United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, THURSDAY, JUNE 23, 2005 No. 85

Senate

The Senate met at 9 a.m. and was called to order by the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Lord, our Lord, how excellent is Your name in all the Earth. You have set Your glory above the Heavens. Lord, we thank You for blessing our land with productivity and protection. May we never take these gifts for granted.

Use our Senators as Your instruments across the world to fill the emptiness in the lives of others. Lead them to make sacrifices that others may find freedom. Open their minds to divine principles, holy directives, and undeniable truths as they seek to respond to a world in need.

Lord, move each of us with Your power to comfort the sorrowful, strengthen the tempted, inspire the faithful and to save the lost. We pray this in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHNNY ISAKSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 23, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHNNY ISAKSON, a Senator from the State of Georgia, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ISAKSON thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will resume debate on the Energy bill, with the time equally divided until the cloture vote, which is scheduled for 10 a.m., about an hour from now. I expect that cloture will be invoked on the bill today. We have now debated the bill and the amendments for almost 2 weeks, and it is time that we move toward final passage, which I hope and believe will be today.

Senators DOMENICI and BINGAMAN have been on the floor and available to consider amendments during the entire 2-week process. I congratulate them on moving this bill forward in a very efficient and timely way.

I do hope that once cloture is invoked, we will find a way to bring this bill to completion this afternoon or evening. As I mentioned last night before closing, if Members do cooperate and show restraint with their amendments, we could certainly finish at a reasonable hour, and I hope we will accomplish that. If Members wait and come forward at the very last minute, it will be necessary to stay here until very late tonight, indeed until tomorrow. So it really is up to us how we handle it. I encourage our colleagues to come to the floor and talk to the managers as soon as possible if they wish to offer their amendments.

I do think we are on the glidepath to completing this bill. As I mentioned last night, following completion of the bill, hopefully tomorrow, we would begin the Interior appropriations bill. The Democratic leader and I will be having more to say about that.

IRAQI PRIME MINISTER

Mr. FRIST. Mr. President, this morning I have the honor of meeting with Iraqi Prime Minister Ibrahim al-Jafari. The Prime Minister is in the United States to meet with President Bush and other Washington leaders to discuss the next steps in Iraq's transition to a free and democratic society. I have not yet met the Prime Minister. I look forward to doing so in the next couple of hours.

The Prime Minister deserves great praise for his leadership. He has worked hard as Prime Minister to reach out across ethnic and religious lines. Because of his efforts, Iraq is led by a transitional government that includes ministers from each of Iraq's ethnic and religious groups.

The Prime Minister's steady leadership has been inspiring. Next Tuesday, 5 days from now, June 28, will mark the 1-year anniversary of the transfer of sovereignty from the Coalition Provisional Authority to a sovereign Iraqi Government. Since then, Iraq has fought the insurgency with determination as it has undergone truly remarkable changes. Perhaps none was more remarkable than the elections on January 31. On that day, 8 million Iraqis cast their votes for the first democratically elected national assembly in more than 50 years. They came on foot, they came by car and some even came by wagon. They defied all manner of terrorist threat and terrorist intimidation.

It was truly extraordinary. No one who saw the images of those brave citizens emerging from the polling stations, holding aloft those stained, blue-inked fingers, could help but be moved and inspired. While the task of forming

a government has taken much longer than any of us would have hoped, the Iraqi people now turn to the task of drafting a constitution and laying the groundwork for a new round of elections at this year's end.

Last week, leaders of the 55-member committee charged with drafting the new constitution reached a compromise with the Sunni Arab groups. Together, they decided on the number of Sunni representatives to serve on that committee. This was a major step forward and a significant effort on the part of the majority to reach out to the Sunni leadership. It was also significant because of the impact it could have on the ground.

As we have seen political progress slow, we have watched unfortunately the violence increase. Building and sustaining momentum in the political process is clearly linked to undermining the terrorists and their support. During their low turnout in the January elections and the current spate of violence, the Sunnis realized they cannot achieve their aims by standing outside the process or by failing to face down the insurgents.

Like all Iraqis, they have a tremendous stake in the success of Iraq becoming a peaceful and prosperous democracy. They know the best way to ensure the outcome and to ensure their rightful place is to work constructively with their fellow Iraqis. I am heartened by the efforts of the Shi'a and Kurd leaders to include the Sunnis in the political process.

These are difficult times, and they require thoughtful leadership. The efforts of all parties to reach out and be inclusive deserves our praise and our steadfast support, as do the brave Iraqis who have stepped forward to defend and protect their country. The Iraqi forces have suffered more deaths and casualties than coalition forces. Despite repeated direct attacks on their ranks, every day thousands of young Iraqis continue to volunteer for service. The Defense Department reports that, as of June 8, more than 160,000 Iraqi security forces have been trained and equipped.

Yes, many of them have much experience to gain and much more to learn before they will be able to act independently, but this will take time as we strive to get 270,000 Iraqis in uniform by July 2006.

Progress is being made. Two or three months ago, I had the opportunity to travel to Jordan and visited one of the Iraqi-Jordanian police training academies. They are on the ground. One can see the progress that is being made in Iraq and with the Iraqi police recruits. One can see their commitment to seeing the job through.

It is all a difficult task, and it is going to take a lot of determination, but I am confident the Iraqi forces will continue to improve and continue to demonstrate their bravery in the days ahead.

As Iraqis assume a greater responsibility for their own defense, the pace of Iraq's reconstruction should also gain speed. After decades of corruption and mismanagement by Saddam's regime, many of Iraq's towns and cities were in shambles, sewage in the streets, tumbled-down schools, unreliable electricity and unreliable and unpotable water. Coalition forces have been working hard to help the Iraqis rebuild and retool.

We are also helping the Iraqis strengthen the rule of law, a civil society, and private enterprise. A strong economy means more opportunities, better jobs, more jobs and a brighter future. Opinion polls show a majority of Iraqis remain optimistic about their economic future despite ongoing security concerns. It is all hard work, and it is made much harder by foreign interference.

The State Department reports that while Syria has taken some steps to improve border security, supporters of the terrorists continue to use Syrian territory as a staging ground. On the Iranian front, Secretary of Defense Rumsfeld and CIA Director Goss report that Iran has sent money and fighters to proteges in Iraq. The fact is, some of Iraq's neighbors fear a large, prosperous democracy on their borders. They fear that a democratic Iraq will export freedom and liberty to their lands. But fear will not stop freedom's progress. Iraq will succeed and will become a beacon of hope throughout the region and throughout the world.

We have already seen the beginnings in the Cedar Revolution in Lebanon. Freedom is on the march, and the Iraqi people are leading the way.

I urge my colleagues in the Senate to continue to offer our steadfast support. This is an extraordinary opportunity to change the course of history and bring peace and stability to the heart of the Middle East. Such steadfastness will not be easy and will not be without cost, but we must succeed. We cannot allow the terrorists to win, and we cannot allow Iraq to fall into chaos, sectarian violence or the rule of extremists. This is going to take a lot of time. It is going to take a lot of money. It is going to take a lot of patience.

The American people need to understand that we will be in Iraq for some time to come. It is vital to the Iraqis that we be there. It is critical to the region that we be there. It is essential to our own security that we be there. Our time line will be driven by success and our exit will depend on the security situation. It will depend on democracy's advance and the wishes of a sovereign Iraq.

It is clear to me that as Iraqis are able to stand up and provide their own security, without coalition assistance and without foreign intervention, we should be able to begin withdrawing personnel from that region.

When I meet with the new Iraqi Prime Minister later this morning, we will discuss all of these pressing matters. I will let him know America is fully committed to Iraq's success. I will also tell him we expect continued progress on security, on reconstruction, and the formation of a functioning democracy.

In the end, Iraq, the region, and the United States will be more safe and more secure.

I ask unanimous consent that the time just consumed be counted against the majority's allocated time prior to the cloture vote.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ENERGY POLICY ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 6 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 6) to ensure jobs for our future with secure, affordable and reliable energy.

Pending:

Wyden-Dorgan amendment No. 792, to provide for the suspension of Strategic Petroleum Reserve acquisitions.

Reid (for Lautenberg) amendment No. 839, to require any Federal agency that publishes a science-based climate change document that was significantly altered at White House request to make an unaltered final draft of the document publicly available for comparison

Schumer amendment No. 811, to provide for a national tire fuel efficiency program.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the Senator from New Mexico, Mr. DOMENICI, and the Senator from New Mexico, Mr. BINGAMAN, or their designees.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand we have 30 minutes; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. KENNEDY. First, I thank my friend and the ranking member, Senator LEAHY, for permitting me to go first so we can attend in an appropriate way the Armed Services Committee and Secretary Rumsfeld. It is typical courtesy on his part.

I yield myself 9 minutes.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

SUPREME COURT VACANCY

Mr. KENNEDY. Mr. President, as we all know, a major debate may soon be underway in the Senate and the country if there is a vacancy on the Supreme Court. It is clear that the Bush administration is well along in choosing its nominee for the vacancy, and the Senate must be well-prepared as well.

The initial major question is whether, for the highest judicial position in the land, President Bush will choose consultation and consensus or confrontation and conflict. I urge the President not to cede this important constitutional responsibility to a narrow faction of his own party—and to groups so extreme they have called for the impeachment of six of the current nine Justices because those Justices refuse to make the law in accord with the groups' wishes.

In the landmark May 23rd agreement, the bipartisan group of 14 Senators spoke clearly for this body on two vital points. First, we intend to remain the world's greatest deliberative body, where the rules, not raw power, prevail, and where the rights of the minority are respected—not silenced. Second, the agreement sent a strong reminder to the President that the Constitution requires him to obtain both the advice and consent of the Senate before appointing judges, and that we expect him to do so in good faith.

When the Framers of the Constitution adopted our system of checks and balances 218 years ago, they focused intently on the process for selecting judges. They wanted judges to be independent, so they gave them lifetime positions and prohibited any reduction in their compensation.

Initially, they were so concerned that Presidents might abuse the power to select judges that they gave the Senate the sole power to appoint Federal judges. But some delegates argued for a Presidential role, and they debated the issue at length.

Benjamin Franklin, always ready with new ideas, pointed to the Scottish system, where the lawyers themselves selected the judges. Invariably, he said, the best and smartest candidates were selected as judges, because the other lawyers wanted to remove their toughest competitor and divide his business among themselves.

In fact, in three separate votes in July 1787, the Framers refused to give the Executive any role in judicial selection, because they did not believe the President could be trusted with that responsibility. They again placed the entire appointment power in the Senate.

Later, as the Constitutional Convention was ending in September, they agreed to a compromise, based on the procedure that Massachusetts had used successfully for over a century. To get the best possible judges, the President and the Senate would have to agree on appointments to the Federal courts. The President was powerless to appoint judges without considering the Senate's advice and obtaining its consent.

For over two centuries that system has worked well. At the Supreme Court level, Presidents have nominated 154 Justices. Most of them were confirmed by the Senate, but some 20 percent were not. Some could not get Senate consent because the Senate did not feel they were qualified for the job, some because they were selected for reasons of politics or ideology with which the Senate did not agree, and some because they were perceived as being too close to the President to be independent.

A few of us who have been here in the Senate for all of the confirmations of the current nine Justices know that most of them were consensus choices. Seven of them—including all six whom the right-wing wants to impeach—were confirmed with such strong bipartisan support that no more than nine Senators voted against them, and, of those, four received unanimous Senate support.

We learned many things from past debates. One of the most important is that there are large reservoirs of excellent potential nominees among the many capable judges and lawyers in the United States, and that, if they are chosen for the High Court, they will receive overwhelming support in the country and in the Senate. Presidents who have listened to the Senate's advice and selected such candidates have had no problem obtaining Senate consent. President Bush can do that, too. If he takes our bipartisan advice, he will have no trouble obtaining our bipartisan consent.

Presidents who have had the most trouble with the confirmation process are those who listened to erroneous advice about the process. As recently as this week, a Member of this body argued in print that:

> Senate practice and even the Constitution contemplate deference to the President and a presumption in favor of confirmation.

That's not what the Constitution says. Since the days of George Washington—whose nomination of a Justice was denied consent by the Senate of that day, there has been no ''presumption in favor of confirmation'' of lifetime judicial appointees. In general, many of us do give some deference to a President's nominees to the executive branch, since they are not lifetime appointments. But even there, if the President overreaches, we act to fulfill our constitutional responsibility.

Three times in my experience, Presidents have pushed the Senate too far on Supreme Court nominations, and the Senate has said ''no.'' Each time, the White House argued for Senate deference and the Senate, each time with bipartisan support, refused to defer. Two of those rejections were consecutive nominations for the same vacancy, with members of the President's own party providing the majority for rejection each time. In the second of those two, the selection was so plainly an arrogant affront to the Senate, that the best argument the proponents could make was that mediocrity deserved representation, too, on the High Court, a proposition the Senate soundly rejected.

Clearly, Senators should not support a nominee just because a President of their party proposed the nomination. The Framers relied on each of us to make independent and individual judgments about the President's nominees. We do not fulfill our constitutional trust if we merely ''placate-the-President.'' I have seen repeated examples of Senatorial courage when numerous members of the President's party—even members of his leadership team—have refused to go along with plainly inappropriate Presidential selections.

We should do exactly what the Framers intended us to do—be joint and coequal defenders of the rule of law and the fairness and quality and independence of the Federal courts. We must listen to their voices now, summoning us across the centuries, to uphold that basic ideal, with full devotion to our role in the checks and balances that have served the Nation so well. We fail them if we march in lockstep with the White House.

As past experience shows, nominees selected for their devotion to a particular ideological agenda are likely to have the most difficulty being confirmed, because that kind of choice rarely achieves a consensus. History shows plainly that the better course is to search for the highest quality candidates who have demonstrated their respect for the rule of law. They respect core constitutional principles, especially those that define the rights of each citizen. They have demonstrated their commitment to finding the law, not making the law. They respect stare decisis, the deference to well-accepted past decisions that have kept the Nation strong by reconciling traditional principles with new needs and challenges. They show respect for the basic structure of Government, especially for Congress when it acts within its established powers. They have demonstrated the ability to subordinate their own ideological and result-oriented preferences to the rule of law.

Especially at the Supreme Court level, the choices should not be partisan choices based on today's partisan issues. The Justice we may select this year could well be providing justice to our children and grandchildren for decades to come. It is more important that the nominee have a strong dedication to principles of justice than a strong position on controversial issues of the day.

It is a disservice to the Court to attempt to install ideological activists bent on making sudden and drastic shifts in the Court's careful, gradual jurisprudence. The Supreme Court is at its worst when it splits into extreme, contentious sides, and reaches extreme results that make much of the Nation cringe and leave only the ideological activists satisfied.

Like sausage and legislation, the confirmation or rejection of a Supreme Court nomination is not always something pleasant to watch or be part of. The course is set by the President. If the President submits an ''in your face'' nomination to flaunt his power, it takes time and effort and sweat and tears before the truth about the candidate is fully discovered and explained to the public and voted on.

We are fortunate to have had a dress rehearsal for the process. Before the White House decided to threaten the Senate with the nuclear option, few Americans had any idea what was happening here and how important it was. It took some time, but eventually the public understood the seriousness of the threat to break the rules in order to change the rules, so that for the first time in Senate history, a bare majority of the Senate could impose a gag rule on every other Senator and enable the President to exercise absolute power over the courts without meaningful review by the Senate. Fortunately, the Senate stepped back from that brink, and the Senators who reached that bipartisan agreement to make it possible deserve great credit.

Those who want the Senate to be a rubber stamp for a White House nominee to the Supreme Court will undoubtedly try to rush us through our duty. But if we are to do our job for the American people in good faith, the process of considering a Supreme Court nominee cannot be rushed. It will take time to obtain the necessary information and documents, and to review and understand them. It will take time to gather witnesses and prepare for hearings. If the nomination is not a consensus nomination, the hearings will be intensive and extensive. If the nominee is evasive, there will be longer hearings and follow-up questions, which will also take time to analyze. Only when all the information is available and fairly considered, can the nomination go forward.

If President Bush resists his fringe constituencies, and seeks the advice of the Senate as he should, the nomination process can have a happy ending. I hope our colleagues across the aisle will urge the President to respect the May 23rd bipartisan agreement and its memorandum of understanding, and take to heart its serious request that he consult with Senators from both parties before proposing a Supreme Court nominee.

We already have in place a process for doing so. In selecting district judge nominees in our States, the White House sends us the list of persons being considered seriously, and asks for our comments on each, as well as our suggestions for additional names to consider. When they have narrowed down the list, they share the short list with us, so that we can give our final advice as to which ones are best and which ones would raise problems. Almost always, our advice is considered and respected. As a result, most District Judges go through the confirmation process quietly and expeditiously, and obtain the consent of the Senate.

Article II, Section 2, Clause 2, of the Constitution clearly says, ''with the advice and consent of the Senate,'' not the advice of anyone else, just 100 of us here in the Senate, who speak for all the American people. It doesn't take much to get our consent. All the President has to do is seek out his preferred non-ideological choices, ask us about them, and listen to our answers.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Mr. President, I appreciate the strong, eloquent statement of the Senator from Massachusetts. He is a former chairman of this committee, the Judiciary Committee. Of course, he is not only a former chairman but, as one of the three most senior Members of the Senate, is well aware of what has been our practice.

I think we may also hear from the senior Senator from Delaware, Mr. BIDEN, who is another former chairman.

Let me speak in my capacity also as a former chairman of the Judiciary Committee.

It is now almost 1 month since the bipartisan agreement was forged to avert an unnecessary ''nuclear'' showdown in the Senate. Democratic Senators who signed the Memorandum of Understanding on Judicial Nominations that averted the nuclear option have fulfilled their commitments with respect to invoking cloture on several controversial nominees. Sadly, with Republicans voting party-line on almost every one of these nominees, they have been confirmed. Meanwhile, as the Democratic leader had offered months ago, the Senate considered and voted upon two Sixth Circuit nominees and an additional DC Circuit nominee.

What has yet to take place, however, is the kind of meaningful consultation that Republican and Democratic Senators explicitly called for in that memorandum. They ''encouraged the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.'' They called for a ''return to the early practices of our government'' that reduced conflict and led to consensus. We have not yet noticed an abundance of consultation. And unfortunately, White House officials have declared that the President has no interest in and feels no obligation to assist in implementing this feature of the memorandum.

Since the White House will not acknowledge the record, I thought it worth noting that 214 of this President's judicial nominations have already been confirmed by the Senate. That includes 41 circuit court nominees, an almost 80-percent confirmation rate of his many divisive circuit court nominees. These figures are all well ahead of the rates during President Clinton's administration. At a similar point in the last administration, only 180 nominees had been confirmed, including only 31 circuit court nominees, which amounted to barely 74 percent of President Clinton's circuit court nominees.

With all the recent talk from Republicans about the principle of every nominee being entitled to an up-or-down vote, it is striking that such a standard was not considered at all while Republicans pocket filibustered more than 60 of President Clinton's judicial nominees. As I demonstrated during the time I served as chairman and since then, President Bush's nominees have been treated far more fairly than were President Clinton's nominees.

I have spoken over the last 4½ years, most recently in the last few weeks, about the benefits to all if the President were to consult with Members of the Senate from both sides of the aisle on important judicial nominations. I return today to emphasize, again, the significance of meaningful consultation on these nominations. It bears repeating given what is at stake for the Senate, the judiciary and the American people.

In a few more days the U.S. Supreme Court will complete its term. Last year the Chief Justice noted publicly that at the age of 80, one thinks about retirement. I get to see the Chief Justice from time to time in connection with his work for the Judicial Conference and the Smithsonian Institution. Sometimes we see each other in Vermont or en route there, and I am struck every time by his commitment to service. He is waging his personal battle against ill health with his characteristic resolve. I know that the Chief will retire when he decides that he should, and not before. He has earned that right after serving on the Supreme Court for more than 30 years, the last 19 as the Chief Justice. I have great respect and affection for him, and he is in our prayers.

In light of the age and health of our Supreme Court Justices, speculation has accelerated about the potential for a Supreme Court vacancy this summer. In advance of any such vacancy, I have called upon the President to follow the constructive and successful examples set by previous Presidents of both parties who engaged in meaningful consultation with Members of the Senate before selecting nominees. This decision is too important to all Americans to be unnecessarily embroiled in partisan politics.

I have said repeatedly that should a Supreme Court vacancy arise, I stand ready to work with President Bush to help him select a nominee to the Supreme Court who can unite Americans. I have urged consultation and cooperation for 4 years and have reached out to the President, again, over these last few weeks. I hope that if a vacancy does arise the President will finally turn away from his past practices, consult with us and work with us. This is the way to unite instead of divide the Nation, and this is the way to honor the Constitution's ''advise and consent'' directive, and this is the way to preserve the independence of our federal judiciary, which is the envy of the rest of the world.

Some Presidents, including most recently President Clinton, found that

consultation with the Senate in advance of a nomination was highly beneficial in helping lay the foundation for successful nominations. President Reagan, on the other hand, disregarded the advice offered by Senate Democratic leaders and chose a controversial, divisive nominee who was ultimately rejected by the full Senate.

In his recent book, ''Square Peg,'' Senator HATCH recounts how in 1993, as the ranking minority member of the Senate Judiciary Committee, he advised President Clinton about possible Supreme Court nominees. In his book, Senator HATCH wrote that he warned President Clinton away from a nominee whose confirmation he believed ''would not be easy.'' Senator HATCH goes on to describe how he suggested the names of Stephen Breyer and Ruth Bader Ginsburg, both of whom were eventually nominated and confirmed ''with relative ease.'' Indeed, 96 Senators voted in favor of Justice Ginsburg's confirmation, and only three Senators voted against; Justice Breyer received 87 affirmative votes, and only nine Senators voted against. Nor are these recent examples the only evidence of effective and meaningful consultation with the Senate over our history.

The Constitution provides that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint'' judges and explicitly the members of the only court established by the Constitution itself, the Supreme Court. For advice to be meaningful, it needs to be informed. Despite his public commitment at a news conference three weeks ago specifically regarding the Supreme Court, the President has not even begun the process of consulting with Democratic Senators. I wrote to the President, again, last month, urging consultation and even making suggestions on how he might wish to proceed.

Bipartisan consultation would not only make any Supreme Court selection a better one, it would also reassure the Senate and the American people that the process of selecting a Supreme Court justice has not become politicized.

The bipartisan group of 14 Senators who joined together to avert the ''nuclear option'' included the following in their agreement:

> We believe that, under Article II, Section 2, of the United States Constitution, the word ''Advice'' speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.
>
> Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.
>
> We firmly believe this agreement is consistent with the traditions of the United States Senate that we as Senators seek to uphold.

I agree. Bipartisan consultation is consistent with the traditions of the Senate and would return us to practices that have served the country well. Our fellow Senators have history and the well-being of the Nation on their side in urging greater consultation on judicial nominations. They are right.

What is troubling are the recent reports that the White House plan does not include meaningful consultation at all, but instead plans a political-style campaign and some sort of preemptive contact to allow them to pretend they consulted, without anything akin to the kind of meaningful consultation that this important matter deserves. Partisan activists supporting the White House boasted last week about a war chest of upwards of $20 million to be used to crush any opposition to the White House's selection. That sounds awfully like preparations for all out partisan political warfare. If the White House intends to follow that type of plan, it would be most unfortunate, unwise and counterproductive.

Though the landscape ahead is sown with the potential for controversy and contention should a vacancy arise on the Supreme Court, confrontation is unnecessary. Consensus should be our mutual goal. I would hope that the President's objective will not follow the path he has taken with so many divisive circuit court nominees and send the Senate a Supreme Court nominee so polarizing that confirmation is eked out in the narrowest of margins. This would come at a steep and gratuitous price that the entire Nation would have to pay in needless division. It would serve the country better to choose a qualified consensus candidate who can be broadly supported by the American people and by the Senate.

The process begins with the President. He is the only participant in the process who can nominate candidates to fill Supreme Court vacancies. If there is a vacancy, the decisions made in the White House will determine whether the nominee chosen will unite the Nation or will divide the Nation. The power to avoid destructive political warfare over a Supreme Court vacancy is in the hands of the President. No one in the Senate is spoiling for a fight. Only one person will decide whether there will be a divisive or a unifying process and nomination. If consensus is accepted as a worthy goal, bipartisan consultation will help achieve it. I believe that is what the American people want, and I know that is what they deserve.

If the President chooses a Supreme Court nominee because of that nominee's ideology or record of activism in the hopes that he or she will deliver political victories, the President will have done so knowing that he is starting a confirmation confrontation. The Supreme Court should not be a wing of the Republican Party, nor should it be an arm of the Democratic Party. If the right-wing activists who were disappointed that the nuclear option was averted convince the President to choose a divisive nominee, they will not prevail without a difficult struggle that will embroil the Senate and the country. And if they do, what will they have wrought? The American people will be the losers: The legitimacy of the judiciary will have suffered a damaging blow from which it may not soon recover. Such a contest would itself confirm that the Supreme Court is just another setting for partisan contests and partisan outcomes. People will perceive the federal courts as places in which ''the fix is in.''

Our Constitution establishes an independent federal judiciary to be a bulwark of individual liberty against incursions or expansions of power by the political branches. That independence is what makes our judiciary the model for others around the world. That independence is at grave risk when a President tries to pack the courts with activists from either side of the political spectrum. Even if successful, such an effort would lead to decisionmaking based on politics and would forever diminish public confidence in our justice system.

The American people will cheer if the President chooses someone who unifies the Nation. This is not the time and a vacancy on this Supreme Court is not the setting in which to accentuate the political and ideological division within our country. In our lifetimes, there has never been a greater need for a unifying pick for the Supreme Court. At a time when too many partisans seem fixated on devising strategies to force the Senate to confirm the most extreme candidates with the least number of votes possible, Democratic Senators are urging cooperation and consultation to bring the country together. There is no more important opportunity than this to lead the Nation in a direction of cooperation and unity.

The independence of the federal judiciary is critical to our American concept of justice for all. We all want Justices who exhibit the kind of fidelity to the law that we all respect. We want them to have a strong commitment to our shared constitutional values of individual liberties and equal protection. We expect them to have had a demonstrated record of commitment to equal rights. There are many conservatives who can readily meet these criteria and who are not rigid ideologues.

This is a difficult time for our country, and we face many challenges. Providing adequate health care for all Americans, improving the economic prospects of Americans, defending against threats, the proliferation of nuclear weapons, the continuing upheaval that afflicts our soldiers in Iraq—all these are fundamental matters on which we need to improve. It is my hope that we can work together on many issues important to the American people, including maintaining a fair and independent judiciary. I am confident that a smooth nomination and confirmation process can be developed on a bipartisan basis if we work

together. The American people we represent and serve are entitled to no less.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New York.

Mr. SCHUMER. How much time remains?

The PRESIDING OFFICER. The minority side controls 10 minutes.

Mr. SCHUMER. I ask unanimous consent that others who wish to add statements to the record on this subject be allowed to do so.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I thank my colleague from Vermont, our leader on the Judiciary Committee, for, as usual, being right on point with eloquence and with no malice.

As many know, there is a real possibility that a vacancy on the Supreme Court will be announced shortly. The Supreme Court should finish its term either Monday or Thursday, depending on the caseload.

There is one question American people are asking about the Supreme Court; that is, how, if and when a vacancy occurs—and we all pray, of course, for Chief Justice Rehnquist's health, but if and when a vacancy occurs—how do we avoid the divisiveness that has plagued this body, this town, and this country about Court nominees over the last several years?

The answer is simple. It can be described in one word: consultation. The ball is in the President's court. If the President chooses to do what he has done on court of appeals nominees—not consult, just choose someone, oftentimes way out of the mainstream, and say take it or leave it—the odds are very high there will be a battle royal over that nomination. If, on the other hand, the President follows the path of what so many other Presidents before him have done—consults with the Senate, with the Congress, both Republicans and Democrats, and takes their advice to heart—we can have a smooth, amiable, easy Supreme Court nomination.

Again, the ball is in the President's court. Consultation is part of the constitutional process, advise and consent. The Founding Fathers did not use words lightly. The relatively short document of our Constitution is amazing for its brilliance and its brevity. When they decide to put a word in like ''advise,'' lots of thought has gone in before it. ''Advise'' means seek the advice of the Senate. It does not say in the Constitution, seek the advice of your party or seek the advice of people who agree with you. The intention, it is quite clear, is to seek a breadth of advice.

That is why, today, a letter signed by 44 of the 45 members of the Democrat caucus, asking the President to consult with us, will be sent. The 45th member, Senator BYRD, agrees with the thrust and the concept of our letter but felt so strongly about the issue he is sending his own letter, which I am sure will be in his own wonderful style and make the point well.

The need for advice, the need for consultation, was made clear when the group of 14—seven Democrats and seven Republicans—got together. In their agreement, they wrote:

> We believe that, under Article II, Section 2, of the United States Constitution, the word ''advice,'' speaks to consultation between the Senate and the President with regard to the use of the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration.

This is a moderate, bipartisan group. They tend to be some of the more conservative Democrats and some of the more liberal Republicans. It is certainly mainstream. Will the President heed their advice and seek the advice of the Senate? If he seeks advice, will it be real? To simply call someone in for a meeting and say, what do you think, and then go about things as if the meeting did not happen is not advice. Real advice means talking about specific nominees in private, saying: What do you think of this name or that name, this person or that person? That is, indeed, what President Clinton did as he consulted Senator HATCH, hardly his ideological soul mate, and many others. Senator HATCH told President Clinton some proposed nominees might be out of the mainstream and garner opposition, at least from the other side of the aisle. But some, even though Senator HATCH clearly did not agree with their politics, were in the mainstream and would get through the Senate with relatively little acrimony. President Clinton took Senator HATCH's advice and the nominations were smooth.

That is not the only time advice has been sought. In 1869, President Grant appointed Edward Stanton to the Supreme Court in response to a petition from a majority of the Senate and the House. In 1932, President Hoover presented Senator William Borah, the influential chairman of the Foreign Relations Committee, with a list of candidates he was considering to replace Justice Oliver Wendell Holmes. Borah persuaded Hoover to move the name of the eventual nominee, Benjamin Cardozo, from the bottom of the list to the top, and Cordozo was speedily and unanimously confirmed.

There are many instances of Presidents seeking the advice in terms of the advice and consent of the Senate. When the President has done it on judicial nominees here, it has worked. Frankly, the President and the White House have consulted with me about nominations to the district courts in New York and the Second Circuit Court of Appeals. They have actually bounced names off of me and said: What do you think of this one? What do you think of that? As a result, every vacancy is filled quickly with little acrimony and with broad consensus.

Most of the nominees I have supported in my area do not agree with me philosophically. But they are part of the mainstream, and I was willing, able and, in many cases, happy to support them. So it can be done and should be done.

There is all too much divisiveness in Washington. On the issue of the courts, it is our sincere belief on this side of the aisle that the President's refusal to consult and willingness to nominate some who are so far out of the mainstream that they cannot be regarded as interpreters of law rather than makers of law. That is the main reason we stand at this point of great acrimony in terms of judicial nominations. All of that can be undone by some sincere consultation.

President Bush, when he ran for office and got into office, said he wanted to change the tone and climate in Washington; he wanted to bring people together. That was a noble sentiment, a wonderful sentiment. He can, despite the acrimony that has occurred on judicial nominations and so much else over the last few years, almost like with a magic wand, undo much of it by seeking real consultation should there be a vacancy on the Supreme Court.

On behalf—I believe I can say this without any hesitation—of all 44 of my colleagues on this side of the aisle, we plead, we pray, with the President to engage in real consultation, to heed the advise and consent of the Constitution, and to come up with a Supreme Court Justice, should a vacancy occur shortly, that we all—from the most conservative to the most liberal Member of this body—can be proud to support.

I yield the floor.

The PRESIDING OFFICER. The minority time is expired.

The Senator from New Mexico.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ISAKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. DOMENICI. How much time does the Senator want?

Mr. ISAKSON. Three minutes.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 3 minutes.

Mr. ISAKSON. Mr. President, I thank the Senator from New Mexico for yielding the time.

(The remarks of Mr. ISAKSON are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself as much time as I may use.

Mr. President, fellow Senators, shortly the Senate is going to vote. We are going to have a cloture vote to decide whether we should bring closure to

what I think has been an excellent 2 weeks of debate about a new American policy, a policy which is directed at trying to make our energy supply for the future more secure for our domestic growth and for our national security.

We have been waiting a long time for this day. If the Senate, indeed, at its pleasure, grants cloture, which I hope we will, it means we will bring to a conclusion in short order a long debate and fulfill a longstanding need for an American energy policy that is encapsulated in this bill, which was produced by the Energy and Natural Resources Committee over weeks of hearings and day after day of debate, with voting, and finally concluding that the bill that is before us is the right thing to do.

Since then, the Senate has exercised its right to offer amendments and discuss them. Some amendments were adopted to change, alter what the committee recommended. But in essence, fellow Senators, we have a rare opportunity today, in a reasonable period of time—not with acrimony but with debate—to pass this legislation. That is, in a sense, consistent with the best of the Senate: having amendments openly debated, many of them; views, some in accord with the bill, some in opposition to the bill here on the floor, as witnessed by those who pay attention to what goes on in the Senate.

So I say, as one who has been a participant for a few years, this is an effort to bring this matter to a vote in the Senate so we can bring this legislation to the House of Representatives. Our Constitution requires that both Houses agree on the legislation. Some do not understand that our Constitution is rather conservative when it comes to passing legislation. You do not just have your vote in the Senate; the House has theirs. Then you have to go to conference and agree on the same text in both Houses, which is done by a committee called a conference committee.

That will occur only when we have voted out a bill. We will vote out a bill only when we have completed debate under our rules. We probably will not conclude debate for a long time unless cloture is imposed.

I believe on a domestic bill, cloture should not be invoked arbitrarily or in advance of a reasonable amount of time. People should be permitted to talk, to amend. But, fellow Senators, we have been at this on the floor for enough time. And when you consider the prior efforts, I believe the American people are wondering why we cannot get something done. Why more time? The purpose for this activity called cloture is to say we have had enough time. With cloture invoked, sooner rather than later, the bill will be voted ''yes'' or ''no'' by the Senate.

So we seek that. That is the privilege of saying to the Senate, we are going to vote ''yes'' or ''no'' soon rather than later. The way we can do that is by voting ''aye'' on the cloture vote.

I note the presence of Senator BINGAMAN. I have additional time. Would the Senator care to address the issue of cloture today?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I appreciate my colleague's comments and his willingness to let me speak for a few minutes.

I join him in urging that we go ahead and invoke cloture on the bill. I do believe we have had a good debate on the Senate floor. We have had a good opportunity for amendments to be offered. The process has been open. I have supported some amendments that have been offered to the bill; I have opposed others. I note my colleague has done the same. I believe each Senator has done the same. That is exactly how the Senate is intended to operate.

Obviously, there are Senators who still have amendments they would like to offer. Some of those amendments will be germane after the cloture vote occurs even if cloture is invoked. Those amendments can be considered by the Senate and disposed of at that time. That is appropriate.

But I understand the scheduling problems the majority leader has and the Democratic leader has as well. They believe they need to move to other legislation early next week, or even as early as tomorrow. Therefore, they would like to go ahead and conclude work on this bill.

This bill is not coming to the Senate sort of ab initio, as they teach you in law school. It has come here after we had a substantial debate on these very same issues two Congresses ago, and again last Congress. As the Senator from New Mexico pointed out, we had a very thorough and open process in the committee. This process we have had on the floor has been a thorough and open process as well.

I believe the bill that came out of committee was a good product. It was a substantial improvement over current law. And I said that. I believe it has been further improved as we have been working here on the Senate floor in considering amendments to the bill, so I do not doubt it could be improved even more. Some of the amendments which Members may still want to offer may well improve it more, and I may be a strong supporter of those. But clearly this has been a process that I think has given everyone an opportunity to participate and offer amendments. It has been a process that has led to a good product which we can take to conference with the House of Representatives. As I say, there will be additional opportunities, even if cloture is invoked, for us to further improve this bill with germane amendments.

So I will support cloture. I know each Senator can make his or her own mind up about that vote, but I believe the chairman of our committee has worked diligently to get us to this point. I have tried to work with him in that process. I think the majority leader and the Democratic leader are very focused on trying to get conclusion on this legislation. I support their efforts.

I yield the floor.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I ask for the regular order.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on H.R. 6, a bill to ensure jobs for our future with secure, affordable, and reliable energy.

Bill Frist, Pete Domenici, Lamar Alexander, Kay Bailey Hutchison, Jim DeMint, Michael Enzi, Ted Stevens, Larry Craig, Craig Thomas, Mike Crapo, Conrad Burns, David Vitter, Richard Burr, Kit Bond, Wayne Allard, Jim Inhofe, Lisa Murkowski, George Voinovich.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on H.R. 6, as amended, the Energy Policy Act of 2005, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Minnesota (Mr. COLEMAN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD, the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 92, nays 4, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—92

Akaka	Bunning	Cornyn
Alexander	Burns	Craig
Allard	Burr	Crapo
Allen	Byrd	DeMint
Baucus	Cantwell	DeWine
Bayh	Carper	Dodd
Bennett	Chafee	Dole
Biden	Chambliss	Domenici
Bingaman	Clinton	Ensign
Bond	Coburn	Enzi
Boxer	Cochran	Feingold
Brownback	Collins	Feinstein

Frist	Levin	Santorum
Graham	Lieberman	Sarbanes
Grassley	Lincoln	Schumer
Gregg	Lott	Sessions
Hagel	Lugar	Shelby
Harkin	Martinez	Smith
Hatch	McConnell	Snowe
Hutchison	Mikulski	Specter
Inhofe	Murkowski	Stabenow
Inouye	Murray	Stevens
Isakson	Nelson (FL)	Sununu
Jeffords	Nelson (NE)	Talent
Johnson	Obama	Thomas
Kennedy	Pryor	Thune
Kerry	Reed	Vitter
Kohl	Reid	Voinovich
Kyl	Roberts	Warner
Landrieu	Rockefeller	Wyden
Leahy	Salazar	

NAYS—4

Corzine	Lautenberg
Durbin	McCain

NOT VOTING—4

Coleman	Dayton
Conrad	Dorgan

The PRESIDING OFFICER. On this vote, the yeas are 92, the nays are 4. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. DOMENICI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

AMENDMENT NO. 839

Mr. LAUTENBERG. Madam President, I have an amendment, Amendment No. 839, related to altering scientific documents. Would that amendment be germane postcloture?

The PRESIDING OFFICER. It would not be germane postcloture.

Mr. LAUTENBERG. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Regular order, Madam President.

The PRESIDING OFFICER. Is the Senator making a point of order against the amendment?

Mr. DOMENICI. I make a point of order that the amendment is not germane.

The PRESIDING OFFICER. The point of order is sustained. The amendment falls.

AMENDMENT NO. 891

(Purpose: To modify the section relating to the coastal impact assistance program)

Mr. DOMENICI. Madam President, I call up amendment No. 891 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. BINGAMAN, Ms. LANDRIEU, Mr. VITTER, and Mr. LOTT, proposes an amendment numbered 891.

Mr. DOMENICI. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I am pleased to be a cosponsor of this amendment, along with the Senator from Louisiana, Mr. VITTER, and many other Senators. We feel very strongly about this particular amendment.

I first thank the chairman of the committee and the ranking member for the excellent work they have done to move this Energy bill forward to this point. It has been a very difficult, tedious, and time-consuming task that has required a lot of patience and a lot of compromises to get a bill of this nature in this climate to this point. We appreciate their patience and their skill.

This is an amendment both leaders have been working on for many weeks. Amendment No. 891 would basically direct a portion of revenues to six States in the United States that have production off their shores, Louisiana being the prime State that produces so much of that energy resource for our Nation, but in addition, obviously Texas, Mississippi, to some degree Alabama, there is some production off the coast of California today—not much but some—and even the State of the Presiding officer, the State of Alaska, that contributes so much to the Nation's energy reserves, has some production off the coast.

Because of this tremendous contribution we have made these many years, let me say willingly and very ably, so many small, medium, and large companies have worked to perfect the technology. They have invented the tools, established the procedures, and have been pioneers in this industry. Many of the tools and technology invented for the environmentally responsible extraction of these minerals—not just in the United States but around the world—have actually been invented and developed in Louisiana. We are extremely proud of the contribution we have made.

In addition to this technological contribution we have made, we have contributed over $150 billion to the Federal Treasury since this began.

I see my colleague from Louisiana on the floor ready to speak in a few moments, but I would like to make a couple of other comments.

The wetlands in Louisiana are not Louisiana's wetlands, they are America's wetlands. They are host to some of the largest commercial shipping in the world. There are seven ports that comprise the ports of south Louisiana and, if combined, it is the largest port system in the world.

We have leveed the Mississippi River for the benefit of the Nation, not just for Louisiana's benefit. Realize, there were people living in Louisiana before the United States was a country. So we have been doing this a very long time. Controlling and taming this river, while it has been a great benefit to the Nation, has come at great cost to the State that holds this mouth of the great Mississippi River.

What do I mean by that? Because we channeled this river, again for the benefit of the Nation so we can ship grain out of Kansas and can ship goods throughout this world—north, south, east, and west—and serve as the vibrant global port that we are, the river has ceased to overflow its banks. So this great delta, the seventh largest in the world, is rapidly sinking. If we do not get some infusion of revenue through this mechanism and others that we are seeking, we will lose these wetlands. It will not be Louisiana's loss, it will be America's loss.

In addition to the commerce we support for our Nation, we also serve as a great migratory flyway for all the many bird species in North America. If they do not have a place to land when they come up from South America and Mexico—that is the place they land, that is the place they nest, that is the first land that is available to them off the water, and that is the marshland we are losing.

In addition, this delta, besides the commerce, besides the environmental benefits for birds and other wildlife, is the fisheries, the nursery for the Gulf of Mexico. More than 40 to 50 percent, estimated by scientists, of all the fisheries in the Gulf of Mexico have some part of their life cycle spent in this great expanse of wetlands.

I have been so pleased to have Senator DOMENICI and Senator BINGAMAN—both Senators from New Mexico—come down to Louisiana to fly over our marsh and see it. You cannot get there any other way. You cannot drive to our coast as you can to the coast in Florida or to the beaches in Mississippi where many of us spent many of our years growing up. There are actually only two beaches, and they are each only about 5 miles long. There are no highways. The only way you can get there is by pirogue, motor boat, skiff, helicopter, or air boat in the marsh. So not many people have seen these wetlands. I have pictures to show any colleague who would like to see them.

It is a magnificent stretch of land. The Everglades can fit inside it. It is three times the size of the Everglades in Florida. It is a huge expanse we are losing. If we do not capture these revenues in some annual, reliable amount to help the State of Louisiana put the resources into saving this wetlands, it will be, indeed, a great loss to America.

In addition to what this wetlands contributes to the United States, it is not only all the above I have described, but it also drains water from two-thirds of the United States. Without the ability to drain this water out, we would have flooding all the way up the Missouri. As you know, because of the

geography of our Nation, that water has to leave those areas or businesses and communities will flood.

We think we are making such—we don't think, we know we are making such a great contribution to this Nation in so many ways. We think this amendment is quite reasonable. There is money available for this purpose. It will be shared with these producing States.

From Louisiana's perspective, this money would be used primarily and almost exclusively for the restoration of America's wetlands so that these wetlands will be there for our children and our grandchildren.

It is with great pride I helped to lead this effort, along with my colleague from Louisiana and many cosponsors. That number continues to grow. We have substantial support because of the leadership of Senator DOMENICI and Senator BINGAMAN.

Again, Louisiana has contributed so much. We simply ask an investment back to preserve this wetlands, which is America's, and to recognize the contribution our State makes to the energy independence of this Nation and to the future economic viability of this Nation.

I want to recognize my colleague from Louisiana, Senator VITTER.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I rise in strong support of amendment No. 891 as well. I am proud to join my Louisiana colleague, MARY LANDRIEU, in doing so.

I want to make five important points why this amendment is clearly the right thing to do.

First, as Senator LANDRIEU said, this amendment has very broad, very deep, and very bipartisan support. I thank her for her leadership, as well as so many others who have come together and worked very hard to craft a responsible amendment to move this issue forward in a concrete way.

Senator DOMENICI, the chairman of the committee, has led in an extraordinary way on this issue and is the primary author of this amendment. We thank him. Senator BINGAMAN, the ranking member of the committee, has led on this amendment as well and is a cosponsor and supportive of it. We thank him. Senator LANDRIEU and I, of course, as well as Senators LOTT and COCHRAN, SESSIONS, and others are all coming together, very broad based, in a bipartisan way to support this effort. That is point No. 1.

Point No. 2 is this is an utterly fair and just thing to do. In this overall debate about an energy bill, we are constantly looking for ways to secure our energy future, to increase our energy independence, to lessen our dependence on foreign sources, which is so troublesome, particularly in a post-9/11 world.

While in that debate, it is important to remember that there are a few States that have been leading that effort and have been doing their part all along, particularly these five coastal producing States—Louisiana, Texas, Mississippi, Alabama, Alaska, and California to a much lesser extent. So in this energy debate, it is certainly important to remember that some of us have been pulling our weight and far more than our weight every step of the way. Yet up until this moment, we have gotten virtually nothing for it.

While oil and gas and other mineral production on public lands onshore gives significant royalties to the host State—usually about 50 percent—that same sort of oil and gas production offshore gives virtually nothing to the host State, less than 1 percent.

That is utterly unfair and this amendment is a small initial step to correct that. As Senator LANDRIEU said, these coastal areas have produced $150 billion or more of Federal revenue, virtually no State revenue. This amendment would correct that injustice in a very small way by capturing a truly tiny percentage of that overall production and royalty figure for the host States.

Point No. 3 is that the host States, the coastal producing States, need this revenue to address problems directly related to this oil and gas production and our contribution to the Nation's energy security. In my home State of Louisiana, we have an absolute crisis going on. It is called coastal erosion. The easiest way I can summarize it is as follows: Close your eyes and try to picture a piece of land the size of a football field. That piece of land disappears from Louisiana, drifts out into the Gulf, lost forever, every 38 minutes. That is around the clock, 24 hours a day, 7 days a week, 52 weeks a year. The clock never stops. It goes on and on.

That loss is directly related to this oil and gas activity. So we have been contributing to the Nation's energy security, but the only thing we have gotten directly for it is these monumental problems which this revenue will help address.

Point No. 4 is that this amendment does not open any new areas to drilling. It does not provide incentives to open any new areas. Personally, I would like to do that. I think more of America needs to contribute to our energy security. I think we need to look in other areas. But clearly that is very politically controversial and this amendment does not attempt to do that in any way. So States that are not in the business, that do not want to be in the business, have nothing to fear from this amendment.

Point No. 5 has to do with the budget. All of us, led by Senator DOMENICI, a former budget chairman, have worked extremely hard so that this does not bust the budget in any way. We have bent over backward to fashion this amendment so it is within all the budget numbers.

A budget point of order may nevertheless be raised and I expect it to be raised. I want to explain what that is because it is not busting the numbers built into the budget. There is a reserve fund or a contingency fund within the budget that was part of the budget and part of the Budget Act specifically associated with the Energy bill. This amendment is well within the numbers of that fund and therefore does not go beyond the numbers of the budget. However, in the Budget Act, the chairman of the Budget Committee has the role of having to sign off on the use of that contingency fund. The chairman may not do that. He may therefore raise a budget point of order, and that is his right, and I respect his right and what he views as his obligation, but I want to make the point very clearly that is a technical point of order which is fundamentally different from an amendment which busts the budget numbers, which goes beyond the numbers built into the budget.

We have worked extremely hard with the budget chairman's staff, I might add, hand in glove with them, to make sure this amendment falls within all of the numbers of the budget and is well below that contingency fund number specifically for the Energy bill. So if that budget point of order is raised, it is valid, but it is, in a sense, a technicality because our amendment does not go beyond the numbers built into the budget and the Budget Act.

Mr. GREGG. Will the Senator yield on that point?

Mr. VITTER. I would be happy to yield.

Mr. GREGG. Is it the position of the Senator from Louisiana, therefore, that when a discretionary program is taken and turned into a direct spending entitlement program, that that is a technical point?

Mr. VITTER. No. The point which I just made was that this amendment is well within all of the numbers laid out in the Budget Act. That was the point I was trying to make.

Mr. GREGG. Madam President, would the Senator yield for a question?

Mr. VITTER. I will be happy to.

Mr. GREGG. It appears to be the Senator's position that since this budget point of order involves taking a discretionary program and making it an entitlement program that that is a technical point.

Mr. VITTER. That is not my——

Mr. GREGG. My position is that is not technical.

Mr. VITTER. If I could clarify and respond to the question, that is not my position at all. My position, which I think I laid out pretty clearly, is this amendment is well within all of the numbers within the budget. It does not bust those numbers. It does not go beyond those budget numbers. That is what I said, that is what I meant, and I believe to the extent the Senator did not argue the point, it is confirmed.

Mr. GREGG. Madam President, would the Senator from Louisiana yield for a question?

Mr. VITTER. I will be happy to.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. The Senator from Louisiana appears to want to have it both ways, that the chairman of the Budget Committee has a right to make this point of order because the chairman of the Budget Committee is given that authority by the Senate in order to protect the integrity of the budget process, and when the chairman of the Budget Committee rises and asks a question which is the basis of his point of order, which is that this amendment takes a discretionary program and turns it into an entitlement program, and asks the Senator from Louisiana does he deem that to be a technical point, the Senator from Louisiana says, no, that is not my argument. My argument is something else.

Well, I would simply say to the Senator from Louisiana, he cannot have it both ways. He cannot say to the budget chairman he has the authority to do this and then say to the budget chairman, when he asks the Senator whether it is a technical point when the budget chairman elicits why he is doing it, that it is not a technical point.

It is a very unusual position to take, that moving a discretionary program to an entitlement program is a technical point, and that is the gravamen of the argument of the Senator from Louisiana.

Mr. VITTER. Reclaiming my time, I think I have laid out my position very clearly. This is a broad-based, bipartisan amendment. This is a fair amendment, particularly considering everything that these coastal producing States have given the country in terms of our energy security. Unfortunately, we are a very small number of States that have contributed in that way. This is designed to address a very real crisis in Louisiana and other coastal States. By the way, that is not some parochial problem. That is a national problem, as my colleague, the senior Senator from Louisiana, has outlined. It threatens national oil and gas infrastructure. It threatens national maritime commerce and ports. It threatens nationally significant fisheries.

Fourth, we are not opening new areas with this amendment. We are not providing incentives to open new areas with this amendment.

Fifth and finally, we are within all the numbers within the budget.

I thank the chairman of the committee. I thank Senator BINGAMAN and others. I thank my colleague, Senator LANDRIEU, for her leadership on this issue.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I rise in support of this amendment. I am a cosponsor of this amendment. It would dedicate funding for coastal impact assistance to States that currently produce oil and gas from the Federal OCS adjacent to State waters.

I have visited the coastal area near Louisiana with Senator LANDRIEU. I know of the very serious concerns which many in that State have about the loss of coastal wetlands caused by a variety of factors, including some activities related to the oil and gas development that has occurred there. Senator LANDRIEU has been a tireless advocate for her State on this issue and I know her colleague has as well.

It is important for my colleagues to know what the amendment does not do. The amendment does not modify any moratorium on OCS leasing. It does not provide an incentive for States to start production. It does not provide for a State opt-in or opt-out for resource assessment or leasing activities. What the amendment does is establish a coastal impact assistance program and provide a stream of revenues for coastal impact assistance to States that already have OCS production off their coast.

Under the amendment, funding would be made available to address the loss of coastal wetlands as well as for other projects and activities for the conservation, protection, and restoration of coastal areas, mitigation of damage for fish and wildlife and other natural resources, and implementation of federally approved marine coastal and conservation management plans.

In addition, up to a fixed percentage of the funding could be used for mitigation of the impact of OCS activities through funding of infrastructure projects. In other words, the amendment allows funding of certain infrastructure projects and public services, but the amount of funds that can be expended for those purposes is capped.

Before concluding, let me clarify one significant point. I support the amendment because it does provide dedicated funds from the Treasury for coastal impact assistance. The amendment does not provide a percentage of revenues or future revenues or otherwise call for revenuesharing from the Outer Continental Shelf. I have stated repeatedly my opposition to that idea. It is my view that the oil and gas resources in the OCS belong to the entire Nation, and the revenue-sharing arrangement, which was earlier discussed but is not part of this amendment, would run contrary to that principle.

In closing, I reiterate my support for this amendment. I hope my colleagues will join me in voting aye for the amendment and waiving the Budget Act, if necessary.

I yield the floor.

Ms. LANDRIEU. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GREGG. I object.

The PRESIDING OFFICER. The Senator may not object to a quorum call. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Madam President, I do not sense that the manager of the bill is on the floor, but I would be interested in knowing whether the Senators from Louisiana wish to enter into a time agreement so we can move to a vote on this point of order.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, it is my understanding there are other Members who have asked to be given a chance to speak, some in opposition to the amendment, perhaps some additional in favor. So we are not able to go to a vote at this point.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Did the Senator from Louisiana wish to respond to my time agreement? I was going to speak.

Ms. LANDRIEU. No. I am sorry. I am wondering if we could have some additional time. Did the Senator want to speak for a certain amount of time?

Mr. GREGG. I understand there is an objection. I believe I have the—do I have the floor?

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. It is my understanding from the Democratic leader on the bill that there is an objection to any time agreement at this point so there is no point in even entering a discussion on that matter, I guess.

Madam President, I rise to address this issue as chairman of the Budget Committee. I begin with this rather unfortunate characterization that a budget point of order is a technical event around here.

Budget points of order are not technical events. In my humble opinion, they are rather important. I guess that is because I am chairman of the Budget Committee. We pass a budget and we say as a Congress and as a party specifically, because nobody on the other side of the aisle participated in passing the budget, that we are going to discipline our house, we are going to be fiscally responsible. In fact, the budget we passed was extremely disciplined. It limited nondefense discretionary spending to a zero increase over the next 3 years. For the first time in 7 years, it attempted to address entitlement spending because we see that as probably the most significant threat to our fiscal integrity as a nation.

It had very aggressive language in the area of enforcement. Certain accounts were set up, such as the reserve account which has been referred to, in order to make sure that dollars were spent appropriately and not whimsically or outside the purposes of the budget.

That budget passed. It was voted on. It passed by a couple of votes but with no Democratic support. However, it was the first budget to pass this Congress in 2 years and only the second time in 4 years did we actually get a budget out of the Congress. I think it is important that we look to the budget

for leadership, or at least for guideposts as to how we are going to function around here. To represent that points of order made under the budget might be technical is, to say the least, inconsistent with the purposes of the budget and the points of order under the budget.

There are a lot of points that have been raised in presenting this case. There have been substantive points and then there have been arguments that it is not outside the budget and therefore should be paid for.

Let me speak initially to the substantive points. I do respect the comments of the senior Senator from Louisiana, when she quite forthrightly stated that the problem that is being caused in Louisiana, relative to loss of frontage and land, is a function of the levying situation—which benefits the Nation. I do not deny that. I read the book ''Rising Tide'' and was amazed at the impact of that flood and know that the levee situation addresses that as well as commerce.

But here is the essential problem. I have reviewed this, briefly. I haven't reviewed it in depth, but I asked my people who are expert in this area, especially those who work in NOAA or have worked in NOAA, what causes this erosion. I agree with the Senator from Louisiana, the senior Senator, that the erosion is essentially being caused by the levees.

It is not a function of drilling offshore, and therefore there is no nexus here. Between drilling offshore and the need to restore, the conservation issues around the land that is being lost, there is no nexus. A scientific nexus does not exist. The issues are really independent of each other. How you fund the restoration of those shore lands is the issue at hand. But what I think is important is that, from a substantive policy debate purpose, the problem is not being caused by energy production, and the amendment, as proposed, has no relationship to energy production, and this is an Energy bill. In other words, this amendment does not create new production. This amendment does not create new renewables, and it does not create conservation.

This amendment conserves land, but the land that is being lost is not necessarily being impacted by energy production, or at least there is no scientific evidence to that effect that I can glean. It hasn't been presented, and I think the senior Senator from Louisiana made the case better than I could make it on that point. So there is not a relationship between what this amendment wants to gather money for and the Energy bill.

Second, I think it is important to note that this amendment uniquely benefits five States at the expense of the General Treasury. It essentially says those five States have a unique conservation issue which the General Treasury has an obligation to support over other States which have conservation issues.

There may be other places that have conservation issues which are probably directly related to the production of energy. I suspect West Virginia has some very serious conservation issues dealing with the production of coal. There is a pretty good nexus. But this amendment doesn't say we use general revenues, that we use the General Treasury to support that effort. No, it says five States have gathered together to take money out of the General Treasury for the purposes of addressing what they see as their conservation needs, which have no nexus of any significance that can be proven to the energy production.

Granted, those States do produce a lot of energy and that energy is a benefit to this country and I appreciate the fact that they do that. But New Hampshire produces more energy than we consume—a significant amount more than we consume—because we built a nuclear plant. I will tell you that produced some conservation issues. But we are not seeking a special fund, for which the taxpayers will have to pay, in order to take care of that issue that will be uniquely tied to New Hampshire.

Ms. LANDRIEU. Will the Senator yield?

Mr. GREGG. After I finish my comments, I will be happy to yield for a question.

The more appropriate approach here, if this is what the game plan is, is probably to fund something such as—use these moneys, if you are going to take money out of the General Treasury and set up an entitlement program for a few States—is to say that program should be for more than a few States. It should be for all the States that have impact from conservation. But I don't think we should be doing even that because I don't think we should be creating new entitlement programs, which is the gravamen of this case, creating a new entitlement program.

Louisiana already benefits rather uniquely—and I think this point should be made, and folks should focus on it a bit—from a variety of different funds which are generated by energy, which help them in the area, theoretically, of conservation. They get 100 percent of the royalties for the first 3 miles of drilling. Last year that was over $800 million. I think they get 27 percent of the rights for the next 3 miles, and last year that was about $38 million. What we are talking about are royalties beyond those areas, in Federal water—not State water; Federal taxpayers, Federal water.

Louisiana is already receiving a fair amount of money through the present royalty process. In addition, due to the creativity—I suspect the senior Senator from Louisiana was involved in this, and I know the prior Senator from Louisiana was involved in this—through their creativity, when Dingell-Johnson was reauthorized, they managed to get a dedicated stream of money for conservation land, and they are the only State in the country that has this; the only State that has a dedicated stream of money.

I congratulate them for their creativity, but I don't think they should get another dedicated stream of money. They already did it once. Why should they get it twice? Every time you start a lawnmower in this country, whether you start it in Louisiana or whether you start it in upstate New York or Montana or Washington or Oregon, every time you pull that cord and it doesn't start and you pull it again and you finally get it started, you are sending money to Louisiana.

Every time somebody in New Hampshire gets on a snowmobile, you are sending money to Louisiana. A lot of people don't get on snowmobiles in Louisiana, but in New Hampshire they do. But we are sending our dollars to Louisiana every time we take out a snowmobile. It is a dedicated stream. I think last year it was $767 million they received out of that fund, unique to Louisiana. I guess they thought it was such a good idea they would come back again: Let's get another dedicated stream of money. What the heck, if it worked once, why not try it twice?

The problem they have, of course, is that this time there is a budget point of order against it. So they have to convince 60 people that Louisiana should get this unique treatment, after Louisiana already gets 100 percent of the royalties from the 3-mile area, which is over $800 million; 27 percent of the royalties from 3 to 6 miles, which is about $38 million; and $71 million from Dingell-Johnson, which no other State gets in that dedicated stream.

Then they put it forward for a program which has no relationship to energy production. Interestingly enough, if you read the amendment, it appears that not only does it have no relationship to energy production but that the money could actually be spent on just about anything. It could probably go into the General Treasury of Louisiana. It basically will become a revenue-sharing event. It doesn't have to go to conservation. On page 14 it says:

> Mitigation of impacts of Outer Continental Shelf activities through the funding of onshore infrastructure projects and public service needs.

''Public service needs'' is a term that means you can fund anything. You could fund the fact that fishermen are not having a good year fishing or that the casino didn't have a good year of gambling or maybe, as we have seen occasionally in the past, that you wanted to build a Hooters in order to hold the shoreline in place. ''Public service needs'' is a pretty broad term, and I know there are some very creative people who, when they see language such as that, see Federal revenue sharing. Give me the dollars, I am going to spend it on whatever.

So this amendment not only does not have a nexus to energy, it doesn't even

necessarily have a nexus to conservation with that language in there. So it has some serious problems.

Those are a few of the substantive probleMs. There are obviously more. Just the issue of fairness is probably the biggest one.

But the bigger issue, of course, is the attack on the General Treasury. The representation that this is a technical event when you create an entitlement, to me, affronts the sensibility of fiscal responsibility. The creation of entitlements around here has become a game. What happens is the Appropriations Committee, of which I am a Member—and I honor my service there and appreciate my chance to serve on it—has given up massive amounts of spending responsibility to the entitlement side. Why? Because every time they create an entitlement to do something which is a discretionary program, it frees up money to spend on some other discretionary program. So it is a very attractive event, quite honestly, to create an entitlement for a discretionary program because that gives an appropriator freedom to spend the money that has just been freed up—again.

That is how you end up driving up Federal spending. Because suddenly you have taken money, for which there was going to have to be some prioritization because the Appropriations Committee would have had to say: If we spend ''X'' million here, we can't spend ''X'' million over there because we can't have it because we are subject to a budget cap. You take that money and put it over on the entitlement side so that money can be spent again.

That is why this is such an outrage as an approach, creating an entitlement. There is no way that, as budget chairman, in good conscience, I can allow this type of activity to go forward without being at least noticed—without at least putting up the red flag and saying: Hey, folks, this is highway robbery. This is a attempt to raid the Treasury, to stick it to the taxpayers twice.

That is why I raised the point of order. I will probably lose it because there is a log rolling exercise going on around here that is significant. But it doesn't mean I should not raise it; That is my job. That is what I am here for, I guess—temporarily, anyway.

So that is the essence of the problem. Substantively, this is not an energy issue. The State of Louisiana already has many revenue streams, including, ironically, unique revenue streams which they have been successful in the past in gaining. This would be an additional revenue stream which would be inappropriate to limit to five States because conservation is not a unique problem for Louisiana, and there are other States that actually have higher equity arguments relative to impacts from energy directly related to where the conservation dollars are going.

I am sure there are significant conservation issues in Louisiana relative to energy production, but the loss of this frontage doesn't appear to be one of them. And creating an entitlement where there was a discretionary program is just bad fiscal policy.

So that is the reason I will be making a point of order at the proper time. I am perfectly happy to go to that vote as soon as the parties wish to do so. I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, I wanted to briefly respond to each of the major points that the distinguished chairman of the Budget Committee has made because I believe, quite honestly and sincerely, he is misinformed about each of these points.

No. 1, the idea that there is no causal linkage between the problem, at least in Louisiana we are trying to address, and offshore oil and gas production: Nothing could be further from the truth. I am glad the distinguished Senator has read ''Rising Tide.'' But I suggest he needs to read a lot more and maybe come to Louisiana.

There are, of course, several causes that have all worked to create this coastal erosion problem, but one of the biggest has been all of the oil and gas service activity which comes off the swampy coast of Louisiana. All of that 50 years of activity has created channelization of our marshes. That has directly led to the intrusion of saltwater into the marshland, the loss of vegetation, which is the glue that holds it together, and this coastal erosion.

There is an absolute identifiable, scientifically proven, causal connection between offshore oil and gas activity and this coastal erosion problem. It is not speculative. It has been scientifically proven. Are there other contributing factors? Of course. Is levying of the Mississippi a significant factor? Of course. But there is a direct causal connection.

Point No. 2, the chairman has suggested there is no relation between this money and energy production. Again, nothing could be further from the truth. The amendment specifically states these States share in this fund in direct proportion to their Outer Continental Shelf energy production. The way to calculate how much each State gets is according to what activity, in meeting the Nation's energy needs, goes on off our coast. There is a direct connection between the calculation of the money and this activity. Again, a direct connection in terms of what money the States get directly dependent on what OCS oil and gas activity exists.

Point No. 3 causes me the most angst being from Louisiana, the notion that there is no justice to this amendment, or that this is somehow a rip-off to the advantage of Louisiana and other coastal States. Nothing could be further from the truth. We have worked 50 years to produce energy in this country. We are one of the only States in this country to have done this. The other States are also represented in this amendment. Yet we have gotten hardly anything for it and truly hardly anything for it in terms of direct revenue to the State.

States that have onshore mineral production or onshore oil and gas production on public land get a 50-percent royalty share. A State such as Louisiana that has this production offshore in the OCS gets less than 1 percent. Yes, there is a justice issue, but the justice issue is weighted in our favor.

I note two things, in particular, the distinguished Senator from New Hampshire mentioned. He talked about other conservation needs. What about the conservation needs brought about by coal activity in West Virginia? The chairman should note West Virginia gets a 50-percent royalty share that directly relates to that activity. Put us on par with West Virginia. We will take that; we will take 50 percent. The fact is this is a pittance compared to that.

Is there a justice problem? You bet there is. West Virginia produces coal, and that is great for the country, and they get a 50 percent royalty share. We produce oil and gas, and that is great for the country, and we get less than 1 percent. This is a justice issue, and all the justice arguments are in our favor.

The Senator also mentioned that Louisiana has a windfall because 3 miles off our coast is State waters. That is true. But the distinguished Senator from New Hampshire should note that for Texas, that seaward boundary is 9 miles. For Florida, that seaward boundary is 9 miles. Yet because of historical accidents and idiosyncracies, it is only 3 miles for Louisiana and Mississippi and Alabama. Everywhere else it is 9 miles or more. For Louisiana, Mississippi, Alabama, it is a third of that, about 3 miles.

You bet there is a justice issue. But, again, the injustice for 50 years and more has been against us. We are trying to correct that in a truly modest way with this amendment.

Fourth and finally is the budget point. I reiterate and am very specific and very clear: This amendment is wholly within the numbers built into that budget. As the chairman knows, built into the budget is a fund specifically dedicated to the Energy bill. This amendment is well within those numbers.

There are lots of things in the Energy bill that are mandatory spending. There are lots of tax provisions. There are lots of other provisions that basically can amount to mandatory spending. This is the same as that. There are lots of other things that are not subject to future decisions or future appropriation or other decisions. This is tantamount to that, and it is within the numbers built into the budget for the Energy bill. We have bent over backwards, worked very hard, to make sure that was the case.

I yield time to the senior Senator from Louisiana, Ms. LANDRIEU.

The PRESIDING OFFICER. There is no time.

The Senator from Louisiana.

Ms. LANDRIEU. I ask unanimous consent to speak for 5 minutes since we have no timeline.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I appreciate so much the support we have on this amendment from both sides of the aisle. A great deal of thought has gone into this amendment. My colleague from Louisiana answered every single one of the objections raised against this amendment by the Senator from New Hampshire. I add just a few words.

First of all, the Senator has done a very good job as budget chairman. I have enjoyed working with the Senator on many issues, including the education reform issue and trying to move toward a balanced budget. I share his goals in so many ways.

He, of course, is a great advocate for his State, although he is somewhat critical of an act that we fondly, and in a very appreciative way, refer to as the Breaux Act in Louisiana. We take that in Louisiana as a great compliment when a Representative, a Senator or a Congressman, can use their committees to do something that is so warranted and so worthy and so necessary for a State. Senator Breaux served so ably in this Senate for many years. We refer to that act as the Breaux Act.

The Senator is correct, we get a relatively substantial amount of money, $50 million a year. It started out at $20 to $25 million and has gone up to $50 million. However, that is a drop in the bucket considering the money that Louisiana has generated for this Nation and for the Senator's general fund. There has been $155 billion generated since 1953. Last year alone, $5 billion came off the coast of Louisiana. That would not be possible without our State agreeing to lay the pipeline, drive the pipe, allow the trucks to come down our two-lane roads that go underwater even when it rains. Forget the storm and hurricanes. Five billion dollars last year.

If any State has contributed to the Federal Treasury anywhere near that amount with their resources, please, I would like to know. No other State, except the State of Wyoming, contributes more to energy independence than the State of Louisiana. Wyoming gets prize 1 and we get prize 2. I am speaking about all sources—nuclear, hydro, geothermal, wood, wind, waste, solar, oil, natural gas, and coal. All of it. The States of Wyoming, Louisiana, West Virginia, Alaska, New Mexico, Kentucky, Oklahoma, Montana, North Dakota, Colorado, and Utah, generate more energy in their State than they consume, more energy than their industries need, and we export it out. And we are happy to do it because we actually believe in our State what we say in the Senate, that we want to be energy independent.

These States are at the top of the chart for usage: California, New York, Ohio. There are others.

People say every State contributes what it can. Some produce sweet potatoes, some produce Irish potatoes, some States have beaches, some States have mountains. I understand that argument. That is what makes our Nation great. We all contribute to this great whole. But Louisiana contributes more than its share and it has since 1940.

Are we asking anybody else to do that? No. Are we trying to move moratoria? No. We are saying for the money we contribute—we understand the OCS does not belong to us; we do not claim it does—we are saying for the money we contribute, could we please have six-tenths of a percent. If it means an entitlement, let me say to the Senator, the people in Louisiana are entitled. They are entitled to the money we helped contribute to the general fund. I don't take that as an insult, I take it as a compliment to the people of my State. We are entitled to some small amount of money we are asking for. We are willing to share it with the States that did not produce nearly the amount we produce, but we are happy to do that. In fact, the Presiding Officer may remember we have had bills to try to share the money with everyone. No matter what we try, we can share with everyone, but it is never quite enough, never quite right.

We have it right this time because we probably have over 60 supporters of this amendment to give Louisiana and these coastal States a small share of the money that, yes, they are most certainly entitled to.

Second, in this bill, the use of this money will go to wetlands conservation and resources. There have been a lot of pictures shown of the coast. I will show one of my favorites because this is what our coast looks like. This is what we are trying to keep healthy, a place where wildlife can flourish. A lot of people live near marshes like this. When they open their kitchen windows, they do not see interstates or big highways, they see this marsh.

If you live near the Atchafalaya and you open your back windows, you will see a beautiful cypress forest. Most are gone in North America, but we are fortunate to have some in Louisiana we are trying to preserve. If you go out near Lake Maurepas around Lake Pontchartrain, this is what you see when the sun sets in the evening.

