABA, the full excess over a $5 billion balance in the Highway Account.

This approach constrains upward adjustments in RABA obligations during the early years of the bill out of respect for the possibility that revenues could be disappointing during the later years of the bill. But this approach still allows the currently large balance in the Highway Account to be put to work.

Subsection (b) concerns budgetary protection only for the highway program, as it was developed in conjunction with provisions concerning that program. Subsection (b) does not establish specific budget protections for highway safety and transit programs. Accordingly, subsection (c) of this section includes a Sense of the Senate resolution that appropriate protections for such programs, developed in conjunction with proposals for such programs, should be included in final legislation reauthorizing highway and transit programs.

SECTION 5, ASSISTANCE IN OVERCOMING ECONOMIC AND DEMOGRAPHIC BARRIERS

Section 5 would create a new type of program that would provide $2 billion per year to assist States in overcoming certain economic and demographic characteristics that can make it more difficult to meet transportation challenges.

Five challenges are recognized under this section: low population density ($625 million), high population density ($625 million), low income ($600 million), high population growth ($75 million), and high levels of State road ownership ($75 million). In each category, the amount of funds distributed to a State is increased when the degree of the challenge is more extreme.

Once received by a State, these funds are to be treated as if received in the same proportion as the State's apportionments under the Interstate Maintenance, National Highway System, Surface Transportation Program, Bridge, Congestion Mitigation and Air Quality programs and would be subject to the administrative rules governing those programs.

SECTION 6, EMERGENCY RELIEF

The Emergency Relief program, 23 U.S.C. 125, has been under funded for years. This section would double the Emergency Relief authorization from the Highway Account of the Highway Trust Fund from $100 million to $200 million annually. It also includes language limiting the Highway Account's annual contribution to the program to a maximum of that level. This in no way limits the ability of the Congress to respond rapidly to emergencies, but it does address the degree to which the Highway Account should be financing the response.

SECTION 7, INCREASED STABILITY OF DISTRIBUTION UNDER ALLOCATION PROGRAMS

Under this section States would be provided assurance of receiving at least some funding under some of these programs, while leaving some funding for treatment on a discretionary basis. Thus, under subsections (c) and (d), 50 per cent of the funds for the TCSP and ITS deployment programs would be distributed to the States based on their Minimum Guarantee percentage shares, leaving the balance for discretionary distribution. As these programs grow, it is appropriate to move in the direction of mainstreaming their distribution, so that all States participate.

In addition, under subsections (a) and (b), concerning the separately funded border infrastructure and corridor programs, each border state, within the meaning of the border program, would receive at least 2 per cent of the program's funds. This leaves most of the funds for discretionary distribution but ensures some participation by the border states in these programs.

SECTION 8, HISTORIC PARK ROADS AND PARKWAYS

This section would ensure that, in the administration of the park roads and parkways program, older and intensively used national parks receive some priority in funding. There are major parks, national treasures, where the roads in the parks or providing access to them were initially constructed before 1940 and are in need of serious attention. This provision focuses on such parks that handle many visitors, specifically those with over 1 million visitor days per year. The bill does not ignore other park and parkway needs, as the proposed increase represents an increase apart from this section's requirement that some funds be dedicated to these high-use, old infrastructure parks.

SECTION 9, COOPERATIVE FEDERAL LANDS TRANSPORTATION PROGRAM

This section would ensure that at least some of the discretionary public lands funding goes to States with significant public

lands holdings, in proportion to the extent to which the land in such States is owned by the Federal Government (or held by the Federal Government in trust). The provision should make the delivery of our public lands highway projects more effective and efficient. While leaving significant funds for discretionary distribution, by making the distribution of some funds more regular, the provision would allow States to work with Federal agencies on projects on a longer term and more regular basis.

SECTION 10, MISCELLANEOUS PROGRAM IMPROVEMENTS

This section contains a number of modest program improvements. Under subsection (c) a State that has the flexibility to use CMAQ funds for highway projects in attainment areas could use those funds for projects in attainment areas that would help prevent pollution. Subsection (e) would codify current practice, under which forest highway projects are not undertaken in a State without the concurrence of the State. Subsection (d) would allow small States the potential to participate in the TIFIA credit program, by lowering the project threshold under that program to $25 million from $100 million. Subsection (b) would increase State flexibility in choosing rail-highway crossing projects. Subsection (a) would correct anomalies in highway statutes that result in inadequate recognition of the economic difficulties facing States with large Federal land holdings.

States with significant Federal lands have greater difficulty raising the non-Federal match for Federal projects due to the restrictions on the use of Federal lands for economic activity and the inability of the States to tax such lands. Thus, the basic rule in title 23 of the U.S. Code has long been that the non-Federal match is reduced in such States. Yet careful review of title 23 reveals many provisions, including even the bridge program, which do not follow this general rule. This section would update the Federal lands match provision, to reflect the greater difficulty in raising match faced by such States and to ensure that the principle of the reduced match for Federal lands States is applied to all major elements of the highway program.

The subsection on Historic Bridges would allow states to use bridge program funds up to an amount not to exceed 200 percent of the cost of demolishing a historic bridge. Additionally, this subsection repeals the prohibition on the use of Federal-aid highway funds in the future, for projects associated with such bridges after the bridge has been donated.

This flexibility does not create an obligation on the state to fund preservation or relocation of a historic bridge.

SECTION 11, MISCELLANEOUS PROGRAM EXTENSIONS AND TECHNICAL REVISIONS

This largely technical section would: not extend a takedown of surface transportation program funds that has been used to support a narrow class of projects; continue the Minimum Guarantee program, the discretionary bridge program, Puerto Rico highway program, and the DBE program. Given overall funding increases, the provision does not extent the Interstate Maintenance Discretionary program, further increasing funds available to all the States under that program. It establishes a placeholder for distribution of funds for high priority projects.

SECTION 12, EFFECTIVE DATE

Under this section the provisions of the bill would take effect on October 1, 2003.

MEGA FUND ACT, PART II—SECTION-BY-SECTION ANALYSIS

SECTION 1, SHORT TITLE

This section sets forth the title of the bill.

SECTION 2

This section amends section 9503(c) of the United States Internal Revenue Code to allow expenditures pursuant to the Mega Fund Act to be available from the Highway Trust Fund.

By Mr. BAUCUS (for himself, Mr. CRAPO, and Mr CRAIG):

S. 3134. A bill to amend titles 23 and 49, United States Code, to encourage economic growth in the United States by increasing transportation investments in rural areas, and for other purposes; to the Committee on Environment and Public Works.

Mr. BAUCUS. Mr. President I rise today to introduce a bill to help rural America. Now I am always trying to help Montana, but this bill will help every State. Today I introduce the MEGA RURAL ACT, Maximum Economic Growth for America Through Rural Transportation Investment.

Quite simply, there are rural transportation needs not being met nationwide. This bill addresses those needs.

This is the eighth bill in a series of bills that Senator CRAPO and I are introducing to highlight our proposals on reauthorization of TEA 21—the Transportation Equity Act for the 21st Century.

So far we've introduced a series of MEGA ACTs, Maximum Economic Growth for America Through different types of investments and policy changes. In the past 6 months I have introduced MEGA TRUST, MEGA RED TRANS, MEGA FUND, Parts I and II, MEGA SAFE, MEGA STREAM and MEGA INNOVATE. Today it's the MEGA RURAL ACT.

The first provision in the MEGA RURAL Act will help states overcome certain rural hardships. In the same manner as the MEGA FUND ACT addresses this, the MEGA RURAL ACT would create a new program, at $2 billion annually, to assist States in dealing with certain economic and demographic barriers.

This would be a new type of program, not subject to the minimum guarantee, that is not keyed to specific project types but to types of problems facing States. States with low population density, or low per capita incomes, for example, face real challenges. While the provision also addresses some problems faced by non-rural States, this new section will give real help to rural States.

The different approach of this program lets States facing those problems receive funds and pick the projects. Every one of the 50 States would receive significant funding under this program every year.

The second issue that the MEGA RURAL ACT addresses is that of rural roads. I've been hearing from County Commissioners from Montana as well as other States, about how much they need direct funding for local roads.

These localities are hard pressed for funds and many of these roads are unsafe. This bill, just as the MEGA SAFE ACT does, would establish a pilot program, at $200 million annually from FY 2004–2009, to address safety on rural local roads. Funds could be used only on local roads and rural minor collectors, roads that are not Federal-aid highways.

The program does not affect distribution of funds among States, as funds will be distributed to each of the 50 States in accord with their relative formula share under 23 U.S.C. 105. Funds could be used only for projects or activities that have a safety benefit. By January 1, 2009 the Secretary of Transportation is to report on progress under the provision and whether any modifications are recommended.

Finally, just as the MEGA RED TRANS ACT does, the MEGA RURAL ACT would ensure that, as Federal transit programs are reauthorized, increased funding is provided to meet the needs of the elderly and disabled and of rural and small urban areas.

There is no question that our nation's large metropolitan areas have substantial transit needs that will receive attention as transit reauthorization legislation is developed. But the transit needs of rural and smaller areas, and of our elderly and disabled citizens, also require additional attention and funding.

The bill would provide that additional funding in a way that does not impact other portions of the transit program. For example, while the bill would at least double every State's funding for the elderly and disabled transit program by FY 2004, nothing in the bill would reduce funding for any portion of the transit program or for any State.

To the contrary, the bill would help strengthen the transit program as a whole by providing that the Mass Transit Account of the Highway Trust Fund is credited with the interest on its balance. This is a key provision in the MEGA TRUST Act the MEGA RED TRANS Act, and now the MEGA RURAL ACT.

Specifically, the bill would set modest minimum annual apportionments, by State, for the elderly and disabled transit program, the rural transit program, and for States that have urbanized areas with a population of less than 200,000.

It would ensure that each State that has a small urbanized area receives a minimum of $11 million for these three programs.

It is not a large amount of money but, for my State of Montana it is double what we get for those programs currently. For some other States it is more than four times what they receive.

The bill would also establish a $30 million program for essential bus service, to help connect citizens in rural communities to the rest of the world by facilitating transportation between rural areas and airports and passenger rail stations.

I am very aware of the role that public transit plays in the lives of rural citizens and the elderly and disabled.

When most people hear the word ''transit'' they think of a light rail system. But in rural areas transit translates to buses and vanpools.

Its about time that these issues are being addressed for rural America. Thank You.

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. 3134

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 ''Maximum Economic Growth for America Through Rural Transportation Investment Act'' or the ''MEGA Rural Act''.

SEC. 2. ASSISTANCE IN OVERCOMING ECONOMIC AND DEMOGRAPHIC BARRIERS.

(a) IN GENERAL.—Title 23, United States Code, is amended by inserting after section 138 the following:

''§ 139. Assistance in overcoming economic and demographic barriers

''(a) DEFINITIONS.—In this section:

''(1) HIGH-GROWTH STATE.—The term 'high-growth State' means a State that has a population according to the 2000 Census that is at least 25 percent greater than the population for the State according to the 1990 Census.

''(2) HIGH-POPULATION-DENSITY STATE.—The term 'high-population-density State' means a State in which the number of individuals per principal arterial mile is greater than 75 percent of the number of individuals per principal arterial mile in the 50 States and the District of Columbia, as determined using population according to the 2000 Census.

''(3) HIGHWAY STATISTICS.—

''(A) IN GENERAL.—The term 'Highway Statistics' means the Highway Statistics published by the Federal Highway Administration for the most recent calendar or fiscal year for which data are available, which most recent calendar or fiscal year shall be determined as of the first day of the fiscal year for which any calculation using the Highway Statistics is made.

''(B) TERMS.—Any reference to a term that is used in the Highway Statistics is a reference to the term as used in the Highway Statistics as of September 30, 2002.

''(4) LOW-INCOME STATE.—The term 'low-income State' means a State that, according to Table PS–1 of the Highway Statistics, has a per capita income that is less than the national average per capita income.

''(5) LOW-POPULATION-DENSITY STATE.—The term 'low-population-density State' means a State in which the number of individuals per principal arterial mile is less than 75 percent of the number of individuals per principal arterial mile in the 50 States and the District of Columbia, as determined using population according to the 2000 Census.

''(6) NATIONAL AVERAGE PER CAPITA INCOME.—The term 'national average per capita income' means the average per capita income for the 50 States and the District of Columbia, as specified in the Highway Statistics.

''(7) PRINCIPAL ARTERIAL MILES.—The term 'principal arterial miles', with respect to a State, means the principal arterial miles (including Interstate and other expressway or freeway system miles) in the State, as specified in Table HM–20 of the Highway Statistics.

''(8) STATE.—The term 'State' means each of the 50 States.

''(9) STATE WITH EXTENSIVE ROAD OWNERSHIP.—The term 'State with extensive road ownership' means a State that owns more than 80 percent of the total Federal-aid and non-Federal-aid mileage in the State according to Table HM–14 of the Highway Statistics.

''(b) ESTABLISHMENT.—There is established a program to assist States that face certain economic and demographic barriers in meeting transportation needs.

''(c) ALLOCATION OF FUNDS.—For each of fiscal years 2004 through 2009, funds made available to carry out this section shall be allocated as follows:

''(1) LOW-INCOME STATES.—For each fiscal year, each low-income State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $600,000,000; and

''(B) the ratio that—

''(i) the difference between—

''(I) the national average per capita income; and

''(II) the per capita income of the low-income State; bears to

''(ii) the sum of the differences determined under clause (i) for all low-income States.

''(2) HIGH-GROWTH STATES.—For each fiscal year, each high-growth State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $75,000,000; and

''(B) the ratio that—

''(i) the percentage by which the population of the high-growth State according to the 2000 Census exceeds the population of the high-growth State according to the 1990 Census; bears to

''(ii) the sum of the percentages determined under clause (i) for all high-growth States.

''(3) LOW-POPULATION-DENSITY STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, each low-population-density State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(i) $625,000,000; and

''(ii) the ratio that—

''(I) the quotient obtained by dividing—

''(aa) the number of principal arterial miles in the State; by

''(bb) the population of the low-population-density State according to the 2000 Census; bears to

''(II) the sum of the quotients determined under subclause (I) for all low-population-density States.

''(B) MAXIMUM ALLOCATION.—

''(i) IN GENERAL.—If the allocation for a low-population-density State under subparagraph (A) is greater than $35,000,000, the allocation of the low-population-density State shall be reduced to $35,000,000.

''(ii) USE OF EXCESS ALLOCATIONS.—

''(I) REALLOCATION.—Subject to subclause (II), the funds in addition to the $35,000,000 that would have been allocated to a low-population-density State but for clause (i) shall be reallocated among the low-population-density States that were allocated less than $35,000,000 under subparagraph (A) in accordance with the proportionate shares of those low-population-density States under subparagraph (A).

''(II) ADDITIONAL REALLOCATIONS.—If a reallocation under subclause (I) would result in the receipt by any low-population-density State of an amount greater than $35,000,000 under this paragraph—

''(aa) the allocation for the low-population-density State shall be reduced to $35,000,000; and

''(bb) the amounts in excess of $35,000,000 shall be subject to 1 or more further reallocations in accordance with that subclause so that no low-population-density State is allocated more than $35,000,000 under this paragraph.

''(4) HIGH-POPULATION-DENSITY STATES.—

''(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, each high-population-density State shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(i) $625,000,000; and

''(ii) the ratio that—

''(I) the quotient obtained by dividing—

''(aa) the population of the high-population-density State according to the 2000 Census; by

''(bb) the number of principal arterial miles in the State; bears to

''(II) the sum of the quotients determined under subclause (I) for all high-population-density States.

''(B) MAXIMUM ALLOCATION.—

''(i) IN GENERAL.—If the allocation for a high-population-density State under subparagraph (A) is greater than $35,000,000, the allocation of the high-population-density State shall be reduced to $35,000,000.

''(ii) USE OF EXCESS ALLOCATIONS.—

''(I) REALLOCATION.—Subject to subclause (II), the funds in addition to the $35,000,000 that would have been allocated to a high-population-density State but for clause (i) shall be reallocated among the high-population-density States that were allocated less than $35,000,000 under subparagraph (A) in accordance with the proportionate shares of those high-population-density States under subparagraph (A).

''(II) ADDITIONAL REALLOCATIONS.—If a reallocation under subclause (I) would result in the receipt by any high-population-density State of an amount greater than $35,000,000 under this paragraph—

''(aa) the allocation for the high-population-density State shall be reduced to $35,000,000; and

''(bb) the amounts in excess of $35,000,000 shall be subject to 1 or more further reallocations in accordance with that subclause so that no high-population-density State is allocated more than $35,000,000 under this paragraph.

''(5) STATES WITH EXTENSIVE ROAD OWNERSHIP.—For each fiscal year, each State with extensive road ownership shall receive an allocation under this paragraph that is equal to the product obtained by multiplying—

''(A) $75,000,000; and

''(B) the ratio that—

''(i) the total Federal-aid and non-Federal-aid mileage owned by each State with extensive road ownership according to Table HM–14 of the Highway Statistics; bears to

''(ii) the sum of the mileages determined under clause (i) for all States with extensive road ownership.

''(d) TREATMENT OF ALLOCATED FUNDS.—

''(1) IN GENERAL.—Subject to paragraph (2), funds allocated to a State under this section for a fiscal year shall be treated for program administrative purposes as if the funds—

''(A) were funds apportioned to the State under sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144; and

''(B) were apportioned to the State in the same ratio that the State is apportioned funds under the sections specified in paragraph (1) for the fiscal year.

''(2) PROGRAM ADMINISTRATIVE PURPOSES.—Program administrative purposes referred to in paragraph (1)—

''(A) include—

''(i) the Federal share;

''(ii) availability for obligation; and

''(iii) except as provided in subparagraph (B), applicability of deductions; and

''(B) exclude—

''(i) calculation of the minimum guarantee under section 105; and

''(ii) applicability of the deduction for the future strategic highway research program under section 104(m).''.

(b) ASSISTANCE IN OVERCOMING ECONOMIC AND DEMOGRAPHIC BARRIERS.—For the program to provide assistance in overcoming economic and demographic barriers under section 139 of title 23, United States Code, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $2,000,000,000 for each of fiscal years 2004 through 2009.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 138 the following:

''139. Assistance in overcoming economic and demographic barriers.''.

SEC. 3. RURAL LOCAL ROADS SAFETY PILOT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) IN GENERAL.—

(A) ELIGIBLE ACTIVITY.—

(i) IN GENERAL.—The term ''eligible activity'' means a project or activity that—

(I) is carried out only on public roads that are functionally classified as rural local roads or rural minor collectors (and is not carried out on a Federal-aid highway); and

(II) provides a safety benefit.

(ii) INCLUSIONS.—The term ''eligible activity'' includes—

(I) a project or program such as those described in section 133(d)(1) of title 23, United States Code;

(II) road surfacing or resurfacing;

(III) improvement or maintenance of local bridges;

(IV) road reconstruction or improvement;

(V) installation or improvement of signage, signals, or lighting;

(VI) a maintenance activity that provides a safety benefit (including repair work, striping, surface marking, or a similar safety precaution); or

(VII) acquisition of materials for use in projects described in any of subclauses (I) through (VI).

(B) PROGRAM.—The term ''program'' means the rural local roads safety pilot program established under subsection (b).

(C) STATE.—The term ''State'' does not include the District of Columbia or Puerto Rico.

(2) OTHER TERMS.—Except as otherwise provided, terms used in this section have the meanings given those terms in title 23, United States Code.

(b) ESTABLISHMENT.—The Secretary shall establish a rural local roads safety pilot program to carry out eligible activities.

(c) ALLOCATION OF FUNDS WITH RESPECT TO STATES.—For each fiscal year, funds made available to carry out this section shall be allocated by the Secretary to the State transportation department in each of the States in the ratio that—

(1) the relative share of the State under section 105 of title 23, United States Code, for a fiscal year; bears to

(2) the total shares of all 50 States under that section for the fiscal year.

(d) ALLOCATION OF FUNDS WITHIN STATES.—Each State that receives funds under subsection (c) shall allocate those funds within the State as follows:

(1) COUNTIES.—Except as provided in paragraph (2) and subject to paragraph (3), a State shall allocate to each county in the State an amount in the ratio that—

(A) the public road miles within the county that are functionally classified as rural local roads or rural minor collectors; bears to

(B) the total of all public road miles within all counties in the State that are functionally classified as rural local roads or rural minor collectors.

(2) ALTERNATIVE FORMULA FOR ALLOCATION.—Paragraph (1) shall not apply to a State if the State transportation department certifies to the Secretary that the State has in effect an alternative formula or system for allocation of funds received under subsection (c) (including an alternative formula or system that permits allocations to political subdivisions or groups of political subdivisions, in addition to individual counties, in the State) that—

(A) was developed under the authority of State law; and

(B) provides that funds allocated to the State transportation department under this section will be allocated within the State in accordance with a program that includes selection by local governments of eligible activities funded under this section.

(3) ADMINISTRATIVE EXPENSES.—Before allocating amounts under paragraph (1) or (2), as applicable, a State transportation department may retain not more than 10 percent of an amount allocated to the State transportation department under subsection (c) for administrative costs incurred in carrying out this section.

(e) PROJECT SELECTION.—

(1) BY COUNTY.—If an allocation of funds within a State is made under subsection (d)(1), counties within the State to which the funds are allocated shall select eligible activities to be carried out using the funds.

(2) BY STATE ALTERNATIVE.—If an allocation of funds within a State is made under subsection (d)(2), eligible activities to be carried out using the funds shall be selected in accordance with the State alternative.

(f) FEDERAL SHARE.—The Federal share of the cost of an eligible activity carried out under this section shall be 100 percent.

(g) REPORT.—Not later than January 1, 2009, after providing States, local governments, and other interested parties an opportunity for comment, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(1) describes progress made in carrying out the program; and

(2) includes recommendations as to whether the program should be continued or modified.

(h) CONTRACT AUTHORITY.—Funds made available to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of an eligible activity under this section shall be determined in accordance with this section.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $200,000,000 for each of fiscal years 2004 through 2009.

SEC. 4. MINIMUM LEVEL OF FUNDING FOR ELDERLY AND DISABLED PROGRAM.

Section 5310 of title 49, United States Code, is amended—

(1) in subsection (b), in the first sentence, by striking the period at the end and inserting the following: '', provided that, for fiscal years 2004, 2005, and 2006, each State shall receive annually, of the amounts apportioned under this section, a minimum of double the amount apportioned to the State in fiscal year 2003 or $1,000,000, whichever is greater, and that for fiscal years 2007, 2008, and 2009, each State shall receive annually, of the amounts apportioned under this section, a minimum equal to the minimum required to be apportioned to the State for fiscal year 2006 plus $500,000.''; and

(2) by adding at the end the following:

''(k) AMOUNTS FOR OPERATING ASSISTANCE.—Amounts made available under this section may be used for operating assistance.

''(l) AVAILABLE FUNDS.—Notwithstanding any other provision of law, of the aggregate amounts made available by and appropriated under this chapter, the amount made available to provide transportation services to elderly individuals and individuals with disabilities under this section in each of fiscal years 2004 through 2009, shall be not less than the amount necessary to match the minimum apportionment levels required by subsection (b).''.

SEC. 5. MINIMUM LEVEL OF FUNDING FOR RURAL PROGRAM.

Section 5311 of title 49, United States Code, is amended—

(1) in subsection (c), in the first sentence, by striking the period at the end and inserting the following: '', provided that none of the 50 States shall receive, from the amounts annually apportioned under this section, an apportionment of less than $5,000,000 for each of fiscal years 2004, 2005, and 2006, and $5,500,000 for each of fiscal years 2007, 2008, and 2009.''; and

(2) by adding at the end the following:

''(k) AMOUNTS.—Notwithstanding any other provision of law, of the aggregate amounts made available by and appropriated under this chapter, the amount made available for the program established by this section in each of fiscal years 2004 through 2009 shall be not less than the sum of—

''(1) the amount made available for all States for such purpose for fiscal year 2003; and

''(2)(A) for each of fiscal years 2004, 2005, and 2006, the amount equal to the difference between $5,000,000 and the apportionment for fiscal year 2003, for each of those individual States that were apportioned less than $5,000,000 under this section for fiscal year 2003; or

''(B) for each of fiscal years 2007, 2008, and 2009, the amount equal to the difference between $5,500,000 and the apportionment for fiscal year 2003, for each of those individual States that were apportioned less than $5,500,000 under this section for fiscal year 2003.''.

SEC. 6. ESSENTIAL BUS SERVICE.

(a) IN GENERAL.—Chapter 53 of title 49, United States Code, is amended by adding at the end the following:

''§ 5339. Essential bus service

''(a) IN GENERAL.—The Secretary shall establish a program under which States shall provide essential bus service between rural areas and primary airports, as defined in section 47102, and between rural areas and stations for intercity passenger rail service, and appropriate intermediate or nearby points.

''(b) ELIGIBLE ACTIVITIES.—Eligible activities under the program established by this section shall include—

''(1) planning and marketing for intercity bus transportation;

''(2) capital grants for intercity bus shelters, park and ride facilities, and joint use facilities;

''(3) operating grants, including direct assistance, purchase of service agreements, user-side subsidies, demonstration projects, and other means; and

''(4) enhancement of connections between bus service and commercial air passenger service and intercity passenger rail service.

''(c) AVAILABILITY OF FUNDS.—Amounts made available pursuant to this section shall remain available until expended.

''(d) RELATIONSHIP TO SECTION 5311.—Amounts for the program established by this

section shall be apportioned to the States in the same proportion as amounts apportioned to the States under section 5311. Section 5311(j) applies to this section.

''(e) FUNDS.—Notwithstanding any other provision of law, of the aggregate amounts made available by and appropriated under this chapter—

''(1) for fiscal years 2004, 2005, and 2006, $30,000,000 of the total for each fiscal year shall be for the implementation of this section; and

''(2) for fiscal years 2007, 2008, and 2009, $35,000,000 of the total for each fiscal year shall be for the implementation of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 53 of title 49, United States Code, is amended by adding at the end the following:

''5339. Essential bus service.''.

SEC. 7. MINIMUM LEVEL OF FUNDING FOR URBANIZED AREAS WITH A POPULATION OF LESS THAN 200,000.

(a) MINIMUM APPORTIONMENT.—Section 5336(a)(1) of title 49, United States Code, is amended by striking ''mile; and'' and inserting the following: ''mile,

provided that the apportionments under this paragraph shall be modified to the extent required so that urbanized areas that are eligible under this paragraph and are located in a State in which all urbanized areas in the State eligible under this paragraph collectively receive apportionments totaling less than $5,000,000 in any of fiscal years 2004, 2005, or 2006, or less than $5,500,000 in any of fiscal years 2007, 2008, or 2009, shall each have their apportionments increased, proportionately, to the extent that, collectively, all of the urbanized areas in the State that are eligible under this paragraph receive, of the amounts apportioned annually under this paragraph, $5,000,000 for each of fiscal years 2004, 2005, and 2006, and $5,500,000 for each of fiscal years 2007, 2008, and 2009; and''.

(b) FUNDS.—Section 5307 of title 49, United States Code, is amended by adding at the end the following:

''(o) FUNDS.—Notwithstanding any other provision of law, of the aggregate amounts made available by and appropriated under this chapter, in each of fiscal years 2004 through 2009, the amount made available for the program established by this section shall be not less than the sum of—

''(1) the amount made available for such purpose for fiscal year 2003; and

''(2) the amount equal to the sum of the increase in apportionments for that fiscal year over fiscal year 2003, to urbanized areas with a population of less than 200,000, in affected States, attributable to the operation of section 5336(a)(1).''.

SEC. 8. LEVEL PLAYING FIELD FOR GOVERNMENT SHARE.

(a) IN GENERAL.—Chapter 53 of title 49, United States Code (as amended by section 6) is amended by adding at the end the following:

''§ 5340. Government share

''With respect to amounts apportioned or otherwise distributed for fiscal year 2004 and each subsequent fiscal year, the Government share of eligible transit project costs or eligible operating costs, shall be the greater of—

''(1) the share applicable under other provisions of this chapter; or

''(2) the share that would apply, in the State in which the transit project or operation is located, to a highway project under section 133 of title 23.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 53 of title 49, United States Code, is amended by adding at the end the following:

''5340. Government share.''.