I am tired of people coming to the Senate and putting up pictures of pelicans with oil all over them. We are wise people. We are an industrious people. We are a people who care about our environment. We have cared about it for hundreds of years. And we continue to try to save it.

The Senator from New Hampshire can most certainly appreciate how much we love our State because he loves his, and how smart the people in Louisiana are to use the resources appropriately, the Senator would understand that these are some of the extraordinarily beautiful places that we are trying to save.

There is a delta that is growing in Louisiana. It is the Atchafalaya Delta. And because of its natural beauty and because the water continues to flow and because of the good technologies our great universities have contributed to understanding the ecology of a delta—there is no delta in New Hampshire, I don't believe. The last time I checked there wasn't one, but there is a big one in Louisiana, the seventh largest delta in the world. It is a growing delta. If you looked on a map from the satellite, you could see there is land growing off the coast of Louisiana. We are proud that this Atchafalaya Delta is growing. We are preserving it. The State is spending millions of dollars to buy this land and preserve it.

Any argument in the Senate that the people of Louisiana are sitting around twiddling their thumbs, not smart enough to figure this out, is an insult. I don't think that is what the Senator meant, but sometimes people in Louisiana hear words in the Senate that lead them to believe that might be the conclusion. I am certain that is not what he meant.

We have every intention of using this money to preserve these wetlands, to make the place that we have lived for over 300, 400 years more beautiful, and most importantly to make it secure for the future. As this marsh goes away, it threatens not only the life and livelihood and investments of the 2 million people who happen to live there and the 1 million people who live on the coast of Mississippi—because this marsh land protects them, as well—it also puts at risk billions and billions of dollars of infrastructure that the oil and gas industry has invested for the benefit of every single solitary American, whether they live in New Hampshire, Maine, Illinois, California, or Florida.

The Senator from Louisiana and I have made our points very well. We appreciate the work of the Senator from New Hampshire and his work on the budget. We understand he has a tough job. But we have a job to do, as well. That job is to get six-tenths of 1 percent of the money that we generate for this Nation without bellyaching about it, without complaining about it. We have patiently and consistently asked for some fair share.

Yes, Senator Breaux was quite successful in managing a small amount of money, but the tab that we have, the Corps of Engineers has helped us to appreciate. The tab that we have to pick up right now in our 20/50 plan is estimated to be $14 billion.

So am I to believe the Senator from New Hampshire expects the 4.5 million people in Louisiana to pick up the tab—$14 billion—to fix the wetlands that is not ours but belongs to everyone, that we did not destroy but the

Mississippi River leveeing destroyed, and put taxes on us to do this? I do not think he would suggest that.

This is a partnership we ask for. We will do our part. The Federal Government should do its part. We are going to continue to press this issue. I am pleased to be able to answer some of those questions and concerns.

Finally, this is a picture of the wetlands itself from a satellite view. This is Louisiana's coast. It is very different from Florida, very different from California. As I said, most people have never quite seen it because there are only two places you can get to. One is Grand Isle, which is shown right here, that tiny, little place. It is a beautiful little island, but it keeps getting battered by the hurricanes that continue to come. And Holly Beach is somewhere right around here on the map. It is too small to see on the map.

There are only two roads you can get to. No one can see our coast unless you are one of the thousands of fishermen who come fish and tie their boats up next to the rigs. They actually fish next to the oil and gas rigs. That is where the best fishing is in the Gulf of Mexico. So unless you are one of those fishermen, or one of the trappers who have trapped here—for hundreds of years families have trapped here—you would not know where this is or what it looks like. But we do because we represent this State.

We are losing this land and must find a way to save it.

This amendment is a beginning. My colleagues have been so patient. Our colleagues have been so helpful. Chairman DOMENICI and Ranking Member BINGAMAN have seen this land.

Again, as my partner from Louisiana said—and I am going to wrap up in a moment—this does not open moratoria. It is not an opt-out or opt-in amendment. It is simply a revenue-sharing amendment. We believe the people of Louisiana and Mississippi and Texas and California and Alaska and Alabama are entitled to some of the money, a small amount of money they are contributing to the general fund that helps us keep our taxes low and funding projects all over the Nation.

Mr. President, 30 more seconds. The Senators have been so patient, but I want to say this one response.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. When the Senator says no other States share the revenues, that is inaccurate. I know he is aware that interior States share 50 percent of their revenues from Federal land in their States. Louisiana does not have a lot of Federal lands. Texas has very little Federal land. Mississippi does not have much Federal land. Most of that is in the West. We are different. We are not the West. We are the South, although Texas could claim to be both. But Louisiana and Mississippi are Southern States. We do not have a lot of Federal land. What we do have is a lot of land right off of here, as shown on the chart, that belongs to the Federal Government. But the Federal Government could not get to it unless we allowed pipelines. There are 20,000 miles of pipelines put under this south Louisiana territory to go all over the country, to keep our lights on and our industries running.

So again, there is revenuesharing. We would like our share. This is going to go for a good cause, for the preservation of an extraordinary marsh. It is time for us to make this decision today for Louisiana and the coastal States.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I appreciate the forthrightness of the Senator from Louisiana. She has made my case. She says it is revenuesharing. I agree with her. She says it is an entitlement. I agree with her. She says they want their share. I agree that is what this plan would do. It would create a new entitlement. It would take money from the general fund and send it to Louisiana.

Fifty-four percent of the money under this amendment goes to Louisiana. The amendment started out as a $200 million a year amendment. Now it is up to $250 million a year, which would mean Louisiana would get about $135 million.

The issue of whether it violates the budget is obvious. It does. And the issue of whether it is technical is obvious. It is not technical. It would create a new entitlement. And it is certainly not technical to say five States should have a unique role in conservation revenues from the Federal general treasury, that they should have a unique right to that as compared to other States which have equal arguments of equity relative to conservation.

So it is very hard to understand—well, no, it is not hard to understand. The Senator from Louisiana made the case. They want their share, they want revenuesharing, and they want an entitlement. That is what they are going after here. It is a grab at the Federal Treasury. Maybe they will be successful at it. But before they do that, they are going to have to at least overcome a point of order and vote to disregard the budget.

At this point, I do make that point of order. Mr. President, this additional spending in this amendment would cause the underlying bill to exceed the committee's section 302(a) allocation; and, therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I move to waive the applicable sections of the Budget Act with respect to this amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I think the fact that this budget point of order has to be waived makes the case there is a budget point of order that lies. It is not an insignificant point of order when it involves creating a new entitlement.

Mr. President, I yield the floor. I would be happy to vote on this now, but I understand the other side has reservations about voting now. But it is fine with me to go to a vote.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first, let me say to the Senator from New Hampshire——

Mr. GREGG. Can I get the yeas and nays on the motion to waive?

Mr. DOMENICI. Of course.

Mr. GREGG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, might I say to the Senator from New Hampshire, of course, this motion is debatable, as the Senator knows. We do not want to take a lot of time, and we do not want them to take a lot of time. But we have objection to proceeding from the other side, so we are going to be here a while. Sooner or later we will vote, even if it is at the end of 30 hours. Everybody should know that. So whoever is delaying this, all the other amendments are waiting.

Mr. GREGG. Mr. President, I leave it to the good offices of the chairman of the committee, who is an exceptional floor leader, to tell me when he wants to have a vote.

Mr. DOMENICI. I say to the Senator, you should know that at some point I am going to take 3 minutes to explain my version of the budget.

Mr. GREGG. I look forward to that.

Mr. DOMENICI. You do not have to be here, but I want you to know that so you don't think I am doing it without your knowledge. I will not take more than 3 minutes explaining what I think it says. All right.

I yield the floor.

Mr. CORZINE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORZINE. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The legislative clerk continued with the call of the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. The pending business is the amendment offered by Senators Landrieu, Domenici, Vitter, and others with regard to the offshore royalty.

The PRESIDING OFFICER. The Senator is correct.

Mr. LOTT. Mr. President, I believe there are some negotiations going on on other issues. My intent is to speak strictly on this amendment, and then I would be glad to put a quorum back in place if there is not another Senator waiting to speak.

To me, this amendment is about energy production, but it is also about basic fairness. I am not going to argue at this point with those who are opposed to oil and gas drilling in various and sundry places. I personally think we should drill where the oil, where the gas is. I know that is a novel idea. I do believe we need a national energy policy that is broad, that will have more production of oil and gas and clean coal technology and hydropower and nuclear power and LNG plants and conservation and alternative fuels—the whole package.

I am glad we appear to be getting to the end of this debate and amendment process and hopefully will produce a bill that passes overwhelmingly and will get into conference and will come up with a bill that can be passed. We need to do it for the country.

This legislation is about national security, and it is about economic security. If we don't deal with the problems of energy needs, if we don't become less dependent on foreign imported oil, the day will come when we are going to have a problem. Just remember, those troops in Iraq and Afghanistan and around the world, those sailors steaming in ships, those tanks, those planes, it takes fuel to run them. So it is about national security.

We are an energy-driven economy. We need this diversity. We need more production, more independence. I believe we should open more areas than we are prepared to do apparently. But the fact is, in my part of the country and the Gulf of Mexico, we have been prepared to have an energy policy. We have been prepared to have the oil and gas industries and refineries and nuclear plants and LNG plants. We are prepared to do what is necessary not just for our own people and for the financial benefit of our own but, frankly, for the whole country.

We are prepared to produce fuels and oil and gas and other fuels. We are prepared to refine it and share it with the rest of the country. We are prepared to wheel our power to other parts of the country because we have been willing to take the risks. We are willing to build utility plants.

Other parts of the country don't want to drill. They don't want coal. They don't want nuclear power. They don't want hydropower. They don't want utility plants. They want nothing. But they want to flip the switch and have the lights come on. They want to get in their SUVs and drive off into the sunset. I resent that hypocrisy, quite frankly, but that is the way it is.

All we are saying is, in our area—Texas, Louisiana, Mississippi, Alabama—we have been willing to do what needs to be done, the right thing for our region, for our people, and for our country. So we have oil and gas off the coast. I haven't had a problem with it. I live on the Gulf of Mexico. When I get up in the morning and look out the window, I am looking at the gulf. I am looking at the pelicans that now are plentiful. I am sure they are coming from Louisiana. When I look at ships going and coming, I am looking at oil tankers, smaller tankers that are lightering oil from bigger tankers. I can remember sitting on my front porch and looking at a natural gas well being flared late at night. It wasn't ugly. It was really quite pretty. But there are risks that go with this.

Particularly in Louisiana, they have paid some prices for what we have done. We levied the Mississippi River, the big and mighty Mississippi River, to keep it from overflowing year after year. That has affected their wetlands because now you don't have that overflow that goes particularly west of the river that puts sediment out there. The levees send it right on out into the gulf. Now we are concerned about dead zones. We are concerned about the impact on salinity. We are concerned about the fisheries in the gulf, the shellfish and others.

We have had to oil drill. In some areas of our region, that has led to some channelization. When you are taking things from under the Earth, I think it has an effect on elevation in certain areas, wetlands areas in particular, estuaries.

You might say: Wait a minute. You get the benefit of the business. Some, yes, I don't deny that. It does create some jobs—some good-paying jobs, some dangerous jobs. It does, though, create a lot of activity for which we have to provide services—roads, harbors. Some of the big companies in the Gulf of Mexico drill off of our coast of Mississippi, but they don't do business there, not in my State. They don't really even hire that many employees. So there is some good from this, but there is some risk and some bad things.

Other parts of the country, when you drill in their States, they get 50 percent of the royalties, and we get an infinitesimal 1 percent plus some benefits within, I guess, the 6-mile limits of the State. But that money coming out of the gulf goes into the deep dark hole of the Federal Treasury. A lot of it goes into land and water conservation for other parts of the States.

Other States are saying: We don't want you to drill or produce or build utility plants in our area. And by the way, we don't want you folks down there who are doing the job and taking the risk to get any of that money. We want that money to come up to the Federal Treasury and come to our States.

Now we are accused of trying to bust the budget. No, we are trying to get a fair share. It is not big money in my State, but it would make a huge difference. When you come from a small 2.8 million-population State with a history of poverty and needs, even though we are making some progress now—we are not 50th or 49th or 48th on most lists; we are moving up the line, creating more jobs, more businesses, better education, better roads—we have other problems. We do have wetlands that are being disturbed or destroyed. We are losing some land, as they are in Louisiana. We do have some environmentally sensitive and some historic sites we need to preserve, protect, and improve. We need some help. We are prepared to do the dirty work. We are prepared to take the risks. We are prepared to do the right thing and share it with America. But we do think we should get a little bit of the return on the royalties that go right through our hands to the rest of America.

This is not a great money grab by Louisiana or Texas, Alabama. This is a way that we can get some help from things that we are producing, some benefit that will help our people and preserve the areas we live in and love. We are accused of being insensitive to the environment and to conservation. Well, this will give us a way to do something about it. Quite often, we don't do what we need to do because we cannot afford it; we do not have the money. I plead with my colleagues from all parts of the country: Look at what we are doing. Look at what problems we are coping with, and look at what we will do with this small amount of money.

By the way, the budget allowed $2 billion in this energy area for us to make some decisions on. Yes, it can be objected to on a point of order at the committee or on the floor or out of conference. But there was money allowed, and this amendment gets well within that number. I think this is a questionable budget point of order, although I don't dispute that the chairman has that authority. I want him to have that authority. Chairman JUDD GREGG is doing his job. I am not mad at him. I told him I hope he will do his job and I hope he will do it for effect, but don't get mad about it. If anybody should get mad, the Senators from Louisiana and the Texans should get mad, and the Mississippians, too.

I support this amendment. I plead with my colleagues, let us have a little bit to help ourselves, and we will in turn help the country.

Ms. LANDRIEU. Mr. President, will the Senator yield for a question?

Mr. LOTT. I yield to the Senator from Louisiana.

Ms. LANDRIEU. The Senator from Mississippi has made such excellent points, and we appreciate his comments and support. The Senator may want to express for a moment the terror that reigned south Louisiana, Mississippi, and Florida last hurricane season with the unusual number of storms

that came up through the Gulf of Mexico and how frightening it is to people on the coast when these wetlands continue to disappear. The intensity of those storms gets greater and greater, and the damage to property and the threat to life is fairly serious.

As a Senator who lives on the Gulf of Mexico, maybe just a word to talk about what happened to our States last hurricane season.

Mr. LOTT. Mr. President, we have great fear that some day, one of those hurricanes will go right up the mouth of the Mississippi River and inundate New Orleans. When Hurricane Ivan was coming through the gulf last year, when it got to the hundred-mile marker, it was headed for my front porch. Then it veered to the east and missed us by about 90 miles and did a lot of damage.

What can we do about that? First of all, you have to have evacuation routes. We need more money for roads to allow the people to get out of there. The best buffer against the damage is the wetlands, the protective barrier islands, protective areas. The only reason my house hasn't been wiped out is because we have a seawall in front of my house, and we are up on a relatively high point. My house is 11 feet up off the ground, what we call an old Creole house.

It survived hurricanes for 150 years. But these estuaries, these areas outside the main area in which we live, are critical because once that high wind and water hits that area, it begins to lose its strength. If we keep losing land into the gulf, across the Gulf of Mexico, the hurricane damage—even though the violence may not increase, the damage will really increase. This is just one aspect.

By the way, we have to be prepared to get people off these oil rigs and out of the Gulf of Mexico. We have to have infrastructure to do that. This will help us achieve that goal.

I yield to my colleague from Mississippi.

Mr. COCHRAN. Mr. President, I appreciate the Senator's remarks. I assure him that I support everything he has said, and I agree it is now time for us to recognize that the initiative of the Senators from Louisiana, Senator VITTER and Senator LANDRIEU, and others, including my colleague from Mississippi, deserves to be supported. It deserves our support.

I understand the question about the budget, but I am reminded about an appeal that I had to defend one time in the Supreme Court of the State of Mississippi. The lawyer on the other side started off his brief he filed with the supreme court, and he said that this is a classic example of a claim not being paid on the basis of a mere technicality. Well, of course, there was a lot more to it than just that. The technicality was a real impediment to the appeal being filed by my opponent in that case. But I was reminded of that when I was walking over here. This is an issue that could go either way, in terms of the point of order and the provisions of the Budget Act. The Senator has made that point, and I congratulate him for doing that.

We are not quarreling with the fact that you can make a point of order, but you should not as a matter of the overriding national interest. It is a national interest; the integrity of the Gulf Coast States are at risk. We have before us a solution to the problem, and it is in the national interest that we support it. That is the argument that is being made to the Senate right now. So however this vote is couched, in terms of a motion to waive the Budget Act or on the validity of the point of order, I hope the Senate will come down on the side of the gulf coast Senators who are trying to solve a problem that is in the national interest. We ought to recognize that and vote that way on this issue.

Mr. LOTT. I thank my colleague from Mississippi for his comments and his knowledge of the issue and the procedures we are dealing with. It is a great comfort to have him here.

One final point before I yield the floor. I thank Senator DOMENICI and Senator BINGAMAN for working with the Senators who are sponsoring this legislation to try to help us find a way to make this effort, to get it at a level that would be helpful to us that would not be a budget buster, that would comply with the amount of money that was allowed in the budget resolution. So I commend Senators VITTER and LANDRIEU, and I hope we will be able to get this provision approved.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, on behalf of the people of Utah, I thank the managers of this Omnibus Energy bill for their leadership in producing a comprehensive and broadly supported proposal.

If the American people think bipartisanship is dead in Congress, they should look at this bill and how it is being managed on the floor these past 2 weeks.

On behalf of the people of Utah, I want to thank the managers of this Omnibus Energy bill for their leadership in producing such a comprehensive and broadly supported proposal.

If the American people think that bipartisanship is dead in Congress, they should take a look at this bill, and how it is being managed on the floor these 2 weeks.

I must commend the leadership of Chairmen DOMENICI and GRASSLEY, and their Democratic counterparts, Senators BINGAMAN and BAUCUS as the Senate considers this critically important piece of legislation.

In addition, I want to thank Chairman GRASSLEY and Senator BAUCUS for working so closely with me on the energy tax incentive package, now part of the Omnibus Energy bill.

In particular, this bill includes a number of provisions of great importance to Utahns, provisions I authored. These include my CLEAR Act, which promotes alternatives in the transportation sector, my Gas Price Reduction through Increased Refinery Capacity Act, and my proposal to improve the treatment of geothermal powerplants. All were included in the energy package.

I am also grateful to the leaders of the Energy Committee, Chairman DOMENICI and Senator BINGAMAN, for agreeing to include the major provisions of another bill of keen interest to Utahns, my bill, the Oil Shale and Tar Sands Promotion Act, S.1111, which was cosponsored by Senators BENNETT and ALLARD.

Our bill would promote development of the largest untapped resource of hydrocarbons in the world. There is more recoverable oil in the oil shale and oil sands of Utah, Colorado, and Wyoming than in the entire Middle East.

The chairman and his staff have done yeomen's work to successfully strike a compromise on S. 1111 that is agreeable to all sides and that can be accepted into this bill. I thank both leaders for that effort.

And finally, I thank them for including my bill, S. 53, in the Energy bill. S. 53 would amend the Mineral Leasing Act to authorize the Secretary of the Interior to issue separately, for the same area, a lease for tar sands and a lease for oil and gas, thus freeing up a new resource of natural gas in our Nation.

Now, I would like to turn to the Hatch-Bennett amendment on high level nuclear waste, which we filed in an effort to bring some focus to our Nation's policy for handling spent nuclear fuel.

In my hand is an article from yesterday's Washington Post.

The headline reads, ''Bush Calls for More Nuclear Power Plants.'' And the article begins: ''President Bush called today for a new wave of nuclear power plant construction as he promoted an energy policy that he wants to see enacted in a bill now making its way through Congress.''

The President is calling for a robust nuclear power strategy, and his reasons are clear: nuclear power is clean and safe, and there is an abundant supply of cheap uranium in Northern America.

But my question is, ''What are we going to do with all the waste?''

We cannot have a nuclear power strategy until we know what to do with all the spent nuclear fuel.

And what is becoming quickly apparent to me and to the people of Utah is that we do not have a coherent national nuclear waste policy. Until we do, we are putting the cart before of the horse.

For years, I have supported sending this high level nuclear waste to the desert of Nevada.

To be honest, it has never been an easy vote for me, because it was against the wishes of my friends and colleagues from that State. However, it

has been our national policy for more than two decades to build a site at Yucca Mountain, a safe, remote location, where spent fuel could be taken over by the Federal Government and buried deep beneath the desert.

Even though Utah does not use or produce nuclear power, I have recognized the need to have a nuclear power program in the U.S. that relies on a plan to safely handle our waste. In other words, we need a strong nuclear waste program.

Here is a picture of the desert area where Yucca Mountain actually is. You can see it is desolate and out in the middle of nowhere.

Unfortunately, a few nuclear power utilities are attempting to hijack our Nation's nuclear waste strategy by joining forces to build an away-from-reactor, aboveground storage site for one-half of our Nation's high level nuclear waste on a tiny Indian reservation in Tooele, UT.

Even more unfortunate is that the only tribe they could con into taking this waste was the Skull Valley Band of the Goshutes, whose small reservation just happens to sit on one of the most dangerous sites you could imagine for storing high level nuclear waste.

The Skull Valley reservation is directly adjacent to the Air Force's Utah Test and Training Range and Dugway Proving Grounds where live ordnance is used.

Here is an illustration of an F–16 that flies regularly in this area.

This location proposed for the aboveground storage of half of our nuclear waste sits directly under the flight path of 7,000 low altitude F–16 flights every year.

Even if this area were truly remote from all civilization, which it is not, its location alone should disqualify it for the storage of even one cask of high level nuclear waste. But that's the problem with allowing private intrests to establish our nuclear waste strategy, economics can get in the way of reason and safety.

Mr. President, 80 percent of Utah's population sits within 50 miles of the Skull Valley reservation.

Represented on this picture are the type of communities we have near that place.

As a crow flies, Skull Valley is less than 15 miles away from Tooele City, one of the fastest growing cities in Utah, which is becoming a major suburb of Salt lake City.

Skull Valley is only about 30 miles from the Salt Lake City International Airport. And let us not forget that many of the families of the Skull Valley Band live right on the reservation, and half, if not more, of them are against this. These families face, by far, the greatest risk.

When this group of utilities, known as Private Fuel Storage, or PFS, applied for a license from the Nuclear Regulatory Commission, the Commission's three judge Atomic Licensing Board ruled that the threat of a crash from an F–16 was too great to allow a license for the proposed facility. Not letting science get in its way, PFS came back later after two of the three judges were replaced with new ones, this time making a different pitch even though all the facts remained the same.

As a result, the two new judges ruled, in a two-to-one decision, that the risk of a crash from an F–16 was low enough to allow the license.

One has to wonder who in the world would allow the license for a small tribe in this area with this type of danger. The trustee I don't think could possibly do that. Nevertheless, they ignored the prior commission and went ahead and did it.

However, Judge Peter Lam, the senior member of the panel, and its only nuclear engineer, gave a very strong dissent. I would like to quote from Judge Lam's dissent:

> The proposed PFS facility does not currently have a demonstrated adequate safety margin against accidental aircraft crashes. . . . This lack of an adequate safety margin is a direct manifestation of the fundamentally difficult situation of the proposed PFS site: 4,000 spent fuel storage casks sitting in the flight corridor of some 7,000 F–16 flights a year.

Judge Lam also cited the inadequacy of the new methodology used to determine that the site would be safe.

He writes:

> In this current proceeding, the Applicant has performed an extensive probability analysis and a structural analysis to rehabilitate its license application. As explained below, the Applicant's probability and structural analyses both suffer from major uncertainties. These uncertainties fundamentally undermine the validity of the analyses.

Mr. President, with 7,000 F–16 flights every year, one can imagine that emergency landings are not uncommon at the training range, and I am unhappy to report that crash landings are not rare, either.

In the last 20 years, there have been 70 F–16 crashes at the Utah Test and Training Range, and a number of these crashes have occurred well outside the boundaries of the training range.

I have found it baffling that the Final EIS for the Skull Valley plan does not require PFS to have any onsite means to handle damaged or breached casks. Rather, the NRC staff concluded the risk of a cask breach is so minimal that they did not have to consider such a scenario in their EIS. I find this conclusion dubious and dangerous in light of the facts relating to F–16 overflights.

In his dissent, Judge Lam refers to the threat of accidental aircraft accidents. He doesn't even go into the possibility of terrorists. Since the events of September 11, we have learned that one of our Nation's most serious threats may come in the form of deliberate suicide air attacks. It would seem inconceivable that a Government entity would consider giving their endorsement of the PFS plan without thoroughly taking into account the added terrorist threat our Nation now faces.

Yet the Nuclear Regulatory Commission has refused to reopen the Environmental Impact Statement to consider this new threat, even though post-9–11 studies have been completed at all other facilities licensed by the NRC.

It is apparent they just want to dump this stuff somewhere. I have to say, if this continues, I am certainly going to do some reconsidering myself.

I found this especially troubling since the NRC has never granted a license for the storage of more than about 60 casks, but the Skull Valley site will hold up to 4,000 casks of this waste.

I want my colleagues to understand that not only is the size of the PFS proposal a gigantic precedent, but issuing itself a license for a private away-from-reactor storage site has never been done and runs counter to the Nuclear Waste Policy Act which clearly limits the NRC to license storage sites only at Federal facilities or onsite at nuclear powerplants.

Former Secretary of Energy Abraham stated publicly he shares our interpretation. In a letter to members of the Utah congressional delegation, Secretary Abraham issued a policy statement that barred any DOE reimbursement funds from being used in relation to the Skull Valley site. This would include industry members who would lease space at the site. He said:

> Because the PFS/Goshute facility in Utah would be constructed and operated outside the scope of the [Nuclear Waste Policy] Act, the Department will not fund or otherwise provide financial assistance for PFS, nor can we monitor the safety precautions the private facility may install.

My amendment is compatible with the policy outlined by Secretary Abraham in his letter. It would ban the transportation of high level nuclear waste to private away-from-reactor waste sites and calls for a study to the feasibility of storing spent fuel either at Department of Energy facilities or of the Department taking possession of the spent fuel onsite at nuclear reactors.

My amendment calls also for a study of reprocessing spent nuclear fuel for future use.

Let me state the obvious for the record. The PFS plan is vehemently opposed by the entire Utah congressional delegation, Gov. Jon Huntsman, former Gov. Michael Leavitt, and an overwhelming majority of Utahans. In fact, virtually everybody in Utah. A large portion of the 70-member Goshute Band is strongly opposed to the proposal. We believe a majority of them are, but there is some indication of fraud in their elections out there.

Furthermore, the leader of the band, Leon Bear, has pleaded guilty to a Federal indictment. It is notable that every other tribal government in Utah has come out flatly against it. How could any trustee for the Indians allow something like that to be?

Utahns are well aware of the points I have made today. Because of the risks we face associated with the PFS proposal, we know better than any that our Nation's nuclear waste policy is broken. It was with good reason that our Nation's nuclear waste strategy has been built around the expectation that the Federal Government, namely the Department of Energy, would take possession of spent nuclear fuel rods. What better example do we need than the PFS plan to see why private industry should not be allowed to develop and implement our Nation's nuclear waste strategy.

Think about it. PFS is a shell corporation. If anything went wrong, Utah is going to eat it. That is all there is to it. It is ridiculous.

I understand why our colleagues from Nevada oppose the Yucca Mountain site. I am getting more and more understanding of that as I go along. But if they are concerned about waste at Yucca Mountain, they should be exponentially more concerned over the PFS site which is so flawed as to be inherently dangerous, extremely dangerous.

In closing, let me drive home one point. Our President has called for a dramatic increase in our Nation's capacity to generate nuclear power. As Congress considers that proposal, I ask, Should any increase we might authorize rest on a nuclear waste policy established by the Federal Government or should that policymaking rest with a couple of private companies that are driven by profit?

Do we want the Federal Government to take possession of our high level nuclear waste or is our national waste policy to allow private companies to control the transport, storage, and security of this waste? And with shell corporations at that. If that is to be our policy, then I need to inform our colleagues that our Nation's nuclear power strategy is a house built on sand.

Let me summarize my remarks. We Utahns are adamantly opposed to the storage of spent nuclear fuel at the Skull Valley reservation. The current site that has been selected by a consortium made up of eight utilities has several fatal flaws, including the fact that it contemplates a facility that is, one, located fewer than 50 miles from the Salt Lake Valley where 80 percent of our fellow Utahans live; two, directly under the Utah Test and Training Range where roughly 7,000 low-altitude F–16 training flights take place each year, many with live ordnance, and over a range where 70 crashes have taken place already; and three, on the small Skull Valley Goshute Indian reservation where about 40 of the band's 120 total members reside—only 40. Moreover, the Skull Valley Band's leadership is in question. Leon Bear, the band's current chairman, has been accused by his colleagues of disregarding a vote of no confidence. In addition, Mr. Bear recently pleaded guilty to Federal criminal charges and is awaiting sentencing relating to his management of tribal financial resources.

I would like to know if my friend, the chairman of the Senate Energy Committee, believes that storing spent nuclear fuel on a privately run and privately owned offsite facility, such as the Skull Valley reservation in Utah, is a component of our national nuclear waste policy.

Mr. DOMENICI. Mr. President, in response to that question, I would say that our national policy for handling high level nuclear waste is to store it at the proposed DOE site at Yucca Mountain. I don't know whether the Skull Valley site will receive the regulatory approval it needs. That is not my decision. However, in my view, our focus should remain on a solution that puts this waste directly in the hands of the Federal Government.

Mr. HATCH. Mr. President, I thank the chairman for that clarification.

I again thank the leaders of this bill who have done such a great job in bringing both sides together to pass what will be one of the most important energy bills in the history of the world. It certainly is going to do a lot for our country if we will continue to follow this through conference and get it back for final passage. It is long overdue.

I know it has been an ordeal for Senator DOMENICI in particular and others as well. I pay my tribute to them for the hard work they have done.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Virginia.

AMENDMENT NO. 891

Mr. ALLEN. Mr. President, I rise to speak in favor of this Energy bill and in particular the amendment that is primarily sponsored by Senators DOMENICI, BINGAMAN, LANDRIEU, VITTER, and others.

First, I thank Chairman DOMENICI and Ranking Member BINGAMAN for their skillful leadership, their dedication, their patience, and everything they have done to craft a bipartisan bill. It is a bipartisan energy policy that I believe encourages, incents, provides us, as a country, with clean and affordable energy in a growing and obviously more secure economy.

We have made significant progress so far on this measure. I look forward to passage of this bill in the Senate so we can get a final measure passed before the summer recess.

This bill is important for three salient reasons: No. 1, the security of this country; No. 2, jobs in this country; and No. 3, the competitiveness of the United States of America.

As far as security and energy independence, we must become less reliant on foreign sources of oil and natural gas from unstable, unreliable places in the world.

Second, as far as jobs are concerned, this measure, when passed, will save jobs. Hundreds of thousands of jobs will be saved and hundreds of thousands of jobs in a variety of ways will be created—new jobs. It is important for saving jobs especially in the areas where there is manufacturing of chemicals, fertilizers, plastics, forestry products, and even tires. All of those can be manufactured anywhere in the world, but we have a high-intensity need for clean burning natural gas right here in America. And jobs will be saved if we produce it here within our own borders.

We are supporting new technologies for the production of electricity using clean coal technology—where we are embracing the advances of technology to utilize an abundant resource, coal—we are the Saudi Arabia of the world in coal, and we ought to be using it, as well as new technologies for clean nuclear power generation. That is where jobs matter.

As far as competitiveness, there is not a person here, not a person in this country, whether it is driving to school, driving to work, operating a business, and it could be the highest, most technologically advanced business, that doesn't need electricity. Everything we consume goes by rail, truck, air, or a combination thereof before it gets to the store or to our homes or to our places of business. This bill is essential for lower gasoline and diesel costs for transport of these products.

We need to have an affordable energy source for our economy, for jobs, and the competitiveness of our country in the future because many of these jobs can be put anywhere in the world. In addition to proper tax policies, reasonable regulatory policies, less litigation, and the embracing of innovations, an energy policy for this country is long overdue.

With regard to competitiveness, I was Governor at one time. We would always try to get businesses to locate in the Commonwealth of Virginia. We succeeded. The businesses looked at the cost of operations in different States. They looked at what the cost was; what is the regulatory burden; do you have a right-to-work law, which we did; what is the cost of health care. They cared about transportation, but they also looked at the cost of doing business with electricity. We would have a report to top management in New York City, and we would compare our electricity rates in Virginia to those in the New York City area. Virginia's electricity rates, compared to those, looked as though they were almost free. That was an attribute, a strong selling point for businesses to come to the Commonwealth of Virginia. These same principles apply to the entire United States of America.

Let's look at natural gas. Natural gas, that wonderful clean burning fuel, is in many places around the world, in many strong economies around the world. We would certainly want to be able to match other countries in the cost of producing this clean burning fuel, whether for our homes, but also for manufacturers. It is not just the chemical and fertilizer manufacturers, it is the farmers who have to pay these

higher prices, and when farmers have to pay higher prices to run their tractors or to fertilize their fields, that means the cost of food goes up, which affects us all in that way as well.

Look at our prices—and these prices are from February, and prices of natural gas have gone up in this country since this report. In the United States of America, we are over $7 for 1 million Btus of natural gas and it is rising.

Take the United Kingdom, Great Britain. It is $5.15. Turkey is only $2.65. Ukraine is $1.70. Russia is less than a dollar per 1 million Btus. You say, well, we are not competing with them. Who are we competing with then? We are competing with them, as well as with South America. Look at the prices of natural gas in South American countries: $1.50 in Argentina compared to over $7 in the United States. In North Africa, it is less than a dollar.

What about real competition we are facing in the loss of manufacturing jobs to India and to China? China and India are increasing in their economies and, of course, demand for oil, natural gas, coal and other fuels is going up, too, exacerbating the prices. We see China now trying to buy up our gasoline companies, specifically Unocal. For our national security, it's important that we have a comprehensive review of the types of investments State owned Chinese companies are making in international and U.S. based energy resources.

Even there, where China has this booming economy, their price is $4.50 compared to us. The same with Japan. India pays half the price we do in natural gas, $3.10 per 1 million Btus. Our friends in Australia pay $3.75 for a million Btus of natural gas.

As a result of what we are seeing in these higher natural gas prices, we are already losing jobs in this country. The chemical industry, one of our Nation's largest industrial users of natural gas, has watched more than 100,000 jobs, one-tenth of the U.S. chemical workforce, disappear just since the year 2000.

Recent studies by the National Association of Manufacturers and the American Chemistry Council found that 2 million jobs could be saved if Congress lays out a fresh blueprint for the supply, delivery, and efficient use of all forms of energy, including clean burning natural gas.

To address this natural gas crisis that is crippling our American farmers and manufacturers, we need a positive, proactive strategy for greater fuel diversity. The bill does just that by supporting clean coal. It supports nuclear energy and a whole host of renewable technologies, such as biofuels and incentives for fuel cells.

In the area of nuclear, I think it is one of the most important aspects of the bill. When one thinks of the generation of electricity, we ought to be using clean nuclear and clean coal technology while allowing natural gas to be utilized not for base load electricity generation but rather for factories, manufacturing jobs, and in our homes.

The President's Nuclear Power 2010 Program is designed to work with the nuclear industry in a 50/50 cost-sharing arrangement. It also addresses some of the risks and litigation aspects of it. One thing that is not in this measure but I am going to work on in the future is the repository.

The Senator from Utah, Mr. HATCH, was talking about Yucca Mountain. I fully understand why the people in Nevada would not want to have highly radioactive fuel rods that are radioactive for 40,000 years. What we need to do long term is look at what France is doing with nuclear power. What they have done is taken a technology that was started in this country on reprocessing and they have perfected it. We ought to be reprocessing this nuclear fuel, these spent fuel rods. If we do that, it is a much more efficient and much less dangerous approach. It is much less volume, and are decreased. That is something we need to do long term. It is not in this measure, but we need to move forward with it in the future.

Also in this bill we have set efficiency standards for everything from buildings to appliances that will help reduce our demand for electricity and natural gas.

Ultimately, we need to need to produce more natural gas. This amendment talks about coastal States that are committed to more exploration, the impact on their coastal areas and allowing them to get some assistance to these States closest to the exploration.

What I am going to say is not part of this amendment, but the issue of exploration off the coasts of different States came up during the hearings in our committee. It is not necessarily part of—in fact, it is not part of this amendment, but for the people of the Commonwealth of Virginia, this is an issue of some interest in our General Assembly. Our State legislature, in a very strong bipartisan action, stated that they were in favor of allowing or at least determining if there is any natural gas—not oil but natural gas—far off the coast of Virginia, beyond the viewshed, and, in the event that there is, allowing Virginia to share some of those revenues. That is not going to be part of this measure, and I say to Senator BINGAMAN, it is not part of this measure.

I realize things move slowly around here, slower than some of us would like, but I do think that the people in the States should have more of a say in energy production. Right now, if one looks at these coastal areas, it is all subject to the whims of the Federal Government. The Federal Government says they own it; the Federal Government says: We will determine if it is in a moratorium or not.

I am one, having been Governor, who would actually like the people in the States to have more prerogatives. There may be a different batch of folks in the Senate, and we may have a different President who says, No, we are going to do this, we do not care what the people of New Jersey think; we are going to go forward and explore. I would like to protect the prerogatives of the people of the States and also allow the people in the States, if they so choose to explore, to actually share in those revenues.

I have suggested that in Virginia, we ought to use a good portion of it for universities and colleges to reduce in-State tuition costs; another big chunk for transportation to alleviate traffic congestion; and another portion to the coastal areas, such as places like Virginia Beach, for things like beach replenishment. That is just something I would like to see ultimately allowed, but that is not part of this measure.

I also do think that I know the President's views on the inventory issue. People in South and North Carolina, Florida, and New Jersey do not even want an inventory. They do not even want to know what is off their coast. In my view, the compromise to all of this, if they do not want to, they don't have to. Why spend money looking off those coasts because the people of Florida, North Carolina, New Jersey, and maybe South Carolina as well, do not want to. So why waste the money? However, if the people of Georgia and Virginia would like to know what is off their coasts, allow them to at least find out what is out there and then make a determination therefrom. That might be the good compromise to this issue in conference.

This measure that Senator LANDRIEU and Senator VITTER have brought up has to do with Louisiana and a great deal, obviously, with the gulf coast. They have certain needs in Louisiana. Being in Cajun country and all around Louisiana last year for a variety of purposes, I know this is a very big issue to the people of Louisiana. We should be thankful to the people of Louisiana for the efforts they have made in the exploration off their coast because they are powering this country.

Granted, natural gas prices are high, and maybe we will get more production out of Alaska, and maybe we will get some more out of Louisiana or maybe off of Mississippi, but the point is that they have great coastal impacts, not because of the exploration way off in the Gulf of Mexico but because of the services to transport it, just the nature of the bayous. It is just the topography, that they have coastal erosion there that is of great concern to everyone in the State of Louisiana, especially south Louisiana. They are all proud of that sportsman paradise, as they call it.

I strongly support Senator DOMENICI's and Senator BINGAMAN's effort in this bill to consider the needs of producing States. Long term, what we are looking at is supporting, creating, and

preserving manufacturing jobs and finding environmentally safe ways to increase production of clean burning natural gas. It is important for jobs in this country. It is important for our national security to be less dependent on foreign energy. We need to be more independent, and, of course, we need to be much more competitive for investments and jobs if we are going to be the world capital of innovation.

So I urge my colleagues most respectfully to vote for this amendment that allows coastal impact assistance to States closest to this exploration. We have listened in meetings to Senator VITTER argue very persuasively to me and to others, I hope, and the same with Senator LANDRIEU in a variety of forums as well—they have made a persuasive argument for Louisiana, but ultimately it is a persuasive argument for the United States of America.

I thank my colleagues for their attention, and most importantly I thank my colleagues in anticipation of a positive vote for this amendment and moreover getting this Energy bill passed so that this country can become more independent of foreign oil, foreign energy, save those jobs, create more jobs, and make this country more competitive for investment and creativity in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before the Senator from Virginia leaves the floor, might I say to all of those who pay attention to these issues that the Senator is a new member of the Energy Committee, and I wondered when we made up the committee why the Senator had chosen to be on the committee. Then I found out that Virginia has a terrific interest in a lot of these issues, and I found that the Senator was very knowledgeable and a very good participant. The Senator helped us get a good bill. I commend the Senator on his analysis today. This is a bill that should direct us in the right way, especially in the natural gas area.

Clearly, we are at our knees. People say it is the gas pump, but it is also the price of natural gas that is causing America great trouble. We have resources. We just cannot use them because we need new technology and we need to do a better job of getting them ready for the marketplace so that we do not damage the air. We are working on that, and I thank the Senator for that.

Also, I want to compliment the Senator on seeing the value of the offshore resources of the United States. I am not suggesting that I understand each State's political issues, but I do understand that there is a lot of natural gas offshore. No. 2, I do understand it can be produced with little or no harm to anybody. A lot of it can be produced if it is there.

I commend the Senator for realizing that is an American asset and he would like very much for the Congress to face up to that.

I yield to the Senator.

Mr. ALLEN. I say to my chairman that the reason I wanted to get on his committee was because I believed that this Energy bill was the most important legislation we will pass in this Congress that will affect our competitiveness, jobs in this country, as well as our independence or less dependence on foreign oil and foreign energy, whether it is natural gas, liquefied natural gas, and all the rest.

I have been so impressed by the bipartisan way the Senator has methodically tried to move this measure forward that has great importance for the future of our country, not just for the next 5 or 10 years but, indeed, for generations to come. It is a model for how we can work in a bipartisan way. Does everyone get everything they want? No. But I think the American people ultimately will be much better off, there will be more people and families working, and we will be more competitive, thanks to the Senator's leadership.

I am very proud and pleased to have been appointed and elected to the Energy Committee, and I look forward to working with the chairman. He is a magnificent leader with the right vision for this country.

Mr. DOMENICI. I thank the Senator. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I support the Landrieu/Vitter amendment. As a State that is a producer of oil and gas off its shore, I certainly believe we should have some slight, minor benefit from that effort, particularly in light of the fact that State after State just blithely announces they will not have any off their shore. I believe that a 2-percent part of the revenue that is going to the Federal Government to the States that bear the burden of this offshore production is not too much to ask. It is not a violation of the budget. The money is set aside that can be spent on this. It is a question of priority. I believe we should go forward with that.

I wish to say how much I appreciate the remarks of Senator ALLEN. I believe he has analyzed our energy situation well. I would also join in my praise for Chairman DOMENICI for his work. He understands that nuclear and all other sources of power have to be increased to have us more energy independent. It is not just one step that we can take. Frankly, if one wants my opinion, and I believe it is correct, the area most overlooked, the area in which we can have the largest short-term surge of energy in our country that can be so important for our economy and jobs is offshore production of oil and gas, particularly natural gas.

We had an amendment just yesterday that I joined with the Senators from California to support—it did not pass—to have more controls over the building of liquefied natural gas terminals in our States, to give the States some more ability to participate in that process.

Why do we have liquefied natural gas terminals? We have not had them before. The reason is we are not producing enough natural gas in our country to supply our needs, and there are resources worldwide offshore that can be produced around countries such as Qatar in the Persian Gulf—some of whom have been friends, some of whom have not been friends of the United States—so they would have us produce it on those waters, to liquefy it at great expense, transport it around the world to some terminal in my hometown in Mobile, AL, and then put it in our pipelines. And where does the money go? Where does 100 percent of the royalty money go in that circumstance? It goes to the Saudi Arabias and the Qatars and Venezuela and those other countries, sucking out huge sums of money from our country, when we could keep all of that money in our national economy if we produced the existing supplies of natural gas that are off our shores.

I go down to one of the prettiest beaches in America. It is becoming more and more recognized—Gulf Shores, AL. You can stand on those beaches and at night you can see the oil rigs out off the shore. We have not had a spill there. In fact, I had the numbers checked, and I understand there was one spill off Louisiana in 1970. None of that reached the shore.

By the way, as all who have studied this know, natural gas is far less a threat to our environment, if there is a leak, than is oil. Oil is thicker and heavier and can pollute if there is a large amount spread on our shore. But we have not had any of that, and hundreds—thousands—of wells have been drilled and produced in the Gulf of Mexico. According to the Energy Committee, 65 percent of all energy produced from oil and gas comes from the Gulf of Mexico. That is a tremendous amount right off our coast. So Texas and Louisiana and Mississippi and Alabama have participated in that. Yet under the law of the United States and the tax provisions of our country, you cannot receive any revenue from it. It is moving in interstate commerce. You can't tax a truck going through your State, under the Constitution. You can't tax fuel going through a pipeline. So you produce it, and it moves out.

An LNG terminal, by the way, some have said, is an economic benefit to your community. It only has about 30 jobs, and it does have some safety risk, no doubt. Some say a lot. I don't know how much, but it has some safety risk. It has some tendency to diminish the value of property around it for sure. But you can't tax it because it is the interstate flow of a resource.

So they want these States to continue to be serving the American economy with no compensation whatsoever. The 2-percent figure that has been proposed here is not at all unreasonable to me. I think that is a modest charge, in fact.

Let me tell you the extent of the hypocrisy that goes on. My colleagues from Florida, the leaders in the State of Florida, have beautiful beaches such as we have. We border their beaches. They declare you cannot have a well if you have a beach in sight of it. Now they said you can't have an oil well so close—even outside of the sight of the beach. In fact, they are objecting to drilling oil wells 250 miles from the Florida beaches, as if this is somehow some religious event of cataclysmic proportions, if somebody were to drill an oil or gas well—mostly gas wells—out in the deep Gulf of Mexico. You know what. They are proposing right now, they desire and are moving forward with a plan to build a natural gas pipeline from my hometown of Mobile, AL, to Tampa, FL. They want to take the natural gas produced off the shores of Alabama, Mississippi, Louisiana, put it in a pipeline and move it to their State so they can have cheaper energy, and they don't want to have anything within 100 to 250 miles of their State. This is not correct.

Mr. President, I know you are a skilled lawyer and a JAG Officer in the military, but I was a U.S. attorney and represented the U.S. Government. Let me tell you, under the law of the United States, Florida does not own the land 200 miles off its shore. I have to tell you, that is U.S. water. There is no doubt about it. For the Senator from Louisiana and I, our boundary line is just 3 miles. Everybody else in the country has 9 miles, but after 9 miles, it is Federal water. Yet we show deference to the States and want to work with the States and listen to what they have to say, but as a matter of law, they don't get to decide who drills in the waters of the United States of America.

This country is at a point where we have to ask ourselves where we want this offshore oil and gas produced. Do we want to have it produced off Venezuela, in the lake down there, or in the Persian Gulf where all the money we have to pay for it goes to those countries, sucking it out of our economy or would we rather have it produced in this Nation, in the huge amounts that exist so our country can benefit from it? We have these crocodile tears by people who begrudge a little 2 percent that would go to our States that produce it, and they are not complaining one bit, I suppose, about an LNG terminal in Mobile, AL, designed to bring natural gas from halfway around the world, from some country that may be hostile to our national interests.

It makes no sense whatsoever. It is time for us to have a lot bigger discussion about this matter. I see the Senator from Louisiana is here. I know her State has more offshore wells than any other. I know they have had probably more environmental degradation as a result of it. I don't see anything wrong with them being able to ask for some compensation.

I have enjoyed working with her on this legislation.

Ms. LANDRIEU. Will the Senator yield for a question?

Mr. SESSIONS. I am pleased to.

Ms. LANDRIEU. If the Senator will yield, he has made so many excellent points, and I am not sure I heard them. Maybe if he would repeat—right now we are building a pipeline from Alabama to Florida? Could the Senator explain that, again? I am not sure people understand that you are building a pipeline from Alabama and sending the gas—where?

Mr. SESSIONS. To Tampa, FL, to some of those people, I guess, who have the multimillion-dollar mansions on the coast, who want to use that natural gas to cool their hot houses. I remember when it first came up, this debate was ongoing, former Congressman ''Sonny'' Callahan, from Mobile, was in the House. I suggested that he put in an amendment that just blocked the pipeline. If they don't want to produce any oil and gas, why should they get it? And he did, almost perhaps as a bit of humor, but also to raise a serious point. People want to utilize this resource but they are opposing its production.

But let me ask the Senator from Louisiana this question. Don't you think that some of the areas, such as California and others, that are so hostile to producing offshore, are ill-informed about the risk? It is almost as though it is this huge risk that their entire beaches are going to be threatened every day, but we have not had problems in our beaches. Have you in Louisiana?

Ms. LANDRIEU. I thank the Senator for that question. I would like to respond this way. I do think there is a lot of misunderstanding and fear associated with an industry that not everyone knows about. As the Senator knows, we do know a great deal about the industry. We understand that 40 years ago, 30 years ago, the industry was relatively new and mistakes were made and technology was being tried out. We just did not have all the environmental data that we have today. But as the Senator knows, in every industry there has been tremendous advancement made.

Not too along ago I was watching a program on television that was showing the way hot water heaters were developed in the Nation. I think the chairman from New Mexico would appreciate this. The whole program was about how in the early days people really wanted to have water, clean water, but they needed it warm for many purposes—not just for convenience and health, but cleanliness. They couldn't figure it out. So they kept trying to figure out a way to get hot water to people's houses.

But what would happen is these early hot water pumps, as you know, would blow up, they would blow the whole house up and people were actually killed; they lost their lives. But did we stop trying to bring hot water into the homes of Americans?

I know this might seem to be a small matter to people who live in the United States, but turning on a faucet, in your home, for clean, drinkable cold and hot water is still a luxury in the world today. But Americans did not stop with that technology. So today we take it for granted. Everybody can go home and turn the hot water on and it comes out and nobody blows up.

The Senator from Alabama is absolutely correct. There are people who just do not know. This technology is very safe. Plus, we have the Coast Guard, we have Federal agencies, we have the State court system, and the Federal court system, in answer to your question, that all enforce the laws, and agencies that are ''Johnny on the spot'' if something goes wrong.

Are there accidents? Yes. Can things go wrong? Yes. But I think as we start telling people more and at least give people more good information—the Senator from Alabama is correct—then they can make better decisions for the country. Again, to be respectful, if some States have accepted this information and still make the choice not to go forward, that might be their prerogative. But the Senator is absolutely correct. For those States such as Alabama, such as Mississippi, such as Texas and Louisiana, that have decided this is in our State's interests and the Federal interest, then most certainly this small amount of money for coastal impact assistance—to help us with our wetlands, to help us with beach erosion, to help make those investments that are so necessary—is absolutely the right thing to do at this time.

Mr. SESSIONS. May I ask the Senator another question? It has been reported that Cuba is going to be drilling for oil and gas out in the Gulf of Mexico. I wonder if our colleague would prefer that Cuba would do this where, I assume, it would be less safe, with less management, and all the money go to them rather than to the United States? Is that a fact? Is Cuba considering participating in drilling for oil and gas off the coast of Mexico, off our coast?

Ms. LANDRIEU. The Senator is correct. There is some thought that perhaps Cuba may open drilling and Canada may open drilling. But again, this amendment that the Senator has cosponsored, along with my colleague from Louisiana, who is here on the floor as well, is not a drilling amendment. It is not touching the moratoria. It is not laying down any boundary changes whatsoever. It is a coastal impact assistance revenue sharing for only the current producing States. So while there has been an extended debate—because we are not able to go to a final vote because there are some things that are being worked out and there has been an extended debate in these last hours, as my good friend from Florida knows, who is here on the floor—this amendment is a coastal impact amendment.

We have already debated the moratoria issue. We have debated the drilling issue. We could not come to a compromise on that so that issue is going to be saved to another day.

I have said to my friends from New Jersey and my friends from Florida and to my friends from Virginia and to you, the Senator from Alabama, this debate is not going to go away. We are going to have to continue to debate it. But this is not the debate at this moment. This debate now, this amendment that has broad bipartisan support, is about coastal revenue sharing, coastal impact assistance for States that produce oil and gas.

If I could, I wanted to make mention of something that would help the country understand, I think. This is from the Department of Energy, Energy Information Agency's Report of 2001.

These numbers will have changed, obviously, since 2001, but probably not by too much, and I doubt the quarter will change too much.

This is all energy produced—nuclear, hydro, geothermal, wood, wind, waste, solar, oil, natural gas, and coal. That is everything—nuclear, hydro, geothermal, wood, wind, waste, solar, oil, natural gas, coal.

There are only 11 States in the Union that produce more energy than they consume. All of these States, starting from No. 1, California, all the way down to Vermont, use more energy than they produce.

Again, I am aware that we are a Nation of 50 States. Some States grow sweet potatoes, some States grow Irish potatoes; some States make tractors, some States make automobiles.

But the problem here is that some are saying we don't want to produce energy but we want the benefits. So I am saying to my friends on all sides, if you don't want to drill for oil and gas on your shore or off, then put up a nuclear powerplant. If you don't want to put up a nuclear powerplant, put up windmills. If you don't want to put up windmills, you have to try to do something to generate energy for this country.

That is my only argument. That is not this amendment. This amendment is just recognizing that the States that have—let me just say this. I am trying to speak the truth here. Not only does Louisiana produce more than it uses, but please remember how much industry we have. Most of the chemical plants are in Louisiana, New Jersey, Illinois. Those are the areas where there are a lot of chemical plants.

We are proud of the petrochemical industry. But we also supply all of those manufacturing facilities—huge manufacturing facilities—that produce products that are not just bought by Louisiana; these chemicals go into better products we create in America. We sell them overseas, we sell some to ourselves, and we make money.

Not only are we producing all the gas and energy we need, we are fueling all of our plants and then exporting. When you add that on top of the numbers on my chart—and I want this corrected for the record. I am not sure this chart counts offshore; I think this may be just onshore. I don't think this counts offshore. If you add that, these numbers go up exponentially.

Wyoming gets the first prize. Some States say, We do not have the resources. I understand that. Not everyone has oil and gas. Not everyone has coal. The point Senator DOMENICI has been trying to make is, that is fine, but everybody has an ability to do something. Either conserve more, do not let SUVs come to your State if that is what you want to do, or produce more. That is the point—not on this amendment—one of the points of this bill.

Mr. SESSIONS. First, the Senator is exactly correct. This amendment is a very modest amendment. It has nothing to do with production of oil and gas. It is with frustration that our State has worked toward that goal and has not been able to receive any compensation, and many other States seem to be slamming the door on even considering that.

I ask the Senator if there is not a difference in safety and environmental impact when we deal with natural gas as opposed to oil? And is it not true that much of the energy capacity in the Gulf of Mexico and probably off our other States, is natural gas? I know that is important. We have probably seen a tripling of natural gas prices.

I know the Senator agrees that pipelines commence out of the gulf coastal areas—Alabama, Mississippi, Louisiana, Texas—that move the natural gas all over the country, and those States, if the price keeps going up when they heat their houses, they heat their water, their industries utilize natural gas, those prices are going up, also, which threatens their economic competitiveness. It is not that our States have a particular benefit from having the production. It goes in the pipelines that move it all over the country.

Ms. LANDRIEU. The Senator is correct. The Senator from Louisiana could answer as well, Senator VITTER. I will yield to him for a response.

We get the benefit of jobs. We are happy for the jobs, and we are proud of the technology we are developing.

The Senator from Alabama is correct. This oil and gas that comes through our State and is generated in and around our State goes to the benefit of everyone to try to keep the lights on in Chicago, New York, California, and Florida. We are happy to do it. We are not even complaining. We are just saying, in light of this, could we please share less than 1 or 2 percent of the money generated. Last year we gave $5 billion to the Treasury.

The PRESIDING OFFICER (Mr. BURR). The Chair reminds Senators that the Senator from Alabama controls the microphone and the Senator from Louisiana does not have the ability to yield to the Senator from Louisiana.

Mr. SESSIONS. Mr. President, we had a nice discussion and I thank the Chair for reminding us of that.

Before I yield the floor, I have enjoyed discussing this with the Senators from Louisiana, Senator LANDRIEU and Senator VITTER.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will yield momentarily.

I say to the Senators who are listening and to their staffs, we are in the process of trying to put together a short list of amendments that are absolutely necessary. We are getting close to the end—the end will be here when 30 hours have elapsed and then we could have a series of votes, but I don't think anyone wants that.

The Democratic and Republican staffers are taking these amendments and they are working together to see how many are absolutely necessary.

I ask Senators, do not wait, because we will have to go back and call you all. If you are serious about an amendment, there are people on the Democratic side and the Republican side and in the respective cloakrooms waiting to see and talk with you through your staffs or otherwise as to what you want to do about the amendments.

Clearly, there are numerous amendments and I am sure they are all not going to be offered. They were submitted in good faith, but I am sure they are not intended to be voted on before we finish.

Would Senators on both sides of the aisle—I think Senator BINGAMAN agrees—try to help by getting word to the cloakrooms whether they are serious, whether they want to work on their amendments so we can put our list together.

Mr. NELSON of Florida. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. NELSON of Florida. It is my understanding the Senator wants to get this bill done quickly. I certainly support him in his desire to get that done quickly. It is also my understanding, in order to achieve that goal, the two managers of the bill are presently negotiating down the number of amendments.

Is it correct, the understanding that the Senator from Florida has, that the amendments that would be agreed to take up would not include any amendments having to do with the Outer Continental Shelf drilling?

Mr. DOMENICI. Might I say it this way. We are not going to agree unilaterally or even together what the list is. Senators have to agree. So, Senator, you and others who do not want that on the list, you will be there and you will say no, and so it will not be on that list. That is the best way to say it. It is not going to be on the list unless Senators want it on the list. If you do not want it on the list, when we get there, we will call, as you know, and

we will find out. We cannot tell you now because we have a lot of amendments. Let's follow the regular order. You will be there and everyone should know that.

Mr. NELSON of Florida. Indeed. And this Senator understands where both Senators from New Mexico are trying to get with the legislation. I certainly want you to get there and get there fast.

Basically you come up with a list of amendments that would be considered and you would consider under unanimous consent in the Senate, that is the list to be considered for the rest of the debate on the bill before final passage?

Mr. DOMENICI. The Senator is absolutely right. That is the way it is done. That is the way it will be done.

Mr. NELSON of Florida. I thank the Senator for his clarification.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I follow up on some of the previous comments regarding this coastal amendment and quickly underscore two very important points.

As my colleague from Louisiana has explained, this is merely treating those coastal producing States that have produced so much of the Nation's energy needs, taken care of so much of those needs, simply treating those coastal producing States fairly.

If only more States were like us in producing far more energy than we consume, of course, this energy crisis we are facing would be less and less onerous, but that is not the case.

In particular, the distinguished chairman of the Budget Committee was in the Senate and said his State produced more energy than it consumed. I would love to hear the distinguished chairman's sources for that. I checked with the U.S. Department of Energy and they flatly disagreed. The most recent figures I could obtain, September 5, 2003, certainly include the nuclear energy plant the distinguished Senator from New Hampshire was referring to. That produces far less than the State of New Hampshire consumes. In fact, the total energy production from New Hampshire comes from that nuclear facility, .036 quadrillion Btus. The total energy consumption of New Hampshire is .329 quadrillion Btus. So, according to my source from the U.S. Department of Energy, the best information I have, dated September 5, 2003, New Hampshire consumes about nine times what it produces from that nuclear plant or any other source.

I use that as an example because, unfortunately, the coastal producing States we are talking about are in the distinct minority. We do produce the Nation's energy needs. We do produce far more energy than we consume. That is great for the Nation. I wish that load were spread around more, but it is not. That is a very important element of this debate.

The second point that directly flows into is a question of fairness. The Senator from New Hampshire talked about some boondoggle to coastal States. Nothing could be further from the truth. We are simply asking for a small, modest modicum of fairness. This amendment covers 4 years, 2007, 2008, 2009, 2010, 4 years, and then it goes away. During those 4 years, the royalties into the Federal Treasury from this offshore production are expected to be $26 billion. Under this amendment, during those 4 years, our share is $1 billion. That is less than 4 percent. Meanwhile, onshore oil and gas and mineral production is shared in terms of royalties on public lands 50 percent to the States and 50 percent to the Feds.

The Senator from New Hampshire, when he was here, cited the example of West Virginia coal production. That royalty share on public lands is 50/50. We will take 50 percent. If the Senator from New Hampshire wants to offer that amendment, we will accept that. We are only asking for 4 percent for 4 years and then it goes away.

This is fair. It is a fair way to treat those few States that help produce the energy the Nation needs. Those are very important points.

I hope all Senators remember those points as they vote, particularly on an amendment that is squarely within the budget, that does not bust any of the numbers within the budget.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I have new pictures. Before I show the pictures, I will state the situation in the Senate.

The Senator from New Jersey, Senator CORZINE, and this Senator from Florida, are insisting the debate remain on the Landrieu amendment as a means, as the clock is ticking, and with most of the Senate having an interest to recess tonight for the purpose of many schedules that need to be met for tomorrow, including a number of BRAC Commission hearings, especially in the State of New Mexico, that are being held tomorrow, very important pieces of business that Senators need to attend.

What the managers of the bill are presently doing, because the Senator from New Jersey and this Senator from Florida are insisting, since, lo and behold, we discovered what we thought we had taken care of yesterday, which was amendments would not be offered for further attempts at drilling on the Outer Continental Shelf—lo and behold, those amendments have been filed and they were declared germane by the Parliamentarian. Therefore, regardless of all of the agreements that have been made, they can be brought up at any time.

So the Senator from New Jersey and this Senator from Florida, simply recognizing the clock is ticking, in order that those amendments will not be brought up, are continuing to keep the debate on the Landrieu amendment. At such time as we expect the normal process would be done, which is the winnowing down of the remaining amendments, we then would ask for unanimous consent from the Senate to take up only those remaining amendments and that those amendments will not include the amendments further causing the drilling off the Outer Continental Shelf. So that is the parliamentary procedure we find ourselves in.

Now, I have heard a number of statements on this floor over the last several days. I wish to clarify. I also wish to bring an update to the Senate. As shown in this picture, this is what we have at stake in Florida. It is the pristine beaches. That is not the only reason for not wanting to drill off the coast of Florida, but that is one of the reasons, and it is a major reason. We do have a $50 billion-a-year tourism industry that depends on those pristine beaches. Of course, people from all over the world come to enjoy the extraordinary environment we have. That is one of the reasons.

I have enumerated over the last several days many other reasons. Those reasons certainly include the delicacy of the balance of nature in some of the estuaries and bays; the brackish waters; the mangrove swamps which you find on the coast of Florida, which is not specifically a beach. Generally you will find a beach on what is known as a barrier island. It is those barrier islands that have these extraordinary opportunities for guests to come and visit.

I have enumerated over the last several days also another reason; that is, the major national asset that we have off the gulf coast of Florida and off a good part of the Atlantic coast of Florida. It is called restricted airspace. Is it any wonder why the training of pilots for the new F–22 Stealth Fighter is at Tyndall Air Force Base? Is it any wonder why the training of pilots from all branches of the military for the new F–35 Joint Strike Fighter is at Eglin Air Force Base?

It is not any wonder when you realize the place they train is out over the Gulf of Mexico, most of which is restricted airspace, and most of which has had now increased training coming because the Navy Atlantic Fleet training was shut down on the island of Vieques off of Puerto Rico. Most of that training has come to northwest Florida. That training is done out off the Gulf of Mexico. You cannot have surface ships coordinating and training with aircraft, which are practicing with their targets on virtual land masses that have been created by computers on the Gulf of Mexico, if you have oil rigs down there on the surface of the Gulf of Mexico. That is another reason.

But I want to dwell for a minute on this reason right here as shown on this picture. I said I had a new picture. I do. This picture is a week old. This is an oilspill that just occurred off of Louisiana in the last week. There have

been now 600 pelicans threatened, and 200 pelicans have died from this oilspill. This was a relatively minor oilspill: 560 gallons—13 barrels—of oil, a relatively minor spill. You can see the damage it has done.

Now, I have shown other pictures out here. Shown on this picture is what we do not want. And shown on this picture is what we want. That is why the Senators from Florida, the Senators from other coastal States such as North Carolina and South Carolina, the Senators from New Jersey—and you could go on up the coast and then go out to the west coast and start in the North with Washington, Oregon, and California—that is why these Senators are so concerned about the protection of the interests of their particular States.

Now, this next picture is of an oilspill from years ago. I think this was actually from the *Exxon Valdez*, which was a much larger oilspill. That was a whole tanker. But a tanker can do that damage. And the spill from a week ago, which was a relatively minor spill, can also do damage, where 200 pelicans have died and 600 are threatened.

Now I want to address what has been stated here. It is as if Florida is not doing its part, as suggested by the list that was shown earlier of those that are net-plus of energy and those that are net-minus of energy. Is this the way we are going to solve our energy crisis? I think we ought to all be doing each thing we can to solve our energy crisis. It is absolutely inexcusable that America today is in a position whereby we are importing almost 60 percent of our daily consumption from foreign shores. That is not only inexcusable, that is unsustainable, when you consider the defense interests of our country, that we would be so dependent on oil coming from the Mideast and the Persian Gulf region.

By the way, 15 percent of our daily consumption comes from Venezuela. Guess what. We do not exactly have good relations with the Government of Venezuela these days. And the President of Venezuela, Hugo Chavez, from time to time beats his chest and beats the desk and says he is considering the cutting off of oil. That is another story. We could discuss that at length. But it all is forming a composite picture that we ought to be doing something about our dependence on foreign oil.

Well, where do you do the most good the quickest? It is to go where you consume the most energy. Where is most energy in America consumed? It is in transportation. And where in transportation is most energy consumed? It is in our personal vehicles—automobiles, trucks, SUVs. Yet you see we are considering an energy bill, and we cannot even get past an amendment that will raise miles per gallon on SUVs, phased in over a 10-year period. We do not have the votes. Why? Because there are certain interests here that say no. They want those gas guzzlers. Yet it is completely contrary to the interests of the United States.

If we really want to do something, we have to do something about miles per gallon. I wish to share with the Senate a recent experience I had talking with the former Director of Central Intelligence, Jim Woolsey, about a proposal he has that I believe makes a great deal of sense. It is quite exciting. This proposal could, according to his statistics, have the equivalent of having vehicles that would run at 500 miles per gallon. This is not science fiction. Let me tell you the three components.

The first component has to do with the fact that we already mix ethanol with gasoline, the ethanol being made primarily from corn. That is an expensive process, but we do that. In different places, there are various percentages of that ethanol. The ethanol and the gasoline burn together, and the ethanol starts replacing the gasoline.

What if you could replace that gasoline with more ethanol so that, say, it is 50 percent gasoline and 50 percent ethanol? You may say: Well, it would not be economical because it is very expensive to get that ethanol from corn. Jim Woolsey has said you can make ethanol from prairie grass. We have 31 million acres of prairie grass in the United States. It would have to be harvested each year, cutting the grass. You would have refined processes, just like in making ethanol from corn, but you have a different ingredient, and it would be much cheaper to make the ethanol. So why don't we start replacing oil—in other words, gasoline—with ethanol?

What the experts are telling me is you could use the same engines that we have. Perhaps they would have to have a little bit of tweaking to accommodate 50 percent ethanol and 50 percent gasoline, but look how much oil per day we would be saving just with that. But that is just the first component.

The second component is, what happens if you start turning all of America's new automobile engines into hybrid engines? A hybrid engine is what the Japanese have already done so successfully that they have these long waiting lists for these cars that have hybrid engines, that have computers that shift to electricity at one point and to gasoline at another point. The Japanese automakers' cars today—and they have been for several years—are getting better than 50 miles per gallon. That is the second component.

So what happens if you take fuel which is a mixture of ethanol and gasoline and put it into hybrid cars which are being run off of electricity and the mixture of fuel is that you start to see you are beginning to use less and less oil, and you are allowing technology to start working for us.

But there is a third component; that is, taking your hybrid vehicle—that is in your garage at night when you are not using it—and just plugging it in, so that in the morning, when you are ready to use your vehicle, your battery is fully charged up to its capacity. It would be using electricity that has been coming from a powerplant that is usually a powerplant that is fueled by something other than oil.

So now you have a car that leaves the garage. It is fully powered up in its battery, so as it is going to its electric side of the fuel component, it has that extra reserve. The gasoline side does not have to produce all that much for the electrical side of the hybrid.

And, by the way, when it is over on the gasoline side, it is using a lot less gasoline because the gasoline is mixed with ethanol. What Jim Woolsey has told a number of Senators is the calculations are that, under present standards, you would actually have a car that would be the equivalent of 500 miles per gallon. Can you imagine what that would do to our dependence on foreign oil, since our personal vehicles are, in fact, the major factor in our daily consumption of oil? We are talking serious changes. We are talking about not having to have a foreign policy—and I want to recognize my colleague because I want to hear what she says—where we, the United States, become the protector for the entire civilized world of the oil supply flowing out of the Persian Gulf region.

We are talking about a United States foreign policy that, Lord forbid, if radical Islamists were to cause the Saudi Royal Family to fall and then the other gulf states start falling like dominos and suddenly radical Islamists are in control of a major source of the world's oil supply—you can imagine what that would do to the rest of the free world and the industrialized world. We are talking about major crisis.

And how much of a threat is it that there is such a crisis? Look what we are dealing with in Iraq today. Who are the insurgents? Most of the terrorists in the world are now coming there not only to kill our boys and girls but are coming there to train to be terrorists instead of training in the former area of Afghanistan. It is easier for them to come where all the action is in Iraq. Lord help us if ever radical Islamists took over in Iraq.

Ms. LANDRIEU. Will the Senator yield?

Mr. NELSON of Florida. I am happy to yield to my distinguished and very persistent colleague from the State of Louisiana.

Ms. LANDRIEU. I thank the Senator from Florida.

I wanted to say that he has made some excellent points about our need for energy independence. He has stated it eloquently and correctly in terms of our overdependence. In large measure that has been what so many of our debates in the last few weeks have been.

As the Senator knows, the underlying bill we are trying to get to a final vote on within a few hours actually addresses so many of the concerns the Senator has so rightly raised. He is correct that we can move to a new kind of vehicle that you can plug in at night, drive during the day, switch from electricity to gasoline. That gives

us extraordinary hope, without compromising our industry, without Draconian measures. What he spoke about is real, it is not fantasy, and it is in this bill. The ethanol provisions that he talked about are in this bill because of the great work of Senator DOMENICI and Senator BINGAMAN, a Republican and a Democrat. Yes, they are from the same State, but they have different views—some more conservative, some more liberal. But they have come together on a great, balanced bill.

We are attempting to pass this good bill today. We are very close. We are down to the last few amendments. The Senator from Florida has made some excellent points. I also want to say he has been tireless in his advocacy for Florida. He is a Senator from Florida, along with Senator MARTINEZ. They have been down here for hours telling us about their beautiful beaches. We acknowledge it. In Louisiana—I tease the Senator from Florida—we know about those beaches. We grew up on those beaches as well. People from Mississippi and Alabama and Louisiana spend a lot of time on those beaches. We want to help them preserve their beaches.

I wanted to ask the Senator: Does he intend, if we can get our situation cleared up, to support the amendment we have on the floor, which is a revenue coastal impact assistance sharing? He has been so good in his comments about the contribution that Louisiana and other coastal producing States make. I know he is aware that this amendment we are considering is not a drilling amendment. It is not a boundary amendment, the Bingaman-Domenici-Landrieu-Vitter-Lott amendment. I wanted to ask him to comment on that.

Mr. NELSON of Florida. As the Senator well knows, her original amendment had the provisions for drilling off the coast of Florida, which this Senator vigorously fought. But when I sought the advice and counsel of the Senator from Louisiana, she had explained to this Senator that what she wanted was revenuesharing so that she could help with the bays and estuaries and coastal waters of her State. This Senator from Florida did not find that at all to be contrary to any interest in Florida. Therefore, it was the expectation of this Senator that if the Senator from Louisiana backed off of her attempts to want to drill off the coast of Florida, then certainly this Senator would try to help her with regard to the Senator from Louisiana protecting the interests of her State. That is part of the wonderful process of the give and take and the consensus building that we have around here where each State is represented by two Senators. We can look out for our interests, and you can look out for your interests, and then we can look out for our mutual interests. As the Good Book says: Come and reason together.

That is what we have attempted to do. I suspect that although several of us coastal Senators have had to scratch and claw and stand on the floor and make objections and stand up and filibuster and do all of those kinds of things to get our point across, it looks as though the Senator from Louisiana is going to be flying on cloud nine passing her amendment. But she has a higher threshold to get to. She has a threshold of 60 votes in order to pass a budgetary waiver in order to get it through. It is my hope the Senator from Louisiana will get her 60 votes.

Would the Senator like me to yield for purposes of a question and retaining the floor?

Ms. LANDRIEU. I thank the Senator for those comments.

Again, I recognize Senator DOMENICI and Senator BINGAMAN, who have tried to work through the great differences between all of us, representing our individual States, trying to move a bill forward that achieves the purpose we all want. The goal of more energy independence for our Nation, stronger conservation measures, opening the supply of different types—that is the purpose of the bill. So as we get to the final hours, having debated this bill now for 2 hours, I hope we can stay in the spirit of moving this important legislation. One of our colleagues from Virginia said this morning that in his opinion this might be the most significant piece of legislation we may pass this Congress.

We have tried for 14 years. The Senator from Florida is aware we have tried to pass an energy bill. This is not an easy bill to pass, not because Democrats and Republicans disagree, but because regions of the country disagree about how best to achieve that goal. It is an extremely difficult piece of legislation.

If we had not had the two leaders we had, with the patience of Job—as I have said many times, I don't know how they have brought us to this point. I know it is the Domenici-Bingaman amendment that is pending. Senator VITTER and I are cosponsors. Both Senators from Mississippi came earlier to speak on the amendment. We hope sometime in the next hour or so—hopefully sooner—to get a vote on the amendment—it would be a bipartisan vote—and then move on to take care of the other amendments and finalize the bill.

The Senator from Florida knows that despite our differences on this issue, we will agree to debate it in the future. This debate will go on. The underlying debate is not about the moratoria. It is not a drilling amendment. I look forward to having his support.

Mr. NELSON of Florida. This Senator thought the agreement to support the amendment of the Senator from Louisiana is that the Senator from Louisiana would forever and always support the Senator from Florida to keep drilling off of the coast of Florida.

Senator LANDRIEU has been such a tremendous advocate for the interests of her State. She has a need that is in front of the Senator. This Senator intends to help her, even though this Senator would certainly appreciate a little more help in the future from the Senator from Louisiana.

I want to point out again why the Senator from New Jersey, Mr. CORZINE, and I have been so exercised about now that this amendment is out there, filed, and it is germane to the bill, an amendment offered by Senator ALEXANDER, why it is such anathema to us. I will simply give you the explanation. When they say: Oh, we are just going to let States decide if they want to have the drilling off their coasts, there is something known as seaward lateral boundaries that are drawn as to what is the waters off of a State according to a Law of the Sea Treaty which, by the way, was never ratified by the United States, so it is not the law of this country. Let me show you what the line would be off the State of Florida for the State of Louisiana under that Law of the Sea Treaty.

This is Louisiana. This is Mississippi. This is Alabama. And this is the line on the latitudes of Alabama and Florida. Guess what would be considered under the drawing of these lines called seaward lateral boundaries for Louisiana. It is a faint line, but I will point it out with my finger. This is the line for Louisiana. All that off the coast of Florida would be Louisiana.

I suspect that in the case of Senator CORZINE off New Jersey, he would have to worry about something that is not the law of this land but those boundaries being drawn that an adjacent State would say: We want to drill. And lo and behold, it would end up off the coast of New Jersey.

I yield to the Senator from New Jersey.

Mr. CORZINE. I thank my colleague, who is pointing out the legal argument about seaward lateral boundaries which are those that would end up applying in a practical sense where drilling might occur. There is also the reality of oil spills, some associated with drilling for natural gas which has occurred on more than a small percentage of situations in drilling for natural gas, and oil spills moved with the flow of the tides. As is shown in the map the Senator from Florida is presenting, not only do you have a legal boundary, you have a practical boundary because there are no boundaries in the water. And there are no boundaries for fish to swim.

There are grave risks if the environmental and ecological elements of protection are not thought about. And there is a huge cost-benefit for many States with regard to how their economies and the quality of life and lifestyles are developed. That has to be put in measurement and measured against what is going to be gained.

In the case of New Jersey and the Mid-Atlantic and North Atlantic region, earlier tests show very limited supplies of natural gas and oil on that Outer Continental Shelf. Why do we

want to put ourselves at that kind of risk on a cost-benefit analysis? I ask the question, Is that the same kind of analysis at which my distinguished colleague from Florida has arrived?

Mr. NELSON of Florida. Indeed it is. But we feel so passionately about this for the reasons that I have articulated much earlier. When somebody then wants to claim the patina of legality suddenly for their State's waters and, in fact, allow the drilling off the coast of another State, then it is starting to get absurd. That is when we have to put our foot down.

As the Senator from New Jersey was talking, it occurred to me that I want to show, once again, these charts. This is from the *Exxon Valdez*, which is many years ago. But that was last week. That is last week off the coast of Louisiana. That is what we want to prevent.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. I ask unanimous consent to be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSULTATION ON SUPREME COURT NOMINEES

Mr. CORNYN. Mr. President, I want to talk about the anticipated vacancy on the U.S. Supreme Court. Whatever the timeframe for a vacancy on the Court, the process for selecting the next Associate or Chief Justice should reflect the very best of the American judiciary, not the worst of American politics. We deserve a Supreme Court nominee who reveres and respects the law—and a confirmation process that is civil, respectful, and keeps politics out of the judiciary.

This morning, a number of our colleagues on the other side of the aisle asked to be consulted about any future Supreme Court nomination.

I have two responses. First, we should be clear. Although consultation, in theory, may or may not be a good idea, there is no constitutional requirement or Senate tradition that obligates the President, or anyone in the executive branch, to consult with individual Senators, let alone with the Senate as an institution.

Second, consultation may or may not be a good idea, but Senators should behave in a manner that is both respectful and deserving of such a special role in the Supreme Court nomination process, if they expect the administration to meet them halfway.

At a minimum, the President should consider the following three conditions before agreeing to any special consultation with any particular Senator. First, whoever the nominee is, the Senate should focus its attention on judicial qualifications, not personal political beliefs. Second, whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan, political, or personal attacks. Third, whoever the nominee is, the Senate should apply the same fair process that has existed for more than two centuries, and that is confirmation or rejection by a majority vote.

First, as I said, there is no constitutional or Senate tradition requiring consultation with individual Senators, let alone with the Senate as an institution.

The text of the Constitution contemplates no formal role for the Senate as an institution—let alone individual Senators—to advise on selecting Justices on the Supreme Court, or on any Federal court.

As renowned constitutional scholar and historian, David Currie, has pointed out, President George Washington did not consult with the Senate. I quote: ''Madison, Jefferson, and Jay all advised Washington not to consult the Senate before making nominations.''

Professor Michael Gerhardt, the top Democrat adviser on the confirmation process, has similarly noted that ''the Constitution does not mandate any formal prenomination role for the Senate to consult with the President; nor does it impose any obligation on the President to consult with the Senate prior to nominating people to confirmable posts.''

My second point: If there is to be any consultation, the Senate must first show that it will behave itself in a manner worthy of such a special role in the Supreme Court nomination process. After all, there is a right way and a wrong way to debate the merits of a Supreme Court nominee. And history itself provides some useful benchmarks.

First, whoever the nominee is, the Senate should focus its attention on judicial qualifications—not on personal political beliefs.

When President Clinton nominated Ruth Bader Ginsburg to the Court in 1993, Senators knew that she was a brilliant lawyer with a strong record of service in the law. Senators knew that she served as general counsel of the American Civil Liberties Union, a liberal organization that has championed the abolition of traditional marriage laws and attacked the Pledge of Allegiance. And they know that she had previously written that traditional marriage laws are unconstitutional; that the Constitution guarantees a right to prostitution; that the Boy Scouts, Girl Scouts, Mother's Day, and Father's Day are all discriminatory institutions; that courts should force taxpayers to pay for abortions against their will; and that the age of consent for sexual activity should be lowered to the age of 12. The Senate, nevertheless, confirmed her by a vote of 96 to 3.

Similarly, when Steven Breyer, nominated in 1994 by President Clinton, and Antonin Scalia, nominated in 1986 by President Reagan, the Senate recognized that these were brilliant jurists with strong records of service. Breyer had served previously as chief counsel to Senator TED KENNEDY on the Senate Judiciary Committee. His nomination to the Court was opposed by many conservatives because of alleged hostility to religious liberty and private religious education, while Scalia was known to hold strongly conservative views on a number of topics. The Senate, nevertheless, confirmed them by votes of 87 to 9 and 98 to 0, respectively.

Second, whoever the nominee is, the Senate should engage in respectful and honest inquiry, not partisan political or personal attacks.

Unfortunately, as we know, respect for nominees has not always been the standard—at least it has not always been observed.

Lewis Powell, a distinguished member of the U.S. Supreme Court, during his nomination process was accused of demonstrating ''continued hostility to the law,'' and waging a ''continual war on the Constitution.'' Senate witnesses warned that his confirmation would mean that ''justice for women would be ignored.'' John Paul Stevens, also with a distinguished record of service on the Supreme Court, was charged during his confirmation hearings with ''blatant insensitivity to discrimination against women.'' Anthony Kennedy, also on the Court, was scrutinized for his ''history of pro bono work for the Catholic Church,'' and found to be ''a deeply disturbing candidate for the United States Supreme Court,'' according to some accounts.

David Souter, also on the U.S. Supreme Court, during his confirmation process, was described as ''almost neanderthal,'' ''biased,'' and ''inflammatory.'' One Senator actually said Souter's civil rights record was ''particularly troubling'' and ''raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution.'' That same Senator condemned Souter for making ''reactionary arguments'' and for being ''willing to defend the indefensible'' and predicted that, if confirmed, Souter would ''turn the clock back on the historic progress of recent decades.'' At Senate hearings, witnesses cried that, ''I tremble for this country if you confirm David Souter,'' warning that ''women's lives are at stake,'' and even predicting that ''women will die.''

The best apology for these ruthless and reckless attacks is for them never to be repeated again. Unfortunately, recent history is not particularly promising. Even before President Bush took office in January 2001, the now-leader of the opposition party in the Senate told Fox News Sunday that ''we have a right to look at John Ashcroft's religion,'' to determine whether there is ''anything with his religious beliefs that would cause us to vote against him.'' And over the last 4 years, this President's judicial nominees have been labeled ''kooks,'' ''Neanderthals,'' and even ''turkeys.'' Respected public servants and brilliant jurists have been called ''scary'' and ''despicable.''

Third, whoever the nominee is, the Senate should apply the same fair process that has existed for over two centuries when it comes to confirmation or rejection—by an up-or-down vote of the majority.

Our colleagues on the other side of the aisle have recently asked to be consulted about any future Supreme Court nomination—even though the Constitution provides only for advice and consent of the Senate, not individual Senators, and only with respect to the appointment, not the nomination of any Federal judge. If Senators want an extraordinary and extraconstitutional role in the Supreme Court nomination process, the President should first consider seeking a commitment from them to subscribe to the three principles that I have talked about briefly above.

After years of unprecedented obstruction and destructive politics, we must restore dignity, honesty, respect, and fairness to our Senate confirmation process. That is the only way to keep politics out of the judiciary.

Mr. MCCONNELL. Will the Senator yield for a question before yielding the floor?

Mr. CORNYN. Yes.

Mr. MCCONNELL. I was listening carefully to my friend's comments about the process by which we react to the President's nominees to the Supreme Court. Did I hear my colleague correctly, in discussing the issue of what is or is not a mainstream nominee, that Ruth Bader Ginsburg, for whom I voted—and I believe the final vote was something like 96 to 3—had at one time speculated that there might be a constitutional right to prostitution? Did she not suggest that at some point in one of her writings?

Mr. CORNYN. The distinguished assistant majority leader is correct.

Mr. MCCONNELL. Also, had she not suggested at one point that there be a uni-sex ''Parent's Day'' instead of a Father's Day or a Mother's Day, or something similar to that?

Mr. CORNYN. Again, the distinguished assistant majority leader is correct.

Mr. MCCONNELL. I ask my friend from Texas, is it not the case that many nominations that have been sent up here by Presidents have opined, from time to time, controversial or provocative views, particularly if they have had a background as a teacher, that might strike many of us on this side of the aisle, and I suspect a majority on the other side, as outside of the mainstream to the left?

Mr. CORNYN. I say to the distinguished assistant majority leader that any lawyer—and we are likely to get a lawyer nominated for this important job on the Supreme Court—is going to have taken on behalf of a client, someone they have represented, or if they have taught, as the question suggests, during the course of their academic musings, programs, or writings, in Law Journal articles or otherwise, they are going to engage in the kind of intellectual exercise speculating perhaps about the limits of the law or what the law would or would not be under a particular set of circumstances.

It is simply unreasonable to ascribe to those nominees, let's say, the views of someone they are defending in a criminal case because they have volunteered to serve pro bono to defend somebody accused of a crime, or to ascribe to them as their own personal beliefs or ones they will actively seek and enforce from the bench or what they have written in academic writings on perhaps the limits of the Constitution or what would or would not stand up in a particular court decision.

I agree we should be fair to the nominees. We should require they rule in accordance with precedent and the intent of Congress when it comes to interpreting acts of Congress. But we should not try to mischaracterize them or paint them as out of the mainstream by viewing in isolation some of these writings or representations in their legal practice.

Mr. MCCONNELL. Finally, let me ask, is it not largely the case, I ask my colleague from Texas, that until the last few years, controversial or provocative comments or writings have, in fact, not been used as a rationale for defeating nominees, assuming they are lacking in qualifications or ''outside the mainstream'' as a rationale for defeating otherwise well-qualified nominees?

Mr. CORNYN. As the distinguished assistant majority leader knows, there has been a mischaracterization of the record of many nominees who have come up in recent times and one I hope we do not see repeated when we have this Supreme Court vacancy to consider, the President's nominee. But we have not had a good record recently of treating these nominees respectfully, understanding that these are people who are subjecting themselves to this process and public service at some personal sacrifice. I worry if this process becomes too mean and too unfair that we will simply see people who will not answer the call when the President requests they serve as a judge.

We have seen those kinds of characterizations and attacks, as the assistant majority leader described them. It is my hope, and I know his, that we will not see a repetition of that, but we will see a respectful process. We will see one where the Senate does its job. We ask tough questions. We do a thorough investigation. But at the end of the day, we do not try to paint these nominees as something they are not and that we have an up-or-down vote on these nominees, as we have had for more than 200 years.

Mr. MCCONNELL. I thank my friend from Texas for responding to my questions.

Mr. CORNYN. I yield the floor, Mr. President.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Kentucky.

SUPREME COURT NOMINEES

Mr. MCCONNELL. Mr. President, I listened with interest this morning to the remarks of our Democratic colleagues. They talked about a potential Supreme Court vacancy. While we have no knowledge of the occurrence of such a vacancy at this time, our friends implored the White House to consult with them in selecting a Supreme Court nominee. It is on this subject that I wish to make a few observations in the event such a vacancy were to occur.

From time to time, Senators may suggest to a President who he should nominate to the Federal bench. Sometimes Presidents agree with the suggestions and sometimes they do not. This White House has observed this practice, and I believe it will continue to do so. But we should not confuse the solicitude that any President may afford the views of individual Senators on a case-by-case basis with some sort of constitutional right of 100 individual Senators to co-nominate persons to the Federal court.

Unfortunately, I am afraid our Democratic friends are under a misapprehension that they have some sort of individual right of co-nomination. In the past, our colleague Senator SCHUMER has said that in his view—in his view—the President and the Senate should have ''equal roles'' in picking judicial nominees.

And just last week, and again on the floor this morning, my good friend from Vermont said that he ''stands ready to work with President Bush to help him select a nominee to the Supreme Court.''

Such a view of the confirmation process is completely at odds with the plain language of the Constitution, the Framers' intent, common sense, and past statements of our Democratic friends themselves.

Let's start with the Constitution. Article II, section 2 provides that the President, and the President alone—no one else—nominates. It says ''the President shall nominate.'' It does not say ''the President and the Senate shall nominate,'' nor does it say ''the President and a certain quantity of individual Senators shall nominate.'' It says ''the President shall nominate''—the plain words of the Constitution.

It then adds that after he nominates, his nominees will be appointed ''by and with the Advice and Consent of the Senate.''

This plain language meaning of article II, section 2 is confirmed by the Founding Father who proposed the very constitutional language I just cited. Alexander Hamilton wrote that it is the President, not the President and members of the opposition party, who nominates judges. Specifically, in Federalist No. 66, Alexander Hamilton wrote:

> It will be the Office of the President to nominate, and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice—

I repeat, no exertion of choice—

on the part of the Senate. They may defeat

one choice of the Executive and oblige him to make another; but they cannot themselves choose—they can only ratify or reject the choice [of the President].

Nothing could be more clear—Alexander Hamilton in Federalist No. 66 interpreting the plain language of article II, section 2 of the Constitution.

The Framers were, of course, as we all know, brilliant. They recognized that the judicial confirmation process would not function at all if we had the President and a multitude of individual Senators selecting judges. How could a President hope to accommodate the views of 100 different Senators on who he should nominate, each of whom might submit their own slate of nominees? That is why the only person who won a national election is charged with the power of nomination—the only person who won a national election is charged with the power of nomination.

Our Democratic friends at one point at least recognized this as well. For example, during Justice O'Connor's confirmation hearing, my good friend from Delaware, the former chairman of the Judiciary Committee, said:

I believe it is necessary at the outset of these hearings on your nomination—

Talking to Sandra Day O'Connor at the time—

to define the nature and scope of our responsibilities in the confirmation process, at least as I understand them. . . . [A]s a Member of the U.S. Senate, I am not choosing a nominee for the Court.

This is our colleague from Delaware.

. . . I am not choosing a nominee for the Court. That is the prerogative of the President of the United States, and we Members of the U.S. Senate are simply reviewing the choice that he has made.

That was Senator BIDEN in 1981.

And on the subject of deference, I must respectfully disagree with my good friend from Massachusetts, Senator KENNEDY. Professor Michael Gerhardt, on whose expertise in constitutional law our Democratic friends have relied, notes that:

The Constitution . . . establishes a presumption of confirmation that works to the advantage of the President and his nominees.

Finally, let me reiterate that at the end of the day, the Senate gives the President's nominees an up-or-down vote. This has been the practice even when there were highly contested Supreme Court nominees. There were no Supreme Court nominees more contested than Robert Bork and Clarence Thomas. Yet those Supreme Court nominees received up-or-down votes. I expect the same courtesy will be afforded to the next Supreme Court nominee regardless of who the nominating President is.

I thank the Chair, and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York.

Mr. SCHUMER. Mr. President, I am sorry I was at the DPC lunch, but I heard that a number of my colleagues had a little debate about consultation, a letter that 44 of the 45 Democrats sent to the President today, and the 45th, Senator BYRD, agreed in theory with the letter, agreed in the sentiments of the letter but wanted to write his own. He felt so strongly about it, he told me, that he wanted to put it in his own words.

All of a sudden we are hearing two things from the other side about consultation. First—and I could not believe this statement—my good friend from Texas, Senator CORNYN, said the Democrats are being political. If 1984 has not arrived, when asking to consult and bring people together is political and asking to be divided and not consult is nonpolitical, I don't know what is. This is 1984. We are asking the President to bring people together. We are asking the President to follow the Constitution. There is the word ''advise.'' And all of a sudden that is called being political? Please, give me a break.

The American people have asked us—every one of us; we can be from any one of the 50 States, we can be of any political philosophy, and I am sure we are asked when we get home: How do we break this partisanship on judges? The wisdom of the Founding Fathers, as always, is usually best. They recommended advise as well as consent, meaning consult. And here we, in a way—all the Democrats—in a desire to avoid confrontation, asked for consultation, and we are called political?

It seems to my good friend from Texas the only thing that is not political is we just say yes to whatever the President asks. That is not what we will do, and that is not what America is all about.

Our letter, I say to the American people, was heartfelt.

Our letter said: Let us avoid the confrontation on judges. The only way to do it is by consultation, plain and simple. President Clinton consulted. He called Senator HATCH at a time when Senator HATCH was not in the majority. According to Senator LEAHY, he told me this morning that Senator HATCH at that time—it must have been 1993 or 1994—was the ranking minority member, and as I understand it President Clinton bounced names off Senator HATCH: How about this one, how about that one?

Senator HATCH was wise enough to know that he was not going to get a conservative. The President would not nominate a conservative, just as we know and do not expect the President to nominate a Democrat or a liberal. We know that. But there are always shades of gray which only the ideologues of the hard right and the hard left never see. There are people who are mainstream conservatives who would be acceptable to most of us because we believe—my test, and I think it is the test of most of us is not on any one issue but, rather, would be people who would interpret the law, not make it.

I do not like judges who are ideologues. I do not like judges at the extremes. Obviously, the President has nominated some judges at the extremes, but my judicial committee, under my instructions in New York, where I get a say in nominations, knocks out anybody on the far left. That is because ideologues want to make law. They are so sure they are right that they can ignore everybody else.

Consultation is what it is all about. In my judgment, consultation is the only way to avoid the kinds of confrontations which I am sure none of us likes when it comes to judges. To call it political, that does not pass the laugh test.

Then I heard—and again, I was not here—that my friend from Texas and I believe my friend from Kentucky were having a debate on what should be allowed to be in the record in terms of if and when a Supreme Court Justice is nominated. I was told, Well, what they considered and argued while in court should not be considered because they were representing a client, or it should not be this or it should not be that.

The nomination and the confirmation of a U.S. Supreme Court Justice and a U.S. Chief Justice is one of the most important things we shall do as Senators. Let me put my colleagues on notice: Everything should be on the record—everything. Some will have less importance, some will have more importance, but to already, before someone is even nominated, start saying, Oh, this should not be part of the record, that should not be part of the record, sounds a little defensive.

I suppose we should not know anything about the nominee; just take the President's recommendation. Well, again, read the Constitution, I would advise my colleagues, with respect. It does not say the President determines who are Supreme Court nominees. In fact, for two-thirds of the period when the Founding Fathers wrote the Constitution, they had the Senate choose the Supreme Court. The only reason they changed it to have the President nominate is—I think they called it unity of purpose. They thought having—then it was probably 30—26 people try to choose 1 nominee was far more difficult than 1 choosing a nominee. But make no mistake about it, they wanted the Senate to be very active. In fact, as we know from our history and we have repeated on this floor, although it does not seem to make much of a dent, the early Senate rejected one of George Washington's nominees, and I believe in that Senate there were eight Founding Fathers.

They ought to know better than any of us. Here we are saying this should not be part of the record, that should

not be part of the record. Maybe my colleagues are being a little defensive. Maybe they do not want—I do not know who the nominees will be. I have no idea. But maybe they are worried that if all the facts came out, the American people might not want the nominee. I am of the other view. Justice Brandeis stated that sunlight is the greatest disinfectant. The more we see and the more we learn, the better we will be prepared.

I see my good friend, our great leader from Hawaii, has come to the floor of the Senate, and I do not want to delay him.

In conclusion, one, we plead with the President to consult with the minority, as President Clinton did, as President Hoover did, as President Grant did, and as so many others. That will make the process go more easily. When the American people ask us what can avoid the kind of confrontation we have seen with judges, there is a one word answer: consultation. Advise, as in advise and consent.

The ball is in the President's court. He can determine whether we have the kind of process the American people want—careful, thorough but harmonious, without acrimony, by consulting—or he can be like Zeus from Mount Olympus and throw down judicial thunderbolts and say: This is the nominee. Then maybe some of his minions will say: You cannot admit this fact about the nominee or that fact about the nominee or that fact about the nominee. That is not legitimate. That will not create a harmonious process in this body.

We are on the edge of perhaps a nomination for the U.S. Supreme Court—again, one of the most important things we Senators do. Let us hope, with consultation, it will occur in a harmonious and bipartisan way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

WE ARE ALL AMERICANS

Mr. INOUYE. Mr. President, according to press reports last evening one of the principal advisors to the President, Mr. Karl Rove, criticized Democrats for failing to respond to the attacks on 9/11. He is reported to have said that the Democratic Party did not understand the consequences of the Sept. 11, 2001, attacks. He is quoted saying, ''Liberals saw the savagery of the 9/11 attacks and wanted to prepare indictments and offer therapy and understanding for our attackers, Conservatives saw the savagery of 9/11 and the attacks and prepared for war.''

Oftentimes in press reports, words are taken out of context or simply misquoted. I would hope that is the case here. I would hope that the views that were reported to have been expressed do not really represent the thoughts of Mr. Rove and certainly not the President of the United States.

It is not often that I come to the floor to question what someone might have said. My view is that most of the time it is better to just remain silent and not to dignify the remarks which might have been made in the heat of partisan rhetoric, but this is a bit different.

All of us who were in the Congress at that time recall 9/11 vividly. Like all Americans we saw the jet liners crash into the Twin Towers on our televisions and we could all see the smoke rising from the Pentagon just across the river.

Perhaps Mr. Rove forgets what that day was like as we evacuated our offices and tried to maintain an aura of calm for the American public. Perhaps he forgets the spontaneous action of many of my colleagues who gathered on the steps of the Capitol to sing ''God Bless America.'' It wasn't Republicans on the steps and it wasn't conservatives, it was Americans. All colors, all religions, both parties came together in a patriotic symbol to demonstrate the resolve of America.

Mr. Rove must also not remember that the Senate was in the hands of a Democratic majority in September 2001. It was the Democratic majority, acting with the Republican minority, which pushed through a resolution authorizing the use of force to go after Osama Bin Laden. There was no dispute between the parties on this issue. We all agreed that we had to defeat this enemy of America.

I was Chairman of the Defense Appropriations Subcommittee at that time. I worked with my colleague TED STEVENS to put together an emergency appropriations bill to support the Defense Department's requirements to mount an attack on the terrorists. It was a bipartisan plan that provided the administration wide latitude to respond to this tragedy. There was no dissent. We were united across party lines.

Perhaps Mr. Rove just forgets. I cannot forget visiting the Pentagon and examining the extent of the damage and the continuing rescue efforts with my colleague Senator STEVENS. I vividly recall flying to New York City one week later to tour the site of the disaster. I will never forget the acrid smell that still arose through the smoke from the site as we flew over the area in a helicopter. I will forever recall seeing the widows of lost firefighters being escorted, and literally held up, by other New York emergency workers as they visited the site.

It has not been often in our Nation's history that we have been tested. As a teenager I was present on December 7, 1941 at another time in our Nation's history when we suffered a savage attack.

At the time the Nation responded in a bipartisan fashion to respond to that awful attack. Our response to the 9/11 attack was similar. All Americans were outraged by the attack and we proved our resolve to respond. To claim that one party had a monopoly on a patriotic response or a will to act is not only factually in error it is an insult to all Americans.

I have been in politics for many years. I understand the use of partisan political rhetoric to play to an audience. I also know that in this era of instantaneous information, erroneous statements can become accepted as facts. This statement, if it truly reflects the views of the President's advisor, needs to be refuted before it can be thought of as being historically accurate.

There has been a lot said in the press recently about demanding apologies for words that have been spoken. The White House needs to take a look at these statements and consider an appropriate response to repudiate these words.

Patriotism is not owned by one political party. Our national resolve is not Democratic or Republican. It is American.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I ask unanimous consent that I be excused from the Senate between the hours of 3 p.m. and 6 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask for recognition in my own right and I ask my comments be printed in an appropriate place in the RECORD and be given as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. KENNEDY are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. THOMAS). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I see the distinguished Senator from Massachusetts. I know he wants to speak. I do want to explain the position I am in. I am trying very hard to get the amendment that is pending voted on. We have been waiting for a long time. Both Senator BINGAMAN and Senator DOMENICI have to leave. Our scheduled time of departure is 3:30 to get home to go to a BRAC Commission meeting where six commissioners will be there. I need all the time between now and 3:30 to get it done. But if the Senator wants to speak, I will yield and see what happens.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I want to accommodate and help my friend and colleague. What I would like to find out is, if I could be part of a unanimous consent request to simply be recognized after the business

the Senator needs to do, I am happy to accommodate him.

Mr. DOMENICI. The Senator wants to be recognized for a speech.

Mr. KERRY. I want to be recognized to be able to speak immediately after the business the Senator has to conduct. If I can be so recognized, I would appreciate it very much.

Mr. DOMENICI. So long as there is no misunderstanding, the business I am talking about would include a vote.

Mr. KERRY. I understand. The Senator needs to have a vote now, and I will happily accommodate that.

Mr. DOMENICI. I am appreciative. I thank the Senator so much.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. I understand I am part of the unanimous consent request to be recognized after the vote.

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. Yes, indeed. As soon as this business is finished on the pending amendment, he will be recognized for whatever time he needs.

In order to save time, I wonder if I could have 2 minutes of colloquy with the Senator from Louisiana, which is part of the proposal we are trying to finish. No amendments, just a colloquy with reference to the subject matter. I know the Senator from New Jersey is here. This colloquy has to do with some amendments he is pulling down that put our compromise together so we don't have any amendments that offend you. He wants to ask me about two amendments which he will withdraw.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana.

AMENDMENT NO. 802 RECALLED

Mr. VITTER. Mr. President, I rise to engage in a colloquy with the distinguished chairman about one amendment in particular, amendment No. 802. It is based on an underlying bill I introduced, the Alternative Energy Enhancement Act, which would provide some regulatory structure and some royalty sharing for new alternative energy that is developed offshore, particularly on the Outer Continental Shelf. These are new forms of energy which are not in production now, things such as solar energy, thermal energy, wave energy, methane hydrates.

First, I compliment the chairman for his work on the bill because the underlying bill includes most, if not all, of the regulatory provisions of my bill. What it does not include is royalty sharing. I would like to ask the chairman if he could continue to work with me as this energy bill goes to conference to create a fair system of royalty sharing for these new forms of energy, noting that it is absolutely no loss to the Federal Treasury because those revenues are not coming in yet.

Mr. DOMENICI. The Senator has my assurance. Just as I have tried to do that in the past, I will continue to do it. It cannot be included in this bill for a lot of reasons, including those the Senators from offshore States understand. We will continue to work on it and see how we can move it along in due course.

Mr. VITTER. I thank the chairman.

Mr. DOMENICI. Will you pull your amendment after this colloquy?

Mr. VITTER. Yes, this first amendment is No. 802. My second amendment we can deal with much later on. We don't to have deal with it immediately.

Mr. DOMENICI. Will you withdraw it?

Mr. VITTER. Mr. President, I withdraw amendment No. 802.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. CORNYN. Mr. President, I rise to add my support to the Domenici amendment No. 891. However, before I proceed, I want to extend my gratitude and congratulations to the chairman and ranking member of the Energy and Natural Resources Committee, Senator DOMENICI and Senator BINGAMAN, for their hard work in producing this Senate energy bill.

Congress has tried several times to approve a comprehensive energy bill. Under their wise guidance and counsel, I believe that we will be successful this time. It is critical that we provide the country with the resources and tools to meet our growing energy needs and this bill will go a long way in accomplishing that goal.

It is toward this same goal that I support this amendment that would share a portion of the revenues generated by off-shore oil and gas operations with coastal producing States. As we work to address our Nation's growing energy needs and to increase our domestic production of oil and gas, there will be enormous pressures placed on the communities along our coasts that serve as a platform to these operations. These pressures take a variety of forms and present a number of challenges. By giving coastal States an arrangement that States with in-land development already have by sharing some of these oil and gas revenues, we can mitigate some of these pressures. This includes assistance with conservation of critical coastal habitats and wetlands to providing coastal communities with help for infrastructure and public service needs. There has been a significant amount of discussion on the issue of coastal erosion in Louisiana, but I want the Senate to know that parts of Texas are experiencing some of the very same problems.

I also appreciate the comments and reservations expressed by the distinguished Chairman of the Budget Committee. As a member of the Budget Committee, I recognize the significance and implications of waiving the Budget Act. However, in this case, the budget resolution does contain a specific reserve fund to accommodate spending in the energy bill. This amendment does not cause the bill to exceed the funds provided in the resolution for the bill and is fully within the amount of money Congress set aside for the energy bill.

Texas is proud of its heritage as an energy producing State. Texas will continue to play a vital role in providing for the Nation's energy needs. This amendment is a reasonable proposal to address an issue of basic fairness. This will demonstrate to those communities along the coast that are so vital to the production of oil and gas for the Nation that they are valuable, important, and supported.

AMENDMENT NO. 891

Mr. DOMENICI. Might I ask if we are ready to proceed now? Is the chairman of the Budget Committee prepared to make his closing remarks?

The PRESIDING OFFICER. The amendment I mentioned has been recalled.

Mr. DOMENICI. The appropriate word is ''recalled.''

The PRESIDING OFFICER. Recalled.

Mr. DOMENICI. I thank the Parliamentarian.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, what is the parliamentary situation? Is there unanimous consent agreement?

Mr. DOMENICI. There is none. When you finish, we are going to vote.

Mr. GREGG. So I have the last say here and then we will go to a vote.

Mr. DOMENICI. Equal time, 1 minute, 2 minutes; whatever you take, I take. Then we vote.

Mr. GREGG. Well, since it is my point of order, I would like to go last, and I will need about 5 minutes.

Mr. DOMENICI. I will use 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, the distinguished chairman of the Budget Committee has the right to raise a point of order and he did. There is also a provision in the Budget Act that says if a point of order is made, the Senate may waive the point of order. So the issue before the Senate is whether we should waive the point of order. I want to make two points.

First, the Energy and Natural Resources Committee, which has the bill on the floor, was allotted $2 billion. People think we were allotted a lot of money. We were allotted $2 billion to be spent by the committee on matters pertaining to this bill. We have a debate as to whether we can spend it on this amendment or whether we have to spend it on the bill in committee. The Senator from New Mexico maintains that we should, as a Senate, say the $2 billion was given to the committee. We are spending it on legitimate committee business, and we ought to be allowed to spend it on this amendment. We do not break the budget, we just use the money we were allotted. So it isn't a budgetary question. It is a budget issue whether we should waive based upon whether we should have used it in the committee or whether we could use that very same amount of money on

the floor of the Senate. That is the issue.

I yield back any time I have.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I am now recognized for 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. GREGG. Mr. President, it is important to review the bidding here. The situation is that a budget point of order has been raised. It is properly founded, and there is a motion to waive it. The logic behind the point of order is very simple. We are taking a discretionary program and moving it over to be an entitlement program to benefit five States, primarily Louisiana, which will get 54 percent of the money that is allocated. It is hard to understand why we would want to create a new entitlement program simply for Louisiana to address their conservation concerns. There are a lot of States that have conservation concerns. There is, in my opinion, virtually no nexus between the conservation issues which will be addressed theoretically by this amendment, should it pass, and the energy that is being sought off the coast of Louisiana. But even if there were, it would be inappropriate to pass such an amendment to create a new entitlement unless you included other States which had the same type of impact, because they were producing energy, on their environment. Furthermore, we have heard a great deal about how Louisiana has a right to this money. They have an entitlement to this money. Those were the words used by my friends across the aisle. As we look at the numbers relative to how funds are disbursed from the Federal Government, it appears that Louisiana is doing pretty well.

For every dollar Louisiana sends to the U.S. Treasury, Louisiana gets $1.43 back. That is pretty darn good. They are getting a 43-cent bonus on every dollar they spend from what they send up here. Of the five States that will benefit from this, all of them get more money back than they send to Washington, and four get substantially more money. In fact, they are in the top 10 of States to get more money back.

The equities of this Louisiana case are weak, to say the least. When you throw into the factor that they already have a dedicated fund—the only State in the country—for all the money raised as a result of people running lawnmowers in places such as Montana, Oregon, or Massachusetts, you end up, if you start your lawnmower or your snowblower, sending money to Louisiana to help them with environmental mitigation. They already have a fund, and they want more on top of that.

The issue is simple. We passed a budget. The other side of the aisle didn't participate in the process. The Republican side of the aisle did. We passed a budget. Now the question is, Are we going to enforce that budget or are we going to spend money creating an entitlement program that is totally outside of the bounds of the budget, which is wrong, and which has no equities behind it, other than that group of States decided to raid the Federal Treasury?

It seems to me we have to make some decisions as to whether we are going to enforce the budget process. I note that the administration supports this point of order and opposes this amendment. I hope my colleagues will join me in that position, also.

I yield back the remainder of my time.

The yeas and nays have been ordered, as I understand it.

Mr. DOMENICI. Mr. President, before the yeas and nays are called, I think we have a unanimous consent agreement that everybody put their fingerprints on. I will read it, after which time we will vote.

I ask unanimous consent that the list of amendments that I send to the desk be the only first-degree amendments remaining in order to the bill, including the managers' amendment, which are enumerated; provided further that this agreement does not waive the provisions of rule XXII; further, that upon disposition of the pending Domenici amendment, no further amendments relating to the issue of OCS moratorium and natural gas and oil exploration be in order to the bill, with the exception of amendments Nos. 802 and 804, to be offered by the distinguished Senator VITTER; and that upon his statements on them, the amendments will be withdrawn. I modify that to strike the amendment we have already recalled, and that was amendment No. 802. So I strike No. 802, which has already been recalled. The rest of the proposal I leave with the Senate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The list of amendments is as follows:

.

FINAL LIST OF ENERGY AMENDMENTS

Talent—#819; Baucus—#846; Rocky Mountain Fund (to be withdrawn); Durbin—#902, CAFE, #903, Small Business Next Generation Lighting; Lautenberg—#778, P–FUELS; Inouye/Akaka—#876, Deep Water Renewable Thermal Energy; Pryor—#881, Weatherization Assistance Credit; Dodd—#882, SOS: Power Rates in New England; Schumer—#810, Uranium Exports; Obama—#851; Sununu—#873; Bond/Levin—#925; Salazar—#892; and a Manager's Package.

Mr. DOMENICI. I understand that we will proceed to an up-or-down vote. Mr. President, I might say to the Senate, after this vote, I don't believe either Senator from New Mexico will be here for the remainder of the votes. Senator LARRY CRAIG will assume my role as manager of the bill. I thank everybody for their cooperation to get the bill this far.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Minnesota (Mr. COLEMAN), and the Senator from Alaska (Mr. STEVENS).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN), would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN), are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 26, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—69

Akaka	Durbin	Murkowski
Alexander	Ensign	Murray
Allen	Feinstein	Nelson (FL)
Baucus	Frist	Nelson (NE)
Bayh	Graham	Obama
Bennett	Grassley	Pryor
Biden	Hagel	Reed
Bingaman	Hatch	Reid
Bond	Hutchison	Roberts
Boxer	Inouye	Rockefeller
Brownback	Jeffords	Salazar
Burr	Johnson	Sarbanes
Cantwell	Kennedy	Schumer
Carper	Kerry	Sessions
Clinton	Kohl	Shelby
Cochran	Landrieu	Smith
Cornyn	Lautenberg	Snowe
Corzine	Levin	Stabenow
Craig	Lieberman	Talent
DeWine	Lincoln	Thune
Dodd	Lott	Vitter
Dole	Martinez	Voinovich
Domenici	Mikulski	Warner

NAYS—26

Allard	DeMint	Lugar
Bunning	Enzi	McCain
Burns	Feingold	McConnell
Byrd	Gregg	Santorum
Chafee	Harkin	Specter
Chambliss	Inhofe	Sununu
Coburn	Isakson	Thomas
Collins	Kyl	Wyden
Crapo	Leahy	

NOT VOTING—5

Coleman	Dayton	Stevens
Conrad	Dorgan	

The PRESIDING OFFICER. On this vote, the ayes are 69, the nays are 26. Three-fifths of the Senators, duly chosen and sworn, having voted in the affirmative, the motion is rejected. The point of order fails.

Under the previous order, the Senator from Massachusetts will be recognized, but first the question is on agreeing to amendment No. 891.

Mr. CRAIG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 891.

The amendment (No. 891) was agreed to.

The PRESIDING OFFICER. The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to comment about certain statements made this morning that were somewhat critical of the President on the issue of consultation on a prospective Supreme Court nomination. One of the Senators from the other side of the aisle said that there would be a battle royal unless there was consultation that met the requirements of the other side of the aisle. Two other lengthy speeches were also presented along the same line.

There has been a letter submitted by some 44 Senators that called for consultation by the President on the issue of a Supreme Court nomination. However, I think the first thing to acknowledge is that there is no vacancy. It would be premature to be critical. It would be premature to raise the issue in a confrontational sense until the matter is ripe for consideration.

A number of us had occasion to have lunch with members of the Supreme Court last week, and the Chief Justice looked remarkably fit. We saw him when he administered the oath to the President some 5 months ago, when he was helped down to the podium, a little shaky and his voice a little faltering, but last Thursday he looked remarkably well. What he intends to do or what anyone else intends to do remains to be seen, but it is hardly the time, given the kind of confrontation in this body which we have seen on the judicial nomination process, to be looking to pick a fight. I am not saying anyone is picking a fight—just that we ought to avoid picking one. I respect the letter which was sent, dated June 23, to the President, and signed by some 44 Senators. It quotes the President at the press conference on May 31, 2005, where he said: ''I look forward to talking to Members of the Senate about the Supreme Court process to get their opinions as well and will do so. We will consult with the Senate.''

That is an extract from the letter sent to President Bush dated today. Well, May 31 was only 24 days ago and when the President has made a commitment to consult with the Senate, that is pretty firm and that is pretty emphatic.

Given his other responsibilities, and the fact that there is no vacancy on the Supreme Court, it is presumptuous to say that there is some failure on his part. I have asked the President to consult with Democratic Members and to listen. The advice and consent clause of the Constitution is well known. He has asked me, in my capacity as Chairman of the Judiciary Committee, about the issue, and I recommended to him consultation. He has been very receptive to the idea. Although he has made no commitment to me, he did make a very flat commitment in his speech, as cited in this letter.

I might comment that during the confirmation proceedings of Attorney General Gonzales, I think it is fair to say Senator SCHUMER was effusive in his praise of Mr. Gonzales as White House counsel regarding consultation with New York Senators.

May the record show that Senator SCHUMER is nodding in the affirmative. As former prosecutors we sometimes say such things.

It is my hope that we will proceed to the Supreme Court nomination—if and when it occurs—in a spirit of comity. I do not have to speak about my record on the subject. When we were fighting during the Clinton administration about confirming Paez and Berzon, I broke party ranks and supported them. It is my view that there is fault on both sides regarding stalling nominations. It began during the last two years of President Reagan, all four years of Bush No. 1, and reached an intense line, frankly, during the administration of President Clinton, when some 60 nominations were held up in committee. We know what happened with the systematic filibuster and the interim appointment, and we are past that.

We have a very heavy responsibility, if a vacancy occurs on the Supreme Court, to move ahead in a spirit of comity to try to get somebody who can be confirmed; somebody who is acceptable to the Senate. If we are to fail in that and have an eight-person Court, it would be dysfunctional. As we all know, there are many 5-to-4 decisions. The country simply could not function with 4-to-4 court.

It would be my hope that we would lower the rhetoric and not put anybody in the position of being compelled to respond to a challenge. Let us not challenge each other. Let us not challenge the President. Let us move toward consultation.

This is something I have discussed with the distinguished Democratic Leader, Senator REID. Also, Senator LEAHY and I have talked about the subject at length. I think we have established—as Senator LEAHY called—it an atmosphere of comity in the Judiciary Committee. Such that we will approach this very important duty with tranquility, comity, and good will to do the work of the American people and not presume that the President is going to pick someone characterized as out of the mainstream or someone objectionable.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The minority leader.

Mr. REID. First, I underscore what the distinguished chairman of the Judiciary Committee said. We all hope that Chief Justice Rehnquist's health permits him to continue serving on the Court. I became an admirer of his during the impeachment proceedings. I got to know him. He has a great sense of humor, and we all know he has a tremendous intellect. I wish him the very best health. So I hope we do not have to consider a vacancy in the Supreme Court.

I would say to my friend, the distinguished chairman of the Judiciary Committee, we on this side of the aisle, as most all of the Senate, have the greatest respect for ARLEN SPECTER. We are very happy with the relationship he has with the ranking member, Senator LEAHY. They have a relationship that is going to allow us to get work done in the Judiciary Committee. They have respect and admiration for each other.

I always joke with Senator SPECTER that I am one of the people who have read his book—and I have read his book. But my feelings about the Senator from Pennsylvania have only increased in recent years, especially during the last few months when he has responded so well to the illness that he has. We are all mindful of the physical strength this man has. So anything we do in the Judiciary Committee is never disrespectful of the chairman of the Judiciary Committee.

I would say, I attended one of the press events, and I think there was only one, dealing with the Supreme Court, that we talked about today. It was not a battle royal. It was a very constructive statement that we all made.

We are hopeful and confident the President will follow through. Like Senator HATCH's relationship with President Clinton, it was a good way to do things. As a result of the work done with President Clinton and then Senator HATCH, we were able to get two outstanding Supreme Court Justices—Ginsburg and Breyer. No one can complain about the intellect or the hard work and what they have done for our country and for the Court.

We believe there should be advice and consent on all judicial nominations but at least on the Supreme Court. As the Senator from Pennsylvania said, the President a month ago indicated he was going to do that, and we, today, wanted to remind the President, in the letter we sent to him, that he should follow what he said before.

We look forward to a hearing. I have spoken to our ranking member, Senator LEAHY, and he is in the process of working with the Senator from Pennsylvania to come up with a protocol, how we proceed on Supreme Court nominations.

This is a very unusual time in the history of this country. We have gone more than 11 years without an opening in the Supreme Court. As a result of that, staff is not as familiar with how things have happened in the past, and most Senators were not even here when the Supreme Court vacancies were filled last time—at least many of the Senators.

So I say to my friend from Pennsylvania, we look forward to working with you and the administration if, in fact, there is a vacancy on the Supreme Court. And even if there is not a vacancy on the Supreme Court, I believe it is important that you and Senator LEAHY work toward a protocol so when

one does come up, it is not catchup time. I say if there is no Supreme Court vacancy, we look forward to working with you on the many things over which the Judiciary Committee has jurisdiction. We are confident your experience and intellect and love of the law will allow this body to be a better place.

Mr. SPECTER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts.

KARL ROVE

Mr. KERRY. Mr. President, last night in New York City, Karl Rove made some comments to the Conservative Party of New York that need to be discussed on this floor and for which an apology is needed.

None of us here will ever forget the hours after September 11, the frantic calls to our families after we evacuated the Capitol, the evacuations themselves, the images on television, and then the remarkable response of the American people as we came together as one to answer the attack on our homeland.

I remember being in a leadership meeting just off the Chamber here at the moment that the plane hit the Pentagon and we saw the plume of smoke. Then the word came from the White House that they were evacuating and that we should evacuate. I will never forget the anger I felt as we walked out of here, numbers of people running across the street, and I turned to somebody else walking with us and I said, ''We're at war.'' That was the reaction of the American people. That was the reaction of everybody in the Senate and Congress.

We drew strength when our firefighters ran upstairs in New York City and risked their lives so that other people could live. When rescuers rushed into smoke and fire at the Pentagon, we took heart at their courage. When the men and women of flight 93 sacrificed themselves to save our Nation's Capitol, when flags were hanging from front porches all across America and strangers became friends, it brought out the best of all of us in America. That spirit of our country should never be reduced to a cheap, divisive political applause line from anyone who speaks for the President of the United States.

I am proud, as my colleagues on this side are, that after September 11, all of the people of this country rallied to President Bush's call for unity to meet the danger. There were no Democrats, there were no Republicans, there were only Americans. That is why it is really hard to believe that last night in New York, a senior adviser, the most senior adviser to the President of the United States, is twisting, purposely twisting those days of unity in order to divide us for political gain.

Rather than focusing attention on Osama bin Laden and finding him or rather than focusing attention on just smashing al-Qaida and uniting our effort, as we have been, he is, instead, challenging the patriotism of every American who is every bit as committed to fighting terror as is he.

For Karl Rove to equate Democratic policy on terror to indictments or to therapy or to suggest that the Democratic response on 9/11 was weak is disgraceful.

Just days after 9/11, the Senate voted 98 to nothing, and the House voted 420 to 1, to authorize President Bush to use all necessary and appropriate force against terror. And after the bipartisan vote, President Bush said:

> I'm gratified that the Congress has united so powerfully by taking this action. It sends a clear message. Our people are together and we will prevail.

That is not the message that was sent by Karl Rove in New York City last night. Last night, he said: ''No more needs to be said about their motives.'' The motives of liberals.

I think a lot more needs to be said about Karl Rove's motives because they are not the people's motives. They are not the motives that were expressed in that spirit that brought us together. They are not the motives of a Nation that found unity in that critical moment—Democrat and Republican alike, all of us as Americans.

If the President really believes his own words, if those words have meaning, he should at the very least expect a public apology from Karl Rove. And frankly, he ought to fire him. If the President of the United States knows the meaning of those words, then he ought to listen to the plea of Kristen Brightweiser, who lost her husband when the Twin Towers came crashing down. She said:

> If you are going to use 9/11, use it to make this Nation safer than it was on 9/11.

Karl Rove doesn't owe me an apology and he doesn't owe Democrats an apology. He owes the country an apology. He owes Kristen Brightweiser and a lot of people like her, those families, an apology. He owes an apology to every one of those families who paid the ultimate price on 9/11 and expect their Government to be doing all possible to keep the unity of their country and to fight an effective war on terror.

The fact is, millions of Americans across our country have serious questions about that, and they have a right to have a legitimate debate in our Nation without being called names or somehow being divided in a way that does a disservice to the effort to be safer and to bring our people together. The fact is that mothers and fathers of service people spend sleepless nights now, worrying about sons and daughters in humvees in Iraq that still are not adequately armored. They are asking Washington for honesty, for results, and for leadership—not for political division. Before Karl Rove delivers another political assault, he ought to stop and think about those families and the unity of 9/11.

The 9/11 Commission has given us a path to follow to try to make our Nation safer. He ought to be working overtime to implement the provisions. We should not be letting 95 percent of our container ships come into our country uninspected. We should not be leaving nuclear and chemical plants without enough protection. Until the work is done of truly responding in the way that Kristen Brightweiser said we should, making America safer, using 9/11 for that purpose only, we should not see people trying to question the patriotism of Americans who are working in good faith to accomplish those goals.

Before wrapping themselves in the memory of 9/11 and shutting their eyes and ears to the truth, they ought to remember what America is really about; that leadership is not insult or intimidation, it is the strength of making America safe. And they ought to remember what their responsibility is to every single American, and they ought to just focus on the work of doing that. That is what Americans expect of us, and that is what is going to make this country safer in the long run.

I yield the floor.

Mr. JOHNSON. May I direct a question to my colleague from Massachusetts?

Mr. KERRY. I am happy to yield for a question.

Mr. JOHNSON. Is it your view that Mr. Rove understands that the men and women in uniform in Afghanistan and Iraq are Republicans and Democrats in political registration and political philosophy, but they are Americans working together to protect us, to protect our Nation?

As my friend from Massachusetts knows, my oldest son, a staff sergeant in the U.S. Army, served in combat—he is a Democrat—in Afghanistan and Iraq. There is no political division among those young men and women fighting and endangering their lives each and every day in those countries. They are responding to the call of their country, to endanger their lives. They fought heroically, Republicans and Democrats alike. For anyone to suggest that there are differences of motive about protecting America, about responding to 9/11, is beyond the pale. Do you believe Mr. Rove understands that or do you believe that he honestly thinks that the defense of this country is a partisan issue?

Mr. KERRY. Mr. President, let me say to the Senator, first of all, every one of us is proud of him and proud of his family and proud of the service of his son. I remember talking to the Senator from South Dakota about how he felt while his son was in harm's way. If ever there were a sort of clear statement about the insult of Karl Rove's comments, it is the question asked by the Senator. I don't know if Karl Rove understands that. His comments certainly do not indicate it. But I will tell you this: It raises the question of whether he is, as many have suggested, prepared to say anything for political purposes.

I think he owes your son. I think he owes every Democrat. I have been to Iraq. I met countless soldiers who came

up to me and said, ''I voted for you'' or people who said ''I support you'' or people who said they are just Democrats. This comment by Karl Rove insults every single one of them who responded to the call of our country, as did every Senator on this side of the aisle in voting to go into Afghanistan and in supporting the troops across the board. If we are going to get things done and find the common ground here, this is not the way for the most senior adviser to the President to be talking about our country.

I remember the storm created in the last week over the comments of a Senator. Here is a senior adviser to the President of the United States who has insulted every Democrat in this country, every patriot in this country who is trying to do their best to protect our troops and provide good policy to our Nation. To suggest there was a weak response, when we voted 98 to 0, is an insult to that vote and to the unity of the moment and to the words of his own President, and I think he owes an apology to your son and to all of those soldiers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are on the Energy bill at this moment and have put forth a unanimous consent that moves us forward. We have a finite list of amendments I will work with Senator JOHNSON on in the next few minutes. We are about to do a unanimous consent. Those who have amendments should come to the Senate so we can work out the time agreement as we work on the managers' package.

The majority leader is committed to finishing this bill tonight. If we line ourselves up and move in reasonable order with those amendments that will need votes, we might get out of here at a reasonable time. Other than that we could be here quite late.

I hope Senators who do have amendments remaining, and we have not worked them out, can work with us as we finalize the unanimous consent.

I am happy to yield.

Mr. DURBIN. I have one of those amendments. I am prepared to either discuss it or to wait until there is some agreement as to the order, sequence, and time of debate.

What would the Senator prefer?

Mr. CRAIG. I ask the Senator to hold for just a few moments until we work out a unanimous consent of order. We are about there. We have two or three Senators ready to go. We know of your concern and interest and the amendment to be offered. If the Senator withholds for a few moments, we can do that.

Mr. DURBIN. I thank the Senator.

Mr. CRAIG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, with the agreement of the distinguished manager, I ask for 10 minutes to speak on the subject of asbestos as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. SPECTER are printed in today's RECORD under ''Morning Business.'')

Mr. CRAIG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, we are now ready to proceed to continue, and hopefully within the next few hours finish this very important bill.

I ask unanimous consent Senator BAUCUS and Senator SCHUMER be recognized to offer amendment No. 810 and that there be 30 minutes equally divided in the usual form; provided further that following that time the amendment be temporarily set aside for Senator SUNUNU to offer amendment No. 873, and that there be 30 minutes for debate equally divided in the usual form. I further ask consent that following the use or yielding back of time, the Senate proceed to vote in relation to the amendments in the order offered with no second-degree amendments in order to the amendments and with 2 minutes equally divided for closing remarks prior to each vote.

Mr. DURBIN. Reserving the right to object, and I will not object, but I want to establish a spot in the queue. I have been waiting patiently for 2 days. I have said on the CAFE amendment I will be more than happy to allow Senators BOND and LEVIN to offer their alternative amendment at the same time, debate it at the same time, with an agreement on time limitation on debate, but my fear is we are going to drift into the night hours and drift away. I don't want that to happen.

I ask if the Senator would be kind enough to tell me what his intention is after we have completed these two amendments.

Mr. CRAIG. I appreciate the Senator's concern. He has every right to ask. The Senator is in the queue and on the list. We have worked out this tranche of amendments and we will now work to see when we can fit you in. I would hope sooner rather than later. So my advice would be to stick around.

Mr. DURBIN. Being on the Senator's list is as safe as being in a mother's arms.

Mr. SCHUMER. Reserving the right to object, as I understand it, the procedure precludes second degrees?

Mr. CRAIG. It does.

Mr. SCHUMER. The amendment I am going to offer—there is a friendly second degree that Senator KYL and I have agreed to.

As I understand it, Senator DOMENICI and his staff know of the Kyl amendment and approve of it. Senator KYL is on his way. If my colleague will yield, it is filed.

Mr. CRAIG. The Senator makes a good point.

I will withdraw the UC so we can get this solved. I would advise the Senator to start debating his amendment now, and let us see if we cannot resolve that. If you have opening remarks on your amendment, I believe this can be solved. I talked to Senator KYL on the issue. I will talk with staff, and we will move forward.

Is the Senator ready to proceed?

Mr. SCHUMER. I am. I do not have that much to say, and we limited the time. I do not want to finish before Senator KYL gets here. His staff has told him to get here. I guess I can talk about a lot of different subjects until he gets here.

Mr. CRAIG. I withdraw the UC for that purpose.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. First, Mr. President, I ask unanimous consent that following my remarks Senator KYL be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 810

Mr. SCHUMER. Mr. President, I rise today to offer an amendment with my colleague from Arizona to strike language from this Energy bill that would undermine years of progress toward combating nuclear terrorism in an effort to solve a problem that does not exist.

I want to repeat myself for the benefit of my colleagues. By weakening existing law, section 621 of this Energy bill would drastically undercut efforts to encourage reductions in the circulation of weapons-grade uranium and to defend against the specter of nuclear terrorism.

I have often said that the prospect of a nuclear attack on America's soil is our nightmare. That is why I, like many of my colleagues, have been so aggressive in pushing the administration to install nuclear detection devices in our ports, and to take other measures to make sure that nuclear materials cannot be obtained by terrorists and used against us. The human, environmental, and economic impact of such an attack on the United States—any part of our dear country—would be almost unfathomable.

So I urge my colleagues to contemplate that when they are examining what exactly the provision in the Energy bill would do. For years, we have prohibited what this provision of the Energy bill would allow.

The supporters of the language claim that it is necessary to avert an impending crisis in the supply of medical isotopes used in radiopharmaceuticals. A

look at the current isotope industry raises some serious questions as to whether that is what is really going on here. Isotope producers currently make isotopes for use in radiopharmaceuticals and other products by taking a mass of fissionable material, known as the fuel, and using it to shoot neutrons through another mass of fissionable material; that is, the target. Reactors have traditionally used highly enriched uranium, HEU, which can be used to make a nuclear bomb, for fuel and targets.

The Law that we enacted over 10 years ago, in the Energy Policy Act of 1992, has encouraged reactors to shift to low-enriched uranium. And the difference is very simple. It does the same medically, but it cannot be used to create a nuclear weapon. What we do in present law is require that any foreign reactor receiving exports of United States HEU, highly enriched uranium, work with our Government in actively transitioning to LEU, low-enriched uranium, the kind that cannot be used in bombs. It makes common sense, complete common sense. Why the heck would we want to encourage companies to have HEU?

Now, the language in the Energy bill undoes that. After 12 years of it working, after 12 years of everyone getting the medical isotopes they need, and after 12 years of moving countries away from HEU—highly enriched uranium, which bombs can be made from—to LEU, the language in the Energy bill needlessly and dangerously undercuts this requirement. What does it do? It exempts research reactors that produce medical isotopes from current U.S. law.

As our Nation continues to fight the war on terror, now is clearly the wrong time to relax export restrictions on bomb-grade uranium and potentially increase the demand for that material.

By increasing the amount of HEU in circulation around the world, the language in the Energy bill would create an unacceptable risk by heightening the possibility that weapons-grade uranium could be lost or stolen and fall into the hands, God forbid, of terrorists with known nuclear ambitions.

What makes this language even more astonishing is that it creates so much risk for no reward by claiming to fix a problem that does not exist. Supporters of the language argue we are in danger of running out of medical isotopes if the current law is not changed. All of the isotopes that can be produced with HEU can also be produced with LEU, which has no danger to us. And under current law, no producer has ever been denied a shipment of the material necessary to produce isotopes. Let me repeat that. No producer has ever been denied a shipment of the material necessary to produce isotopes.

In fact, the Department of Energy's Argonne National Laboratory has declared that the proposition that our supply of medical isotopes is in danger because LEU targets have not been developed is incorrect, and the U.S.-developed LEU target ''has been successfully irradiated, dissembled, and processed in Indonesia, Argentina, and Australia,'' a move from HEU to LEU because of our law.

Mr. President, I would like to be clear about one thing. I do not intend to trivialize in any way the plight of those suffering from illnesses overseas that require isotopes to treat. My colleagues and I who support this amendment take this point seriously and are unequivocally supportive of making sure that patients can get the medicine they need. In fact, if current law hindered the ability to get isotopes and treat the sick, maybe this debate would be different. But that is not the case.

Under existing law, medical isotope production capacity has grown to 250 percent of demand. Let me repeat that. Under present law, which the Energy bill seeks to change, medical isotope production capacity has grown to 250 percent of demand.

In addition, I repeat, no medical isotope producer has ever been denied a shipment of HEU as a result of the successful incentivization of efforts to convert to LEU.

Existing law guarantees continued use of HEU to produce medical isotopes until LEU substitutes are available, so long as the foreign producers cooperate on efforts to eventually convert to LEU.

For example, exports to Nordion, a Canadian producer, have never been affected by current law, and the company which is at issue here has several years' worth of material stockpiled at soon-to-be-operating reactors. Quite frankly, maybe we have given them too much access and made them complacent. Despite the efforts of the United States to operate in good faith and keep supplying Nordion, this company has decided to resist and slow-walk the conversion process to LEU.

Why? Because it may inconvenience them or cost them a few more dollars in the short run. So for one company, not an American company, we are going to increase the chances of nuclear terrorism by whatever amount with no benefit other than to that company because everyone is getting the isotopes. Maybe they can save a few dollars. If they think that the Senate is willing to risk a catastrophe for their convenience, they have another thing coming.

Existing law does not jeopardize an adequate supply of medical isotopes. Instead, it has been successful in enticing foreign operators to begin converting to LEU, thereby reducing the risk of proliferation.

The record shows that the program works. As a result of existing law, reactors in several nations have successfully instituted measures to convert to LEU. The Petten reactor in the Netherlands, where the major isotope maker Mallinckrodt produces most of its isotopes, will convert its fuel to LEU by 2006 because of incentives in the current law.

The Department of Energy has recognized the importance of this goal and the effectiveness of the program. Secretary Bodman has said we should set the goal of ending commercial use of weapons-grade uranium, and that the LEU allows great progress toward that end. The Department of Energy's Reduced Enrichment for Research and Test Reactors Program Web site states:

> This law has been very helpful in persuading a number of research reactors to convert to LEU.

So what we have here is an effort to undermine an existing program that has not had a negative impact on health care and has played a role in our fight against nuclear terrorism.

If the provision in the Energy bill does become law, make no mistake, it will create a proliferation risk. By increasing the amount of weapons-grade uranium in circulation, this bill would increase the likelihood that lost or stolen material would find its way into the wrong hands.

I know the list in this bill looks innocent enough with countries such as Canada, Germany, Belgium, the Netherlands, and France. However, four of these countries are members of the EU and subject to the U.S.-EURATOM Agreement on Nuclear Cooperation.

Under the agreement, these nations will not be required to inform the United States of retransfers of U.S.-supplied materials from one EURATOM country to another, report on alterations to U.S.-supplied materials, or inform the United States of retransfers of these materials from one facility in one country to another facility in that same country.

As a result, HEU could end up being directly sent to any of the 25 countries in the European Union, including those in which the Department of Energy is spending a considerable amount of money to remove existing HEU stockpiles.

So to my colleagues I say, if you support the language in the Energy bill, do not do it because of assurances that the countries the material is heading to are safe. In reality—in reality—we do not know this and cannot control where the material may end up. That is a terrifying thought.

In conclusion, the reality of this situation is that terrorists do not care if the weapons-grade uranium they can try to get their hands on was meant for a military or medical purpose. All we know they care about is how they can use it to attack our Nation and harm our way of life.

If we learned anything from the attacks on September 11, it should be that we can never again afford to underestimate the ingenuity or determination of those who would cause us harm. Likewise, we must take every step to ensure that they can never lay their hands on the materials they would need to launch an attack of mass destruction against the United States.

Mr. President, a needless risk is a reckless risk, and that is exactly the type of risk the language in the Energy bill lays before us. I urge my colleagues to support the existing law that has effectively combated nuclear proliferation without degrading the quality of health care in the United States by voting for my amendment, along with the friendly second-degree amendment that my colleague from Arizona, I believe, will offer.

Mr. President, under the unanimous consent agreement, I now yield to my colleague from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank you. I think what we are going to be able to agree to is that after the proponents and opponents of the Schumer amendment have concluded their debate, we will have an up-or-down vote on the Schumer amendment. In either event, I believe we could at that point get a unanimous consent agreement that the study and report called for in the Kyl second-degree amendment could be voted on by voice vote.

But until Senator BOND is available to confirm that, we do not need to propound that particular request. So we should simply go ahead with the debate on the underlying Schumer amendment. Given the fact that Senator SCHUMER just spoke in favor of that, let me simply take about 2 minutes to second what Senator SCHUMER did and then turn time over to an opponent of the amendment, perhaps the Senator from North Carolina.

Mr. CRAIG. Mr. President, will the Senator from Arizona yield?

Mr. KYL. Yes.

Mr. CRAIG. Mr. President, as we tried to craft the UC, we gave this issue of the Schumer amendment 30 minutes. So I would hope we could keep in the spirit of 15 and 15 so we can keep ourselves on track this evening. So the opponents would have 15 minutes, as we finish fashioning this UC.

Mr. KYL. If I could, Mr. President, just inquire of the manager of the bill, we don't have a set 30 minutes yet, but that is the desire; is that correct?

Mr. CRAIG. We are hoping that adds in.

Mr. KYL. Mr. President, let me take a moment to say that I totally agree with Senator SCHUMER that we need to restore existing law in this area. The reason is because highly enriched uranium is used to build bombs. We want to be very careful how we export that. In the case of the production of medical isotopes, we do need to export it because that is all that is available right now to produce medical isotopes in relatively large quantities. Low enriched uranium for a target for these isotopes is a process that scientifically works. We are trying to work out whether or not it can happen on a large-scale production basis. Current law says we will continue to export highly enriched uranium as long as the recipient of that highly enriched uranium is working with the United States cooperatively to try to get to the production of these isotopes with low enriched uranium. That is a goal that I think everybody agrees with. We need to have that incentive so that when we export this, we are exporting it to somebody that is cooperating with us.

What the Energy bill did was to eliminate that requirement of cooperation. It is stricken from the language. That is wrong. If we want an incentive for people to continue to work with us, we have to retain the existing law's language. That is why the Schumer amendment is critical, to ensure that we can both continue to produce these medical isotopes, but also to do so in a way that does not proliferate highly enriched uranium around the world.

The manufacturer of this product in Canada has enough of this material right now to build a couple of bombs. In Canada that is probably OK, as long as they continue to cooperate with us. But you eliminate that requirement of cooperation, all of us will have a real problem on our hands. Were something bad to happen, each one of us would be responsible for that. That is the reason the Schumer amendment is so important.

My second-degree amendment, if it is agreed to, simply requires a study and report to us about the status of the development of this technology, whether it is cost beneficial and whether it is scientifically achievable.

With that, let me yield the floor to an opponent of the amendment.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from North Carolina.

Mr. BURR. Mr. President, I rise in opposition to the Schumer amendment. Let me compliment Senator KYL for his willingness, over the last 24 hours, to try to bring assurances, through some consensus legislation, of where we both agree we need to get to, that we had language that would do it. We do have a slight disagreement because I believe the language that is in the bill does meet the move towards low-enriched uranium. I believe that the health of the American public should be at the forefront of our consideration. Because if, in fact, we adopt a policy that eliminates the availability of radiopharmaceuticals, then we have greatly affected the diagnostic capabilities that exist, that technology has created over the last decade and, in many cases, the treatments for cancer. An interruption that happened from even the Canadian source before meant that doctors were rationed on what they could receive in radiopharmaceuticals. We know how fragile this is because we are reliant on reactors outside this country for those radiopharmaceuticals.

Senator KYL and, hopefully, Senator SCHUMER agree that when this is all decided—and I hope it is decided with the language that the entire Energy Committee worked on and what is in the House language and has been there—when it is all said and done, I hope we find a way to either get the Department of Energy or somebody to begin to produce low-enriched uranium in this country. It is an awful policy that we still turn outside the country for those reactors to produce the medical isotopes, but there is a rich history of that. The Department of Energy has looked at this since 1992. They looked at Los Alamos and using the reactors there to begin to make low-enriched uranium. Then they looked at Sandia. Then they talked about privatizing Sandia. The net result was, in the year 2000, the Department of Energy came to the conclusion that they were going to disband this effort, that they couldn't figure out how to do it. The fact is, there is not a lot of profit generated from it. But this is clearly a treatment that will grow as researchers find new tools for it.

I know there is an attempt to try to address a time limit here, but I am not sure that we can put a time limit on all the patients in America that are relying on the decision we are going to make tonight. We would spend a lot more time on individual health bills.