SEC. 9. INTEREST CREDITED TO MASS TRANSIT ACCOUNT.

Section 9503(f)(2) of the Internal Revenue Code of 1986 (relating to the Highway Trust Fund) is amended by striking the period at the end and inserting the following: '', provided that after September 30, 2003, interest accruing on the balance in the Mass Transit Account shall be credited to such account.''.

By Mr. CARPER (for himself, Mr. CHAFEE, Mr. BREAUX, and Mr. BAUCUS):

S. 3135. A bill to amend the Clean Air Act to establish a national uniform multiple air pollutant regulatory program for the electric generating sector; to the Committee on Environment and Public Works.

Mr. CARPER. Mr. President, this past June, at an EPW Committee markup, I joined the majority of committee members in reporting out legislation to reduce harmful emissions from our Nation's power plants. At that time, I offered, and then withdrew an alternate, comprehensive, 4-emission approach. Since then, along with representatives from electric generators who would be impacted by such legislation, and some leaders in the environmental community, I have worked to strengthen my amendment even further. The result is the Clean Air Planning Act. I rise today to introduce this bill, and am pleased to be joined by Senators CHAFEE, BEAUX, and BAUCUS.

The bill takes a market-based approach that would aggressively reduce emissions of sulfur dioxide, SO_2, nitrogen oxides, NO_X, carbon dioxide, CO_2, and mercury from electrical power generators. This approach also would provide planning and regulatory certainty to electric generators, who are required to achieve these reductions. It is mindful of the fact that coal fuels approximately 50 percent of our Nation's electricity and contributes a disproportionate share of emissions, and will remain the leading source of reliable, affordable electricity for decades to come.

The public health and environmental impacts of SO_2, NO_X, and mercury have been well documented. While there is bipartisan agreement that emissions of these three pollutants from power plants need further control, there is some disagreement over how much and how fast. The Clean Air Planning Act would establish significant caps on total emissions of these pollutants, but the caps would be phased in to provide the industry the time needed to meet the caps. In addition, the bill includes a flexible trading system to allow the caps to be attained most efficiently.

There is also a growing consensus that greenhouse gases such as CO_2 emissions from power plants are contributing to climate change. The time has come to set up mechanisms that will address these emissions without impeding economic growth. The Clean Air Planning Act establishes the modest goal of capping CO_2 emissions from electrical generators at 2001 levels by 2012. Generators can meet that goal with a flexible system that allows both trading between generators.

The bill also includes flexible options to reduce the costs of controlling carbon dioxide emissions through international projects and through forest and agricultural projects that can sequester carbon from the atmosphere while also providing additional environmental benefits. Part of the task ahead is to get better analysis that helps determine the right parameters for these flexibility provisions, so that the bill provides a smooth least-cost transition for the industry yet also delivers a meaningful incentive for improved efficiency and reduced emissions from power plants.

In the context of comprehensive legislation that will achieve significant reductions in emissions from power plants, some existing regulatory requirements should be updated. This bill carefully updates some New Source Review requirements to eliminate redundancy while retaining strict environmental protections.

I have heard from several experts in recent weeks who have studied provisions of this bill as it was being developed, and I plan to engage them in further discussions in the weeks and months ahead. I appreciate their willingness to help keep this important topic moving forward. This is a complex issue, one that should be of great importance to electric generators, environmental leaders, State and local regulators, and to each of us here in the Senate. There are numerous complicated issues in this legislation such as the proper extent of crediting off system carbon reductions, equitable allocation of allowances, appropriate regulatory streamlining, and prevention of local impacts, and we invite assistance from all who want to help us address these issues.

Today, America's power plants will emit over 6 million tons of harmful emissions. They will also power the world's most productive economy. Reducing emissions while retaining affordable electricity is the goal of the Clean Air Planning Act, and I urge my colleagues to join me in this effort. I look forward to developing consensus within the Senate next year and passing strong, comprehensive legislation.

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

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

S. 3135

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clean Air Planning Act of 2002''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) fossil fuel-fired electric generating facilities, consisting of facilities fueled by coal, fuel oil, and natural gas, produce nearly ⅔ of the electricity generated in the United States;

(2) fossil fuel-fired electric generating facilities produce approximately ⅔ of the total sulfur dioxide emissions, ⅓ of the total nitrogen oxides emissions, ⅓ of the total carbon dioxide emissions, and ⅓ of the total mercury emissions, in the United States;

(3)(A) many electric generating facilities have been exempt from the emission limitations applicable to new units based on the expectation that over time the units would be retired or updated with new pollution control equipment; but

(B) many of the exempted units continue to operate and emit pollutants at relatively high rates;

(4) pollution from existing electric generating facilities can be reduced through adoption of modern technologies and practices;

(5) the electric generating industry is being restructured with the objective of providing lower electricity rates and higher quality service to consumers;

(6) the full benefits of competition will not be realized if the environmental impacts of generation of electricity are not uniformly internalized; and

(7) the ability of owners of electric generating facilities to effectively plan for the future is impeded by the uncertainties surrounding future environmental regulatory requirements that are imposed inefficiently on a piecemeal basis.

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

(1) to protect and preserve the environment and safeguard public health by ensuring that substantial emission reductions are achieved at fossil fuel-fired electric generating facilities;

(2) to significantly reduce the quantities of mercury, carbon dioxide, sulfur dioxide, and nitrogen oxides that enter the environment as a result of the combustion of fossil fuels;

(3) to encourage the development and use of renewable energy;

(4) to internalize the cost of protecting the values of public health, air, land, and water quality in the context of a competitive market in electricity;

(5) to ensure fair competition among participants in the competitive market in electricity that will result from fully restructuring the electric generating industry;

(6) to provide a period of environmental regulatory stability for owners and operators of electric generating facilities so as to promote improved management of existing assets and new capital investments; and

(7) to achieve emission reductions from electric generating facilities in a cost-effective manner.

SEC. 3. INTEGRATED AIR QUALITY PLANNING FOR THE ELECTRIC GENERATING SECTOR.

The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—INTEGRATED AIR QUALITY PLANNING FOR THE ELECTRIC GENERATING SECTOR

"SEC. 701. DEFINITIONS.

''In this title:

''(1) AFFECTED UNIT.—

''(A) MERCURY.—The term 'affected unit', with respect to mercury, means a coal-fired electric generating facility (including a cogenerating facility) that—

''(i) has a nameplate capacity greater than 25 megawatts; and

''(ii) generates electricity for sale.

''(B) NITROGEN OXIDES AND CARBON DIOXIDE.—The term 'affected unit', with respect to nitrogen oxides and carbon dioxide, means a fossil fuel-fired electric generating facility (including a cogenerating facility) that—

''(i) has a nameplate capacity greater than 25 megawatts; and

''(ii) generates electricity for sale.

''(C) SULFUR DIOXIDE.—The term 'affected unit', with respect to sulfur dioxide, has the meaning given the term in section 402.

''(2) CARBON DIOXIDE ALLOWANCE.—The term 'carbon dioxide allowance' means an authorization allocated by the Administrator under this title to emit 1 ton of carbon dioxide during or after a specified calendar year.

''(3) COVERED UNIT.—The term 'covered unit' means—

''(A) an affected unit;

''(B) a nuclear generating unit with respect to incremental nuclear generation; and

''(C) a renewable energy unit.

''(4) GREENHOUSE GAS.—The term 'greenhouse gas' means—

''(A) carbon dioxide;

''(B) methane;

''(C) nitrous oxide;

''(D) hydrofluorocarbons;

''(E) perfluorocarbons; and

''(F) sulfur hexafluoride.

''(5) INCREMENTAL NUCLEAR GENERATION.—The term 'incremental nuclear generation' means the difference between—

''(A) the quantity of electricity generated by a nuclear generating unit in a calendar year; and

''(B) the quantity of electricity generated by the nuclear generating unit in calendar year 1990;

as determined by the Administrator and measured in megawatt hours.

''(6) MERCURY ALLOWANCE.—The term 'mercury allowance' means an authorization allocated by the Administrator under this title to emit 1 pound of mercury during or after a specified calendar year.

''(7) NEW RENEWABLE ENERGY UNIT.—The term 'new renewable energy unit' means a renewable energy unit that has operated for a period of not more than 3 years.

''(8) NEW UNIT.—The term 'new unit' means an affected unit that has operated for not more than 3 years and is not eligible to receive—

''(A) sulfur dioxide allowances under section 417(b);

''(B) nitrogen oxide allowances or mercury allowances under section 703(c)(2); or

''(C) carbon dioxide allowances under section 704(c)(2).

''(9) NITROGEN OXIDE ALLOWANCE.—The term 'nitrogen oxide allowance' means an authorization allocated by the Administrator under this title to emit 1 ton of nitrogen oxides during or after a specified calendar year.

''(10) NUCLEAR GENERATING UNIT.—The term 'nuclear generating unit' means an electric generating facility that—

''(A) uses nuclear energy to supply electricity to the electric power grid; and

''(B) commenced operation in calendar year 1990 or earlier.

''(11) RENEWABLE ENERGY.—The term 'renewable energy' means electricity generated from—

''(A) wind;

''(B) organic waste (excluding incinerated municipal solid waste);

''(C) biomass (including anaerobic digestion from farm systems and landfill gas recovery);

''(D) fuel cells; or

''(E) a hydroelectric, geothermal, solar thermal, photovoltaic, or other nonfossil fuel, nonnuclear source.

''(12) RENEWABLE ENERGY UNIT.—The term 'renewable energy unit' means an electric generating facility that uses exclusively renewable energy to supply electricity to the electric power grid.

''(13) SEQUESTRATION.—The term 'sequestration' means the action of sequestering carbon by—

''(A) enhancing a natural carbon sink (such as through afforestation); or

''(B)(i) capturing the carbon dioxide emitted from a fossil fuel-based energy system; and

''(ii)(I) storing the carbon in a geologic formation or in a deep area of an ocean; or

''(II) converting the carbon to a benign solid material through a biological or chemical process.

''(14) SULFUR DIOXIDE ALLOWANCE.—The term 'sulfur dioxide allowance' has the meaning given the term 'allowance' in section 402.

"SEC. 702. NATIONAL POLLUTANT TONNAGE LIMITATIONS.

''(a) SULFUR DIOXIDE.—The annual tonnage limitation for emissions of sulfur dioxide from affected units in the United States shall be equal to—

''(1) for each of calendar years 2008 through 2011, 4,500,000 tons;

''(2) for each of calendar years 2012 through 2014, 3,500,000 tons; and

''(3) for calendar year 2015 and each calendar year thereafter, 2,250,000 tons.

''(b) NITROGEN OXIDES.—The annual tonnage limitation for emissions of nitrogen oxides from affected units in the United States shall be equal to—

''(1) for each of calendar years 2008 through 2011, 1,870,000 tons; and

''(2) for calendar year 2012 and each calendar year thereafter, 1,700,000 tons.

''(c) MERCURY.—

''(1) IN GENERAL.—The annual tonnage limitation for emissions of mercury from affected units in the United States shall be equal to—

''(A) for each of calendar years 2008 through 2011, 24 tons; and

''(B) for calendar year 2012 and each calendar year thereafter, a percentage determined under paragraph (2) of the total quantity of mercury present in delivered coal in calendar year 1999 (as determined by the Administrator).

''(2) DETERMINATION OF PERCENTAGE.—The percentage referred to in paragraph (1)(B) shall be—

''(A) not less than 7 nor more than 21 percent; and

''(B) determined by the Administrator not later than January 1, 2004, based on the best scientific data available concerning—

''(i) the reduction in emissions of mercury necessary to protect public health and the environment; and

''(ii) the cost and performance of mercury control technology.

''(3) MAXIMUM EMISSIONS OF MERCURY FROM EACH AFFECTED UNIT.—

''(A) CALENDAR YEARS 2008 THROUGH 2011.—For each of calendar years 2008 through 2011, the emissions of mercury from each affected unit shall not exceed either, at the option of the operator of the affected unit—

''(i) 50 percent of the total quantity of mercury present in the coal delivered to the affected unit in the calendar year; or

''(ii) an annual output-based emission rate for mercury that shall be determined by the Administrator based on an input-based rate of 4 pounds per trillion British thermal units.

''(B) CALENDAR YEAR 2012 AND THEREAFTER.—For calendar year 2012 and each calendar year thereafter, the emissions of mercury from each affected unit shall not exceed—

''(i) 30 percent of the total quantity of mercury present in the coal delivered to the affected unit in the calendar year; or

''(ii) an annual output-based emission rate for mercury that shall be determined by the Administrator.

''(d) CARBON DIOXIDE.—Subject to section 704(d), the annual tonnage limitation for emissions of carbon dioxide from covered units in the United States shall be equal to—

''(1) for each of calendar years 2008 through 2011, the quantity of emissions projected to be emitted from affected units in calendar year 2005, as determined by the Energy Information Administration of the Department of Energy based on the projections of the Administration the publication of which most closely precedes the date of enactment of this title; and

''(2) for calendar year 2012 and each calendar year thereafter, the quantity of emissions emitted from affected units in calendar year 2001, as determined by the Energy Information Administration of the Department of Energy.

''(e) REVIEW OF ANNUAL TONNAGE LIMITATIONS.—

''(1) PERIOD OF EFFECTIVENESS.—The annual tonnage limitations established under subsections (a) through (d) shall remain in effect until the date that is 20 years after the date of enactment of this title.

''(2) DETERMINATION BY ADMINISTRATOR.—Not later than 15 years after the date of enactment of this title, the Administrator, after considering impacts on human health, the environment, the economy, and costs, shall determine whether 1 or more of the annual tonnage limitations should be revised.

''(3) DETERMINATION NOT TO REVISE.—If the Administrator determines under paragraph (2) that none of the annual tonnage limitations should be revised, the Administrator shall publish in the Federal Register a notice of the determination and the reasons for the determination.

''(4) DETERMINATION TO REVISE.—

''(A) IN GENERAL.—If the Administrator determines under paragraph (2) that 1 or more of the annual tonnage limitations should be revised, the Administrator shall publish in the Federal Register—

''(i) not later than 15 years and 180 days after the date of enactment of this title, proposed regulations implementing the revisions; and

''(ii) not later than 16 years and 180 days after the date of enactment of this title, final regulations implementing the revisions.

''(B) EFFECTIVE DATE OF REVISIONS.—Any revisions to the annual tonnage limitations under subparagraph (A) shall take effect on the date that is 20 years after the date of enactment of this title.

''(f) REDUCTION OF EMISSIONS FROM SPECIFIED AFFECTED UNITS.—Subject to the requirements of this Act concerning national ambient air quality standards established under part A of title I, notwithstanding the annual tonnage limitations established under this section, the Federal Government or a State government may require that emissions from a specified affected unit be reduced to address a local air quality problem.

''SEC. 703. NITROGEN OXIDE AND MERCURY ALLOWANCE TRADING PROGRAMS.

''(a) REGULATIONS.—

''(1) PROMULGATION.—

''(A) IN GENERAL.—Not later than January 1, 2004, the Administrator shall promulgate regulations to establish for affected units in the United States—

''(i) a nitrogen oxide allowance trading program; and

''(ii) a mercury allowance trading program.

''(B) REQUIREMENTS.—Regulations promulgated under subparagraph (A) shall establish requirements for the allowance trading programs under this section, including requirements concerning—

''(i)(I) the generation, allocation, issuance, recording, tracking, transfer, and use of nitrogen oxide allowances and mercury allowances; and

''(II) the public availability of all information concerning the activities described in subclause (I) that is not confidential;

''(ii) compliance with subsection (e)(1);

''(iii) the monitoring and reporting of emissions under paragraphs (2) and (3) of subsection (e); and

''(iv) excess emission penalties under subsection (e)(4).

''(2) MIXED FUEL, CO-GENERATION FACILITIES AND COMBINED HEAT AND POWER FACILITIES.—The Administrator shall promulgate such regulations as are necessary to ensure the equitable issuance of allowances to—

''(A) facilities that use more than 1 energy source to produce electricity; and

''(B) facilities that produce electricity in addition to another service or product.

''(3) REPORT TO CONGRESS ON USE OF CAPTURED OR RECOVERED MERCURY.—

''(A) IN GENERAL.—Not later than 18 months after the date of enactment of this title, the Administrator shall submit to Congress a report on the public health and environmental impacts from mercury that is or may be—

''(i) captured or recovered by air pollution control technology; and

''(ii) incorporated into products such as soil amendments and cement.

''(B) REQUIRED ELEMENTS.—The report shall—

''(i) review—

''(I) technologies, in use as of the date of the report, for incorporating mercury into products; and

''(II) potential technologies that might further minimize the release of mercury; and

''(ii)(I) address the adequacy of legal authorities and regulatory programs in effect as of the date of the report to protect public health and the environment from mercury in products described in subparagraph (A)(ii); and

''(II) to the extent necessary, make recommendations to improve those authorities and programs.

''(b) NEW UNIT RESERVES.—

''(1) ESTABLISHMENT.—The Administrator shall establish by regulation a reserve of nitrogen oxide allowances and a reserve of mercury allowances to be set aside for use by new units.

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units—

''(A) not later than June 30, 2004, the quantity of nitrogen oxide allowances and mercury allowances required to be held in reserve for new units for each of calendar years 2008 through 2012; and

''(B) not later than June 30 of each fifth calendar year thereafter, the quantity of nitrogen oxide allowances and mercury allowances required to be held in reserve for new units for the following 5-calendar year period.

''(c) NITROGEN OXIDE AND MERCURY ALLOWANCE ALLOCATIONS.—

''(1) TIMING OF ALLOCATIONS.—The Administrator shall allocate nitrogen oxide allowances and mercury allowances to affected units—

''(A) not later than December 31, 2004, for calendar year 2008; and

''(B) not later than December 31 of calendar year 2005 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(2) ALLOCATIONS TO AFFECTED UNITS THAT ARE NOT NEW UNITS.—

''(A) QUANTITY OF NITROGEN OXIDE ALLOWANCES ALLOCATED.—The Administrator shall allocate to each affected unit that is not a new unit a quantity of nitrogen oxide allowances that is equal to the product obtained by multiplying—

''(i) 1.5 pounds of nitrogen oxides per megawatt hour; and

''(ii) the quotient obtained by dividing—

''(I) the average annual net quantity of electricity generated by the affected unit during the most recent 3-calendar year period for which data are available, measured in megawatt hours; by

''(II) 2,000 pounds of nitrogen oxides per ton.

''(B) QUANTITY OF MERCURY ALLOWANCES ALLOCATED.—The Administrator shall allocate to each affected unit that is not a new unit a quantity of mercury allowances that is equal to the product obtained by multiplying—

''(i) 0.0000227 pounds of mercury per megawatt hour; and

''(ii) the average annual net quantity of electricity generated by the affected unit during the most recent 3-calendar year period for which data are available, measured in megawatt hours.

''(C) ADJUSTMENT OF ALLOCATIONS.—

''(i) IN GENERAL.—If, for any calendar year, the total quantity of allowances allocated under subparagraph (A) or (B) is not equal to the applicable quantity determined under clause (ii), the Administrator shall adjust the quantity of allowances allocated to affected units that are not new units on a pro rata basis so that the quantity is equal to the applicable quantity determined under clause (ii).

''(ii) APPLICABLE QUANTITY.—The applicable quantity referred to in clause (i) is the difference between—

''(I) the applicable annual tonnage limitation for emissions from affected units specified in subsection (b) or (c) of section 702 for the calendar year; and

''(II) the quantity of nitrogen oxide allowances or mercury allowances, respectively, placed in the applicable new unit reserve established under subsection (b) for the calendar year.

''(3) ALLOCATION TO NEW UNITS.—

''(A) METHODOLOGY.—The Administrator shall promulgate regulations to establish a methodology for allocating nitrogen oxide allowances and mercury allowances to new units.

''(B) QUANTITY OF NITROGEN OXIDE ALLOWANCES AND MERCURY ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of nitrogen oxide allowances and mercury allowances to be allocated to each new unit based on the projected emissions from the new unit.

''(4) ALLOWANCE NOT A PROPERTY RIGHT.—A nitrogen oxide allowance or mercury allowance—

''(A) is not a property right; and

''(B) may be terminated or limited by the Administrator.

''(5) NO JUDICIAL REVIEW.—An allocation of nitrogen allowances or mercury allowances by the Administrator under this subsection shall not be subject to judicial review.

''(d) NITROGEN OXIDE ALLOWANCE AND MERCURY ALLOWANCE TRANSFER SYSTEM.—

''(1) USE OF ALLOWANCES.—The regulations promulgated under subsection (a)(1)(A) shall—

''(A) prohibit the use (but not the transfer in accordance with paragraph (3)) of any nitrogen oxide allowance or mercury allowance before the calendar year for which the allowance is allocated;

''(B) provide that unused nitrogen oxide allowances and mercury allowances may be carried forward and added to nitrogen oxide allowances and mercury allowances, respectively, allocated for subsequent years; and

''(C) provide that unused nitrogen oxide allowances and mercury allowances may be transferred by—

''(i) the person to which the allowances are allocated; or

''(ii) any person to which the allowances are transferred.

''(2) USE BY PERSONS TO WHICH ALLOWANCES ARE TRANSFERRED.—Any person to which nitrogen oxide allowances or mercury allowances are transferred under paragraph (1)(C)—

''(A) may use the nitrogen oxide allowances or mercury allowances in the calendar year for which the nitrogen oxide allowances or mercury allowances were allocated, or in a subsequent calendar year, to demonstrate compliance with subsection (e)(1); or

''(B) may transfer the nitrogen oxide allowances or mercury allowances to any other person for the purpose of demonstration of that compliance.

''(3) CERTIFICATION OF TRANSFER.—A transfer of a nitrogen oxide allowance or mercury allowance shall not take effect until a written certification of the transfer, authorized by a responsible official of the person making the transfer, is received and recorded by the Administrator.

''(4) PERMIT REQUIREMENTS.—An allocation or transfer of nitrogen oxide allowances or mercury allowances to an affected unit shall, after recording by the Administrator, be considered to be part of the federally enforceable permit of the affected unit under this Act, without a requirement for any further review or revision of the permit.

''(e) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2008 and each calendar year thereafter, the operator of each affected unit shall surrender to the Administrator—

''(A) a quantity of nitrogen oxide allowances that is equal to the total tons of nitrogen oxides emitted by the affected unit during the calendar year; and

''(B) a quantity of mercury allowances that is equal to the total pounds of mercury emitted by the affected unit during the calendar year.

''(2) MONITORING SYSTEM.—The Administrator shall promulgate regulations requiring the accurate monitoring of the quantities of nitrogen oxides and mercury that are emitted at each affected unit.

''(3) REPORTING.—

''(A) IN GENERAL.—Not less often than quarterly, the owner or operator of an affected unit shall submit to the Administrator a report on the monitoring of emissions of nitrogen oxides and mercury carried out by the owner or operator in accordance with the regulations promulgated under paragraph (2).

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the affected unit, who shall certify the accuracy of the report.

''(C) PUBLIC REPORTING.—The Administrator shall make available to the public, through 1 or more published reports and 1 or more forms of electronic media, data concerning the emissions of nitrogen oxides and mercury from each affected unit.

''(4) EXCESS EMISSIONS.—

''(A) IN GENERAL.—The owner or operator of an affected unit that emits nitrogen oxides or mercury in excess of the nitrogen oxide allowances or mercury allowances that the owner or operator holds for use for the affected unit for the calendar year shall—

''(i) pay an excess emissions penalty determined under subparagraph (B); and

''(ii) offset the excess emissions by an equal quantity in the following calendar year or such other period as the Administrator shall prescribe.

''(B) DETERMINATION OF EXCESS EMISSIONS PENALTY.—

''(i) NITROGEN OXIDES.—The excess emissions penalty for nitrogen oxides shall be equal to the product obtained by multiplying—

''(I) the number of tons of nitrogen oxides emitted in excess of the total quantity of nitrogen oxide allowances held; and

''(II) $5,000, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

''(ii) MERCURY.—The excess emissions penalty for mercury shall be equal to the product obtained by multiplying—

''(I) the number of pounds of mercury emitted in excess of the total quantity of mercury allowances held; and

''(II) $10,000, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

''SEC. 704. CARBON DIOXIDE ALLOWANCE TRADING PROGRAM.

''(a) REGULATIONS.—

''(1) IN GENERAL.—Not later than January 1, 2004, the Administrator shall promulgate regulations to establish a carbon dioxide allowance trading program for covered units in the United States.

''(2) REQUIRED ELEMENTS.—Regulations promulgated under paragraph (1) shall establish requirements for the carbon dioxide allowance trading program under this section, including requirements concerning—

''(A)(i) the generation, allocation, issuance, recording, tracking, transfer, and use of carbon dioxide allowances; and

''(ii) the public availability of all information concerning the activities described in clause (i) that is not confidential;

''(B) compliance with subsection (f)(1);

''(C) the monitoring and reporting of emissions under paragraphs (2) and (3) of subsection (f);

''(D) excess emission penalties under subsection (f)(4); and

''(E) standards, guidelines, and procedures concerning the generation, certification, and use of additional carbon dioxide allowances made available under subsection (d).

''(b) NEW UNIT RESERVE.—

''(1) ESTABLISHMENT.—The Administrator shall establish by regulation a reserve of carbon dioxide allowances to be set aside for use by new units and new renewable energy units.

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units and new renewable energy units—

''(A) not later than June 30, 2004, the quantity of carbon dioxide allowances required to be held in reserve for new units and new renewable energy units for each of calendar years 2008 through 2012; and

''(B) not later than June 30 of each fifth calendar year thereafter, the quantity of carbon dioxide allowances required to be held in reserve for new units and renewable energy units for the following 5-calendar year period.

''(c) CARBON DIOXIDE ALLOWANCE ALLOCATION.—

''(1) TIMING OF ALLOCATIONS.—The Administrator shall allocate carbon dioxide allowances to covered units—

''(A) not later than December 31, 2004, for calendar year 2008; and

''(B) not later than December 31 of calendar year 2005 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(2) ALLOCATIONS TO COVERED UNITS THAT ARE NOT NEW UNITS.—

''(A) IN GENERAL.—The Administrator shall allocate to each affected unit that is not a new unit, to each nuclear generating unit with respect to incremental nuclear generation, and to each renewable energy unit that is not a new renewable energy unit, a quantity of carbon dioxide allowances that is equal to the product obtained by multiplying—

''(i) the quantity of carbon dioxide allowances available for allocation under subparagraph (B); and

''(ii) the quotient obtained by dividing—

''(I) the average net quantity of electricity generated by the unit in a calendar year during the most recent 3-calendar year period for which data are available, measured in megawatt hours; and

''(II) the total of the average net quantities described in subclause (I) with respect to all such units.

''(B) QUANTITY TO BE ALLOCATED.—For each calendar year, the quantity of carbon dioxide allowances allocated under subparagraph (A) shall be equal to the difference between—

''(i) the annual tonnage limitation for emissions of carbon dioxide from affected units specified in section 702(d) for the calendar year; and

''(ii) the quantity of carbon dioxide allowances placed in the new unit reserve established under subsection (b) for the calendar year.

''(3) ALLOCATION TO NEW UNITS AND NEW RENEWABLE ENERGY UNITS.—

''(A) METHODOLOGY.—The Administrator shall promulgate regulations to establish a methodology for allocating carbon dioxide allowances to new units and new renewable energy units.

''(B) QUANTITY OF CARBON DIOXIDE ALLOWANCES ALLOCATED.—The Administrator shall determine the quantity of carbon dioxide allowances to be allocated to each new unit and each new renewable energy unit based on the unit's projected share of the total electric power generation attributable to covered units.

''(d) ISSUANCE AND USE OF ADDITIONAL CARBON DIOXIDE ALLOWANCES.—

''(1) IN GENERAL.—

''(A) ALLOWANCES FOR PROJECTS CERTIFIED BY INDEPENDENT REVIEW BOARD.—In addition to carbon dioxide allowances allocated under subsection (c), the Administrator shall make carbon dioxide allowances available to projects that are certified, in accordance with paragraph (3), by the independent review board established under paragraph (2) as eligible to receive the carbon dioxide allowances.

''(B) ALLOWANCES OBTAINED UNDER OTHER PROGRAMS.—The regulations promulgated under subsection (a)(1) shall—

''(i) allow covered units to comply with subsection (f)(1) by purchasing and using carbon dioxide allowances that are traded under

any other United States or internationally recognized carbon dioxide reduction program that is specified under clause (ii);

''(ii) specify, for the purpose of clause (i), programs that meet the goals of this section; and

''(iii) apply such conditions to the use of carbon dioxide allowances traded under programs specified under clause (ii) as are necessary to achieve the goals of this section.

''(2) INDEPENDENT REVIEW BOARD.—

''(A) IN GENERAL.—

''(i) ESTABLISHMENT.—The Administrator shall establish an independent review board to assist the Administrator in certifying projects as eligible for carbon dioxide allowances made available under paragraph (1)(A).

''(ii) REVIEW AND APPROVAL.—Each certification by the independent review board of a project shall be subject to the review and approval of the Administrator.

''(iii) REQUIREMENTS.—Subject to this subsection, requirements relating to the creation, composition, duties, responsibilities, and other aspects of the independent review board shall be included in the regulations promulgated by the Administrator under subsection (a).

''(B) MEMBERSHIP.—The independent review board shall be composed of 12 members, of whom—

''(i) 10 members shall be appointed by the Administrator, of whom—

''(I) 1 member shall represent the Environmental Protection Agency (who shall serve as chairperson of the independent review board);

''(II) 3 members shall represent State governments;

''(III) 3 members shall represent the electric generating sector; and

''(IV) 3 members shall represent environmental organizations;

''(ii) 1 member shall be appointed by the Secretary of Energy to represent the Department of Energy; and

''(iii) 1 member shall be appointed by the Secretary of Agriculture to represent the Department of Agriculture.

''(C) STAFF AND OTHER RESOURCES.—The Administrator shall provide such staff and other resources to the independent review board as the Administrator determines to be necessary.

''(D) DEVELOPMENT OF GUIDELINES.—

''(i) IN GENERAL.—The independent review board shall develop guidelines for certifying projects in accordance with paragraph (3), including—

''(I) criteria that address the validity of claims that projects result in the generation of carbon dioxide allowances;

''(II) guidelines for certifying incremental carbon sequestration in accordance with clause (ii); and

''(III) guidelines for certifying geological sequestration of carbon dioxide in accordance with clause (iii).

''(ii) GUIDELINES FOR CERTIFYING INCREMENTAL CARBON SEQUESTRATION.—The guidelines for certifying incremental carbon sequestration in forests, agricultural soil, rangeland, or grassland shall include development, reporting, monitoring, and verification guidelines, to be used in quantifying net carbon sequestration from land use projects, that are based on—

''(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

''(II) comprehensive carbon accounting that—

''(aa) reflects net increases in carbon reservoirs; and

''(bb) takes into account any carbon emissions resulting from disturbance of carbon reservoirs in existence as of the date of commencement of the project;

''(III) adjustments to account for—

''(aa) emissions of carbon that may result at other locations as a result of the impact of the project on timber supplies; or

''(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

''(IV) adjustments to reflect the expected carbon storage over various time periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir.

''(iii) GUIDELINES FOR CERTIFYING GEOLOGICAL SEQUESTRATION OF CARBON DIOXIDE.—The guidelines for certifying geological sequestration of carbon dioxide produced by a covered unit shall—

''(I) provide that a project shall be certified only to the extent that the geological sequestration of carbon dioxide produced by a covered unit is in addition to any carbon dioxide used by the covered unit in 2008 for enhanced oil recovery; and

''(II) include requirements for development, reporting, monitoring, and verification for quantifying net carbon sequestration—

''(aa) to ensure the permanence of the sequestration; and

''(bb) to ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.

''(iv) DEADLINES FOR DEVELOPMENT.—The guidelines under clause (i) shall be developed—

''(I) with respect to projects described in paragraph (3)(A), not later than January 1, 2004; and

''(II) with respect to projects described in paragraph (3)(B), not later than January 1, 2005.

''(v) UPDATING OF GUIDELINES.—The independent review board shall periodically update the guidelines as the independent review board determines to be appropriate.

''(E) CERTIFICATION OF PROJECTS.—

''(i) IN GENERAL.—Subject to clause (ii), subparagraph (A)(ii), and paragraph (3), the independent review board shall certify projects as eligible for additional carbon dioxide allowances.

''(ii) LIMITATION.—The independent review board shall not certify a project under this subsection if the carbon dioxide emission reductions achieved by the project will be used to satisfy any requirement imposed on any foreign country or any industrial sector to reduce the quantity of greenhouse gases emitted by the foreign country or industrial sector.

''(3) PROJECTS ELIGIBLE FOR ADDITIONAL CARBON DIOXIDE ALLOWANCES.—

''(A) PROJECTS CARRIED OUT IN CALENDAR YEARS 1990 THROUGH 2007.—

''(i) IN GENERAL.—The independent review board may certify as eligible for carbon dioxide allowances a project that—

''(I) is carried out on or after January 1, 1990, and before January 1, 2008; and

''(II) consists of—

''(aa) a carbon sequestration project carried out in the United States or a foreign country;

''(bb) a project reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

''(cc) any other project to reduce emissions of greenhouse gases that is carried out in the United States or a foreign country.

''(ii) MAXIMUM QUANTITY OF ADDITIONAL CARBON DIOXIDE ALLOWANCES.—The Administrator may make available to projects certified under clause (i) a quantity of allowances that is not greater than 10 percent of the tonnage limitation for calendar year 2008 for emissions of carbon dioxide from affected units specified in section 702(d)(1).

''(iii) USE OF ALLOWANCES.—Allowances made available under clause (ii) may be used to comply with subsection (f)(1) in calendar year 2008 or any calendar year thereafter.

''(B) PROJECTS CARRIED OUT IN CALENDAR YEAR 2008 AND THEREAFTER.—The independent review board may certify as eligible for carbon dioxide allowances a project that—

''(i) is carried out on or after January 1, 2008; and

''(ii) consists of—

''(I) a carbon sequestration project carried out in the United States or a foreign country; or

''(II) a project to reduce the greenhouse gas emissions (on a carbon dioxide equivalency basis determined by the independent review board) of a source of greenhouse gases that is not an affected unit.

''(e) CARBON DIOXIDE ALLOWANCE TRANSFER SYSTEM.—

''(1) USE OF ALLOWANCES.—The regulations promulgated under subsection (a)(1) shall—

''(A) prohibit the use (but not the transfer in accordance with paragraph (3)) of any carbon dioxide allowance before the calendar year for which the carbon dioxide allowance is allocated;

''(B) provide that unused carbon dioxide allowances may be carried forward and added to carbon dioxide allowances allocated for subsequent years;

''(C) provide that unused carbon dioxide allowances may be transferred by—

''(i) the person to which the carbon dioxide allowances are allocated; or

''(ii) any person to which the carbon dioxide allowances are transferred; and

''(D) provide that carbon dioxide allowances allocated and transferred under this section may be transferred into any other market-based carbon dioxide emission trading program that is—

''(i) approved by the President; and

''(ii) implemented in accordance with regulations developed by the Administrator or the head of any other Federal agency.

''(2) USE BY PERSONS TO WHICH CARBON DIOXIDE ALLOWANCES ARE TRANSFERRED.—Any person to which carbon dioxide allowances are transferred under paragraph (1)(C)—

''(A) may use the carbon dioxide allowances in the calendar year for which the carbon dioxide allowances were allocated, or in a subsequent calendar year, to demonstrate compliance with subsection (f)(1); or

''(B) may transfer the carbon dioxide allowances to any other person for the purpose of demonstration of that compliance.

''(3) CERTIFICATION OF TRANSFER.—A transfer of a carbon dioxide allowance shall not take effect until a written certification of the transfer, authorized by a responsible official of the person making the transfer, is received and recorded by the Administrator.

''(4) PERMIT REQUIREMENTS.—An allocation or transfer of carbon dioxide allowances to a covered unit, or for a project carried out on behalf of a covered unit, under subsection (c) or (d) shall, after recording by the Administrator, be considered to be part of the federally enforceable permit of the covered unit under this Act, without a requirement for any further review or revision of the permit.

''(f) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2008 and each calendar year thereafter—

''(A) the operator of each affected unit and each renewable energy unit shall surrender to the Administrator a quantity of carbon dioxide allowances that is equal to the total tons of carbon dioxide emitted by the affected unit or renewable energy unit during the calendar year; and

''(B) the operator of each nuclear generating unit that has incremental nuclear generation shall surrender to the Administrator a quantity of carbon dioxide allowances that is equal to the total tons of carbon dioxide emitted by the nuclear generating unit during the calendar year from incremental nuclear generation.

''(2) MONITORING SYSTEM.—The Administrator shall promulgate regulations requiring the accurate monitoring of the quantity of carbon dioxide that is emitted at each covered unit.

''(3) REPORTING.—

''(A) IN GENERAL.—Not less often than quarterly, the owner or operator of a covered unit, or a person that carries out a project certified under subsection (d) on behalf of a covered unit, shall submit to the Administrator a report on the monitoring of carbon dioxide emissions carried out at the covered unit in accordance with the regulations promulgated under paragraph (2).

''(B) AUTHORIZATION.—Each report submitted under subparagraph (A) shall be authorized by a responsible official of the covered unit, who shall certify the accuracy of the report.

''(C) PUBLIC REPORTING.—The Administrator shall make available to the public, through 1 or more published reports and 1 or more forms of electronic media, data concerning the emissions of carbon dioxide from each covered unit.

''(4) EXCESS EMISSIONS.—

''(A) IN GENERAL.—The owner or operator of a covered unit that emits carbon dioxide in excess of the carbon dioxide allowances that the owner or operator holds for use for the covered unit for the calendar year shall—

''(i) pay an excess emissions penalty determined under subparagraph (B); and

''(ii) offset the excess emissions by an equal quantity in the following calendar year or such other period as the Administrator shall prescribe.

''(B) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty shall be equal to the product obtained by multiplying—

''(i) the number of tons of carbon dioxide emitted in excess of the total quantity of carbon dioxide allowances held; and

''(ii) $100, adjusted (in accordance with regulations promulgated by the Administrator) for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

''(g) ALLOWANCE NOT A PROPERTY RIGHT.—A carbon dioxide allowance—

''(1) is not a property right; and

''(2) may be terminated or limited by the Administrator.

''(h) NO JUDICIAL REVIEW.—An allocation of carbon dioxide allowances by the Administrator under subsection (c) or (d) shall not be subject to judicial review.''.

SEC. 4. NEW SOURCE REVIEW PROGRAM.

Section 165 of the Clean Air Act (42 U.S.C. 7475) is amended by adding at the end the following:

''(f) REVISIONS TO NEW SOURCE REVIEW PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED UNIT.—The term 'covered unit' has the meaning given the term in section 701.

''(B) NEW SOURCE REVIEW PROGRAM.—The term 'new source review program' means the program to carry out section 111 and this part.

''(2) REGULATIONS.—In accordance with this subsection, the Administrator shall promulgate revisions to the new source review program.

''(3) APPLICABILITY CRITERIA.—The regulations shall revise the applicability criteria under the new source review program for covered units so that, beginning January 1, 2008, a physical change or a change in the method of operation at a covered unit shall be subject to the regulations under the new source review program and subject to approval by the Administrator only if—

''(A)(i) the change involves the replacement of 1 or more components of the covered unit; and

''(ii) the amount of the fixed capital costs of the replacement exceeds 50 percent of the amount of the fixed capital costs of construction of a comparable new covered unit; or

''(B) the change results in any increase in the rate of emissions from the covered unit of air pollutants regulated under the new source review program (measured in pounds per megawatt hour).

''(4) LOWEST ACHIEVABLE EMISSION RATE.—The regulations shall revise the definition of 'lowest achievable emission rate' under section 171, with respect to technology required to be installed by the electric generating sector, to allow costs to be considered in the determination of the lowest achievable emission rate, so that, beginning January 1, 2008, a covered unit (as defined in section 701) shall not be required to install technology required to meet a lowest achievable emission rate if the cost of the technology exceeds a maximum amount (in dollars per ton) that—

''(A) is determined by the Administrator; but

''(B) does not exceed twice the amount of the cost guideline for best available control technology established under subsection (a)(4).

''(5) EMISSION OFFSETS.—A new source within the electric generating sector that locates in a nonattainment area after December 31, 2007, shall not be required to obtain offsets for emissions of air pollutants.

''(6) NO EFFECT ON OTHER REQUIREMENTS.—Nothing in this subsection affects the obligation of any State or local government to comply with the requirements established under this section concerning—

''(A) national ambient air quality standards;

''(B) maximum allowable air pollutant increases or maximum allowable air pollutant concentrations; or

''(C) protection of visibility and other air quality-related values in areas designated as class I areas under part C of title I.''.

SEC. 5. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PROGRAM.

(a) IN GENERAL.—Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651 et seq.) is amended by adding at the end the following:

''SEC. 417. REVISIONS TO SULFUR DIOXIDE ALLOWANCE PROGRAM.

''(a) DEFINITIONS.—In this section, the terms 'affected unit' and 'new unit' have the meanings given the terms in section 701.

''(b) REGULATIONS.—Not later than January 1, 2004, the Administrator shall promulgate such revisions to the regulations to implement this title as the Administrator determines to be necessary to implement section 702(a).

''(c) NEW UNIT RESERVE.—

''(1) ESTABLISHMENT.—Subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a), the Administrator shall establish by regulation a reserve of allowances to be set aside for use by new units.

''(2) DETERMINATION OF QUANTITY.—The Administrator, in consultation with the Secretary of Energy, shall determine, based on projections of electricity output for new units—

''(A) not later than June 30, 2004, the quantity of allowances required to be held in reserve for new units for each of calendar years 2008 through 2012; and

''(B) not later than June 30 of each fifth calendar year thereafter, the quantity of allowances required to be held in reserve for new units for the following 5-calendar year period.

''(3) ALLOCATION.—

''(A) REGULATIONS.—The Administrator shall promulgate regulations to establish a methodology for allocating allowances to new units.

''(B) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this subsection shall not be subject to judicial review.

''(d) EXISTING UNITS.—

''(1) ALLOCATION.—

''(A) REGULATIONS.—Subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a), and subject to the reserve of allowances for new units under subsection (c), the Administrator shall promulgate regulations to govern the allocation of allowances to affected units that are not new units.

''(B) REQUIRED ELEMENTS.—The regulations shall provide for—

''(i) the allocation of allowances on a fair and equitable basis between affected units that received allowances under section 405 and affected units that are not new units and that did not receive allowances under that section, using for both categories of units the same or similar allocation methodology as was used under section 405; and

''(ii) the pro-rata distribution of allowances to all units described in clause (i), subject to the annual tonnage limitation for emissions of sulfur dioxide from affected units specified in section 702(a).

''(2) TIMING OF ALLOCATIONS.—The Administrator shall allocate allowances to affected units—

''(A) not later than December 31, 2004, for calendar year 2008; and

''(B) not later than December 31 of calendar year 2005 and each calendar year thereafter, for the fourth calendar year that begins after that December 31.

''(3) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this subsection shall not be subject to judicial review.

''(e) WESTERN REGIONAL AIR PARTNERSHIP.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED STATE.—The term 'covered State' means each of the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

''(B) COVERED YEAR.—The term 'covered year' means—

''(i)(I)(aa) the third calendar year after the first calendar year in which the Administrator determines by regulation that the total of the annual emissions of sulfur dioxide from all affected units in the covered States is projected to exceed 271,000 tons in calendar year 2018 or any calendar year thereafter; but

''(bb) not earlier than calendar year 2016; or

''(II) if the Administrator does not make the determination described in subclause (I)(aa)—

''(aa) the third calendar year after the first calendar year with respect to which the total of the annual emissions of sulfur dioxide from all affected units in the covered States first exceeds 271,000 tons; but

''(bb) not earlier than calendar year 2021; and

''(ii) each calendar year after the calendar year determined under clause (i).

''(2) MAXIMUM EMISSIONS OF SULFUR DIOXIDE FROM EACH AFFECTED UNIT.—In each covered year, the emissions of sulfur dioxide from each affected unit in a covered State shall not exceed the number of allowances that are allocated under paragraph (3) and held by the affected unit for the covered year.

''(3) ALLOCATION OF ALLOWANCES.—

''(A) IN GENERAL.—Not later than January 1, 2013, the Administrator shall promulgate regulations to establish—

''(i) a methodology for allocating allowances to affected units in covered States under this subsection; and

''(ii) the timing of the allocations.

''(B) NO JUDICIAL REVIEW.—An allocation of allowances by the Administrator under this paragraph shall not be subject to judicial review.''.

(b) DEFINITION OF ALLOWANCE.—Section 402 of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651a) is amended by striking paragraph (3) and inserting the following:

''(3) ALLOWANCE.—The term 'allowance' means an authorization, allocated by the Administrator to an affected unit under this title, to emit, during or after a specified calendar year, a quantity of sulfur dioxide determined by the Administrator and specified in the regulations promulgated under section 417(b).''.

(c) TECHNICAL AMENDMENTS.—

(1) Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)—

(A) is amended by redesignating sections 401 through 403 as sections 801 through 803, respectively; and

(B) is redesignated as title VIII and moved to appear at the end of that Act.

(2) The table of contents for title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. prec. 7651) is amended by adding at the end the following:

''Sec. 417. Revisions to sulfur dioxide allowance program.''.

SEC. 6. RELATIONSHIP TO OTHER LAW.

(a) EXEMPTION FROM HAZARDOUS AIR POLLUTANT REQUIREMENTS RELATING TO MERCURY.—Section 112 of the Clean Air Act (42 U.S.C. 7412) is amended—

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

''(7) MERCURY EMITTED FROM CERTAIN AFFECTED UNITS.—Not later than 8 years after the date of enactment of this paragraph, the Administrator shall carry out the duties of the Administrator under this subsection with respect to mercury emitted from affected units (as defined in section 701).''; and

(2) in subsection (n)(1)(A)—

(A) by striking ''(A) The Administrator'' and inserting the following:

''(A) STUDY, REPORT, AND REGULATIONS.—

''(i) STUDY AND REPORT TO CONGRESS.—The Administrator'';

(B) by striking ''The Administrator'' in the fourth sentence and inserting the following:

''(ii) REGULATIONS.—

''(I) IN GENERAL.—The Administrator''; and

(C) in clause (ii) (as designated by subparagraph (B)), by adding at the end the following:

''(II) EXEMPTION FOR CERTAIN AFFECTED UNITS RELATING TO MERCURY.—An affected unit (as defined in section 701) that would otherwise be subject to mercury emission standards under subclause (I) shall not be subject to mercury emission standards under subclause (I) or subsection (c).''.

(b) TEMPORARY EXEMPTION FROM VISIBILITY PROTECTION REQUIREMENTS.—Section 169A(c) of the Clean Air Act (42 U.S.C. 7491(c)) is amended—

(1) in paragraph (3), by striking ''this subsection'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(4) TEMPORARY EXEMPTION FOR CERTAIN AFFECTED UNITS.—An affected unit (as defined in section 701) shall not be subject to subsection (b)(2)(A) during the period—

''(A) beginning on the date of enactment of this paragraph; and

''(B) ending on the date that is 20 years after the date of enactment of this paragraph.''.

(c) NO EFFECT ON OTHER FEDERAL AND STATE REQUIREMENTS.—Except as otherwise specifically provided in this Act, nothing in this Act or an amendment made by this Act—

(1) affects any permitting, monitoring, or enforcement obligation of the Administrator of the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.) or any remedy provided under that Act;

(2) affects any requirement applicable to, or liability of, an electric generating facility under that Act;

(3) requires a change in, affects, or limits any State law that regulates electric utility rates or charges, including prudency review under State law; or

(4) precludes a State or political subdivision of a State from adopting and enforcing any requirement for the control or abatement of air pollution, except that a State or political subdivision may not adopt or enforce any emission standard or limitation that is less stringent than the requirements imposed under that Act.

Mr. CHAFEE. Mr. President, I am pleased to join with Senator CARPER today to introduce the Clean Air Planning Act of 2002. Congress needs to advance four pollutant legislation that offers the best chance for broad bipartisan support, and I believe this bill meets that test. The testimony received through hearings in the Environment and Public Works Committee over the past several years has clearly outlined the need for controlling the major emissions from power plants, sulfur dioxide, nitrogen oxide, mercury and carbon dioxide, while at the same time recognizing the added costs of these new controls. We know through experience that we will only be successful at passing legislation if we find middle ground.

The relationship of fossil fuels to global warming is clear and scientifically validated. The release of the ''U.S. Climate Action Report 2002'' by the Administration in May tells us we need to take real actions toward solving the problem. The longer we wait, the harder this problem will be to solve. The Rio Convention is a perfect example of why waiting is not reasonable. In 1992, we agreed to voluntarily reduce harmful emissions to 1990 levels. It didn't happen. Now, in 2002 we are told that reductions to 1990 levels will stall the economy. If we wait much longer before taking any action, imagine how much harder it will be to achieve real reductions without harming the economy.

I am a co-sponsor of Senator JEFFORDS' bill, S. 556, and I voted for it in the Environment and Public Works Committee. However, I believe that Carper-Chafee will ultimately enjoy broader support. Our bill would achieve significant reductions in a more cost effective way than other proposals. For sulfur dioxide, nitrogen oxide, and mercury, we will establish emission caps that are superior to reductions that can be achieved under the existing Clean Air Act. In addition, for the first time, we will ensure that we achieve real reductions of carbon dioxide emissions.

Many predicted that the passage of S. 556 from the Committee would create a stalemate on this important issue. I believe that the Carper-Chafee bill offers a real opportunity to break the stalemate and begin an honest debate that will eventually lead to enactment of strong legislation. I look forward to working with all of my colleagues as we move forward to pass a bill that enjoys the broadest support and adequately addresses the serious health, environmental, and economic issues facing the nation.

By Mr. LEAHY:

S. 3137. A bill to provide remedies for retaliation against whistleblowers making congressional disclosures; to the Committee on Governmental Affairs.

Mr. LEAHY. Mr. President, I rise to introduce the Congressional Oversight Protection Act of 2002. The 107th Congress has truly been the Congress of the whistleblower. From Sherron Watkins who helped expose many of the misdeeds at Enron, to FBI Special Agent Coleen Rowley and others who brought needed public attention to some of the shortcomings of the FBI prior to 9–11, we have been eyewitness to the value of getting the inside story.

The 107th Congress has also been one of rejuvenated bipartisan oversight. On the Judiciary Committee we convened the first series of comprehensive bipartisan FBI oversight hearings in decades after I assumed the Chairmanship. The Joint Intelligence Committee is now conducting bipartisan hearings to ascertain what shortcomings on the part of our intelligence community need to be corrected so as not to allow the 9–11 terrorist attacks to recur. The Senate Banking Committee conducted extensive oversight of the SEC and its relationship with the accounting industry, to ascertain whether a new regulatory scheme was required. Both the Senate and House Judiciary Committees are attempting to ascertain how the new powers we provided in the USA PATRIOT Act are being used. These are only a few examples.

We have all been the beneficiaries of such increased oversight and the courage of the whistleblowers who provided information as part of that effort, because their revelations have led to important reforms. The Enron scandal and the subsequent hearings led to the most extensive corporate reform legislation in decades, including the criminal provisions and the first ever corporate whistleblower protections from S. 2010, the Corporate Fraud and Criminal Accountability Act, that I authored. The testimony of the rank and file FBI agents that we heard on the Judiciary Committee helped us to craft

the bipartisan FBI Reform Act, S. 1974. This legislation, which included enhanced whistleblower protections, was reported unanimously to the full Senate in April but is being blocked by an anonymous Republican hold. The same day as Coleen Rowley's nationally televised testimony before the Judiciary Committee, President Bush not only reversed his previous opposition to establishing a new cabinet level Department of Homeland Security, but gave a national address calling for the largest government reorganization in 50 years. In the last year we have learned once again that the public as a whole benefits from a lone voice in the government.

Unfortunately, the people who very rarely benefit from these revelations are the whistleblowers themselves. We have heard testimony in oversight hearings on the Judiciary Committee that there is quite often retaliation against those who raise public awareness about problems within large organizations even to Congress. Sometimes the retaliation is overt, sometimes it is more subtle and invidious, but it is almost always there. The law needs to protect the people who risk so much to protect us and create a culture that encourages employees to report waste, fraud, and mismanagement.

For those who provide information to Congress, that protection is a hollow promise. On one hand, the law is very clear that it is illegal to interfere with or deny, ''the right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof . . .'' See 18 U.S.C. §7211. Amazingly, however, this simple provision is a right without a remedy. Employees who are retaliated against for providing information to Congress cannot pursue any avenue of redress to protect their statutory rights. The only exception to this applies to employees of publicly traded companies, who are now covered by the whistleblower provision included in the Sarbanes-Oxley Act that we passed this year. Thus, under current law, government whistleblowers reporting to Congress have less protection than private industry whistleblowers.

This bill would merely correct this anomaly by providing government employees that come to Congress with the right to bring an action in court when they suffer the type of retaliation already prohibited under the law. Thus, it does not create new statutory rights, but merely provides a statutory remedy for existing law. That way, we can promise future whistleblowers who come before Congress that their right to access the legislative branch is not an illusion. We can also assure the public at large that our future efforts at Congressional oversight and improving the functions of government will be effective. This legislation is strongly supported by leading whistleblower groups, including the National Whistleblower Center and the Government Accountability Project, and I ask unanimous consent that their letters of support be printed in the RECORD.

For all these reasons, I urge swift passage of this legislation. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 3137

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 ''Congressional Oversight Protection Act of 2002''.

SEC. 2. PROVIDING REMEDIES FOR RETALIATION AGAINST WHISTLEBLOWERS MAKING CONGRESSIONAL DISCLOSURES.

Section 7211 of title 5, United States Code, is amended—

(1) by inserting ''(a)'' before ''The right''; and

(2) by adding at the end the following:

''(b) Any employee aggrieved by the discrimination of an employer in violation of subsection (a) may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over an action under this subsection, without regard to the amount in controversy.

''(c) Any employee prevailing in an action under this section shall be entitled to all relief necessary to make the employee whole, including—

''(1) reinstatement with the same seniority status that the employee would have had but for the discrimination;

''(2) the amount of back pay lost as a result of the discrimination, with interest;

''(3) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees; and

''(4) punitive damages, in appropriate cases.

''(d) Upon the request of the complainant, any action under this section shall be tried by the court with a jury.

''(e) The same legal burdens of proof in proceedings under this section shall apply as apply under sections 1214(b)(4)(B) and 1221(c) in the case of any alleged prohibited personal practice described in section 2302(b)(8).

''(f) For purposes of this section, the term 'employee' means an individual (as defined by section 2105) and any individual or organization performing services under a contract with the Government (including as an employee of an organization).''.

NATIONAL WHISTLEBLOWER CENTER,
Washington, DC, October 16, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: I am writing to strongly support your legislation, the Congressional Oversight Protection Act of 2002. The National Whistleblower Center (Center) is the pre-eminent national organization that promotes effective measures to protect whistleblowers who come forward in the public interest at great risk to their careers. In that regard, your introduction of this bill once again demonstrates your leadership in understanding the importance of whistleblowing and its role in our democratic process, and the Center is pleased to support your bill and work hard to achieve its swift passage.

In the wake of the events of 9/11, the stakes have been raised for Congress to perform the most effective oversight of the federal government. To do so, Congress must have unfettered access to information. And that means that citizens in both the public and private sectors must be free to come forward to Congress with proper disclosures without the fear of retaliation. Under current law, citizens have the right to make disclosures to Congress, but there is no remedy for them to protect their rights in the event of retaliation. Your bill would provide such a remedy and, in doing so, would put government whistleblowers on a par with whistleblowers in publicly-held companies who have such protections under the newly-passed Sarbanes-Oxley Act.

This year, the concept and importance of whistleblowing has been etched indelibly on the minds of the public, thanks to congressional investigations into Enron and other companies, thanks to the joint investigation into intelligence lapses in the government, and thanks to extensive media coverage of these matters. The public's appreciation for the necessity of whistleblowers and whistleblower protections creates an atmosphere conducive to passing the Congressional Oversight Protection Act at the earliest possible time. Your leadership in trying to fill an important void in whistleblower law should be commended and hailed by all those who support ''good government.''