Nuclear medicine procedures using medical isotopes are heart disease, cancer, including breast, lung, prostate, thyroid and non-Hodgkin's lymphoma, and brain, Grave's disease, Parkinson's, Alzheimer's, epilepsy, renal failure, bone infections. Our ability to take radioisotopes and send them to an organ, where now we can see that organ without an incision, without opening a person up, a noninvasive way to determine exactly what is happening in the human body and, on the oncology side, a way to treat cancers, when we can take the chemotherapy product and send it right to where we want those cells to be killed.

I would like to submit, for the record, a letter from the Nuclear Regulatory Commission because they have commented on this language. I ask unanimous consent to print it in the RECORD.

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

U.S. NUCLEAR REGULATORY COMMISSION,
Washington, DC, June 3, 2004.

Hon. CHRISTOPHER S. BOND,
Chairman, Subcommittee on Transportation and Infrastructure, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to the letter of April 20, 2004, from you and Senator Inhofe, requesting information on the security measures employed by the NRC regarding the licensing and transport of high-enriched uranium (HEU).

As you noted in your letter, the NRC has twice provided comments on the provision related to export shipments of HEU used in medical isotope production (a letter signed by Chairman Meserve to Representative Tauzin, dated March 31, 2003, and a letter signed by me to the members of the Conference

Committee considering the differing versions of H.R. 6, the ''Energy Policy Act of 2003,'' passed by the Senate and the House of Representatives, dated September 5, 2003). The NRC continues to have no objections to the provision pertaining to the export of HEU targets for the production of medical isotopes by specified countries. The NRC continues to believe that the enactment of this measure could be of benefit in ensuring the timely supply of medical isotopes in the United States.

Additional information responding to your specific questions is provided in the Enclosure. If you have any further questions or comments, please feel free to contact me.

Sincerely,

NILS J. DIAZ.

Mr. BURR. They have been consulted. They are the agency that determines whether a license is granted. It was suggested that this is some willy-nilly program, that anybody who wants to send highly enriched uranium out to a reactor somewhere just simply does that, and hopefully we get back radiopharmaceuticals. That is not the case. This is a very stringent licensing program, where they apply to the Nuclear Regulatory Commission. They are instructed by the Atomic Energy Act as to the process they go through, currently in the law, that was written by Senator SCHUMER in 1992. Over the years, the interpretation of that provision has changed. Over the years, that has caused indecision at the Nuclear Regulatory Commission.

It was that indecision, that vagueness in the current law that Senator SCHUMER is attempting to strike and go back to provision in law that the Nuclear Regulatory Commission has said: We don't feel that we can successfully make this evaluation without you clarifying the parameters you want us to be in.

So in short, we asked the Nuclear Regulatory Commission to write us on the language and asked them if it cleared it up, asked them if, in fact, this gave them the proper direction from the Senate, from the Congress. This is the letter back from the Nuclear Regulatory Commission that says:

The NRC continues to have no objections to the provisions pertaining to the export of HEU targets for the production of medical isotopes by specified countries.

I know there are others anxious to speak. I have so much more to say. I see the chairman of the bill has stood and may have a unanimous consent request. I am not sure. But I would like to see if my colleague from Arkansas is prepared to speak in opposition to the Schumer amendment.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I would like to take a few moments. I rise to join the Senator from North Carolina in speaking in opposition to the Schumer amendment. I certainly am concerned that the amendment before us would remove a carefully crafted provision from the bill that seeks to ensure that Americans will maintain a reliable supply of medical isotopes or the radiopharmaceuticals used to diagnose and treat so many diseases. We are on the brink, all of us here, working hard to increase funding for the discovery of eliminating these diseases. In the meantime, being able to provide the hope to those who suffer from these diseases is so critically important.

These diseases include everything from heart disease to hyperthyroidism, Parkinson's disease, Alzheimer's, epilepsy, kidney failure, bone infection, brain cancer, lung cancer, prostate cancer, thyroid cancer, non-Hodgkin's lymphoma, and brain cancer—so many of these that plague the lives of Americans who can get some relief from the medical treatment that is provided by these medical isotopes.

At least 14 million Americans are diagnosed and treated with medical isotopes each year. While I believe America should continue in the vein of developing policies consistent with our nonproliferation goals, we must make sure that these and future patients do not lose access to the radiopharmaceuticals. We cannot move forward in a way toward nonproliferation and wrest the responsibility, not knowing full well what the future might be for these patients and their needs.

I support the provision in the underlying bill, as was mentioned by my colleague from North Carolina, that was carefully crafted in the committee to take into consideration all of these needs, making sure that we are recognizing the sensitivity and the caution that needs to exist and yet recognizing that the development of technologies and new information and medical treatments are something that are vital to these 14 million Americans.

The provision in the underlying bill permits the export of the highly enriched uranium used only for the production of the medical isotopes until a low-enriched uranium alternative is commercially viable and available. We know that those are also issues. We talk about the reimportation of those isotopes, making sure that the production of them is something that is going to continue in order to make sure that the access to these pharmaceuticals is available.

This provision is balanced, it is fair, and it is supported by the nuclear medicine community, including those in my home State of Arkansas. I urge my colleagues to vote against this amendment. Vote against it so that patients do not lose their access to these very necessary drugs.

I don't know that my colleagues have mentioned all of those in support of this effort: The American College of Nuclear Physicians, the American College of Radiology, the American Society of Nuclear Cardiology, the Council on Radionuclides and Radiopharmaceuticals, the National Association of Cancer Patients, the National Association of Nuclear Pharmacies, the Nuclear Energy Institute, and the Society of Nuclear Medicine.

We have an opportunity to stay on course with something that has been negotiated and very thoroughly vetted in the underlying bill that will keep us on the right track and make sure that these 14 million Americans and their families will continue to have the access to these pharmaceuticals that they need while we continue to work forward in the manner which we can to make sure that all of the safety and caution that needs to be there is there, will remain there, while we still enjoy the unbelievable technologies that have been discovered in recent medicine.

I thank the Senator from North Carolina for yielding. I do encourage my colleagues to rise in opposition to the amendment so that we can go back to what is in the underlying bill. I think it will prove well for all of those who suffer from many diseases that we can treat with these medical isotopes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will attempt to offer a unanimous consent now that will finalize action on the Schumer amendment and move us to the Sununu amendment.

I ask unanimous consent that Senator SCHUMER be recognized to offer his amendment No. 810 and that there be—there has already been approximately 30 minutes of debate on this. I ask for another 30 minutes, and I would hope that my colleagues would use it wisely and judiciously or we will be here until early tomorrow morning, that 30 minutes be equally divided in the usual form; provided further that following that time, the amendment be temporarily set aside for Senator SUNUNU to offer amendment No. 873, and that there be 30 minutes for debate equally divided in the usual form. I further ask consent that following the use or yielding back of time, the Senate proceed to votes in relation to the amendments in the order offered, with no second-degree amendments in order to the amendments, and with 2 minutes equally divided for closing remarks prior to each vote; provided further that following the vote in relation to the Schumer amendment, the Kyl amendment, No. 990, as modified, be considered and agreed to.

Finally, Senator BOND will be allocated 7 minutes prior to the vote on or in relation to the Schumer amendment. That will come out of the 15 minutes allocated of the 30 for debate on the Schumer amendment.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object, so long as the unanimous consent agreement did not say that the last word was Senator BOND. The last word is ordinarily reserved for the proponent of the amendment.

Mr. CRAIG. That is the intent. It is just to secure for Senator BOND 7 minutes of debate on the Schumer amendment prior to the vote.

Mr. KYL. Further reserving the right to object, would the manager of the bill

at this time have an estimate—we will temporarily lay this aside for the presentation of another amendment and then back to this amendment and, with the 30 minutes, presumably, we would be voting at about 6 o'clock, or thereabouts; is that correct?

Mr. CRAIG. That is correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized.

AMENDMENT NO. 810

Mr. SCHUMER. Mr. President, I call up my amendment No. 810.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York, [Mr. SCHUMER], proposes an amendment numbered 810.

Mr. SCHUMER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To strike a provision relating to medical isotope production)

Beginning on page 395, strike line 3 and all that follows through page 401, line 25.

Mr. SCHUMER. Mr. President, I will let some of the opponents speak now, since I have spoken, unless my colleague from Arizona would like to speak. We could have some of the opponents go.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I will speak very briefly in opposition to the Schumer amendment.

Since 1971, there have been more than 45 million successful shipments of radioactive materials. And the Nuclear Regulatory Commission tracks and licenses all of these statements of medical isotope production. The NRC takes its job very seriously. This is a phenomenally safe track record that we are involved in.

My colleagues from North Carolina and Arkansas have talked of the tremendous importance of being able to have adequate supplies of radioisotopes. Doctors conduct 14 million procedures each year in the United States using medical isotopes to diagnose and treat cancer, heart disease, and other serious sicknesses. The Senator from North Carolina has clearly laid out why this language is in this bill, and it is important.

Mr. President, hundreds, of thousands of Americans depend on medical isotopes to diagnose and treat life-threatening diseases.

It is also a fact that we do not produce these isotopes in the United States. We must ship enriched uranium to producers in Canada and Western Europe that produce the isotopes and return them to hospitals in the United States.

Yet some of my colleagues ask: Why must we ship these isotopes internationally at all? Does this pose security risks?

My answer: An emphatic no!

Let me explain why . . .

It is understandable to be concerned about the shipment of enriched uranium outside of the United States. And, of course, I share your concern. But it is important to recognize that these shipments are safe and secure.

The U.S. Nuclear Regulatory Commission tracks and licenses all of the shipments for medical isotope production. The NRC takes its job very seriously.

The shipments are carefully tracked by the NRC and corresponding agencies in Canada and Western Europe throughout their journey. They are subject to the same sort of strict guidelines in these countries that they are under in the United States.

Since 1971, there have been more than 45 million successful shipments of radioactive materials. Shippers, State regulators, government agencies, and international organizations carefully handle and track each and every shipment—time after time. The result: The isotopes can do what they are made for—fight deadly disease.

Doctors conduct 14 million procedures each year in the United States using medical isotopes to diagnose and treat cancer, heart disease and other serious sicknesses. We must ensure a reliable supply of medical isotopes so that doctors can carry out these procedures.

The diagnosis and treatment of diseases like cancer, heart disease and other dreaded diseases depend on radiotherapy using medical isotopes. Doctors and patients depend on a stable supply of medical isotopes.

That supply depends on the assurance that these isotopes are transported safely and securely. And they are. But the NRC must have the tools it needs to carry out its mission.

This bill before us today helps the NRC to effectively license these shipments so that supply of medical isotopes is there when we need them.

I urge my colleagues to support this important and timely legislation as written, to insure a reliable supply of isotopes to help treat and diagnose heart disease; cancer, including breast, lung, prostate, thyroid cancer, Non-Hodgkin's Lymphoma, and brain; Grave's Disease (hyperthyroidism); Occult infection (in AIDS); Parkinson's Disease; Alzheimer's Disease; Epilepsy; Renal (kidney) Failure; and Bone Infections.

I yield the floor and ask my colleagues to oppose the Schumer amendment.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I was not on the floor when the unanimous consent request was proposed. It is not typical to have 7 minutes on the other side and only 1 for us right before the amendment.

I ask unanimous consent that 7 out of our 15 minutes be used right before the vote on the Schumer-Kyl amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I will speak for a moment. I am responding both to the senior Senator from Idaho and also the Senator from Arkansas. The Senator from Idaho is correct. Under existing law, we have had numerous shipments since 1992, and we have been producing these medical isotopes, and everything has been fine. That is what the Schumer amendment seeks to do—to ensure that the existing law is in place. So that condition the Senator from Idaho spoke to is precisely the good condition that would prevail if the Schumer amendment is adopted and we return to existing law.

The problem is that an amendment was inserted in the Energy bill in committee which strikes existing law and eliminates the requirement that the recipient of this highly enriched uranium provide assurances to the United States that it is cooperating with us to move to a low-enriched uranium target. That is everybody's goal. Nobody disagrees with that goal.

But because of that amendment, we would no longer have the assurance that we could eventually get off of highly enriched uranium—which is used to build nuclear bombs—and get to low-enriched uranium. This is a proliferation issue, not a medical issue. That is what I say to the Senator from Arkansas.

There is no suggestion that there is going to be any lack of medical treatment as a result of the existing law. Since 1992, we have had medical isotopes available for treatment, and we are going to have them available in the future. There is nothing in existing law that takes away from that. There is an attempt by somebody to scare people into believing that somehow or another the existing law—in effect since 1992—is somehow going to result in a lack of medical isotopes. That is false, and it is pernicious. Whoever is trying to spread this notion should not do that because it will scare people into thinking there are not going to be medical isotopes available for treatment. Nothing could be further from the truth. Existing law has worked. Not once has an export license been denied. So let's forget this scare tactic. We are going to have the medical isotopes that we need.

The real question here is proliferation. We have had a law that has worked very well since 1992. We are trying to move toward low-enriched uranium. Listen to what the Secretary of Energy has had to say about this. In a speech delivered on April 5, Secretary Samuel Bodman said:

We should set a goal of working to end the commercial use of highly enriched uranium in research reactors.

The availability today of advanced, high-density low enriched uranium fuels allows great progress toward this goal.

The Department of Energy's Reduced Enrichment for Research and Test Reactors program Web site states:

This law has been very helpful in persuading a number of research reactors to convert to LEU.

That is existing law, which we want to retain. Why would we want to strike the one provision in existing law that helps us to achieve this goal? The provision that says that the recipient of this highly enriched uranium has to provide assurances to the United States that it is cooperating with us toward this goal—something is going on here, Mr. President, and it is not good.

Let me also say, with regard to this myth about the lack of medical isotopes, the fact is that DOE's Argonne National Laboratory characterized this very claim as a ''myth,'' adding that the U.S.-developed low-enriched uranium foil target ''has been successfully irradiated, disassembled, and processed in Indonesia, Argentina, and Australia.'' Furthermore, HEU exports for use as targets in medical isotope production are not prohibited under current law, and no such export has ever been denied under that law, as I said. Current law is intended to encourage conversion to low-enriched uranium, which can't be used to make nuclear bombs. But in no way does it prohibit the export of highly enriched uranium. We are not at the technological stage where we can mass produce through low-enriched uranium.

The bottom line is this: Current law has been working, as the Senator from Idaho so eloquently noted. It provides the medical isotopes we need. No export license has ever been denied. Recently, the Secretary of Energy made the point that we are trying to convert, eventually, to low-enriched uranium, and the current law that requires recipients of highly enriched uranium to work with us toward that goal has worked very well toward this end.

Why would we eliminate that requirement of cooperation, when we are trying to make sure that this highly enriched uranium doesn't proliferate around the globe? As I said, a company in Canada that is currently working with us has enough of this stuff for two bombs. It would not be a good idea for us to allow further proliferation of highly enriched uranium around the world when we are concerned about terrorists getting a hold of a nuclear weapon. Let's keep the law in place. I urge my colleagues to support the Schumer amendment.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, I have all the respect in the world for my colleague, Senator KYL. I think it is reasonable in life that two people can disagree on what something says.

In this particular case, an entire committee looked at it, the Nuclear Regulatory Commission. When the question is asked, Who asked for change? the answer is simple: The Nuclear Regulatory Commission. This is with over 10 years of working with the current language. And as time has gone on and technology has changed, and as the requirement for the size of what we needed in radioisotopes has changed, it was the Nuclear Regulatory Commission that, in fact, suggested they needed Congress's help.

Let me address the last fact Senator KYL brought up. One, only Argentina currently produces medical isotopes using LEU target technology, which is unable to even meet the current needs in Argentina medical community. Indonesia has ceased any further testing of the U.S.-developed LEU through the technical obstacles. We all want low-enriched uranium. After this is over, I hope this body will take on that challenge, the challenge of domestically producing medical isotopes and the Department of Energy will probably have a hold of the tiger that we give them when we instruct the Department to go back to what they dropped in 2000, after they have reviewed it, and look at our reactors here and how we accomplish production, whether we can make money at it or not.

I want to go back to health, though. Some have suggested that health is not important. Health is important. I list it up here on the chart. Annually, over 14 million nuclear medicine procedures are performed in the United States that require medical isotopes manufactured from highly enriched uranium. Patients and doctors in the United States are 100 percent reliant on the import of medical isotopes that are used with highly enriched uranium. That is a fact. Every day, over 20,000 patients undergo procedures that use radiopharmaceuticals developed to diagnose coronary artery disease and assist in assessing patient risk for major cardiac-related deaths, such as strokes.

This is not just what we treat; this is what we prevent from happening through this diagnostic tool. The CDC estimates that 61 million Americans—almost one-fourth of the U.S. population—lives with the effects of stroke or heart disease, and heart disease is the leading cause of disability among working adults.

Medical isotopes are one of the tools used to diagnose and treat many forms of cancer, as we have listed. Medical isotopes are also used to help manage pain in cancer patients, such as decreasing the need for pain medication when cancer spreads or metastasizes to the bone. Thyroid cancer. Radiopharmaceuticals are used to diagnose and treat thyroid disorders and cancer which, according to the American Cancer Society, is one of the few cancers where the incident rate is increasing.

Mr. President, we are talking about dealing with real health problems that are on the rise, and technology can come up with new treatments. But that treatment is held in limbo until we decide. Non-Hodgkins lymphoma is the fifth most common cancer in the United States. According to the American Cancer Society, approximately 56,000 new cases of non-Hodgkins lymphoma will be diagnosed in the year 2005. The voice of proliferation, Alan Kuperman, of the Nuclear Control Institute, said this about the language that is currently in the Energy bill:

This provision is not controversial and, thus, likely to remain in the energy bill when and if it is enacted.

He went on to say:

Ironically, an amendment originally drafted to pave the way for continued HEU exports [which is his interpretation, not that of the committee] for isotope production may have the unintended consequences of terminating them.

That is exactly the opposite of what those who suggest the need for this amendment is. Even the person who is the most outspoken in this country says: You know what. What the Energy Committee has done will force us into the use of low-enriched uranium.

In fact, this tells me from the person who is the most outspoken that our committee has done exactly what we attempted to do. We have written exactly the right language.

Without a secure and permanent supply of medical isotopes, it is unlikely that new nuclear medicine procedures will be researched or developed. If, in fact, we suggest we will cut off this source, why would any researcher around this country look at how to further what they can do with medical isotopes?

My colleague from Arkansas stated it very well. This is not just Members of the Senate who are suggesting we have read the language and it is right; it is the American College of Nuclear Physicians, the American College of Radiology, the American Society of Nuclear Cardiology—and the list goes on. Every Member can see it. Can this many health care professionals be wrong?

Separate this, as Senator KYL suggested. This is a proliferation issue, and it is a health issue. As to the health issue, I do not think anybody questions the value of this product for the health of the American people.

There is no better gold standard on deciding whether an application or license should be approved than the Nuclear Regulatory Commission. The Nuclear Regulatory Commission is still in charge of this process. That has not changed. It will not change. If it is a national security risk, it will not just be the Nuclear Regulatory Commission that screams, it will be the Government—the House and Senate, the White House—that screams.

The PRESIDING OFFICER. There is 7 minutes remaining to the opposition which has been allocated to Senator BOND.

Mr. BURR. Mr. President, I want to maintain the 7 minutes for Senator BOND. I thank Senator KYL for the gracious way we tried to negotiate. I think it is unfortunate that we have not. I urge Senators to defeat this amendment. Protect the patients.

Mr. CRAIG. Mr. President, how much of that time remains of the window of 7 minutes for the Schumer side?

The PRESIDING OFFICER. There is 10 minutes remaining on the Schumer side.

Mr. CRAIG. A total of 10.

Mr. KYL. Mr. President, let me use part of that 3 minutes right now to ask unanimous consent to print in the RECORD a statement and a letter from the Physicians for Social Responsibility, dated June 20, 2005. I ask unanimous consent that this material be printed in the RECORD.

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

STOP THE PROLIFERATION OF WEAPONS-GRADE URANIUM

SUPPORT THE SCHUMER AND KYL AMENDMENTS TO THE ENERGY BILL

Senator SCHUMER and Senator KYL intend to offer amendments (Amendments 810 and 990, respectively) to the Energy Bill to eliminate language that would undermine U,S. efforts to encourage reductions in the circulation of weapons grade uranium. Senators SCHUMER and KYL urge their colleagues to support these amendments, which will maintain current restrictions on the export of bomb-grade uranium and reduce the possibility that nuclear material will wind up in terrorists' hands.

Isotope producers currently make isotopes for use in radiopharmaceuticals and other products by taking a mass of fissionable material, known as fuel, and using it to shoot neutrons through another mass of fissionable material, the target. Reactors have traditionally used highly enriched uranium (HEU), which can be used to make a nuclear bomb, for fuel and targets. Language in the Energy Policy Act of 1992 has encouraged reactors to shift to low-enriched uranium (LEU), which cannot be used to create a nuclear weapon, by requiring any foreign reactor receiving exports of U.S. HEU to work with the United States in actively transitioning to LEU.

Section 621 of the Energy Bill dangerously undercuts this requirement by exempting research reactors that produce medical isotopes from current U.S. law. It would weaken efforts to reduce the amount of weapons-grade uranium in circulation around the world and reward producers that have been most resistant to complying with U.S. law. It would do so by allowing facilities to avoid ever having to move to an LEU ''target'', even if it is technically and economically feasible to do so. This is in direct contradiction to Secretary of Energy Bodman's call to ''set a goal of working to end the commercial use of highly enriched uranium in research reactors.''

As our nation continues to fight the War on Terror, now is clearly the wrong time to relax export restrictions on bomb-grade uranium and potentially increase the demand for that material. Not only does the language in the Energy bill pose a threat to national security, it seeks to fix a problem that does not exist. Supporters of the language argue that we are in danger of running out of medical isotopes if current law is not changed. No producer has ever been denied an export license for HEU to be used in medical isotope production because of the restrictions in the 1992 Energy Policy Act. Indeed, all that a facility must do to continue to receive these exports is work in good faith with the United States on eventual conversion to LEU when it is technically and economically feasible. This is not an unreasonable standard, it does not jeopardize our supply, and it is, as intended, encouraging conversion.

Senator SCHUMER plans to offer a first degree amendment to strike section 621. Senator KYL will second degree his amendment with a requirement for a study. The rationale is that it is prudent to conduct a comprehensive study before we even consider lifting the restrictions, as opposed to after lifting them, as the Energy bill language would do.

MEDICAL ISOTOPE PRODUCTION: MYTHS AND FACTS

Myth: Our supply of medical isotopes is in danger because LEU targets have not been developed, and an adequate supply of medical isotopes cannot be produced with LEU.

Fact: The Department of Energy's Argonne National Laboratory characterizes this claim as a ''myth,'' adding that the US-developed, LEU foil target ''has been successfully irradiated, disassembled, and processed in Indonesia, Argentina, and Australia.'' Furthermore, HEU exports for use as targets in medical isotope production are not prohibited under current law, and no such export has ever been denied under that law. Current law is intended to encourage conversion to low-enriched uranium, which cannot be used to make a nuclear bomb. It is working without jeopardizing our supply of medical isotopes.

Myth: Section 621 has broad agency support.

Fact: The fact is that the United States has a long-established policy of reducing HEU exports. In a speech delivered on April 5th, Secretary of Energy Bodman stated, ''We should set a goal of working to end the commercial use of highly enriched uranium in research reactors. The availability today of advanced, high-density low-enriched uranium fuels allows great progress toward this goal.'' The Department of Energy's Reduced Enrichment for Research and Test Reactors program website states, ''This law has been very helpful in persuading a number of research reactors to convert to LEU.''

Myth: Existing law needs to be weakened to ensure a reliable supply of medical isotopes for use in medical procedures.

Fact: Under existing law, medical isotope production capacity has grown to 250% of demand. In addition, no medical isotope producer has ever been denied a shipment of HEU as a result of the successful incentivization of efforts to convert to LEU. The Schumer-Kyl amendments would guarantee continued use of HEU to produce medical isotopes until LEU substitutes are available, so long as foreign producers cooperate on efforts to eventually convert to LEU when possible. For example exports to Nordion, a Canadian producer, have never been affected by current law and the company has several-years worth of material stockpiled at soon-to-be-operating reactors.

Myth: Weakening existing law will not create a proliferation risk.

Fact: Weakening existing law will increase the amount of HEU in circulation and the frequency with which it is transported, resulting in a greater proliferation risk of loss or theft. For example, Section 621 exempts five countries from current law restrictions, including four members of the European Union. These four nations would be subject to the requirements of the U.S.-EURATOM Agreement on Nuclear Cooperation. Under the EURATOM agreement, EURATOM countries are not required to inform the U.S. of retransfers of U.S.-supplied materials from one EURATOM country to another, report on alterations to U.S.-supplied materials, or inform the U.S. of retransfers of these materials from one facility in one country to another facility in that same country. As a result, HEU could end up being indirectly sent to any of the 25 countries in the European Union including those in which the Department of Energy is spending a considerable amount of money to remove existing HEU stockpiles.

Myth: Existing law has not been effective in decreasing the risk of proliferation.

Fact: As a result of existing law, reactors in several nations have successfully instituted measures to convert to LEU. For example, the Petten reactor in the Netherlands, where the major isotope maker Mallinckrodt produces most of its isotopes, will convert its fuel to LEU by 2006 because of incentives in the existing law. The Department of Energy's Reduced Enrichment for Research and Test Reactors program website states, ''This law has been very helpful in persuading a number of research reactors to convert to LEU.''

PHYSICIANS FOR SOCIAL RESPONSIBILITY,
Washington, DC, June 20, 2005.

U.S. Senate,
Washington, DC.

DEAR SENATOR: Physicians for Social Responsibility (PSR), representing 30,000 physicians and health professionals nationwide, is writing to urge you to reject a provision in the Energy Policy Act of 2005 (Section 621 of the nuclear title, ''Medical Isotope Production'') that would seriously weaken export controls on highly enriched uranium (HEU), the easiest material for terrorists to use to make a nuclear bomb. As physicians and health care professionals, we support the use of medical isotopes, but this legislation is not necessary to ensure the supply of medical isotopes to U.S. hospitals and clinics. We urge you to support instead the amendment offered by Senators Chuck Schumer (D–NY) and Jon Kyl (R–AZ), which would retain current HEU export control provisions.

Under existing law, medical isotope production capacity has grown to 250 percent of demand. In addition, no medical isotope producer has ever been denied a shipment of HEU as a result of the successful incentivization of efforts to convert to LEU. The Schumer-Kyl amendment would guarantee continued use of HEU to produce medical isotopes until LEU substitutes are available, so long as foreign producers cooperate on efforts to eventually convert to LEU when possible. For example exports to Nordion, a Canadian producer, have never been affected by current law and the company has several-years worth of material stockpiled at soon-to-be-operating reactors.

Moreover, there is no shortage of medical isotopes. An April 2005 paper entitled ''Production of Mo–99 in Europe: Status and Perspectives,'' by Henri Bonet and Bernard David of IRE, a major producer of medical isotopes, reports both ''current production'' and ''peak capacity'' production by the major isotope producers at the major reactors used for isotope production. Nordion's current production is 40 percent of current world demand. The firms IRE and Mallinckrodt (Tyco-Healthcare), at Petten and BR–2, together currently produce 39 percent of current world demand. But their peak capacity production is 85 percent of current world demand. That means that IRE and Mallinckrodt, by themselves, could more than replace Nordion's entire current production.

In addition, the Safari reactor in South Africa currently produces 10 percent of current world demand. But its peak capacity is 45 percent of current world demand. That means that the South African reactor, by itself, could almost entirely replace Nordion's entire current production.

A final illustrative statistic is that worldwide peak capacity production today is 250 percent of current world demand. So, we do indeed have a surplus of production capacity. Worldwide production capacity is more than twice worldwide demand.

There is therefore absolutely no need to put Americans at risk of nuclear terrorist attack by loosening rules on international shipments of HEU. We would gain nothing from repealing the Schumer Amendment but an increased proliferation threat.

Existing law limiting U.S. HEU exports (Section 134 of the Atomic Energy Act, known popularly as the Schumer amendment) has been on the books for more than a decade, and there is no evidence that it has interfered in any way with the supply of medical isotopes in the past, or that it will suddenly begin to do so in the future. The law as it stands allows continued export of HEU to producers of medical isotopes, as long as they agree to convert to low-enriched uranium (which cannot be used as the core of a nuclear bomb) when it becomes technically and economically possible to do so, and to cooperate with the United States to bring that day closer. We strongly believe that this law has served our country well for more than ten years, drastically reducing commerce in potential bomb material while ensuring continued supplies of needed medicines, and that this is the right policy to maintain for the future. This law directly supports the call of Energy Secretary Samuel Bodman, made in a speech on April 5, to ''set a goal of working to end the commercial use of highly enriched uranium in research reactors.''

The purpose of Schumer amendment was to phase out HEU exports in order to reduce the risk of this material being stolen by terrorists or diverted by proliferating states for nuclear weapons production. The law bars export of HEU for use as reactor fuel or as targets to produce medical isotopes, except on an interim basis to facilities that are actively pursuing conversion to low-enriched uranium (LEU), a material that, unlike HEU, cannot be used to make a Hiroshima-type bomb. Because the United States has been the primary world supplier of HEU, the law provides a strong incentive for reactor operators and isotope producers to convert their operations from HEU to LEU. The law does not impose an unreasonable burden on isotope producers and indeed exempts them if conversion would result in ''a large percentage increase in the total cost of operating the reactor.''

This is entirely in line with administration policy. President Bush has repeatedly said that the deadliest threat facing the United States is that of terrorists armed with nuclear weapons. Repealing the Schumer amendment would make access to HEU easier, and thus a terrorist nuclear attack on an American city more likely. It is further likely that countries such as Latvia, Poland and Hungary would be allowed to receive retransfers of U.S. HEU, despite holding poorly safeguarded stocks of this material already. Once this material gets into the hands of terrorists, it is a relatively simple task to produce a crude nuclear weapon that could kill hundreds of thousands of people if exploded in a major city. It makes no sense to take action that would not make our medical isotope supply more secure, but would increase the terrorist threat to our cities.

The legislation on which you are about to vote would eliminate the Schumer amendment's legal restriction on supply of HEU to the main producers of medical isotopes and thereby dramatically reduce their incentives to convert from HEU to LEU. The likely result would be perpetual use of HEU by these isotope producers instead of the phase-out foreseen by current law. Worldwide, such isotope production now annually requires some 50–100 kg of fresh HEU, sufficient for at least one nuclear weapon of a simple design, or several of a more sophisticated design. (Each of the world's major isotope production facilities already requires annually about 20 kg of fresh HEU.) If conversion to LEU is derailed, the annual amount of HEU needed for isotope production is likely to grow in step with the rising demand for isotopes. Moreover, after the HEU targets are used and processed, the uranium waste remains highly enriched (exceeding 90 percent), and cools quickly, so that within a year the remaining HEU is no longer ''self-protecting'' against terrorist theft. Thus, substantial amounts of weapon-usable HEU waste accumulate at isotope production sites, presenting yet another vulnerable and attractive target for terrorists.

Contrary to its stated intent, section 621 would do nothing to ensure the supply of medical isotopes to the United States because that supply is not currently endangered by restrictions on exports of HEU. The United States now gets most of its medical isotopes from the Canadian supplier Nordion, which still produces such isotopes at its aging NRU reactor and associated processing plant. The Schumer Amendment does not block continued export of HEU for isotope production at this facility prior to its impending shutdown. In addition, Nordion has stockpiled four years' worth of HEU targets specially designed for its new isotope production facility, which is scheduled to commence commercial operation soon. Even in the unexpected circumstance that Nordion's isotope production were to cease, the United States could turn to alternate suppliers in the Netherlands, Belgium, and South Africa that currently enjoy excess production capacity.

We wish to underscore that the existing law does not discriminate against Canada or any other foreign producer. Indeed, in 1986, the U.S. Nuclear Regulatory Commission (NRC) ordered all domestic, licensed nuclear research reactors to convert from HEU to LEU fuel as soon as suitable LEU fuel for their use became available. The NRC recognized that prevention of theft and diversion of HEU from civilian facilities cannot be assured by physical protection and safeguards alone, but rather requires a phase-out of HEU commerce. The Schumer Amendment applied the same standard to foreign operators.

Supporters of the new legislation, like the Burr Amendment before it, such as the American College of Nuclear Physicians, have argued erroneously that the Schumer Amendment ''was not drafted with medical uses of HEU in mind.'' In fact, the approximately 500-word Schumer Amendment uses the word ''target'' nine times. Targets, in distinction to ''fuel,'' are used exclusively for the production of medical isotopes. Thus, it is readily apparent that the current law was drafted explicitly to include the HEU targets that are used in medical isotope production.

We also wish to underscore that conversion of isotope production from HEU to LEU is technically and economically feasible. Australia has produced medical isotopes using LEU for years. According to Argonne National Laboratory, the main consequence of Nordion converting from HEU to LEU would be to increase its waste volume by about ten percent. That is a small price to pay to eliminate the risk that this material could be stolen by terrorists and used to build nuclear weapons.

The main obstacle to Nordion converting its production process from HEU to LEU has been the company's refusal to pursue such conversion in good faith, as required by the Schumer amendment as a condition for interim exports of HEU. In 1990, Atomic Energy Canada, Ltd. (from which Nordion was spun off) pledged to develop an LEU target by 1998 and to ''phase out HEU use by 2000.'' Nordion and AECL failed to meet this target. During the last few years, to qualify for additional HEU exports, Nordion repeatedly has pledged to cooperate with the United States on conversion. However, Nordion stopped engaging in such cooperation more than a year ago.

The Schumer Amendment will never lead to an interruption in Nordion's ability to produce isotopes unless Nordion aggressively refuses to cooperate with U.S. policies designed to prevent terrorists from acquiring the essential ingredients of nuclear weapons. No company has a perpetual entitlement to U.S. bomb-grade uranium, and any such exports should be reserved for recipients who cooperate with U.S. law intended to prevent nuclear proliferation and nuclear terrorism.

During the past 25 years, an international effort led by the U.S. has succeeded at sharply reducing civilian HEU commerce. In 1978, the U.S. created the Reduced Enrichment for Research and Test Reactors (RERTR) program at Argonne National Laboratory. In 1980, the UN endorsed the conversion of existing reactors in its International Nuclear Fuel Cycle Evaluation. In 1986, the NRC ordered the phase-out of HEU at licensed facilities. Also in 1986, the RERTR program began work on converting isotope production. And in 1992, the Schumer amendment was enacted. All of these far-sighted efforts were undertaken well in advance of the concrete manifestation of the terrorist intent to wreak mass destruction that our country experienced on September 11, 2001. For Congress now to undermine this longstanding U.S. effort to prevent nuclear terrorism flies in the face of the Bush Administration's stated determination to protect our country from weapons of mass destruction.

For over forty years PSR physicians have dedicated themselves to protecting public health and opposing spread of nuclear weapons and material. We strongly oppose current efforts to repeal part of the Schumer Amendment to relax export controls on nuclear-weapon grade material because be believe that rather than ensuring the supply of medical isotopes, the main effect of section 621 would be to perpetuate dangerous commerce in bomb-grade uranium and increase the risk that this material will find its way into terrorist hands. We urge you to support the amendment offered by Senators Schumer and Kyl, maintaining important proliferation controls and safeguarding the medical isotope needs of Americans.

Thank you for your attention to this important national security matter. PSR physicians stand ready to provide further information upon request.

Sincerely,

JOHN O. PASTORE M.D.
President,
President Physicians for Social Responsibility.
ROBERT K. MUSIL, PH.D., MPH,
Executive Director and CEO,
Physicians for Social Responsibility.

Mr. KYL. Mr. President, I will quote a couple lines from this letter. I appreciate the comments of my colleague from North Carolina. I am tempted—I do not know if he is a poker player—to use that old phrase, ''I will see you one and call you here,'' talking about the number of people who are supportive. We have a letter from 30,000 physicians. That letter is in the RECORD and I will quote from it briefly.

The Physicians for Social Responsibility, representing 30,000 physicians and health professionals nationwide, is writing to urge support for the Schumer amendment and opposition to the language supported by the Senator from North Carolina.

As noted, the letter says:

As physicians and health care professionals, we support the use of medical isotopes, but this legislation—

Meaning the legislation in the Energy bill—

is not necessary to ensure the supply of medical isotopes to U.S. hospitals and clinics.

Under existing law, medical isotope production capacity has grown to 250 percent of demand. In addition, no medical isotope producer has ever been denied a shipment of HEU as a result of the successful incentivization of efforts to convert to LEU. The Schumer-Kyl amendment would guarantee continued use of HEU to produce medical isotopes until LEU substitutes are available, so long as foreign producers cooperate on efforts to eventually convert to LEU when possible.

It makes the point that under existing law, we have all the medical isotopes we need, but we also have something else. We have assurances from these producers that they are working with the United States to eventually try to move away from using highly enriched uranium, which makes nuclear bombs, and move instead to low-enriched uranium, when that is possible.

The essence of the Schumer amendment is to retain that law because the language that is in the bill right now eliminates that requirement of assurances. Why on Earth would we want to do that?

I urge my colleagues to support the Schumer amendment. I simply note that if there is any confusion, after the Schumer amendment is dispensed with, the Kyl second-degree amendment will be automatically voted on or adopted, and that provides for a study and a report to the Congress on the status of this situation so that instead of having competing claims by all of us, we will have a report upon which I think we can all rely to help guide us in the future. In the meantime, it seems to me only to make sense to keep current law in effect.

Mr. President, might I inquire if there is more than 7 minutes remaining on the Schumer side?

The PRESIDING OFFICER. There is precisely 7 minutes remaining on the Schumer side.

Mr. KYL. I leave it to the manager at this point to determine what to do.

Mr. CRAIG. Mr. President, I ask, consistent with the unanimous consent request, that we set the Schumer amendment aside for consideration of the Sununu amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. The Sununu amendment has 30 minutes equally divided allotted under the unanimous consent agreement.

The PRESIDING OFFICER. That is correct.

The Senator from New Hampshire.

AMENDMENT NO. 873

Mr. SUNUNU. Mr. President, I call up amendment No. 873.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. Sununu], for himself and Mr. WYDEN, proposes an amendment numbered 873.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To strike the title relating to incentives for innovative technologies)

Beginning on page 756, strike line 1 and all that follows through page 768, line 20.

Mr. SUNUNU. Mr. President, I am pleased to offer this amendment on behalf of myself and Senator WYDEN. This is a very comprehensive energy bill. As I have said before on this floor and outside this Chamber, I think it is probably much too comprehensive an energy bill; there is too much in it; it is too large; it spends too much money. There are authorizations. There is mandatory spending. We, unfortunately, voted to waive the budget limitations in our budget resolution earlier today. There is an $11 billion tax package that creates all manner of incentives and subsidies for producing energy.

It is time that we exercise just a little bit of restraint, and the amendment I offer this afternoon with Senator WYDEN would do just that in one particular area, and that is in the area of loan guarantees for building new powerplants.

We need a competitive energy sector including nuclear power, coal, gas, hydroelectric, solar, and wind. And we should do everything possible to establish a competitive marketplace that avoids trying to pick winners and losers in that energy production marketplace. Unfortunately, in too many areas, this bill fails to do so.

In particular, this title provides loan guarantees—taxpayer subsidized loan guarantees—for building new privately owned powerplants. That simply is not sound economic policy, sound fiscal policy, or sound energy policy. They could be coal plants. They could be nuclear plants. They could be renewable energy plants.

Over the course of the 5-year authorization in this bill, the Congressional Budget Office estimates that nearly $4 billion worth of loan guarantees will be offered at a cost to the taxpayers of $400 million. But the potential cost could be much higher because the Federal Government and the taxpayers would be on the hook for the full subsidy, the full cost of those loans.

The Congressional Budget Office says the following in their report on the Energy bill:

Under the bill, the Department of Energy could sell, manage, or hire contractors to take over a facility to recoup losses in the event of a default or it could take over a loan and make payments on behalf of the borrowers.

These are private sector borrowers.

Such payments could result in the Department of Energy—

That is the Federal Government and the taxpayers—

effectively providing a direct loan with as much as a 100-percent subsidy rate.

That just is not sound economic policy. The administration, through its budget office, states that ''the administration is concerned about the potential cost of the bill's new Department of Energy programs to provide 100 percent federally guaranteed loans for a wide range of commercial or near commercial technologies.''

Therein lies the heart of the problem. We are subsidizing, providing loan guarantees for privately owned and operated and profitable powerplants, whether coal or nuclear or renewable energy. It is not sound economic policy. Our amendment simply strikes this portion of the bill.

There is still $11 billion in tax subsidies to every conceivable kind of energy production. There is still an 8-billion-gallon mandate to purchase ethanol and it still contains a taxpayer subsidy for ethanol. This does not touch the electricity title. It does not touch the authorization for the clean coal technologies or fossil fuel research and development or other areas in the bill that provide subsidies to successful private companies. We are just trying to target this loan guarantee which just does not make any sense. It would be a new program. It is a terrible precedent, putting the taxpayers on the hook for billion-dollar loans to successful private profitable corporations.

I urge my colleagues to support this amendment. It is supported by a number of taxpayer groups concerned about the size and scope of Government—Taxpayers for Common Sense and National Taxpayers Union. It also is supported by the Sierra Club and a host of other environmental groups that are focused on good environmental policy as well as good energy policy.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I urge our colleagues to reject the Sununu-Wyden bill and support the Domenici-Bingaman bill. The provision the Senator seeks to strike is one of the most innovative and one of the crucially important parts of the legislation. As I will explain in a minute, it is not a free ride, and it costs the Government nothing. It scores at 0. It is constructed in conformance with the Federal Credit Reform Act.

Let me explain the amendment and, in doing so, I am doing it on behalf of the chairman of the committee, Senator DOMENICI. This is his idea. It is an idea to help us jump-start legislation which we have probably come to think of as a clean energy bill, as a bill which transforms the way we produce electricity in the United States, puts us on

a path toward low-carbon and no-carbon electricity, and involves, in doing so, using a number of new technologies, technologies that are not yet commercially proven.

For example, in our legislation, the Domenici-Bingham clean energy legislation, we talk about more efficient coal plants. We talk about carbon sequestration, a technology which has not yet been fully demonstrated. We talk about advanced nuclear plants, plants that are of the next generation of nuclear plants. We talk about new forms of solar. Solar has a very limited use in the United States, but there is some exciting new technology there. We talk about new biomass and hybrid cars, a technology which is just beginning to emerge.

One of the largest and most important of these new technologies is what we call IGCC, or clean coal gasification, the idea of using coal, of which we have hundreds of years supply, to turn it into gas. I will say more about that in a minute. We have higher efficiency natural gas turbines, a hydrogen economy. We are quite a bit away from there, and research and development is important for that.

We are excited about these incredible potential new technologies, and our goal here is to jump-start these technologies, get them into the marketplace—only new technologies, only technologies that are not commercially viable—and then we step back and get out of the way.

That is not just the idea of our Energy Committee, which voted 21 to 1 for a bill that contains this provision and heard a great amount of testimony, it is the idea, for example, of the bipartisan National Commission on Energy Policy, which pointed out that the energy challenges faced by the United States mean many new technologies and, unfortunately, ''both public and private investments in research and development, demonstration and early deployment of advanced energy technologies have been falling short of what is likely to be needed to make these technologies available in the time frames and on the scales required.''

We have since World War II invested in research and development. Half our new jobs since World War II, according to the National Academy of Sciences, have come from research and development. Our R&D, our scientific capacity, is our cutting edge advantage. If we do not, for example, help launch a handful of new clean coal gasification plants, if we do not, for example, invest in the next generation of nuclear plants, they either will not happen or they will happen so slowly that we do not get on the path we intend to be on.

In conclusion, let me point out exactly what we are talking about. This title is limited to technologies that are not commercial, that are not in general use. These technologies have to avoid reduced or sequestered air pollutants or manmade greenhouse gases, and the technology has to be new or significantly improved over what is available today in the marketplace.

In addition, this is not a free ride. The guarantees can only be for 80 percent of the cost of the project. The developers will share the risk.

More important, the program is constructed in accordance with the Federal Credit Reform Act and it costs the Government nothing. In every case, the cost of the guarantee has to be paid in advance. It could be done through appropriations, but that would have to be decided each time. But in most cases it will be done because the project sponsors will simply write a check to the Federal Treasury before the guarantee is issued. These payments are calculated based upon the risk that any one of the guaranteed loans might go into default—that always could happen—so that the amount collected will be sufficient to pay off that portion of the loans that do default.

In other words, it is in the form of an insurance premium that takes into account, actuarially, what the defaults might be should there be any.

This is not new. The Federal Credit Reform Act has been on the books since 1990. It applies across the Government, and I want to emphasize this key point: The provision scores at zero. Only if Congress later decides to appropriate money for the program will it cost anything.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, let me respond briefly just to a couple of points there. There was a lot of discussion at the end of Senator ALEXANDER's remarks about the credit law and scoring and the suggestion that this scores at zero.

This scores at zero cost, as we stand here on the Senate floor, because no loans have been issued. So, obviously, it scores at zero. To say that, and to suggest to the American taxpayers that there won't be any liability or any cost to this program is absolutely outrageous.

This is a program that does authorize, No. 1, no limit of the number of loans that could be offered; no limit in the total principal that could be put at risk. The Congressional Budget Office estimates $3.75 billion in loans over the 5 years. Yes, when you use our credit law, that would mean $400 million in appropriations. But to say it scores at nothing, as if this is a program with no cost or risk to the taxpayer, is absolutely misleading.

We need to be clearer about what this program really does and does not do. There are no limits on the number of projects, no limits on the principal that could be guaranteed, and it certainly does authorize a program that puts the taxpayers at risk.

At this time I yield to my cosponsor on this amendment, Senator WYDEN.

Mr. CRAIG. Mr. President, before the Senator from Oregon speaks, could I ask what time remains on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire has 8½ minutes; the time in opposition is 9½ minutes.

Mr. CRAIG. I thank the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. I ask unanimous consent to speak for up to 5 minutes and then allow my friend and colleague to conclude on behalf of the Sununu-Wyden amendment.

The PRESIDING OFFICER. Does the Senator from New Hampshire yield 5 minutes?

Mr. SUNUNU. I yield 5 minutes to the Senator from Oregon.

Mr. WYDEN. Mr. President, I rise in support of the Sununu-Wyden amendment to strike the so-called incentives title of this legislation because I believe this title is a blank check for boondoggles. The fact is, we are now at the point when some of the special interests in this country are going to be triple-dipping. They are going to get tax incentives as a result of the tax cut; they are going to get loan guarantees under the amendment of the distinguished Senator from Nebraska; and this amendment, this section that we seek to strike, offers additional loan guarantees.

These loan guarantees are not only costly, they are also risky. American taxpayers would be required, under title XIV, to subsidize as much as 80 percent of the cost of constructing and operating new and untried technologies. According to the Congressional Budget Office, the risk of default on these projects funded by guarantees is between 20 percent and 60 percent. The amendment that Senator SUNUNU and I offer today would block this unwise and risky investment and stop throwing good taxpayer money after bad.

I see our friend from Tennessee is here. He heard me discuss this to some extent in the Energy Committee. I have believed that this legislation is already stuffed with a smorgasbord of subsidies for various industries. As I touched on earlier, the buffet of subsidies is so generously larded that you are going to have industries in this country come back for seconds and even third helpings from this taxpayer-subsidized buffet table.

You look for examples: the Hagel amendment, which provides secured loan guarantees for virtually the same projects and technologies as title XIV loan guarantees; coal gasification, advanced nuclear power projects, and renewable projects receive up to 25 percent of their estimated costs for construction activity, acquisition of land and financing. There is no need to double the subsidies for these projects with the incentives under title XIV as well.

I want to be clear. I am not against incentives for new technologies. That is why, as a member of the Finance Committee, I supported the energy tax title that provides tax benefits for a variety of energy technologies, ranging

from fuel cells and renewable technologies to fossil fuel and nuclear energy. So I am already one who has voted, at this point in the debate, to say that we ought to have some incentives with respect to these promising industries.

But what concerns me is the double- and triple-dipping. There is an important difference between the tax incentives that I supported in the Finance Committee and the loan guarantees under title XIV. The tax incentives that were produced on a bipartisan basis in the Finance Committee reward those who produce or save energy. By contrast, the loan guarantees subsidize projects whether they produce energy or not.

As I mentioned, the Congressional Budget Office says there is a very substantial risk of failure. I might even be persuaded to go along with the 25-percent subsidy provided by the Hagel amendment to help kick-start new energy technologies, but I don't think it is a wise use of taxpayer money to provide up to an 80-percent subsidy for the very same projects that would also get a 25-percent subsidy under the Hagel amendment.

Just with that example alone, you are talking about some projects that would receive a subsidy of 105 percent.

With respect to who reaps the benefits from these extraordinary loan guarantees, we know a variety of interests would. In my area of the country, we still remember WPPSS, the nuclear powerplants where there was a huge default and we had many ratepayers very hard hit. Our ratepayers are still paying the bills for the powerplants that were planned years ago but were never built. Skyrocketing cost overruns led to defaults. The collapse shows that Federal loan guarantees are a gamble that taxpayers should not be forced to take.

I am very hopeful my colleagues will support the Sununu-Wyden amendment. At this point, I think it is fair to say that we have voted for multiple subsidies for a lot of the industries that we hope will help to some degree cure this country's addiction to foreign oil. But at some point the level of subsidies ought to stop. I urge my colleagues to support the amendment, and I yield.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I don't know that all has been said, but most nearly all has been said. Let me speak briefly about the Sununu amendment.

If I have heard it once I have heard it a lot of times in the last few years: Oh, we need new technology. We need innovation. We need clean energy. All of those kinds of things are at the threshold of the American consumer's opportunity: Sequestration of carbon, new nuclear technology, biomass, hybrid cars—some of those are beginning to enter the market—coal gasification—here we have a very large part of our energy being supplied by coal; we want to clean it up so we can continue to use it—high, efficient natural gas turbines, hydrogen, and on and on and on.

New technologies are wonderful, but sometimes it is very hard to get them started, get them into the marketplace, allow them to be mainstreamed, create the cost effectiveness, the duplication, and multiplying effects that occur in the marketplace. That is why, in working this major piece of energy legislation for our country, we looked at incentives. We also looked at assuring that we protect the American taxpayer, who is also now, because we failed over the last 5 years to develop an energy policy, being taxed at the pump higher than any of these incentives would ever tax them. Yet we have some who would suggest that this is simply the wrong approach—to add some incentive, to build guarantees, to do that which assures that we can mainstream a variety of these technologies, that we can become increasingly self-sufficient.

The Senator from Tennessee is right, and he has explained it very well. Many of these are scored as zero, not because the loan has not been made but because the cost of the guarantee is paid by the person taking out the loan.

So this is clearly, here, the right thing that is being done, and that does not mean that the Government of our country, our taxpayers, is ''off the hook.'' It doesn't mean that at all. It means right now they are on the hook and paying through the nose for high-cost energy because we have not done for the last 5 years what we are now trying to do in this bill, and that is to build a new marketplace, new opportunities, clean technologies, get them into the marketplace, get them working, mainstream them so America and American business can pick them up and make them available to the American consumer.

I think it is a very important amendment. If you are for the Energy bill as it is before us, you must vote no on the Schumer amendment. It guts the very underlying premise of the bill. It is not a double-dip, it is not a triple-dip, it is a slam-dunk to defeat and destroy a very valuable piece of legislation.

I hope my colleagues will oppose the Sununu amendment.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, first I apologize to my colleague, Senator SCHUMER of New York. It was just a slip of the tongue by the Senator from Idaho, I am sure. Senator SCHUMER may be in trouble if he is easily confused with me when he goes back home to New York.

Mr. CRAIG. I do apologize. I do know the difference, and I apologize.

Mr. SUNUNU. No offense taken, but I would say, lightheartedly, that you might wish to apologize to the Senator from New York.

If the owners of these powerplants were paying the risk premium, then the Congressional Budget Office would not estimate that in the year 2006 there will have to be $85 million in appropriated taxpayer resources to support this program; or, in 2007, $85 million; or 2008, $85 million; or 2009, $85 million; or 2010, $60 million. The owners of these powerplants are not picking up the risk. That money will have to be appropriated because there will be risks borne by the Federal Government, by the taxpayer, when these loans are issued. To suggest otherwise is to misunderstand how the program operates.

With regard to technology, let me close in response on this broad point of our concerns for technology. I also would like to see new and innovative technologies brought to the market. Only, when I talk about the importance of those new technologies, I then do not hesitate to say I have confidence in the engineers and scientists and investors and financial people, working in the solar industry and nuclear industry and coal industry, to continue to develop new ideas and new technologies. I am not so arrogant, as an elected representative, or someone here in Washington, to think that only someone working in the Department of Energy in Washington, DC, can know or understand what kind of technologies are deserving of a billion-dollar loan subsidy or a $500 million loan guarantee.

That is the problem with this kind of a program. It presumes that the only people who understand technology and innovation and how it might make a contribution to our energy markets and our environment reside in Washington. That is wrong.

We need more competitive markets. We need to do something about the costs of regulation, but we do not need to put the taxpayers on the hook for billions of dollars in loan guarantees for privately owned and operated powerplants that are operated by successful, profitable corporations. I wish them well, I want to see them compete, but I do not want to put taxpayers on the hook for the cost.

I urge my colleagues to support this amendment that is endorsed and supported by those concerned about the cost to the Federal budget as well as those concerned about the environment.

I yield back the remainder of our time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I would hope that timewise, all time could be used on the Sununu amendment, understanding there is still a minute to close at the time of the vote and that we can return now to the Schumer amendment. Senator BOND is on the Senate floor, and he could utilize his 7 minutes prior to Senator SCHUMER utilizing his 7 minutes in closure so we could bring these two amendments to a close and to a vote.

The PRESIDING OFFICER. The Senator yields back the time in opposition to the Sununu amendment?

Mr. CRAIG. We have no objection. I yield back time on our side.

AMENDMENT NO. 810

The PRESIDING OFFICER (Mr. DEMINT). There are now 7 minutes per side on the Schumer amendment.

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I urge my colleagues to oppose the amendment by Senator SCHUMER and Senator KYL to prevent cancer patients from getting the cancer medicine they need. Both Senator SCHUMER's first-degree amendment and Senator KYL's second-degree amendment would strip provisions we put in the Energy bill to ensure cancer patients continue to have a reliable and affordable source of cancer medicine. We cannot do this to our cancer patients.

Cancer is a scourge that affects millions of people across the Nation in each of our States and in many of our families. Cancer will strike over a million people this year, 30,000 in my home State of Missouri, and cancer will kill 12,000 Missourians this year. Cancer takes our mothers and fathers. Cancer takes our spouses, our children. But many people beat cancer.

Section 621 of the Energy bill will help people beat cancer. Cancer patients beat cancer with nuclear medicines, also known as medical isotopes, to diagnose and treat their cancer. Doctors use slightly radioactive forms of iodine, xenon, and other substances to help them find and diagnose breast cancer, lung cancer, prostate cancer, and other cancers. Doctors also use nuclear medicines to treat cancer patients fighting non-Hodgkin's lymphoma, thyroid cancer, and relieve cancer symptoms such as bone pain.

Andrew Euler, seen here, is a boy from the small town of Billings, MO, in my home State. Drew was 8 years old when cancer struck him. Drew's parents described the day the doctors told them that their son had cancer as the most horrific experience of their lives. The Eulers learned that cancer is the leading cause of death among children like Drew under 15 years of age. Thyroid cancer will strike 23,000 Americans this year and take the lives of 1,400 children and adults.

With the help from the fine cancer doctors at Washington University in St. Louis, Drew underwent surgery and received doses of nuclear medicine in the form of radioactive iodine to treat his cancer. Drew, I am happy to say, is now cancer free, living a normal teenage life of basketball, skateboarding, and swimming. Having good doctors and access to medicine is a blessing too many take for granted. Drew and many others across the country are alive today because of the nuclear medicine administered after his surgery.

Section 621 of the Energy bill, which Senator BURR and I authored, will ensure that cancer patients like Drew can continue to get and afford the cancer medicine they need.

This provision is needed because the Atomic Energy Act requires industry to change the way they make nuclear medicines. The law requires a shift from highly enriched uranium, HEU, to low enriched uranium, LEU. I have no problem with the switch. Indeed, our energy provisions encourage this switch. What I have a problem with is that current law makes no accommodation for supply disruptions or affordability. That means cancer patients might not get their medicine.

Currently, law was written that way to address fuel for nuclear reactors but is now being applied to nuclear medicine. It would force a premature switch in the nuclear medicine production process before we have a feasible and affordable alternative. That would mean cancer patients could not get the medicine they need at prices they could afford. Section 621 still requires a production changeover but not before we know that patients will retain affordable access to their medicine.

Unfortunately, well-meaning stakeholders want to strip this cancer medicine provision from the bill. Opponents of this provision somehow think that making the cancer medicine that helped cure Drew will help terrorists build a bomb, but that is simply not the case. The nuclear medicine production process is highly regulated by the U.S. Nuclear Regulatory Commission. Raw material shipments of HEU are conducted under strict Government requirements, including armed guards. These shipments go to Canada and back because no U.S. reactor is designed to make medical isotopes. We send HEU because that is the only raw material target that the Canadian reactor can accept.

In the post-9/11 world, we are obliged to take this concern seriously, check it out, and see whether it is valid. I can assure my colleagues that the concern is not one we have to worry about. Homeland security is fully protected in the production of nuclear medicines. No one has to take my word for it. We wrote to the U.S. Nuclear Regulatory Commission to ask them whether the shipment of HEU to Canada endangers homeland security. The NRC said it did not. Indeed, they said:

> The NRC continues to believe that the current regulatory structure for export of HEU provides reasonable assurance that the public health and safety and the environment will be adequately protected and that these exports will also not be inimical to the common defense and security of the United States.

The full response is for official use only, so I cannot describe it on the Senate floor. This has been cleared. I will be happy to share the full response with any Senator who wishes to see it.

There are other smaller issues raised by stakeholders that are addressed in our provision. The section only applies to nuclear medicine production, not reactor fuel. It allows HEU so long as there is no feasible and affordable alternative. Once the Department of Energy finds that a feasible and affordable alternative exists, then the switch occurs and the provision sunsets.

These provisions sound reasonable because they are the outcome of a compromise. Section 621 represents a compromise reached in the Energy bill in the last Congress. Indeed, this section has garnered nothing but unanimous approval as it has gone through the committee process. The Energy Committee approved it unanimously during their markup. My colleagues on the Environment Committee approved this section unanimously last Congress and again this Congress. Members of the medical community support this provision and strongly oppose attempts to strike it such as the Schumer and Kyl amendments. These groups include: The National Association of Cancer Patients, American College of Nuclear Physicians, American College of Radiology, American Society of Nuclear Cardiology, Council on Radionuclides and Radiopharmaceuticals, National Association of Nuclear Pharmacies, and Society of Nuclear Medicine.

Of course, Drew Euler supports this provision. He is alive today because of nuclear medicines. Drew got the medicine he needed. I hope the Senate will act today to ensure that cancer patients continue to get the medicine they need. I ask my colleagues to oppose the Schumer and Kyl amendments.

I yield such time as remains to my colleague from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BURR. Mr. President, I thank the Senator and would only make this point. Some have made the accusation that this legislation weakens existing law. Let me point out to my colleagues item 7 in the language, termination of review:

> After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.

This does fulfill the national security. It is reassured by the Nuclear Control Institute and the person who is most outspoken, Alan Kuperman. Ironically, he says this amendment, originally drafted to pave the way to continued HEU exports, would actually do away with them. We would go to LEU faster, is his conclusion.

We urge our colleagues to oppose the Schumer amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. It is now my understanding that Senator SCHUMER will close, and the 7 minutes remaining includes the 2 that had been allotted in the original UC.

Mr. SCHUMER. I am going to take 3½ minutes and yield the closing 3½ minutes to my colleague from Arizona, Senator KYL.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, again, the argument is simple: Do we want nuclear proliferation? If we do, we allow highly enriched uranium to be floating around the world with very few checks.

There is no issue of health. Let me repeat: Everyone, every single person in this country and in other countries who needs isotopes has gotten them. Let me quote from Physicians for Social Responsibility, a group that has been involved: Contrary to its stated intent, section 621, the new section added to this bill, would do nothing to ensure the supply of medical isotopes to the United States because that supply is not currently endangered by restrictions on exports of HEU.

So the bottom line is simple: We want sick people to get these isotopes. They are all getting them. But why do we have to trade away the ability to prevent highly enriched uranium from proliferating around the world? God forbid the consequences to our country if a terrorist steals such uranium or it gets lost.

No U.S. firm has any interest in this. It is one Canadian firm that does not want to pay the extra price that other firms have been paying to require foreign countries to convert from HEU, highly enriched uranium, which can be used for weapons, to low-grade uranium, LEU, which cannot.

So the argument is simple. There are a large number of organizations that support our amendment, many of them concerned with nuclear proliferation and, of course, organizations concerned with health such as Physicians for Social Responsibility.

The argument is clear-cut. This amendment never should have been put in the Energy bill. The policy that our country has had for the last 12 years has been working very well, and we have had our cake and eaten it, too. Everyone gets isotopes, and various reactors and foreign countries are required to convert from HEU to LEU. Right now, we are worried about Iran. We are worried about North Korea. We are worried about terrorists stealing weapons-grade uranium, and we are now doing something here, mainly at the behest of one Canadian company, to allow more of that uranium out on the market.

If my friends on the other side could point to a single person who is denied the isotope they need for health purposes, they might have an argument, but they do not. The argument is simple: the cost to one Canadian company versus our ability to prevent weapons-grade uranium, highly enriched uranium, from proliferating around the world.

I hope we will go back to present law, stay with present law, stick to the law that has been supported by both administrations, Republican and Democrat, and prevent the danger of nuclear terrorism from getting any greater than it is.

I yield my remaining time to my colleague and friend from Arizona, JON KYL.

The PRESIDING OFFICER. The Senator from Arizona has 4 minutes.

Mr. KYL. Mr. President, my colleagues first should be astonished that Senator SCHUMER and I are in total agreement on something, and I cannot wait to tell them why and hope that will persuade them that if the Senator from New York and I are in agreement on something, there must be something to it. Indeed, both Senator SCHUMER and I have been very strong advocates against proliferation of nuclear material.

The chairman of the Senate Foreign Relations Committee, Senator LUGAR, is strongly in agreement with the position that Senator SCHUMER and I are taking. He will be listed as one of the people in support of the Schumer-Kyl approach. No one has fought this harder than Senator LUGAR. We are all familiar with the Nunn-Lugar work.

The reason Senator LUGAR is so strongly supportive, the reason members of the Democratic Party are so strongly supportive, the reason people who have been involved in national defense and proliferation on nuclear issues from day one, like myself, are so concerned about this is that we are in danger, unless this amendment passes, of changing a law that has helped us to control proliferation of nuclear material. Why would we want to change the law?

Since 1992, our law has enabled us to export highly enriched uranium, from which you can make bombs, as long as there is an assurance that the recipient is cooperating with us in trying to control proliferation; in this case, trying to eventually move to low-enriched uranium. We would all love to be able to move to low-enriched uranium to produce, for example medical isotopes. That is why we are so concerned.

The language in the bill, unfortunately, removes the requirement for that cooperation. Why would we want to do that? Because one Canadian company is concerned about the cost. That shouldn't even be a concern because today the Nuclear Regulatory Commission issues these export licenses and one of their considerations is cost. They have already made the decision that this is not an issue for the issuance of a license.

Has one license ever been denied? Never. None. It is a false choice to suggest somebody is going to be denied medical treatment, a little boy or a little girl or anybody else, if this amendment is adopted. Since 1992, nobody has been denied treatment with medical isotopes. The law has permitted the development of this kind of treatment, and there is nothing to suggest that it will not continue.

The law does something else, too. It requires assurances that the people who are producing this are working with us to eventually try to convert to low-enriched uranium. What does the Department of Energy say about that? The Department of Energy, on its Web site dealing with this subject with regard to current law, says this law has been very helpful in persuading a number of research reactors to convert to low-enriched uranium.

Why, if we have a law that has never denied any license and has permitted the production of these isotopes for medical production and moves us toward a nonproliferation, toward low-enriched uranium, why we would want to scrap that and say we will do away with the requirement that the companies work with the United States to work toward low-enriched uranium? It makes no sense at all.

That is why the group of physicians I cited earlier is in support of the current law. It is why the Department of Energy Web site notes the fact that the current law is working well.

I ask my colleagues, in summary, this question: If ever a terrorist group gets a hold of this high-enriched uranium and builds a bomb because we eliminated this requirement for no particular purpose, what are we going to say about that? Let's retain the existing law the Department of Energy believes has been working. Nobody is denied medical treatment as a result of this law.

I urge my colleagues to support the Schumer amendment. Please support the Schumer amendment at this time.

The PRESIDING OFFICER. All time is expired. The question is on agreeing to the amendment.

Mr. SCHUMER. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays were previously ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from New Mexico (Mr. DOMENICI).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—52

Akaka	Feinstein	Nelson (FL)
Alexander	Gregg	Nelson (NE)
Bayh	Harkin	Obama
Biden	Inouye	Reed
Boxer	Kennedy	Reid
Byrd	Kerry	Rockefeller
Cantwell	Kohl	Salazar
Clinton	Kyl	Santorum
Collins	Lautenberg	Sarbanes
Conrad	Leahy	Schumer
Cornyn	Levin	Snowe
Corzine	Lieberman	Specter
Dayton	Lott	Stabenow
Dodd	Lugar	Sununu
Dorgan	Martinez	Vitter
Durbin	McCain	Wyden
Ensign	Mikulski	
Feingold	Murray	

NAYS—46

Allard	Bennett	Bunning
Allen	Bond	Burns
Baucus	Brownback	Burr

Carper	Graham	Pryor
Chafee	Grassley	Roberts
Chambliss	Hagel	Sessions
Coburn	Hatch	Shelby
Cochran	Hutchison	Smith
Coleman	Inhofe	Stevens
Craig	Isakson	Talent
Crapo	Jeffords	Thomas
DeMint	Johnson	Thune
DeWine	Landrieu	Voinovich
Dole	Lincoln	Warner
Enzi	McConnell	
Frist	Murkowski	

NOT VOTING—2

Bingaman	Domenici

The amendment (No. 810) was agreed to.

Mr. SCHUMER. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 873

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, under the unanimous consent, we now have the Sununu amendment with a minute allocated to each side for closing comments.

The PRESIDING OFFICER. The Senator is correct. Who yields time?

The Senator from Idaho.

Mr. CRAIG. I yield 1 minute for closure to the Senator from Tennessee.

Mr. ALEXANDER. Mr. President, if Chairman DOMENICI were here tonight, he would urge our colleagues to oppose the Sununu amendment because it is critical to this clean energy bill. If we want lower natural gas prices, we need new technologies for carbon sequestration, for advanced nuclear, for solar, for biomass, and for hybrid vehicles. We need to invest in these options and jump start them. We have done that throughout our history in America. That is our secret weapon, our science and technology, research and development. Chairman DOMENICI likes the existing provision because this is for new technology. It is not a free ride.

Chairman DOMENICI would urge Members, as I do, to vote no on Sununu-Wyden because his existing provision jumpstarts new technologies for a clean energy bill from coal plants to sequestration to advanced nuclear to solar, new technologies not in general use. It costs the Government nothing, according to the scoring of the Congressional Budget Office. It is like an insurance policy. The user of the guarantee pays the premium.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, there are nearly $4 billion in estimated loan guarantees over the next 5 years in this title. Those absolutely will cost the Federal Government something. That is exactly why money, $400 million, has to be appropriated to support them.

I was pleased to work on this amendment with Senator WYDEN to whom I yield the remainder of my time.

Mr. WYDEN. Mr. President, when it comes to subsidies, without the Sununu-Wyden amendment, some of the country's deepest pockets will be triple-dipping. These industries get subsidies under the tax title from Finance. That is dip 1. The Hagel amendment, yesterday adopted, provides loans. That is dip 2. Title XIV that we seek to strike provides loan guarantees of up to 80 percent. That is dip 3. I urge Senators to join all the country's major environmental groups, all the country's major organizations representing taxpayer rights and support the bipartisan Sununu-Wyden amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 873.

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nevada (Mr. ENSIGN).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) is necessarily absent.

The PRESIDING OFFICER (Mr. BURR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 21, nays 76, as follows:

[Rollcall Vote No. 155 Leg.]

YEAS—21

Allard	Feingold	Mikulski
Boxer	Gregg	Reed
Coburn	Harkin	Sarbanes
Collins	Kennedy	Schumer
Corzine	Kyl	Smith
DeMint	Lautenberg	Sununu
Durbin	McCain	Wyden

NAYS—76

Akaka	Dodd	McConnell
Alexander	Dole	Murkowski
Allen	Dorgan	Murray
Baucus	Enzi	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Bennett	Frist	Obama
Biden	Graham	Pryor
Bond	Grassley	Reid
Brownback	Hagel	Roberts
Bunning	Hatch	Rockefeller
Burns	Hutchison	Salazar
Burr	Inhofe	Santorum
Byrd	Inouye	Sessions
Cantwell	Isakson	Shelby
Carper	Jeffords	Snowe
Chafee	Johnson	Specter
Chambliss	Kerry	Stabenow
Clinton	Kohl	Stevens
Cochran	Landrieu	Talent
Coleman	Leahy	Thomas
Conrad	Levin	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Voinovich
Crapo	Lott	Warner
Dayton	Lugar	
DeWine	Martinez	

NOT VOTING—3

Bingaman	Domenici	Ensign

The amendment (No. 873) was rejected.

Mr. CRAIG. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 990, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the clerk will report amendment No. 990, as modified.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL], for himself, Mr. LUGAR, and Mr. LOTT, proposes an amendment numbered 990, as modified.

The amendment is as follows:

(Purpose: To provide a substitute to the amendment)

On page 401, after line 25 insert the following:

SEC. 621. MEDICAL ISOTOPE PRODUCTION: NONPROLIFERATION, ANTITERRORISM, AND RESOURCE REVIEW.

(a) DEFINITIONS.—In this section:

(1) HIGHLY ENRICHED URANIUM FOR MEDICAL ISOTOPE PRODUCTION.—The term ''highly enriched uranium for medical isotope production'' means highly enriched uranium contained in, or for use in, targets to be irradiated for the sole purpose of producing medical isotopes.

(2) MEDICAL ISOTOPES.—The term ''medical isotopes'' means radioactive isotopes, including molybdenum-99, that are used to produce radiopharmaceuticals for diagnostic or therapeutic procedures on patients.

(b) STUDY.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the conduct of a study of issues associated with section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d), including issues associated with the implementation of that section.

(2) CONTENTS.—The study shall include an analysis of—

(A) the effectiveness to date of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) in facilitating the conversion of foreign reactor fuel and targets to low-enriched uranium, which reduces the risk that highly enriched uranium will be diverted and stolen;

(B) the degree to which isotope producers that rely on United States highly enriched uranium are complying with the intent of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to expeditiously convert targets to low-enriched uranium;

(C) the adequacy of physical protection and material control and accounting measures at foreign facilities that receive United States highly enriched uranium for medical isotope production, in comparison to Nuclear Regulatory Commission regulations and Department administrative requirements;

(D) the likely consequences of an exemption of highly enriched uranium exports for medical isotope production from section 134(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2160d(a)) for—

(i) United States efforts to eliminate highly enriched uranium commerce worldwide through the support of the Reduced Enrichment in Research and Test Reactors program; and

(ii) other United States nonproliferation and antiterrorism initiatives;

(E) incentives that could supplement the incentives of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to further encourage foreign medical isotope producers to convert from highly enriched uranium to low-enriched uranium;

(F) whether implementation of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) has ever caused, or is likely to cause, an interruption in the production and supply of medical isotopes in needed quantities;

(G) whether the United States supply of isotopes is sufficiently diversified to withstand an interruption of production from any

1 supplier, and, if not, what steps should be taken to diversify United States supply; and

(H) any other aspects of implementation of section 134 of of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) that have a bearing on Federal nonproliferation and antiterrorism laws (including regulations) and policies.

(3) TIMING; CONSULTATION.—The National Academy of Sciences study shall be—

(A) conducted in full consultation with the Secretary of State, the staff of the Reduced Enrichment in Research and Test Reactors program at Argonne National Laboratory, and other interested organizations and individuals with expertise in nuclear nonproliferation; and

(B) submitted to Congress not later than 18 months after the date of enactment of this Act.

Mr. KYL. Mr. President, my amendment would simply add a reporting requirement.

Current law—known as the Schumer amendment to the Energy Policy Act of 1992—is intended to phase out U.S. exports of highly enriched uranium in order to reduce the risk of that material being stolen by terrorists or diverted by proliferating states for nuclear weapons production.

The importance of phasing out these exports is glaringly obvious in the post-September 11 world, as we are confronted with terrorist-sponsoring regimes, such as North Korea and Iran, that are intent on developing nuclear weapons and terrorist organizations that would like nothing more than to attack the United States using a nuclear device.

Asked several years ago about suspicions that he is trying to obtain chemical and nuclear weapons, Osama bin Laden said:

If I seek to acquire such weapons, this is a religious duty. How we use them is up to us.

U.S. law bars export of HEU for use as reactor fuel or as targets to produce medical isotopes, except on an interim basis to facilities that are actively pursuing conversion to low-enriched uranium.

Because the United States is the world's primary supplier of HEU, the law also provides a strong incentive for such conversion, an objective that is strongly supported by Secretary of Energy Samuel Bodman's recent statement that, ''We should set a goal of working to end the commercial use of highly enriched uranium in research reactors.''

Why is this important? Unlike highly enriched uranium, low-enriched uranium cannot be used as the core of a nuclear bomb.

Section 621 of the pending bill would essentially exempt HEU exports to five countries for medical isotope production from the standards set by the 1992 Schumer amendment. If enacted, it would allow foreign companies to receive U.S. HEU for use in medical isotope production ''targets'' without having to commit to converting to low-enriched uranium.

Specifically, for export license approval, the new language requires only a determination that the HEU will be irradiated in a reactor in a recipient country that ''is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when such fuel can be used in that reactor.''

In contrast, current law requires the proposed recipient of a U.S. HEU export to provide ''assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium.'' In addition, current law permits such exports only if ''the United States government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor,'' which requires the proposed recipient to actively cooperate with the United States on conversion.

This is a difficult distinction, so let me be clear: current law places restrictions on exports of targets and fuel, and the Energy bill exempts targets from these restrictions. How are fuel and targets used? Fuel is used to generate the chain reaction that powers a reactor; a target is a mass of fissionable material that is irradiated to produce a medical isotope. The target is inserted in an operating reactor and then withdrawn after it has been irradiated.

This change would allow countries to avoid ever having to move to an LEU target, even if it is technically feasible to do so.

Furthermore, four of the five countries to which the Energy bill's exemption would apply are members of the European Union and, therefore, U.S. exports of HEU to them would be subject to the requirements of the U.S.–EURATOM Agreement on Nuclear Cooperation.

Under that agreement, EURATOM countries are not required to inform the United States of retransfers of U.S. supplied materials from one EURATOM country to another or report on alterations to U.S. supplied materials. As such U.S. HEU—once transferred to one of these four countries—can go anywhere else in the EU. Given EU expansion, it is not difficult to imagine the concern this creates. The Energy bill language ostensibly exempts only five countries from current law; in practice, the number is much larger.

This is all the more reason not to remove the incentive to convert to LEU.

One of the gravest threats we face today is the possibility that a terrorist will obtain nuclear material and use it in an attack against the United States. It simply makes no sense to loosen our own restrictions on the export of nuclear weapon-grade uranium to countries where we do not have direct control over its security.

Proponents of the new language contained in the Energy bill argue that weakening current law is needed to ensure the continued supply of medical isotopes—for the diagnosis and treatment of sick patients—and that this reality justifies any increased proliferation risk. They claim that there is a danger we will run out of these isotopes.

But we have seen no compelling evidence that the United States is in danger of running out of medical isotopes. Our main supplier—a Canadian company called Nordion—has stockpiled over 50 kg of U.S.-origin HEU, which is enough to make one simple nuclear bomb or two more sophisticated bombs. Indeed, Nordion has enough U.S.-origin bomb-grade uranium to produce medical isotopes for the next three to four years. [Source: Union of Concerned Scientists and the Nuclear Control Institute]

Supporters of the language in the Energy bill seem to be concerned that Nordion will cut off from U.S.-HEU exports and that will result in an isotope deficiency. But that claim does not mesh with the facts. Nordion produces about 40 percent of the world's supply of medical isotopes today; worldwide production capacity is 25 percent of current wordwide demand.

That means that, even without Nordion's medical isotopes, production could still reach 210 percent of world demand.

Finally, it is important to note that no company has ever been denied an export license under the Schumer amendment for HEU to be used in targets for medical isotope production AND current law has, as intended, incentivized countries to begin to convert to LEU. The Netherlands is one good example; conversion of that country's Petten reactor (to LEU fuel) is scheduled to be completed by 2006.

Senator SCHUMER's amendment, which I strongly support, strikes section 621 of H.R. 6. Maintaining current law restrictions will ensure that the United States plays an active role in encouraging other countries to convert to using low-enriched uranium. All that they must do in order to continue to receive U.S. HEU exports is agree to convert to low-enriched uranium—which cannot be used as the core of a nuclear bomb—when it becomes technically and economically possible to do so and actively cooperate with the United States on that conversion. This is not unreasonable.

And, as I mentioned, there is no danger of running out of medical isotopes at this time—the largest supplier to the United States currently has a surplus of U.S. HEU and worldwide maximum production capacity is more than twice demand.

My second-degree amendment would simply add a requirement for a report from the National Academy of Sciences. That report includes an analysis of:

The effectiveness of current law (the Schumer amendment) in compelling conversion to low-enriched uranium; the likely consequences with respect to nonproliferation and antiterrorism initiatives of removing current restrictions;

Whether implementation of current law has ever caused an interruption in

the production and supply of medical isotopes to the U.S.; and

Whether the U.S. supply of isotopes is sufficiently diversified to withstand an interruption of production from any one supplier.

It is prudent to conduct such a comprehensive study before we even consider lifting the restrictions in current law, as opposed to after lifting them, as the Energy bill language would do.

The report would be due 18 months after enactment of the Energy bill. So, even if Nordion were cut off from U.S. exports tomorrow, the due date would be long before Nordion's surplus HEV runs out.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

The amendment (No. 990), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, we are going to move as quickly as we can. It appears that we can complete all work on this bill tonight. We have a few remaining amendments. I am going to offer a unanimous consent request at this time and, hopefully, we can cut the time down from it, if our colleagues will expedite their effort on behalf of these amendments that are outstanding.

Mr. President, I ask unanimous consent that Senator BOND be recognized in order to offer the Bond-Levin CAFE amendment No. 925; provided further that the amendment be set aside and Senator DURBIN be recognized immediately to offer his CAFE amendment No. 902; provided further that there be 80 minutes of debate total to be used in relation to both amendments, with Senators Bond and/or his designee in control of 40 minutes, and Senator DURBIN and/or his designee in control of 40 minutes.

I further ask that following the use or yielding back of time, the Senate proceed to a vote in relation to the Bond amendment, to be followed by a vote in relation to the Durbin Amendment, with no second degrees in order to either amendment prior to the vote, and with 2 minutes equally divided for debate prior to the second vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CRAIG. I thank the Chair. I trust that our colleagues are on the Senate floor. I see them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 925

Mr. BOND. Mr. President, I call up the Bond-Levin amendment, as described by the distinguished acting floor manager of this bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. LEVIN, Ms. STABENOW, and Mr. VOINOVICH, proposes an amendment numbered 925.

Mr. BOND. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in the RECORD of Wednesday, June 22, 2005 under ''Text of Amendments.'')

Mr. BOND. Mr. President, pursuant to the order, I ask that that amendment be set aside.

The PRESIDING OFFICER. The amendment is set aside under the order.

AMENDMENT NO. 902

Mr. DURBIN. Mr. President, I call up amendment No. 902.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], proposes an amendment numbered 902.

Mr. DURBIN. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in the RECORD of Wednesday, June 23, 2005, under ''Text of Amendments.'')

Mr. DURBIN. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors: DODD, CANTWELL, LAUTENBERG, KENNEDY, REED of Rhode Island, and BOXER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, it is my understanding, under the terms of the agreement, that we have 40 minutes on our side, and there are 40 minutes under the control of Senators BOND or LEVIN.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. Mr. President, I will start by reading a paragraph, but it is not from an environmental magazine or a political magazine or from a liberal magazine. It is from BusinessWeek, published in their most recent online edition of June 20, entitled ''Energy; Ignoring the Obvious Fix.'' I will read this paragraph because it describes where we are at this moment in time:

As Congress puts the final touches on a massive new energy bill, lawmakers are about to blow it. That's because the bill, which they hope to pass by the end of July, almost certainly won't include the one policy initiative that could seriously reduce America's dependence on foreign oil: A government-mandated increase in the average fuel economy of new cars, SUVs, light trucks and vans.

That is BusinessWeek. They say that Congress is about to blow it. Sadly, BusinessWeek is correct because you can search this bill, page after page, section after section, and find no reference to the obvious need in America to increase the fuel efficiency of the cars and trucks that we drive.

The amendment that I am proposing addresses the CAFE standards. This amendment would result in more fuel-efficient vehicles in America. This amendment would incrementally increase fuel economy standards in automobiles over the next 10 years.

Regardless of what the opponents of this amendment say, technology is available to reach these goals, the safety of our vehicles need not be compromised in the process, and we don't have to lose American jobs in order to have safer, more fuel-efficient cars.

I suggest to those who have no faith in the innovative capacity of our Nation that America has risen to the challenge before. We can do it again.

Before I explain my amendment and highlight why improving fuel efficiency would be a priority, let me read from a few headlines that make this debate especially important.

This was in this week's Washington Post:

Gas price rises as oil hits a record high.

What was the dollar amount, the latest amount? It was $59.42 a barrel—record high amounts for oil. In my State of Illinois, the average price of gasoline is $2.16 per gallon.

From the Wall Street Journal, here is the big headline:

Big Thirst for Oil is Unslaked, Demand by U.S., China Rises.

The Wall Street Journal says:

Oil consumption remains strong even as petroleum prices approach $60 a barrel, sparking concerns that growing demand could spur still-higher prices and further dampen economic growth.

Philip Verleger, senior fellow at the Washington-based Institute for International Economics, says:

I can see oil at $90 a barrel by next March 31.

I have read from BusinessWeek. We understand their consideration of this provision. They understand that if we do not deal with more fuel-efficient vehicles, we are ignoring the obvious.

I am offering this amendment to give my colleagues an opportunity to put America back on track, to reduce consumption of oil-based products by our transportation fleet by increasing fuel economy standards.

The BusinessWeek online piece continues:

If we don't act now, a crisis will probably force more drastic action later.

I first say to my colleague following this debate, I wish them all a happy 30th anniversary. It was 30 years ago we faced an energy crisis in America. This year marks the 30th anniversary of the Energy Policy and Conservation Act that created the original CAFE program and responded to that crisis.

Listen to these oil prices that brought America's economy to its knees 30 years ago. I am going back to October of 1973. The price of oil rose from $3 a barrel to $5.11 per barrel, sending a shock across America. By January, just a few months later, the prices were up to $11.65 a barrel. At the time, however, the United States was only dependent on foreign oil for 28 percent of its use. That percentage has grown to 58 percent today.

Put it in context: 30 years ago, 28 percent of our oil was coming from overseas, and we were dealing with $11 a barrel. Today, 58 percent is, and we are dealing with $59.60 a barrel, roughly speaking. So we have seen a dramatic increase in our dependence, a dramatic increase in price, and there is no reason to believe it is going to end. We are captives of OPEC and that cartel.

When MARIA CANTWELL came to the floor of the Senate and offered an amendment to reduce America's dependence on foreign oil by 40 percent over the next 20 years, it was soundly defeated. I think only three Republicans joined the Democrats who supported it.

To think we are overlooking in a debate on an energy bill dependence on foreign oil and the inefficiency of cars and trucks tells you how irrelevant this debate is. Any serious debate about America's energy future would talk about our dependence—overdependence—on foreign oil and the fact that we continue to drive cars and trucks that are less fuel efficient every single year.

The recent prices that have shown up also create anxiety over oil exports from other producer nations. This past Friday, the United States, Britain, and Germany closed their consulates in Nigeria, in its largest city of Lagos, due to a threat from foreign Islamic militants. The countries we are relying on for foreign oil are politically shaky, and we depend on them. If they do not provide the oil, our economy suffers, and American families and consumers suffer.

In response to the 1973 oil embargo, Congress created the CAFE program and decided at the time to increase the new car fleet fuel economy because it had declined from 14.8 miles per gallon in 1967 to 12.9 miles per gallon in 1973.

Today we face even more embarrassing statistics. Today we consume more than 3 gallons of oil per capita in the United States, whereas other industrialized countries consume 1.3 gallons per capita per day, and the world average is closer to a half a gallon per capita per day. We use four times more oil than any nation.

The amendment I am proposing would increase passenger fuel economy standards by 12.5 miles per gallon over the next 11 years, increasing fuel economy standards for nonpassenger vehicles by 6.5 miles per gallon in the same time period, for a combined fleet average of nearly 34 miles per gallon. I am increasing it 5.3 miles per gallon over current plans. Current NHTSA rulemaking would only raise it to 22.2 miles per gallon by 2007.

The average mileage of U.S. passenger vehicles peaked in 1988 at 25.9 miles per gallon and has fallen to an estimated 24.4 in 2004.

Let me show one chart which graphically demonstrates the sad reality. Remember the oil embargo I talked about, in 1973, the panic in America, the demand that our manufacturers of automobiles increase the fuel efficiency of cars over the next 10 years? They screamed bloody murder. They said the same things we are going to hear from my colleagues tonight in opposition to this amendment. They said if you want cars that get so many miles per gallon over the next 10 years, America is going to be riding around in little dinky cars such as golf carts. I heard exactly the same words on the Senate floor today.

Furthermore, if you want more fuel-efficient cars, they are going to be so darned dangerous, no family should ride in them. This is what our big three said back in 1973: We can't do this; it is technologically impossible. Frankly, if you do it, we are going to see more and more foreign cars coming into the United States.

Thank God Congress ignored them. We passed the CAFE standards. Looked what happened. Fuel-efficiency cars in a 10-year period went up to their highest levels. Now look what has happened since. It is flat or declining in some areas. It tells us, when we look at both cars and trucks, that our fuel efficiency has been declining since 1985. How can this be good for America? How can this make us less energy dependent? How can this clean up air we breathe? It cannot.

People will come to the floor of the Senate today and say: We think every American ought to buy and drive the most fuel-inefficient truck or car they choose, and if you do not stand by that, you are violating the most basic American freedom. What about the freedoms that are at stake as we get in conflicts around the world with oil-producing nations?

If we want to preserve our freedoms, we should accept personal responsibility as a nation, as families, and as individuals. Personal responsibility says we need better cars and better trucks that are more fuel efficient. We need to challenge all manufacturers of cars and trucks, foreign and domestic, to meet these standards so that we are not warping the market, we are setting a standard for the whole market.

Unfortunately, there is strong opposition to this notion. Some of those who oppose it have the most negative and backward view of American technology that you can imagine.

We understand now from reliable scientific sources—in particular the National Academy of Sciences—that we have technologies and can improve fuel efficiency of trucks by 50 to 65 percent and cars by 40 to 60 percent. But Detroit is so wedded to the concept of selling these monster SUVs and big cars that they will not use it. They will not use the technology that is currently there.

We are dealing now with hybrid technology. Let me tell a little story about hybrid technology.

First let me tell you what we are dealing with on the overall picture. This chart shows U.S. consumption of oil in the transportation sector. As we can see, light-duty vehicles represent the biggest part of it—60 percent. It is a huge part.

We also have general oil consumption in America. If we want to reduce our dependence on foreign oil, we have to focus attention on transportation—68 percent usage of the oil we import.

We know if we want to reduce dependence on foreign oil, this is what we need to do. Here is a list of all the different technologies currently available. I won't read them all through but will make them part of the RECORD as part of my statement: transmission technology, engine technologies, vehicle technologies that could be used right now to make cars and trucks more efficient.

What is going to happen over a period of time, though, is we are going to see a lot of debate about different cars and different trucks. Let me show you one in particular. I just mentioned hybrid vehicles. My wife and I decided a few months ago to buy a new car. We wanted to buy American. We did not need a big monster SUV. It is basically just the two of us and maybe a couple of other passengers. We wanted something American and fuel efficient.

Go out and take a look. You will find there is one American-made car on the market today that even cares about fuel efficiency—the Ford Escape hybrid. That is the only one. The others are made by manufacturers around the world. It turns out they are not making too many of these Ford Escape hybrids. In the first quarter of this year, Ford made 5,274. Take a look at the competition. Japan again, sadly, got the jump on us. When they came up with their Honda Accords and Civics, they ended up selling 9,317 and then 14,604 the first quarter. Toyota was 13,602, and look at the number here: 34,225.

What I am telling you is, how could Detroit miss this? When we look at the big numbers, the total sales for these cars for hybrids sold, total hybrids sold in 2004 before we ended up having an American car on the market was 83,000 vehicles. Where was Detroit? Where are they now? The only place one can turn is a Ford Escape hybrid. What are they waiting for? Do they want the Japanese to capture another major market before they even dip their toe in the water?

We have to understand that there is demand in America for more fuel-efficient cars. We also have to understand the technology is there to dramatically increase gas mileage. This Ford Escape hybrid my wife and I drive is getting a little better than 28 miles a gallon. I wish it were a lot better. Sadly, some of the Japanese models are a lot better. At least it is better than the average SUV by a long shot and better than most cars we buy. They can do a lot better if Ford, General Motors, and Chrysler would wake up to the reality. Instead, they are stuck in the past. They are going to sell more this year of what they made last year. They cannot

just look ahead as, unfortunately, their competitors in Japan have done.

The National Research Council puts away this argument that we cannot have a fuel-efficient car that is safe. The National Research Council's recent report found that increases of 12 to 27 percent for cars and 25 to 42 percent for trucks were possible without any loss of performance characteristics or degradation of safety.

What we know now is that we have the technology to make a more fuel-efficient car. They do not have to be so dinky you would not want to drive in them. They accommodate a family, and you do not compromise safety in the process.

Look at history. The automobile industry in America has resisted change for such a long time. I can remember as a college student when they came out with all the exposes about the dangers of the Corvair. Oh, Detroit just denied it completely. The auto industry, sadly, has fought against safety belts, airbags, fuel system integrity, mandatory recalls, side impact protection, roof strength, and rollover standards. I am not surprised they are fighting against fuel efficiency, but I am disappointed. They just don't get the marketplace. As the price of oil goes up and the price of gas goes up, Americans want an alternative—a safe car they can use for themselves and their family that is fuel efficient.

Let me talk about the loss of jobs. The argument is made that if we have more fuel-efficient cars, we are just going to be giving away American jobs. It comes from the same industry where General Motors announced 2 weeks ago they were laying off 25,000 people, and Ford announced they were laying off 1,700 this week. They have to see the writing on the wall. Their current models are not serving the current market. Their sales are going down while the sales from foreign manufacturers are going up.

There was an auto industry expert on NPR a few weeks ago, Maryann Keller. She said:

> General Motors has been focused in the United States on big SUVs and big pickup trucks. . . . It worked as long as gas was cheap, but gas is not cheap . . . They really have not paid attention to fuel economy technology, nor have they paid attention to developing crossover vehicles which have better fuel economy. They've just been very late to the party and that's probably their primary problem today in the marketplace.

We ought to ask the American people what they want. We are going to hear a lot of people stand up and say what they want. I will tell you what the latest polls say: 61 percent of Americans favor increasing fuel-efficiency requirements to 40 miles a gallon. They get it; they understand it. The problem is they can't buy it. If you want to buy an American car that meets this goal in your family's mind, there is only one out there. Some will come trailing along in a year or two, but the Japanese have beaten us to the punch again.

Let's create an incentive for Detroit and for Tokyo. Let's create an incentive for all manufacturers that are selling cars in the United States, an incentive that lessens our dependence on foreign oil, cleans up the air, and gives us safe vehicles using new technology. Those who are convinced that America cannot rise to this challenge do not know the same Nation I know. We can rise to it. We can succeed. We can meet our energy needs in the future by making good sense today in our energy policy.

Mr. NELSON of Florida. Will the Senator yield?

Mr. DURBIN. Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator from Illinois has 22 minutes remaining.

Mr. DURBIN. I will be happy to yield to the Senator from Florida.

Mr. NELSON of Florida. I thank the Senator for laying out so clearly the fact that we are so dependent on foreign oil. If we really want to do something about it—as the Senator has explained by the charts, it is clear that most of the oil that is consumed in America is consumed in the transportation sector and most of the oil that is consumed in the transportation sector is consumed in our personal light vehicles. So if we really want to do something about weaning ourselves from dependence on foreign oil, of which almost 60 percent of our daily consumption of oil is coming from foreign shores, this is where we can make a difference.

Mr. DURBIN. The Senator from Florida is correct. I will tell him I know what I am up against. I think the Senator from Florida, being a realist, does too. When you have the major automobile manufacturers who are frightened by the challenge—they are afraid of this challenge. They do not think they can meet it. They have been beaten to the punch by Japan when it comes the hybrid cars. Instead, they started talking about hydrogen fuel vehicles. That may happen in my lifetime, but it is just as likely it will not happen in my lifetime. Instead of dealing with hybrid vehicles that are already successful with consumers in America, they are afraid of this challenge. Because they are afraid of this challenge, they throw up all of these arguments: oh, that car is going to be a golf cart, it is going to be so tiny if it is fuel efficient, it is not going to be safe; there is just no way that American engineers can even figure out how to make them.

I do not buy it. I think, as I said to the Senator and others who are listening, the technology is there. We do not have to compromise safety. What is wrong with the challenge? What is wrong with the challenge from the President and the Congress asking the manufacturers selling cars in America to make them more fuel efficient? This legislation does not do it; my amendment would.

Mr. NELSON of Florida. Would it not be something if we could start to have all new vehicles be required, in some way, to be hybrid and/or higher miles per gallon standard, if that were combined with an additional thing like ethanol into gasoline, ethanol that could be made more cheaply, perhaps from prairie grass—that is on 31 million acres; all it needs to be is cut—instead of a more expensive process of corn, although that certainly is a good source of ethanol. Would we not start to see exponentially our ability to wean ourselves from dependence on foreign oil?

Mr. DURBIN. The Senator from Florida has a vision that I share, and that is alternative fuels, fuels that are renewable such as those the Senator has described, ethanol and biodiesel, and vehicles that do not use as much fuel.

Senator OBAMA and I have a public meeting every Thursday morning, and there was a real sad situation today. A group of parents brought in children with autism to talk about that terrible illness and the challenges they face. More and more of that illness, and others, are being linked to mercury. Whether it is in a vaccine, I do not know; whether it is in the air, most certainly it is. If we can reduce emissions by reducing the amount of fuel that we burn, would my colleagues not believe we would be a healthier nation? Maybe there would be fewer asthma victims. Maybe some of these poor kids who are afflicted with respiratory problems would be spared from them.

I cannot believe people can rationally stand on the Senate floor and say what we need is to give Americans a choice of driving a car that burns gasoline and gets 6 miles per gallon; boy, that is the American way. Well, that is selfish. It really is. We ought to be looking at national goals that bring us, as an American family, together to do the responsible thing.

Mr. NELSON of Florida. I thank the Senator for being so eloquent in laying out what is a looming crisis. The crisis is going to hit us. We may not suspect it. It may hit us in the way of radical Islamists suddenly taking over major countries where those oilfields are, such as Saudi Arabia. If that occurs, Lord forbid. Then we are going to have a crisis, and we are going to be wishing that we were not so dependent on foreign oil, as we are now.

Mr. DURBIN. I thank the Senator. I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I yield myself 15 minutes.

I rise to address some of the lingering questions regarding Corporate Average Fuel Economy, or CAFE standards. I was hoping this debate would not be necessary because we have debated it, we have resolved it, we have set a process in place, and it is working. Obviously, we are here again. We have been through this CAFE debate in the 107th

and 108th Congresses, and with the Durbin amendment before us we get to go through it once again in this Congress. Surely, my colleagues remember that both of the previous CAFE amendments in the last two Congresses were soundly defeated.

Why were they? Because Members of this body realize that CAFE is a complex issue that requires thought and scientific analysis, not just political rhetoric.

The Bond-Levin amendment that was passed in 2003 by a vote of 66 to 30 requires the National Highway Traffic Safety Administration, or NHTSA, to increase CAFE standards as fast as technology becomes available. It is a scientific test based on science, not politics.

We must recognize at the beginning that the Durbin amendment costs lives, costs U.S. jobs, and deprives consumers of their basic free will to choose the vehicle that best fits their needs and the needs of their families. Neither the lives of drivers or passengers on our Nation's highways nor the livelihood of autoworkers and their families should be placed in jeopardy so Congress can arbitrarily increase infeasible and scientifically unjustified standards for fuel efficiency.

Any fuel efficiency standard that is administered poorly, without a sound scientific analysis, will have a damaging impact on automobile plants, suppliers, and the fine men and women who build these vehicles.

There have been many arguments that a large increase in CAFE standards is needed to pressure automakers to invest in new technologies which will consistently increase automobile fuel efficiency. Automobile manufacturers already utilize advanced technology programs to ensure the improvement of fuel efficiency, the reduction of emissions and driver and passenger safety, and they are being pushed to do so by NHTSA regulations. Auto manufacturers are constantly investing capital in advanced technology research by the integration of new products, such as hybrid electric and alternative fuel vehicles and higher fuel efficiency vehicles. So far, the auto industry has invested billions of dollars in developing and promoting these new technologies. Diverting resources from further investments in these programs in favor of arbitrarily higher CAFE standards would place a stranglehold on the technological breakthroughs which are already taking place.

Alternative fuels, such as biodiesel, ethanol, and natural gas, have continuously been developed to service a wide variety of vehicles. The automotive industry continues to utilize breakthrough technology which focuses on the development of advanced applied science to produce more fuel-efficient vehicles, while at the same time producing innovative safety attributes for these vehicles.

Furthermore, modifications need time to be implemented. According to the National Academy of Sciences:

> Any policy that is implemented too aggressively (that is, too much in too short a period of time) has the potential to adversely affect manufacturers, suppliers, employees and consumers.

The NAS further found that no car or truck can be prepared to reach the 40 miles per gallon or 27.5-mile-per-gallon level required for fleets within 15 years. The Durbin amendment would require it in 11. That makes it clear that if we try to shove unattainable standards down the throats of automakers, the workers and the companies, we will have a problem.

What will we have achieved by doing so? There is the false perception that the Federal Government has done nothing to address CAFE standards. Nothing could be further from the truth. On April 3, 2003, NHTSA set new standards for light trucks for the model years 2005 through 2007. These standards are 21 miles per gallon this year; 21.6 next year; and 22.2 the following year. This 1½-mile-per-gallon increase during this 3-year-period more than doubles the last increase in light truck CAFE standards that occurred between 1986 and 1996. This recent increase is the highest in 20 years.

In addition, by April 1 next year, NHTSA will publish new light truck CAFE standards for model year 2008 and possibly beyond. Most stakeholders expect a further increase in CAFE standards for these years as well.

It is important to understand that NHTSA is doing this, utilizing scientific analysis as a basis for these increases. We must proceed with caution because higher fuel economy standards, based on emotion or political rhetoric, not sound science, can strike a major blow to the economy, the automobile industry, auto industry jobs, and our Nation. Highway safety and consumer choice will also be at risk.

Letting NHTSA promulgate standards is the appropriate way to do it, and that is what almost two-thirds of the Members of this body decided when we brought the last Levin-Bond amendment before us.

In an April 21 letter this year, Dr. Jeff Runge, Director of NHTSA, said:

> The Administration supports the goal of improving vehicle fuel economy while protecting passenger safety and jobs. To this end, we believe that future fuel economy must be based on data and sound science.

Those advocating arbitrary increases may try to avert any discussion of the impact on jobs or dismiss the argument. However, I have heard from a broad array of union officials, plant managers, local automobile dealers and small businesses who have told me that unrealistic CAFE standards cut jobs because the only way for manufacturers to meet these numbers is to make significant cuts to light truck, minivan and SUV production. But these are the same vehicles that Americans continue to demand and American workers produce.

On June 17, this month, I received a letter from the UAW regarding CAFE amendments, such as the Durbin amendment, which speaks volumes about the detrimental impact that further CAFE increases could have on the automotive industry. The letter states that:

> the UAW continues to strongly oppose these amendments because we believe the increases in CAFE standards are excessive and discriminatory, and would directly threaten thousands of jobs for UAW members and other workers in this country.

It further states:

> In light of the economic difficulties currently facing GM and Ford, the UAW believes it would be a profound mistake to require them now to shoulder the additional economic burdens associated with extreme, discriminatory CAFE standards. This could have an adverse impact on the financial condition of these companies, further jeopardizing production and employment for thousands of workers throughout this country.

However, the UAW does strongly support the newly introduced Bond-Levin amendment requiring NHTSA to continue the rulemaking efforts to issue new fuel economy standards for cars and light trucks, based on a wide range of factors such as technological feasibility and the impact of CAFE standards. I ask unanimous consent that the letters be printed in the RECORD.

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

> INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW
>
> *Washington, DC, June 17, 2005.*
>
> DEAR SENATOR: Next week the Senate is scheduled to continue debate on the comprehensive energy legislation. At that time, the Senate may consider a number of amendments relating to Corporate Average Fuel Economy (CAFE) standards.
>
> The UAW strongly supports the Levin-Bond amendment which would require the Department of Transportation to engage in rulemaking to issue new fuel economy standards for both cars and light trucks, taking into consideration a wide range of factors, including technology, safety, and the impact on employment. This amendment is similar to the Levin-Bond amendment that was approved by the Senate in the last Congress. The UAW supports the approach contained in this amendment because we believe it can lead to a significant improvement in fuel economy, without jeopardizing the jobs of American automotive workers.
>
> The UAW understands that Senators McCain, Feinstein or Durbin may offer amendments that I would mandate huge increases in the CAFE standards. These amendments are similar to proposals that have been considered and rejected decisively by the Senate in previous Congresses. The UAW continues to strongly oppose these amendments because we believe the increases in the CAFE standards are excessive and discriminatory, and would directly threaten thousands of jobs for UAW members and other workers in this country. In our judgment, fuel economy increases of the magnitude proposed in these amendments are neither technologically or economically feasible. The study conducted by the National Academy of Sciences does not support such increases. The UAW is particularly concerned that the structure of these proposed

fuel economy increases—a flat mpg requirement for cars and/or light trucks—would severely discriminate against full line producers, such as GM, Ford and DaimlerChrysler, because their product mix contains a higher percentage of larger cars and light trucks. This could result in severe disruptions in their production, and directly threaten the jobs of thousands of UAW members.

Furthermore, in light of the economic difficulties currently facing GM and Ford, the UAW believes it would be a profound mistake to require them now to shoulder the additional economic burdens associated with extreme, discriminatory CAFE increases. This could have an adverse impact on the financial condition of these companies, further jeopardizing production and employment for thousands of workers throughout this country.

The UAW continues to believe that improvements in fuel economy are achievable over time. But we believe that the best way to achieve this objective is to provide tax incentives for domestic production and sales of advanced technology (hybrid and diesel) vehicles, and to direct the Department of Transportation to continue promulgating new fuel economy standards that are economically and technologically feasible.

Thank you for considering our views on these important issues.

Sincerely,

ALAN REUTHER,
Legislative Director.

JUNE 16, 2005.

Hon. BILL FRIST,
Senate Majority Leader,
Washington, DC.

DEAR MAJORITY LEADER FRIST: The U.S. Senate is in the process of considering various energy-related provisions and amendments to the comprehensive energy bill which passed the Committee on Energy and Natural Resources earlier this month. It has come to our attention that amendments may be forthcoming calling for increases to the Corporate Average Fuel Economy (CAFE) standards including light trucks. The Committee on Energy and Natural Resources defeated similar amendments, in a bipartisan way. The organizations listed below strongly oppose any increase in CAFE standards.

Our opposition is based on concerns that such a federal mandate will have a negative impact on consumers and translate directly into a narrower choice of vehicles for America's farmers and ranchers, who depend on affordable and functional light trucks to perform the daily rigors of farm and ranch work. Our groups cannot support standards that increase the purchase price of trucks, while decreasing horsepower, towing capacity, and torque. In addition, recent studies indicate that an aggressive increase in the CAFE; standard for light trucks could add over $3,000.00 in the purchase price per vehicle. This would result in yet another added production cost for U.S. farmers and ranchers that cannot be passed on when selling farm commodities.

On behalf of farm and ranch families across the country who rely on affordable light trucks and similar vehicles for farming and transportation needs, we urge you to oppose any amendments calling for an increase in CAFE standards as well as any amendment which will have the effect of increasing those standards.

Sincerely,

NATIONAL CATTLEMEN'S BEEF ASSOCIATION,
AMERICAN FARM BUREAU FEDERATION,
AGRICULTURAL RETAILERS ASSOCIATION,
NATIONAL CORN GROWERS ASSOCIATION,
THE FERTILIZER INSTITUTE,
NATIONAL MILK PRODUCERS FEDERATION,
NATIONAL GRANGE,
AMERICAN SOYBEAN ASSOCIATION.

MAY 13, 2005.

Hon. PETE DOMENICI,
Chairman, Senate Energy and Natural Resources Committee, Washington, DC.

DEAR CHAIRMAN DOMENICI: The Senate Energy and Natural Resources Committee will soon consider various energy-related provisions and amendments to the comprehensive energy bill which passed the U.S. House of Representatives a few weeks ago. It has come to our attention that amendments may be forthcoming calling for increases to the Corporate Average Fuel Economy (CAFE) standards including light trucks. The organizations listed below strongly oppose any increase in CAFE standards.

Our opposition is based on concerns that such a federal mandate will have a negative impact on consumers and translate directly into a narrower choice of vehicles for America's farmers and ranchers, who depend on affordable and functional light trucks to perform the daily rigors of farm and ranch work. Our groups cannot support standards that increase the purchase price of trucks, while decreasing horsepower, towing capacity, and torque. In addition, recent studies indicate that an aggressive increase in the CAFE standard for light trucks could add over $3,000.00 in the purchase price per vehicle. This would result in yet another added production cost for U.S. farmers and ranchers that cannot be passed on when selling farm commodities.

On behalf of farm and ranch families across the country who rely on affordable light trucks and similar vehicles for farming and transportation needs, we urge you to oppose any amendments calling for an increase in CAFE standards.

Sincerely,

National Cattlemen's Beef Association, Public Lands Council, The Fertilizer Institute, National Corn Growers Association, National Grange, American Farm Bureau Federation, Agricultural Retailers Association, National Milk Producers Federation, National Association of Wheat Growers.

Mr. BOND. This is very important to know because 1 out of every 10 jobs in our country is dependent on new vehicle production and sales. The auto industry is responsible for 13.3 million jobs, or 10 percent of private sector jobs. Auto manufacturing contributes $243 billion to the private sector, over 5.6 percent of the private sector compensation. Every State in the Union is an auto State. Let us take a look at that chart. The occupant of the chair is from North Carolina. That has 158,000. The State of Illinois has 311,000. My State has 221,000. The State of Michigan has 1,007,500.

I have heard it said that we should not worry about these jobs. The proponents of the amendment to increase it say that it is not going to do any harm.

But if you adopt this amendment you can kiss tens of thousands of good, high-paying, American, union manufacturing jobs goodbye. I am not willing to do that to the 36,000 men and women working directly in the automotive industry, nor to the over 200,000 men and women who work in auto-dependent jobs in my State.

But it is not just jobs. It is safety. According to the National Academy of Sciences:

> Without a thoughtful restructuring of the program . . . additional traffic fatalities would be the tradeoff if CAFE standards are increased by any significant amount.

You see, we have learned in the past that when you have politically inspired CAFE increases which cannot be achieved with technological means, the only way of achieving them is by making the cars lighter, 1,000 pounds to 2,000 pounds lighter.

Do you know what. More people die in those smaller cars than in the full-size cars that they replace. Since it began, we are running about 1,500 deaths a year. In August of 2001, the NAS issued a report which found that between 1,300 to 2,600 people in 1993 alone were killed in these smaller automobiles. It is not just smaller automobiles hitting larger automobiles—43 percent of those deaths were in single-car accidents.

My colleague from Illinois has suggested we disregard these statistics as estimates. These are not estimates, these are dead people. These are people who died from politically inspired CAFE. That is what we are talking about. Excessive CAFE standards pressure automobile manufactures to reduce the weight for light trucks, completely do away with larger trucks used for farming and other commercial purposes.

My colleague from Illinois mentioned golf carts—yes, golf carts would comply. But certainly the pickup trucks that a lot of farmers in my State drive would not make it.

If an increase in fuel economy is brought about by encouraging downsizing, weight reduction, or more small cars, it will cause additional traffic fatalities. The notion that people's lives and safety are hanging in the balance because of unwarranted CAFE increases should cause all of us some concern. The ability to have a choice of the vehicle assures the safety of one's family. It should not be a sacrifice that must be made in favor of arbitrary fuel efficiency standards.

I don't want to tell the people in my State or any other State they are not allowed to purchase an SUV because Congress decided it would not be a good choice. That sounds like the command and control economy of the Soviet Union.

Another very important point is the impact of increased CAFE standards on consumer choice and affordability. Despite the record high cost of gasoline sales, light truck sales have continued to skyrocket. In the past 25 years, sales of light trucks have almost tripled. In March of 2005, full-size pickup trucks occupied three of the top five sales positions, including the No. 1 and 2 spots. From these numbers and from these

charts it is obvious that consumers consistently favor safety, utility, performance, and other characteristics over fuel economy. The only way to stop sales of these vehicles would be to enact Soviet-style mandates, declaring that auto manufacturers could no longer produce light trucks and SUVs, and consumers could no longer buy them.

Some people in this body apparently believe our fellow Americans cannot be trusted to make the right choice when purchasing a vehicle. As far as I am concerned, when you get down to having the Government making the choice or the consumer making the choice, I am with the consumer.

Just how arbitrary would these CAFE cost increases be to consumers? The CBO last found that raising fuel standards for cars and trucks by 4 miles per gallon could cost consumers as much as $3.6 billion.

I also have a copy of a recent letter that was sent to Chairman DOMENICI and Majority Leader FRIST from a consortium of agricultural organizations which states that ''recent studies indicate that an aggressive increase in CAFE standards for light trucks could add over $3,000 to the purchase price per vehicle. It is signed by the National Cattlemen's Association, the National Corn Growers, the American Farm Bureau, National Milk Producers and the National Association of Wheat Growers among others. They oppose these arbitrary increases because they believe they will have a negative impact on consumers, and translate directly into a narrower choice of vehicles for America's farmers and Ranchers, who depend on affordable and functional light trucks to perform the I daily rigors of farm and ranch work. I submitted this letter for the RECORD.

Finally, I must to dispel the myth that CAFE increases reduce our Nation's dependence on foreign oil. According to the American International Automobile Dealers:

> Despite the claims of CAFE advocates, experience shows that CAFE does not result in the reduction of oil imports. The import share of U.S. oil consumption was 35% in 1974. Since that time, new car fuel economy has doubled but our oil imports share has climbed to almost 60%.

In that 30 year time frame, the consumption of gasoline has increased and not decreased. The bottom line is that after 30 years of CAFE standards, our nation is more dependent on foreign oil than ever before.

I believe that there are other better ways to reduce our Nation's dependence on foreign oil than massive increases in CAFE standards. These include promoting the development and use of alternative fuels such as ethanol, bio-diesel and natural gas. We should pass legislation that encourages the development of advance fuel technology such as hybrid and fuel cell vehicles that utilize hydrogen and other sources of energy. We should also focus on increasing domestic supplies I of energy that include oil and natural gas.

We must talk about what is technologically feasible and what will produce better fuel economy, while continuing to preserve and produce jobs, and not risk the lives of drivers and their families on our nation's roads. We must continue to ensure the safety for parents and their children, and we must not throw out of work the wonderful American men and women who are making these automobiles in my state and across the entire nation.

In light of this, Senator LEVIN and I have reintroduced an amendment that was '' adopted by the Senate in the previous two Congresses, which maintains the authority of the National Highway Traffic Safety Administration—subject to public comment—to determine passenger auto standards based upon the ''maximum feasible'' level. Under the Bond-Levin Amendment, determinations to this feasibility level include the following factors:

No. 1. Technological feasibility;

No. 2. Economic Practicability;

No. 3. The effect of other government motor vehicle standards on fuel economy;

No. 4. The need of the nation to conserve energy;

No. 5. The desirability of reducing U.S. dependency on foreign oil;

No. 6. The effects of fuel economy standards on motor vehicle safety, and passenger safety;

No. 7. The effects of increased fuel economy on air quality;

No. 8. The adverse effects of increased CAFE standards on the competitiveness of U.S. manufacturers;

No. 9. The effects of CAFE Standards on U.S. employment;

No. 10. The cost and lead time required for the introductions of new technologies; and

No. 11. The potential for advanced hybrid and fuel cell technologies.

Every factor, which I have just mentioned, must play a major role in the consideration of setting future fuel efficiency standards for vehicles. The Bond-Levin amendment provides for these impacts and leaves it to the experts at NHTSA to develop viable standards based on this criteria and sound scientific analysis.

The Bond-Levin amendment also extends the flexible fuel or ''duel fuel'' credit to continue to provide incentives for automakers to produce vehicles that are capable of running on alternative fuels such as ethanol/gasoline blends. So far these incentives have been successful in putting more than 4 million alternative fuel vehicles on our nation's roads. This will be another positive step in helping our Nation reduce its dependence on foreign oil.

Again, this debate is about safety, jobs, consumer choice and sound scientific analysis.

I urge my colleagues to oppose the arbitrary and unscientific Durbin amendment, and to support the Levin-Bond 2nd degree amendment.

I yield to my colleague from Michigan—how much time does he want?

The PRESIDING OFFICER. The Senator from Missouri has 24½ minutes.

Mr. LEVIN. Is the time combined on the two amendments?

The PRESIDING OFFICER. The Senator from Illinois has 17 minutes remaining.

Mr. LEVIN. That is on both amendments combined?

The PRESIDING OFFICER. That is correct.

Mr. BOND. I yield 15 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first let me thank Senator BOND for his work on this amendment, which offers an alternative, a rational alternative. This alternative would allow the agency that is the expert to weigh all the factors that should go into a rulemaking and to raise CAFE standards in a logical and rational and scientific way rather than a totally arbitrary way, which is what the Durbin amendment does.

Of course, we want to raise CAFE standards. We want to do it in a way that protects the environment and protects jobs in America. But we do not want to do it in a way that will not protect the environment and will destroy jobs in America at the same time.

We need to improve fuel economy, but how we increase it is critical. That is the main point I am going to make. You need to do it, but how we do it is critical. The question is whether we are going to do it through a rulemaking on the part of an agency looking at all the relevant factors, and I am going to list them in a moment or whether we are going to just pick a number out of the air. The number of the Senator from Illinois is 40—just go to 40 miles per gallon on the fleet and at the same time, by the way, just add trucks to the car fleet for the first time. It is not just cars now that have to get to 40 miles per gallon under the proposal of the Senator, but we add minivans and sport utility vehicles to that fleet—and it is done arbitrarily. It is not based on the considerations that a rational agency should bring to bear on rulemaking, which is what NHTSA is there for.

Instead we are going to 40 miles per gallon for the whole fleet. We are throwing trucks into the car fleet to boot. It is a triple whammy to American jobs in the Durbin amendment. The first whammy is that the numbers that he picks are total arbitrary numbers: 40 miles per gallon, and he adds two of the three types of light trucks to the car fleet.

Rather than legislating an arbitrary number, what the Bond-Levin amendment does is to tell NHTSA to take a number of important considerations into account when setting the level of the standard. Here are the 13 factors that we tell NHTSA to consider. We think we have found and identified every rational standard or criterion

which they ought to look at in setting this number.

First, maximum technological feasibility.

Second, economic practicability.

Third, the effect of other Government motor vehicle standards on fuel economy—because we have other standards, in terms of clean air and emissions, which bear on fuel economy. Someone, NHTSA, should take that into account.

Fourth, the need to conserve energy.

Fifth, the desirability of reducing U.S. dependence on foreign oil.

Next, the effect on motor vehicle safety. This is a point which Senator BOND has made, which the National Academy of Sciences has commented on.

Next, the effects of increased fuel economy on air quality.

Next, the adverse effects of increased fuel economy standards on the relative competitiveness of manufacturers.

Next, the effect on U.S. employment.

Next, the cost in lead time required for introduction of new technologies.

Next, the potential for advanced technology vehicles, such as hybrid and fuel cell vehicles, to contribute to significant fuel usage savings.

Next, the effect of near-term expenditures required to meet increased fuel economy standards on the resources available to develop advanced technologies.

Finally, to take into account the report of the National Research Council entitled ''Effectiveness and Impact of Corporate Average Fuel Economy Standards.''

Those are 13 factors that ought to be considered in a rulemaking, instead of just an arbitrary seizure on a number that is then put into law and imposed on everybody arbitrarily.

The Durbin amendment, in addition to adopting an arbitrary number, worsens the discriminatory features of the existing CAFE system because there are inherent discriminatory features in that system that give an unfair competitive advantage to foreign automotive manufacturers while not benefiting the environment. The reason for this is a bit complicated. I hope every Member of this body will look very hard at the CAFE system and not just look at the amendments that are before us, but also look at the situation we have where CAFE already gives a discriminatory boost to imported vehicles. The CAFE system gives this boost, not because the vehicles are more efficient—because they are not. The same size imported vehicles have about the same fuel economy as the same size domestic vehicles.

I want to give some examples. There is no difference in terms of fuel economy. But the CAFE system, because of the way it has been designed, gives a discriminatory boost to imports because the domestic manufacturers provide a full line of different sized vehicles, which results in a lower fleet average.

Let's just take four vehicles. This is a comparison of vehicle fuel economy, pound per pound. We are looking at vehicles of the same size.

Here is an example of a large SUV. The Chevrolet Suburban weighs 6,000 pounds. The Toyota Sequoia weighs 5,500 pounds. So the Sequoia, in this case, is actually lighter than the Suburban. But the Sequoia, Toyota, is less fuel efficient—although it is slightly lighter—than the Chevrolet Suburban.

The Jeep Liberty, 19 miles per gallon; the Toyota 4Runner, slightly less fuel efficient, although they are the same weight, 4,500 pounds.

The example of a large pickup truck, the Chevrolet Silverado gets 18 miles per gallon, the Toyota Tundra gets 17 miles per gallon. They both weigh the same amount, 4,750 pounds. The Toyota Tundra, slightly less fuel efficient than the Chevrolet Silverado.

The Chevrolet Venture and the Toyota Sienna both weigh exactly the same, 4,250 pounds. The Chevrolet Venture is slightly more fuel efficient than the Toyota Sienna.

The point of this is to try to bring to bear the fact that, when you have vehicles of about the same weight, you have about the same fuel economy, in these cases slightly better fuel economy on the part of the Chevrolet and the Jeep, than we do the Toyota.

You never get that impression from the charts that we see from the Senator from Illinois. That is not the impression that you get. He says that Toyota does everything more efficiently, they do all the hybrids. We, on the other hand, do all the big vehicles.

We do not make all the big vehicles. As a matter of fact, the growth in the sale of Toyotas and Hondas, when it comes to light trucks primarily pick up trucks and SUVs is dramatically greater than anything they are doing in the area of hybrids. Their hybrid sales are a peanut compared to the growth in light truck sales. Hybrids represent 1 percent of the market, but when you look at the light truck sales on the part of Toyota and Honda, there are dramatic increases in numbers of sales of those vehicles. That is not because they are more fuel efficient, they are not. In some cases, they are slightly less. Let's assume they are the same. The sale of those light trucks has nothing to do with their fuel efficiency. It has to do with legacy costs, but I am not going to get into that at this point.

So we have a situation where, because of the CAFE system, which is designed to look at the entire fleet average, because the imports have traditionally had a lot smaller vehicles—smaller trucks and SUVs in their fleet, they have a lot more ''headroom'' to sell all the light trucks they want without being penalized under the CAFE system.

It doesn't do the environment one bit of good to tell people you can buy a Toyota Tundra but not a Chevrolet Silverado. But that is what the CAFE system does.

That is what the CAFE system does. Toyota has ''headroom''—and I will give you the numbers in a moment—to sell huge additional numbers of their vehicles but a company like GM does not. That does nothing for the environment. Quite the opposite, it slightly hurts the environment. But call it a draw. It does nothing for the environment, and it damages American jobs. That is an inherent defect in the CAFE system. The Durbin amendment exacerbates that defect because it builds into the system an even larger number that must be met.

By the way, these are the numbers I said a moment ago. This is the headroom, the additional sale of large pickups or SUVs allowed under CAFE. Toyota can sell an additional 1.8 million vehicles and still meet the CAFE standard. Honda can sell an additional 2.6 million vehicles and still meet the CAFE standard. But GM cannot sell any additional vehicles. But that is not because the Toyota and Honda vehicles are more fuel efficient. I cannot say that enough times. It is not because they are more fuel efficient. They are not more fuel efficient. At best, they are even.

What good does it do to tell folks: You can buy a Tundra but not a Silverado? Why are we doing that to ourselves? It is not for the environment because it is no more environmentally friendly. Why are we doing that to ourselves? Why are we doing that to American jobs?

The growth in sales of the imported vehicles is dramatic. It overwhelms the numbers of hybrids being sold. My dear friend from Illinois shows on his chart hybrid sales of something like 35,000. Meanwhile, Toyota's truck sales include 700,000 pickup trucks and SUVs this year. The impression of my colleague's chart is, look at all of the hybrids they are selling. But this is a peanut compared to the number of large trucks they are selling. So do not say the Big 3 are selling all the large vehicles and let everyone else off the hook. They are all selling a lot more large trucks than they are hybrids.

Mr. BIDEN. Will the Senator yield?

Mr. LEVIN. I am happy to yield.

Mr. BIDEN. Why don't we change the standard, the CAFE standard? Why is no one recommending that? Why don't we say that every vehicle, based on weight, no matter where it is made, must meet the same exact standard? Why don't we do that?

Mr. LEVIN. It could be done. And NHTSA has a right to do that under our bill if it is logical to do that. But we should not set the number. We could say to NHTSA, and it is a perfectly logical argument, it seems to me that you should have the same mile per gallon standard for the same size vehicle. That is a logical argument. But that is not what is in this amendment. This builds on a defective system and makes it worse.

Mr. BIDEN. If the Senator will yield, I have trouble with the amendment of the Senator from Illinois, but I also

have trouble with the amendment of the Senator from Michigan. It seems to me we have a problem, a big problem. I don't think we can meet the standard of the Senator from Illinois in time, and I think it would damage American jobs significantly.

But I don't understand why we do not bite the bullet and say, whether NHTSA does it or not, you can't drive a Toyota that gets less miles than a Dodge Durango or an American-made car because you have a fleet average.

The PRESIDING OFFICER. The Senator from Michigan should be advised his time has expired.

Mr. DURBIN. Mr. President, how much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Illinois has 17 minutes; the Senator from Missouri has 9 minutes 20 seconds.

Mr. DURBIN. I will speak for a few minutes and yield to my colleague and friend from Missouri.

To the Senator from Delaware, I am talking fleet average. That applies to German, Japanese, American cars—to all cars. The argument, buy a Toyota Tundra, do not buy a Chevrolet Silverado that is not true. This is not a standard for American-made cars but a standard for cars sold in America from wherever they are manufactured.

Yes, the rules will apply to American manufacturers the same as they apply to others. Don't we want that? Isn't our goal to reduce the consumption of oil in America and our dependence on foreign oil? I no more stand here and put a discriminatory amendment up for American manufacturers and workers and say, You have to play to a higher standard than Japanese, German, Swedish, or whatever the source might be of the other car. This is a fleet average. It does not mean that every car has to meet this average. It is an average, which means there will be larger cars and larger trucks that will get lower mileage, but there must be more fuel-efficient cars that bring it to an average number.

Let me also talk about the unrealism of my proposal. For the record, increasing the fuel efficiency of passenger cars by 12½ miles per gallon over the next 11 years, the argument that it is beyond us, Americans cannot imagine how we would do such a thing—NHTSA has required that trucks in our country increase their fuel efficiency by 2.2 miles a gallon over 2 years. So they are improving by more than a mile a gallon over 2 years. My standard for all is 12½ miles over 11 years. Why is this such a huge technological leap? I don't think it is.

I yield for a short question on a limited time.

Mr. BIDEN. I truly am confused. I don't doubt what the Senator says. I don't fully understand it.

It is a fleet average. Toyota makes an automobile—I am making this up—that gets 60 miles per gallon when people drive around in Tokyo that they will not sell here at all in order that they can make a giant Toyota truck that gets poorer mileage or as poor mileage as our truck, and they get to sell it here because they have averaged out their fleet.

My question is, Why don't we just say, based on the weights of these vehicles, everybody has to meet the same standard, not an average, because people are not buying two-seater 60-mile-per-gallon vehicles here as they are in Europe where it is $4 a gallon. That is my question.

Mr. DURBIN. Let me say to the Senator from Delaware, if that is the loophole, I want to close it.

Mr. BIDEN. I think it is.

Mr. DURBIN. I am concerned about what is sold in America. I am concerned about the oil that is consumed in America and the gasoline consumed in America. I don't care if Toyota makes a car that is sold in Australia and what the mileage might be. That is their concern.

For us to take the attitude or approach that we are not even going to hold the manufacturer to any higher standards with fuel efficiency in my mind is a concession that we will be dependent on foreign oil for as long as we can imagine.

The Senator from Missouri says I am engaged in a ''Soviet survival'' approach to the economy. I will just tell him that I don't believe it was a Soviet-style approach which enacted CAFE in the first instance and resulted in such a dramatic decline in our dependence on foreign oil.

As to the argument that this kills jobs, the idea this kills jobs, I ask unanimous consent to have printed in the RECORD a letter of endorsement from the Transport Workers Union of America. Here is one union that supports it.

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

TRANSPORT WORKERS UNION OF AMERICA,
Washington, DC, June 16, 2005.

DEAR SENATOR: On behalf of the 130,000 members of the Transport Workers Union and transit and rail workers everywhere, we urge you to vote for the Durbin CAFE amendment to the pending energy bill to raise fuel economy standards.

The amendment requires all car companies in America—both domestic and foreign—to increase average fuel efficiency. This is achievable with current technology and so clearly in the national interest that it is difficult to understand how anyone could oppose it:

(1) National Security—in an era when the United States is under attack from foreign fanatics, it is of critical importance to reduce our dependence on foreign oil imports, most especially when those imports support and subsidize those very nations which are the source of these attacks.

(2) Air Pollution—Opponents of environmental measures are fond of citing the need for established, proven science. There is no dispute that auto emissions are one of the major sources of air pollution in the modern era.

(3) Reducing Health Costs—Auto emissions are a major cause of asthma and other respiratory diseases and a major contributor to the rising health care costs in America. These costs are, in turn, a major factor in the difficulty American manufacturers have in competing with foreign manufacturers.

It would be disingenuous to pretend that the members of the Transport Workers Union do not have a major stake in reducing the costs to the U.S. economy—accidents, death, healthcare, pollution cleanup, and enforcement—of automobile use. Certainly anything that would stop the extreme subsidizing of auto use in America and allow the marketplace to drive consumers to the most efficient use of transportation resources would increase jobs for the rail and transit workers we represent.

But that is an important point. Tightening auto fuel efficiency standards would not, as some argue, reduce American jobs. It would simply transfer them from one industry to another—to an industry which is not only highly unionized and highly compensated, but which promotes the national interest of security, a clean environment and lower health care costs.

We urge you to vote for the Durbin fuel economy amendment to the energy bill.

Sincerely,

ROGER TAUSS,
Legislative Director,
Transport Workers Union.

Mr. DURBIN. And I might also say the National Environmental Trust says that by 2020, nearly 15,000 more U.S. autoworkers would have jobs because of a higher fuel efficiency standard, a 14-percent increase in average annual growth in U.S. auto industry employment, an auto industry that is declining in terms of the people who are working there.

In terms of the savings, the Senator from Missouri was troubled by the notion that American consumers would spend $3.6 billion for this new technology in these more fuel-efficient vehicles. What the Senator does not acknowledge is that by making that investment of $3.6 billion, under my amendment the savings in fuel to consumers will be over $110 billion; $3.6 billion in new cars and trucks, $110 billion of savings to consumers.

So would you get rid of an old gas guzzler to have a more fuel-efficient engine if it meant a trip to the gasoline station did not require taking out a loan at a local bank? Of course you would. That is only smart and only sensible.

Let me also say on the issue of safety, if you see the memo on safety on the vehicles involved, we know that we have the potential here of building vehicles that are safer and fuel efficient. We have statistics that relate to cars and trucks sold, but, in fairness, these are statistics in a period from 1994 and 1997. I will assume SUVs are a lot safer today.

But if you think it is a given that an SUV is safer than a car, the Honda Civic, at 2,500 pounds, had a year death rate of 47 per million registered vehicle miles; a 5,500-pound vehicle—twice as large—four-wheel-drive Chevy Suburban had a death rate of 53 per million registered vehicle miles. Other popular SUVs are even more lethal during that period: four-door Blazers, at 72 deaths

per million; the shorter-wheel-base two-door Blazer had an appalling 153 deaths per million; the Explorer, 76; Jeep Grand Cherokee had 52; and of course, in fairness, Toyota 4Runner, a large SUV, 126 deaths per million.

The notion that SUVs are automatically safer—we know the problems with rollovers, and we know that some of the difficulties with even the larger cars have to be reconciled. To assume that a larger, bigger SUV is always safer is not proven by these numbers, these statistics.

Let me also say what I propose would apply to Toyota and Honda SUVs sold in America as well. I honestly believe we should hold those to the same standard.

Mr. BIDEN. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. BIDEN. I have trouble explaining to my Chrysler workers when I want to raise the CAFE standard. They are not happy with me. I voted against it last time.

My friend from Michigan, if you can drive a Toyota into that Chrysler parking lot that gets less mileage than the vehicle being made in that Chrysler plant under the way CAFE standards are set up, you would be able to do that because the fleet average means you can drive in a big old Toyota getting 16 miles to the gallon or 17 miles to the gallon, but you could not drive the Dodge Durango that gets 18 miles a gallon—1 mile better—because the fleet average causes the Durango to be out of the ballpark.

That is my problem with all of this. That is why I cannot vote for what the Senator is suggesting even though I agree with the thrust of what he is saying. That is why I have difficulty with my friend from Michigan. He solves that problem in a sense, but he does not solve the larger problem of kicking the requirements higher.

I thank the Senator.

Mr. DURBIN. How much time remains?

The PRESIDING OFFICER. The Senator from Illinois has 8 minutes 40 seconds.

Mr. DURBIN. I also say about a Bond-Levin amendment that will be offered that it does not set goals for increased fuel economy for oil savings. That is unfortunate. It gives the decisionmaking over to the National Highway Traffic Safety Administration. They do not have a very good track record in holding the automobile maker selling in America to increased fuel efficiency.

I like dual E85 vehicles. I think those are sensible. Sadly, at this point, there are very few places to turn to to buy the fuel.

My colleague, Senator OBAMA, was talking about a tax treatment that would give incentives to set up these E85 stations. It was, unfortunately, not included in this bill. I think it should have been. Right now, there are precious few to turn to. Dual-fuel use is part of the Bond-Levin amendment, but it is a very rare occurrence where you can actually find the E85 fuel to put in your car. Plus, we find when they are dual-fuel use vehicles, which the Senators rely on a great deal for their savings, fewer than 1 percent of the people actually use the better fuel. They stick to the less fuel efficient source of energy for their car. They do not use the E85 fuel.

Sadly, the Bond-Levin amendment will increase our 2015 oil consumption by almost as much as we currently import from Saudi Arabia. So no more fuel efficiency, a response to the problem which is not realistic and, unfortunately, even more dependent on foreign oil in the future.

Mr. President, I reserve the remainder of my time.

Mr. LEVIN. Mr. President, I wonder if the Senator from Missouri would yield 30 additional seconds to me to put a statement in the RECORD.

Mr. BOND. I so yield, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this is a National Academy of Sciences finding about the CAFE system that the Senator from Delaware made reference to. It states:

. . . one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers'' that is, ''equal treatment of equivalent vehicles made by different manufacturers.''

The NAS continues, ''The current CAFE standards fail this test.''

That is what the Senator from Delaware was referring to.

Mr. President, I ask unanimous consent that the full paragraphs from the National Academy of Sciences study be printed in the RECORD.

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

NATIONAL ACADEMY OF SCIENCES REPORT ON CAFE [2002]

CAFE DISCRIMINATES AGAINST THE DOMESTIC AUTO INDUSTRY

''. . . one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers. The current CAFE standards fail this test. If one manufacturer was positioned in the market selling many large passenger cars and thereby was just meeting the CAFE standard, adding a 22-mpg car (below the 27.5-mpg standard) would result in a financial penalty or would require significant improvements in fuel economy for the remainder of the passenger cars. But, if another manufacturer was selling many small cars and was significantly exceeding the CAFE standard, adding a 22-mpg vehicle would have no negative consequences.'' (page 102)

''A policy decision to simply increase the standard for light-duty trucks to the same level as for passenger cars would operate in this inequitable manner. Some manufacturers have concentrated their production in light-duty trucks while others have concentrated production in passenger cars. But since trucks tend to be heavier than cars and are more likely to have attributes, such as four-wheel drive, that reduce fuel economy, those manufacturers whose production was concentrated in light-duty trucks would be financially penalized relative to those manufactures whose production was concentrated in cars. Such a policy decision would impose unequal costs on otherwise similarly situated manufacturers.'' (page 102)

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Missouri.

Mr. BOND. Mr. President, I thank my colleague from Michigan.

I would say that, No. 1, NHTSA has said they will consider basing light-truck standards on vehicle weight or size, as the Senator from Delaware suggested. The Senator from Illinois was downplaying the CAFE increases by NHTSA, but he just talked about them. The difference between the 1.5-mile-per-gallon increase that NHTSA ordered for light trucks—and they did order it—and what he is proposing is that NHTSA's was based on science and technology.

With that, Mr. President, I yield 4 minutes to my friend from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I thank my friend for yielding me time.

Mr. TALENT. Mr. President, Missouri is an auto State. Each year the hard-working employees of six assembly plants produce well over 1 million cars and light trucks that are shipped around the country. In fact, we have 221,000 auto-related workers in Missouri. There are 6.6 million autoworkers around the country. I raise the question: What happens to our automobile economy, what happens to the workers, what happens to the people who buy them, what happens to the people on the highways if suddenly our auto manufacturers are forced to make unreasonable changes in fuel economy standard?

When enacted, CAFE established a 14.6-mpg level for combined car and light truck fuel economy. That level increased to 17.5-mpg in 1982 and to 20.7-mpg in 1996. Since the early 1970s, new vehicles have continued to become more fuel efficient. According to the EPA data, efficiency has increased steadily at nearly 2 percent per year on average from 1975 to 2001 for both cars and trucks. Fuel economy rates in cars have more than doubled in the past generation, from 14.2 miles per gallon in 1974 to more than 28.1 miles per gallon in 2000.

Today's light truck gets better mileage than the compact cars from the 1970s. This bipartisan approach, offered by Senator LEVIN and the Senior Senator from Missouri, KIT BOND, increases fuel economy. It does it in a way that also allows the domestic manufacturing industry in our U.S. economy to thrive as well. The two are not mutually exclusive. We can accomplish both goals. If we rush to legislate higher CAFE standards it will have a negative effect on the American economy and on manufacturing jobs in America. If we do it wrong, we will not even benefit the environment the way we should.

I drive a Ford, and I just toured the Ford Motor plant in Kansas City. I listened to the car manufacturers, the

working men and women in the unions who build the cars, and the other impacted groups, and the significantly higher CAFE standard creates a real possibility of costing thousands of Americans their jobs, including many of the 221,000 auto-related workers in Missouri. The Ford F150 pickup truck is made in Kansas City. They estimated that an increase in CAFE standards to the 34-mpg that others are suggesting would raise the price of the truck by $3,000. That is a lot of money to a farmer or a construction worker considering a purchase. Adding $3,000 or more to the sticker price of a new SUV or truck hurts sales and it kills jobs. This compromise offered by Senators BOND and LEVIN is a reasonable measure that gives our U.S. automakers equal footing with their foreign counterparts. The adverse effects of an increased fuel economy standard will have a negative effect on the relative competitiveness of U.S. manufacturers.

A higher fuel economy discriminates against the American auto industry. The American-manufactured vehicles, like those made in Missouri, are just as fuel efficient as the imports. However, they are put in a negative position, because of the CAFE structure—the fact that it looks at a fleetwide average rather than looking at class of vehicles compared to class of vehicles. Nothing is gained for the environment if an imported SUV is bought instead of an American-made SUV where the American SUV is at least as fuel efficient as the foreign SUV. Nothing is gained for the air, but a lot of American jobs are lost. This is the impact of a 36-mile-per-gallon combined car/truck standard on five manufacturers. Honda only has to increase theirs by 20 percent; Toyota, 36 percent; GM, 51 percent; Ford, 56 percent; DaimlerChrysler, 59 percent.

Instead of saying the same size vehicle will be subject to the same CAFE standard, the same mileage standard, it lumps together all vehicles of a manufacturer, and the results are, in my judgment, bizarre and costs huge numbers of American jobs without the benefit to the environment. While CAFE standards do not mandate that manufacturers make small cars, they have had a significant effect on the designs manufacturers adopt—generally, the weights of passenger vehicles have been falling. Producing smaller, lightweight vehicles that can perform satisfactorily using low-power, fuel-efficient engines is the most affordable way for automakers to meet the CAFE standards.

The only way for U.S. automakers to meet the unrealistic numbers that others are proposing is to cut back significantly on the manufacturing of the light trucks, minivans, and SUVs that the American consumers want, that the people of my State and the people of the other States want—to carry their children around safely and conveniently, to do their business.

Levin-Bond asks the Department of Transportation to consider rulemaking that would also consider the effect on U.S. employment, the effect on near-term expenditures that are required to meet increased fuel economy standards on the resources available to develop advanced technology. It puts in place a rational and science-based system of looking at many criteria which are relevant to the question of where the new standards for fuel economy ought to be instead of arbitrarily picking a number out of the air. CAFE should be addressed through a rational rulemaking process that is put in place by experts over a fixed period of time that then makes a decision on what the new standards should be. Politicians who don't fully understand the technologies involved should not arbitrarily set unattainable CAFE standards.

As we struggle to get our economy moving again, we ought to be developing proposals that will increase the number of jobs—not eliminate them. We are debating this obscure theory of CAFE where foreign manufacturers are relatively unconstrained by CAFE because of a fleet mix, not because they are more fuel efficient class by class. For those who say, too bad, we must force the U.S. Big Three to build more fuel-efficient cars and trucks, do you know that under CAFE it doesn't matter what the companies manufacture and build? It is calculated based on what the consumer buys.

Our auto manufacturers can produce vehicles that get 40 miles per gallon. Sure, they can. They can produce electric vehicles which even do better than that. The question is: Are there people who want to buy them? Light trucks today account for about 50 percent of GM sales, 60 percent of Ford sales, and 73 percent of DaimlerChrysler sales. There are over 50 of these high economy models in the showrooms across America today. But guess what. They represent less than 2 percent of total sales. Americans don't want them. You can lead a horse to water; you can't make him drink. You can lead the American consumer to a whole range of lightweight, automobiles, but you can't make them buy them.

Additionally, with the higher cost of new vehicles, farmers, construction workers and parents aren't going to afford the more expensive new light truck. More older, less efficient cars will stay on the road longer. How does that improve our air quality or reduce the need for imported oil?

Let's put this debate in perspective. Support the American autoworker, support the American economy, support the Levin-Bond amendment and oppose the unreasonable proposal from Senator DURBIN.

Mr. President, I sure agree with what the Senator from Delaware was saying, and the Senator from Michigan, so I do not have to repeat it all. I want to make what I think are four brief points.