Once again, thank you for your continued leadership on this and other whistleblower issues throughout the 107th Congress. Please feel free to call on the Center to work together to pass this bill.

Respectfully,

KRIS J. KOLESNIK,
Executive Director.

GOVERNMENT ACCOUNTABILITY PROJECT,
Washington, DC, October 17, 2002.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: This letter is to express unqualified appreciation for introduction of the Congressional Oversight Protection Act, providing access to jury trials in court for federal whistleblowers and others who bear witness through disclosures to Congress. This legislation reflects leadership to close an inherent flaw that has prejudiced even the best administrative law remedial systems. Administrative boards do not have the judicial independence or resources for high-stakes, politically sensitive whistleblower disputes with national consequences. Ironically, those type of disputes are the primary, most significant reason for enacting whistleblower protection laws.

The legislation puts teeth into the congressional right to know law, the Lloyd LaFollette Act of 1912. (5 USC 7211) That law's purpose is simple, and fundamental—to protect the free flow of information to Congress. It prohibits discrimination for communicating with Congress. It was passed in response to presidential gag orders that had imposed prior approval before federal employees could communicate with Congress. Flood statements before passage emphasized the free flow of information as the lifeblood for Congress to carry out its mission. The need is even greater when freedom of speech means the freedom to warn Congress of national security breakdowns, before the public suffers the consequences again.

Unfortunately, Congress failed to specifically provide access to court to enforce Lloyd LaFollette rights. As a result, it has been a right without a remedy. That means it is of little more than rhetorical significance, and no benefit to reprisal victims. Since 1912, 54 whistleblowers have tried to assert their rights under this law. Fifty three cases were dismissed for lack of jurisdiction. Consistently the explanation is that

the statute did not provide the court with jurisdiction as authority to act. The bill's purpose is to strengthen Congress' right to know—a prerequisite for informed oversight. The bill's strategy is to provide reinforced protection, beyond normal civil service remedies, for those who choose to communicate through and work with Congress.

There should be no question of the need for reinforced protection of congressional whistleblowers. The system of administrative civil service hearings was never designed for major public policy disputes involving high stakes national consequences and active congressional oversight. The Administrative Judges who hear the cases have no judicial independence and know they will be treated like whistleblowers if they rule for those challenging politically powerful government officials. As a result, those hearing officers treat significant whistleblower cases like poison ivy. Consistently, the administrative process has been a black hole for politically significant disputes, with decisions regularly not being finalized for years, and one case still pending after 11 years. In a significant environmental dispute involving millions of dollars in timber theft, four Forest Service employees are still waiting for their day in court after six years.

After lessons learned from the FBI's Coleen Rowley, it is beyond credible debate that whistleblowers can make a major contribution toward preventing another 9/11. Analogous frustrations of Border Patrol, Customs Service, Department of Energy, Federal Bureau of Investigation, Federal Aviation Administration and the Nuclear Regulatory Commission whistleblowers illustrate an unmistakable pattern of ignoring or silencing patriots on the front lines of homeland security. As our nation's modern Paul Reveres, whistleblowers are invaluable as an early warning signal to prevent avoidable disasters.

It should also be clear, however, that this legislation is a necessity to strengthen homeland security. It will not solve the complex problems of the civil service system. But it will give whistleblowers a credible remedy for the first time in eight years, if they work with Congress. Increasingly whistleblowers have been lionized for their bravery, but that is no substitute for genuine, enforceable rights. Indeed, the praise can ring cynically hollow to those whose careers are in ashes for doing their duty. It is unrealistic to expect whistleblowers to defend the public, if they cannot defend themselves. Profiles in Courage are the exception, not the rule. If successful, your initiative to add rights matching the rhetoric supporting whistleblowers will be a good government breakthrough.

Sincerely,

TOM DEVINE,
Legal Director.

By Mr. DOMENICI:

S. 3138. A bill to authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I rise to introduce a bill that would authorize the Secretary of the Interior to help construct and occupy part of the Hibben Center for Archaeological Research at the University of New Mexico. This bill will help the University of New Mexico finish a state of the art museum facility to store, and display the National Park Service's Chaco Collection.

Let me give you a bit of background. In 1907, Theodore Roosevelt founded the Chaco Canyon Culture National Historical Park in Northwestern New Mexico. The Monument was created to preserve the extensive prehistoric pueblo ruins in Chaco Canyon.

The height of the Chaco culture began in the mid 800's and lasted over 300 years. People built dozens of complex multi-storied masonry buildings containing hundreds of rooms. These complexes were connected to communities by a network of prehistoric roads. I helped to establish the Chaco Culture National Historic Park to preserve these areas.

Since 1907, the University of New Mexico and the National Park Service have been partners in this area. From 1907 to 1949, the University owned the land within the Park boundaries. During this period, Dr. Frank Hibben excavated in Chaco Canyon and remained interested in the area throughout his long career. The University built a large collection of artifacts that it retains today.

In 1949, the University deeded the land to the Federal Government, and since that time, the University and the Park Service have continued a partnership through a series of memoranda of understanding. Since 1985, the NPS Chaco collections have been housed at University of New Mexico's Maxwell Museum of Anthropology. As both the University of New Mexico and the National Park Service collections have begun to grow, a new home for them is needed.

To this end, Dr Hibben began planning a new research and curation facility at the University of New Mexico. He asked the Park Service to partner with him on this project, and today, construction of the Hibben center, a modern, professional facility to house the University of New Mexico's collections as well as the Park Service collections is a reality.

Dr. Hibben recently passed away, and left the University of New Mexico the funds to assist with this project. The partnership between the Park Service and the University will mean that the Hibben center will hold a world-class collection and will facilitate and encourage the study of these important Southwestern collections.

This bill will provide authorization to pay for the Federal share of the improvement costs to the Hibben Center. This bill is long overdue, and will honor both the legacy of Dr. Hibben and the Chaco Culture.

I urge my colleagues to support this important piece of legislation.

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. 3138

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 ''Hibben Center for Archaeological Research Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) when the Chaco Culture National Historical Park was established in 1907 as the Chaco Canyon National Monument, the University of New Mexico owned a significant portion of the land located within the boundaries of the Park;

(2) during the period from the 1920's to 1947, the University of New Mexico conducted archaeological research in the Chaco Culture National Historical Park;

(3) in 1949, the University of New Mexico—

(A) conveyed to the United States all right, title, and interest of the University in and to the land in the Park; and

(B) entered into a memorandum of agreement with the National Park Service establishing a research partnership with the Park;

(4) since 1971, the Chaco Culture National Historical Park, through memoranda of understanding and cooperative agreements with the University of New Mexico, has maintained a research museum collection and archive at the University;

(5) both the Park and the University have large, significant archaeological research collections stored at the University in multiple, inadequate, inaccessible, and cramped repositories; and

(6) insufficient storage at the University makes research on and management, preservation, and conservation of the archaeological research collections difficult.

SEC. 3. DEFINITIONS.

In this Act:

(1) HIBBEN CENTER.—The term ''Hibben Center'' means the Hibben Center for Archaeological Research to be constructed at the University under section 4(a).

(2) PARK.—The term ''Park'' means the Chaco Culture National Historical Park in the State of New Mexico.

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

(4) TENANT IMPROVEMENT.—The term ''tenant improvement'' includes—

(A) finishing the interior portion of the Hibben Center leased by the National Park Service under section 4(c)(1); and

(B) installing in that portion of the Hibben Center—

(i) permanent fixtures; and

(ii) portable storage units and other removable objects.

(5) UNIVERSITY.—The term ''University'' means the University of New Mexico.

SEC. 4. HIBBEN CENTER FOR ARCHAEOLOGICAL RESEARCH.

(a) ESTABLISHMENT.—The Secretary may, in cooperation with the University, construct and occupy a portion of the Hibben Center for Archaeological Research at the University.

(b) GRANTS.—

(1) IN GENERAL.—The Secretary may provide to the University a grant to pay the Federal share of the construction and related costs for the Hibben Center under paragraph (2).

(2) FEDERAL SHARE.—The Federal share of the construction and related costs for the Hibben Center shall be 37 percent.

(3) LIMITATION.—Amounts provided under paragraph (1) shall not be used to pay any costs to design, construct, and furnish the tenant improvements under subsection (c)(2).

(c) LEASE.—

(1) IN GENERAL.—Before funds made available under section 5 may be expended for

construction costs under subsection (b)(1) or for the costs for tenant improvements under paragraph (2), the University shall offer to enter into a long-term lease with the United States that—

(A) provides to the National Park Service space in the Hibben Center for storage, research, and offices; and

(B) is acceptable to the Secretary.

(2) TENANT IMPROVEMENTS.—The Secretary may design, construct, and furnish tenant improvements for, and pay any moving costs relating to, the portion of the Hibben Center leased to the National Park Service under paragraph (1).

(d) COOPERATIVE AGREEMENTS.—To encourage collaborative management of the Chacoan archaeological objects associated with northwestern New Mexico, the Secretary may enter into cooperative agreements with the University, other units of the National Park System, other Federal agencies, and Indian tribes for—

(1) the curation of and conduct of research on artifacts in the museum collection described in section 2(4); and

(2) the development, use, management, and operation of the portion of the Hibben Center leased to the National Park Service under subsection (c)(1).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated—

(1) to pay the Federal share of the construction costs under section 4(b), $1,574,000; and

(2) to pay the costs of carrying out section 4(c)(2), $2,198,000.

(b) AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.

(c) REVERSION.—If the lease described in section 4(c)(1) is not executed by the date that is 2 years after the date of enactment of this Act, any amounts made available under subsection (a) shall revert to the Treasury of the United States.

By Mr. SESSIONS (for himself, Mr. GRASSLEY, and Mr. LEAHY):

S. 3139. A bill to provide a right to be heard for participants and beneficiaries of an employee pension benefit plan of a debtor in order to protect pensions of those employees and retirees; to the Committee on the Judiciary.

Mr. SESSIONS. Mr. President, I rise today to introduce The Employee Pension Bankruptcy Protection Act of 2002. Today, when a company declares bankruptcy, it is often the employees and retirees who suffer. They suffer because they often loose their hard earned pensions and retirement benefits during the bankruptcy process. This is simply not right. When Americans loose the pensions and benefits that they have worked a lifetime to earn, it is the responsibility of the members of this body to take notice and to act to protect them.

The bill I introduce today does one very simple thing it gives employees and retirees the right to request that they be represented before the bankruptcy court, the same kind of representation that protects the rights of others that are owed money by the corporation. Under this bill, a representative of the employees and retirees can appear and be heard if it is likely that the employee benefit pension plan of the bankrupt corporation will be terminated or substantially underfunded and if it is possible that the beneficiaries of the plan will be adversely affected.

By allowing employees and retirees to be represented before the bankruptcy court, we will ensure that the bankruptcy court hears from the people who entrusted their retirement savings to their employer. Employees and retirees will be able to argue to the court that any division of assets or bankruptcy plan must be fair to the pensioners. The needs of the corporation's employees and retirees should be heard BEFORE the assets of a bankrupt corporation are split up among creditors and lost forever. They deserve to have their day in court.

It has only recently been brought to my attention that under current law, employees and retirees are not represented before the bankruptcy court as creditors. Legally, the pension fund is the ''creditor'' of the corporation, not the employees and retirees. Thus, the pension interests of employees and retirees are represented in the bankruptcy process by a trustee of the pension, if one exists, or by the PBGC, if it takes over the pension fund.

Because PBGC, under its governing statutes, can not guarantee the full benefits of the pension plan, but can only guarantee the statutory amount, significant portions of hard earned pensions can remain unpaid when a company goes bankrupt. While the PBGC is often able to pay most of the pension benefits when a company goes bankrupt, in certain cases the statutory limit can be much lower than the pension payment the employee or retiree was promised by the corporation. Employees and retirees deserve more than this. They deserve the additional representation before the bankruptcy court that this bill provides if their hard earned pensions and retiree benefits are to be adequately protected.

I would like to thank Mr. John Nichols of Gadsden, AL, and his son, Phil for bringing this to my attention. The ordeal faced by Mr. Nichols, is a prime example of why employees and retirees need more representation before the bankruptcy court. Mr. Nichols spent his entire career at a steel plant in Gadsden. He began working for Republic Steel in 1956 and stayed with the company through two ownership changes and a buyout by LTV Steel.

When LTV bought out Mr. Nichols employers, LTV Steel took over the monthly pension payments guaranteed to the former employees and retirees of Republic Steel, including Mr. Nichols. Soon after the takeover, however, LTV filed for bankruptcy, claiming that it could no longer make pension payments to Republic Steel's former employees. PBGC, the Pension Benefit Guarantee Corporation stepped in to help LTV make a small part of the pension payments, but LTV eventually stopped making payments at all.

Because all the payments LTV had been making were not guaranteed by the PBGC, the long awaited pension payments earned by Mr. Nichols and by Republic Steel's other loyal employees were severely reduced. Mr. Nichols' pension payments went from $2,225.00 to $675.00—only 30 percent of what he had been promised. A third of this payment now covers Mr. Nichols' health insurance premium that he can no longer purchase through LTV, leaving him with only 20 percent of his promised pension each month. PBGC could only pay the retirees the amount their statute allowed, and no one had the responsibility of going to the bankruptcy court and telling them what was happening to the retirees of Republic Steel. PBGC itself recognized that the claims of the pensioners against LTV, ''are among the many claims that will probably never be paid, except perhaps in cents on the dollar'' and stated that PBGC's claim against LTV for the pension plan underfunding was perhaps ''[t]he largest of these claims [that will go unpaid].''

During LTV's bankruptcy case, various creditors were represented before the bankruptcy court, but not the employees and retirees. Thus, when the assets of LTV were divided among its creditors, employees and the retirees were not at the table. If the employees and retirees had had an opportunity to make their case before the bankruptcy judge, the result could have been different.

The Employee Pension Bankruptcy Protection Act of 2002 seeks to make sure that what happened to the retirees of Republic Steel will never happen again, employees and retirees will never be deprived of their pensions without having their day in court. While a company may still be able to discharge its obligation to pay pensioners in bankruptcy, this bill at least takes the first modest step to protect pensioners by providing them the opportunity to be part of the bankruptcy bargaining process. Before the bankruptcy court sells assets or adopts a plan of reorganization, the employees and retirees will be heard. After all, it is their money. This is only fair.

I strongly urge my colleagues in the Senate to support this bill and to work with me to further ensure that employees and retirees of corporations are fairly treated and protected under the United States Bankruptcy Code.

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. 3139

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 ''Employee Pension Bankruptcy Protection Act of 2002''.

SEC. 2. PURPOSE AND INTENT.

The purpose and intent of this Act is to provide employees and retirees with a greater likelihood of having outstanding pension

liabilities paid by a corporation that files for bankruptcy by allowing the employees and retirees of that corporation the right to be heard before the bankruptcy court.

SEC. 3. RIGHT TO BE HEARD.

Section 1109 of title 11, United States Code, is amended by adding at the end the following:

''(c) In a case in which the debtor is the sponsor of an employee pension benefit plan pursuant to section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)), and such plan is likely to be terminated pursuant to title IV of that Act or substantially underfunded by the debtor resulting in a hardship to the participants or beneficiaries, a representative of the participants (as defined in section 3(7) of that Act) and beneficiaries (as defined in section 3(8) of that Act) who are entitled to benefits under such plan and who may be adversely affected by events in the case, may appear and be heard with respect to a sale of all or substantially all of the assets of the debtor or with respect to a plan of reorganization, provided that such participants and beneficiaries may employ counsel and other professionals who shall be compensated from the estate of the debtor.''.

By Mr. DODD (for himself and Ms. COLLINS):

S. 3140. A bill to assist law enforcement in their efforts to recover missing children and to clarify the standards for State sex offender registration programs; to the Committee on the Judiciary.

Mr. DODD. Mr. President, I am pleased to join with my colleague from Maine, Senator COLLINS to introduce the Prevention and Recovery of Missing Children Act of 2002, to improve the recovery of missing children and the tracking of convicted sexual offenders and child predators.

Sexual offenders pose an enormous challenge for policy makers. They create unparalleled fear among citizens, and most of their victims are children and youth. Two-thirds of imprisoned sex offenders report that their victims were under age 18, and nearly half report that their victims are ages 12 and younger.

Last year, several newspapers across the country, including the Hartford Courant, highlighted the inadequacy of reporting information in missing child cases and the lack of tracking of convicted sex offenders and known child predators. One tragic example reported a convicted sex offender who moved from Massachusetts to Montana, where police were never contacted about his history. He brutally murdered several Montana children before he was apprehended, and was later linked to 54 cases of child abduction and molestation in several States. In many cases, convicted sex offenders and child predators slip through law enforcement loopholes and continue to prey on children.

Over the last decade, Congress enacted several laws designed to improve the tracking of convicted sex offenders and improve the recovery of missing children, including The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994; Megan's Law of 1996; and The Pam Lyncher Sex Offender Tracking and Identification Act of 1996. Collectively, these acts established minimum standards for State sex offender registration programs and created systems to track convicted sex offenders.

While these current Federal laws address the main features of an effective registry system, the discretion over registry details and procedures is left up to the States. This has led to a lack of consistency and wide disparities between States. For example, State requirements for sex offender notification of registration changes range from 1 day to 40 days, and State requirements for a sex offender to register an address after moving to a new State range from 48 hours to 70 days.

In addition, many States place the burden to notify changes in registry information solely on the sex offender. We need to tighten registry systems so that law enforcement in all States is better equipped to track sexual offenders. This bill strengthens the registry foundation for all States built upon the practices already in place in some States. It builds on successful practices to better protect our communities nationwide.

The tracking of released sex offenders is critical to protecting our children. Most sex offenders are not in prison, about 60 percent of convicted sex offenders are under conditional supervision in the community, and those who are in prison often serve limited sentences. This is of great concern because sex offenders, particularly if untreated, are at risk of re-offending.

This bill makes several important changes to improve the tracking of sex offenders and the recovery of missing children. The bill: amends the definition of ''minimally sufficient program'' to include: the registration of all convicted sex offenders prior to release; the collection of information to assist in tracking individuals, including a DNA sample, current photograph, driver's license and vehicle information; and verification of address and employment information for all offenders every 90 days; amends penalties for non-compliance with registry requirements. It provides that State programs must designate non-compliance as a felony and permits the issuance of a warrant. This provision is intended to encourage compliance by offenders as well as provide a tool for prosecutors; improves the chances for recovering missing children and aides law enforcement in solving cases by preventing the removal of missing children from the National Crime Information Center (NCIC) database and making sure that convicted sex offenders do not become exempt from the lifetime registration requirement; improves the chances for recovery of missing children by requiring entry of child information into the NCIC database within 2 hours.

We must make the tracking of convicted sex offenders and the post-release supervision of child sexual predators a higher priority. It is not enough to ensure that an offender completes his sentence.

Since most sexual offenders are in the community, we must ensure that there is continuing contact and supervision of released sexual offenders. We have an obligation to protect our children from sexual offenders and sexual predators who prey on our children.

I urge my colleagues to join us in supporting this legislation.

By Mr. DODD (for himself, Mr. KENNEDY, Mrs. MURRAY, Mrs. BOXER, Mr. INOUYE, Mr. AKAKA, and Mr. CORZINE):

S. 3141. A bill to amend the Family and Medical Leave Act of 1993 to expand the scope of the Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD: Mr. President, I am pleased to join with my colleagues Senator KENNEDY, Senator MURRAY, Senator BOXER, Senator INOUYE, Senator AKAKA, and Senator CORZINE to introduce the ''Family and Medical Leave Expansion Act.'' Since enactment in 1993, more than 35 million Americans have taken leave under the Family and Medical Leave Act.

Despite the many Americans the Family and Medical Leave Act has helped, too many continue to be left behind. Too many continue to have to choose between job and family. The facts are clear: millions of Americans remain uncovered by the Family and Medical Leave Act. And, too many who are eligible for the Family and Medical Leave Act cannot afford to take unpaid leave from work. The ''Family and Medical Leave Expansion Act'' addresses both these problems.

The ''Family and Medical Leave Expansion Act'' would expand the scope and coverage of FMLA. It would fund pilot programs at the state level to offer partial or full wage replacement programs to ensure that employees do not have to choose between job and family.

Times have changed over the years. More and more mothers are working. While only 27 percent of mothers with infants were in the labor force in 1960, by 1999 that percentage rose to nearly 60 percent. Even as employment rates within this group rises, family responsibilities remain constant, a reality that lies at the core of the FMLA. According to an employee survey by the Department of Labor, about one fifth of US workers have a need for some form of leave covered under the FMLA, and about 40 percent of all employees think they will need FMLA-covered leave within the next five years.

According to a Department of Labor study in 2000, leave to care for one's own health or for the health of a seriously ill child, spouse or parent, together account for almost 80 percent of all FMLA leave. Approximately 52 percent of the leave taken is due to employees' own serious health problems, while 26 percent of the leave is taken

by young parents caring for their children at birth or adoption.

The FMLA requires that all public sector employers and private employers of 50 or more employees provide up to twelve weeks of unpaid leave for medical and family care reasons for eligible employees. About 77 percent of employees, in the private and public sector, currently work in FMLA-covered sites, although only 62 percent of employees are actually eligible for leave.

However, only 11 percent of private sector work sites are covered under FMLA. Individuals working for small private employers deserve the same work protections afforded to other employees. As a step toward expanding protection to all hard-working Americans, this bill would extend FMLA coverage to all private sector worksites with 25 or more employees within a 75-mile radius.

Mothers and fathers, sons and daughters have the same family responsibilities and personal health problems, regardless of whether they work for the government, a large private enterprise, or a small private business. Expanding the FMLA to businesses with 25 or more employees is a crucial acknowledgment of this reality.

The bill recognizes the enormous physical and emotional toll domestic violence takes on victims. The bill expands the scope of FMLA to include leave for individuals to care for themselves or to care for a daughter, son, or parent suffering from domestic violence.

Expanding the scope and coverage of FMLA is a positive step for many Americans. But, alone, it is not enough. According to a Department of Labor study, 3.5 million covered Americans needed leave but, without wage replacement, could not afford to take leave. Over four-fifths of those who needed leave but did not take it said they could not afford unpaid leave. Others cut their leave short, with the average duration of FMLA leave being 10 days. Of those individuals taking leave under the Family and Medical Leave Act, nearly three-quarters had incomes above $30,000.

While the financial sacrifice is often enormous, the need for leave can be even more so. Every year, many Americans bite the bullet and accept unpaid leave. As a result, nine percent of leave takers go on public assistance to cover their lost wages. Almost twelve percent of female leave takers use public assistance for this reason. These individuals are far from unwilling to work. Instead, they are trying to balance work with family, often during a crisis, too often with inadequate means to get by.

Other major industrialized nations have implemented policies far more family-friendly to promote early childhood development and family caregiving. At least 128 countries provide paid and job-protected maternity leave, with sixteen weeks the average basic paid leave. In 1992, before we enacted the Family and Medical Leave Act, the European Union mandated a paid fourteen week maternity leave as a health and safety measure. Among the 29 Organization for Economic Cooperation and Development, OECD, countries, the average childbirth-related leave is 44 weeks, while the average duration of paid leave is 36 weeks.

Compared to these other developed nations, the United States is far behind in efforts to promote worker welfare and productivity. The ''Family and Medical Leave Expansion Act'' builds on current law to provide pilot programs for states and the federal government to provide for partial or full wage replacement for 6 weeks. At a minimum, this will ensure that parents can continue to make ends meet while taking family and medical leave.

No one should have to choose between work and family. Women and men deserve to take leave when family or health conditions require it without fear of losing their job or livelihood. We must not simply pay lip service to family integrity and the promotion of a healthy workplace. Instead, we must actively work to reduce workplace barriers. I urge my colleagues to support the ''Family and Medical Leave Expansion Act'' to promote our national values and ensure the welfare and health of hard-working Americans.

By Mrs. LINCOLN:

S. 3144. A bill to amend title XVI of the Social Security Act to clarify that the value of certain funeral and burial arrangements are not to be considered available resources under the supplemental security income program; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I am pleased to introduce legislation that codifies the exclusion of irrevocable funeral trusts from Supplemental Security Income, SSI, resource calculations.

Irrevocable funeral trusts are funds set aside for funeral and burial expenses. These funds cannot be accessed until after the owner's death. Until recently, these trusts were not included in SSI resource calculations, but an administrative misinterpretation in 2001 dropped this important exclusion.

This misinterpretation has since been corrected, but it had serious repercussions for many senior citizens while it was in effect. When irrevocable funeral and burial trusts were included in SSI calculations, it penalized those SSI applicants who chose to save for their funeral by inflating their actual individual wealth, even though the trusts could not be accessed. The end result was that many senior citizens' SSI applications were rejected. Because the SSI definition of resources and exclusions is used for Medicaid eligibility determinations, the inclusion also affected Medicaid applicants.

I am introducing this bill to codify the exclusion to give senior citizens certainty that future administrations will not be able to misinterpret Congressional intent.

In the past, Congress has recognized the value of funeral planning as good social policy. We have encouraged consumers to engage in ''pre-need'' funeral planning in a number of ways.

This legislation will encourage people to engage in pre-need planning. It will codify the existing practice of excluding irrevocable funeral trusts from SSI calculations and ensure that future misinterpretations are avoided. We must ensure that people are not penalized for providing for their own funerals. I encourage my colleagues to give this legislation serious consideration.

By Mr. DODD (for himself, Mr. EDWARDS, and Mr. DEWINE):

S. 3145. A bill to amend the Higher Education Act of 1965 to establish a scholarship program to encourage and support students who have contributed substantial public services; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise to introduce, along with Senators EDWARDS and DEWINE, the Youth Service Scholarship Act. This Act would authorize the Secretary of Education to award college scholarships of up to $5,000 to students who perform at least 300 hours of community service in each of two years of high school and continuing scholarships to students who continue their service in college.

I believe that education is the hub of the wheel of our democracy. There is no better way to address any and all of the challenges we face as a nation than by providing all of our children with the education they need and deserve. In the 21st Century, higher education is not a luxury, it is a necessity, and this Act would extend access to higher education to more low-income students who otherwise might have difficulty attending college.

Naturally, education means reading and math and history and science, but it also means learning to be a citizen. It's not easy to be a good citizen, and this Act will encourage our young people to engage in community service and reward them for that, and in so doing, will help ensure that our next generation of leaders understands that being an American is not just a privilege, but a responsibility.

We know that students who participate in community service and youth development are less likely to use drugs and alcohol and to misbehave in school, and are more likely to receive good grades and be interested in going to college. We also know that Federal resources can be an effective incentive to leverage broader community support.

So, I urge my colleagues to join me, and Senators EDWARDS and DEWINE, in supporting the Youth Service Scholarship Act so that we can achieve more of those and other positive outcomes.

By Mr. LEAHY (for himself and Mrs. CARNAHAN):

S. 3146. A bill to reauthorize funding for the National Center for Missing and Exploited Children, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I rise today to introduce the ''Protecting Our Children Comes First Act of 2002,'' which will double funding for the National Center for Missing and Exploited Children, NCMEC, reauthorize the Center through fiscal year 2006, and increase Federal support to help NCMEC programs to find missing children across the Nation. I am pleased that Senator CARNAHAN joins me as the original cosponsor of this legislation.

It is painful to see on TV or in the newspapers photo after photo of missing children from every corner of the Nation. As a father and grandfather, I know that an abducted child is the worst nightmare. Unfortunately, it is a nightmare that happens all too often. Indeed, the Justice Department estimates that 2,200 children are reported missing each day of the year. There are approximately 114,600 attempted stranger abductions every year, with 3,000–5,000 of those attempts succeeding. These families deserve the assistance of the American people and helping hand of the Congress.

As the Nation's top resource center for child protection, the National Center for Missing & Exploited Children spearheads national efforts to locate and recover missing children and raises public awareness about ways to prevent child abduction, molestation, and sexual exploitation.

As a national voice and advocate for those too young to vote or speak up for their own rights, the NCMEC works to make our children safer. The Center operates under a Congressional mandate and works in cooperation with the U.S. Department of Justice's, DOJ, Office of Juvenile Justice and Delinquency Prevention in coordinating the efforts of law enforcement officers, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors to break the cycle of violence that historically has perpetuated these needless crimes against children.