Let me clarify, whether you meet CAFE standards does not depend on the cars you offer to sell. It depends on the cars that people actually buy. It is very important to remember that. That is the reason for the problem with the amendment of the Senator from Illinois that the Senator from Michigan and Senator BIDEN both mentioned.

The Japanese have been effective in capturing more of the small-car market. American manufacturers have been more effective in capturing the SUV and truck market. Now, the Senator from Illinois says we missed a bet by going after the truck and SUV market. Well, the Japanese don't think so. The Senator from Michigan made the point, they have been going like a house afire to try to capture precisely that market. And the amendment of the Senator from Illinois would make it much easier for them to do it.

The reason is, the trucks and the SUVs we sell now are general fleet. They tend to be big and, therefore, have somewhat lower mileage. So if the amendment of the Senator from Illinois were adopted, the Japanese manufacturers could continue to sell lower mileage bigger trucks and bigger SUVs and still comply with his standard under the CAFE laws. The result would be they would be able to capture the SUV and larger truck market.

His amendment would not cause people to buy fewer large SUVs and trucks. It would cause them to buy fewer American SUVs and American trucks. That is the point the Senator from Michigan and my friend from Missouri have made.

Now, the Senator from Illinois talks about monster SUVs. I have to comment, people do not buy SUVs or trucks because they have lower gas mileage. They buy them generally for reasons of safety or utility. We went through this in my family. We used to drive smaller cars. When we started having kids, my wife put her foot down and said: The car you have been driving would fold up like an accordion if you ever got in an accident. We have kids now. You have to get a bigger car. That is the first time we bought an SUV. That kind of decisionmaking goes on all over the United States.

Let me close by commenting on some of what the Senator from Illinois said about our auto manufacturers. He was criticizing decisions they made and mentioning they are having difficult economic times. It is true that our auto manufacturers are going through some troubled times. Is that a reason to heap a new burden on them? It is true they have not been as effective as any of us would have liked in capturing the small-car market. Is that a reason to take the larger truck market from them? It is true that America relies too much on overseas oil. Is that a reason to send our jobs overseas?

We have an alternative in front of us that is going to encourage greater fuel economy: higher mileage automobiles. It is working. It is rational and logical, as the Senator from Michigan has said, rather than arbitrary. It is the Bond-Levin amendment.

I urge the Senate to adopt that amendment and stay the course. It is working, and it will protect American jobs.

I thank the Senate, Mr. President. I yield whatever time I have.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank my friend from Missouri.

Mr. President, I ask unanimous consent that the Senator from Missouri, Mr. TALENT, and the Senator from Kentucky, Mr. BUNNING, be added as cosponsors to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I yield 2 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. President, as cochairman of the Senate Auto Caucus, I am pleased to join with my colleagues, Senator BOND and Senator LEVIN, as a cosponsor of this corporate average fuel economy standards amendment to the Energy bill. It is an important issue, and it impacts on the economy of our country, the environment, and the safety of the traveling public.

There is no doubt that each of us wants the automobile industry to make cars, trucks, SUVs, and minivans that are energy efficient. It is not only good for the environment, but it means more money in the pockets of the American consumers because they are going to spend less money at the gas pump.

However, I am deeply concerned that the artificial and arbitrarily chosen CAFE standard supported by some of my colleagues will have a devastating effect on jobs. Ohio is the No. 2 automotive manufacturing State in America, employing more than 630,000 people either directly or indirectly. I have heard from a number of these men and women whose livelihood depends on the auto industry and who are, frankly, very worried about their future.

There is genuine concern that a provision mandating an arbitrary standard could cause a serious disruption and shifting in the auto industry resulting in the loss of tens of thousands of jobs across the Nation.

Domestic automakers build the light trucks that consumers want. DaimlerChrysler's fleet of light trucks makes up more than 50 percent of their entire fleet. The company manufactures the Jeep Liberty and the Jeep Wrangler in Toledo, OH, and employs approximately 5,200 workers at this plant. If an arbitrary CAFE provision is mandated that targets light trucks, this plant could close because Chrysler would be forced to redistribute their manufacturing base to build more small, high-mileage cars.

The concern of auto workers was evident at the polls in Ohio last November. Voters rejected a candidate for President who had advocated an arbitrary standard that would have cost jobs and raised prices on the vehicles that consumers demand.

Another concern is that an arbitrary standard would have a harmful effect on public safety, as well as put a severe crimp in the manufacturing base of my State of Ohio which is already under duress because of high natural gas costs, litigation, health care costs, and competition from overseas.

In 2001, new vehicle sales of trucks, SUVs, and minivans outpaced the sale of automobiles for the first time in American history. This remarkable result can be attributed to a number of factors, but one reason that is often cited is the fact that these vehicles are seen as safer.

On the other hand, the Bond-Levin amendment is a rational proposal based on sound science that will keep workers both in Ohio and nationwide working, allowing these men and women to continue to take care of their families and educate their children while also encouraging greater fuel efficiency and safer vehicles.

This amendment calls for the Department of Transportation to increase fuel economy standards based on several factors including the following: technology feasibility; economic practicability; the need to conserve energy and protect the environment; the effect on motor vehicle safety; and the effect on U.S. employment.

I believe this is a much more responsible approach that will improve the fuel efficiency of our Nation's vehicles while also protecting public safety and our Nation's economic security.

This amendment also requires that the Department of Transportation complete the rulemaking process that would increase fuel efficiency standards for 2008 model vehicles. If the administration doesn't act within the required timeframe, Congress will act, under expedited procedures, to pass legislation mandating an increase in fuel economy standards consistent with the same criteria that the administration must consider.

This administration is already taking steps to improve fuel efficiency. As you know, in 2003, the National Highway Traffic Safety Administration enacted the largest fuel efficiency increase for light trucks in over 20 years. By 2007, fuel efficiency requirements will increase to 22.2 miles per gallon from the 20.7 miles per gallon that had been in place through the 2004 model year.

The amendment will also increase Federal research and development for hybrid electric vehicles and clean diesel vehicles.

Additionally, the amendment will increase the market for alternative-powered and hybrid vehicles by mandating that the Federal Government, where feasible, purchase alternative powered and hybrid vehicles.

I believe that this guaranteed market will encourage the auto industry to continue to increase their investment in research and development with an eye towards making alternative-fuel and hybrid vehicles more affordable, available, and commercially appealing to the average consumer.

As a matter of fact, I have ridden in a hybrid manufactured by DaimlerChrysler and I have driven a fuel-cell automobile manufactured by General Motors. I firmly believe that my children and grandchildren will one day be driving automobiles that run on hydrogen and give off only water. However, it will take time for the technology that makes these vehicles possible to be cost-effective and for these vehicles to be marketable.

Until then, I believe that consumer demand will continue to drive the market place. While truck, SUV, and minivan demand is not expected to decrease any time soon, automakers will meet this demand.

In the meantime, many consumers are making the decision to move from light trucks to smaller vehicles as their needs change. In light of today's gas prices, consumers will demand more fuel efficient-vehicles that do not jeopardize their personal and family safety.

For example, my daughter-in-law currently drives a full-size van. As the mother of four young children, she has needed the space and flexibility a van provides in order to accommodate the necessary safety seats for my grandchildren. Now that her children are getting older and are able to travel without car safety seats, she is looking into purchasing a station wagon. Such a vehicle will meet her needs while saving fuel over the long term.

As consumer demands change because of trends and fuel prices, automakers will change to meet that demand. These changes in auto manufacturing should be driven by consumer choice, not by a government-mandated arbitrary standard.

The Bond-Levin amendment is supported by the AFL–CIO, the UAW, the U.S. Chamber of Commerce, the automotive industry, the American Farm Bureau Federation and a number of other organizations.

I urge my colleagues to support the Bond-Levin amendment. It meets our environmental, safety and economic needs in a balanced and responsible way, contributing to the continued and needed harmonization of our energy and environmental policies.

Mr. MCCAIN. Mr. President, I support increasing corporate average fuel economy standards. In fact, I have supported strengthening CAFE standards for several years, and in 2002 I introduced legislation that would have significantly improved such standards. My strong support for raising CAFE standards makes it all the more difficult for me to oppose the amendment offered by Senator DURBIN this evening.

When this body considers legislation, we must always be mindful of distinguishing between the advisability and the feasibility of the proposal before us. I strongly support the Durbin amendment's goals of lowering our reliance on foreign oil and of reducing

the emission of greenhouse gases. I strongly support those goals. But this amendment, sadly, does not appear to be achievable without significantly and detrimentally affecting our economy.

Mr. President, there are realistic options available to us. For example, I support legislation that would require passenger cars and light trucks to meet the same average fuel economy standard of 27.5 miles within a reasonable amount of time. I will continue to work towards such achievable and beneficial improvements to our Nation's average fuel economy.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Illinois has 6 minutes 53 seconds. The Senator from Missouri has 1 minute 50 seconds.

The Senator from Illinois.

Mr. DURBIN. Thank you very much, Mr. President.

Take a look at this chart and see what is happening in America. As the price of gasoline goes up, this veracious appetite for SUVs is going down. SUV sales in America are declining, with a 19-percent decrease from the first quarter of 2004 to 2005.

Detroit, are you listening? Are you listening to consumers across America? They do not like to take expensive gasoline and put it into an SUV that gets terrible mileage. They are telling you what the future is going to look like when we have $50- and $60- and $70- and $80- and $90-a-barrel oil coming into the United States.

The consumers are speaking already. Sadly, their response is not being picked up. Sadly, their response is not being picked up by some of the major manufacturers of U.S. automobiles.

Take a look at this chart. The Chevy Suburban: I know the Chevy Suburban. The car I am provided in the Senate is a Chevy Suburban. It is a great car but a big, heavy car. It is picked for that reason for security purposes. Whatever. But take a look at the comparable sales: the Toyota Prius, 34,225 in U.S. sales so far in 2005; 35,756 Ford Expeditions; 24,000 Chevy Suburbans.

The point I am making is the American consumer's appetite is growing for a car which Detroit is not making. We are, sadly, 2 years behind. These Toyota Priuses, which one of our colleagues in the Senate drives, happen to be cars for which you can get 50 miles a gallon and more. People want them, but they cannot buy an American version. What is Detroit waiting for?

Look where we are as a nation. When we took the leadership—Senator BOND may call this Soviet-style leadership, command-and-control leadership—in 1975 and said we were going to have more fuel-efficient vehicles, look at that increase in average miles per gallon in a 10-year period of time—dramatic. Look what has happened since then—flat-lining.

As we have increased our dependence on foreign oil, our cars and trucks are less and less fuel efficient. The end is near, my friends. It is going to reach us sooner rather than later if we do not accept the reality that we need to say, if America is going to be truly less dependent on foreign oil, we have to set standards that move us toward energy conservation and energy efficiency. The first place to start is in the cars and trucks we drive.

I think if a President, if a Congress, stood up and said: ''America, we are in this together; we are challenging Detroit to come out with a fuel-efficient car; we need one that is going to make America less dependent on foreign oil so we do not get involved in wars, so we do not have to walk hand-in-hand with Saudi sheiks around America; we want to be less dependent and will you join us, America, the businesses and families of this country would stand up and say: We are ready.

I wish to say, in response to the Senator from Ohio, the Chair of the Senate Auto Caucus, Mr. VOINOVICH, I could not agree with him more. This is a hugely important industry. It is in trouble because the market share for American automobile manufacturers continues to decline. They are building cars that Americans are not buying. Americans are looking to Japanese and German and other cars instead.

There is a message there. We have to revitalize this industry by thinking forward instead of thinking backward. And thinking forward says, the price of gas is going up. You better have a more fuel-efficient vehicle. You can reach it if you use innovation and creativity. Unfortunately, that is not occurring today.

Let me close with a comment I opened with from BusinessWeek magazine:

As Congress puts the final touches on a massive new energy bill, lawmakers are about to blow it. That's because the bill, which they hope to pass by the end of July, almost certainly won't include the one policy initiative that could seriously reduce American's dependence on foreign oil: a government-mandated increase in the average fuel economy of new cars, SUVs, light trucks, and vans.

The Bond-Levin amendment does not do that. It does not increase fuel efficiency. It does not reduce dependence on foreign oil. The amendment which I offer does, and I hope my colleagues will support it.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I think there is a clear difference. My colleague from Illinois has a political idea of a fuel standard and says that will increase efficiency. The difference is that the Bond-Levin approach relies on what is working and that is having sound science, administered by the National Highway Traffic Safety Administration, pushing the manufacturers of cars to improve mileage as quickly as it can be improved, using science and technology, rather than forcing them to go to small automobiles which, according to NHTSA, have caused between 1,300 and 2,600 more vehicle deaths a year as a result of the lower weight cars needed to meet arbitrary fuel standards previously imposed.

I urge my colleagues to oppose the Durbin amendment but to support the Bond-Levin amendment to ensure that we maintain safe, efficient automobiles, getting better fuel economy, and providing choices for our families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, does the Senator from Missouri have time remaining?

The PRESIDING OFFICER. The Senator has 37 seconds.

Does the Senator wish to reserve that time or yield it back?

Mr. BOND. I reserve my time.

Dr. DURBIN. In the interest of picking up a few more votes, I yield back all my time.

The PRESIDING OFFICER. The Senator from Illinois yields back all his time.

The Senator from Missouri.

Mr. BOND. I yield back all my time as well.

The PRESIDING OFFICER. The Senator yields back his time. All time has expired.

The junior Senator from Missouri.

Mr. TALENT. Mr. President, I have talked to both sides to get permission for a unanimous consent request allowing me to offer an amendment that is acceptable to both sides on a voice vote.

AMENDMENT NO. 819

So I ask unanimous consent to be permitted to offer amendment No. 819 and proceed to a vote right after I explain it.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, some of us have to catch a flight. I was hoping we would get the vote off here.

Mr. CRAIG. Let me work this through. This will take a minute or 2 for the Senator from Missouri. It has been agreed to. It will be a voice vote, and then we will move immediately to the votes.

Mrs. BOXER. I object if it is more than a minute. That is how close it is. I can give him a minute.

Mr. TALENT. Thirty seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT], for himself, Mr. JOHNSON, Mr. BOND, and Mr. DORGAN, proposes an amendment numbered 819.

The amendment is as follows:

(Purpose: To increase the allowable credit for fuel use under the alternatively fueled vehicle purchase requirement)

On page 420, strike lines 5 through 16 and insert the following:

SEC. 702. FUEL USE CREDITS.

(a) IN GENERAL.—Section 312 of the Energy Policy Act of 1992 (42 U.S.C. 13220) is amended to read as follows:

"SEC. 312. FUEL USE CREDITS.

''(a) DEFINITIONS.—In this section:

''(1) BIODIESEL.—The term 'biodiesel' means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

''(2) QUALIFYING VOLUME.—The term 'qualifying volume' means—

''(A) in the case of biodiesel, when used as a component of fuel containing at least 20 percent biodiesel by volume—

''(i) 450 gallons; or

''(ii) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of the average annual alternative fuel use; and

''(B) in the case of an alternative fuel, the amount of the fuel determined by the Secretary to have an equivalent energy content to the amount of biodiesel defined as a qualifying volume under subparagraph (A).

''(b) ALLOCATION.—

''(1) IN GENERAL.—The Secretary shall allocate 1 credit under this section to a fleet or covered person for each qualifying volume of alternative fuel or biodiesel purchased for use in a vehicle operated by the fleet.

''(2) LIMITATION.—The Secretary may not allocate a credit under this section for the purchase of an alternative fuel or biodiesel that is required by Federal or State law.

''(3) DOCUMENTATION.—A fleet or covered person seeking a credit under paragraph (1) shall provide written documentation to the Secretary supporting the allocation of the credit to the fleet or covered person.

''(c) USE.—At the request of a fleet or covered person allocated a credit under subsection (b), the Secretary shall, for the year in which the purchase of a qualifying volume is made, consider the purchase to be the acquisition of 1 alternative fueled vehicle that the fleet or covered person is required to acquire under this title, title IV, or title V.

''(d) TREATMENT.—A credit provided to a fleet or covered person under this section shall be considered to be a credit under section 508.

''(e) ISSUANCE OF RULE.—Not later than 180 days after the date of enactment of the Energy Policy Act of 2005, the Secretary shall issue a rule establishing procedures for the implementation of this section.''.

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Energy Policy Act of 1992 is amended by striking the item relating to section 312 and inserting the following:

''Sec. 312. Fuel use credits.''.

Mr. TALENT. Mr. President, this is an amendment that has been accepted by unanimous consent and voice vote by the Senate in the past. It would allow municipalities to help meet their EPAct requirement by using biodiesel. I am offering it on behalf of Senators JOHNSON, BOND, DORGAN, and myself.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 819.

The amendment (No. 819) was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 925

The PRESIDING OFFICER. The question is on agreeing to amendment No. 925 offered by the Senators BOND and LEVIN.

Mr. BOND. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Sentors are necessarily absent: the Senator from New Mexico (Mr. DOMENICI), and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. DODD), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 31, as follows:

[Rollcall Vote No. 156 Leg.]

YEAS—64

Alexander	DeMint	Martinez
Allard	DeWine	McConnell
Allen	Dole	Mikulski
Baucus	Dorgan	Murkowski
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Pryor
Bond	Feingold	Roberts
Brownback	Frist	Salazar
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Hagel	Shelby
Byrd	Hatch	Smith
Carper	Hutchison	Specter
Chambliss	Inhofe	Stabenow
Coburn	Isakson	Stevens
Cochran	Johnson	Talent
Coleman	Kohl	Thune
Conrad	Kyl	Vitter
Cornyn	Landrieu	Voinovich
Craig	Levin	Warner
Crapo	Lincoln	
Dayton	Lugar	

NAYS—31

Akaka	Harkin	Reed
Biden	Jeffords	Reid
Boxer	Kennedy	Rockefeller
Cantwell	Kerry	Sarbanes
Chafee	Lautenberg	Schumer
Clinton	Leahy	Snowe
Collins	Lieberman	Sununu
Corzine	McCain	Thomas
Durbin	Murray	Wyden
Feinstein	Nelson (FL)	
Gregg	Obama	

NOT VOTING—5

Bingaman	Domenici	Lott
Dodd	Inouye	

The amendment (No. 925) was agreed to.

Mr. CRAIG. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, for the information of Senators, in all likelihood the next vote will be the last vote tonight. We cannot say with certainty, but in all likelihood this is the last vote. The plan is to have final passage on the Energy bill at 9:45 on Tuesday morning. We will complete the bill tonight. We still have the managers' package. That is why I cannot say absolutely no votes. But there is a 99-percent chance that the next vote will be the last vote.

We will be working on the Interior bill on Friday and Monday. We will be stacking the votes on Interior, hopefully, for Tuesday and complete passage of the Interior bill.

I yield the floor.

AMENDMENT NO. 902

The PRESIDING OFFICER. Under the previous order, the Durbin amendment is next for consideration.

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Senators have yielded back their time. The question is on agreeing to amendment No. 902. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators are necessarily absent: the Senator from New Mexico (Mr. DOMENICI), and the Senator from Mississippi (Mr. LOTT).

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from California (Mrs. BOXER), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 28, nays 67, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—28

Akaka	Gregg	Obama
Cantwell	Harkin	Reed
Carper	Jeffords	Reid
Chafee	Kennedy	Rockefeller
Collins	Lautenberg	Sarbanes
Corzine	Leahy	Schumer
Dayton	Lieberman	Snowe
Dodd	Lugar	Wyden
Durbin	Murray	
Feinstein	Nelson (FL)	

NAYS—67

Alexander	DeWine	McConnell
Allard	Dole	Mikulski
Allen	Dorgan	Murkowski
Baucus	Ensign	Nelson (NE)
Bayh	Enzi	Pryor
Bennett	Feingold	Roberts
Biden	Frist	Salazar
Bond	Graham	Santorum
Brownback	Grassley	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith
Burr	Hutchison	Specter
Byrd	Inhofe	Stabenow
Chambliss	Isakson	Stevens
Clinton	Johnson	Sununu
Coburn	Kerry	Talent
Cochran	Kohl	Thomas
Coleman	Kyl	Thune
Conrad	Landrieu	Vitter
Cornyn	Levin	Voinovich
Craig	Lincoln	Warner
Crapo	Martinez	
DeMint	McCain	

NOT VOTING—5

Bingaman	Domenici	Lott
Boxer	Inouye	

The amendment (No. 902) was rejected.

Mr. CRAIG. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, before I move to a couple of other items to complete our work this evening, I will yield the floor to the Senator from Georgia for a brief statement.

The PRESIDING OFFICER. The Senator from Georgia.

(The remarks of Mr. CHAMBLISS are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENTS NOS. 811; 832, AS MODIFIED; 871, AS MODIFIED; 886, AS MODIFIED; 899, AS MODIFIED; 808; 825; 940, AS MODIFIED; 1005; 1006; 1007; 1008; 851, AS MODIFIED; 892, AS MODIFIED; 903, AS MODIFIED; 919, AS MODIFIED; 834

Mr. CRAIG. Mr. President, we have a series of managers' amendments that have been cleared on both sides. Therefore, I now ask unanimous consent that the series of amendments at the desk be considered and agreed upon en bloc and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to as follows:

AMENDMENT NO. 811

(The amendment is printed in the RECORD of June 21, 2005, under ''Text of Amendments.'')

AMENDMENT NO. 832, AS MODIFIED

On page 724, line 12, insert before ''shall enter'' the following: '', in consultation with the Administrator of the Environmental Protection Agency,''.

On page 726, line 5, insert ''and the Administrator of the Environmental Protection Agency'' after ''Interior''.

On page 726, line 10, insert before ''shall report'' the following: ''and the Administrator of the Environmental Protection Agency, after consulting with states,''.

On page 726, line 14, strike ''Secretary's agreement or disagreement'' and insert ''agreement or disagreement of the Secretary of the Interior and the Administrator of the Environmental Protection Agency''.

AMENDMENT NO. 871, AS MODIFIED

(Purpose: To provide whistleblower protection for contract and agency employees at the Department of Energy)

At the appropriate place, insert the following:

''SECTION. WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF THE DEPARTMENT OF ENERGY.

(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

(1) in subparagraph (C), by striking 'and' at the end;

(2) in subparagraph (D), by striking 'that is indemnified' and all that follows through '12344.'; and

(3) by adding at the end the following:

'(E) the Department Of Energy.'.

(b) DE NOVO JUDICIAL DETERMINATION.—Section 211(b) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)) is amended by adding at the end the following:

'(4) DE NOVO JUDICIAL DETERMINATION.—If the Secretary does not issue a final decision within 180 days after the filing of a complaint under paragraph (1) and the Secretary does not show that the delay is caused by the bad faith of the claimant, the claimant may bring a civil action in United States district court for a determination of the claim by the court de novo.'.

AMENDMENT NO. 886, AS MODIFIED

(Purpose: To include waste-derived ethanol and biodiesel in a definition of biodiesel)

On page 159, after line 23, add the following:

SEC. 211. WASTE-DERIVED ETHANOL AND BIODIESEL.

Section 312(f)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)(1)) is amended—

(1) by striking '''biodiesel' means'' and inserting the following: '''biodiesel'—

''(A) means''; and

(2) in subparagraph (A) (as designated by paragraph (1)) by striking ''and'' at the end and inserting the following:

''(B) includes biodiesel derived from—

''(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and''.

AMENDMENT NO. 899, AS MODIFIED

(Purpose: To establish procedures for the reinstatement of leases terminated due to unforeseeable circumstances)

On page 296, after line 25, add the following:

SEC. 34___. REINSTATEMENT OF LEASES.

Notwithstanding section 31(d)(2)(B) of the Mineral Leasing Act (30 U.S.C. 188(d)(2)(B)), the Secretary may reinstate any oil and gas lease issued under that Act that was terminated for failure of a lessee to pay the full amount of rental on or before the anniversary date of the lease, during the period beginning on September 1, 2001, and ending on June 30, 2004, if, (1) not later than 120 days after the date of enactment of this Act, the lessee—

(A) files a petition for reinstatement of the lease;

(B) complies with the conditions of section 31(e) of the Mineral Leasing Act (30 U.S.C. 188(e)); and

(C) certifies that the lessee did not receive a notice of termination by the date that was 13 months before the date of termination; and (2) the land is available for leasing.

AMENDMENT NO. 808

(Purpose: To establish a program to develop Fischer-Tropsch transportation fuels from Illinois basin coal)

On page 346, between lines 9 and 10, insert the following:

SEC. 4___. DEPARTMENT OF ENERGY TRANSPORTATION FUELS FROM ILLINOIS BASIN COAL.

(a) IN GENERAL.—The Secretary shall carry out a program to evaluate the commercial and technical viability of advanced technologies for the production of Fischer-Tropsch transportation fuels, and other transportation fuels, manufactured from Illinois basin coal, including the capital modification of existing facilities and the construction of testing facilities under subsection (b).

(b) FACILITIES.—For the purpose of evaluating the commercial and technical viability of different processes for producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal, the Secretary shall support the use and capital modification of existing facilities and the construction of new facilities at—

(1) Southern Illinois University Coal Research Center;

(2) University of Kentucky Center for Applied Energy Research; and

(3) Energy Center at Purdue University.

(c) GASIFICATION PRODUCTS TEST CENTER.—In conjunction with the activities described in subsections (a) and (b), the Secretary shall construct a test center to evaluate and confirm liquid and gas products from syngas catalysis in order that the system has an output of at least 500 gallons of Fischer-Tropsch transportation fuel per day in a 24-hour operation.

(d) MILESTONES.—

(1) SELECTION OF PROCESSES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall select processes for evaluating the commercial and technical viability of different processes of producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(2) AGREEMENTS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall offer to enter into agreements—

(A) to carry out the activities described in this section, at the facilities described in subsection (b); and

(B) for the capital modifications or construction of the facilities at the locations described in subsection (b).

(3) EVALUATIONS.—Not later than 3 years after the date of enactment of the Act, the Secretary shall begin, at the facilities described in subsection (b), evaluation of the technical and commercial viability of different processes of producing Fischer-Tropsch transportation fuels, and other transportation fuels, from Illinois basin coal.

(4) CONSTRUCTION OF FACILITIES.—

(A) IN GENERAL.—The Secretary shall construct the facilities described in subsection (b) at the lowest cost practicable.

(B) GRANTS OR AGREEMENTS.—The Secretary may make grants or enter into agreements or contracts with the institutions of higher education described in subsection (b).

(e) COST SHARING.—The cost of making grants under this section shall be shared in accordance with section 1002.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $85,000,000 for the period of fiscal years 2006 through 2010.

AMENDMENT NO. 825

(Purpose: To establish a 4-year pilot program to provide emergency relief to small business concerns affected by a significant increase in the price of heating oil, natural gas, propane, gasoline, or kerosene, and for other purposes)

On page 208, after line 24, insert the following:

SEC. 303. SMALL BUSINESS AND AGRICULTURAL PRODUCER ENERGY EMERGENCY DISASTER LOAN PROGRAM.

(a) SMALL BUSINESS PRODUCER ENERGY EMERGENCY DISASTER LOAN PROGRAM.—

(1) DISASTER LOAN AUTHORITY.—Section 7(b) of the Small Business Act (15 U.S.C. 636(b)) is amended by inserting after paragraph (3) the following:

''(4)(A) In this paragraph—

''(i) the term 'base price index' means the moving average of the closing unit price on the New York Mercantile Exchange for heating oil, natural gas, gasoline, or propane for the 10 days, in each of the most recent 2 preceding years, which correspond to the trading days described in clause (ii);

''(ii) the term 'current price index' means the moving average of the closing unit price on the New York Mercantile Exchange, for the 10 most recent trading days, for contracts to purchase heating oil, natural gas, gasoline, or propane during the subsequent calendar month, commonly known as the 'front month'; and

''(iii) the term 'significant increase' means—

''(I) with respect to the price of heating oil, natural gas, gasoline, or propane, any time the current price index exceeds the base price index by not less than 40 percent; and

''(II) with respect to the price of kerosene, any increase which the Administrator, in consultation with the Secretary of Energy, determines to be significant.

''(B) The Administration may make such loans, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, to assist a small business concern that has suffered or that is likely to suffer substantial economic injury on or after January 1, 2005, as the result of a significant increase in the price of heating oil, natural gas, gasoline, propane, or kerosene occurring on or after January 1, 2005.

''(C) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

''(D) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless such borrower constitutes a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the $1,500,000 limitation.

''(E) For purposes of assistance under this paragraph—

''(i) a declaration of a disaster area based on conditions specified in this paragraph shall be required, and shall be made by the President or the Administrator; or

''(ii) if no declaration has been made pursuant to clause (i), the Governor of a State in which a significant increase in the price of heating oil, natural gas, gasoline, propane, or kerosene has occurred may certify to the Administration that small business concerns have suffered economic injury as a result of such increase and are in need of financial assistance which is not otherwise available on reasonable terms in that State, and upon receipt of such certification, the Administration may make such loans as would have been available under this paragraph if a disaster declaration had been issued.

''(F) Notwithstanding any other provision of law, loans made under this paragraph may be used by a small business concern described in subparagraph (B) to convert from the use of heating oil, natural gas, gasoline, propane, or kerosene to a renewable or alternative energy source, including agriculture and urban waste, geothermal energy, cogeneration, solar energy, wind energy, or fuel cells.''.

(2) CONFORMING AMENDMENTS.—Section 3(k) of the Small Business Act (15 U.S.C. 632(k)) is amended—

(A) by inserting '', significant increase in the price of heating oil, natural gas, gasoline, propane, or kerosene'' after ''civil disorders''; and

(B) by inserting ''other'' before ''economic''.

(b) AGRICULTURAL PRODUCER EMERGENCY LOANS.—

(1) IN GENERAL.—Section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)) is amended—

(A) in the first sentence—

(i) by striking ''operations have'' and inserting ''operations (i) have''; and

(ii) by inserting before '': *Provided,*'' the following: '', or (ii)(I) are owned or operated by such an applicant that is also a small business concern (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), and (II) have suffered or are likely to suffer substantial economic injury on or after January 1, 2005, as the result of a significant increase in energy costs or input costs from energy sources occurring on or after January 1, 2005, in connection with an energy emergency declared by the President or the Secretary'';

(B) in the third sentence, by inserting before the period at the end the following: ''or by an energy emergency declared by the President or the Secretary''; and

(C) in the fourth sentence—

(i) by inserting ''or energy emergency'' after ''natural disaster'' each place that term appears; and

(ii) by inserting ''or declaration'' after ''emergency designation''.

(2) FUNDING.—Funds available on the date of enactment of this Act for emergency loans under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.) shall be available to carry out the amendments made by subparagraph (A) to meet the needs resulting from natural disasters.

(c) GUIDELINES AND RULEMAKING.—

(1) GUIDELINES.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration and the Secretary of Agriculture shall each issue guidelines to carry out this section and the amendments made by this section, which guidelines shall become effective on the date of their issuance.

(2) RULEMAKING.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration, after consultation with the Secretary of Energy, shall promulgate regulations specifying the method for determining a significant increase in the price of kerosene under section 7(b)(4)(A)(iii)(II) of the Small Business Act (15 U.S.C. 636(b)(4)(A)(iii)(II)), as added by this section.

(d) REPORTS.—

(1) SMALL BUSINESS ADMINISTRATION.—Not later than 12 months after the date on which the Administrator of the Small Business Administration issues guidelines under subsection (c)(1), and annually thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, a report on the effectiveness of the assistance made available under section 7(b)(4) of the Small Business Act, as added by this section, including—

(A) the number of small business concerns that applied for a loan under such section 7(b)(4) and the number of those that received such loans;

(B) the dollar value of those loans;

(C) the States in which the small business concerns that received such loans are located;

(D) the type of energy that caused the significant increase in the cost for the participating small business concerns; and

(E) recommendations for ways to improve the assistance provided under such section 7(b)(4), if any.

(2) DEPARTMENT OF AGRICULTURE.—Not later than 12 months after the date on which the Secretary of Agriculture issues guidelines under subsection (c)(1), and annually thereafter, the Secretary shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Small Business and the Committee on Agriculture of the House of Representatives, a report that—

(A) describes the effectiveness of the assistance made available under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), as amended by this section; and

(B) contains recommendations for ways to improve the assistance provided under such section 321(a).

(e) EFFECTIVE DATE.—

(1) SMALL BUSINESS.—The amendments made by subsection (a) shall apply during the 4-year period beginning on the earlier of the date on which guidelines are published by the Administrator of the Small Business Administration under subsection (c)(1) or 30 days after the date of enactment of this Act, with respect to assistance under section 7(b)(4) of the Small Business Act, as added by this section.

(2) AGRICULTURE.—The amendments made by subsection (b) shall apply during the 4-year period beginning on the earlier of the date on which guidelines are published by the Secretary of Agriculture under subsection (c)(1) or 30 days after the date of enactment of this Act, with respect to assistance under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), as amended by this section.

AMENDMENT NO. 940, AS MODIFIED

An amendment intended to be proposed by Mr. INHOFE:

''(vi) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subparagraph), and as authorized under section 202(1) of the Clean Air Act. If the Administrator promulgates by such date, final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from reformulated gasoline than the reductions that would be achieved under section 211(k)(1)(B) of the Clean Air Act as amended by this clause, then sections 211 (k)(1)(i) through 211(k)(l)(v) shall be null and void and regulations promulgated thereunder shall be rescinded and have further effect.

AMENDMENT NO. 1005

(Purpose: To make a technical correction)

At the end of subtitle H of title II, add the following:

SEC. 2____. ENERGY POLICY AND CONSERVATION TECHNICAL CORRECTION.

Section 609(c)(4) of the Public Utility Regulatory Policies Act of 1978 (as added by section 291) is amended by striking ''of 1954 (42 U.S.C. 6303)'' and inserting ''(42 U.S.C. 6303(d))''.

AMENDMENT NO. 1006

(Purpose: To require the Secretary to carry out a study and compile existing science to determine the risks or benefits presented by cumulative impacts of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using the open-rack vaporization system)

On page 755, after line 25, insert the following:

SEC. 13____. SCIENCE STUDY ON CUMULATIVE IMPACTS OF MULTIPLE OFFSHORE LIQUEFIED NATURAL GAS FACILITIES.

(a) IN GENERAL.—The Secretary (in consultation with the National Oceanic Atmospheric Administration, the Commandant of the Coast Guard, affected recreational and commercial fishing industries and affected energy and transportation stakeholders) shall carry out a study and compile existing science (including studies and data) to determine the risks or benefits presented by cumulative impacts of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the

Gulf of Mexico using the open-rack vaporization system.

(b) ACCURACY.—In carrying out subsection (a), the Secretary shall verify the accuracy of available science and develop a science-based evaluation of significant short-term and long-term cumulative impacts, both adverse and beneficial, of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using or proposing the open-rack vaporization system on the fisheries and marine populations in the vicinity of the facility.

AMENDMENT NO. 1007

(Purpose: To improve the clean coal power initiative)

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 1008

(Purpose: To clarify provisions regarding relief for extraordinary violations)

On page 696, lines 24 and 25, strike ''unlawful on the grounds that it is unjust and unreasonable'' and insert ''not permitted under a rate schedule (or contract under such a schedule) or is otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest''.

AMENDMENT NO. 851, AS MODIFIED

(Purpose: To require the Secretary to establish a Joint Flexible Fuel/Hybrid Vehicle Commercialization Initiative, and for other purposes)

On page 424, between lines 7 and 8, insert the following:

SEC. 706. JOINT FLEXIBLE FUEL/HYBRID VEHICLE COMMERCIALIZATION INITIATIVE.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term eligible entity means—

(A) a for-profit corporation;

(B) a nonprofit corporation; or

(C) an institution of higher education.

(2) PROGRAM.—The term ''program'' means the applied research program established under subsection (b).

(b) ESTABLISHMENT.—The Secretary shall establish an applied research program to improve technologies for the commercialization of—

(1) a combination hybrid/flexible fuel vehicle; or

(2) a plug-in hybrid/flexible fuel vehicle.

(c) GRANTS.—In carrying out the program, the Secretary shall provide grants that give preference to proposals that—

(1) achieve the greatest reduction in miles per gallon of petroleum fuel consumption;

(2) achieve not less than 250 miles per gallon of petroleum fuel consumption; and

(3) have the greatest potential of commercialization to the general public within 5 years.

(d) VERIFICATION.—Not later than 90 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register procedures to verify—

(1) the hybrid/flexible fuel vehicle technologies to be demonstrated; and

(2) that grants are administered in accordance with this section.

(e) REPORT.—Not later than 260 days after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report that—

(1) identifies the grant recipients;

(2) describes the technologies to be funded under the program;

(3) assesses the feasibility of the technologies described in paragraph (2) in meeting the goals described in subsection (c);

(4) identifies applications submitted for the program that were not funded; and

(5) makes recommendations for Federal legislation to achieve commercialization of the technology demonstrated.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, to remain available until expended—

(1) $3,000,000 for fiscal year 2005;

(2) $7,000,000 for fiscal year 2006;

(3) $10,000,000 for fiscal year 2007; and

(4) $20,000,000 for fiscal year 2008.

AMENDMENT NO. 892, AS MODIFIED

On page 342, strikelines 1 through 19 and insert the following:

SEC. 407. WESTERN INTEGRATED COAL GASIFICATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall carry out a project to demonstrate production of energy from coal mined in the western United States using integrated gasification combined cycle technology (referred to in this section as the ''demonstration project'').

(b) COMPONENTS.—The demonstration project—

(i) may include repowering of existing facilities;

(ii) shall be designed to demonstrate the ability to use coal with an energy content of not more than 9,000 Btu/lb.; and

(iii) shall be capable of removing and sequestering carbon dioxide emissions.

(c) ALL TYPES OF WESTERN COALS.—Notwithstanding the foregoing, and to the extent economically feasible, the demonstration project shall also be designed to demonstrate the ability to use a variety of types of coal (including subbituminous and bituminous coal with an energy content of up to 13,000 Btu/lb) mined in the western United States.

(d) LOCATION.—The demonstration project shall be located in a western State at an altitude of greater than 4,000 feet above sea level.

(e) COST SHARING.—The Federal share of the cost of the demonstration project shall be determined in accordance with section 1002.

(f) LOAN GUARANTEES.—Notwithstanding title XIV, the demonstration project shall not be eligible for Federal loan guarantees.

AMENDMENT NO. 903, AS MODIFIED

(Purpose: To provide that small businesses are eligible to participate in the Next Generation Lighting Initiative)

Beginning on page, 469, strike line 10 and all that follows through page 470, line 20, and insert the following:

(d) INDUSTRY ALLIANCE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall competitively select an Industry Alliance to represent participants who are private, for-profit firms, including large and small businesses, that, as a group, are broadly representative of United States solid state lighting research, development, infrastructure, and manufacturing expertise as a whole.

(e) RESEARCH.—

(1) GRANTS.—The Secretary shall carry out the research activities of the Initiative through competitively awarded grants to—

(A) researchers, including Industry Alliance participants;

(B) small businesses;

(C) National Laboratories; and

(D) institutions of higher education.

(2) INDUSTRY ALLIANCE.—The Secretary shall annually solicit from the Industry Alliance—

(A) comments to identify solid-state lighting technology needs;

(B) an assessment of the progress of the research activities of the Initiative; and

(C) assistance in annually updating solid-state lighting technology roadmaps.

(3) AVAILABILITY TO PUBLIC.—The information and roadmaps under paragraph (2) shall be available to the public.

(f) DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION.—

(1) IN GENERAL.—The Secretary shall carry out a development, demonstration, and commercial application program for the Initiative through competitively selected awards.

(2) PREFERENCE.—In making the awards, the Secretary may give preference to participants in the Industry Alliance.

AMENDMENT NO. 919, AS MODIFIED

(Purpose: To enhance the national security of the United States by providing for the research, development, demonstration, administrative support, and market mechanisms for widespread deployment and commercialization of biobased fuels and biobased products)

(The amendment is printed in the RECORD of June 22, 2005 under ''Text of Amendments.'')

AMENDMENT NO. 1009

(Purpose: To provide a Manager's amendment)

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 834

(Purpose: To provide for understanding of and access to procurement opportunities for small businesses with regard to Energy Star technologies and products, and for other purposes)

On page 52, line 24, strike ''efficiency; and'' and all that follows through page 53, line 8 and insert the following: ''efficiency;

''(C) understanding and accessing Federal procurement opportunities with regard to Energy Star technologies and products; and

''(D) identifying financing options for energy efficiency upgrades.

''(2) The Secretary, the Administrator of the Environmental Protection Agency, and the Administrator of the Small Business Administration shall make program information available to small business concerns directly through the district offices and resource partners of the Small Business Administration, including small business development centers, women's business centers, and the Service Corps of Retired Executives (SCORE), and through other Federal agencies, including the Federal Emergency Management Agency and the Department of Agriculture.

''(3) The Secretary, on a cost shared basis in cooperation with the Administrator of the Environmental Protection Agency, shall provide to the Small Business Administration all advertising, marketing, and other written materials necessary for the dissemination of information under paragraph (2).

''(4) There are authorized to be appropriated such sums as may be necessary to carry out this subsection, which shall remain available until expended.''.

AMENDMENT NO. 792 WITHDRAWN

Mr. CRAIG. I ask unanimous consent the Wyden amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUHCA REPEAL AND FERC MERGER AUTHORITY

Mr. SHELBY. Will the chairman yield for a question?

Mr. DOMENICI. I will be happy to yield.

Mr. SHELBY. I thank the chairman. As the chairman is aware, repeal of the Public Company Utility Holding Act of 1935 has been a priority of the Senate

Banking Committee for almost 25 years. As recently as 1997 and 1999, the Senate Banking Committee reported PUHCA repeal bills out of committee. As chairman of the Banking Committee, I have been pleased to work with the Chairman of the Energy Committee to ensure that PUHCA repeal was included as part of a comprehensive Energy bill.

I congratulate the chairman for reporting a bill out of Committee that includes PUHCA repeal. Nevertheless, I have concerns that the expanded merger review authority for FERC provided for in the Electricity title undermines the important policy goals behind PUHCA repeal. It is widely understood that PUHCA has served its purpose and is outdated. Now, PUHCA acts as a barrier to interstate capital flows, and other Federal laws make the PUHCA regime redundant.

The purpose of PUHCA repeal legislation is to eliminate these duplicative and unnecessary regulatory burdens. I am concerned that PUHCA repeal is undermined by legislation providing FERC with enhanced merger review authority over utility companies. I do not believe that Congress should repeal PUHCA, only to replace it with a burdensome regulatory framework administered by FERC. But I am afraid that may be exactly what we are doing in the Electricity title of this bill. I do not believe that Congress should require enhanced FERC merger authority as a prerequisite for PUHCA repeal.

I would ask the chairman to consult with me during conference to ensure against this result. As the Senate Banking Committee has done recently, I think it is important that we repeal PUHCA without creating additional regulatory burdens.

Mr. DOMENICI. I thank the Senator from Alabama for his remarks, and I share his concern regarding additional FERC merger review authority. I look forward to working with him in conference to ensure that PUHCA repeal is not accompanied by the grant of unnecessary merger review authority to FERC.

Mr. SHELBY. Thank you, Mr. chairman.

ELECTRIC TRANSMISSION PROPERTY DEPRECIATION

Mr. THOMAS. Mr. President, I would like to speak about an amendment I filed to the tax title of this bill on electric transmission property depreciation and engage Mr. GRASSLEY in a colloquy on this important issue if I may.

I did not push this issue to a vote during the committee markup, and I don't intend to do so on the floor either since I understand the provision is included in the House version of the bill and enjoys broad support in both the House and the Senate.

That said, I felt it was important to underscore the importance of energy infrastructure in the United States. It is completely irrelevant how much we have in the area of energy-producing resources if we can't transport that energy to where it's needed.

And electric transmission capacity is a prime example.

There are a number of barriers to building additional transmission capacity, among them being stringent regulations at the federal, state, and local levels; NIMBY-ism, in other words, those who want it, but not in their backyard; and high capital cost.

My amendment—which would have incorporated my bill, S. 815, into the tax title—addresses the substantial investment required to build additional capacity.

I thank Senators SNOWE, BINGAMAN, BUNNING, and SMITH for cosponsoring both the bill and the amendment.

The provision would shorten the depreciation life of electric transmission property from the current 20 years to 15 years, thereby substantially reducing the cost.

I understand Chairman GRASSLEY's hesitancy to include provisions in the Senate package that are already covered in the House bill. However, I am asking for the Chairman's commitment to ensure this important provision is included in a final energy package.

Mr. GRASSLEY. I agree that energy infrastructure, particularly electric transmission capacity, is a critical component of our domestic energy policy, and I am committed to helping you ensure that it is included in the final energy bill.

SEC. 261, HYDROELECTRIC RELICENSING REFORM

Ms. CANTWELL. Mr. President, Section 261 of the underlying bill contains provisions designed to reform the hydroelectric relicensing process. These provisions are the result of a hard-won compromise, and I thank the chairman and ranking member, along with Senators CRAIG, SMITH and FEINSTEIN for their leadership on this issue. In particular, these provisions significantly differ from previous House- and Senate-passed versions, as they will allow States, tribes and the public to propose alternative licensing conditions, and will further allow these entities to trigger the trial-type hearing process outlined in this section. I believe these public participation provisions are key improvements in this legislation. I would also like to more fully explore the process by which alternative conditions proposed by these stakeholders should be considered.

Before an alternative condition or prescription to a license may be approved, the Secretary must concur with the judgment of the license applicant that it will either cost significantly less to implement, or result in improved operation of the hydro project for electricity production—at the same time it provides for adequate protection of the resource—or in the case of fishway prescriptions, will be no less protective than the fishway initially proposed by the Secretary. This provision does not provide the license applicant a so-called veto power over proposed alternatives, because this judgment requires the Secretary's concurrence. In addition, it is the Senate's intent that these judgments be supported by substantial evidence as required by Section 313 of the Federal Power Act. I would like to ask the senior Senator from New Mexico the following question: If the Secretary determines that a license applicant's judgment has been based on inaccurate data and thus fails to meet the test of being supported by substantial evidence, can the Secretary withhold his or her concurrence?

Mr. DOMENICI. The Senator from Washington is correct in expressing our intent that the license applicant's judgment be supported by substantial evidence. It is not our intent to provide an incentive for applicants to provide poor data in order to prompt the rejection of a condition by other stakeholders. If the Secretary of a resource agency determines that the evidence provided by the license applicant is of insufficient quality and therefore does not meet the substantial evidence test, the Secretary should not concur with the license applicant's judgment in the matter.

Mr. SALAZAR. Mr. President, I am pleased join with the distinguished majority leader in support of H.R. 6.

I am particularly pleased with the bill's support for integrated coal gasification, IGCC, technology development and deployment into commercial use. Our Nation needs a comprehensive energy policy which promotes new, cleaner, and more advanced generation technologies.

I have been increasingly concerned with the challenges associated with developing IGCC technology for burning Western coal. Western coal is a valuable resource and crucial to our economy; however, both cost and technological difficulties have prevented development of IGCC in the West. That is why I support a provision for a Western IGCC Demonstration Project, Section 407. This project would allow for development of an IGCC technology designed to use Western coal and in a cost-effective manner.

I have also been increasingly concerned with the need to address climate change. The promise of IGCC technology's ability to reduce carbon dioxide emissions should be realized as soon as possible. That is why the Western IGCC demonstration project shall include a carbon technology component.

I wish to also take this opportunity to clarify an important point. There have been media reports expressing concern that the Western IGCC demonstration project is special legislation designed to benefit a single company building a new project in Wyoming. I can assure you that neither this provision, nor any other provision I have sponsored, is designed to benefit any specific project or any specific company. My sincere objective is simply to provide for the development of an IGCC

demonstration project in the West, using Western coal, regardless of who owns or develops it.

This provision is designed to provide incentives to an IGCC project using Western coal at high altitudes. I have heard from many stakeholders, the utility industry, environmental groups and energy consumers, regarding the potential environmental and energy benefits of this new technoloy. However, I have also heard that IGCC has been applied primarily in the East. It is not yet demonstrated to be viable and cost-effective in the high altitude West using the low-rank coals mined in Western States. This provision would allow the region to prove the viability of this important technology, assess carbon capture and sequestration opportunities, and, I hope, lead to its successful deployment in my region of the country.

The purpose of the Western coal demonstration project will be to show that coal gasification works for the different kinds of coals mined in the West. This includes the lower energy coals like those mined in Wyoming's Powder River Basin, and it includes higher energy coals like those found in Colorado. These coals vary by energy content, and in other ways such as moisture and sulfur content. My colleague from Wyoming and I want to ensure that the demonstration project will show the feasibility of gasification for the entire range of Western coals. In that way, hurdles to gasification can be removed and our Nation can move forward into a cleaner energy future, and one that recognizes the importance of our abundance of coal resources.

I want to close with a special tribute to Senator THOMAS for his diligence in this effort. We are both Western Senators and we share a concern that the Western United States should benefit from IGCC technology as much as the Eastern United States. I want to thank him for his initiative and support for this provision.

Mr. DOMENICI. I thank Senator SALAZAR for his support for H.R. 6 and share his interest in developing a sound and forward-looking energy policy for our Nation. I understand his concern that the West enjoy clean energy generation. I look forward to working with him to move H.R. 6 as quickly as possible.

INNOVATIVE TECHNOLOGIES

Mr. CONRAD. Mr. President, I would like to engage the distinguished manager of the bill in a brief colloquy. I understand that title XIV of the bill before us includes incentives for ''innovative technologies,'' including gasification projects that will allow us to use our vast domestic coal reserves to produce clean transportation fuels.

Mr. DOMENICI. The Senator is correct.

Mr. CONRAD. I thank the distinguished Senator from New Mexico for accepting clarifying language that will allow additional coal-to-fuel facilities to qualify for the loan guarantees included in title XIV of the Energy bill.

As a result of these changes, the incentives included in section 1403, which include loan guarantees, would apply to the development of projects that will utilize various gasification technologies to produce clean transportation fuels from any of our coal types, including bituminus, sub-bituminous, and lignite coals.

Mr. DOMENICI. The Senator is correct.

Mr. CONRAD. Again, I thank the distinguished chairman of the Energy Committee for working with me to ensure that facilities in my State will be eligible for these incentives for coal-to-liquids technologies. It is my hope that North Dakota's coal resources will play an important role in reducing our dependence on foreign oil, allowing us to create jobs here at home and clean our environment.

GOVERNOR'S AUTHORITY

Mr. VITTER. Mr. President, I would like to discuss a Governor's authority to approve the issuance of a license for an offshore LNG facility.

Mr. DOMENICI. I understand that intend to emphasize the current role of a Governor in the licensing of offshore LNG facilities pursuant to the Deepwater Port Act.

Mr. VITTER. The Senator is correct. In Louisiana, there has been a tremendous amount of controversy involving the licensing of offshore LNG terminals recently related mainly to a technology for reheating the gas called open rack vaporization. My amendment is designed to emphasize the Governor's current authority under the Deepwater Port Act. Under current law the Deepwater Port Act allows the Governor of a state to approve—or be presumed to approve—the issuance of a license for an offshore LNG facility.

Mr. DOMENICI. The Senator saying that a Governor currently has a clear opportunity to disapprove that a license be issued for any offshore LNG terminal?

Mr. VITTER. That is correct. So, no changes to existing law are necessary in order for the Governor to approve or disapprove issuance of a license for offshore LNG facilities.

Mr. DOMENICI. How many times has a Governor used this authority to approve or disapprove that a license be issued?

Mr. VITTER. A Governor has never attempted to use this authority. In the case of Louisiana, we have two licensed offshore LNG facilities and the Governor of Louisiana approved both of these facilities.

Louisiana has lost thousands of jobs due to the high costs of energy. The underlying bill does much to address this challenge and LNG will play an important role in addressing the increasing demand for natural gas.

I thank the Senator from New Mexico for clarifying the Governor's authority to approve or disapprove an offshore LNG facility.

BLM POLICY ON OIL AND GAS DEVELOPMENT IN POTASH RESERVE

Mr. CORNYN. Mr. Chairman, I rise to speak to an amendment I have filed to address the Bureau of Land Management's policy toward development of much needed oil and gas resources in the potash reserve. Notwithstanding the strong bipartisan consensus that the U.S. must expeditiously develop its readily available domestic oil and gas resources, for decades the Bureau of Land Management has restricted development of large volumes of oil and gas located in the Known Potash Leasing Area near Carlsbad, NM. BLM has authority to permit compatible oil and gas development in conjunction with potash mining in the area, but the agency has failed to do so due to asserted concerns with adverse impact on potash mining reserves and mine safety. For a long time the oil and gas industry has had the technical ability to drill in the potash region without creating any such threat to these potash mining interests. Concerns with BLM's administration of the Interior Secretary's October 1986 order have been raised with Congress over many years. However, given the Nation's continuing economic stress due to the oil and gas price and supply situation, and the policy imperative underlying the current energy bill debate to facilitate resource development on Federal lands where Federal rules or policies have unnecessarily inhibited such activity, the time has come to expeditiously resolve the administrative problems that have impeded reasonable oil and gas development in the Nation's potash reserve.

The BLM has denied approximately 190 applications for drilling permits and applicants strongly believe that their permits have been denied without appropriate consideration of their technical ability to develop oil and gas in the potash area while not creating any safety risks to potash mining or jeopardizing economically recoverable potash reserves.

My amendment would address this disadvantage for oil and gas drilling permits in the potash area, insuring that BLM allows drilling compatibly with the interest in maintaining potash reserves and mining in the area. Specifically, my amendment would still allow BLM to deny permits out of concern for adverse impact on potash mining, but only if the agency could specify with particularity the reasons why approval of the oil and gas permit would jeopardize potash mining safety or threaten recoverable potash reserves the value of which exceeded the value of the recoverable oil and gas associated with the relevant permit.

I understand that the chairman is well aware of the protracted history of this problem and has directed his staff to investigate the situation with BLM. Indeed, this week my staff attended a meeting with the BLM State director and the Chairman's staff to discuss this issue.

I certainly could offer the amendment for a vote at this time, but may I first inquire of the chairman whether he shares my concern with the BLM policy regarding the amount of oil and gas drilling being permitted in the potash region?

Mr. DOMENICI. This has been an evolving problem for some time now and I share the Senator's concern about whether the proper balance is being struck. Particularly in light of available technologies, I believe that there should be a way to produce oil and gas in the potash area without interfering with the recovery of the potash resource. My desire is to see both a vibrant potash industry and a vibrant oil and gas industry in the region, with both generating strong economic activity and employment.

Mr. CORNYN. I share the Chairman's views and would furthr inquire whether the chairman would be willing to work with me through the course of the conference on the energy bill to assure that this problem with BLM policy is properly addressed?

Mr. DOMENICI. I would tell the Senator that I would be pleased to give him that commitment.

Mr. CORNYN. I thank the Chairman.

Ms. CANTWELL. Mr. President, I wish to clarify for my colleagues the intent of section 1270 of the underlying Energy bill, which is a provision of extreme importance to my Washington State constituents. Ratepayers in my State were harmed by the Western energy crisis and the manipulation and fraudulent practices of Enron in wholesale electricity markets. A number of proceedings remain underway at the Federal Energy Regulatory Commission, which will determine the relief granted to consumers harmed by Enron's unlawful trading practices. An important issue that remains is whether utilities—such as Washington State's Snohomish County Public Utility District—should be forced to make termination payments to Enron, for power Enron never delivered in the midst of its scandalous collapse into bankruptcy.

The intent of section 1270 of the underlying bill and the technical correction we have adopted today is simply to affirm that the Federal Energy Regulatory Commission has exclusive jurisdiction under sections 205 and 206 of the Federal Power Act to determine whether these termination payments should be required. This provision expresses Congress's belief that the issues surrounding the potential requirement to make termination payments associated with wholesale power contracts are inseparable and inextricably linked to the commission's jurisdictional responsibilities.

Mr. CRAIG. I would like to inquire of the Senator from Washington, does section 1270 predetermine or in any way prejudice the manner in which FERC employs its jurisdiction in matters currently pending before the Commission?

Ms. CANTWELL. This provision in no way prejudices or predetermines FERC's decisions in those matters. During the Senate Energy Committee's work on this legislation, the supporters of this amendment and I initially considered offering an amendment that would have gone further to require a certain outcome, had the commission made certain findings. We chose not to pursue that amendment in response to concerns that were raised by colleagues. Section 1270 of this legislation is completely neutral regarding how the commission uses its authority under sections 205 and 206 of the Federal Power Act. As such, the provision does not in any way implicate what is known as the Mobile-Sierra doctrine, related to which standard FERC should apply to its review of jurisdictional wholesale power contracts.

Mr. CRAIG. How does the technical amendment adopted today further clarify the committee and Congress's intent in regard to section 1270 of the underlying legislation?

Ms. CANTWELL. The clarifications to section 1270 effectuated by the amendment accepted today are consistent with the committee's intent in adopting section 1270. In addition, they are completely consistent with Supreme Court precedent.

The committee sought assurances that section 1270 would not disturb underlying legal doctrines such as the Mobile-Sierra doctrine or the separation of powers principles. The amendment provides further clarity that section 1270 is not intended to otherwise disturb or modify the Mobile-Sierra doctrine by adding the phrase ''or contrary to the public interest.'' This phrase, when coupled with the standard recital of FERC's exclusive authority to determine whether a charge is just and reasonable, makes it clear that Congress is making no pronouncements regarding the manner in which FERC exercises its authority, but rather only that it is the appropriate forum to resolve these issues. Congress is giving no guidance to FERC on Mobile-Sierra one way or another through this provision.

The committee's overarching intent with respect to section 1270 was to ensure that the Federal Energy Regulatory Commission, and not the bankruptcy court involved in the Enron matter, decides all of the issues surrounding whether termination payments are lawful. The addition of the phrase ''rate schedules and contracts entered thereunder'' ensures that result.

In addition, this clarification is completely consistent with Supreme Court decisions permitting Congress to give a Federal agency the authority to resolve matters that are also normally addressed by our judicial branch of government. As the Supreme Court stated in a case entitled Commodity Futures Trading Commission v. Schor, 478 U.S. 833, 854 (1986),

''looking beyond form to the substance of what Congress has done'', we are persuaded that the congressional authorization of limited CFTC jurisdiction over a narrow class of common law claims as an incident to the CFTC's primary, and unchallenged, adjudicative function does not create a substantial threat to the separation of powers. Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 589 (1985).

Similarly, in this instance, the grant of authority to FERC to decide this matter is exceedingly narrow insofar as it relates solely to the legality of Enron collecting additional profits in the form of termination payments for power not delivered. Clearly, it is directly related to the agency's core function to ensure just and reasonable rates and guard against market manipulation. Moreover, these are public rights that are at stake in this dispute—the rights of electric ratepayers across the country to just and reasonable rates, rights that have existed under federal statute since 1935—and not mere private rights that should be resolved by a non-article III bankruptcy tribunal. Accordingly, the clarification provided by the amendment is completely consistent with Supreme Court precedent on the separation of powers principle.

Mr CARPER. Mr. President, I would like to take a moment to discuss with my friend, the Senator from Montana, a tax incentive which I believe is very important to our efforts to reduce fuel consumption in America. As you know, Senator BAUCUS is the ranking Democrat on the Senate Finance Committee and has a great understanding of our nation's tax policy, as well as a great institutional memory of tax legislation through the years. Senator BAUCUS and Senator GRASSLEY, the chairman of the Finance Committee, provide us with advice and counsel concerning tax policy and do a superb job in that role.

The specific incentive I would like to discuss with my friend from Montana is a provision included in the House energy bill to encourage the use of clean diesel passenger vehicles. It is called the ''diesel advanced lean-burn'' tax credit, and it would give consumers a credit on their income taxes when they purchase a clean diesel vehicle meeting stated fuel efficiency and environmental requirements. I am very supportive of this provision and want to encourage my colleagues to consider it when the Senate energy bill is conferenced with the House bill.

Why is that? Why do I think this provision is so important to our energy policy? For these reasons.

Diesel fuel contains more energy than gasoline, resulting in fuel economy increases of more than 40 percent compared to equivalent gas powered autos.

In fact, the Department of Energy estimates that 30 percent diesel penetration in the U.S. passenger vehicle market by 2020 would reduce net crude oil imports by 350,000 barrels per day.

So why aren't diesel vehicles more common on U.S. highways? Because until recently, they have been considered significantly dirtier in terms of air pollution. But the technology has

changed. Today, you will have a difficult time telling a new diesel car from its gasoline counterpart. New diesels are clean, quiet, and powerful. And they will get even cleaner with the introduction of low sulfur diesel fuel in the United States late next year as the result of new regulations.

Diesel engines have become increasingly popular in Europe over the last 20 years to the extent that market penetration now exceeds 40 percent. The situation is very different in the U.S. where diesel accounts for only 1 percent of light vehicles.

Clean diesel engines provide the perfect platform for the use of BioDiesel which comes from products grown here at home by American farmers. The more diesel engines on the road, the greater demand for this renewable product, and the less petroleum imports from overseas to meet our fuel needs.

We now have the opportunity to take advantage of the advances in clean diesel technology and to do what we can to get more of these fuel efficient vehicles on the road.

In the 2003 Energy Bill there was a tax incentive for ''new advanced lean burn motor vehicles,'' and the House recently passed an Energy Bill containing essentially the same provision.

So with that background, I wanted to ask my friend from Montana whether it is correct that high efficiency diesel vehicles would be considered ''lean burning'' vehicles?

Mr. BAUCUS. First, let me compliment my friend for his thoughtful discussion of this issue. The Senator from Delaware has obviously done a fair amount of homework on automotive technology, and I appreciate his insights on the benefits of clean diesel technology. Let me also congratulate the Senator on his work with Senator VOINOVICH and others on the recently introduced legislation to clean up heavy-duty diesel engines through retrofitting. We adopted that measure as an amendment to the energy bill earlier this week, and I think it is an important addition, so I thank the Senator for his work in that regard.

Now, to respond to the Senator's question concerning the diesel lean-burn provision from the House bill. Under the House provision, the tax credit would be available for the purchase of diesel vehicles meeting certain fuel efficiency and emissions standards. As long as a vehicle met those standards, it would be considered a ''lean burning'' vehicle and thereby merit the tax credit to the purchaser.

Mr. CARPER. The 2003 conference legislation contained incentives for lean-burn diesel vehicles. Is it fair to say that you are interested in this technology and in promoting cleaner diesel cars in the U.S.?

Mr. BAUCUS. I agree with my colleague that lean-burn diesel is promising technology. We did include the diesel lean-burn credit in the energy conference measure in 2003. As you know, in the Senate bill, we have included similar incentives for the purchase of other energy-efficient vehicles—hybrids, alternative fuel vehicles and fuel cell vehicles. We often start out with different positions than our House counterparts, and typically we merge together the best pieces of each bill in conference. I think any new technology warrants serious consideration if it can help make U.S. vehicles more fuel efficient and lessen our dependence on foreign oil.

Mr. CARPER. And is it your thought that the Senate conferees should carefully consider the tax incentives provided in the House version of the bill for these types of vehicles?

Mr. BAUCUS. I believe we should, and I believe we will. I am confident that the clean diesel credit will get very careful consideration by the Senate conferees.

Mr. CARPER. I thank my friend for taking a moment to discuss this matter with me, and I would encourage my colleagues who will be negotiating the tax provisions of the Energy Bill with the House of Representatives to do just that—to carefully consider the benefits that new clean diesel vehicles have to offer. I think the benefits are substantial, that diesel passenger vehicles are already very clean and will get even cleaner next year when low sulfur fuel becomes available, and that a transition toward this technology will pay big dividends for the country over the next few years. This is something we can do which will have an almost immediate positive effect, and I encourage my colleagues to consider this incentive positively.

Ms. CANTWELL. Mr. President, I rise to speak to a particular section of the comprehensive energy bill (S. 10) that we have been discussing for the past 2 weeks. My comments focus specifically on section 1270 of this legislation.

Section 1270 was an amendment I offered in the Energy & Natural Resources Committee mark-up of this legislation. It was accepted after considerable debate and discussion, on a bipartisan voice vote. Since then, I have continued to work with my colleagues on the Energy Committee, to further clarify and perfect this language. In fact, I was pleased to work with my colleague from Idaho, Senator CRAIG, on a technical amendment to this language, amendment No. 895, to refine it even further.

This provision, entitled ''Relief for Extraordinary Violations,'' is extremely important to the consumers of Washington State and ratepayers in other parts of the West, who bore tremendous costs as a result of Enron's schemes to manipulate our wholesale electricity markets. The principle at the heart of this provision is simple. The consumers of Washington State must not be forced to become the deep-pockets for Enron's bankruptcy. The same ratepayers who have paid so dearly for the Western energy crisis and Enron's schemes to manipulate markets should not be forced to pay even more—four years later—for power that Enron never even delivered.

I must thank my colleagues on the Energy Committee for their thoughtful consideration of this issue, particularly my colleagues from the Pacific Northwest and West as a whole who have seen first-hand the toll the crisis has taken on our economy and our constituents. I must also express my gratitude to the rest of the members of the committee, and to the chairman and ranking member for indulging what was a very thoughtful debate on this issue.

At the conclusion of the committee debate, this Senator was extremely satisfied; first, because of the very nature of the debate itself, in which—for almost an entire hour—a bipartisan group of Senators focused their valuable time and attention on a situation that is highly complicated, and likely unprecedented in the history and application of our Nation's energy laws. And second, because, at the end of the day, the committee struck a blow for justice and for Western consumers. It was an important statement. This is not the kind of country where we should reward Enron for its criminal conspiracy to commit fraud; a fraud of historic proportions perpetrated against the consumers of the West.

As my colleagues appreciate by now, my State was particularly ravaged by the western energy crisis of 2000–2001. One of my State's public utility districts, Public Utility District No. 1 of Snohomish County, had a long-term contract with Enron, to purchase power. The contract was terminated once Enron began its scandalous collapse into bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under the contract through so-called ''termination payments.'' Enron has made this claim even though Enron never delivered the power under the contract, even though Enron had obtained its authority to sell power fraudulently, and even though Enron was in gross violation of its legal authority to sell power at the very time the contract was entered into. This has been demonstrated by the criminal guilty pleas of the senior managers of Enron's Western power trading operation, in which it has been admitted that Enron was engaged in a massive criminal conspiracy to rig electric markets and rip off electric ratepayers. But it has been further illustrated by the now-infamous Enron tapes, in which Enron employees discuss many unsavory topics, including specifically how they were ''weaving lies together'' in their negotiations related to the contract with Snohomish.

I will tell my colleagues that there is no way under the sun that I believe my constituents owe Enron another penny. Not one single penny more. What this amendment does is ensure that, when the Federal Energy Regulatory Commission FERC comes to a conclusion

later this year about how to cleanup the Enron mess, that the bankruptcy court cannot overturn FERC's decision about whether these ''termination payments'' are just, reasonable or in the public interest. It says to FERC, ''do your job to protect consumers, and when you make a decision, that decision will stand.'' Interpreting our nation's energy consumer protection laws is not the job of a bankruptcy judge.

Now, this Senator has a very strong opinion on this matter in general. I believe there is no way no stretch of the imagination, or interpretation of law in which these termination payments could be deemed just, reasonable or in the public interest, knowing everything we know today about what Enron did to the consumers of my state. In fact, during committee debate on the underlying provision in this bill, some of my colleagues suggested that we should just out-right abrogate these contracts; simply declare them null and void on their face. But what we recognized, relying on the legal expertise of the committee staff, is that an act like that—as tempting as it may seem—would pose certain constitutional issues. We recognized that this provision section 1270—is the best way for Congress to express its will in this matter.

I have, as my colleagues know, had substantial differences with FERC over the course of the past few years. But I am glad to say today, after 4 long years, it appears that the commission may be on the right track on this issue. This March, FERC issued a ruling in which the commission definitely found that the termination payments at issue here ''are based on profits Enron projected to receive under its long-term wholesale power contracts executed during the period when Enron was in violation of conditions of its market-based rate authority.'' For the first time, FERC found that Enron was in violation of its market-based rate authority at the time victimized utilities such as Washington's Snohomish PUD inked power sales contract with the now-bankrupt energy giant. That FERC process is on-track to wrap-up this year; but so long as that process is ongoing, utilities like Snohomish have been operating under the threat that the bankruptcy court would swoop in and demand payments for Enron, regardless of the pattern of market manipulation and fraud. In a series of rulings, the bankruptcy court has expressed its will to do just that. What this provision does is ensure the bankruptcy court cannot force these utilities and their consumers to make termination payments that are unjust, unreasonable or contrary to the public interest.

Section 1270 states that notwithstanding any other provision of law, and specifically the bankruptcy code, FERC ''shall have exclusive jurisdiction'' to make these determinations. Many of my colleagues might naturally assume that this provision merely sets forth what is already the case. But as I stated earlier, that is not necessarily the case. This provision is necessary and critical because the Federal bankruptcy court has already concluded that it will not defer to FERC with respect to whether our constituents will be required to make termination payments. Not only has the bankruptcy court not deferred to FERC, it compounded the seriousness of the issue by enjoining FERC from proceeding with its own specific inquiry into whether Enron is owed the termination payments. It forced FERC to stop on a matter that FERC had said required its special expertise.

Imagine making it through the arduous and frustrating, years-long process of proving the case against Enron and proving it to FERC, only to find out at the end of the day that the bankruptcy court would intervene and force these termination payments anyway. It is this situation—a collision between FERC and the bankruputcy court that this legislation addresses. And what the Congress is saying with this amendment, as counsel for the Energy Committee stated during our extended discussion, is that ''the Commission, not the bankruptcy [court], is the proper forum in which these question be resolved.'' That is certainly my view, and the view of many of us who represent ratepayers harmed by Enron.

I do not assume this position in denigration of the responsibility of the bankruptcy court. The bankruptcy court has an important role to play in our law and our economic community. However, I do think it is fair to say that it is a forum in which it naturally looks first to maximizing the assets of the estate. In contrast, the Federal Energy Regulatory Commission's first obligation is to protect our nation's ratepayers. In this very unique context, in which a seller of electricity that has fraudulently and criminally manipulated the market in violation of the tariffs on file with the commission—and where the seller is now seeking to reap the profits from that activity in the form of termination payments for power never delivered—what we are saying here, unequivocally, is that FERC is the forum in which this should be resolved. FERC is the entity that is supposed to look after our nation's ratepayers, and should have make the decision about whether termination payments are permissible under the Federal Power Act..

Given the nuanced, legal nature of this provision, I can assure my colleagues that this ''rifle shot,'' as the ranking minority member of the committee called it, is narrowly drawn in order to minimize any unanticipated impacts. It is only applicable to contracts entered into during the electricity crisis with sellers of electricity that manipulated the market to such an extent that they brought about unjust and unreasonable rates. There is only one such seller, and that is Enron, and there are only a handful of terminated contracts with Enron that haven't been resolved as of this date.

As a result, the amendment does not tamper with or otherwise disturb longstanding legal precedents. It does not tamper with the Mobile-Sierra doctrine, nor does it disturb other recent federal court decisions regarding the relationship of the bankruptcy courts and FERC in the context of the rejection in bankruptcy of FERC approved power sales contracts. It is, as the ranking minority member of the committee observed, a ''clean shot'' that ''affirms that FERC is the entity with the authority to review whether termination payments associated with cancelled Enron power contracts are lawful under the Federal Power Act.''

The ultimate disposition of this issue is of paramount concern to my constituents. It will decide whether they will be on the hook for more than $120 million, an amount that means more than $400 in the pocket of each ratepayer in Snohomish County, WA. It is critical that this issue be decided by the forum with the specialized expertise in matters relating to the sale of electricity with a stated mission of protecting ratepayers, and that is the Federal Energy Regulatory Commission.

Let me conclude by saying that I am very pleased that this provision has broad bipartisan support as well as the support of the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association. I believe my colleague from Oregon, Senator SMITH, said it exactly right when this amendment was debated in committee, and I am extremely grateful for his support. He essentially said that no Senator Republican or Democrat should feel any limitation in ''lending their shoulder to this wheel,'' to get this situation fixed. Senator SMITH, Senator ALLEN, and Senator CRAIG all played important roles during the mark-up in allowing this measure to move forward.

And I would be remiss if I did not mention the invaluable assistance from the Senators from Nevada on this issue the minority leader, Senator REID, but also Senator ENSIGN. While Senator ENSIGN does not serve on the Energy Committee, he played a crucial role in ensuring that colleagues on both sides of the aisle understood the importance and reasonableness of this measure, and the importance of this provision to him and to the people of Nevada.

I thank my colleagues, look forward to the passage of this provision out of the Senate and to working together to ensure this critical measure is included in legislation that emerges from the Energy bill conference with the House of Representatives.

Mrs. MURRAY. Mr. President, I would like to express my support for a provision in this energy legislation that provides relief for Washington State ratepayers who suffered from Enron's market manipulation schemes.

All of us from the West Coast remember the energy crisis of 2001, when consumers and businesses were hit with massive increases in the cost of energy. Many in California faced shortages and brownouts. In Washington State, we felt the impact as well.

Washington State ratepayers have been continually penalized for failures in the energy market and failures by Federal energy regulators. While there were many causes for the energy crisis, the most disturbing is the fact that energy companies, such as Enron, manipulated the marketplace to take advantage of consumers.

As we saw throughout the crisis, the Federal Energy Regulatory Commission did not take aggressive action to protect consumers from market manipulation. In fact, over the last several years, as we in the West have sought to clean up the mess that these companies left in their wake, FERC has continued to drag its regulatory feet.

For more than 3 years, many of us in the Northwest delegation have been urging FERC to better protect consumers, and provide relief to ratepayers affected by market manipulation. At the height of the 2001 energy crisis, FERC was urging companies to enter into long-term contracts at highly-inflated rates, advice which many Northwest companies followed.

In 2003, FERC found that market manipulation occurred during the 2001 energy crisis, but indicated it would be unlikely that Washington State ratepayers would be reimbursed for the harm caused by the manipulation. When Western utilities—including Snohomish PUD, which was hit particularly hard—terminated their contracts with Enron, Enron turned around and sued them for ''termination payments.''

It was very disturbing for all of us to see FERC agree that there was manipulation, but leave Washington ratepayers holding the bag—with no relief—for the harm they experienced in 2001 and continue to experience today.

I am pleased that this energy legislation addresses this important issue by giving FERC exclusive jurisdiction to determine whether termination payments are required under certain power contracts are unjust and unreasonable.

This is wonderful news for Washington State ratepayers because of a March 2005 order, in which FERC found Enron in violation of its market-based authority at the time Snohomish PUD signed its power contract. This provision ensures Snohomish PUD's ratepayers will not be required to pay the now-bankrupt Enron for power the region did not receive.

Mr. President, I support this provision as it will protect Northwest ratepayers and give FERC more tools to better police the energy market.

Mr. ENSIGN. Mr. President, I rise to thank my colleagues for including a provision in this bill which give the people of Nevada a fair chance to keep their hard earned money away from the clutches of Enron.

Enron is still seeking to extract an additional $326 million in profits from my State's utilities for power that was never delivered. Enron, after all of its market manipulation and financial fraud, is still trying to profit from its wrong-doing at the expense of each and every Nevadan.

Section 1270 of the Energy Policy Act ensures that the proper government agency will determine whether Enron is entitled to more money from Nevada. That agency is the Federal Energy Regulatory Commission. When FERC was established by Congress, its fundamental mission was, and remains, to protect ratepayers. FERC has specialized expertise required to resolve the issues surrounding some of the contracts that Enron entered into and eventually terminated.

Many of my colleagues know that Enron has filed for bankruptcy protection. There is an issue in the bankruptcy case as to whether Enron can enforce contracts that it terminated. The enforceability of these contracts should not be decided by a bankruptcy court. A bankruptcy judge does not have the specialized expertise required for this job. A bankruptcy court is responsible for considering different equities than an oversight agency, like FERC, would. The bankruptcy court is responsible for enhancing the bankruptcy estate for the benefit of creditors. FERC, on the other hand, sees a more complete picture which includes protecting the interests of the general public.

This is why section 1270 is so important. It is a provision that is limited in scope. It does not seek to resolve the issue in the favor of one party. Though many Senators from affected States may have been tempted to legislate the outcome, we have refrained from doing so. Let me set the stage for why this provision is so critical. It is a complicated story. It is one that should be told in order to understand why I so strongly support this provision and why I believe the provision should be enacted into law.

There are two major utilities that serve Nevada: Nevada Power and Sierra Pacific Power. Both need to buy power in the wholesale power market to meet the growing energy needs of Nevada. Las Vegas is the fastest growing city in the country. It takes a lot of power to keep the lights on in Las Vegas, Reno, and other parts of our growing State. At the height of the western electricity crisis, when spot market prices for electricity were going not just through the roof but through the stratosphere, FERC urged utilities like the Nevada utilities to reduce their purchases of spot supplies and enter into long-term contracts for electricity.

That is precisely what the Nevada utilities did. Enron was one of the biggest suppliers of wholesale electricity at the time. Starting in December 2000, the Nevada utilities entered into long-term contracts with Enron to meet a significant portion of their long-term needs. At the time, no one was aware of Enron's on-going criminal conspiracy to manipulate the market. No one knew that Enron had engaged in fraud to hide its true financial picture.

The prices that the Nevada utilities agreed to pay Enron for long-term power were truly outrageous. The prices fully reflected Enron's success in manipulating the market. Prices were three times as high as the threshold that FERC had established as a ceiling price that would trigger close scrutiny under the just and reasonable standard. As a result, in November 2001, the Nevada utilities asked FERC to review the rates to determine whether those contract prices were just and reasonable.

Two days after the Nevada companies filed their complaints against Enron, Enron filed for bankruptcy. Its financial house of cards had finally collapsed. As one definitive study of Enron concluded, Enron had been insolvent at the time the company entered into each and every contract with the Nevada utilities.

The contracts between Enron and the Nevada utilities incorporated the Western Systems Power Pool Agreement, a master agreement on file and approved by FERC. This master agreement governs transactions of more than 200 parties throughout the west.

Under the terms of that agreement, if one of the parties files for bankruptcy, the other party may rescind the agreement. So in this case, Enron's bankruptcy would have given the Nevada utilities cause to terminate the contracts. Under the unique terms of this agreement, however, the commercial party that is ''in the money'' will still be able to benefit if the contract is rescinded. So while the Nevada companies could terminate the contract, they still would have had to pay Enron the difference between the contract price and the market price at the time of terminating, to say nothing of the need to buy replacement power.

When Enron entered bankruptcy, the price for electricity had fallen to the level power had sold for prior to Enron's market manipulation. This demonstrates that there was a huge difference between the artificially and unlawfully manipulated price that Enron commanded at the time of the contract and the market price at the time Enron filed for bankruptcy. Given the huge financial hit that the Nevada companies would have had to pay to terminate the Enron contracts, the Nevada companies continued to honor their commitment to purchase power under these contracts.

In March 2002, the Public Utilities Commission of Nevada refused to allow the Nevada utilities to pass more than $400 million in purchased power costs on to ratepayers. As a result, the credit ratings of the Nevada utilities fell below investment grade. Under the terms of the WSPPA, this downgrade gave Enron the right to request assurances regarding the Nevada companies'

intentions with respect to their contracts. In meetings and in telephone calls, the Nevada Companies assured Enron that they would be able to pay Enron everything that would be owed under the contracts.

The WSPPA required Enron to use ''reasonable'' discretion with respect to the contracts. Despite this requirement, Enron terminated the contracts with the Nevada companies and demanded that the Nevada companies pay Enron termination payments totaling approximately $326 million. These termination payments represent pure profit to Enron on power than Enron never delivered. By pure profit, I mean just that. The termination payments are calculated, as I previously noted, by the difference between the cost of power today and the outrageous, manipulation-based prices Enron was able to extract during the energy crisis that Enron had unlawfully created.

The Nevada companies refused to make payment. At this time, it was known that Enron had manipulated the entire western market. As part of Enron's bankruptcy, an ''adversary proceeding'' was initiated to determine the enforceability of these contracts and whether Enron would be allowed to continue to profit under fraudulent contracts at the expense of Nevada's ratepayers.

At this point, the legal proceedings become very complex but the proceedings should be summarized so my colleagues will understand exactly what has happened.

On June 24, 2003, FERC determined that the ''just and reasonable'' standard of review is not available to the Nevada companies with respect to their long-term contracts with Enron. This decision was made because FERC argued that it had previously ''pre-determined'' that the contracts would be just and reasonable when they granted Enron its authority to sell electricity at market-based rates years earlier.

On the very next day, FERC withdrew Enron's authority to sell electricity at market-based rates because of its ''market manipulation schemes that had profound adverse impacts on market outcomes'' which violated its ''market-based rate authorizations.''

The bankruptcy court judge, on August 23, 2003, ruled on a summary judgment motion that the Nevada utilities were required to pay Enron $326 million in termination payments. The court held that, because FERC had not found that Enron's contracts should be modified by virtue of its market manipulation, the filed-rate doctrine applied. It further ruled that it did not need to defer to FERC on whether Enron had complied with the tariff since it could interpret the tariff as well as FERC.

On October 6, 2003, the Nevada Companies filed a complaint with FERC. The complaint sought to have FERC determine: Enron's termination was unreasonable under the tariff; Enron was not entitled to termination payments on equitable grounds; and, assuming Enron was otherwise entitled to termination payments, the contract provision should be set aside as contrary to the public interest.

Then, on July 22, 2004, FERC set for hearing the narrow question of whether Enron's termination was reasonable. FERC deferred ruling on the issue of whether the contract should be set aside under the public interest standard until that issue became ''necessary.'' At the hearing, FERC did not address the issue of equitable claims. On that same day, FERC ruled in a separate case that Enron could be required to disgorge all of its profits.

On September 30, 2004, FERC's administrative law judge denied Enron's motion to dismiss the case, finding, among other things, that FERC's specialized expertise is required.

U.S. District Court Judge Barbara Jones reversed a ruling of the bankruptcy court on October 15, 2004. The district court considered the issue of whether the Nevada companies owed Enron the termination payments. The district court found that the Nevada companies had offered timely assurances and that the issue of whether Enron rejected those assurances and terminated reasonably were issues of fact which required a trial.

On December 3, 2004, the bankruptcy court enjoined FERC from further proceedings after finding that FERC had violated the ''automatic stay'' provisions of the Bankruptcy Code. A hearing on termination payments was tentatively scheduled for this coming July. Currently, motions for interlocutory appeal are pending before a U.S. District Court Judge.

Despite the ruling of a FERC administrative law judge that FERC's expertise was necessary to interpret the master tariff's requirement that a terminating party act ''reasonably,'' the bankruptcy court has enjoined FERC from further considering this issue. Section 1270 of this legislation confirms the decision of the FERC administrative law judge. This section says the judge is correct and the bankruptcy court is wrong. It makes clear that, in this limited matter, FERC has the exclusive jurisdiction to determine the merits of the claims at issue.

This provision is very reasonable. It is a targeted response to a clash among competing jurisdictions over which tribunal, FERC or the bankruptcy court, should decide this issue. If Congress doesn't address the issue of jurisdiction now, the Supreme Court will have to do so years from now. That need not happen. Congress can decide this jurisdictional issue. The decision of the Senate, as reflected in Section 1270, is the right decision.

The language of the amendment tracks Supreme Court precedent that recognizes that Congress can choose to give jurisdiction over issues to administrative agencies when the jurisdiction is consistent with the core functions of the agency. In this instance, the recognition of authority to FERC to decide this matter is narrow. It relates solely to the legality of Enron collecting additional profits in the form of termination payments for power not delivered. It is also directly related to the agency's core function to ensure just and reasonable rates and guard against market manipulation.

I want to assure my colleagues that this provision does not encroach upon the sanctity of contracts. It merely picks the proper forum for determining whether Enron complied with its tariff obligations. Likewise, it also does not alter the standard of review for challenging the contract. Congress is not picking a standard; it is only picking a forum.

Mr. President, this reasonable provision has the support of key industry leaders such as the National Rural Electric Cooperative Association, the American Public Power Association, and the Edison Electric Institute. It has bipartisan support. Anyone who has been as harmed by Enron as ratepayers in my state have understands the need to ensure that only the most qualified tribunal should rule on whether Enron can collect an additional $326 million in windfall profits.

Mr. SALAZAR. Mr. President, as I have said time and again during this debate over the last several weeks, America is being held hostage to its over-dependence on foreign oil. This Energy bill is our first step in setting America free.

From the National Renewable Energy Laboratory in Golden to the balanced development of oil and gas, Colorado is already playing a big part in setting America free.

With a huge, untapped resource called oil shale, Colorado can play an even bigger role in this effort. If properly developed, oil shale that exists in my great State of Colorado has the potential to be part of a strategy to address America's dependence on foreign oil.

Colorado is home to tremendous deposits of oil shale, a type of hydrocarbon bearing rock that is abundant in Western Colorado, as well as Utah and Wyoming. Estimates place the potential recoverable amount of this type of oil as high as 1 trillion barrels. Let me say that again—1 trillion barrels.

Let me put that in perspective:

Saudi Arabia's proven conventional reserves are said to be around 261 billion barrels.

Several of our colleagues argued earlier this spring that ANWR is a resource so remarkable that we must open that pristine land to drilling. According to the U.S. Geological Survey—USGS—the mean estimate of technically recoverable oil is 7.7 billion barrels—billion bbl—but there is a small chance that, taken together, the fields on this Federal land could hold 10.5 billion bbl of economically recoverable oil. That's one percent of the potential oil shale.

Assuming we use 15 million barrels of oil a day just for transportation, oil

shale could keep our transportation going for another 200 years.

Colorado has some experience in trying to access this potential asset. We have had two boom and bust periods, one in the 1800s and the other in the 1980s.

The most recent story is about the ''Boom & Bust'' Colorado experienced during the last oil shale development cycle that began in the 1970's and ended in May of 1982 on ''Black Sunday.''

I will never forget the powerful lessons of Black Sunday.

Colorado invested millions in new towns, only to see thousands of residents flee when oil prices fell, leaving behind them a devastated real estate market.

Communities that invested heavily in schools and roads and housing could no longer meet the burden of paying for this critical infrastructure.

Buildings on the Western Slope—and even in Denver—were built and left empty, if the construction was completed at all.

Towns that thought they were seeing a bright future, struggled to deal with crippling unemployment.

The technical challenges of oil shale and the searing memories of Black Sunday have taught all of Colorado some important lessons.

We now recognize that oil shale's potential can only be realized if it is approached in the right way.

Oil shale development must be considered a marathon and not a sprint.

I believe, as many in Colorado do, that oil shale research and development must be conducted in an open, cautious and thoughtful manner that includes our local communities.

As Congress instructs Federal agencies to consider oil shale research and development leasing and commercial leasing, it must give careful consideration to environmental and socioeconomic impacts and mitigations as well as the sustainability of an oil shale industry.

Colorado is a team player. The people of my State are ready to share the abundant natural resources with which we have been blessed. In exchange, Colorado expects to have a seat at the table.

That is why I introduced the Oil Shale Development Act of 2005. I am very pleased that it has been incorporated into the Energy bill we are now considering.

I believe the oil shale provision in this Energy bill is a thoughtful approach to future oil shale development. It is full of commonsense provisions that build on the lessons we learned in that painful experience 30 years ago.

It directs leasing for research and development;

It requires a programmatic Environmental Impact Study to ensure that we take a comprehensive environmental look at potential commercial leasing;

It directs the Secretary of Interior to work with the States, local communities, and industry to identify and report on issues of primary concern to local communities and populations with commercial leasing and development;

and it insists that States—not the Federal Government—retain authority over water rights.

I know we are going to hear more and more about oil shale development in the Rocky Mountain west. That is as it should be, and we will embark on a thoughtful, balanced approach to oil shale development with this bill.

Mr. ALLEN. Mr. President, as we move forward on Energy legislation crucial for our country's national security, jobs, and competitiveness, I wish to raise an issue which is threatening global energy security. The surging demand for energy in developing countries coupled with the dynamic rise in power and influence of government operated energy companies is changing the global energy market. Specifically, I am concerned about the role of the People's Republic of China with its national oil companies, and the potential adverse effects on U.S. energy supplies. I am also concerned about our ability to compete for energy assets.

China's surging demand for energy is impacting the world. China has now emerged as the second largest consumer of energy, and demand could double by 2020. According to the U.S. Energy Information Administration, China is consuming 7.2 million barrels of oil per day and this is expected to rise to 7.8 million barrels of oil per day by next year. China alone has accounted for 40 percent of growth in oil demand over the last 4 years. According to recent studies, China's growing demand for oil is one of the significant factors driving oil prices to record high levels. With such growth in the Chinese economy, it is understandable why there is greater demand for energy in the form of coal, oil, and nuclear power as well as materials ranging from cement to steel.

With limited domestic resources, China has embarked on an aggressive program through its national energy companies to secure energy and in doing so has proposed acquisition of energy assets around the world, including assets of U.S. based companies. It has become increasingly difficult for private companies in the U.S. to compete against these government-owned energy companies, such as the Chinese state-owned company known as CNOOC. The inherent advantage that these state-owned companies have is that they can operate under non-market terms and conditions for the purchase of energy supplies and assets, including accepting very low rates of return. Thus, private entities in free countries are disadvantaged in competing for energy assets.

China in the past year has signed deals for oil reserved in Africa, Iran, South America, and now Canada. Today, one of China's largest state-controlled oil companies made a $18.5 billion unsolicited bid for Unocal, signaling the first big takeover battle by a Chinese company for a U.S. corporation.

Energy is a global issue and we need to understand the implications for American interests on how these energy shifts may impact us as well as the rest of the world.

It is important that we have a comprehensive review which would include a full assessment of the types of investments China is making in international and U.S. based companies, a better understanding of the relationship between the Chinese energy sector and the Chinese government, and what we can do to ensure a level playing field and flexibility in the global market. Perhaps most importantly, we need to understand how we can better work cooperatively to pursue energy interests as well as work together on conservation, energy efficiency, and technology.

It is nice to talk about working cooperatively with China, but I am concerned that we may be headed on a collision course. Energy is the lifeblood of economic growth and we are beginning to see an imbalance occur. I look forward to hearing from the administration to gain a better understanding of the issues and how the U.S. can best proceed to secure our future energy needs.

Mr. FEINGOLD. Mr. President, while I voted for a similar amendment offered by the Senators from Arizona, Mr. MCCAIN, and Connecticut, Mr. LIEBERMAN, in 2003, unfortunately, the current version of the amendment includes over $600 million in taxpayer subsidies for the creation of new nuclear powerplants. The nuclear industry is a mature industry that does not need to be propped up by the taxpayers. Over 300 national environmental and consumer organizations, including the League of Conservation Voters, Public Interest Research Group, and the Sierra Club, oppose this amendment. Our Nation faces an ever-growing budget deficit and we must be fiscally and environmentally responsible. I strongly believe that global warming is an important national issue, which is why I supported the Bingaman-Specter sense-of-the-Senate amendment to push for a national policy on global warming. I will continue to work with my colleagues on both sides of the aisle to create a meaningful global warming program.

Mr. JEFFORDS. Mr. President, I rise today to congratulate my colleagues on our efforts to pass an energy bill through the Senate that does not include exemptions for the oil and gas industry from drinking water and clean water protections. Section 327 of H.R. 6 as reported contains an exemption to the Safe Drinking Water Act for the practice of hydraulic fracturing. Section 328 of H.R. 6 contains an exemption for the oil and gas industry from obtaining stormwater discharge permits under the Clean Water Act, rolling back fifteen years of environmental

protection. These efforts to weaken the protections applied to our Nation's waters should be stricken from the bill as the conferees on H.R. 6 work to resolve the differences between the two bills.

Over half of our Nation's fresh drinking water comes from underground sources. Hydraulic fracturing occurs when fluids are injected at high rates of speed into rock beds to fracture them and allow easier harvesting of natural oils and gases. It is these injection fluids, and their potential to contaminate underground sources of drinking water, that are of high concern. In a recent report, the EPA acknowledged that these fluids, many of them toxic and harmful to people, are pumped directly into or near underground sources of drinking water. This same report cited earlier studies that indicated that only 61 percent of these fluids are recovered after the process is complete. This leaves 39 percent of these fluids in the ground, risking contamination of our drinking water.

In June of 2004, an EPA study on hydraulic fracturing identified diesel as a ''constituent of potential concern.'' Prior to this, EPA had entered into a Memorandum of Agreement with three of the major hydraulic fracturing corporations, whom all voluntarily agreed to ban the use of diesel, and if necessary select replacements that will not cause hydraulic fracturing fluids to endanger underground sources of drinking water. However, all parties acknowledged that only technically feasible and cost-effective actions to provide alternatives would be sought.

Litigation over the last several years has resulted in findings that hydraulic fracturing should be regulated as part of the underground injection control program in the Safe Drinking Water Act. Yet, EPA indicated in a letter in December of 2004 that they have no intention of publishing regulations to that effect or ensuring that state programs adequately regulate hydraulic fracturing.

I will include our letter to EPA dated October 14, 2004, and their response dated December 7, 2004, in the RECORD.

We need to be moving in the right direction—taking steps to ensure that hydraulic fracturing is appropriately regulated under the Safe Drinking Water Act. I have introduced S. 1080, the Hydraulic Fracturing Safety Act of 2005 to ensure that the practice of hydraulic fracturing is regulated under the Safe Drinking Water Act through the Underground Injection Control, UIC, Program. I would like to thank Senators LAUTENBERG, BOXER, and LIEBERMAN for co-sponsoring that bill. The House energy bill takes steps in the wrong direction—exempting hydraulic fracturing from the Safe Drinking Water Act.

I urge the conferees of this energy bill to strike section 327 of the House-passed energy bill. By striking this language, the conferees will help to ensure that the drinking water enjoyed by all Americans is not damaged through the process of hydraulic fracturing.

This exemption for hydraulic fracturing is not the only step backwards that the House energy bill takes. Section 328 of the bill exempts the oil and gas industry from stormwater protections in the Clean Water Act.

Stormwater runoff is a leading cause of impairment to the nearly 40 percent of surveyed U.S. water bodies that do not meet water quality standards.

Currently, the oil and gas industry is regulated under Phase I of EPA's stormwater regulations which requires National Pollution Discharge Elimination System, NPDES, permits for medium and large municipal storm sewer systems and eleven, 11, categories of industrial activity, including construction sites disturbing more than 5 acres of land. In 1999, EPA adopted the Phase II permitting requirements, effective March 10, 2003, covering small municipal separate stormwater systems and construction sites affecting one to five acres of land. However, EPA extended the Phase II permitting deadline to June 12, 2006 for only the oil and gas industry.

Now, section 328 of the House energy bill completely exempts the oil and gas industry from compliance with both Phase I and Phase II of the NPDES stormwater program.

This action will adversely impact water quality. Oil and gas construction activities require companies to undertake a number of earth disturbing activities, including: clearing, grading, and excavating. Oil and gas site development may also include road construction to transport equipment and other materials, as well as pipeline construction. The stormwater pollution created from these activities can be devastating to the environment.

According to the EPA, over a short period of time, stormwater runoff from construction site activity can contribute more harmful pollutants, including sediment, into rivers, lakes, and streams than had been deposited over several decades. Sediment clouds water, decreases photosynthetic activity, reduces the viability of aquatic plants and animals; and ultimately destroys animals and their habitat. Sediment rates from cleared and graded construction sites are typically 10 to 20 times greater than those from agricultural lands and one-thousand to two-thousand times greater than those from forest lands. Other harmful pollutants in stormwater runoff from construction sites include phosphorous and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may be mobilized when land surfaces are disturbed.

More than 5,000 cities, towns, and counties and eleven, 11, industrial sectors are required to obtain NPDES stormwater permits. Large oil and gas construction sites covered under the Phase I stormwater program have been taking action to reduce the impact of sediments and pollutants on water quality since 1990. In 2005, GAO reported that over a one-year period, 4,330 oil and gas construction sites obtained Phase I stormwater permits in three of the six largest oil and gas producing states. In 20 the Warren County Conservation District submitted information to EPA indicating that 70 percent of the oil and gas projects they inspected between 1997 and 2002 were in violation of Phase I permit conditions. If this amendment is adopted, these actions will no longer be required. In FY 2002/2003, the Alaska Department of Environmental Conservation estimated that they would review 400 engineering plans as part of the stormwater permitting process. The House provision would exempt these sites from 15-year-old requirements to reduce the pollution they send into surrounding waters through stormwater discharges.

The environmental impact from this amendment is even more severe when you factor in the approximately 30,000 oil and gas ''starts'' per year that EPA anticipates could be covered by the Phase II stormwater regulation. EPA is currently reviewing the impact of the regulation on these sites. Adopting this amendment would circumvent this review process and exempt thousands of sites from taking action to protect water quality.

Section 402(l) of the Clean Water Act contains a limited exemption for specific types of uncontaminated discharges from specific types of oil and gas sites from stormwater permit requirements. The language of the Act and the legislative history of this section indicate that when adopted, section 402(l) was intended to give a narrow exemption for specific circumstances in the oil and gas industry that did not include construction activities at every oil and gas—related site.

I urge the conference committee on H.R. 6 to reject the Clean Water and Safe Drinking Water Act exemptions included in the House energy bill. These provisions represent a major step backward in efforts to protect water quality and could pose a direct threat to the safety of drinking water supplies. Should these exemptions be included in the final conference report, we will see our Nation's water quality standards go down the drain.

I ask unanimous consent to print the above-referenced letters in the RECORD.

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

U.S. SENATE, COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, October 14, 2004.

Administrator MICHAEL O. LEAVITT,
Environmental Protection Agency, Ariel Rios Building, Washington, DC

DEAR ADMINISTRATOR LEAVITT: We are writing to you regarding the Environmental Protection Agency's (EPA's). administration of the Safe Drinking Water Act (SDWA) as it pertains to hydraulic fracturing. In recent months, the Agency has taken several key actions on this issue:

On December 12, 2003, the EPA signed a Memorandum of Understanding with three of the largest service companies representing 95 percent of all hydraulic fracturing performed

in the U.S. These three companies, Halliburton Energy Services, Inc., Schlumberger Technology Corporation, and BJ Services Company, voluntarily agreed not to use diesel fuel in their hydraulic fracturing fluids while injecting into underground sources of water for coalbed methane production.

In June of 2004, EPA completed its study on hydraulic fracturing impacts and released its findings in a report entitled, ''Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs. The report concluded that hydraulic fracturing poses little chance of contaminating underground sources of drinking water and that no further study was needed.

On July 15, 2004, the EPA published in the Federal Register its final response to the court remand (Legal Environmental Assistance Foundation (LEAF), Inc., v: United States Environmental Protection Agency, 276 F. 3d 1253). The Agency determined that the Alabama underground injection control (UIC) program for hydraulic fracturing, approved by EPA under section 1425 of the SDWA, complies with Class II well requirements.

We are concerned that the Agency's execution of the SDWA, as it applies to hydraulic fracturing, may not be providing adequate public health protection, consistent with the goals of the statute.

First, we have questions regarding the information presented in the June 2004 EPA Study and the conclusion to forego national regulations on hydraulic fracturing in favor of an MOD limited to diesel fuel. In the June 2004 EPA Study, EPA identifies the characteristics of the chemicals found in hydraulic fracturing fluids, according to their Material Safety Data Sheets (MSDSs), identifies harmful effects ranging from eye, skin, and respiratory irritation to carcinogenic effects. EPA determines that the presence of these chemicals does not warrant EPA regulation for several reasons. First, EPA states that none of these chemicals, other than BTEX compounds, are already regulated under the SDWA or are on the Agency's draft Contaminant Candidate List (CCL). Second, the Agency states that it does not believe that these chemicals ate present in hydraulic fracturing fluids used for coalbed methane, and third, that if they are used, they are not introduced in sufficient concentrations to cause harm. These conclusions raise several questions:

1. The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the CCL development process, and if not, why not?

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events'' (June 2004 EPA Study, p. 4–17.)

a. How did the Agency select particular field engineers with whom to converse on this subject?

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

c. How did the Agency select the three separate fracturing events to witness?

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (June 2004 EPA Study, p. 4–19) as determining factors in the types of hydraulic fracturing fluids that will be used?

e. Which companies were observed?

f. Was prior notice given of the planned witnessing of these events?

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentially being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

The Agency concludes in the June 2004 study that even if these chemicals are present, they are not present in sufficient concentrations to cause harm. The Agency bases this conclusion on assumed flowback, dilution and dispersion, adsorption and entrapment, and biodegradation. The June 2004 study repeatedly cites the 1991 Palmer study, ''Comparison between gel-fracture and water-fracture stimulations in the Black Warrior basin; Proceedings 1991 Coalbed Methane Symposium,'' which found that only 61 percent of the fluid injected during hydraulic fracturing is recovered. Please explain what data EPA collected and what observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground are not present in sufficient concentrations to adversely affect underground sources of drinking water.

After identifying BTEX compounds as the major constituent of concern (June 2004 EPA study, page 4–15), the Agency entered into the MOU described above as its mechanism to eliminate diesel fuel from hydraulic fracturing fluids.

3. a. How does the Agency plan to enforce the provisions in the MOD and ensure that its terms are met?

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

c. Will the Agency require states to monitor for diesel use as part of their Class II UIC Programs?

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

b. What action does the Agency plan to take should such a situation occur?

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel hydraulic fracturing?

e. The Agency also states that it expects that even if diesel were used, a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that the 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

We are also concerned that the EPA response to the court remand leaves several unanswered questions. The Court decision found that hydraulic fracturing wells ''fit squarely within the definition of Class II wells,'' (LEAF II, 276 F.3d at 1263), and remanded back to EPA to determine if the Alabama underground injection control program under section 1425 complies with Class II well requirements. On July 15, 2004, EPA published its finding in the Federal Register that the Alabama program complies with the requirements of the 1425 Class IT well requirements. (69 FR No. 135, pp 42341.) According to EPA, Alabama is the only state that has a program specifically for hydraulic fracturing approved under section 1425. Based on this analysis, it seems that in order to comply with the Court's finding that hydraulic fracturing is a part of the Class II well definition, the remaining states should be using their existing Class IT, EPA—approved programs, under 1422 or 1425, to regulate hydraulic fracturing.

To date, EPA has approved Underground Injection Control programs in 34 states. Approval dates range from 1981–1996.

5. Do you plan to conduct a national survey or review to determine whether state Class IT programs adequately regulate hydraulic fracturing?

At the time that these programs were approved, the standards against which state Class IT programs were evaluated did not include any minimum. requirements for hydraulic fracturing. In its January 19, 2000 notice of EPA's approval of Alabama's 1425 program, the Agency stated, ''When the regulations in 40 CFR parts 144 and 146, including the well classifications, were promulgated, it was not EPA's intent to regulate hydraulic fracturing of coal beds. Accordingly, the well classification systems found in 40 CFR 144.6 and 146.5 do not expressly include hydraulic fracturing injection activities. Also, the various permitting; construction and other requirements found in Parts 144 and 146 do not specifically address hydraulic fracturing.'' (65 FR No. 12, p. 2892.)

Further, EPA acknowledges that there can be significant differences between hydraulic fracturing and standard activities addressed by state Class IT programs. In the January 19, 2000 Federal Register notice, the Agency states:

''. . . since the injection of fracture fluids through these wells is often a one-time exercise of extremely limited duration (fracture injections generally last no more than two hours) ancillary to the well's principal junction of producing methane, it did not seem entirely appropriate to ascribe Class II status to such wells, for all regulatory purposes, merely due to the fact that, prior to commencing production, they had been fractured.'' (65 FR No. 12, p. 2892.)

Although hydraulic fracturing falls under the Class II definition, the Agency has acknowledged that hydraulic fracturing is different than most of the activities that occur under Class II and that there are no national regulations or standards on how to regulate hydraulic fracturing.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under state Class II programs?

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class IT programs?

We appreciate your timely response to these questions in reaction to the three recent actions taken by the EPA in relation to hydraulic fracturing—the adoption of the MOU, the release of the final study, and the response to the Court remand. Clean and safe drinking water is one of our nation's greatest assets, and we believe we must do all we

can to continue to protect public health. Thank you again for your response.

Sincerely,

JIM JEFFORDS.
BARBARA BOXER.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, December 7, 2004.

Hon. JIM JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: Thank you for your letter to Administrator Michael Leavitt dated October 14, 2004, concerning the recent actions that the Environmental Protection Agency (EPA) has taken in implementing the Underground Injection Control (UIC) program with respect to hydraulic fracturing associated with coalbed methane wells.

The Office of Ground Water and Drinking Water (OGWDW) has prepared specific responses to your technical and policy questions regarding how we conducted the hydraulic fracturing study, the reasons behind our decisions pertaining to the recommendations contained in the study, and any plans or thoughts we may have on the likelihood for future investigation, regulation, or guidance concerning such hydraulic fracturing.

Since the inception of the UIC program, EPA has implemented the program to ensure that public health is protected by preventing endangerment of underground sources of drinking water (USDWs). The Agency has placed a priority on understanding the risks posed by different types of UIC wells, and worked to ensure that appropriate regulatory actions are taken where specific types of wells may pose a significant risk to drinking water sources. In 1999, in response to concerns raised by Congress and other stakeholders about issues associated with the practice of hydraulic fracturing of coalbed methane wells in the State of Alabama, EPA initiated a study to better understand the impacts of the practice.

EPA worked to ensure that its study, which was focused on evaluating the potential threat posed to USDWs by fluids used to hydraulically fracture coalbed methane wells was carried out in a transparent fashion. The Agency provided many opportunities to all stakeholders and the general public to review and comment on the Agency study design and the draft study. The study design was made available for public comment in July 2000, a public meeting was held in August 2000, a public notice of the final study design was provided in the Federal Register in September 2000, and the draft study was noticed in the Federal Register in August 2002. The draft report was also distributed to all interested parties and posted on the internet. The Agency received more than 100 comments from individuals and other entities.

EPA's final June 2004 study, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, is the most comprehensive review of the subject matter to date. The Agency did not recommend additional study at this time due to the study's conclusion that the potential threat to USDWs posed by hydraulic fracturing of coalbed methane wells is low. However, the Administrator retains the authority under the Safe Drinking Water Act (SDWA) section 1431 to take appropriate action to address any imminent and substantial endangerment to public health caused by hydraulic fracturing.

During the course of the study, EPA could not identify any confirmed cases where drinking water was contaminated by hydraulic fracturing fluids associated with coalbed methane production. We did uncover a potential threat to USDWs through the use of diesel fuel as a constituent of fracturing fluids where coalbeds are co-located with a USDW. We reduced that risk by signing and implementing the December 2003 Memorandum of Agreement (MOA) with three major service companies that carry out the bulk of coalbed methane hydraulic fracturing activities throughout the country. This past summer we confirmed that the companies are carrying out the MOA and view the completion of this agreement as a success story in protecting USDWs.

In your letter, you asked about the Agency's actions with respect to hydraulic fracturing in light of LEAF v. EPA. In this case, the Eleventh Circuit held that the hydraulic fracturing of coalbed seams in Alabama to produce methane gas was ''underground injection'' for purposes of the SDWA and EPA's UIC program. Following that decision, Alabama developed—and EPA approved—a revised UTC program to protect USDWs during the hydraulic fracturing of coalbeds. The Eleventh Circuit ultimately affirmed EPA's approval of Alabama's revised UIC program.

In administering the UIC program, the Agency believes it is sound policy to focus its attention on addressing those wells that pose the greatest risk to USDWs. Since 1999, our focus has been on reducing risk from shallow Class V injection wells. EPA estimates that there are more than 500,000 of these wells throughout the country. The wastes injected into them include, in part, storm water runoff, agricultural effluent, and untreated sanitary wastes. The Agency and States are increasing actions to address these wells in order to make the best use of existing resources.

EPA remains committed to ensuring that drinking water is protected. I look forward to working with Congress to respond to any additional questions, or the concerns that Members of Congress or their constituents may have. If you have further comments or questions, please contact me, or your staff may contact Steven Kinberg of the Office of Congressional and Intergovernmental Relations at (202) 564–5037.

Sincerely,

BENJAMIN H. GRUMBLES,
Acting Assistant Administrator.

Attachment.

EPA RESPONSE TO SPECIFIC QUESTIONS REGARDING HYDRAULIC FRACTURING

The data presented in the June 2004 EPA study identifies potential harmful effects from the chemicals listed by the Agency in this report. Has the Agency or does the Agency plan to incorporate the results of this study and the fact that these chemicals are present in hydraulic fracturing agents into the Contaminant Candidate List (CCL) development process, and if not, why not?''

Although the EPA CBM study found that certain chemical constituents could be found in some hydraulic fracturing fluids, EPA cannot state categorically that they are contained in all such fluids. Each fracturing procedure may be site specific or basin specific and fluids used may depend on the site geology, the stratigraphy (i.e. type of coal formation), depth of the formation, and the number of coal beds for each fracture operation. The Agency's study did not develop new information related to potential health effects from these chemicals; it merely reported those potential health effects indicated on the Material Safety Data Sheet (MSDS) or other information we obtained from the service companies.

As noted in the final report, ''Contaminants on the CCL are known or anticipated to occur in public water systems. . .'' The extent to which the contaminants identified in fracturing fluids are part of the next CCL process will depend upon whether they meet this test.

2. In the June 2004 EPA study, the Agency concludes that hydraulic fracturing fluids do not contain most of the chemicals identified. This conclusion is based on two items—''conversations with field engineers'' and ''witnessing three separate fracturing events''.

a. How did the agency select particular field engineers with whom to converse on this subject?

The Agency did not ''select'' any of the engineers; we talked with the engineers who happened to be present at the field operations. In general those were engineers from the coalbed methane companies and the service companies who conducted the actual hydraulic fracturing. When we scheduled to witness the events, we usually conversed with the production company engineer to arrange the logistics and only spoke with the field engineers from the service companies at the well site.

b. Please provide a transcript of the conversations with field engineers, including the companies or consulting firms with which they were affiliated.

EPA did not prepare a word-for-word transcript of conversations with engineers.

c. How did the Agency select the three separate fracturing events to witness?

The events selected were dependent on the location of the fracturing events, the schedules of both EPA OGWDW staff and EPA Regional staff to witness the event, and the preparation time to procure funding and authorization for travel. EPA witnessed the 3 events because the planning and scheduling of these happened to work for all parties. In one event, only EPA HQ staff witnessed the procedure, in another event only EPA Regional staff witnessed it, and in one event both EPA HQ and Regional staff attended with DOE staff.

d. Were those events representative of the different site-specific characteristics referenced in the June 2004 study (p. 4–19) as determining factors in the types of hydraulic fracturing fluids that will be used?

Budget limitations precluded visits to each of the 11 different major coal basins in the U.S. It would have proven to be an expensive and time-consuming process to witness operations in each of these regions. Additionally, even within the same coal basin there are potentially many different types of well configurations, each of which could affect the fracturing plan. EPA believed that witnessing events in 3 very different coal basin settings—Colorado, Kansas, and south western Virginia—would give us an understanding of the practice as conducted in different regions of the country.

e. Which companies were observed?

EPA observed a Schlumberger hydraulic fracturing operation in the San Juan basin of Colorado, and Halliburton hydraulic fracturing operations in southwest Virginia and Kansas.

f. Was prior notice given of the planned witnessing of these events?

Yes, because it would have been very difficult to witness the events had they not been planned. To plan the visit, EPA needed to have prior knowledge of the drilling operation, the schedule of the drilling, and the scheduling of the services provided by the hydraulic fracturing service company. Wells, in general, take days to drill (in some cases weeks and months depending on depth of the well) and the fracturing may take place at a later date depending on the availability of the service company and other factors beyond anyone's control.

g. What percentage of the annual number of hydraulic fracturing events that occur in the United States does ''3'' represent?

Because of a limited project budget, EPA did not attempt to attend a representative

number of hydraulic fracturing events; that would have been beyond the scope of this Phase I investigation. The primary purpose of the site visits was to provide EPA personnel familiarity with the hydraulic fracturing process as applied to coalbed methane wells. The visits served to give EPA staff a working-level, field experience on exactly how well-site operations are conducted, how the process takes place, the logistics in setting up the operation, and the monitoring and verification conducted by the service companies to assure that the fracturing job was accomplished effectively and safely. EPA understands that thousands of fracturing events take place annually, for both conventional oil and gas operations and for coalbed methane production, and that three events represent an extremely small fraction of that total.

h. Finally, please explain why the Material Safety Data Sheets for the fluids identified as potentialIy being used in hydraulic fracturing list component chemicals that the EPA does not believe are present.

In Table 4–1 of the final study, EPA identified the range of fluids and fluid additives commonly used in hydraulic fracturing. Some of the fluids and fluid additives may contain constituents of potential concern, however, it is important to note that the information presented in the MSDS is for the pure product. Each of the products listed in Table 4–1 is significantly diluted prior to injection. The MSDS information we obtained is not site specific. We reviewed a number of data sheets and we noted that many of them are different, contain different lists of fluids and additives, and thus we concluded in the final report that we cannot say whether one specific chemical, or chemicals, is/are present at every hydraulic fracturing operation.

3. a. How does the Agency plan to enforce the provisions in the MOU and ensure that its terms are met?

There is no mechanism to ''enforce'' a voluntary agreement such as the MOA signed by EPA and the three major service companies. The MOA was signed in good faith by senior managers from the three service companies and the Assistant Administrator for Water, and EPA expects it will be carried out. EPA has written all signers of the MOA and asked if they have implemented the agreement and how will they ensure that diesel fuel is not being used in USDWs. All three have written back to EPA, stating that they have removed diesel from their CBM fracturing fluids when a USDW is involved and intend to implement a plan to ensure that such procedures are met. EPA intends to follow up with the service companies on progress in implementing such plans.

b. For example, will the Agency conduct independent monitoring of hydraulic fracturing processes in the field to ensure that diesel fuel is not used?

It is unlikely that EPA will conduct such field monitoring. First, in most oil and gas producing states, and coalbed methane producing states, the State Oil and Gas Agency generally has UIC primary enforcement responsibility, and the state inspectors are the primary field presence of such operations. Second, EPA has a very limited field staff and in most cases they are engaged in carrying out responsibilities related to Class I, III and V wells in states in which they directly implement the UIC program. EPA plans to work with several organizations, including the Ground Water Protection Council and the Independent Petroleum Association of America to determine if there are other smaller companies conducting CBM hydraulic fracturing with diesel fuel as a constituent and will explore the possibility of including them in the MOA.

c. Will the Agency require states to monitor for diesel use as part of their Class II programs?

Given limited funds for basic national and state UIC program requirements, EPA does not have plans to include the states as parties to the MOA or require them to monitor for diesel fuel in hydraulic fracturiug fluids. The State of Alabama's EPA-approved UIC program prohibits the hydraulic fracturing of coalbeds in a manner that allows the movement of contaminants into USDWs at levels exceeding the drinking water MCLs or that may adversely affect the health of persons. Current federal UIC regulations do not expressly address or prohibit the use of diesel fuel in fracturing fluids, but the SDWA and UIC regulations allow States to be more stringent than the federal UIC program.

4. a. Should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOU, what recourse is available to EPA under the terms of the MOU?

There are no terms in the MOA that would provide EPA a mechanism to take any enforcement action should the Agency become aware of an unreported return to the use of diesel fuel in hydraulic fracturing by one of the parties to the MOA. However, EPA would work closely with the companies to determine why such action occurred and discuss possible termination procedures. The agreement defines how either party can terminate the agreement. EPA would make every effort to work with such a company to maintain their participation in the agreement. EPA entered the agreement with an assumption that the companies would honor the commitments they have made about diesel use in hydraulic fracturing fluids.

b. What action does the Agency plan to take should such action occur?

If such a situation does happen, and EPA learns that diesel fuel used in hydraulic fracturing fluid may enter a USDW and may present an imminent and substantial threat to public health, EPA may issue orders or initiate litigation as necessary pursuant to SDWA section 1431 to protect public health. Otherwise, EPA would take the actions described under the previous question.

c. Why did EPA choose to use an MOU as opposed to a regulatory approach to achieve the goal of eliminating diesel fuel in hydraulic fracturing?

While the report's findings did not point to a significant threat from diesel fuel in hydraulic fracturing fluids, the Agency believed that a precautionary approach was appropriate. EPA chose to work collaboratively with the oil service companies because we thought that such an approach would work quicker and be more effective than other approaches the Agency might employ (i.e. rulemaking, enforcement orders, etc.). We believed that once the service companies became familiar with the issue, they wouid willingly address EPA's concerns. After several months of meetings and negotiations between representatives of the service companies and high level management in EPA's Office of Water, a Memorandum of Agreement (MOA) was drafted and signed by all parties effective December 24, 2003.

We believe that the MOA mechanism accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months, whereas proposing a rule to require removal would have taken at least a year or more.

d. What revisions were made to the June 2004 EPA study between the December 2003 adoption of the MOU and the 2004 release of the study? Which of those changes dealt specifically with the use and effects of diesel fuel in hydraulic fracturing?

During the specified time-frame, EPA focused on making editorial changes to the report and clarifying information relative to its qualitative discussion of the mitigating effects of dilution, dispersion. adsorption, and biodegradation of residual fluids. With respect to tbe use and effects of diesel fuel. changes in the study primarily focused on including language in the text of the report which acknowledged that we had successfully negotiated an MOA with the service companies. Specifically, EPA referenced this agreement in the text of the report in the Executive Summary at page ES–2 and on page ES–17, and further discussed the MOA in Chapter 7 in the Conclusions Section of the study.

e. The Agency also states that it expects that even if diesel were used, a number of factors would decrease the concentration and availability of BTEX. Please elaborate on the data EPA collected and the observations the Agency made in the field that would support the conclusion that 39 percent of fluids remaining in the ground (1991 Palmer), should they contain BTEX compounds, would not be present in sufficient concentrations to adversely affect underground sources of drinking water.

EPA reiterates that the 39 percent figure from the 1991 Palmer paper is only one instance where it has been documented what quantity of the hydraulic fracturing fluids injected into wells will remain behind. Dr. Palmer, who conducted the original research, estimated that coalbed methane production wells flow back a greater percentage of fracturing fluids injected during the process. Where formations are dewatered or produced for a substantial period of time, greater quantities of formation and fracturing fluids would presumably be removed. We used 39 percent remaining fluids as a ''worst case'' scenario while doing our qualitative assessment, since it was the only figure we had from research conducted on coalbed methane wells.

With respect to the BTEX compounds, we no longer believe that they are a concern owing to the MOA negotiated between EPA and the three major service companies.

5. Do you plan to conduct a national survey or review to determine whether state Class II programs adequately regulate hydraulic fracturing?

At this time, EPA has no plans to conduct such a survey or review regarding the adequacy of Class II programs in regularing hydraulic fracturing. In its final study design, EPA indicated that it would not begin to evaluate existing state regulations concerning hydraulic fracturing until it decided to do a Phase III investigation. The Agency, however, reserves the right to change its position on this if new information warrants such a change.

6. In light of the Court decision and the Agency's July 2004 response to the Court remand, did the Agency consider establishing national regulations or standards for hydraulic fracturing or minimum requirements for hydraulic fracturing regulations under Class II programs?

When State UIC programs were approved by the Agency—primarily during the early 1980s—there was no Eleventh Circuit Court decision indicating that hydraulic fracturing was within the definition of ''underground injection.'' Prior to LEAF v. EPA. EPA had never interpreted the SDWA to cover production practices, such as hydraulic fracturing. After the Court decision in 1997, the Agency began discussions with the State of Alabama on revising their UIC program to include hydraulic fracturing. The net result of that process was the EPA approval of Alabama's revised section 1425 SDWA UIC program to include specific regulations addressing CBM

hydraulic fracturing. This approval was signed by the Administrator in December 1999. and published in the Federal Register in January 2000.

In light or the Phase I HF study and our conclusion that hydraulic fracturing did not present a significant public health risk, we see no reason at this time to pursue a national hydraulic fracturing regulation to protect USDWs or the public health. It is also relevant at the three major service companies have entered into an agreement with EPA to voluntarily remove diesel fuel from their fracturing fluids.

7. a. If so, please provide a detailed description of your consideration of establishing these regulations or standards and the rationale for not pursuing them.

b. Do you plan to establish such regulations or standards in the future?

c. If not, what standards will be used as the standard of measurement for compliance for hydraulic fracturing under state Class II programs?

EPA has not explored in any detailed fashion minimum national or state requirements for hydraulic fracturing of CBM wells, except when it evaluated the revised UIC program in Alabama.

Considering and developing national regulations for hydraulic fracturing would involve discussions with numerous stakeholders. the states, and the public and it would require an intensive effort to arrive at regulatory language that could be applied nation-wide. As EPA's study indicates, coalbeds are located in very distinct geologic settings and the manner in which they are produced for methane gas may be very different in each locale. The proximity of USDW to the coal formations. and the regional geology and hydrology all play roles in how hydraulic fracturing operations are conducted.

If EPA receives information of drinking water contamination incidents and follow-up investigations point to a problem, EPA would then re-evaluate its decision to not continue with additional stndy relating to CBM hydraulic fracturing.

Should additional states submit revised UIC programs for EPA's review and approval which include hydraulic fracturing regulations, we would evaluate these programs under the '''effectiveness.'' standards of the SDWA section 1425 as we did or the State of Alabama.

OIL AND GAS ACCOUNTABILITY PROJECT
Durango, CO, June 14, 2005.

Hon. JAMES M. JEFFORDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR JEFFORDS: Please accept this letter of endorsement for S. 1080, the Hydraulic Fracturing Safey Act of 2005.

Hydraulic fracturing is the industry practice of injecting fluids and other substances underground in order to increase production of oil and gas. While the industry refuses to fully list the chemicals it injects underground, the EPA has found that many of these chemicals are known to be toxic to humans and some are actually considered hazardous under federal law. Yet, the EPA and all states except Alabama have refused to regulate the toxics that are used during hydraulic fracturing operations. What this, means, in practice, is that is it legal for hydraulic fracturing companies to inject toxic chemicals into or close to drinking water aquifers. The EPA has even admitted that a number of toxic hydraulic fracturing chemicals can be injected into drinking water sources at concentrations that pose a threat to human health.

With thousands of new oil and gas wells being drilled each year, the impacts of hydraulic fracturing are beginning to show up. In western Colorado, hydraulic fracturing literally blew up one homeowner's water well and contaminated it with methane. In Alabama, hydraulic fracturing turned water wells black, and citizens have experienced health problems following contact with the affected water. The true scope of the problem, is not known, however, because state agencies do not monitor groundwater for chemicals used in hydraulic fracturing operations.

Despite the fact that unregulated hydraulic fracturing may be poisoning our drinking water. Senator Inhofe has introduced a bill, S.837, on behalf of the oil and gas industry, that would completely exempt hydraulic fracturing from EPA regulation under the Safe Drinking Water Act.

Thank you and Senators Lautenberg, Boxer and Lieberman for introducing the Hydraulic Fracturing Safety Act of 2005 (S. 1080). requiring the use of nontoxic products in hydraulic fracturing operations during oil and gas production. This important bill will help to protect our precious underground drinking water sources.

Sincerely,

GWEN LACHELT,
Director.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, May 25, 2005.

Hon. JAMES M. JEFFORDS,
Ranking Member, Senate Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR RANKING MEMBER JEFFORDS: On behalf of the National Wildlife Federation, and the millions of hunters, anglers and outdoor enthusiasts we represent, I am writing to thank you for introducing the Hydraulic Fracturing Safety Act of 2005.

I am pleased that your legislation would ban the use of diesel or other priority pollutants listed under the Federal Water Pollution Control Act in hydraulic fracturing for oil or natural gas exploration and production and also require the EPA to regulate hydraulic fracturing.

EPA does not currently regulate hydraulic fracturing, a common technique used to stimulate oil and gas production that can potentially compromise groundwater resources and reserves. An EPA whistle-blower and other experts agree that hydraulic fracturing is a serious threat to drinking water. Hydraulic fracturing has already impacted residential drinking water supplies in at least three states (Colorado, Virginia and Alabama) and incidents have been recorded in other states (New Mexico, West Virginia and Wyoming) where residents have recorded changes in water quality or quantity following hydraulic fracturing operations near their homes.

I am disappointed that the U.S. House of Representatives passed an energy bill that exempts the oil and gas industry from being regulated under the Safe Drinking Water Act for hydraulic fracturing. The House passed bill would also exempt all oil and gas construction activities from the Clean Water Act; cut the heart out of environmental reviews by allowing for numerous National Environmental Policy Act exemptions; and require the BLM to rush to judgment on complex energy permitting decisions. These provisions would harm America's wildlife and Americans' water resources and recreational opportunities. I urge you to remain steadfast and oppose any amendments on the Senate floor that would provide egregious exemptions to the laws that protect water resources, wildlife and their habitat.

NWF and the millions of hunters, anglers and outdoor enthusiasts we represent commend you for your leadership on safeguarding our water resources and wildlife habitat. If you have further questions, please do not hesitate to contact me.

Sincerely,

JIM LYON,
Senior Vice President, Conservation.

Mr. JEFFORDS. Mr. President. I thank Senator GRASSLEY, Senator BAUCUS and the other members of the Senate Finance Committee for agreeing to my recycling amendment, which I call the Recycling Investment Saves Energy, RISE, provisions. These provisions were added to the tax title of the energy bill last week and have now been incorporated into the Energy bill as section 1545 of H.R. 6.

The current Senate Energy bill contains important provisions to promote the use of energy savings in vehicles, appliances, new homes, and commercial buildings. As we move forward with fostering energy efficiency, we must not neglect recycling. Recycling should be an integral component of our nation's energy efficiency strategy.

The RISE provisions will create jobs, increase productivity, and conserve energy by establishing a tax credit to preserve and expand America's recycling infrastructure. Specifically, the provisions establish a 15 percent tax credit for the purchase of qualified recycling equipment used to sort or process packaging and printed materials, such as beverage containers, cardboard boxes, glass jars, steel cans and newspapers.

The tax credit could be claimed by material recovery facilities, manufacturers or other persons that purchase recycling equipment that sorts or processes residential or commercial recyclable materials, even if such equipment also is used to handle material from industrial facilities.

This national investment in our recycling infrastructure is necessary to reverse the declining recycling rate of many consumer commodities, including aluminum, glass and plastic, which are near historic lows. For example, 55 billion aluminum cans were wasted by not being recycled in 2004, which represents approximately $1 billion of aluminum lost to industry. The recycling rate of paper is estimated to be roughly 50 percent, glass containers 35 percent, and PET plastic bottles less than 20 percent.

The energy savings from greater recycling are significant. Increasing the recycling of containers, packaging and paper could save the equivalent energy output of 15 medium-sized power plants on an annual basis. Recycling aluminum cans, for example, saves 95 percent of the energy required to make the same amount of aluminum for its virgin source. Increasing the U.S. recycling rate to 35 percent would result in annual energy savings of 903 trillion BTUs, enough to meet the annual energy needs of 8.9 million homes.

Due to the diminishing quantity and quality of available recyclable materials, many companies are not able to obtain the volume of quality recycled feedstock needed to meet demand. This

new economic challenge makes it even harder for recycled products to compete in the marketplace. For example, two Michigan plastic recycling facilities recently closed, affecting 100 jobs, as a result of inconsistent supply of recycled plastic. Similarly 17 percent of the recycling capacity at U.S. paper mills has been shut down, in part due to insufficient quality recyclable materials. One leading glass manufacturer also reports that they are able to obtain only a small fraction of the volume of recycled glass that their facilities can use.

In some cases, recyclers have been forced to shut down their operations in the United States and relocate to other countries due in part to insufficient or poor quality recycled feedstocks. This is particularly unfortunate as, on a per-ton basis, sorting and processing recyclables are estimated to sustain 10 times more jobs than landfilling or incineration.

The RISE provisions aim to reverse the declining recycling rate and resulting energy loss by incentivizing greater collection of quality recyclable materials. The bill would expand collection efforts by making innovative technology more affordable, such as reversible vending machines that collect and process empty containers. It could also be used to finance equipment at recycling collection centers.

This targeted tax credit would address quality concerns by reducing the barriers hindering investment in optical sorting and other state of the art equipment needed at material recovery facilities. By reducing material loss and improving quality, RISE will increase both the quantity and quality of recycled feedstock available to manufacturers.

Reducing the barriers to recycling also serves a number of environmental goals, including lessening the need for new landfills, preventing emissions of many air and water pollutants, reducing greenhouse gas emissions, and stimulating the development of green technology. But most importantly, recycling helps preserve resources of our children's future. For these reasons, I urge my colleagues to support these provisions.

Mr. President, last night the Senate narrowly defeated the Kerry amendment No. 844, sense-of- the-Senate resolution on climate change. I was unable to be present for the vote, but I strongly supported this sense of the Senate. The United States has consistently failed to constructively engage in international discussions in a manner consistent with our obligations under the United Nations Framework Convention on Climate Change or even under a basic good neighbor policy. The Bush administration policy on global warming is ineffective, unproductive, and irresponsible.

The administration's voluntary approach and efforts to address global warming have been underfunded and will not produce real emissions reductions in the timeframe necessary. Fortunately, many of the States have taken up the mantle of leadership, since there is a tremendous vacuum in the White House. By reversing his pledge to control carbon dioxide from powerplants, walking away from the Kyoto Protocol, and now snubbing British Prime Minister Tony Blair's request for assistance from the United States on this critical climate change problem, the President is reneging on this Nation's responsibility and opportunity to be a world leader.

Carbon dioxide levels have never been higher and the United States disproportionately contributes to the global warming problem. We need to reengage with the world in producing a binding global plan that reduces greenhouse gases below levels that would cause dangerous interference with the Earth's climate.

The administration and the world should pay close attention to the passage of the Bingaman-Specter resolution that committed the Senate to adopting legislation containing mandatory controls on carbon dioxide. This is an important resolution and it should serve as a wakeup call to the administration and those among the carbon-intensive industries. We must shoulder our moral responsibility to reduce the risks of global warming.

Mr. President, I thank the bill managers, Senator DOMENICI and Senator BINGAMAN, for agreeing to accept my amendment in the managers' package that was agreed to last night by unanimous consent. My amendment directs the Architect of the Capitol to study the feasibility of installing energy and water conservation measures on the rooftop of the Dirksen building, specifically the roof area above the cafeteria in the center of the building.

Today, all that exists is open space in the center of the building. My amendment will assist the Architect in obtaining information that will allow this space to be used in a more efficient manner and save taxpayer dollars.

During debate on the energy bill, the Senate has heard numerous arguments on the importance of conserving energy. In August of 2003, nearly 50 million people in the Northeast and Midwest were affected by a massive power outage. This event emphasized the vulnerability of the U.S. electricity grid to human error, mechanical failure, and weather-related outages. Failure to maintain a reliable grid had a huge impact on our Nation's economy, businesses, and individuals' everyday lives.

It is vital, then, that we here in the Senate do our part and put measures in place to make the Nation's Capitol a more secure and sustainable user of electricity. The Capitol Complex is largely dependent upon the electrical grid for power. Our daily operations should not be compromised by grid failure.

My amendment moves us forward in the right direction. Technology already exists to ensure that our operating systems can continue to operate despite loss of a main power supply. By creating onsite generating capacity through the installation of cogeneration equipment at the power plant and using solar powered equipment, like photovoltaic panels, we could produce energy to operate essential systems during a blackout or significant loss of power. We can start slowly by powering emergency lighting and notification systems in hallways so the occupants know how to exit the building safely or upgrade the electrical generating capacity of the complex. Technology is only getting better. My amendment asks the Architect of the Capitol to explore the use of this new technology to ensure that the Nation's Capitol always has reliable power.

In addition, this new technology also has the potential to provide significant savings in the Capitol's operating budget. We are all looking for ways to save the taxpayers money and reduce the Nation's deficit. We have the opportunity today to set an example and practice what we preach. As Members of Congress, we can educate ourselves and our staff on the benefits of energy efficiency, and see first hand the savings it can generate. The Nation's Capitol can join those already utilizing this technology and help encourage others to adopt it as well.

My amendment requires a feasibility study be conducted to look at the Dirksen building rooftop, including the open space in the center of the building directly above the cafeteria. The study will focus on more efficient use of the space while providing energy and water savings to the Capitol Complex.

I envision a wonderful park and garden area that Members and staff can actually use. These gardens would not only provide a beautiful environment by utilizing native plants, but they would also reduce energy use, and provide insulation for the building to reduce heat and energy loss.

These gardens would also provide a collection system for rainwater to limit the amount of stormwater runoff in the area. This collected water could be utilized for basic plumbing, watering the vegetation, or even the fire sprinkler systems; thereby reducing the use of water in the Capitol Complex.

Installation of technology, like photovoltaic panels, could collect the rays of the sun and provide energy to the building. These can be installed on the rooftops of our buildings in many different areas. These panels are now made to blend into any environment

There is even technology that exists to funnel natural daylight into the cafeteria in the basement. Imagine enjoying natural daylight as you consume your lunch or hold that quick meeting. Preliminary studies show that exposure to daylight improves worker productivity and results in less absenteeism due to illness.

The Architect of the Capitol is currently updating the master plan for the

Capitol Complex. This small project fits into that plan. The Architect is making great strides to update our operating systems with newer and efficient technology with sustainable features. I appreciate his efforts and encourage him to continue doing so.

Before I conclude, I would like to thank a former staffer who helped me develop this great idea, Mary Katherine Ishee. Mary Katherine was creative enough to look beyond the barren view from the committee offices on the fourth floor of the Dirksen building and realize the opportunity it presented.

It is about time we bring our home, the Capitol Complex, up to date with the rest of the world. This language is a step in that direction. We have the potential to use the latest technology to save energy, address security concerns, conserve our resources, and make more efficient use of this space.

We will all benefit from a wonderful, efficient, and useful park in the middle of the Dirksen building, and the taxpayers will benefit from our reduced energy and water use in the form of lower utility bills. I am very pleased that this measure has been added and I hope it will be retained by the conferees.

Mr. President, I want to thank Senators DOMENICI and BINGAMAN for adopting my amendment No. 774, as part of the Senate Energy bill. The amendment authorizes up to $20 million a year for 7 years for the establishment of a new Department of Energy grant program to aid local governments, municipal utilities, rural electric cooperatives, and not-for-profit agencies. The cost of repairing transmission lines is proving particularly difficult for small communities in Vermont and across America.

I became interested in creating such a program due to the challenges that communities in my State are facing with respect to the upgrading and siting of transmission and distribution lines. For example, residents in Lamoille County, VT, have been struggling to find ways to expand the transmission system to accommodate the demands of a growing tourism industry without overly burdening local residents with the cost of such an upgrade. Currently, the transmission system that delivers electricity to this area of my State is at peak capacity, leaving the local community in jeopardy should a single event like a fallen power line or damage to a key piece of equipment occur.

Not only must communities afford the costs of the infrastructure itself, but also the costs of integrating these new technologies into the rural landscape in a way that does not destroy their scenic quality and protects their lifestyle.

These grants will help rural communities meet these needs. They can be used for increasing energy efficiency, siting or upgrading transmission lines, or providing modernizing electric generating facilities to serve rural areas. Under the generation grants portion of the program, preference will be given to renewable facilities such as wind, ocean waves, biomass, landfill gas, incremental hydropower, livestock methane, or geothermal energy.

By adopting my legislation as part of this Energy bill, small electric cooperatives and local governments in Lamoille County, VT, will be eligible to apply for Federal grants to construct new facilities and transmission upgrades. This is a good amendment and it should be retained by the conferees.

Mr. President, last night the Senate defeated amendment No. 961 that would have banned the siting of windmills in many areas in the lower 48 States and made them ineligible to receive Federal tax subsidies. Had I been present to vote, I would have opposed this amendment. In my 30 years in Congress, I have been a strong proponent of renewable energy sources including wind power. I am very optimistic about the role wind energy can play in satisfying a growing proportion of this Nation's energy needs.

If the objective of this amendment was to protect scenic qualities of America's lands and shorelines, it did not achieve that goal. The amendment only targeted the siting of windmills within 20 miles of Federal public lands, but did not address the siting of coal-fired powerplants and other energy sources that have far greater impacts to our public lands. Just look at the impacts that air pollution blowing in from coal-fired Midwest powerplants is currently having on the Great Smoky Mountain National Park, Shenandoah National Park, and the protected areas in the beautiful green mountains of Vermont.

This amendment also failed to treat all public lands and wildlife refuges equally. As ranking member of the Environment and Public Works Committee, the committee with jurisdiction over our Nation's wildlife refuges, I was concerned that, had this amendment been approved, no wind turbine situated anywhere near Federal lands in the lower 48 States would have been eligible to receive Federal tax subsidies, thereby severely limiting the expansion of wind power in the United States. Oddly, this amendment specifically exempted some other federally protected areas such as coastal wildlife refuges in Louisiana and Alaska. By defeating this amendment by a wide margin, the Senate sends a strong message that wind power has a role to play in satisfying this Nation's energy needs.

Mr. PRYOR. Mr. President, families in Arkansas want and deserve a national energy policy that truly moves us towards energy independence. We must look beyond oil, gas, and coal and develop cleaner alternatives and new sources of energy, especially renewable fuels.

This bill offers a good starting point in achieving this goal, and I am pleased the Senate has agreed to adopt my amendment that embraces the potential of biodiesel and hythane as part of this effort.

My amendment requires that the Department of Energy, in conjunction with universities throughout the country, prepare two reports. These reports would evaluate the potential markets, infrastructure development needs and possible impediments to commercialization for two alternative fuels: biodiesel and hythane.

Biodiesel can substitute directly for petroleum-based diesel fuel, usually with no engine modifications, and offers a number of health and environmental benefits. It produces less carbon monoxide, less sulfur oxides emissions, and less particulate or soot emissions from some engines. It allows for safer handling. It is an agricultural-based feedstock may be produced anew every year, unlike fossil fuels which have declining reserves. And in Arkansas and other agricultural states, the robust commercializing of biodiesel would mean an economic boon to our farmers.

The promise of biodiesel as a fuel source is just beginning to show. Biodiesel only currently accounts for less than 0.1 percent of diesel fuel consumption in the U.S. But total U.S. diesel fuel use was estimated at 39.5 billion gallons in 2001, including 33.2 billion of on-road highway use.

The enhanced commercialization of biodiesel can help reverse this trend, but only if we enable this industry to get off the ground on a solid footing. We have seen an enormous amount of federal assistance help support and catapult the ethanol industry. Our soybean farmers and our Nation could benefit from similar treatment.

My amendment also requires a study on the feasibility of hythane deployment, which is a blend of hydrogen and methane. Hythane is considered a stepping stone or bridge to the hydrogen economy because it represents an initial commercial application of hydrogen as a legitimate fuel option. It reduces nitrogen oxide, NO_x, emissions by 95 percent relative to diesel, and makes significant reductions in carbon dioxide.

China is now leading the way in developing hythane-powered vehicles. In preparation for the 2008 Olympics, Beijing, is in the process of replacing 10,000 diesel buses with hythane buses.

Additionally, hythane offers a solution to improve waste management in our communities. According to the Environmental Protection Agency, municipal solid waste landfills are the largest source of human-related methane emissions in the United States, accounting for about 34 percent of these emissions. Landfill gas is created as solid waste decomposes in a landfill and consists of about 50 percent methane.

Instead of allowing this gas to escape into the air, it can be captured, converted, and used to make hythane. As

of December 2004, there are approximately 380 operational Landfill Gas energy projects in the United States and more than 600 landfills that are good candidates for projects. Companies ranging from Ford to Honeywell to Nestle are converting landfill gas into energy.

There is similar potential for chemical plants who also release methane into the atmosphere, contributing to local smog and global climate change. If they sequestered methane to sell to a hythane manufacturer, I believe they would take advantage of the profits it would yield.

My State of Arkansas, for example, has significant methane seams, including the Fayetteville shale bed methane seam, which Southwest Energy and CDX Gas are already using to their advantage. These resources could contribute to hythane fuel production as well.

Our Nation's energy problems cannot be solved overnight; however, we would be remiss if we did not at least further explore innovative and practical solutions, such as biodiesel and hythane. This amendment is a win-win situation for our energy dependence, health, economy and environment. I thank my colleagues for their support.

Mr. FEINGOLD. Mr. President, I regret that I was unable to take part in yesterday's cloture vote because I was testifying before the BRAC Commission in St. Louis, MO, along with the senior Senator from Wisconsin, in an effort to save the Milwaukee-based 440th Airlift Wing from closing. The fate of the 440th is very important to me and my constituents, and, while I have only missed a handful of votes in my 12 years in the Senate, it is clear to me that testifying in St. Louis was the right decision.