NCMEC professionals have disturbingly busy jobs, they have worked on more than 90,000 cases of missing and exploited children since its 1984 founding, helping to recover more than 66,000 children, and raised its recovery rate from 60 percent in the 1980s to 94 percent today. The Center has set up a nationwide, toll free, 24-hour telephone hotline to take reports about missing children and clues that might lead to their recovery, a National Child Pornography Tipline to handle calls from individuals reporting the sexual exploitation of children through the production and distribution of pornography, and a CyberTipline to process online leads from individuals reporting the sexual exploitation of children. It has taken the lead in circulating millions of photographs of missing children, and serves as a vital resource for the 17,000 law enforcement agencies located throughout the U.S. in the search for missing children and the quest for child protection.

Today, NCMEC is truly a national organization, having established its headquarters in Alexandria, VA; and operating branch offices in five other locations throughout the country to provide hands-on assistance to families of missing children, advocating legislative changes to better protect children, conducting an array of prevention and awareness programs, and motivating individuals to become personally involved in child-protection issues. It has also grown into an international organization, establishing the International Division of the National Center for Missing and Exploited Children, which has been working to fulfill the Hague Convention on the Civil Aspects of International Child Abduction. The International Division provides assistance to parents, law enforcement, attorneys, nonprofit organizations, and other concerned individuals who are seeking assistance in preventing or resolving international child abductions.

NCMEC manages to do all of this good work with only a $10 million annual DOJ grant, which will expire after fiscal year 2003. We should act now both to extend its authorization and increase the Center' s funding to $20 million each year through fiscal year 2006 so that it can continue to help keep children safe and families intact around the nation. There is so much more to be done to ensure the safety of our children, and the legislation we introduce today will help the Center in its efforts to prevent crimes that are committed against them.

The ''Protecting Our Children Comes First Act'' also increases Federal support of NCMEC programs to find missing children by allowing the U.S. Secret Service to provide forensic and investigative support to the NCMEC.

The bill also amends of the Missing Children's Assistance Act to coordinate the operation of the Center's CyberTipline to provide all online users an effective means of reporting Internet-related child sexual exploitation, such as child pornography, child enticement, and child prostitution. Since its creation in 1998, the NCMEC CyberTipline has fielded almost 100,000 reports, which has allowed Internet users to quickly and easily report suspicious activities linked to the Internet.

Our legislation gives Federal authorities the authority to share the facts or circumstances of sexual exploitation crimes against children with state authorities without a court order. The bill also gives the NCMEC the power to make reports directly to state and local law enforcement officials instead of only through the FBI and other agencies. Finally, it provides that reports to NCMEC by Internet Service Providers may include additional information, such as the identity of a subscriber who sent a message containing child pornography, in addition to the required reporting of the contents of such a communication.

I applaud the ongoing work of the Center and hope both the Senate and the House of Representatives will promptly pass this bill to provide more Federal support for the NCMEC to continue to find missing children and protect exploited children across the country.

By Mr. DEWINE (for himself, Mr. LEAHY, Mr. GRASSLEY, Ms. CANTWELL, Mr. BROWNBACK, and Mr. DOMENICI):

S. 3147. A bill to foster local collaborations which will ensure that resources are effectively and efficiently used within the criminal and juvenile justice systems; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today, along with Senators LEAHY, GRASSLEY, CANTWELL, DOMENICI, and BROWNBACK, to introduce the ''Mentally Ill Offender Treatment and Crime Reduction Act.'' This bipartisan measure would, among other things, create a program of planning and implementation grants for communities so they may offer more treatment and other services to mentally ill offenders. Under this bill, programs receiving grant funds would be operated collaboratively by both a criminal justice agency and a mental health agency.

The mentally ill population poses a particularly difficult challenge for our criminal justice system. People afflicted with mental illness are incarcerated at significantly higher rates than the general population. According to the Bureau of Justice Statistics, while only about five percent of the American population has a mental illness, about 16 percent of the State prison population has such an illness. The Los Angeles County Jail, for example, typically has more mentally ill inmates than any hospital in the country.

Unfortunately, however, the reality of our criminal justice system is that jails and prisons do not provide a therapeutic environment for the mentally ill and are unlikely to do so any time soon. Indeed, the mentally ill inmate often is preyed upon by other inmates or becomes even sicker in jail. Once released from jail or prison, many mentally ill people end up on the streets. With limited personal resources and little or no ability to handle their illness alone, they often commit further offenses resulting in their re-arrest and re-incarceration. This ''revolving door'' is costly and disruptive for all involved.

Although these problems tend to manifest themselves primarily within the prison system, the root cause of our current situation is found in the mental health system and its failure to provide sufficient community-based treatment solutions. Accordingly, the solution will necessarily involve collaboration between the mental health

system and criminal justice system. In fact, it also will require greater collaboration between the substance abuse treatment and mental health treatment communities, because many mentally ill offenders have a drug or alcohol problem in addition to their mental illness.

The purpose of the ''Mentally Ill Offender Treatment and Crime Reduction Act'' is to foster exactly this type of collaboration at the federal, state, and local levels. The bill provides incentives for the criminal justice, juvenile justice, mental health, and substance abuse treatment systems to work together at each level of government to establish a network of services for offenders with mental illness. The bill's approach is unique, in that it not only would promote public safety by helping curb the incidence of repeat offenders, but it also would promote public health, by ensuring that those with a serious mental illness are treated as soon as possible and as efficiently and effectively as possible.

Among its major provisions, this legislation calls for the establishment of a new competitive grant program, which would be housed at the U.S. Department of Justice, but administered by the Attorney General with the active involvement of the Secretary of Health and Human Services. To ensure that collaboration occurs at the local level, the bill requires that two entities jointly submit a single grant application on behalf of a community.

Applications demonstrating the greatest commitment to collaboration would receive priority for grant funds. If applicants can show that grant funds would be used to promote public health, as well as public safety, and if the program they propose would have the active participation of each joint applicant, and if their grant application has the support of both the Attorney General and the Secretary of Health and Human Services, then it would receive priority for funding.

The bill permits grant funds to be used for a variety of purposes, each of which embodies the goal of collaboration. First, grant funds may be used to provide courts with more options, such as specialized dockets, for dealing with the non-violent offender who has a serious mental illness or a co-occurring mental illness and drug or alcohol problem. Second, grant funds could be used to enhance training of mental health and criminal justice system personnel, who must know how to deal appropriately with the mentally ill offender. Third, grant funds could be devoted to programs that divert non-violent offenders with severe and persistent mental illness from the criminal justice system into treatment. Finally, correctional facilities may use grant funds to promote the treatment of inmates and ease their transition back into the community upon release from jail or prison.

In specifically authorizing grant funds to be used to promote more options for courts to deal with mentally ill offenders, this bill builds on legislation that I introduced with Congressman Ted Strickland two years ago. That measure, which became law, authorized $10 million per year for the establishment of more mental health courts. I have long supported mental health courts, which enable the criminal justice system to provide an individualized treatment solution for a mentally ill offender, while also requiring accountability of the offender. The legislation we are introducing today would make possible the creation or expansion of more mental health courts, and it also would promote the funding of treatment services that support such courts.

In addition to making planning and implementation grants available to communities, the ''Mentally Ill Offender Treatment and Crime Reduction Act'' also calls for an Interagency Task Force to be established at the federal level. This Task Force would include the Attorney General and the Secretary of Health and Human Services, as well as the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Commissioner of Social Security. The Task Force would be charged with identifying new ways that federal departments can work together to reduce recidivism among mentally ill adults and juveniles.

Finally, the bill directs the Attorney General and Secretary of Health and Human Services to develop a list of ''best practices'' for criminal justice personnel to use when diverting mentally ill offenders from the criminal justice system.

This is a good bill and one that is long overdue. I encourage my colleagues to support this important measure. 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. 3147

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 ''Mentally Ill Offender Treatment and Crime Reduction Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness.

(2) According to the Office of Juvenile Justice and Delinquency Prevention, over 20 percent of youth in the juvenile justice system have serious mental health problems, and many more have co-occurring mental health and substance abuse disorders.

(3) According to the National Alliance for the Mentally Ill, up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives.

(4) According to the Office of Juvenile Justice and Delinquency Prevention, over 150,000 juveniles who come into contact with the juvenile justice system each year meet the diagnostic criteria for at least 1 mental or emotional disorder.

(5) A significant proportion of adults with a serious mental illness who are involved with the criminal justice system are homeless or at imminent risk of homelessness; and many of these individuals are arrested and jailed for minor, nonviolent offenses.

(6) The majority of individuals with a mental illness or emotional disorder who are involved in the criminal or juvenile justice systems are responsive to medical and psychological interventions that integrate treatment, rehabilitation, and support services.

(7) According to the Bureau of Justice Statistics, as of July 1999, 75 percent of mentally ill inmates had previously been sentenced at least once to time in prison or jail or probation.

(8) Collaborative programs between mental health, substance abuse, and criminal or juvenile justice systems that ensure the provision of services for those with mental illness or co-occurring mental illness and substance abuse disorders can reduce the number of such individuals in adult and juvenile corrections facilities, while providing improved public safety.

SEC. 3. PURPOSE.

The purpose of this Act is to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems. Such collaboration is needed to—

(1) reduce rearrests among adult and juvenile offenders with mental illness, or co-occurring mental illness and substance abuse disorders;

(2) provide courts, including existing and new mental health courts, with appropriate mental health and substance abuse treatment options;

(3) maximize the use of alternatives to prosecution through diversion in appropriate cases involving non-violent offenders with mental illness;

(4) promote adequate training for criminal justice system personnel about mental illness and substance abuse disorders and the appropriate response to people with such illnesses;

(5) promote adequate training for mental health treatment personnel about criminal offenders with mental illness and the appropriate response to such offenders in the criminal justice system; and

(6) promote communication between criminal justice or juvenile justice personnel, mental health treatment personnel, nonviolent offenders with mental illness, and other support services such as housing, job placement, community, and faith-based organizations.

SEC. 4. DEPARTMENT OF JUSTICE MENTAL HEALTH AND CRIMINAL JUSTICE COLLABORATION PROGRAM.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

''PART HH—ADULT AND JUVENILE COLLABORATION PROGRAM GRANTS

''SEC. 2991. ADULT AND JUVENILE COLLABORATION PROGRAMS.

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

''(1) APPLICANT.—The term 'applicant' means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

''(2) COLLABORATION PROGRAM.—The term 'collaboration program' means a program to

promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

''(A) a criminal justice agency, a juvenile justice agency, or a mental health court; and

''(B) a mental health agency.

''(3) CRIMINAL OR JUVENILE JUSTICE AGENCY.—The term 'criminal or juvenile justice agency' means an agency of a State or local government that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

''(4) DIVERSION.—The term 'diversion' means the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for adult offenders with severe and persistent mental illness or juvenile offenders with serious mental or emotional disorders.

''(5) MENTAL HEALTH AGENCY.—The term 'mental health agency' means an agency of a State or local government that is responsible for mental health services.

''(6) MENTAL HEALTH COURT.—The term 'mental health court' means a judicial program that meets the requirements of part V of this title.

''(7) MENTAL ILLNESS.—The term 'mental illness' means a diagnosable mental, behavioral, or emotional disorder—

''(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

''(B) that has resulted in the substantial impairment of thought processes, sensory input, mood balance, memory, or ability to reason and substantially interferes with or limits 1 or more major life activities.

''(8) PRELIMINARILY QUALIFIED OFFENDER.—The term 'preliminarily qualified offender' means an adult or juvenile who—

''(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders; or

''(ii) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

''(B) has faced or is facing criminal charges and is deemed eligible by a designated pretrial screening and diversion process, or by a magistrate or judge.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Department of Health and Human Services.

''(10) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

''(b) PLANNING AND IMPLEMENTATION GRANTS.—

''(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets adults or juveniles with mental illness or co-occurring mental illness and substance abuse disorders in order to promote public safety and public health.

''(2) PURPOSES.—Grants awarded under this section shall be used to create or expand—

''(A) mental health courts;

''(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel in procedures for identifying the symptoms of mental illness and co-occurring mental illness and substance abuse disorders in order to respond appropriately to individuals with such illnesses; and

''(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

''(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders;

''(ii) juveniles and adults with mental illness for whom diversion is appropriate; or

''(iii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities.

''(3) APPLICATIONS.—

''(A) IN GENERAL.—To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under part V of this title may be made in conjunction with an application under this section.

''(B) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION.—The Attorney General shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

''(4) PLANNING GRANTS.—

''(A) APPLICATION.—The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

''(B) CONTENTS.—The Attorney General may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

''(C) PERIOD OF GRANT.—A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

''(D) AMOUNT.—The amount of a planning grant may not exceed $75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.

''(5) IMPLEMENTATION GRANTS.—

''(A) APPLICATION.—Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

''(B) COLLABORATION.—To receive an implementation grant, the joint applicants shall—

''(i) document that at least 1 criminal or juvenile justice agency (which can include a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

''(ii) describe the responsibilities of each participating agency, including how each agency will use grant resources to jointly ensure that the provision of mental health treatment services is integrated with the provision of substance abuse treatment services, where appropriate;

''(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

''(iv) involve, to the extent practicable, in developing the grant application—

''(I) individuals with mental illness or co-occurring mental illness and substance abuse disorders; or

''(II) the families or advocates of such individuals under subclause (I).

''(C) CONTENT.—To be eligible for an implementation grant, joint applicants shall comply with the following:

''(i) DEFINITION OF TARGET POPULATION.—Applicants for an implementation grant shall—

''(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

''(II) develop guidelines that can be used by personnel of a criminal or juvenile justice agency to identify individuals with mental illness or co-occurring mental illness and substance abuse disorders.

''(ii) SERVICES.—Applicants for an implementation grant shall—

''(I) ensure that offenders with mental illness who are to receive services under the collaboration program will first receive individualized, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

''(II) specify plans for making mental health treatment services available and accessible to mentally ill offenders at the time of their release from the criminal justice system, including outside of normal business hours;

''(III) ensure that mentally ill offenders served by the collaboration program will have access to community-based mental health services, such as crisis intervention, case management, assertive community treatment, medications, medication management, psychiatric rehabilitation, peer support, or, where appropriate, integrated substance abuse treatment services;

''(IV) make available, to the extent practicable, individualized mental health treatment services, other support services (such as housing, education, job placement, mentoring, or health care), benefits (such as disability income, disability insurance, and medicaid, where appropriate), and the services of faith-based and community organizations for mentally ill individuals served by the collaboration program; and

''(V) include strategies to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse, if the population targeted for the collaboration program includes juveniles with mental illness.

''(D) HOUSING AND JOB PLACEMENT.—Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

''(E) POLICIES AND PROCEDURES.—Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

''(F) FINANCIAL.—Applicants for an implementation grant shall—

''(i) explain the applicant's inability to fund the collaboration program adequately without Federal assistance;

''(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing

third-party resources for services already covered under programs (such as medicaid, medicare, and the State Children's Insurance Program); and

''(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

''(G) OUTCOMES.—Applicants for an implementation grant shall—

''(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

''(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

''(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

''(H) STATE PLANS.—Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

''(I) USE OF FUNDS.—Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

''(i) MENTAL HEALTH COURTS AND DIVERSION.—Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under part V of this title or diversion programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

''(ii) TRAINING.—Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

''(I) criminal justice system personnel to identify and respond appropriately to the unique needs of an adult or juvenile with mental illness or co-occurring mental illness and substance abuse disorders; or

''(II) mental health system personnel to respond appropriately to the treatment needs of criminal offenders with mental illness or co-occurring mental illness and substance abuse disorders.

''(iii) SERVICE DELIVERY.—Funds may be used to create or expand local treatment programs that promote public safety by serving individuals with mental illness or co-occurring mental illness and substance abuse disorders.

''(iv) IN-JAIL AND TRANSITIONAL SERVICES.—Funds may be used to promote and provide mental health treatment for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

''(J) GEOGRAPHIC DISTRIBUTION.—The Attorney General, in consultation with the Secretary, shall ensure that implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

''(c) PRIORITY.—The Attorney General, in awarding funds under this section, shall give priority to applications that—

''(1) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

''(2) demonstrate the active participation of each co-applicant in the administration of the collaboration program; and

''(3) have the support of both the Attorney General and the Secretary.

''(d) MATCHING REQUIREMENTS.—

''(1) FEDERAL SHARE.—The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

''(A) 80 percent of the total cost of the program during the first 2 years of the grant;

''(B) 60 percent of the total cost of the program in year 3; and

''(C) 25 percent of the total cost of the program in years 4 and 5.

''(2) NON-FEDERAL SHARE.—The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

''(e) FEDERAL USE OF FUNDS.—The Attorney General, in consultation with the Secretary, in administering grants under this section, may use up to 3 percent of funds appropriated to—

''(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

''(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

''(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

''(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

''(5) develop a uniform program evaluation process; and

''(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

''(f) INTERAGENCY TASK FORCE.—

''(1) IN GENERAL.—The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

''(2) RESPONSIBILITIES.—The task force established under paragraph (1) shall—

''(A) identify policies within their departments which hinder or facilitate local collaborative initiatives for adults or juveniles with mental illness or co-occurring mental illness and substance abuse disorders; and

''(B) submit, not later than 2 years after the date of enactment of this section, a report to Congress containing recommendations for improved interdepartmental collaboration regarding the provision of services to adults and juveniles with mental illness or co-occurring mental illness and substance abuse disorders.

''(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice to carry out this section—

''(1) $100,000,000 for each of fiscal years 2003 and 2004; and

''(2) such sums as may be necessary for fiscal years 2005 through 2007.''.

(b) LIST OF ''BEST PRACTICES''.—The Attorney General, in consultation with the Secretary of Health and Human Services, shall develop a list of ''best practices'' for appropriate diversion from incarceration of adult and juvenile offenders.

(c) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

''PART HH—ADULT AND JUVENILE COLLABORATION PROGRAM GRANTS

''Sec. 2991. Adult and juvenile collaboration programs.''.

Mr. LEAHY. Mr. President, I have joined today with Senators DEWINE, CANTWELL, BROWNBACK, and GRASSLEY to introduce legislation that will help State and local governments reduce crime by providing more effective treatment for the mentally ill. All too often, people with mental illness rotate repeatedly between the criminal justice system and the streets of our communities, committing a series of minor offenses. Their crimes occupy the ever scarcer time of law enforcement officers, diverting them from their more urgent responsibilities, and leave the offenders themselves in prisons or jails where little or no medical care is available for them. With this legislation, we are trying to give State and local governments the tools they need to break this cycle, for the good of law enforcement, corrections officers, our public safety, and mentally ill offenders.

I held a Judiciary Committee hearing in June on the criminal justice system and mentally ill offenders. At that hearing, we heard from State mental health officials, law enforcement officers, corrections officials, and the representative of counties around our Nation. All agreed that people with untreated mental illness are more likely to commit crimes, and that our State mental health systems, prisons and jails do not have the resources they need to treat the mentally ill, and prevent crime and recidivism. As this legislation's findings detail, 16 percent of adults incarcerated in U.S. jails and prisons have a mental illness, more than 20 percent of youth in the juvenile justice system have serious mental health problems, and up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives. This is a serious problem that has not received the legislative or public attention it deserves.

Under this bill, State and local governments can apply for funding to: a. create or expand mental health courts, which divert qualified offenders from prison to receive treatment; b. create or expand programs to provide specialized training for criminal justice and mental health system personnel; c. create or expand local treatment programs that serve individuals with mental illness or co-occurring mental illness and substance abuse disorders; and d. promote and provide mental health treatment for those incarcerated in or released from and penal or correctional institution. This new program authorizes $100 million for each of the next two fiscal years, and such sums as necessary through fiscal year 2007.

I would like to thank a number of people for their advice and involvement in this legislation. First, we would not be here today without the hard work of the Bazelon Center for Mental Health Law. I know that the Bazelon Center has additional ideas to improve this legislation, and I look forward to working with the Center as this bill moves through the legislative process. For example, I think we need to do more to ensure close coordination between the Department of Justice and the Department of Health and Human Services in designing and making these grants. Through this legislation, we are forcing States to bring together their health and law enforcement officials to make grant requests it only makes sense to have the joint perspectives of DOJ and HHS fully involved in evaluating those requests. This is an issue that we will continue to work on, and I hope we will continue to receive the input of the Bazelon Center as we do so.

Second, we have received great advice and support from officials in my State of Vermont. Susan Besio, the commissioner of Vermont's Department of Developmental and Mental Health Services, and John Gorczyk, the commissioner of Vermont's Department of Corrections, reviewed this legislation and offered their comments, which have been adopted in the version that we introduce today. Gary Margolis, the Chief of Police Services at the University of Vermont, testified at our June hearing and helped me understand the importance of this issue for law enforcement officers in Vermont and around the nation.

Third, the Council of State Governments has also provided invaluable assistance and advice on this issue. Indeed, their report on mentally ill offenders and the criminal justice system was instrumental in focusing the attention of the Judiciary Committee on this important topic.

Although I am pleased that we have introduced this bill before the end of this Congress, I think we all understand that the passage of meaningful mental health legislation may have to wait until the next Congress. I want to work with all of the officials and groups I have mentioned, the other sponsors of this legislation, and any other interested parties, to continue to make improvements to this bill. This is a topic that should be a priority for the Judiciary Committee next year, and I will work to make it so.

Mr. GRASSLEY. Mr. President, I'm pleased today to be introducing with Senators DEWINE, LEAHY, BROWNBACK, and CANTWELL the Mentally Ill Offender Treatment and Crime Reduction Act of 2002. This bipartisan bill authorizes the Attorney General to administer a grant program to assist communities in planning and implementing services for mentally ill offenders. These grants will increase public safety by fostering collaborative efforts by criminal justice, mental health, and substance abuse agencies. I've seen these types of collaborative programs work in Iowa and I know that they can work elsewhere.

We have an obligation to ensure that the public is protected from these offenders who suffer from mental illness. The Bureau of Justice Statistics has reported that over 16 percent of adults incarcerated in U.S. jails and prisons have a mental illness. In addition, the Office of Juvenile Justice and Delinquency Prevention has reported that over 20 percent of youth in the juvenile justice system have serious mental problems. This grant program will help increase public safety, as well as reduce the number of mentally ill adults and juveniles incarcerated in correctional facilities.

These grant dollars may be used by States and localities to establish mental health courts or other diversion programs, create or expand community-based treatment programs, provide in-jail treatment and transitional services, and for training of criminal justice and mental health system employees. The State of Iowa and a number of its counties are already leading the way in finding creative and collaborative programs to address the problems presented by these mentally ill criminals. Working together, the criminal justice, mental health, and substance abuse professionals can make a difference in the lives of this special class of offenders and also increase the safety of the public.

I want to thank Senator DEWINE for his leadership on this important issue. He has drafted a bill that reflects a common sense approach to a serious public safety issue. I also want to encourage my colleagues to support this important piece of legislation.

Ms. CANTWELL. Mr. President, I am proud to join with Senator DEWINE and Judiciary Chairman PATRICK LEAHY along with Senators GRASSLEY and BROWNBACK in cosponsoring this important legislation. This bill will take steps to reduce the prevalence of mentally ill individuals in the criminal justice system by providing more effective treatment. Forty percent of the mentally ill in this country come in contact with the criminal justice system, many for minor but repeated offenses. This wastes tremendous law enforcement resources that can be better focused on more urgent responsibilities and results in many of the mentally ill sitting in jail cells with little treatment available to them. My State has already taken some forward looking action in this area, and this legislation is an important next step.

The Mentally Ill Crime Reduction Act of 2002 funds new grants that will give States the tools they need to work collaboratively to break the cycle of mentally ill people repeatedly moving through the corrections system. This legislation will allow more jurisdictions to follow Seattle's lead in creating mental health courts that monitor individuals to keep them in treatment and out of jail. It will provide much needed funding to mental health and substance abuse programs, and it will provide critical dollars for treatment of those incarcerated in, or released from, prisons. The legislation has the support of Washington State Corrections Director Joe Lehman and the Washington Department of Social and Health Services as well as the National Alliance for the Mentally Ill and the Council of State Governments. I'd like to especially thank the Bazelon Center for their work in this area and their commitment to improving this situation.

Earlier this year, the Council on State Governments Criminal Justice/Mental Health Consensus Project issued a report that detailed the disparate proportions of the mentally ill in the criminal justice system. The Project found that while those suffering from serious mental illness represent approximately 5 percent of the population of this country, they represent over 16 percent of the prison population. Of that 16 percent, nearly three-quarters also have a substance abuse problem, and nearly half were incarcerated for committing a nonviolent crime. In some jurisdictions recidivism rates for mentally ill inmates can reach over 70 percent. Police, judges and prosecutors are usually without options of what to do with mentally ill patients given the lack of health services, and thus many end up in jail for minor crimes. The Los Angeles County Jail alone holds as many as 3,300 individuals with mental illness, more than any state hospital or mental health institution in the United States.

Each time a mentally ill individual is incarcerated, his or her mental condition will likely worsen. Once incarcerated, people with mental illness are particularly susceptible to harming themselves or others. This environment exacerbates their mental illness, yet access to effective counseling or medication is severely limited. This in turn brings on depression or delusions that immobilize them; many have spent years trying to mask torments or hallucinations with alcohol or drugs which leads to these individuals, on average, spending more time in prisons.

This problem is particularly acute in the area of juvenile offenders. The Office of Juvenile Justice and Delinquency Prevention reports that over 20 percent of children in the juvenile justice system, over 155,000, have serious mental health problems. This bill creates specialized training programs for juvenile and criminal justice agency personnel in identifying symptoms of mentally ill individuals that will help identify and treat juveniles at an earlier stage.

The prevalence of people with mental illness in the criminal justice system comes at a high price to taxpayers. In King County, WA officials identified 20 people who had been repeatedly hospitalized, jailed or admitted to detoxification centers. These emergency

services cost the county approximately $1.1 million in a single year. In contrast, an Illinois Cooperative Program, which brought criminal justice and mental health service personnel together to provide services to those mentally ill patients released from jail, calculated that the 30 individuals in the study spent approximately 2,200 days less in jail, and 2,100 fewer days, in hospitals than they had the previous year for a savings of $1.2 million dollars.

In 1997, Seattle Fire Department Captain Stanley Stevenson was murdered by an individual who had been found incompetent by the local municipal court but was released because of the lack of alternative options. This murder was the impetus for the creation of a Task Force that led directly to the formation of the Seattle mental health court in 1999. The primary reason why this Court has been growing more effective in dealing with mentally ill offenders is that it has increased cooperation between the mental health and criminal justice systems, operations that have traditionally not worked closely together. Building on the model of the drug court, the mental health court closely monitors compliance with treatment regimens through a team proficient in dealing with the mentally ill and at using the stick of the criminal justice system to make that treatment work. The vast majority of these individuals are responsive to treatment.

This program has progressed well and is becoming an effective means of helping mentally ill offenders, assuring public safety, and running a more cost efficient system. Yet to allow this system to continue to expand in Seattle and other communities in Washington state, as well as to allow other states to begin using these types of programs, federal grant funding is critical. That is what this bill provides.

Collaboration between mental health, substance abuse, law enforcement, judicial, and other criminal justice personnel is also critical to the success of our mental health court program in Seattle. It is only through full coordination between the criminal justice and the mental health treatment community at the federal and the local level that these efforts will be successful.

Similarly, only through full coordination at the federal and local level will this bill be able to make a critical difference. I believe that some additional improvements can be made to strengthen that critical coordination and I look forward to working with Senator DEWINE and Chairman LEAHY to accomplish that goal. I welcome the introduction of this legislation and look forward to working with my cosponsors to make this bill law in the next Congress.

By Mr. LIEBERMAN (for himself and Mr. HATCH):

S. 3148. A bill to provide incentives to increase research by private sector entities to develop antivirals, antibiotics and other drugs, vaccines, microbicides, and diagnostic technologies to prevent and treat illnesses associated with a biological, chemical, or radiological weapons attack; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, America has a major flaw in its defenses against bioterrorism. Hearings I chaired in the Governmental Affairs Committee on bioterrorism demonstrated that America has not made a national commitment to research and development of treatments and cures for those who might be exposed to or infected by a biological agent, chemical toxin, or radiological material. Correcting this critical gap is the purpose of legislation we are introducing today. This legislation is a refined and upgraded version of legislation I introduced last year (S. 1764, December 4, 2001) and I am delighted that Senator HATCH has joined me as the lead cosponsor of the new bill.

Obviously, our first priority must be to attempt to prevent the use of these agents and toxins by terrorists, quickly assess when an attack has occurred, take appropriate public health steps to contain the exposure, stop the spread of contagion, and then detoxify the site. These are all critical functions, but in the end we must recognize that some individuals may be exposed or infected. Then the critical issue is whether we can treat and cure them and prevent death and disability.

In short, we need a diversified portfolio of medicines. In cases where we have ample advance warning of an attack and specific information about the agent, toxin, or material, we may be able to vaccinate the vulnerable population in advance. In other cases, even if we have a vaccine, we might well prefer to use medicines that would quickly stop the progression of the disease or the toxic effects. We also need a powerful capacity quickly to develop new countermeasures where we face a new agent, toxin, or material.

Unfortunately, we are woefully short of vaccines and medicines to treat individuals who are exposed or infected. We have antibiotics that seem to work for most of those infected in the current anthrax attack, but these have not prevented five deaths. We have no effective vaccines or medicines for most other biological agents and chemical toxins we might confront. We have very limited capacity to respond medically to a radiological attack. In some cases we have vaccines to prevent, but no medicines to treat, an agent. We have limited capacity to speed the development of vaccines and medicines to prevent or treat novel agents and toxins not currently known to us.

We have provided, and should continue to provide, direct Federal funding for research and development of new medicines, however, this funding is unlikely to be sufficient. Even with ample Federal funding, many private companies will be reluctant to enter into agreements with government agencies to conduct this research. Other companies would be willing to conduct the research with their own capital and at their own risk but are not able to secure the funding from investors.

The legislation we introduce today would provide incentives for private biotechnology companies to form capital to develop countermeasures—medicines—to prevent, treat and cure victims of bioterror, chemical and radiological attacks. This will enable this industry to become a vital part of the national defense infrastructure and do so for business reasons that make sense for their investors on the bottom line.

Enactment of these incentives is necessary because most biotech companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. They must necessarily focus on research that will lead to product sales and revenue and, thus, to an end to their dependence on investor capital. There is no established or predictable market for countermeasures. These concerns are shared by pharmaceutical firms. Investors are justifiably reluctant to fund this research, which will present challenges similar in complexity to AIDS. Investors need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk, complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases.

It is in our national interest to enlist these companies in the development of countermeasures as biotech companies tend to be innovative and nimble and intently focused on the intractable diseases for which no effective medical treatments are available.

The incentives we have proposed are innovative and some may be controversial. We invite everyone who has an interest and a stake in this research to enter into a dialogue about the issue and about the nature and terms of the appropriate incentives. We have attempted to anticipate the many complicated technical and policy issues that this legislation raises. The key focus of our debate should be how, not whether, we address this critical gap in our public health infrastructure and the role that the private sector should play. Millions of Americans will be at risk if we fail to enact legislation to meet this need.

RELATIONSHIP TO BIOTERRORISM PREPAREDNESS LEGISLATION

My proposal is complimentary to legislation on bioterrorism preparedness we enacted earlier this year. That law, Bioweapons Preparedness Act, focuses on many needed improvements in our public health infrastructure. These investments provide the infrastructure

where we could deploy the countermeasures that could be developed pursuant to the incentives proposed in my legislation.

Among the provisions in the Frist-Kennedy law are initiatives regarding bioterrorism preparedness capacities, improvements in communications about bioterrorism, protection of children, protection of food safety, and global pathogen surveillance and response. We need to fully fund these new programs and capacities.

My legislation builds on these provisions by providing incentives to enable the biotechnology industry acting on its own initiative to fund and conduct research on countermeasures. It includes tax, procurement, intellectual property and liability incentives. Accordingly, my proposal raises issues falling within the jurisdiction of the HELP, Finance, and Judiciary Committees.

The Frist-Kennedy law and my bill are complimentary. The bottom line is that we need both bills—one focusing on public health and one focusing on medical research. Without medical research, public health workers will not have the single most important tool to use in an attack—medicine to prevent death and disability and medicine that will help us avoid public panic.

CIPRO AS A COUNTERMEASURE

We are fortunate that we have broad-spectrum antibiotics, including Cipro, to treat the type of anthrax to which so many have been exposed. This treatment seems to be effective before the anthrax symptoms become manifest, and effective to treat cutaneous anthrax, and we have been able to effectively treat some individuals who have inhalation anthrax. I am thankful that this drug exists to treat those who have been exposed, including my own Senate staff. Our offices are immediately above those of Senator DASCHLE.

We have seen how reassuring it is that we have an effective treatment for this biological agent. We see long lines of Congressional staffers and postal workers awaiting their Cipro. Think what it would be like if we could only say, ''We have nothing to treat you and hope you don't contract the disease.'' Think of the public panic that we might see.

I am grateful that this product exists and proud of the fact that the Bayer Company is based in Connecticut. The last thing we should be doing is criticizing this company for their research success. The company has dispensed millions of dollars worth of Cipro free of charge. Criticizing it for the price that it charges tells other research companies that the more valuable their products are in protecting the public health, the more likely they are to be criticized and bullied.

It is fortuitous that Cipro seems to be effective against anthrax. The product was not developed with this use in mind. My point with this legislation is we cannot rely on good fortune and chance in the development of countermeasures. We need to make sure that these countermeasures will be developed. We need more companies like Bayer, we need them focused specifically on developing medicines to deal with the new bioterror threat, and we need to tell them that there are good business reasons for this focus.

We also are fortunate to have an FDA-licensed vaccine, made by BioPort Corporation, that is recommended by our country's medical experts at the DOD and CDC for pre-anthrax exposure vaccination of individuals in the military and some individuals in certain laboratory and other occupational settings where there is a high risk of exposure to anthrax. This vaccine is also recommended for use with Cipro after exposure to anthrax to give optimal and long-lasting protection. That vaccine is not now available for use. We must do everything necessary to make this and other vaccines available in adequate quantities to protect against future attacks.

The point of this legislation is that we need many more Cipro-like and anthrax vaccine-like products. That we have these products is the good news; that we have so few others is the problem.

BIOLOGICAL WEAPONS CONVENTION

One unfortunate truth in this debate is that we cannot rely upon international legal norms and treaties alone to protect our citizens from the threat of biological or chemical attack.

The United States ratified the Biological and Toxin Weapons Convention (BWC) on January 22, 1975. That Convention now counts 144 nations as parties. Twenty-two years later, on April 24, 1997, the United States Senate joined 74 other countries when it ratified the Chemical Weapons Convention (CWC). While these Conventions serve important purposes, they do not in any way guarantee our safety in a world with rogue states and terrorist organizations.

The effectiveness of both Conventions is constrained by the fact that many countries have failed to sign on to either of them. Furthermore, two signatories of the BWC, Iran and Iraq, are among the seven governments that the Secretary of State has designated as state sponsors of international terrorism, and we know for a fact that they have both pursued clandestine biological weapons programs. The BWC, unlike the CWC, has no teeth—it does not include any provisions for verification or enforcement. Since we clearly cannot assume that any country that signs on to the Convention does so in good faith, the Convention does so in good faith, the Convention's protective value is limited.

On November 1 of 2001, the President announced his intent to strengthen the BWC as part of his comprehensive strategy for combating terrorism. A BWC review conference, held every five years to consider ways of improving the Convention's effectiveness, will convene in Geneva beginning November 19. In anticipation of that meeting, the President has urged that all parties to the Convention enact strict national criminal legislation to crack down on prohibited biological weapons activities, and he has called for an effective United Nations procedures for investigation suspicious outbreaks of disease or allegations of biological weapons use.

These steps are welcomed, but they are small. Even sweeping reforms, like creating a more stringent verification and enforcement regime, would not guarantee our safety. The robust verification and enforcement mechanisms in the CWC, for instance, have proven to be imperfect, and scientists agree that it is much easier to conceal the production of biological agents than chemical weapons.

The inescapable fact, therefore, is that we cannot count on international regimes to prevent those who wish us ill from acquiring biological and chemical weapons. We must be prepared for the reality that these weapons could fall into the hands of terrorists, and could be used against Americans on American soil. And we must be prepared to treat the victims of such an attack if it were ever to occur.

CDC QUARANTINE PLANS

On November 26 of last year, the Centers for Disease Control issued its interim working draft plan for responding to an outbreak of smallpox. The plan does not call for mass vaccination in advance of a smallpox outbreak because the risk of side effects from the vaccine outweighs the risks of someone actually being exposed to the smallpox virus. At the heart of the plan is a strategy sometimes called ''search and containment.''

This strategy involves identifying infected individual or individuals with confirmed smallpox, identifying and locating those people who come in contact with that person, and vaccinating those people in outward rings of contact. The goal is to produce a buffer of immune individuals and was shown to prevent smallpox and to ultimately eradicate the outbreak. Priorities would be set on who is vaccinated, perhaps focusing on the outward rings before those at the center of the outbreak. The plan assumes that the smallpox vaccination is effective for persons who have been exposed to the disease as long as the disease has not taken hold.

In practice it may be necessary to set a wide perimeter for these areas because smallpox is highly contagious before it might be diagnosed. There may be many areas subject to search and containment because people in our society travel frequently and widely. Terrorists might trigger attacks in a wide range of locations to multiply the confusion and panic. The most common form of smallpox has a 30 percent mortality rate, but terrorists might be able to obtain supplies of ''flat-type'' smallpox with a mortality rate of 96 percent

and hemorrhagic-type smallpox, which is almost always fatal. For these reasons, the CDC plan accepts the possibility that whole cities or other geographic areas could be cordoned off, letting no one in or out—a quarantine enforced by police or troops.

The plan focuses on enforcement authority through police or National Guard, isolation and quarantine, mandatory medical examinations, and rationing of medicines. It includes a discussion of ''population-wide quarantine measures which restrict activities or limit movement of individuals [including] suspension of large public gatherings, closing of public places, restriction on travel [air, rail, water, motor vehicle, and pedestrian], and/or 'cordon sanitaire' [literally a 'sanitary cord' or line around a quarantined area guarded to prevent spread of disease by restricting passage into or out of the area].'' The CDC recommends that states update their laws to provide authority for ''enforcing quarantine measures'' and it recommends that States in ''preevent planning'' identify personnel who can enforce these isolation and quarantine measures, if necessary.'' Guide C—Isolation and Quarantine, page 17.

On October 23, 2001, the CDC published a ''Model State Emergency Health Powers Act.'' It was prepared by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, in conjunction with the National Governors Association, National Conference of State Legislatures, Association of State and Territorial Health Officials, National Association of City and County Health Officers, and National Association of Attorneys General. A copy of the model law is printed at www.publichealthlaw.net. The law would provide powers to enforce the ''compulsory physical separation (including the restriction of movement and confinement) of individuals and/or groups believed to have been exposed to or known to have been infected with a contagious disease from individuals who are believed not to have been exposed or infected, in order to prevent or limit the transmission of the disease to others.'' Federal law on this subject is very strong and the Administration can always rely on the President's Constitution authority as Commander in Chief.

Let us try to imagine, however, what it would be like if a quarantine is imposed. Let us assume that there is not enough smallpox vaccine available for use in a large outbreak, that the priority is to vaccinate those in the outward rings of the containment area first, that the available vaccines cannot be quickly deployed inside the quarantined area, that it is not possible to quickly trace and identify all of the individuals who might have been exposed, and/or that public health workers themselves might be infected. We know that there is no medicine to treat those who do become infected. We know the mortality rates. It is not hard to imagine how much force might be necessary to enforce the quarantine. It would be quite unacceptable to permit individuals to leave the quarantined area no matter how much panic had taken hold.

Think about how different this scenario would be if we had medicines that could effectively treat and cure those who become infected by smallpox. We still might implement the CDC plan but a major element of the strategy would be to persuade people to visit their local clinic or hospital to be dispensed their supply of medicine. We could trust that there would be a very high degree of voluntary compliance. This would give us more time, give us options if the containment is not successful, give us options to treat those in the containment area who are infected, and enable us to quell the public panic.

Because we have no medicine to treat those infected by smallpox, we have to be prepared to implement a plan like the one CDC has proposed. Theirs is the only option because our options are so limited. We need to expand our range of options.

THE COUNTERMEASURE RESEARCH GAP

We should not be lulled by the apparent successes with Cipro and the strains of anthrax we have seen in the recent attacks. We have not been able to prevent death in some of the patients with late-stage inhalation anthrax and Robert Stevens, Thomas Morris, Jr., Joseph Curseen, Kathy Nguyen, and Ottilie Lundgren died. This legislation is named in honor of them. What we needed for them, and did not have, is a drug or vaccine that would treat late stage inhalation anthrax.

As I have said, we need an effective treatment for those who become infected with smallpox. We have a vaccine that effectively prevents smallpox infection, and administering this vaccine within four days of first exposure has been shown to offer some protections against acquiring infection and significant protection against a fatal outcome. The problem is that administering the vaccine in this time frame to all those who might have been exposed may be exceedingly difficult. And once infection has occurred, we have no effective treatment options.

In the last century 500 million people have died of smallpox—more than have from any other infectious disease—as compared to 320 million deaths in all the wars of the twentieth century. Smallpox was one of the diseases that nearly wiped out the entire Native American population in this hemisphere. The last naturally acquired case of smallpox occurred in Somalia in 1977 and the last case from laboratory exposure was in 1978.

Smallpox is a nasty pathogen, carried in microscopic airborne droplets inhaled by its victims. The first signs are headache, fever, nausea and backache, sometimes convulsions and delirium. Soon, the skin turns scarlet. When the fever lets up, the telltale rash appears—flat red spots that turn into pimples, then big yellow pustules, then scabs. Smallpox also affects the throat and eyes, and inflames the heart, lungs, liver, intestines and other internal organs. Death often came from internal bleeding, or from the organs simply being overwhelmed by the virus. Survivors were left covered with pockmarks—if they were lucky. The unlucky ones were left blind, their eyes permanently clouded over. Nearly one in four victims died. The infection rate is estimated to be 25–40 percent for those who are unvaccinated and a single case can cause 20 or more additional infections.

During the 16th Century, 3.5 million Aztecs—more than half the population—died of smallpox during a two-year span after the Spanish army brought the disease to Mexico. Two centuries later, the virus ravaged George Washington's troops at Valley Forge. And it cut a deadly path through the Crow, Dakota, Sioux, Blackfoot, Apache, Comanche and other American Indian tribes, helping to clear the way for white settlers to lay claim to the western plains. The epidemics began to subside with one of medicine's most famous discoveries: the finding by British physician Edward Jenner in 1796 that English milkmaids who were exposed to cowpox, a mild second cousin to smallpox that afflicts cattle, seemed to be protected against the more deadly disease. Jenner's work led to the development of the first vaccine in Western medicine. While later vaccines used either a killed or inactivated form of the virus they were intended to combat, the smallpox vaccine worked in a different way. It relied on a separate, albeit related virus: first cowpox and the vacinnia, a virus of mysterious origins that is believed to be a cowpox derivative. The last American was vaccinated back in the 1970s and half of the US population has never been vaccinated. It is not known how long these vaccines provide protection, but it is estimated that the term is 3–5 years.

In an elaborate smallpox biowarfare scenario enacted in February 1999 by the Johns Hopkins Center for Civilians Biodefense Studies, it was projected that within two months 15,000 people had died, epidemics were out of control in fourteen countries, all supplies of smallpox vaccine were depleted, the global economy was on the verge of collapse, and military control and quarantines were in place. Within twelve months it was projected that eighty million people worldwide had died.

A single case of smallpox today would become a global public health threat and it has been estimated that a single smallpox bioterror attack on a single American city would necessitate the vaccination of 30–40 million people.

The U.S. government is now in the process of purchasing substantial stocks of the smallpox vaccine. We

then face a very difficult decision on deploying the vaccine. We know that some individuals will have an adverse reaction to this vaccine. No one in the United States has been vaccinated against smallpox in twenty-five years. Those that were vaccinated back then may not be protected against the disease today. If we had an effective treatment for those who might become infected by smallpox, we would face much less pressure regarding deploying the vaccine. If we face a smallpox epidemic from a bioterrorism attack, we will have no Cipro to reassure the public and we will be facing a highly contagious disease and epidemic. To be blunt, it will make the current anthrax attack look benign by comparison.

Smallpox is not the only threat. We have seen other epidemics in this century. The 1918 influenza epidemic provides a sobering admonition about the need for research to develop medicines. In two years, a fifth of the world's population was infected. In the United States the 1918 epidemic killed more than 650,000 people in a short period of time and left 20 million seriously ill, one fourth of the entire population. The average lifespan in the U.S. was depressed by ten years. In just one year, the epidemic killed 21 million human beings worldwide—well over twice the number of combat deaths in the whole of World War I. The flu was exceptionally virulent to begin with and it then underwent several sudden and dramatic mutations in its structure. Such mutations can turn flu into a killer because its victims' immune systems have no antibodies to fight off the altered virus. Fatal pneumonia can rapidly develop.

Another deadly toxin, ricin toxin, was of interest to the al-Qaeda terrorist network. At an al-Qaeda safehouse in Saraq Panza, Kabul reporters found instructions for making ricin. The instructions make chilling reading. ''A certain amount, equal to a strong dose, will be able to kill an adult, and a dose equal to seven seeds will kill a child,'' one page reads. Another page says: ''Gloves and face mask are essential for the preparation of ricin. Period of death varies from 3–5 days minimum, 4–14 days maximum.'' The instructions listed the symptoms of ricin as vomiting, stomach cramps, extreme thirst, bloody diarrhoea, throat irritation, respiratory collapse and death.

No specific treatment or vaccine for ricin toxin exists. Ricin is produced easily and inexpensively, highly toxic, and stable in aerosolized form. A large amount of ricin is necessary to infect whole populations—the amount of ricin necessary to cover a 100-km^2 area and cause 50 percent lethality, assuming aerosol toxicity of 3 mcg/kg and optimum dispersal conditions, is approximately 4 metric tons, whereas only 1 kg of Bacillus anthracis is required. But it can be used to terrorize a large population with great effect because it is so lethal.

Use of ricin as a terror weapon is not theoretical. In 1991 in Minnesota, 4 members of the Patriots Council, an extremist group that held antigovernmental and antitax ideals and advocated the overthrow of the U.S. government, were arrested for plotting to kill a U.S. marshal with ricin. The ricin was produced in a home laboratory. They planned to mix the ricin with the solvent dimethly sulfoxide (DMSO) and then smear it on the door handles of the marshal's vehicle. The plan was discovered, and the 4 men were convicted. In 1995, a man entered Canada from Alaska on his way to North Carolina. Canadian custom officials stopped the man and found him in possession of several guns, $98,000, and a container of white powder, which was identified as ricin. In 1997, a man shot his stepson in the face. Investigators discovered a makeshift laboratory in his basement and found agents such as ricin and nicotine sulfate. And, ricin was used by the Bulgarian secret police when they killed Georgi Markov by stabbing him with a poison umbrella as he crossed Waterloo Bridge in 1978.

Going beyond smallpox, influenza, and ricin, we do not have an effective vaccine or treatment for dozens of other deadly and disabling agents and toxin. Here is a partial list of some of the other biological agents and chemical toxins for which we have no effective treatments: clostridium botulinum toxin (botulism), francisella tularensis (tularaemia), Ebola hemorrhagic fever, Marbug hemorrhagic fever, Lassa fever, Julin (Argentine hemorrhagic fever), Coxiella burnetti (Q fever), brucella species (brucellosis), burkholderia mallei (glanders), Venezuelan encephalomyelitis, eastern and western equine encephalomyelitis, epsilon toxin of clostridium perfringens, staphylococcus entretoxin B, salmonella species, shigella dysenteriae, escherichia coli O157:H7, vibrio cholerae, cryptosporidium parvum, nipah virus, hantaviruses, tickborne hemorrhagic fever viruses, tickborne encephalitis virus, yellow fever, nerve agents (tabun, sarin, soman, GF, and VX), blood agents (hydrogen cyanide and cyanogens chloride), blister agents (lewisite, nitrogenadn sulfur mustards, and phosgene oxime), heavy metals (arsenic, lead, and mercury), and volatile toxins (benzene, chloroform, trihalomethanes), pulmonary agents (Phosgene, chlorine, vinly chloride), and incapacitating agents (BZ).

The naturally occurring forms of these agents and toxins are enough to cause concern, but we also know that during the 1980s and 1990s the Soviet Union conducted bioweapons research at forty-seven laboratories and testing sites, employed nearly fifty thousand scientists in the work, and that they developed genetically modified versions of some of these agents and toxins. The goal was to develop an agent or toxin that was particularly virulent or not vulnerable to available antibiotic.

The United States has publicly stated that five countries are developing biological weapons in violation of the Biological Weapons convention, North Korea, Iraq, Iran, Syria, and Libya, and stated that additional countries not yet named (possibly including Russia, China, Israel, Sudan and Egypt) are also doing so as well.

What is so insidious about biological weapons is that in many cases the symptoms resulting from a biological weapons attack would likely take time to develop, so an act of bioterrorism may go undetected for days or weeks. Affected individuals would seek medical attention not from special emergency response teams but in a variety of civilian settings at scattered locations. This means we will need medicines that can treat a late stage of the disease, long after the infection has taken hold.

We must recognize that the distinctive characteristic of biological weapons is that they are living micro-organisms and are thus the only weapons that can continue to proliferate without further assistance one released in a suitable environment.

The lethality of these agents and toxins, and the panic they can cause, is quite frightening. The capacity for terror is nearly beyond comprehension. We do not believe it is necessary to describe the facts here. Our point is simple: we need more than military intelligence, surveillance, and public health capacity. We also need effective medicines. We also need more powerful research tools that will enable us to quickly develop treatments for agents and toxins not on this or any other list.

We need to do whatever it takes to be able to reassure the American people that hospitals and doctors have powerful medicines to treat them if they are exposed to biological agents or toxins, that we can contain an outbreak of an infectious agent, and that there is little to fear. To achieve this objective, we need to rely on the entrepreneurship of the biotechnology industry.

DIRECT GOVERNMENT FUNDING OF RESEARCH

There is already some direct funding of research by the Defense Advanced Research Projects Agency (DARPA), the National Institutes of Health (NIH), and the Centers for Disease Control (CDC). This research should go forward.

DARPA, for instance, has been described as the Pentagon's ''venture capital fund,'' its mission to provide seed money for novel research projects that offer the potential for revolutionary findings. Last year, DARPA's Unconventional pathogen Countermeasures program awarded contracts totalling $50 million to universities, foundations, pharmaceutical and biotechnology companies seeking new ways to fight biological agents and toxins.

The Unconventional Pathogen Countermeasures program now funds 43 separate research efforts on antibacterials, anti-toxins, anti-virals, decontamination, external protection

from pathogens, immunization and multi-purpose vaccines and treatments. A common thread among many of these undertakings is the goal of developing drugs that provide broad-spectrum protection against several different pathogents. This year, with a budget of $63 million, the program has received over 100 research proposals in the last two months alone.

Some of this DARPA research is directed at developing revolutionary, broad-spectrum, medical countermeasures against significantly pathogenic products. This goal is to develop countermeasures that are versatile enough to eliminate biological threats, whether from natural sources or modified through bioengineering or other manipulation. The countermeasures would need the potential to provide protection both within the body and at the most common portals of entry (e.g., inhalation, ingestion, transcutaneous). The strategies might include defeating the pathogen's ability to enter the body, traverse the bloodstream or lymphatics, and enter target tissues; identifying novel pathogen vulnerabilities based on fundamental, critical molecular mechanisms of survival or pathogenesis (e.g., Type III secretion, cellular energetics, virulence modulation); constructing unique, robust vehicles for the delivery of countermeasures into or within the body; and modulating the advantageous and/or deleterious aspects of the immune response to significantly pathogenic microorganisms and/or the pathogenic products in the body.

While DAPRA's work is specifically aimed at protecting our military personnell, the National Institutes of Health also spent $49.7 million in the last fiscal year to find new therapies for those who contract smallpox and on systems for detecting the disease. In recent years, NIH's research programs have sought to create more rapid and accurate diagnostics, develop vaccines for those at risk of exposure to biological agents, and improve treatment for those infected. Moreover, in the last fiscal year, the Centers for Disease Control has allocated $18 million to continue research on an anthrax vaccine and $22.3 million on smallpox research.

Some companies are willing to enter into a research relationships funded by DARPA and other agencies to develop countermeasures. Relationships between the government and private industry can be very productive, but they can also involve complex issues reflecting the different cultures of government and industry. Some companies—including some of the most enterpreneurial—might prefer to take their own initiative to conduct this research. Relationships with government entities involve risks, issues, and bureaucracy that are not present in relationships among biotechnology companies and between them and non-governmental partners.

The Defense Departments Joint Vaccine Acquisition Program (JVAP) illustrates the problems with a government led and managed program. A report in December 2000 by a panel of independent experts found that the current program ''is insufficient and will fail'' and recommended it adopt an approach more on the model of a private sector effort. It needs to adopt ''industry practices,'' ''capture industry interest,'' ''implement an organizational alignment that mirrors the vaccine industry's short chain of command and decision making,'' ''adopt an industry-based management philosophy,'' and ''develop a sound investment strategy.'' It bemoaned the ''extremely limited'' input from industry in the JVAP program.

It is clear from this experience that we should not rely exclusively on government funding of countermeasures research. We should take advantage of the entrepreneurial fervor, and the independence, of our biotechnology industry entrepreneurs. It is not likely that the government will be willing or able to provide sufficient funding for the development of the countermeasures we need. Some of the most innovative approaches to vaccines and medicines might not be funded with the limited funds available to the government. We need to provide incentives that will encourage every biotech company to review its research priorities and technology portfolio for its relevance and potential for countermeasure research. Some of this research is early stage, basic research that is being developed and considered only for its value in treating an entirely different disease. We need to kindle the imagination of biotechnology companies and their tens of thousands of scientists regarding countermeasure research.

INDUSTRY RESEARCH ON COUNTERMEASURES

My proposal would supplement direct Federal government funding of research with incentives that make it possible for private companies to form the capital to conduct this research on their own initiative, utilizing their own capital, and at their own risk—all for good business reasons going to their bottom line.

The U.S. biotechnology industry, approximately 1,300 companies, spent $13.8 billion on research last year. Only 350 of these companies have managed to go public. The industry employs 124,000 (Ernest & Young data) people. The top five companies spent an average of $89,000 per employee on research, making it the most research-intensive industry in the world. The industry has 350 products in human clinical trials targeting more than 200 diseases. Losses for the industry were $5.8 billion in 2001, $5.6 billion in 2000, $4.4 billion in 1999, $4.1 billion in 1998, $4.5 billion in 1997, $4.6 billion in 1996, and similar amounts before that. In 2000 fully 38 percent of the public biotech companies had less than 2 years of funding for their research. Only one quarter of the biotech companies in the United States are publicly traded and they tend to be the best funded.

There is a broad range of research that could be undertaken under this legislation. Vaccines could be developed to prevent infection or treat an infection from a bioterror attack. Broad-spectrum antibiotics are needed. Also, promising research has been undertaken on antitoxins that could neutralize the toxins that are released, for example, by anthrax. With anthrax it is the toxins, not the bacteria itself, that cause death. An antitoxin could act like a decoy, attaching itself to sites on cells where active anthrax toxin binds and then combining with normal active forms of the toxin and inactivating them. An antitoxin could block the production of the toxin.

We can rely on the innovations of the biotech industry, working in collaboration with academic medical centers, to explore a broad range of innovative approaches. This mobilizes the entire biotechnology industry as a vital component of our national defense against bioterror weapons.

INCENTIVES NEEDED TO SPUR RESEARCH

The legislation takes a comprehensive approach to the challenges the biotechnology industry faces in forming capital to conduct research on countermeasures. It includes capital formation tax incentives, guaranteed purchase funds, patent protections, and liability protections. We believe we will have to include each of these types of incentives to ensure that we mobilize the biotechnology industry for this urgent national defense research.

Some of the tax incentives in this legislation, and both of the two patent incentives I have proposed, may be controversial. In our view, we can debate tax or patent policy as long as you want, but let's not lose track of the issue here—development of countermeasures to treat people infected or exposed to lethal and disabling bioterror weapons.

We know that incentives can spur research. In 1983 we enacted the Orphan Drug Act to provide incentives for companies to develop treatments for rare diseases with small potential markets deemed to be unprofitable by the industry. In the decade before this legislation was enacted, fewer than 10 drugs for orphan diseases were developed and these were mostly chance discoveries. Since the Act became law, 218 orphan drugs have been approved and 800 more are in the pipeline. The Act provides 7 years of market exclusivity and a tax credit covering some research costs. The effectiveness of the incentives we have enacted for orphan disease research show us how much we can accomplish when we set a national priority for certain types of research.

The incentives we have proposed differ from those set by the Orphan Drug Act. We need to maintain the effectiveness of the Orphan Drug Act and not undermine it by adding many other disease research targets. In addition, the tax credits for research for orphan drug research have no value for most biotechnology companies because few

of them have tax liability with respect to which to claim the credit. This explains why we have not proposed to utilize tax credits to spur countermeasures research. It is also clear that the market for countermeasures is even more speculative than the market for orphan drugs and we need to enact a broader and deeper package of incentives.

DECISION MAKING ON TARGETS AND REGISTRATION OF RESEARCH

The government determines which research is covered by the legislation and which companies qualify for the incentives for this research. No company is entitled to utilize the incentives until the government certifies its eligibility.

These decisions are vested in the Secretary, Department of Homeland Security. In S. 1764, the decisions were vested in the White House Office of Homeland Security, but it is now likely that a Department will be created. I have strongly endorsed that concept and led the effort to enact the legislation forming the new Department.

The legislation confers on the Secretary, in consultation with the Secretary of Defense and Secretary of Health and Human Services, authority to set the list of agents and toxins with respect to which the legislation and incentives applies.

The Secretary determines which agents and toxins present a threat and whether the countermeasures are ''more likely'' to be developed with the application of the incentives in the legislation. The Secretary may determine that an agent or toxin does not present a threat or that countermeasures are not more likely to be developed with the incentives. It may determine that the government itself should fund the research and development effort and not rely on private companies. The Department is required to consider the status of existing research, the availability of non-countermeasure markets for the research, and the most effective strategy for ensuring that the research goes forward. The legislation includes an illustrative, non-binding list of fifty-four agents and toxins that might be included on the Secretary's list. The decisions of the Secretary are final and are not subject to judicial review.

The Department then must provide information to potential manufacturers of these countermeasures in sufficient detail to permit them to conduct the research and determine when they have developed the needed countermeasure. It may exempt from publication such information as it deems to be sensitive.

The Department also must specify the government market that will be available when a countermeasure is successfully developed, including the minimum number of dosages that will be purchased, the minimum price per dose, and the timing and number of years projected for such purchases. Authority is provided for the Department to make advance, partial, progress, milestone, or other payments to the manufacturers.

The Department is responsible for determining when a manufacturer has, in fact, successfully developed the needed countermeasure. It must provide information in sufficient detail so that manufacturers and the government may determine when the manufacturer has successfully developed the countermeasure the government needs. If and when the manufacturer has successfully developed the countermeasure, it becomes entitled to the procurement, patent, and liability incentives in the legislation.

Once the list of agents and toxins is set, companies may register with the Department their intent to undertake research and development of a countermeasure to prevent or treat the agent or toxin. This registration is required only for companies that seek to be eligible for the tax, purchase, patent, and liability provisions of the legislation. The registration requirement gives the Department vital information about the research effort and the personnel involved with the research, authorizes inspections and other review of the research effort, and the filing of reports by the company.

The Secretary then may certify that the company is eligible for the tax, purchase, patent, and liability incentives in the legislation. It bases this certification on the qualifications of the company to conduct the countermeasure research. Eligibility for the purchase fund, patent and liability incentives is contingent on successful development of a countermeasure according to the standards set in the legislation, as determined by the Secretary.

The legislation contemplates that a company might well register and seek certification with respect to more than one research project and become eligible for the tax, purchase, patent, and liability incentives for each. There is no policy rationale for limiting a company to one registration and one certification.

This process is similar to the current registration process for research on orphan (rare) diseases. In that case, companies that are certified by the FDA become eligible for both tax and market exclusivity incentives. This process gives the government complete control on the number of registrations and certifications. This gives the government control over the cost and impact of the legislation on private sector research.

DIAGNOSTICS AND RESEARCH TOOLS

The registration and certification process applies to research to develop diagnostics and research tools, not just drugs and vaccines.

Diagnostics are vital because healthcare professionals need to know which agent or toxin has been used in an attack. This enables them to determine which treatment strategy is likely to be most effective. We need quickly to determine which individuals have been exposed or infected, and to separate them from the ''worried well.'' it is likely in an attack that large numbers of individuals who have not been exposed or infected will flood into healthcare facilities seeking treatment. We need to be able to focus on those individuals who are at risk and reassure those who are not at risk.

In terms of research tools, it is possible that we will face biological agents and chemical agents we have never seen before. As I've mentioned, the Soviet Union bioterror research focused in part on use of genetic modification technology to develop agents and toxins that currently-available antibiotics can not treat. Australian researchers accidentally created a modified mousepox virus, which does not affect humans, but it was 100 percent lethal to the mice. Their research focused on trying to make a mouse contraceptive vaccine for pest control. The surprise was that it totally suppressed the ''cell-medicated response''—the arm of the immune system that combats viral infection. To make matters worse, the engineered virus also appears unnaturally resistant to attempts to vaccinate the mice. A vaccine that would normally protect mouse strains that are susceptible to the virus only worked in half the mice exposed to the killer version. If bioterrorists created a human version of the virus, vaccination programs would be of limited use. This highlights the drawback of working on vaccines against bioweapons rather than treatments.

With the advances in gene sequencing—genomics—we will know the exact genetic structure of a biological agent. This information in the wrong hands could easily be manipulated to design and possibly grow a lethal new bacterial and viral strains not found in nature. A scientist might be able to mix and match traits from different micoorganism—called recombinant technology—to take a gene that makes a deadly toxin from one strain of bacteria and introduce it into other bacterial strains. Dangerous pathogens or infectious agents could be made more deadly, and relatively benign agents could be designed as major public health problems. Bacteria that cause diseases such as anthrax could be altered in such a way that would make current vaccines or antibiotics against them ineffective. It is even possible that a scientist could develop an organism that develops resistance to antibiotics at an accelerated rate.

This means we need to develop technology—research tools—that will enable us to quickly develop a tailor-made, specific countermeasure to a previously unknown organism or agent. These research tools will enable us to develop a tailor-made vaccine or drug to deploy as a countermeasure against a new threat. The legislation authorizes companies to register and receive a certification making them eligible for the incentives in the bill for this vital research.

TAX INCENTIVES FOR CAPITAL FORMATION

The legislation includes four tax incentives to enable biotechnology and

pharmaceutical companies to form capital to fund research and development of countermeasures. Companies must irrevocably elect only one of the incentives with regard to the countermeasure research.

Four different tax incentives are available so that companies have flexibility in forming capital to fund the research. Each of the options comes with advantages and limitations that may make it appropriate or inappropriate for a given company or research project. We do not now know fully how investors and capital markets will respond to the different options, but we assume that companies will consult with the investor community about which option will work best for a given research project. Capital markets are diverse and investors have different needs and expectations. Over time these markets and investor expectations evolve. If companies register for more than one research project, they may well utilize different tax incentives for the different projects.

Companies are permitted to undertake a series of discrete and separate research projects and make this election with respect to each project. They may only utilize one of the options with respect to each of these research projects.

The first option is for the company to establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners. For example, under this arrangement, the research and development tax credits and depreciation deductions for the company may be passed by the corporation through to its partners to be used to offset their individual tax liability. These deductions and credits are then lost to the corporation. This alternative is available only to companies with less than $750,000,000 in paid-in capital.

The second option is for the company to issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock held for at least three years. This is a modification of the current Section 1202 where only 50 percent of the gains are not taxed. This provision is adapted from legislation I have introduced, S. 1134, and introduced in the House by Representatives DUNN and MATSUI (H.R. 2383). A similar bill has been introduced by Senator COLLINS, S. 455. This option also is available to small companies.

The third and fourth options grant special tax credits to the company for the research. The first credit is for research conducted by the company and the other for research conducted at a teaching hospital or similar institution. Tax credits are available to any company, but they are only useful to a company with tax liability against which to claim the credit. Very few biotechnology companies receive revenue from product sales and therefore have no tax liability. Companies with revenue may be able to fund the research from retained earnings rather than secure funding from investors.

A company that elects to utilize one of these incentives is not eligible to receive benefits of the Orphan Drug Tax Credit. Companies that can utilize tax credits—companies with taxable income and tax liability—might find the Orphan Credit more valuable. The legislation includes an amendment to the Orphan Credit to correct a defect in the current credit. The amendment has been introduced in the Senate as S. 1341 by Senators HATCH, KENNEDY and JEFFORDS. The amendment simply states that the Credit is available starting the day an application for orphan drug status is filed, not the date the FDA finally acts on it. The amendment was one of many initiatives championed by Lisa J. Raines, who died on September 11 in the plane that hit the Pentagon, and the amendment is named in her honor. As we go forward in the legislative process, I hope we will have an opportunity to speak in more detail about the service of Ms. Raines on behalf of medical research, particularly on rare diseases.

The guaranteed purchase fund, and the patent protections, and liability provisions described below provide an additional incentive for investors and companies to fund the research.

GOVERNMENT COUNTERMEASURE PURCHASE FUND

The market for countermeasures is speculative and small. This means that if a company successfully develops a countermeasure, it may not receive sufficient revenue on sales to justify the risk and expense of the research. This is why the legislation establishes a countermeasures purchase fund that will define the market for the products with some specificity before the research begins.

The Secretary will set standards for which countermeasures it will purchase and define the financial terms of the purchase commitment. This will enable companies to evaluate the market potential of its research before it launches into the project. The specifications will need to be set with sufficient specificity so that the company—and its investors—can evaluate the market and with enough flexibility so that it does not inhibit the innovativeness of the researchers. This approach is akin to setting a performance standard for a new military aircraft.

The legislation provides that the Secretary will determine whether the government will purchase more than one product per class. It might make sense—as an incentive—for the government to commit to purchasing more than one product so that many more than one company conducts the research. A winner-take-all system may well intimidate some companies and we may end up without a countermeasure to be purchased. It is also possible that we will find that we need more than one countermeasure because different products are useful for different patients. We may also find that the first product developed is not the most effective.

The purchase commitment for countermeasures is available to any company irrespective of its paid-in capital.

INTELLECTUAL PROPERTY PROTECTIONS

Intellectual property protection of research is essential to biotechnology and pharmaceutical companies for one simple reason: they need to know that if they successfully develop a medical product another company cannot expropriate it. It's a simple matter of incentives.

The patent system has its basis in the U.S. Constitution where the federal government is given the mandate to ''promote the progress of Science and the Useful Arts by securing for a limited time to Authors and Inventors the exclusive right to their respective Writings and Discoveries.'' In exchange for full disclosure of the terms of their inventions, inventors are granted the right to exclude others from making, using, or selling their inventions for a limited period of time. this quid pro quo provides investors with the incentive to invent. In the absence of the patent law, discoverable inventions would be freely available to anyone who wanted to use them and inventors would not be able to capture the value of their inventions or secure a return on their investments.

The patent system strikes a balance. Companies receive limited protection of their inventions if they are willing to publish the terms of their invention for all to see. At the end of the term of the patent, anyone can practice the invention without any threat of an infringement action. During the term of the patent, competitors can learn from the published description of the invention and may well find a new and distinct patentable invention.

The legislation provides two types of intellectual property protection. The first simply provides that the term of the patent on the countermeasure will be the term of the patent granted by the Patent and Trademark Office without any erosion due to delays in approval of the product by the Food and Drug Administration. The second provides that a company that successfully develops a countermeasure will receive a bonus of two years on the term of any patent held by that company. Companies must elect one of these two protections, but only small biotechnology companies may elect the second protection. Large, profitable pharmaceutical companies may elect only the first of the two options.

The first protection against erosion of the term of the patent is an issue that is partially addressed in current law, the Hatch-Waxman Patent Term Restoration Act. That act provides partial protection against erosion of the term (length) of a patent when there are delays at the FDA in approving a product. The erosion occurs when the PTO issues a patent before the product

is approved by the FDA. In these cases, the term of the patent is running but the company cannot market the product. The Hatch-Waxman Act provides some protections against erosion of the term of the patent, but the protections are incomplete. As a result, many companies end up with a patent with a reduced term, sometimes substantially reduced.

The issue of patent term erosion has become more serious due to changes at the PTO in the patent system. The term of a patent used to be fixed at 17 years from the date the patent was granted by the PTO. It made no difference how long it took for the PTO to process the patent application and sometimes the processing took years, even decades. Under this system, there were cases where the patent would issue before final action at the FDA, but there were other cases where the FDA acted to approve a product before the patent was issued. Erosion was an issue, but it did not occur in many cases.

Since 1995 the term of a patent has been set at 20 years from the date of application for the patent. This means that the processing time by the PTO of the application all came while the term of the patent is running. This gives companies a profound incentive to rush the patent through the PTO. (Under the old system, companies had the opposite incentive.) With patents being issued earlier by the PTO, the issue of erosion of patent term due to delays at the FDA is becoming more serious and more common.

The provision in the legislation simply states that in the case of bioterrorism countermeasures, no erosion in the term of the patent will occur. The term of the patent at the date of FDA approval will be the same as the term of the patent when it was issued by the PTO. There is no extension of the patent, simply protections against erosion. Under the new 20 year term, patents might be more or less than 17 years depending on the processing time at the PTO, and all this legislation says is that whatever term is set by the PTO will govern irrespective of the delays at the FDA. This option is available to any company that successfully develops a countermeasure eligible to be purchased by the fund.

The second option, the bonus patent term, is only available to small companies with less than $750,000,000 in paid-in capital. It provides that a company that successfully develops a countermeasure is entitled to a two-years extension of any patent in its portfolio. This does not apply to any patent of another company bought or transferred in to the countermeasure research company.

I am well aware that this bonus patent term provision will be controversial with some. A company would tend to utilize this option if it owned the patent on a product that still had, or might have, market value at the end of the term of the patent. Because this option is only available to small biotechnology companies, most of whom have no product on the market, in most cases they would be speculating about the value of a product at the end of its patent. The company might apply this provision to a patent that otherwise would be eroded due to FDA delays or it might apply it to a patent that was not eroded. The result might be a patent term that is no longer than the patent term issued by the PTO. It all depends on which companies elect this option and which patent they select. In some cases, the effect of this provision might be to delay the entry onto the market of lower priced generics. This would tend to shift some of the cost of the incentive to develop a countermeasure to insurance companies and patients with an unrelated disease.

My rationale for including the patent bonus in the legislation is simple: I want this legislation to say emphatically that we mean business, we are serious, and we want biotechnology companies to reconfigure their research portfolios to focus in part on development of countermeasures. The other provisions in the legislation are powerful, but they may not be sufficient.

LIMITATION ON LIABILITY

This proposal protects companies willing to take the risks of producing anti-terrorism products for the American public from potential losses incurred from lawsuits alleging adverse reactions to these products. It also preserves the right for plaintiffs to seek recourse for alleged adverse reactions in Federal District Court, with procedural and monetary limitations.

Under the plan, the Secretary of HHS is required to indemnify and defend entities engaged in qualified countermeasure research through execution of ''indemnification and defense agreements.'' This protection is only available for countermeasures purchased under the legislation or to use of such countermeasures as recommended by the Surgeon General in the event of a public health emergency.

An exclusive means of resolving civil cases that fall within the scope of the indemnification and defense agreements is provided with litigation rights for injured parties. Non-economic damages are limited to $250,000 per plaintiff and no punitive or exemplary damages may be awarded.

Some have tried to apply the existing Vaccine Injury Compensation Program (VICP) to this national effort. That is inappropriate because that program will be extremely difficult to use, both administratively and scientifically. For example, it would take several years to develop the appropriate ''table'' that identifies a compensable injury. Companies will be liable during this process. Note that when VICP was created, there had been studies of what adverse reactions to mandated childhood vaccines had occurred and the table was based largely on this experience. Even so, it has taken years of effort, ultimately resulting in wholesale revisions to the table by regulation, to get the current table in place. For antibioterrorism products currently being developed, it will simply be impossible to construct a meaningful Vaccine Injury Table—there will be no experience with the product.

MISCELLANELOUS PROVISIONS

The legislation contains a series of provisions designed to enhance countermeasure research.

The legislation provides for accelerated approval by the FDA of countermeasures developed under the legislation. In most cases, the products would clearly qualify for accelerated approval, but the legislation ensures that they will be reviewed under this process.

It provides a statutory basis for the FDA approving countermeasures where human clinical trials are not appropriate or ethical. Rules regarding such products have been promulgated by the FDA.

It grants a limited antitrust exemption for certain cooperative research and development of countermeasures.

It provides incentives for the construction of biologics manufacturing facilities and research to increase the efficiency of current biologics manufacturing facilities.

It enhances the synergy between our for-profit and not for profit biomedical research entities. The Bayh-Dole Act and Stevenson-Wydler Act form the legal framework for mutually beneficially partnerships between academia and industry. My legislation strengthens this synergy and these relationships with two provisions, one to upgrade the basic research infrastructure available to conduct research on countermeasures and the other to increase cooperation between the National Institutes of Health and private companies.

Research on countermeasures necessitates the use of special facilities where biological agents can be handled safely without exposing researchers and the public to danger. Very few academic institutions or private companies can justify or capitalize the construction of these special facilities. The Federal government can facilitate research and development of countermeasures by financing the construction of these facilities for use on a fee-for-service basis. The legislation authorizes appropriations for grants to nonprofit and for-profit institutions to construct, maintain, and manage up to ten Biosafety Level 3–4 facilities, or their equivalent, in different regions of the country for use in research to develop countermeasures. BSL 3–4 facilities are ones used for research on indigenous, exotic or dangerous agents with potential for aerosol transmission of disease that may have serious or lethal consequences or where the agents pose high risk of life-threatening disease, aerosol-transmitted lab infections, or related agents with unknown risk of

transmission. The Director of the Office and NIH shall issue regulations regarding the qualifications of the researchers who may utilize the facilities. Companies that have registered with and been certified by the Director—to develop countermeasures under Section 5(d) of the legislation—shall be given priority in the use of the facilities.

The legislation also reauthorizes a very successful NIH-industry partnership program launched in FY 2000 in Public Law 106–113. The funding is for partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures (as defined in Section 3 of the bill) and research tools (as defined in Section 4(d)(3) of the bill). Such grants shall be awarded on a one-for-one matching basis. So far the matching grants have focused on development of medicines to treat malaria, tuberculosis, emerging and resistant infections, and therapeutics for emerging threats. My proposal should be matched by reauthorization of the challenge grant program for these deadly diseases.

The legislation also sets incentives for the development of adjuvents to enhance the potency, and efficacy of antigens in responding to a biological agent.

It requires the new Department to issue annual reports on the effectiveness of this legislation and these incentives, and directs it to host an international conference each year on countermeasure research.

CALIBRATION OF INCENTIVES

The legislation is carefully calibrated to provide incentives only where they are needed. This accounts for the choices in the legislation about which provisions are available to small biotechnology companies and large pharmaceutical companies.

The legislation makes choices. It sets the priorities. It provides a dose of incentives and seeks a response in the private sector. We are attempting here to do something that has not been done before. This is uncharted territory. And it also an urgent mission.

There may be cases where a countermeasure developed to treat a biological toxin or chemical agent will have applications beyond this use. A broad-spectrum antibiotic capable of treating many different biological agents may well have the capacity to treat naturally occurring diseases.

This same issue arises with the Orphan Drug Act, which provides both tax and FDA approval incentives for companies that develop medicines to treat rare diseases. In some cases these treatments can also be used for larger disease populations. There are few who object to this situation. We have come to the judgment that urgency of this research is worth the possible additional benefits that might accrue to a company.

In the context of research to develop countermeasures, I do not consider it a problem that a company might find a broader commercial market for a countermeasure. Indeed, it may well be the combination of the incentives in this legislation and these broader markets that drives the successful development of a countermeasure. If our intense focus on developing countermeasures, and research tools, provides benefits for mankind going well beyond terror weapons, we should rejoice. If this research helps us to develop an effective vaccine or treatment for AIDS, we should give the company the Nobel Prize for Medicine. If we do not develop a vaccine or treatment for AIDS, we may see 100 million people die of AIDS. We also have 400 million people infected with malaria and more than a million annual deaths. Millions of children die of diarrhea, cholera and other deadly and disabling diseases. Countermeasures research may deepen our understanding of the immune system and speed and development of treatments for cancer and autoimmune diseases. That is not the central purpose of this legislation, but it is also an additional rationale for it.

CONCLUSION

This issue raised by my legislation is very simple: do we want the Federal government to fund and supervise much of the research to develop countermeasures or should we also provide incentives that make it possible for the private sector, at its own expense, and at its own risk, to undertake this research for good business reasons. This Frist-Kennedy law focuses effectively on direct Federal funding and coordination issues, but it does not include the sufficient incentives for the private sector to undertake this research on its own initiative. That law and my legislation are perfectly complimentary. We need to enact both to ensure that we are prepared for bioterror attacks.

I ask unanimous consent that an outline of the legislation appear at this point in the RECORD.

BIOLOGICAL, CHEMICAL AND RADIOLOGICAL WEAPONS COUNTERMEASURES RESEARCH ACT OF 2002

The legislation, a refined version of S. 1764 introduced on December 4, 2001, proposes incentives that will enable biotechnology and pharmaceutical companies to take the initiative—for good business reasons—to conduct research to develop countermeasures, including diagnostics, drugs, and vaccines, to treat those who might be exposed to or infected by biological, chemical or radiological agents and materials in a terror attack.

The premise of this legislation is that direct government funding of this research is likely to be much more expensive to the government and less likely to produce the countermeasures we need to defend America. Shifting some of the risk and expense of this research to entrepreneurial private sector firms is likely to be less expensive to the government and much more likely to produce the countermeasures we need to protect ourselves in the event of an attack.

For biotechnology companies, incentives for capital formation are needed because most such companies have no approved products or revenue from product sales to fund research. They rely on investors and equity capital markets to fund the research. These companies must focus on research that will lead to product sales and revenue and end their dependence on investor capital. When they are able to form the capital to fund research, biotech companies tend to be innovative and nimble and focused on the intractable diseases for which no effective medical treatments are available. Special research credits for pharmaceutical companies are also needed.

For both biotech and pharmaceutical companies, there is no established or predictable market for these countermeasures. Investors and companies are justifiable reluctant to fund this research, which will present technical challenges similar in complexity to development of effective treatments for AIDS. Investors and companies need assurances that research on countermeasures has the potential to provide a rate of return commensurate with the risk, complexity and cost of the research, a rate of return comparable to that which may arise from a treatment for cancer, MS, Cystic Fibrosis and other major diseases or from other investments.

The legislation provides tax incentives to enable companies to form capital to conduct the research and tax credits usable by larger companies with tax liability with respect to which to claim the credits. It provides a guaranteed and pre-determined market for the countermeasures and special intellectual property protections to serve as a substitute for a market. Finally, it establishes liability protections for the countermeasures that are developed.

Specifics of the legislation are as follows:

(1) Setting Research Priorities (Section 101): The Department of Homeland Security sets the countermeasure research priorities in advance. It focuses the priorities on threats for which countermeasures are needed, and with regard to which the incentives make it ''more likely'' that the private sector will conduct the research to develop countermeasures. It is required to consider the status of existing research, the availability of non-countermeasure markets for the research, and the most effective strategy for ensuring that the research goes forward. The Department then provides information to potential manufacturers of these countermeasures in sufficient detail to permit them to conduct the research and determine when they have developed the needed countermeasure. The Department is responsible for determining when a manufacturer has, in fact, successfully developed the needed countermeasure.

(2) Registration of Companies (Section 102): Biotechnology and pharmaceutical companies register with the Department to become eligible for the incentives in the legislation. They are obligated to provide reports to the Department as requested and be open to inspections. The Department certifies with companies are eligible for the incentives. Once a company is certified as eligible for the incentives, it becomes eligible for the tax incentives for capital formation, and if it successfully develops a countermeasure that meets the specifications of the Department, it becomes eligible for the procurement, patent, and liability provisions.

(3) Diagnostics (Section 103): The incentives apply to development of diagnostics, as well as drugs, vaccines and other needed countermeasures.

(4) Research tools (Section 104): A company is also eligible for certification for the tax and patent provisions if it seeks to develop a research tool that will make it possible to quickly develop a countermeasure to a previously unknown agent or toxin, or an agent

or toxin not targeted by the Department for research.

(5) Capital Formation for Countermeasure Research (Section 201): The legislation provides that a company seeking to fund research is eligible to elect from among four tax incentives. The companies are eligible to:

(a) Establish an R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners. Section 201 (b)(1).

(b) Issue a special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock. Section 201(b)(2).

(c) Receive a special tax credit to help fund the research. Section 201 (b)(3).

(d) Receive a special tax credit for research conducted at a non-profit and academic research institution. Section 201 (b)(4).

A company must elect only one of these incentives and, if it elects one of these incentives, it is then not eligible to receive benefits under the Orphan Drug Act. The legislation includes amendments (Section 218) to the Orphan Drug Act championed by Senators HATCH, KENNEDY and JEFFORDS (S. 1341). the amendments make the Credit available from the date of the application for Orphan Drug status, not the date the application is approved as provided under current law.

(6) Countermeasure Purchase Fund (Section 202): The legislation provides that a company that successfully develops a countermeasure—through FDA approval—is eligible to sell the product to the Federal government at a pre-established price and in a predetermined amount. The company is given notice of the terms of the sale before it commences the research.

(7) Intellectual Property Incentives (Section 203): The legislation provides that a company that successfully develops a countermeasure is eligible to elect one of two patent incentives. The two alternatives are as follows:

(a) The company is eligible to receive a patent for its invention with a term as long as the term of the patent when it was issued by the Patent and Trademark Office, without any erosion due to delays in the FDA approval process. This alternative is available to any company that successfully develops a countermeasure irrespective of its paid-in capital.

(b) The company is eligible to extend the term of any patent owned by the company for two years. The patent may not be one that is acquired by the company from a third party. This is included as a capital formation incentive for small biotechnology companies with less than $750 million in paid-in capital, or, at the discretion of the Department of Homeland Security, to any firm that successfully develops a countermeasure.

In addition, a company that successfully develops a countermeasure is eligible for a 10 year period of market exclusivity on the countermeasure.

(8) Liability Protections (Section 204): The legislation provides for protections against liability for the company that successfully develops a countermeasure.

(9) Accelerated Approval of Countermeasure (Section 211): The countermeasures are considered for approval by the FDA on a ''fast track'' basis.

(10) Special Approval Standards (Section 212): The countermeasures may be approved in the absence of human clinical trails if such trails are impractical or unethical.

(11) Limited Antitrust Exemption (Section 213): Companies are granted a limited exemption from the antitrust laws as they seek to expedite research on countermeasures.

(12) Biologics Manufacturing Capacity and Efficiency (Sections 214–215): Special incentives are incorporated to ensure that manufacturing capacity is available for countermeasures.

(13) Strengthening of Biomedical Research Infrastructure: Authorizes appropriations for grants to construct specialized biosafety containment facilities where biological agents can be handled safely without exposing researchers and the public to danger (Section 216). Also reauthorizes a successful NIH-industry partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical and medical device industries with regard to the development of countermeasures and research tools (Section 217).

(14) Adjuvents (Section 219): The legislation provides incentives for the development and use of adjuvents to enhance the potency of countermeasures.

(15) Annual Report (Section 220): The Department is required to prepare for the Congress an annual report on the implementation of these incentives.

(16) International Conference (Section 221): The Department is required to organize an annual international conference on countermeasure research.

Mr. HATCH. Mr. President, I rise today to cosponsor, with my colleague Senator LIEBERMAN from Connecticut, Chairman of the Governmental Affairs Committee, legislation that we believe is essential to better prepare our nation to prepare for and respond to bioterrorist attacks. The goal of our bill, the Biological, Chemical and Radiological Measures Research Act of 2002, is to encourage private sector research and development of diagnostic products, drugs, and vaccines designed to counter biological, chemical, or radiological attacks.

One year ago our country faced a series of anthrax attacks that exposed deficiencies in our nation's ability to respond to attacks of bioterrorism. We need to do more. This bill will help protect the American public by deterring future acts of bioterrorism and, in the event of another such attack, will increase our capacity to respond effectively to the weapon deployed.

This legislation complements the bioterrorism bill passed by Congress earlier this year that focused on building up the public health infrastructure. Senators KENNEDY, GREGG and FRIST deserve much credit for their work on that bill as do Congressmen TAUZIN, BILIRAKIS, DINGELL and BROWN. Also, we would be remiss if we did not recognize the manner in which the Appropriations Committees in both the Senate and the House adjusted their priorities so quickly last Fall. I salute the leadership of Senators BYRD, HARKIN, STEVENS and SPECTER in making available substantial new funding for building up the capacity of the public health system to protect our citizens against the threat of bioterrorism.

When it comes to protecting America, partisanship has no place. Senator LIEBERMAN built upon the strong tradition of bi-partisanship in the war against terrorism in introducing this bill today.

Although we are far better prepared for a terrorist attack today than ever before, and preventing a terrorist attack is our first priority, there are areas where we can improve our preparedness in the case of such an attack. Chief among these is the development of preventive agents and treatments for those citizens who may become exposed to or infected by deadly biological, chemical, and radiological agents.

Building up the public health infrastructure alone will be insufficient if our national medicine chest does not contain safe and effective medicines to counter particular threat agents. This bill creates incentives for the private sector to try to fill the medicine chest with new products designed to respond to biological or other similar attacks. We need many new treatments and vaccines and the Lieberman-Hatch bill will unleash the creative energy and many resources of the private sector biomedical research enterprise.

America leads the world in biomedical research capacity. The Lieberman-Hatch bill attempts to help focus the enormous assets of our research expertise in a manner that will protect the public health. This legislation seeks to help translate the basic knowledge, much of it funded through the $27 billion taxpayer-investment in the National Institutes of Health, into tangible products developed by the private sector.

Given the growing risk of further attacks and the potentially devastating consequences of bioterrorism, we must abandon a business as usual attitude and take the vigorous steps that Senator LIEBERMAN and I urge through this legislation.

Our legislation is an additional measure to other avenues we have pursued to protect our nation from terrorism, including the Biologic Weapons Convention and government funded research at NIH, the Defense Advanced Research Projects Agency, DARPA, and the Centers for Disease Control and Prevention, CDC.

Though we have mobilized many governmental agencies and increased direct federal funding for research and development of new treatments, I agree with Senator LIEBERMAN, that what we have done thus far, impressive as it has been, is not nearly enough. Direct government funding for this research is likely to be insufficient for our national defense needs unless we marry our efforts with the private sector to the greatest extent possible. That is exactly what this bill does.

Unfortunately, it is hard to avoid sounding somewhat like an alarmist when speaking on these matters. But, the truth of the matter today is that we do not have effective treatment for a host of potential biological, chemical and radiological threat agents. We must develop these with a greater sense of urgency and this legislation will serve as a catalyst for private sector investment and research and development activities.

We need to develop an expedient, efficient capacity that combines the best of what our society has—strong federal and academic institutions with the most innovative biotechnology and pharmaceutical companies in the world. It would be a grave mistake to ignore the tremendous capabilities and potential of our country's biotech and pharmaceutical private sector.

We must be creative, willing to work together, putting aside partisan politics and our opinions of the government or the private sector when dealing with a potential deadly threat to our nation. I believe Senator LIEBERMAN and I have done that. Though we have not agreed on all the details on everything related to homeland security, we agree on this vital component. We must provide the tools to forge a collaborative effort by the private sector and the Federal Government to come up with the cures and vaccines we may, sadly, need one day.

The best deterrent of bioterrorist attacks is to be able to demonstrate the capacity to counter such dastardly acts. I think the case can be made that all the rapid progress we have made in smallpox in the last year makes an attack with that agent less likely. That is the good news. The bad news is that there are too many agents for which we do not have any vaccine or effective therapeutic response. We need to roll up our sleeves and get to work on many other potential tools of destruction. Our bill provides the private sector with important incentives to get this work done and to get it done now.

Most private sector companies rely on equity capital markets and investments to fund research. Naturally, they focus on research that will lead to products that will sell and have a dependable market. As we know, thankfully, there is no dependable or established market for counter terrorism. Therefore, not unreasonably, investors need some kind of assurance that the costly and complex research we are asking them to invest in will be rewarded—that the reward will be commensurate with the risk.

Under current law, private companies are reluctant to enter into agreements with government agencies to conduct needed research. The bill Senator LIEBERMAN and I are introducing greatly expands the incentives for biotechnology and pharmaceutical companies to develop bioterrorism countermeasures. I do not think anyone will oppose involving some of the most powerful research minds and new technology as we defend our country against these threats. We need to involve these biomedical research companies more directly into our national defense plan, as they may very well be the ones to provide us with what we need to the medical front.

I know there are novel, and perhaps controversial, features in this bill—anything innovative usually does. I ask that each and every one of you who has a stake in this issue enter into this debate. Keep in mind that the goal is to close any gap that exists in our plan against terrorism—I believe this includes engaging the private sector. We need to make sure that these companies have the proper incentives to engage in expensive, arduous research that could potentially save millions of Americans.

Let me now review the specifics of our proposal. We provide incentives, such as tax incentives, guaranteed purchase funds, and patent and liability protections, which make it possible for private companies to form the capital needed to conduct this vital research. Again, we cannot expect these companies to engage in expensive research and development for an extremely unpredictable market without providing them meaningful incentives and reassurance.

In some respects this legislation is similar to another bill I co-authored, the Orphan Drug Act. The Orphan Drug Act utilizes tax credits and marketing exclusivity incentives to spur research into rare diseases with patient populations under 200,000 in the United States. This modest little bill has resulted in over 220 approved orphan products with over 1000 more designated for investigation. It is my hope and expectation that, in introducing our bill today, we can recreate the success of the Orphan Drug Act in getting the private sector motivated in a particular area of research.

The Lieberman-Hatch bill contains powerful incentives. Here is how it works. The bill requires the private sector to work closely with the appropriate governmental officials. The legislation ensures that the Department of Homeland Security sets the countermeasure research priorities in advance. The Department of Homeland Security is required to take into account the status of existing research, the potential for non-countermeasure markets for the research, and the most effective strategy for propelling the research forward and provides this information to potential manufacturers. The bill also requires companies to register with the Department, to provide reports as requested and to be open to inspections, in order to be eligible for incentives. Once a company is certified, it is eligible for tax incentives for capital formation.

The Department then determines if a manufacturer has successfully developed a countermeasure. Once the specifications of the Department are met, the company is eligible for the procurement, patent, and liability provisions. These incentives apply to diagnostics, drugs, vaccines and other countermeasures deemed necessary, including research tools.

If companies seek to develop a research tool that enables the advancement of a countermeasure to a previously unknown agent or toxin, or an agent or toxin not targeted by the Department, they are also eligible for incentives.

The four tax incentives companies are eligible to select from include:

(a) An R&D Limited Partnership to conduct the research. The partnership passes through all business deductions and credits to the partners.

(b) A special class of stock for the entity to conduct the research. The investors would be entitled to a zero capital gains tax rate on any gains realized on the stock.

(c) A special tax credit to help fund the research.

(d) A special tax credit for research conducted at a non-profit and academic research institution.

I want to point out that a company can elect only one of these incentives and, if it elects one of these incentives, the company is not eligible to further benefits under the Orphan Drug Act. That is only fair.

I would like to briefly discuss the Countermeasure Purchase Fund contained in Section 202 of the bill. Basically, the legislation affords a company that successfully develops a countermeasure—through FDA approval—eligibility to sell the product to the Federal Government at a pre-established price and in a pre-determined amount. The company is given notice of the terms of the sale before it begins research.

The intellectual property incentives are contained in Section 203 of the bill. There are two patent incentives:

One, the company is eligible to receive full patent term restoration for its invention. This means that it is held harmless for patent term erosion due to the lengthy FDA approval process. This alternative is available to any company that successfully develops a countermeasure irrespective of its paid-in capital. This is a significant incentive over the normal partial patent term restoration provisions contained in the Drug Price Competition and Patent Term Restoration Act. I am a coauthor of this law which has contributed to consumer savings of $8 to $10 billion each year since its passage in 1984. This was the legislation that created the modern generic drug industry. But under this law the patent term cannot be restored beyond 14 years. When the 1984 law was enacted the patent term was 17 years from date of patent issuance; with the enactment of the GATT Treaty implementing legislation, the patent term was changed to 20 years from date of application. By adopting a policy of day for day patent term restoration, the Lieberman-Hatch bill is sending a strong signal to the private sector to pour its resources into this research. By lengthening the patent term beyond the existing 14 year cap, drug companies will have a new incentive to devote their efforts to this research.

Two, under the bill, small companies are also eligible to elect to extend the term of any patent owned by the company for two years. The patent may not be one that is acquired by the company from a third party. This is included as a capital formation incentive

for small biotechnology companies with less than $750 million in paid-in capital, or, at the discretion of the Department of Homeland Security, to any firm that successfully develops a countermeasure. This provision will get the attention of our nation's growing biotechnology sector.

In addition, a company that successfully develops a countermeasure is eligible for a 10 year period of market exclusivity on the countermeasure. This means that the FDA may not approve a generic copy of such a drug for 10 years regardless of whether the drug has any patent protection. This is in contrast to the 5 years of marketing exclusivity granted under the Drug Price Competition and Patent Term Restoration Act. This is an important incentive because it is the government that enforces the marketing exclusivity provision, not the firm through costly, risky, and time-consuming private patent infringement litigation.

Other incentives in the bill include the liability protections set forth in section 204; a limited antitrust exemption designed to expedite and coordinate research as set forth in section 213; accelerated FDA approval provisions described in section 211; and, special FDA approval standards established in section 212 that codify the FDA regulations that authorize approval in the absence of human clinical trails if such trails are impractical or unethical.

In addition the bill provide; incentives to enhance biologics manufacturing capacity for countermeasures. This includes grants to construct specialized biosafety containment facilities where biological agents can be handled safely without exposing researchers and the public to danger. The bill also reauthorizes a successful NIH-industry partnership challenge grants to promote joint ventures between NIH and its grantees and for-profit biotechnology, pharmaceutical, and medical device industries with regard to the development of countermeasures and research tools.

Finally, the bill also provides incentives for the development and use of adjuvants to enhance the potency of countermeasures; requires the Department of Homeland Security to prepare an Annual Report to Congress on the implementation of these incentives in the legislation and to organize an annual international conference on countermeasure research.

Let me conclude by saying that this legislation lays out an unabashedly aggressive set of incentives designed to stimulate research. There will undoubtedly be criticisms of some of the features of the bill. Senator LIEBERMAN and I recognize that adjustments will have to be made along the way. We want to work closely with President Bush, Vice President CHENEY, Governor Ridge, and Secretary Thompson and others in the Administration in refining this legislation. We recognize that unless the President feel that this type of program is necessary it is unlikely to be adopted.

The subject mater of this legislation cuts across many Committees of the Senate. Senator LIEBERMAN and I will work with the Finance Committee, the Judiciary Committee I serve on both of these committees—as well as the HELP Committee, Commerce Committee, and the Governmental Affairs Committee which my friend from Connecticut Chairs. I might add, as much as I admire Senator LIEBERMAN, I hope that next month he becomes the Ranking Democratic Member of the Governmental Affairs Committee.

We will continue to work with all interested parties in the private sector to refine this legislation. We welcome this dialog.

Let me state clearly that my cosponsorship today is more an unambiguous statement that I intend to work in partnership with Senator LIEBERMAN than it is a statement that I agree with each provision and detail of this bill. Specifically, I do not agree with—and would not support—the anti-trust and indemnification provisions as currently drafted. We must tread carefully in the areas of government indemnification and in holding any meetings with the private sector in which antitrust concerns are triggered.

My cosponsorship of this legislation today which will serve as a discussion draft between the 107th and 108th Congress—should not be considered as a reversal of my views on indemnification and antitrust policy. It is not. My cosponsorship only signals my willingness to be open to rethinking my traditional views of indemnification and antitrust policy in light of this grave threat to our national security. These sections—as well as many other parts of the bill need more work. At the end of the day, I hope we can come together on these questions.

I want to stress the fact that I opposed proposed indemnification language in the Kennedy-Gregg-Frist bioterrorism bill passed earlier this year. I have opposed indemnification provisions in discussions over matters of homeland security. I continue to hold my position that indemnification is not only not the best policy but that it may also be counterproductive in the long run.

Similarly, I have rejected any general policy of governmental indemnification of those injured by asbestos or tobacco use. The private sector must bare its share of the risk and responsibility when it produces potentially dangerous products.

Frankly, I believe the solution to the indemnification issue may ultimately stem from the hard work of Senators WARNER and THOMPSON with respect to their amendment, Number 4530, to the Homeland Security bill. This language was carefully worked out in close consultation with by Senators WARNER and THOMPSON and the White House earlier this year. We will take advantage of amendment Number 4530 as we further refine our legislation in this area.

The Warner-Thompson language builds upon the principles contained in Executive order No. 10879 and the authority set forth in Public Law 85–804. These authorities grant the Department of Defense, at DoD's discretion, to include indemnification clauses in its contracts with military contractors, with certain limitations and conditions. In order for this authority to apply to the new Office of Homeland Security, current law needs to be amended.

It is important to note that the language of the Warner-Thompson amendment retains the principle of discretionary authority. That is important. We can not write a blank check to the private sector. Senator LIEBERMAN and I have included language in our bill that requires the new Secretary of Homeland Security ''to make a determination . . . that it is in the national security interest of the United States'' before any indemnification provision could be triggered. The Warner-Thompson amendment is narrowly tailored to the procurement of anti-terrorism technology or services by a federal agency directly engaged in homeland security activities. Moreover, consistent with the Warner-Thompson language, we need to flesh out the factors the Administration shall consider in negotiating the extent of any indemnification.

Although we need to further refine the language in the discussion draft bill we introduce today, my intent is do follow the lead of and principles contained in the Warner-Thompson Amendment. Further, the Warner-Thompson Amendment language includes procurements made by State and local governments but only through contracts made by the head of an agency of the Federal Government and only to the extent that those loses are not covered by insurance.

A discussion of indemnification in the context of bioterrorism countermeasures is a very special case. It is a unique circumstance in which we may very well face many issues never confronted before such as the possibility of using drugs that can not be ethically tested in human beings due to the danger of the agent the drug is intended to treat. We are not talking about asbestos or tobacco here, we are talking about potential attacks that could undermine the public health, economic wealth, and environmental integrity of the United States of America.

We are trying to protect against the use weapons of terror in the hands of terrorists, not routine uses of consumer and other products. If unforseen side effects occur when countermeasures are dispensed, society may be presented with problems that will require innovative responses. The future of our country is at stake. I have twenty grandchildren and I want them to hand down our traditions and heritage to their grandchildren. It is for their

sake that we must try to settle these issues.

But let us not get to far ahead of ourselves at this point with all these details. This legislation is a work in progress. Anyone who has witnessed the extensive floor debate over the last 2 months over the creation of the Office of Homeland Security understands that we have much, much more work to do with respect to the creation of the new department and many other homeland security issues. I hope and expect that President Bush and the Congress will come together on the Department of Homeland Security. I commend Senator LIEBERMAN for his constructive role in this ongoing debate.

My support of this legislation should be construed as a personal commitment to work closely with Senator LIEBERMAN, the White House and other parties to address the issues raised in the bill. It is my hope that we can arrive at an acceptable compromise on the indemnification and antitrust provisions, as well as, all the other matters taken up in this important legislation.

As a pragmatic legislator, I understand that to make an omelette, you always have to break an egg. I hope this discussion draft bill will help inspire discussion and move the process along.

We are facing unprecedented threats to our Nation's security. We need to be open to novel solutions to these new problems. We hope that this bill will foster thoughtful discussion on how best to prepare the nation for any potential biological, chemical, or radiological attack.

Let us not lose sight of our mission to protect our nation from the devastating illness and death that bioterrorism can bring. We desperately need to develop the technology to prevent, detect, diagnose, and treat our citizens who may fall victim to bioterrorism. I believe that strengthening the government's partnership with the private sector is the most effective and expedient step we can take at this point in time. The Kennedy-Gregg-Frist bioterrorism law was an enormous step forward. The funding support provided by Senators BYRD, STEVENS, HARKIN, and SPECTER and other appropriators is also essential. This public sector investment must now be joined by legislation that will foster a commensurate private sector response. That is exactly what the Lieberman-Hatch bill, the Biological, Chemical and Radiological Measures Research Act of 2002, will do if Congress passes this law.

Let me close by saying that I have enjoyed working with Senator LIEBERMAN in developing this bill and look forward to continuing this partnership in the future as we work with other Senators on this legislation. I also want to recognize the efforts of Chuck Ludlam on Senator LIEBERMAN's staff for all the work he has done to bring the bill to this point. Senator LIEBERMAN and I urge our colleagues to review the ''Biological, Chemical and Radiological Measures Research Act of 2002''. I hope that our colleagues will conclude that this legislation deserves to be near the top of the agenda when the 108th Congress convenes in January.

By Mr. MCCAIN:

S.J. Res. 50. A joint resolution expressing the sense of the Senate with respect to human rights in Central Asia; to the Committee on Foreign Relations.

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

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

S.J. RES. 50

Whereas the Central Asian nations of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan provided the United States with important assistance in the war in Afghanistan, from military basing and overflight rights to the facilitation of humanitarian relief;

Whereas America's victory over the Taliban in turn provided important benefits to the Central Asian nations, removing a regime that threatened their security, and significantly weakening the Islamic Movement of Uzbekistan, a terrorist organization that had previously staged armed raids from Afghanistan into the region;

Whereas the United States has consistently urged the nations of Central Asia to open their political systems and economies and to respect human rights, both before and since the attacks of September 11, 2001;

Whereas Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are members of the United Nations and the Organization for Security and Cooperation in Europe, both of which confer a range of human rights obligations on their members;

Whereas according to the State Department Country Reports on Human Rights Practices, the government of Kazakhstan harasses and monitors independent media and human rights activists, restricts freedom of association and opposition political activity, and allows security forces to commit extrajudicial executions, torture, and arbitrary detention with impunity;

Whereas according to the State Department, the government of the Kyrgyz Republic engages in arbitrary arrest and detention, restricts the activities of political opposition figures, religious organizations deemed ''extremist,'' human rights activists, and nongovernmental organizations, and discriminates against ethnic minorities.

Whereas according to the State Department, the government of Tajikistan remains authoritarian, curtailing freedoms of speech, assembly, and association, with security forces committing extrajudicial executions, kidnappings, disappearances, and torture;

Whereas according to the State Department, Turkmenistan is a Soviet-style one-party state centered around the glorification of its president, which engages in serious human rights abuses, including arbitrary arrest and detention, severe restrictions of personal privacy, repression of political opposition, and restrictions on freedom of speech and nongovernmental activity;

Whereas according to the State Department, the government of Uzbekistan continues to commit serious human rights abuses, including arbitrary arrest, detention and torture in custody, particularly of Muslims who practice their religion outside state controls, the severe restriction of freedom of speech, the press, religion, independent political activity and nongovernmental organizations, and detains over 7,000 people for political or religious reasons;

Whereas the United States Commission on International Religious Freedom has expressed concern about religious persecution in the region, recommending that Turkmenistan be named a Country of Particular Concern under the International Religious Freedom Act of 1998, and that Uzbekistan be placed on a special ''Watch List'';

Whereas, by continuing to suppress human rights and to deny citizens peaceful, democratic means of expressing their convictions, the nations of Central Asia risk fueling popular support for violent and extremist movements, thus undermining the goals of the war on terrorism;

Whereas President Bush has made the defense of ''human dignity, the rule of law, limits on the power of the state, respect for women and private property and free speech and equal justice and religious tolerance'' strategic goals of United States foreign policy in the Islamic world, arguing that ''a truly strong nation will permit legal avenues of dissent for all groups that pursue their aspirations without violence''; and

Whereas the Congress has expressed its desire to see deeper reform in Central Asia in past resolutions and legislation, most recently conditioning assistance to Uzbekistan on its progress in meeting human rights and democracy commitments to the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the Sense of the Congress that:

(1) the governments of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan should accelerate democratic reforms and fulfill their human rights obligations including, where appropriate, by—

''(A) releasing from prison all those jailed for peaceful political activism or the nonviolent expression of their political or religious beliefs;

''(B) fully investigating any credible allegations of torture and prosecuting those responsible;

''(C) permitting the free and unfettered functioning of independent media outlets, independent political parties, and non-governmental organizations, whether officially registered or not;

(D) permitting the free exercise of religious beliefs and ceasing the persecution of members of religious groups and denominations not registered with the state;

(E) holding free, competitives, and fair elections;

(F) making publicly available documentation of their revenues and punishing those engaged in official corruption;

(2) the President of the United States, the Secretary of State, and the Secretary of Defense should—

(A) continue to raise at the highest levels with the governments of the nations of Central Asia specific cases of political and religious persecution, and urge greater respect for human rights and democratic freedoms at every diplomatic opportunity;

(B) take progress in meeting the goals outlined in paragraph (1) into account when determining the level and frequency of United States diplomatic engagement with the governments of the Central Asian nations, the allocation of United States assistance, and the nature of United States military engagement with the countries of the region;

(C) ensure that the provisions of the Foreign Operations Appropriations Act are fully implemented to ensure that no United States

assistance benefits security forces in Central Asia implicated in violations of human rights;

(D) follow the recommendations of the United States Commission on International Religious Freedom by designating Turkmenistan a Country of Particular Concern under the International Religious Freedom Act of 1998 and by making clear that Uzbekistan risks designation if conditions there do not improve;

(E) work with the Government of Kazakhstan to create a political climate free of intimidation and harassment, including releasing political prisoners and permitting the return of political exiles, most notably Akezan Kazegeldin, and to reduce official corruption, including by urging the Government of Kazakhstan to cooperate with the ongoing United States Department of Justice investigation;

(F) support through United States assistance programs those individuals, non-governmental organizations, and media outlets in Central Asia working to build more open societies, to support the victims of human righrs abuses, and to expose official corruption; and

(3) increased levels of United States assistance to the governments of the Central Asian nations made possible by their cooperation in the war in Afghanistan can be sustained only if there is substantial and continuing progress towards meeting the goals outlined in paragraph (1).

By Mr. WYDEN:

S.J. Res. 51. A resolution to recognize the rights of consumers to use copyright protected works, and for other purposes; to the Committee on the Judiciary.

Mr. WYDEN. Mr. President, today I am introducing a resolution that spells out what I believe should be the basic rights of consumers to use and enjoy legally acquired copyrighted works. The purpose of this resolution is simple: to establish the principle that as the Nation's copyright system evolves and adapts to new technologies, it must respect and preserve the interests of consumers. I am joined in this effort by my friend and frequent collaborator, Representative CHRIS COX, who has already introduced a similar resolution in the House.

In today's information age, intellectual property rules are the oil that helps keep the economic engine running smoothly. Digitization and the rise of the Internet have given the engine a big boost by creating new and more efficient ways of circulating, manipulating, and using information. The pace of these developments has left the copyright system scrambling to keep up.

Industry working groups have been meeting over the past several years to negotiate new copy protection rules, but consumers have not always had a prominent seat at the table, and there is a real risk that the interests of consumers could get short shift. That is why I believe it is important to affirm that new copyright protection systems must not be allowed to undermine or erode the existing rights and expectations of consumers. Existing copyright laws, under the doctrine of ''fair use,'' permit consumers to make copies of content for limited, non-commercial purposes. A new copyright regime for the digital world must not narrow or limit these rights. It would be a terrible irony if the advances in digital technology were to result in a step backwards for consumers.

I expect to see a great deal of activity on this subject during the next Congress—on the legislative front certainly, but also in further negotiations between industry groups and in efforts to devise new technological approaches. To ensure that the scope of ''fair use'' in the digital world will not be any narrower than it has been in the analog world, I believe it would be helpful for Congress to spell out its expectations concerning what legitimate fair use includes. That is what this resolution aims to do. Specifically, it says that consumers of legally acquired content should be permitted to make copies for purposes of using the content later (time-shifting), using it in a different place (space shifting), or making a backup; to use the content on different platforms or devices; to translate the content into different formats; and to use technology to achieve any of these purposes. Copyright law should not give copyright holders the ability to prohibit such legitimate, personal, non-commercial activity.

It is clear to me that the content industries face very serious challenges in preventing piracy, and that intellectual property protections must be strong. People and companies that create copyrighted works must be fairly compensated, and piracy must be punished. America's information-based economy depends on it.

But efforts to combat piracy must not come at the expense of legitimate consumer uses of intellectual property. That would be throwing out the baby with the bathwater.

I understand that the content industries have serious concerns about this resolution. I have listened to them, and I can appreciate theirs fear that, for example, expressing consumer rights in too absolute a fashion could open the door to someone making 1,000 copies of a CD to share with all their friends and acquaintances at no charge. That is not my intention. So the resolution I am introducing specifies that the rights in question must be exercised in a reasonable, personal, and non-commercial manner. The rights are not absolute.

Going forward, I intend to continue to listen to both sides of this debate, and to support solutions that do not upset the balance in existing law between commercial use and non-commercial, personal use. I want to protect the interests of both copyright holders and consumers. But the fact is, as of today, nobody in the Senate has stepped forward with legislation on the consumer side of this issue. This resolution helps fill that void.

Introducing this resolution now, with the end of this Congress drawing near, Congressman COX, and I are essentially laying down a marker for next year's debate. I will work closely with my Chairman on the Senate Commerce Committee, Senator HOLLINGS, and others to move the issue forward. A positive expression affirming the reasonable interests of consumers should be part of this Nation's evolving copyright regime.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 345—EXPRESSING SYMPATHY FOR THOSE MURDERED AND INJURED IN THE TERRORIST ATTACK IN BALI, INDONESIA, ON OCTOBER 12, 2002, EXTENDING CONDOLENCES TO THEIR FAMILIES, AND STANDING IN SOLIDARITY WITH AUSTRALIA IN THE FIGHT AGAINST TERRORISM

Mrs. FEINSTEIN (for herself, Mr. HAGEL, Mr. HELMS, and Mr. NELSON of Florida) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 345

Whereas more than 180 innocent people were murdered and at least 300 injured by a cowardly and brutal terrorist bombing of a nightclub in Bali, Indonesia, on October 12, 2002, the worst terrorist incident since September 11, 2001;

Whereas those killed include two United States citizens, as well as citizens from Germany, the United Kingdom, and Canada, but the vast majority of those killed and injured were Australian, with more than 220 Australians still missing;

Whereas two American citizens are still missing;

Whereas this bloody attack appears to be part of an ongoing terror campaign by al-Qaida, and strong evidence exists that suggests the involvement of al-Qaida, together with Jemaah Islamiah, in this attack; and

Whereas the people of the United States and Australia have developed a strong friendship based on mutual respect for democracy and freedom: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its deepest condolences and sympathies to the families of the American victims, to the other families of those murdered and injured in this heinous attack, and to the people of Australia, Great Britain, Canada, and Germany;

(2) condemns in the strongest possible terms the vicious terrorist attacks of October 12, 2002, in Bali, Indonesia;

(3) expresses the solidarity of the United States with Australia in our common struggle against terrorism;

(4) supports the Government of Australia in its call for the al-Qaida-linked Jemaah Islamiah to be listed by the United Nations as a terrorist group;

(5) urges the Secretary of State to designate Jemaah Islamiah as a foreign terrorist organization; and

(6) calls on the Government of Indonesia to take every appropriate measure to bring to justice those responsible for this reprehensible attack.