If I had been present I would have again voted against the cloture motion on the nomination of John Bolton. Since the motion required 60 votes to pass, my absence did not affect, and could not have affected, the outcome of the vote.

Mr. BYRD. Mr. President, for too long, we as a body, and we as a Nation, have fallen short in our efforts to address some of the most profound and far reaching challenges of our time—global climate change and energy security. For too long, we have skirted the issues and have shirked our responsibilities. We have convinced ourselves that we are doing something but, in reality, we continue to take no real action. Rather than lead, we have stood by, paralyzed, undermining any efforts to forge an effective response.

It is time to pull ourselves out of that quicksand and confront the tasks at hand. First, we must establish practical and comprehensive steps to reduce U.S. emissions of greenhouse gases and to reduce our dependence on foreign energy sources. Second, we must work in a partnership with developing nations to deploy clean energy technologies that can meet their urgent development needs while reducing their own contribution to global climate change and their growing energy dependency. Third, we must commit ourselves to the fundamental task of forging an effective and sound international agreement to guide a truly global effort to confront this most daunting problem, global climate change.

In 1997, during the 105th Congress, the Senate passed S. Res. 98, by a vote of 95 to 0. As the primary author, along with Senator HAGEL, of S. Res. 98, I sought at that time to express the sense of the Senate regarding the provisions of any future binding, international agreement that would be acceptable to the Senate.

However, almost from the day of that vote, those on both sides of the issue have misrepresented and misconstrued its intent. What was meant as a guide for action has instead been invoked, time and again, as an excuse for inaction. Yet no one has misrepresented and misconstrued S. Res. 98 more so than this present administration. Rather than employing it as a tool to positively influence the international negotiations, the administration used it as cover to simply walk away from the negotiating table.

For the U.S., the issue should no longer be about the Kyoto Protocol. Certainly, everyone in this Chamber knows that the United States will not join the Kyoto Protocol. The rest of the world has come to accept that fact as well. So let us exorcize the specter of the Kyoto Protocol from this debate. The real question is what comes next. How do we arrive at a credible, workable strategy, one compatible with the best interests of the United States and of the other major emitting industrial and developing countries? That must be the question now before us.

We must send a clear signal that we recognize our responsibilities, and we must be prepared to work toward a fair and effective framework for action. We must be bold leaders. We owe this to ourselves; we owe it to the other nations of the world; and we owe it most of all to our children and to future generations.

Technology is a critical component to resolving the climate change challenges in the U.S. and around the world. But let me be clear. Even as the administration has touted technology as the solution, it continues to woefully underfund these very programs. Technology policies by themselves cannot be the silver bullet. Technology policies must be paired with commonsense, market-based solutions to create incentives for innovation and adoption of new and improved technologies that will provide a signal to reduce emissions.

There must be a broader approach. I want to commend Senators MCCAIN and LIEBERMAN for their diligence and hard work to find a middle ground. I want to commend Senator BINGAMAN on his efforts as well. Like them, I believe that we face a problem, and it requires that we craft an economically and environmentally sound solution.

The McCain-Lieberman amendment did not pass in its current form. While I did not vote for their amendment, I want to make it very clear to the administration and to others who just want to say ''no'' that I will work with Senator MCCAIN, Senator LIEBERMAN, and Senator BINGAMAN, and other Republican and Democratic Senators who want to craft a constructive solution.

I have long said that global warming and our energy security are major challenges in the U.S. and around the world. Troubling things are happening in our atmosphere, and we should wake up. I am not alone in this belief. The U.S. cannot bury its head in the sand and hope that these problems will simply go away.

I have insisted on a rational and cost-effective approach for dealing with climate change, both domestically and internationally. I have no doubt that the far right and the far left will oppose any moderate approach on this issue, but it is time to get the right architecture and solid funding in place to make a first step a reality. I am concerned that the McCain-Lieberman approach, in its present form, will negatively impact my State, but that does not mean that we will not be able to find some common ground in the future. I hope that my friends in the energy industry will decide to work with them as well.

Mr. President, we cannot just stand still. I know Senator MCCAIN. He is tenacious, and Senators LIEBERMAN and BINGAMAN are equally tenacious. If 14 Senators in the middle can come together to diffuse the Nuclear Option, then I am certain that a solid center of Senators can find a new path forward to address global climate change and our Nation's energy security needs. I would certainly not support actions that would harm the economy or the people of my State of West Virginia or the United States in general. Yet, I repeat, I believe that there is a middle path forward, and I stand ready to work with those who share that view.

Mr. REID. Mr. President, I rise to speak to a particular section of H.R. 6, the Energy bill that would lead to Nevada and Washington ratepayers being relieved of $480 million in fees under fraudulent contracts entered into with Enron, the defunct energy company.

The largest utility in my State, Nevada Power, had a $326 million contract with Enron for power. The contract was terminated once it became impossible for Enron to hide its financial frauds any longer and instead was forced to declare bankruptcy. Nonetheless, Enron has asserted before the bankruptcy court the right to collect all of the profits it would have made under the contract through so-called ''termination payments.'' Enron has made this claim even though Enron never delivered the power under the

contract, even though Enron had obtained its authority to sell power fraudulently, and even thought Enron was in gross violation of its legal authority to sell power at the very time the contract was entered into.

The energy bill ensures that the proper government agency will determine whether Enron is entitle to more money from Nevada. That agency is the Federal Energy Regulatory Commission, FERC. When FERC was established by Congress, its fundamental mission was, and remains, to protect ratepayers. FERC has specialized expertise required to resolve the issues surrounding some of the contracts that Enron entered into and eventually terminated. The provision is an outgrowth of the Enron criminal conspiracy to rip off ratepayers throughout the West.

Enron is still seeking to extract an additional $326 million in profits from my State's utilities for power that was never delivered. Enron, after all of its market manipulation and financial fraud, is still trying to profit from its wrong-doing at the expense of every Nevadan.

Starting in December 2000, Nevada utilities entered into long-term contracts with Enron to meet a significant portion of their long-term needs. No one was aware of Enron's fraudulent activities to manipulate electricity markets. The prices that Nevada Power agreed to pay were three times as high as the threshold that FERC had established as a ceiling price. In November 2001, Nevada Power asked FERC to review the rate to determine whether those contracts were just and reasonable. Two days after the complaint was filed against Enron, Enron filed for bankruptcy. There is an issue in the bankruptcy case as to whether Enron can enforce contracts that it terminated. The bankruptcy court is responsible for enhancing the bankruptcy estate for the benefit of creditors. FERC, on the other hand, sees a more complete picture which includes protecting the interests of the general public.

This issue is of paramount concern to my constituents. It will decide whether they will be on the hook for more than a hundred million dollars, an amount that when spread out over a relatively small number of ratepayers, would translate into rate increases. It is critical that this issue be decided by the forum with the specialized expertise in matters relating to the sale of electricity with a stated mission of protecting ratepayers, and that is the Federal Energy Regulatory Commission.

I would like to especially thank Senators BINGAMAN, CANTWELL, DOMENICI, and ENSIGN for their assistance on this provision. I thank my colleagues on both sides of the aisle for their support up until this point, and for their continuing support in making sure that this critical measure is included in the legislation that emerges from the conference committee.

I yield the floor.

Mr. CRAIG. Mr. President, I am not aware of any further amendments. Therefore, I ask for a third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. CRAIG. I ask unanimous consent that the vote on passage of the bill occur at 9:45 a.m, on Tuesday, June 28, with paragraph 4 of rule XII waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, before I yield the floor, let me extend a very special thanks to all who have participated in the crafting and the final work product that we now have before us, a national energy policy for our country. A good many have contributed and most assuredly the chairman of the committee, PETE DOMENICI, and the ranking member, Senator BINGAMAN, have done an excellent job, in a very bipartisan way, to bring us to where we are at this moment.

Let me also extend a special thanks to the staff of the committee who have expended extraordinary time and hours to get us to this point. I thank my personal staff for a near 5-year effort, as we have worked over a long period of time to winnow out, shape, and bring before us what I think I can say is a very fine work product.

I am anxious to see its final passage, which will occur on Tuesday, and a conference with the House. I hope we can have this bill on the President's desk sooner, rather than later. The American people deserve a national energy policy that allows this country to get back into the production of energy of all of the types that have been addressed in this legislation.

I thank all of my colleagues for their work effort, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

KARL ROVE

Mr. REED. Mr. President, I rise to join many of my colleagues to express my dismay concerning the deplorable comments by Karl Rove that suggest that—indeed states that Democrats did not respond to the attack on this country on 9/11, that they did not join in with other Americans who not only recognized the consequences but came together to work together to attack those who attacked us and to bring to justice those who had callously attacked and killed thousands of Americans. Such a statement is beyond the pale.

Mr. President, 9/11 is a moment in which the Nation was attacked, and we all came together, not as Democrats or Republicans, liberals or conservatives, but as Americans. We all came together.

The record itself clearly undercuts this contention of Mr. Rove. Within days of the attack of 9/11, we passed in this Senate an authorization for the use of military force. The vote was 98 to nothing. Every Republican and every Democratic Senator voting cast his or her vote to give the President of the United States the authority and the power to go forward, seek our enemies, and destroy them.

I can recall going up to Providence, RI, my State capital, that afternoon, and standing with every one of the elected officials in the State, Republican and Democrat, before a crowd of 25,000 people. My message was very simple. The Senate unanimously has authorized the President to seek out and destroy those who attacked us. That is what happened on 9/11. It was not as Mr. Rove tries to distort, to spin some situation in which we did not recognize the consequences or respond to the responsibilities of that dreadful moment.

Mr. Rove suggests that our response was simply to suggest therapy, to understand our attackers. That is a misstatement of the fact. In fact, following that authorization of the use of force, we succeeded in this Senate, acting with virtual unanimity on measure after measure, to give the President and this Nation what we all needed to defend ourselves and to inflict upon our adversaries the justice which they so richly deserved.

We passed the Aviation Transportation Security Act. We passed the fiscal year Intelligence Authorization Act—unanimously, the fiscal year Defense Authorization Act, the fiscal year Defense Appropriations Act, on and on and on, with virtual unanimity.

We did this because we recognized that we are Americans. Today, Mr. Rove seeks to distort this historic record, to suggest we did not come together as Americans, but that there were those who knew the way and took it and those who tried to ignore the reality. That is a gross misstatement of history, of the facts, and he should apologize for it. It is inappropriate that an individual who works in the White House should make such callous and clearly erroneous statements for political effect.

Mr. Rove suggests, in the article I have seen in the newspaper describing his speech, that our response was one of moderation and restraint. Nothing could be further from the truth. Our response was one voice authorizing the President to attack, giving him the tools to carry out the attack. Mr. Rove suggested that conservatives saw 9/11 and said we will defeat our enemies. That is exactly what all Americans said or did. He goes on to suggest that what liberals saw prompted liberals to say: We must understand our enemies.

Again, that is not the reality. I hope Mr. Rove is not suggesting unwittingly that we should go about without respecting and understanding our enemies. He should look back at Sun Tzu,

the Chinese philosopher whose ''Art of War'' speaks to us today as it did centuries ago. As Sun Tzu said:

If you know the enemy and know yourself, you need not fear the results of 100 battles.

In fact, some might suggest we are learning about our enemy too late in Iraq today.

The point I make is this type of attack has no place, it does not conform to history, it undercuts the spirit of that moment, a moment in which every American came together as one people, indeed, as the world responded to us. That unanimity may have lessened over the last several months, but it was there. To view September 11 any other way is a gross distortion. Mr. Rove should apologize for it.

He went on to attack my colleague, the Senator from Illinois, Mr. DURBIN. Senator DURBIN has apologized for his comments, and that apology is appropriate. But to continue to attack this individual does nothing to advance any of the ideals or aspirations or policies that we must be engaged with. What it does is distort a person, someone I have come to know, respect, and admire. Someone who is caring and concerned for people, whose thoughtfulness, whose intense commitment to doing what is appropriate for all Americans, and who is particularly sensitive to the needs of our military forces has impressed me.

Like anyone who has had the privilege of serving and understanding in the U.S. Army or any uniformed service, I had the privilege of commanding paratroopers of the 82nd Airborne Division. We understand the extraordinary courage and bravery and valor of those individuals.

I have been impressed many times with Senator DURBIN's commitment to help those individuals in meaningful ways by providing the equipment they need, by ensuring that our veterans who have served with distinction are not ignored. The attacks on him are without correlation to the person and to the service of this individual.

I hope Mr. Rove would apologize for these remarks and would refrain in the future from distorting the historial record. I don't think that is too much to ask of someone who is in such a position of power in the White House.

At this point, it is sufficient to conclude by saying I hope, indeed, that we can avoid this kind of personalized attack, this gross distortion, which is untrue, misleading, and divides a nation and does not unite it. I hope we move on to substantive policy as we face real problems that face this Nation.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

FIRST LIEUTENANT NOAH HARRIS

Mr. ISAKSON. Mr. President, I rise today to read from an e-mail sent to me in May of this year:

Our presence here is not just about Iraq. It is sending a message to the oppressed peoples of the world that freedom can be a reality. Freedom is the greatest gift that we, the U.S., have been granted, and as such, it is our responsibility to spread it. For it to become a permanent fixture in our future and our children's future, we must give it to all those that desire it.

Mr. President, that is an e-mail to me from 1LT Noah Harris, of Ellijay, GA, from Baghdad, Iraq.

On Saturday of this past week, First Lieutenant Harris died in the service of his country. His e-mail to me expressed democracy and freedom far better than I am capable of doing.

Noah Harris served as an intern in Congressman DEAL's office 2 years ago, which is where I had the occasion to meet him.

When I received his e-mail, I sat down at my desk in my office and wrote him a note thanking him for his service to his country and his fellow man.

This morning, I rise to pay tribute to the life that has been given on behalf of the greater good. Noah Harris was the type of young man who serves without desire for credit or acclaim in Iraq today but on behalf of his country and everything we stand for.

At the age of 23, he embodied the hope of the future. His sacrifice, in fact, ensures that the future for others will be brighter.

He captained his high school football team, was never beaten in the State in wrestling, went to the University of Georgia and captained the cheerleaders at that institution.

He came to Washington to serve as an intern. Shortly after September 11, 2001—struck, as all of us were, by the tragedy of that day—Noah Harris volunteered to serve in the U.S. military and, to the greater good, the people of the world.

On Saturday, at noon of this week, in Ellijay, GA, I and hundreds of other Georgians will pause in the northwest Georgia mountains to pay tribute to the life of Noah Harris.

I am privileged and pleased to stand on the floor of the Senate today in advance of that to acknowledge our thanks, on behalf of this Senate, and all who serve in this Congress, and our President, for the life, the times, the service, and the gift of 1LT Noah Harris.

Mr. CHAMBLISS. Mr. President, I stand before this body tonight with a heavy heart. One of Georgia's best and brightest young soldiers has paid the ultimate sacrifice in the service of his country in the War on Terror. Tonight the people of Ellijay, GA are grieving the loss of one of their bravest sons on the battlefield of freedom.

In our Nation's noble struggle to spread democracy, First Lieutenant Noah Harris gave his life in Baqubah, Iraq.

Noah, a member of the 2nd Battalion, 69th Armor Regiment, 3rd Infantry Division, died of wounds suffered as a result of an explosion near his armored vehicle around midnight, June 17, 2005.

Noah's death came one week before his birthday. Most young men his age would be making plans for a celebration; however, this young hero choose the battlefield instead.

Nearly 24 years old, this brave patriot was eager to serve his country and to spread our message of freedom and democracy to oppressed nations. His tragic and untimely death is a testimony of his passion and dedication to freedom's call.

The only child of Rick and Lucy Harris, Noah was a state champion wrestler and the captain of his high school football team. A natural leader and athlete, Noah took these skills to the University of Georgia where he was the captain of the cheerleading squad.

As a 1999 graduate of Gilmer High School, Noah's gifts were not merely athletic. He was honored as a scholar athlete during the Peach Bowl. These are but a few of the admirable accomplishments and achievements that endeared Noah to all of those with whom he came in contact.

While a student at UGA, Noah was motivated by the attack on our country on September 11th. Noah walked in to the ROTC office immediately after 9/11 asking to serve. Told he was too far along in his studies, Noah persisted until he was allowed to join the ROTC. You see, Noah believed passionately that there were no exemptions from serving in the cost of freedom.

A personal longing to promote liberty and help the Iraqi people who had long suffered under Saddam Hussein were a constant theme in Noah's letters home to his family and friends, but ever humble, Noah shrugged off the gravity of his commitment adopting the simple mantra ''I do what I can'' in response to being called a hero.

Noah believed that a greater good was worth fighting for and recognized the power of leading by example which exemplifies the qualities in each one of our Nation's treasured soldiers.

Noah's vision and passion to achieve a greater good for the people of Iraq is an excellent model for those who come after him to continue the fight against freedom's foes.

Noah aspired to serve in public office, and he was also interested in real estate as a personal career. A passionate advocate for the mission in Iraq, Noah expressed the urgency of the cause

when he was home visiting friends and family during his leave in May.

It is clear that Noah had a caring heart, as his friends recount that he was known to give Beanie Babies to the children in Iraq.

In tribute to Noah, members of the Gilmer County community will assemble at Gilmer High School Friday June 24 at 2 p.m. to distribute yellow ribbons across Gilmer County in preparation for the celebration of Noah's life on Saturday June 25, what would be his 24th birthday.

The ribbons will line highway 52 East in Ellijay to Highway 515, which stretches from the county line to the Ellijay First United Methodist Church, the site of the memorial service.

Another soldier in the vehicle was killed, and the driver was injured severely in the explosion. Noah and his fellow soldiers were transporting two captured insurgents during night operations in the Baquba neighborhood of Buhritz.

Noah's fellow soldier, Corporal William A. Long of Lilburn, GA, also died from injuries sustained in the blast. Three years ago, after talking with his stepfather and stepbrother, who are former members of the military, William joined the Army.

After his enlistment expired, he was very aware that his unit would be deployed to Iraq. His desire to serve our country and free the Iraqi people, however, led him to re-enlist.

A resident of Atlanta for most of his life and a Berkmar High School alumnus, William was well-mannered and well-liked by all. His family describes him as a ''perfectionist'' and ''basketball-lover.''

Ironically, before going to Iraq, William participated in more than 700 funerals as a member of the prestigious ''Old Guard.'' Many of those funerals were held at Arlington National Cemetery, the cemetery where William will be buried.

President Ronald Reagan once said:

Putting people first has always been America's secret weapon.

That secret weapon drives the American spirit to dream and dare, and take great risks for a greater good. Noah and William represented the true heart of servant leadership. Their desire was to first, serve others, not themselves.

My wife Julianne and I wish to extend our sympathies and our prayers to both Noah's and William's family, friends, and fellow soldiers. Their sacrifice will not be lost or forgotten. May God bless Noah Harris and William Long.

IRAQ

Mr. KENNEDY. Mr. President, this morning in the Armed Services Committee, Secretary Rumsfeld and Generals Myers, Casey, and Abizaid briefed us on the status of the war effort.

Secretary Rumsfeld said, once again, that it is a tough road ahead but that we must persevere and he sees reasons to be hopeful. Secretary Rumsfeld was describing a different war than most persons are concerned about. The war in Iraq they see is one of mistake after mistake after mistake. Whatever our position on the Iraq war, we should all be concerned that the administration has not handled it competently.

Secretary Rumsfeld needs to see what the American people see very clearly: The President does not have a winning strategy in Iraq. Our troops have been asked to do more with less. Our current strategy isn't working and the Congress and the American people know it.

Secretary Rumsfeld insists today that it is false to say the administration is painting a rosy picture. But that is exactly what he continues to do. It is time for Secretary Rumsfeld to take off his rose-colored glasses and admit to the American people and to our men and women in uniform who are paying the price with their lives for its failures that he had no realistic strategy for success.

It is time to level with the American people instead of continuing to paint an optimistic picture that has no basis in reality because of his failed strategy. And it is time for Secretary Rumsfeld to resign.

Despite the elections last January and the formation of a new transitional Iraqi government, many are increasingly concerned that the administration has no effective or realistic plan to stabilize Iraq. It continues to underestimate the strength and the deadly resilience of the Iraqi insurgency and it has failed shamefully to adequately protect our troops. More than 1,700 American service men and women have been killed in Iraq so far and over 13,000 more have been wounded. The families of these courageous soldiers know all too well that the insurgents are not desperate or dead-enders or in their last throes, as administration officials have repeatedly claimed.

Instead, General Casey indicated that the insurgency is around 26,000 strong, an increase over the 5,000 the Pentagon believed were part of the insurgency 1 year ago.

As General Myers said in April, the capacity of the insurgents ''is where they were almost a year ago.'' General Abizaid told the committee today that the overall strength of the insurgency is ''about the same as it was'' 6 months ago. Looking ahead, as General Vines said this week, ''I'm assuming that the insurgency will remain at about its current level.''

In the last 2 months, America has lost an average of three soldiers a day in Iraq, and no end is in sight. As General Myers said on May 12.

I wouldn't look for results tomorrow . . . One thing we know about insurgencies is that they last from . . . three, four years to nine years.

Because of the war, our military has been stretched to the breaking point.

The Department of Defense has had to activate a stop-loss policy, to prevent service members from leaving the military as soon as they fulfill their commitment.

Nearly 50 percent of the persons serving in the regular Armed Forces have been deployed to Iraq or Afghanistan since December 2001, and nearly 15 percent of them have been deployed more than once.

Thirty six percent of all those serving in the Armed Forces, including in the National Guard and the Reserves, have been deployed to Iraq or Afghanistan of since December of 2001.

The alarm bell about the excessive strain on our forces has been ringing for at least a year and a half. In January 2004, LTG John Riggs said it bluntly:

I have been in the Army 39 years, and I've never seen the Army as stretched in that 39 years as I have today.

As LTG James Helmley, head of the Army Reserve, warned at the end of 2004, the Army Reserve ''is rapidly degenerating into a 'broken' force'' and is ''in grave danger of being unable to meet other operational requirements.''

These continuing deployments are taking their toll not only on our forces in the field but also on their families here at home. The divorce rate in the active-duty military has increased 40 percent since 2000.

The war in Iraq and the casualties and the strain on families have seriously undermined the Pentagon's ability to attract new recruits and retain members already serving. Both the Regular and Reserve components of the Armed Forces are increasingly unable to meet recruitment goals. MG Michael Rochelle, head of the Army Recruiting Command, stated the problem succinctly in May when he said that this year is ''the toughest recruiting climate ever faced by the all-volunteer Army.''

In March, the Pentagon announced it was raising the maximum age for Army National Guard recruits from 34 to 39, and was also offering generous new health benefits for Guard and Reserve members activated after the September 11 terrorist attacks.

Despite these facts, Secretary Rumsfeld insisted today that we will not have a broken Army as a result of the war.

The severe strain the war is placing on our Armed Forces and on our ability to protect our national security interests in other parts of the world concerns us all.

The Army has been forced to go to all-time new lengths to fill its ranks. In May, it began offering a 15-month active duty enlistment, the shortest enlistment tour in the history of the Army.

To recruit and retain more soldiers, the National Guard has increased its retention bonus from $5,000 to $15,000. The first-time signing bonus has gone up from $6,000 to $10,000. GEN Steven Blum, Chief of the Army National Guard, said:

Otherwise, the Guard will be broken and not ready the next time it's needed, either here at home or for war.

We all know that these problems of recruiting and retention cannot be fixed through enlistment bonuses, health benefits, and raising the age of service. These are short-term Band-Aids on the much larger problem of the war. Only progress in bringing the war to an honorable conclusion will lead to a long-term solution to the problem which is clearly undermining our ability to respond to crises elsewhere in the world.

Despite claims by the administration of progress, Iraq is far from stable and secure. We have made very little progress on security since sovereignty was transferred to the interim Iraqi Government 1 year ago.

Today, Secretary Rumsfeld insisted we are not stuck in a quagmire in Iraq. He insisted that ''the idea that what's happening over there is a quagmire is so fundamentally inconsistent with the facts.'' What planet is he on? Perhaps he is still living in the ''Mission Accomplished'' world.

By last June, 852 American service members had been killed in action. Today, the number has doubled to more than 1,700.

By last June, 5,000 American service members had been wounded in action. Today, the number has more than doubled, to over 13,000.

DIA Director Admiral Jacoby told the Armed Services Committee in March that:

the insurgency in Iraq has grown in size and complexity over the past year. Attacks numbered approximately 25 per day one year ago.

Just last week, General Pace said:

the numbers of attacks country-wide in Iraq each day is about 50 or 60.

A year ago, the United States had 34 coalition partners in Iraq. Nine of those partners have pulled out in the past year. Today, we have just 25. By the end of the year, another five countries that are among the largest contributors of troops are scheduled to pull out.

One year ago, 140,000 American troops were serving in Iraq. Today, we have the same number of troops.

The training of the Iraqi security forces continues to falter. The administration still has not given the American people a straight answer about how many Iraqi security forces are adequately trained and equipped. They continue to overestimate the number of Iraqis actually able to fight. In the words of the General Accounting Office:

U.S. government agencies do not report reliable data on the extent to which Iraqi security forces are trained and equipped.

In February last year, Secretary Rumsfeld preposterously said:

We accelerated the training of Iraqi security forces, now more than 200,000 strong.

In fact, the numbers of Iraqis who are adequately trained is far, far lower. As General Meyers conceded a year later, only about 40,000 Iraqi security forces ''can go anywhere and do anything.''

It is still far from clear how many Iraqi forces are actually capable of fighting without American help and assistance.

Our reconstruction effort has faltered as well over the last year—and faltered badly. The misery index in Iraq continues to rise. As of June 15, only $6 billion—one third—of the $18 billion provided by Congress last summer for Iraq reconstruction had been spent.

The Iraqi people desperately need jobs. But we are unable to spend funds quickly, because the security situation is so dire. Of the amount we do spend, it is far from clear how much is actually creating jobs and improving the quality of life. We need greater focus on small projects to create jobs for Iraqis, not huge grants to multinational corporations that create more profits for corporate executives than stability in Iraq.

By the State Department's own accounting, up to 15 percent of reconstruction funding is being used to provide security for the reconstruction. That estimate itself may be too low. A Department of Energy analysis this month says that perhaps 40 percent or more is actually being spent on security, as opposed to actual reconstruction.

These costs have increased—not decreased—over the past year as insurgent attacks have continued to escalate. We are spending ever-increasing amounts of assistance on security to guard against an insurgency that the Vice President insists is in its last throes.

A joint survey by the United Nations Development Program and the Iraqi Government released last month shows Iraq is suffering from high unemployment, widespread poverty, deteriorating infrastructure, and unreliable water, sewage, sanitation, and electricity services—despite its immense oil wealth and access to water.

Estimates of the number of unemployed range between 20 and 50 percent of the population. Every unemployed person is ripe for recruiting by the insurgents, who offer as little as $50 a person for those willing to plant explosives on a highway or shoot a policeman.

Iraq still suffers heavily from severe electricity shortages. According to the Department of Energy assessment, the causes are numerous, ''including sabotage, looting, lack of security for workers, disruptions in fuel supplies . . .''

A year ago, Iraqis had an average of 12 hours of electricity per day. Today, they have just over 10 hours a day.

Almost all of Baghdad's households suffer from an unstable supply. In parts of the city, electricity is turned on for 3 hours and then turned off for 3 hours. As a result, 29 percent rely on private generators for electricity. In areas with high incidences of poverty, many families have no alternative supply to turn to.

Water and sanitation are enormous problems as well. Just this week, water was unavailable in many parts of Baghdad because insurgents blew up the water pipes.

According to the United Nations Development Program, only 54 percent of families in Iraq have safe drinking water, and 80 percent of families in rural areas use unsafe drinking water.

What happened to all of the oil that was supposed to pay for the costs of reconstruction and drive the recovery of Iraq's economy? Last year, the Iraqi Oil Minister said that 642 attacks on the oil system had cost the economy $10 billion. In 2005, pipelines are still under attack, and analysts believe it will be 2 to 3 years before Iraq is able to increase its oil production.

The administration has been consistently wrong about Iraq. They wrongly insisted there was no guerilla war. They repeatedly—and wrongly—called the insurgents dead-enders who are in their last throes. They repeatedly—and wrongly—sent our service men and women on patrol without proper armor, a shortage that continues with the marines even today. When Secretary Rumsfeld was challenged about it by a soldier, to huge applause from the troops, on the Secretary's visit to Iraq last December, he responded:

You go to war with the army you have. They're not the army you might want or wish to have at a later time.

That response from the troops says it all. Surely, no Secretary of War or Secretary of Defense in our history has ever been so humiliated by his troops or received such a resounding vote of no confidence.

The Secretary's failed strategy has created an impossible situation for our forces. The administration has undermined our national security and undermined our ability to protect our national security interests elsewhere in the world.

Our colleague, Senator HAGEL, summed it up brilliantly when he told U.S. News and World Report last week:

Things aren't getting better; they're getting worse. The White House is completely disconnected from reality . . . It's like they're just making it up as they go along. The reality is that we're losing in Iraq.

Mr. President, next Tuesday marks the 1-year anniversary of the transfer of sovereignty in Iraq, and to mark the occasion, President Bush will address the Nation.

When he does, all of us hope that he will state a new, more realistic and more effective strategy for the United States to succeed in Iraq.

The war has clearly made America less safe in the world. It has strengthened support for al-Qaida and made it harder to win the real war against terrorism—the war against al-Qaida.

The President needs an effective strategy to accelerate the training of a capable Iraqi security force.

The President needs an effective strategy to rescue the faltering reconstruction effort and create jobs and hope for the Iraqi people, and neutralize the temptation to join the insurgents.

The President needs an effective strategy for serious diplomacy to bring

the international community into Iraq, to support the adoption of a constitution that protects all the people of Iraq.

He needs an effective strategy to repair the damage the war has caused to our reputation in the world and to our military. Our men and women in uniform deserve no less.

We are muddling through day by day, hoping for the best, and fearing the worst. Our men and women in uniform deserve better—and so do the American people.

ASBESTOS

Mr. SPECTER. Mr. President, I have sought recognition to talk briefly about the contents of S. 852 to provide for asbestos reform. This is a subject which has been before the Senate in one way or another for the better part of two decades. I recall my first contact with the issue when then-Senator Gary Hart of Colorado was soliciting members of the Judiciary Committee because of the deep problems of Johns-Mansville.

The Supreme Court of the United States, on a number of occasions, has importuned the Congress to take over the subject because the asbestos cases are flooding the courts and because class actions are inappropriate to address the issue.

The result of the avalanche of asbestos litigation has seen some 77 companies in the United States go into bankruptcy and thousands of people suffering from asbestos-related injuries—mesothelioma, deadly diseases—and unable to collect any compensation because of the fact their employers or those who would be liable for their injuries are in a state of bankruptcy.

Senator HATCH took the lead as chairman of the Judiciary Committee in the 108th Congress in structuring a bill which created a trust fund which has been established at $140 billion to pay asbestos victims. This is a sum of money which has been agreed to by the insurance companies and by the manufacturers and had the imprimatur of the leadership of the Senate.

In the fall of last year, 2004, Senator FRIST and Senator Daschle came to terms as that being a figure which would take care of the needs. The victims have never been totally satisfied with that figure, but it represents a very substantial sum, obviously, and according to the filings of the Goldman Sachs analysis, should be adequate to compensate the victims.

They made a detailed analysis and came to the conclusion that $125 billion was the figure necessary. Then when we removed the smokers, a figure of $7 billion, it came to a net of $118 billion, leaving a substantial cushion between $118 billion on the projection and $140 billion.

When the bill was passed out of the Judiciary Committee in late July of 2003, largely along party lines, the aid of a senior Federal judge was enlisted to serve as a mediator. Chief Judge Edward R. Becker had taken senior status the preceding May and was willing to convene the parties, the so-called stakeholders, in his chambers in Philadelphia in August of 2003. He brought together the insurers, the trial lawyers, the AFL–CIO representing claimants, and the manufacturers, a group of four interest groups who are very powerful in our community.

From those two meetings, there have been a series of approximately 40 conferences in my offices where we have worked through a vast number of problems where I think we have accommodated many of the interests.

In May, the Judiciary Committee voted the bill out of committee on a 13-to-5 vote, with bipartisan support, and during the course of the markup some 70 amendments were agreed to. There are still some outstanding issues, but we have been soliciting cosponsors and have found very substantial interest in the Senate on trying to move through legislation on this important issue. There is no denial that this is a very major national problem. There is no denial that there are many victims of asbestos who are now destitute because the people who were responsible for their damages have gone into bankruptcy. There is no denial that there has been a tremendous drain on the U.S. economy and that if we could solve this issue it would be a bigger boost to the economy than a gigantic tax break or most any other remedy which might be found to stimulate our economy.

There are, obviously, risks in any bill. We have worked through the complexities of a startup procedure where the people who have exigent claims—that is, where they may die within a year—we have an elaborate system of offers and inducements to try to settle those cases within a brief period of time, some 9 months. Obviously, we cannot have a stay of judicial proceedings forever, so there has to be some resort to the courts if we are unable to get the program set up.

Without going into greater detail, we have worked assiduously to try to resolve this issue. We either have it solved or are very close to a solution. We have worked through complex questions on subrogation, complex questions on the Federal Employers Liability Act, and there are still ongoing decisions with a controversy as to how the $90 billion will be divided up among the manufacturers. That essentially is the question that only the manufacturers themselves can guarantee.

Similarly, there are issues as to how the $46 billion will be divided up among the insurers. Candidly, the insurance industry is split on the issue, but we are still working, and I have meetings in the course of the next week to 10 days with people who have outstanding concerns to try to resolve those issues.

When the vote came out of committee, some of those who voted in favor of the bill did so with reservations. We have worked through this, and I think those issues are either resolved or resolvable.

Senator LEAHY and I have worked very closely. It is a bipartisan bill which had the 10 members of the Judiciary Committee on the Republican side voting in favor—to repeat again, subject to some reservations—and three Democrats voting in favor of the bill. Senator LEAHY and I are determined to retain our core provisions, but we are open to suggestions.

It is my hope that this bill will come to the Senate right after the Fourth of July recess. That, of course, is a decision which the majority leader has to make in setting the calendar. There is a momentum in hand where it would be very much in the national interest, for the reasons I stated, to move ahead.

I ask unanimous consent that the text of the Dear Colleague letter sent by Senator LEAHY and myself to Members of the Senate be printed in the RECORD at the conclusion of my presentation.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, June 22, 2005.

DEAR COLLEAGUE: We write to detail the problem our nation now faces with the asbestos crisis and to inform you on the substance of Senate Bill 852, the Fairness in Asbestos Injury Resolution Act of 2005, which was voted out of committee on May 26 with a bipartisan 13–5 majority. We urge you to support this bill, and reiterate our interest in working with you to improve this legislation while preserving its core provisions. This is more detailed than the customary ''Dear Colleague'' letter, but we felt this extensive discussion was necessary because of the complexities of the issues and proposed legislation.

INTRODUCTION

The asbestos issue has been before the Senate Judiciary Committee for more than twenty years, since Senator Gary Hart of Colorado sought the assistance of Judiciary Committee members in enacting federal legislation to address Johns-Manville's asbestos claims.

Since that time: asbestos litigation has overwhelmed both federal and state court systems; 77 companies have gone into bankruptcy, with more on the brink, due to the rising tide of asbestos claims; and thousands of impaired asbestos victims have received pennies on the dollar since many of the companies liable for their exposure have gone into bankruptcy.

Since the 1980's, the number of asbestos defendants has risen from about 300 to more than 8,400, spanning approximately 85 percent of the U.S. economy. As a result, some 60,000 workers lost their jobs. Employees' retirement funds have shrunk by an estimated 25 percent. This is a problem that extends beyond the victims of asbestos disease alone. It has a growing impact on the average American and little question remains that it is a crisis of serious proportions.

THE COURTS ENLIST THE HELP OF CONGRESS

In 1997, the Supreme Court commented for the first time on the growing asbestos problem by stating (in the context of holding that asbestos litigation was not susceptible to class action treatment):

The most objectionable aspects of this asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials

are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether. . . .

Given the escalating problem, the Supreme Court has repeatedly called upon Congress to act through national legislation: ''[T]he elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' The current asbestos crisis ''cries out for a legislative solution.'' ''Members of this Court have indicated that Congress should enact legislation to help resolve the asbestos problem. Congress has not responded.'' As recently as 2003, the high court observed that ''this Court has recognized the danger that no compensation will be available for those with severe injuries caused by asbestos . . . It is only a matter of time before inability to pay for real illness comes to pass.''

THE 2005 RAND REPORT

On May 10, 2005, the Rand Corporation issued a report highlighting the problems that many asbestos victims face in today's tort system. In addition to discussing the number of corporate bankruptcies, and other alarming economic consequences of asbestos liability, the report summarized the average disbursements on asbestos payments to claimants for the year 2002, the most recent year available: Asbestos victims filing claims receive an average of forty-two (42) cents for every dollar spent on asbestos litigation; Thirty-one (31¢) cents of every dollar have gone to defense costs; and Twenty-seven (27¢) cents have gone to plaintiffs attorneys and related court cost.

LEGISLATIVE HISTORY LEADING TO S. 852

The current bipartisan bill is the product of years of negotiations, discussion, and compromise. On May 22, 2003, then-Chairman Hatch introduced S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003. He deserves great credit for establishing in that bill a national trust fund with a schedule of payments, analogous to workers' compensation. We have built on that aspect of S. 1125, ever mindful that the primary objective of legislation must be to ensure fair and timely compensation to victims of asbestos disease.

In July 2003, the Judiciary Committee voted out S. 1125, largely along party lines, in an effort to move the legislation forward. However, the bill foundered on unresolved issues. In August, Judge Edward R. Becker, who had recently taken senior status after being Chief Judge of the Third Circuit, and having authored the opinion in the asbestos class action suit which was affirmed by the U.S. Supreme Court, convened a two-day conference in Philadelphia—with manufacturers, labor (AFL–CIO), insurers, and trial lawyers to determine if some common ground could be found. Subsequently, from September 2003 through January 2005, we held 36 stakeholder meetings here, with Judge Becker as a pro bono mediator. These meetings were usually attended by at least 25 stakeholder representatives with as many as 75 representatives attending on some occasions. These stakeholder sessions have included many Senators, as well the staffs of Senators Feinstein, Carper, Cornyn, DeWine, Ben Nelson, Baucus, Biden, Chambliss, Craig, Dodd, Durbin, Feingold, Graham, Grassley, Kennedy, Kohl, Kyl, Landrieu, Levin, Lincoln, Murray, Pryor, Schumer, Sessions, Snowe, Stabenow, and Voinovich.

Over the last few months, in anticipation of bill introduction and during Committee markup, we convened 26 meetings with our Judiciary Committee colleagues to address their concerns with the bill. During these deliberative sessions, we addressed issues including disease categories, award amounts, Fund sunset, and judgments and verdicts pending at the time of enactment.

After hundreds of hours of extensive analysis and deliberation, we found we could accommodate many, if not most, of the myriad issues raised by stakeholders and Senators before formal introduction of S. 852. After introduction, the Judiciary Committee held six markups lasting over a month. During this bipartisan process, and through continuing meetings, we were able to further resolve a number of complex issues, including medical criteria, Fund start-up, insurer allocation, the Equitas hardship issue, and Fund contribution transparency. Indeed, the markup process resulted in the Committee's acceptance of over 70 amendments from Republican and Democratic members. After extensive deliberation, the Committee discharged S. 852 on a solid bipartisan vote of 13–5.

S. 852

We have sought an equitable bill which takes into account, to the maximum extent possible, the concerns of stakeholders and Senators. The bill establishes a privately-funded $140 billion trust fund that compensates asbestos victims through a no-fault system administered by the Department of Labor. S. 852 in no way holds the taxpayer responsible for contributing to the Fund. In fact, during markup, the Committee accepted an amendment that explicitly absolves the federal government from any funding obligations or liabilities with respect to the Fund.

Once established and capitalized through the private contributions from defendant and insurer participants, asbestos victims will simply submit their claims to the fund through an administrative process designed to compensate them quickly. Claimants would be fairly compensated if they meet medical criteria for certain illnesses and if they show past asbestos exposure.

The major features of this bill reflect consensus on core principles, but all are directed to ensuring fair and adequate compensation to the victims of asbestos exposure:

Funding: The size of the fund was a principal issue of contention during the 108th Congress. Last October, Majority Leader Frist and then-Democratic Leader Daschle agreed that the Fund should be set at $140 billion, which has been generally accepted as sufficient to ensure adequate payment to victims and is now embodied in S. 852. The manufacturers and insurers have agreed to pay that sum—a guaranteed amount—into the trust fund.

Removal of the Old Level VII's: Some members raised concerns about compensating the so-called ''exposure only'' Level VII lung cancers, fearing that this disease category would create a ''smokers'' compensation fund. Without sufficient markers to show a stronger causal connection between asbestos exposure and lung cancer, this disease category could have required $7 billion from the Fund. After serious consideration, we removed this disease category from the bill.

No Subrogation: A key issue for to determine compensation for asbestos victims has been workers' compensation subrogation. Allowing for subrogation would permit insurers to impose a lien on Fund awards recovered by claimants. The value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. To be fair to victims, claimants should be allowed to retain and receive the full value of both their Fund awards and workers' compensation payments.

More Effective Start-Up: Perhaps one of the most difficult issues was how pending claims in the tort system will be treated upon S. 852's enactment. With general agreement that if the fund was not up and running within a reasonable amount of time, some or all pending claims could return to the tort system. The bill as introduced provides for a 9 month stay of claims for exigent cases and a 24 month stay for nonexigent cases. Furthermore, the legislation creates a procedure enabling exigent claimants to receive prompt payment even during the initial startup period authored by Senator Feinstein. Taking into consideration concerns raised by victims, insurers, and defendant participants, Senators Kyl and Feinstein worked through compromise language during the markup process that greatly improves the start-up process.

Sunset: The stakeholders generally agree that if the Fund cannot pay all valid claims, a claimant's right to a jury trial cannot be barred. But such a sunset should not occur before there is an extensive and rigorous ''program review.'' During markup, Senators Kyl and Leahy worked towards refining the sunset procedures by enabling the Administrator to submit recommendations to Congress regarding possible changes to the medical criteria or the funding formula. In the event of a sunset, the bill now allows claimants to bring their lawsuits only in federal court or in a state court in the state in which the plaintiff resides or where the exposure took place.

Attorneys' Fees: Before S. 852 was introduced, and after extensive deliberation with Judiciary Committee members, agreement was reached on a 5% attorneys' fee cap for all monetary awards received by asbestos victims within the Fund. The nature of the claims process justifies this cap, for once the fund is established, recovery is fairly straightforward and there will no longer be a need for substantial and time-consuming attorney involvement. Moreover, fee caps in federal compensation programs are fairly common. We are working on further refinements in the bill to assist claimants in processing their claims through a paralegal program that the Administrator will be authorized to implement.

Level VI Claimants: Members raised concerns about the strength of the causal connection between asbestos exposure and the development of cancer in areas other than the lungs (e.g., colon, stomach, esophageal and laryngeal cancers). To assuage these concerns, the bill commissions an Institute of Medicine study to assess this causal connection, which will come out no later than April 2006. The findings of the study will become binding on the Administrator when compensating asbestos victims for each cancer in this disease category.

Silica Claims: We heard concerns that many asbestos claims might be ''repackaged'' as silica claims in the tort system. We also, however, heard concerns that liability for non-asbestos diseases not be abrogated simply because S. 852 becomes law. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims, but that workers with genuine silica exposure disease should be able to pursue their claims in the tort system. A hearing was held on this issue on February 2, 2005, which established that exposure to asbestos and silica are easily distinguishable on x-rays and that markings from asbestos and silica disease are rarely found in the same patient. Consequently, the bill requires claimants, prior to pursuing a silica claim in the tort system, to provide rigorous medical evidence establishing that their injury was caused by exposure to silica, and that asbestos exposure was not a significant contributing factor to their injuries.

Medical Screening: Some Committee members were concerned about a medical screening program within the Fund. Although earlier versions of the asbestos bill excluded such a program, we concluded that one was necessary as an offset to the reduced role of a claimant's attorney. It is reasonable to have routine examinations for a discrete population of high-risk workers as a matter of basic fairness. By establishing a program with rigorous standards (such as a provision offered by Senator Coburn requiring service providers to be paid at Medicare rates), as has been done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard. This program is vastly different from any screening in the current tort system.

Pending Claims and Settlements: Prior to bill introduction, and as a result of the numerous stakeholder meetings, agreement was reached on how the bill affects pending claims and settlements in the tort system. The bill preserves: (1) cases with a verdict or final order or final judgment entered by a trial court; (2) any civil claim that, on the date of enactment, is in trial before a jury or judge at the presentation of evidence phase; and (3) written settlement agreements, executed prior to date of enactment, between a defendant and a specific named plaintiff, so long as the agreement expressly obligates the defendant to make a future monetary payment to the plaintiff and plaintiff fulfills all conditions of the settlement agreement within 30 days.

CT Scans: Unlike prior iterations of the asbestos bill, S. 852 permits greater use of CT scans. During markup, the Committee accepted an amendment that commissions a study by the Institute of Medicine to evaluate whether CT scans are well accepted and reasonably reliable to diagnose certain lung cancer claims. In addition, after extensive discussions between Senators Leahy and Coburn, the Committee accepted an amendment that calls on the American College of Radiologists to establish guidelines for comparing claimants' CT scans.

Transparency: Several members raised concern over the specific sources of defendant funding. After numerous briefing sessions from claims analysts and financial projection experts, the Committee accepted an amendment which provides that within 60 days after the date of enactment the contributors to the Fund must submit to the Administrator information sufficient to determine their contribution levels. The Administrator must publish this funding allocation information in the Federal Register within 60 days of receipt and before the Fund can be deemed operational.

Asbestos Ban: Despite the known danger involved with asbestos, a number of products and processes still use asbestos today. As Congress considers creating an alternative compensation program to address past exposures to asbestos, it is only sensible that we also prevent future asbestos-related illnesses from occurring by banning asbestos use. Therefore, this bipartisan bill contains a ban on the commercial manufacture, use and distribution of asbestos and asbestos-containing products, originally authored by Senator Murray. This provision was unanimously modified in Committee last month by the adoption of Senator Kyl's amendment to provide narrow exceptions to the ban for national security purposes.

S. 852 has benefited from a thorough process during this Congress. This legislation is complicated, but it is both integrated and comprehensive and reflects a remarkable and widespread will to enact legislation to finally resolve the asbestos crisis. On the state of a 20 year record, the choice we are presented with is not between this bipartisan bill and one that takes a dramatically different approach. The choice is between this bipartisan bill and the continuation of the present chaotic system which leaves thousands of victims suffering from deadly diseases without compensation and scores of companies threatened with bankruptcy.

Sincerely,

ARLEN SPECTER.
PATRICK LEAHY.

STRAW PURCHASES AND THE ILLEGAL GUN MARKET

Mr. LEVIN. Mr. President, a report published last week in the Buffalo News further exposes how reckless gun dealers and the use of ''straw purchasers'' contribute to gun violence in our country. It is important that we recognize their role in adding to our Nation's gun violence problem and work to enact commonsense legislation to keep dangerous firearms out of the hands of violent criminals.

Under current law, when an individual buys a handgun from a licensed dealer, there are Federal requirements for a background check to insure that the purchaser is not an individual who is prohibited by law from purchasing or possessing a firearm. ''Straw purchasers'' serve as middlemen by purchasing firearms with the intent of transferring or selling them to other individuals who may be prohibited by law from purchasing firearms themselves or who may wish to hide the total number of firearms in their possession from Federal authorities. These ''straw purchasers'' help to supply the illegal gun market by allowing the true purchaser to obtain firearms, oftentimes in large quantities, without having to pass a background check. This practice is a felony under Federal law.

As the Buffalo News report points out, individuals using ''straw purchasers'' are often aided by gun dealers who turn a blind eye to the practice. One of the gun show dealers mentioned in the report has been linked to more than 600 guns recovered by New York City police, a semi-automatic rifle used in the 1999 shootings at Columbine High School, and is now prohibited from selling guns in the State of California as a result of a lawsuit brought by several communities there. In addition, reportedly nearly 200 handguns that were illegally resold in Buffalo, NY, were originally sold by the same dealer. Investigations revealed that the handguns were obtained over a 6-month period by a man and several accomplices who made ''straw purchases'' on his behalf. Since records of multiple gun sales must be filed with the Government, the ''straw purchases'' were apparently made to avoid alerting Federal authorities to the illegal reselling of the guns in Buffalo. According to the Buffalo News, the ''straw purchasers'' in this case said that their role was limited to signing and paying for the handguns that the true buyer selected.

Occurrences like those detailed by the Buffalo News are apparently not uncommon and continue to help fuel the illegal gun market in our country. Reckless dealers and ''straw purchasers'' indirectly threaten the security of our communities by facilitating the transfer of dangerous firearms to potential criminals who may use them in violent crimes. Unfortunately, instead of strengthening our gun safety laws as they apply to reckless dealers and ''straw purchasers,'' some of my colleagues are seeking to provide irresponsible gun manufacturers and dealers with immunity from liability, even when their actions contribute to the growth of the illegal gun market. I urge my colleagues to support efforts to help stop guns from falling into the hands of violent criminals.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each day I have come to the floor to highlight a separate hate crime that has occurred in our country.

In Chicago, a bisexual Latina student was threatened by a white male at a local university because of her sexual orientation. Sometime after the incident, the victim was walking outside of her dorm when the same male student followed her into an alley and assaulted her. She was punched and kicked repeatedly in the stomach.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

SUPPORT SPLITTING THE NINTH CIRCUIT COURT OF APPEALS

Mr. CRAIG. Mr. President, I rise today to support legislation splitting the Ninth Circuit Court of Appeals. It is high time Congress took this action. For far too long, the Ninth Circuit has been bogged down by an immense caseload, slowing the wheels of justice. Now we have the opportunity to correct a problem that has been in sore need of a solution for decades. The people of the State of Idaho have long requested this action, but it is not only good for Idaho; it is good for the States of the West represented in the Ninth Circuit, and for the Nation as a whole.

Calls for a split in the Ninth Circuit began as early as the 1930s. Support dwindled when the court expanded into Seattle and Portland to alleviate travel concerns and caseload burdens. In 1973, the Hruska Commission expressed concerns with the size of two circuit

courts: the Ninth and the Fifth. Congress compromised in 1978 by expanding the number of judges in both circuits. However, in 1981 the sheer size forced Congress to split the Fifth Circuit in two, forming the Eleventh Circuit and the Fifth Circuit in its current configuration. Interestingly, a 2003 report shows that the Ninth Circuit is, today, almost the same size as the Fifth and Eleventh if they were recombined.

Legislation was introduced in 1989 to split the Ninth into two circuits, creating a new Twelfth Circuit Court of Appeals. A 1990 report advised against the split without first attempting management changes to ease the caseload burden. Again in 1995, the Senate attempted to split the Ninth, and again in 1997.

In 1997 the Commission on Structural Alternatives for the Federal Courts of Appeals, commonly referred to as the White Commission, was formed to determine, among other things, whether there was a need to split the Ninth Circuit Court of Appeals. After hearing testimony, taking written statements, and gathering statistical data, the Commission published its final report in December 1998.

The White Commission report based its decision to oppose a split on the fear that population growth would put other circuits in a position similar to the Ninth, and that continuing to split circuits would eventually lead to an unwieldy kaleidoscope of law. The Commission instead proposed a restructuring within the circuit.

Today, we can see the result of the repeated failure to address Federal circuit court growth. In 1997 there were nearly 52,000 appeals filed in Federal circuit courts. In 2003, there were approximately 60,500. Of that 8,500 increase, 4,000 are in the Ninth Circuit but contrary to the White Commission's fear, the remaining 4,500 case increase is spread over the other 10 circuit courts. With this key Commission conclusion challenged, it is neither prudent nor fair to force Idahoans and other citizens of the West to wait an average of 4.5 months longer than citizens of other districts for their cases to be decided.

Although the 4.5 month wait is a critically important number, there are additional numbers that this Senate should take into consideration when evaluating this issue. For example, the Ninth Circuit has 50 authorized judges, while the average for all other circuits is 20. There are more than 57 million people living within the Ninth Circuit, while the other Circuits average a population of just over 21 million. And probably the most telling statistic: the Ninth Circuit has nearly triple the average number of appeals filed by all other circuits. No wonder it takes the Ninth 4.5 months longer to resolve an appeal.

It is worth noting that over the years, the Ninth Circuit has adopted a variety of management reforms aimed at coping with the circuit's unwieldy size. However, I submit that we have long since reached the point beyond which this crisis can be ''managed'' away. It is a gross disservice to the talented jurists and staff of the Ninth Circuit, and an injustice to the citizens of the States it represents, for this Congress to stand idly by while caseloads and waiting periods only increase, and increase, and increase.

Two versions of corrective legislation are being introduced by Senators MURKOWSKI and ENSIGN, and it is my intention to cosponsor both of these proposals. I pledge to do everything within my power to help enact a workable plan for splitting the Ninth Circuit, and I urge all of our colleagues in the strongest possible terms to support us in this effort.

ADDITIONAL STATEMENTS

HONORING BURLEY TOBACCO GROWERS COOPERATIVE

● Mr. BUNNING. Mr. President, I proudly rise today to recognize the Burley Tobacco Growers Cooperative for their extremely generous contribution of $10 million to Phase II payments for Kentucky tobacco farmers. The people of Kentucky are extremely appreciative of this generous gift.

As you may know, Phase II is the second set of payments from the Master Settlement Agreement. This settlement was made between the major tobacco companies and the elected officials of the tobacco growing States. Phase II money requires $5.15 billion to be contributed by the four companies over a 12 year period. The Phase II money was meant to alleviate some of the financial stress to farmers as quotas were cut.

The Phase II compensations due for 2004, however, were not paid because the tobacco companies requested a refund due to the passage of the tobacco buyout. For Kentucky farmers, this would have been devastating. Fortunately for Kentucky, the Burley Tobacco Growers Cooperative has donated $10 million to be combined with the $114 million raised by the Commonwealth to equal $124 million for payments. This means that 164,000 Kentucky farmers will have Phase II payment checks in their hands by the end of June.

Mr. President, I find the charitable spirit that was so kindly displayed by the Burley Tobacco Growers Cooperative to be exceptional in every way. Kentucky is the only State that has stepped forward to produce Phase II payments, and this is due, in large part, to the generosity of Burley Tobacco Growers Cooperative. I would like to thank President Henry West and all those involved in the cooperative, including the members, for making such a positive impact on Kentucky's tobacco growers. This extraordinary association has helped ensure that the true spirit of the Phase II agreement is upheld.●

MAJOR GENERAL JANET E.A. HICKS

● Mr. CHAMBLISS. Mr. President, I rise today to recognize and commend an outstanding patriot and American, Major General Janet Hicks, the Commanding General of the United States Army Signal Center at Fort Gordon, GA, the first female Chief of the Signal Corps in the history of the Army and the first female Commanding General of the U.S. Army Signal Center at Fort Gordon, GA. General Hicks will be retiring from the Army on July 15, 2005, after a 30 year distinguished military career.

Originally from Iowa, General Hicks was commissioned into the Army's Signal Corps on March 17, 1975, after receiving her bachelor of arts degree in French language and literature from Simpson College in Central Iowa. Her first assignments took her to Korea, then to Hawaii with the 25th ''Tropical Lightning'' Infantry Division, where she served as a platoon leader, division radio signal officer and company commander. Following her attendance at the Advanced Signal Officers Course at Fort Gordon, she joined the faculty and staff there where she taught basic and advanced officer courses. General Hicks was then reassigned to Alaska with the Information Systems Command and the 6th Infantry Division in key leadership positions before joining the staff of the U.S. Central Command at McDill Air Force Base in Tampa, FL.

Recognizing her outstanding leadership qualities, General Hicks was designated for Battalion Command and assigned to command the 125th Signal Battalion, 25th Infantry Division at Schofield Barracks, HI, in June 1992. Following her command there, she was selected to attend the Army's War College before being posted as the Chief of the Army's Signal Branch at Personnel Command in Alexandria, VA. In June 1997 she was promoted to Colonel and assumed command of the 516th Signal Brigade in Hawaii, with concurrent duties as the Deputy Chief of Staff for Information Management, US Army Pacific. In June 2000, she was promoted to Brigadier General and became the Director of Command, Control, Communications and Computer Systems, the J–6 for the United States Pacific Command, covering the joint communications for all of the Pacific Theatre. Major General Hicks assumed command of the United States Army Signal Center and School and Fort Gordon on August 7, 2002.

Throughout her career General Hicks has been decorated with many military and civilian awards and citations. But, completing her military career as the Army's Chief of Signal is truly an awesome responsibility and honor. Since assuming command General Hicks has

improved the training of soldiers, campaigned for better equipment and upgraded the facilities and quality of life for soldiers and their families on Fort Gordon. She also claims that besides her demanding military life, she credits her successes to two wonderful people in her life—her husband Ron and her daughter Jennifer.

Throughout her military career General Hicks has always taken the initiative, faced the challenges and resolved problems. Her leadership style has always impressed her superiors. She has always dealt with people—young soldiers, senior military leaders and civilians with equity, candidness and resolve. She is highly respected by the soldiers of her command, people of the Central Savannah Regional Area and the citizens of Georgia.

I feel that it is most appropriate to recognize this outstanding American for her 30 years of dedicated and honorable service to this Nation as a military leader. I ask that all of my colleagues join me in thanking and commending Major General Hicks, her husband Ron and their daughter Jennifer on the completion of a distinguished military career. We also wish her and her family the best in their well deserved retirement and a happy and prosperous future.●

HONORING HAZEL HANON

● Mr. JOHNSON. Mr. President, it is with great pleasure that I rise today to honor Mrs. Hazel Hanon and the incredible work that she has done over these past 60 years with the Marshall Post No. 3507 Ladies Auxiliary of Britton, SD.

Hazel gained membership to the auxiliary sponsorship of both her husband, Leon, who served in the U.S. Navy during WWII, and her brother, Dempsy, also a WWII veteran and member of the U.S. Air Force. As one of the auxiliary's charter members, save for a short hiatus in her membership, Hazel as been with Marshall Post No. 3507 since is founding in 1945. Despite the auxiliary's declining membership over the past few years, it is clear the organization and Hazel are still wholeheartedly committed to supporting America's brave war heroes.

Over the years the auxiliary has hosted Post Suppers, served banquets, sold poppies, organized bake sales, compiled and sold cookbooks, and even run an annual Turkey Raffle during Thanksgiving, all to raise money for our Nation's veterans. Proceeds from these events are then donated to VA Hospitals or used to buy supplies so the women can bake cookies and cakes and then personally deliver the goodies to veterans in hospitals throughout South Dakota.

Since the post's founding, Hazel has been extremely giving of her time, and her generosity will forever be appreciated. I am pleased that her dedication and patriotism are being publicly recognized, and I am certain that Hazel's achievements and commitment to the auxiliary will serve as inspiration to future generations of passionate and patriotic South Dakotans.

Mr. President, Hazel Hanon is a remarkable person who richly deserves this distinguished recognition. I strongly commend her years of work and dedication, and it is with great honor that I share her impressive accomplishments with my colleagues.●

HONORING GRACE SIERS

● Mr. JOHNSON. Mr. President, it is with great honor that I rise today to publicly commend Grace Siers, charter member of Marshall Post No. 3507 Ladies Auxiliary in Britton, SD, for her many years of devoted service to our Nation's veterans.

Sixty years ago, in 1945, Grace joined the VFW Ladies Auxiliary, and has been an irreplaceable asset to the organization ever since. Grace is part of a long line of military patriots, as she joined the auxiliary under the sponsorship of her husband, William Siers, who served in WWI, as well as her three brothers, Vance, John, and Clarence Hunscher, all veterans of WWII. Not surprisingly, the tradition of serving our country continues with Grace's five sons, Le Roy, Donald, Virgil, Gary, and Robert, and even her grandson and granddaughter, all of whom served in the military. Regrettably, her son, Robert, died while fighting in Vietnam.

Although decades have passed and auxiliary members are no longer as active as they once were, Grace's hard work and dedication over the years enabled the auxiliary to raise thousands of dollars, bring smiles to the faces of countless injured and recovering veterans, and educate innumerable South Dakotans about the importance of supporting America's brave veterans.

In early years, Grace recalls hosting Post Suppers, serving banquets, selling poppies, organizing bake sales, compiling and selling cookbooks, and even manning the post during the annual Turkey Raffle on Thanksgiving, all to raise money for the auxiliary. In turn, the funds were donated to VA hospitals and used to buy supplies so the women could bake cookies and cakes and then personally deliver the goodies to veterans in hospitals throughout South Dakota.

Grace's tremendous contributions to the Britton community set her apart from other outstanding citizens. Her extraordinary service and commitment to Marshall Post No. 3507 Ladies Auxiliary is to be commended. Through Grace's remarkable community involvement and dedication to America's veterans, the lives of countless South Dakotans have been enormously enhanced. Her wonderful example serves as a model for other hardworking and dedicated individuals throughout South Dakota to emulate.

Grace Siers is an extraordinary woman who richly deserves this distinguished recognition. I strongly commend her years of hard work and dedication, and I am very pleased that her substantial efforts are being publicly honored and celebrated. It is with great pleasure that I share her impressive accomplishments with my colleagues.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

LEGISLATION AND SUPPORTING DOCUMENTS TO IMPLEMENT THE UNITED STATES-DOMINICAN REPUBLIC-CENTRAL AMERICAN FREE TRADE AGREEMENT—PM 14

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

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents to implement the Dominican Republic-Central America-United States Free Trade Agreement (the ''Agreement''). The Agreement represents an historic development in our relations with Central America and the Dominican Republic and reflects the commitment of the United States to supporting democracy, regional integration, and economic growth and opportunity in a region that has transitioned to peaceful, democratic societies.

In negotiating this Agreement, my Administration was guided by the objectives set out in the Trade Act of 2002. Central America and the Dominican Republic constitute our second largest export market in Latin America and our tenth largest export market in the world. The Agreement will create significant new opportunities for American workers, farmers, ranchers, and businesses by opening new markets and eliminating barriers. United States agricultural exports will obtain better access to the millions of consumers in Central America and the Dominican Republic.

Under the Agreement, tariffs on approximately 80 percent of U.S. exports will be eliminated immediately. The Agreement will help to level the playing field because about 80 percent of Central America's imports already enjoy duty-free access to our market. By providing for the effective enforcement of labor and environmental laws,

combined with strong remedies for noncompliance, the Agreement will contribute to improved worker rights and high levels of environmental protection in Central America and the Dominican Republic.

By supporting this Agreement, the United States can stand with those in the region who stand for democracy and freedom, who are fighting corruption and crime, and who support the rule of law. A stable, democratic, and growing Central America and Dominican Republic strengthens the United States economically and provides greater security for our citizens.

The Agreement is in our national interest, and I urge the Congress to approve it expeditiously.

GEORGE W. BUSH.
THE WHITE HOUSE, *June 23, 2005.*

REPORT ON THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO THE EXTREMIST VIOLENCE IN MACEDONIA AND THE WESTERN BALKANS REGION—PM 15

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

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the Western Balkans emergency is to continue in effect beyond June 26, 2005. The most recent notice continuing this emergency was published in the *Federal Register* on June 25, 2004, 69 FR 36005.

The crisis constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting (i) extremist violence in the Republic of Macedonia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo, that led to the declaration of a national emergency on June 26, 2001, has not been resolved. Subsequent to the declaration of the national emergency, I amended Executive Order 13219 in Executive Order 13304 of May 28, 2003, to address acts obstructing implementation of the Ohrid Framework Agreement of 2001 in the Republic of Macedonia, which have also become a concern. The acts of extremist violence and obstructionist activity outlined in Executive Order 13219, as amended, are hostile to U.S. interests and pose a continuing unusual and extraordinary threat to the national security and foreign policy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency declared with respect to the Western Balkans and maintain in force the comprehensive sanctions to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *June 23, 2005.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2706. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled ''Letter Report: Sole Source Agreements Issued by the Executive Office of the Mayor and Office of the City Administrator Failed to Comply with Procurement Law and Regulations''; to the Committee on Homeland Security and Governmental Affairs.

EC–2707. A communication from the Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the Administration's calendar year 2004 report on category rating; to the Committee on Homeland Security and Governmental Affairs.

EC–2708. A communication from the Chief Executive Officer, Corporation for National and Community Service, transmitting, pursuant to law, the Inspector General's Semi-Annual Report and the Corporation's Report on Final Action; to the Committee on Homeland Security and Governmental Affairs.

EC–2709. A communication from the Administrator, Small Business Administration, transmitting, pursuant to law, the Administration's Semiannual Report of the Inspector General; to the Committee on Homeland Security and Governmental Affairs.

EC–2710. A communication from the Attorney General of the United States, transmitting, pursuant to law, the Inspector General's Semiannual Report for the period of October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2711. A communication from the Chairman and the General Counsel, National Labor Relations Board, transmitting, pursuant to law, the Board's Semiannual Report of the Inspector General for the period of October 1, 2004 through March 31, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2712. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Retirement Coverage of Air Traffic Controllers'' (RIN3206–AK73) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2713. A communication from the Acting Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Long-Term Care Insurance Regulations'' (RIN3206–AJ71) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2714. A communication from the Acting Director, Employee and Family Support Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees Health Benefits Program Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes'' (RIN3206–AJ10) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2715. A communication from the Acting Director, Employee and Family Support Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Federal Employees Health Benefits Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes'' (RIN3206–AJ20) received on June 16, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–2716. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report relative to a Presidential appointment reduction plan; to the Committee on Homeland Security and Governmental Affairs.

EC–2717. A communication from the Senior Procurement Executive, Office of the Chief Acquisition Officers, National Aeronautics and Space Administration, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Circular 2005–04'' (FAC 2005–04), Interim Rule (Item IV–FAR Case 2004–35), and nine Federal Acquisition Regulations: ((RIN9000–AK04, RIN9000–AK03, RIN9000–AJ97, RIN9000–AK17, RIN9000–AK02, RIN9000–AJ79, RIN9000–AJ67, RIN9000–AJ93)(48 CFR Chapter 1)) received on June 16, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–2718. A communication from the Secretary of Labor, transmitting, the report of a draft bill entitled ''Unemployment Compensation Program Integrity Act of 2005'' received on June 14, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–2719. A communication from the Secretary of Labor, transmitting, pursuant to law, the Department of Labor's annual report on the fiscal year 2002 operations of the Office of Workers' Compensation Programs; to the Committee on Health, Education, Labor, and Pensions.

EC–2720. A communication from the Railroad Retirement Board, transmitting, pursuant to law, a report on the actuarial status of the railroad retirement system, including any recommendations for financing changes; to the Committee on Health, Education, Labor, and Pensions.

EC–2721. A communication from the Railroad Retirement Board, transmitting, pursuant to law, the Board's 2005 annual report on the financial status of the railroad unemployment insurance system; to the Committee on Health, Education, Labor, and Pensions.

EC–2722. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of Presidential Determination 2005–24 relative to the suspension of limitations under the Jerusalem Embassy Act; to the Committee on Foreign Relations.

EC–2723. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more with Ghana; to the Committee on Foreign Relations.

EC–2724. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Qualification of

Certain Arrangements as Insurance'' (Notice 2005–49) received on June 21, 2005; to the Committee on Finance.

EC–2725. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Allocation of Environmental Remediation Costs'' (Rev. Rul. 2005–42) received on June 21, 2005; to the Committee on Finance.

EC–2726. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—July 2005'' (Rev. Rul. 2005–38) received on June 21, 2005; to the Committee on Finance.

EC–2727. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Interaction between 280G and 83(b)'' (Rev. Rul. 2005–39) received on June 21, 2005; to the Committee on Finance.

EC–2728. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''One Insured—Disregarded Entities'' (Rev. Rul. 2005–40) received on June 21, 2005; to the Committee on Finance.

EC–2729. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Sections 142(a); 142(l)—Brownfields Demonstration Program for Qualified Green Building and Sustainable Design Projects'' (Notice 2005–48) received on June 21, 2005; to the Committee on Finance.

EC–2730. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Rebuilding Plan'' (RIN0648–AP02) received on June 16, 2005 to the Committee on Commerce, Science, and Transportation.

EC–2731. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40B'' (RIN0648–AS33) received on June 16, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2732. A communication from the Chief, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Digital Television Receiving Capability'' (ET Docket No. 05–24) received on June 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2733. A communication from the Assistant Bureau Chief for Management, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Regulation of International Accounting Rates'' (IB Docket No. 04–226, FCC 05–91) received on June 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2734. A communication from the Acting Division Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of IP-Enabled Services, WC Docket No. 04–36, E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05–196'' (FCC 05–116) received on June 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2735. A communication from the Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket Nos. 04–53 and 02–278'' (DA 05–692) received on June 17, 2005; to the Committee on Commerce, Science, and Transportation.

EC–2736. A communication from the Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket Nos. 04–53 and 02–278'' (FCC 04–194) received on June 17, 2005; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 335. A bill to reauthorize the Congressional Award Act (Rept. No. 109–87).

By Mr. SHELBY, from the Committee on Appropriations, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 2862. A bill making appropriations for Science, the Departments of State, Justice, and Commerce, and related agencies for the fiscal year ending September 30, 2006, and for other purposes (Rept. No. 109–88).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation. Edmund S. Hawley, of California, to be an Assistant Secretary of Homeland Security.

*David A. Sampson, of Texas, to be Deputy Secretary of Commerce.

*John J. Sullivan, of Maryland, to be General Counsel of the Department of Commerce.

*William Alan Jeffrey, of Virginia, to be Director of the National Institute of Standards and Technology.

*Ashok G. Kaveeshwar, of Maryland, to be Administrator of the Research and Innovative Technology Administration, Department of Transportation.

*Israel Hernandez, of Texas, to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

*Coast Guard nomination of Radm Sally Brice-O'Hara to be Rear Admiral.

Mr. STEVENS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

National Oceanic and Atmospheric Administration nominations beginning with Paul L. Schattgen and ending with David J. Zezula, which nominations were received by the Senate and appeared in the Congressional Record on June 16, 2005.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mrs. MURRAY:

S. 1290. A bill to appropriate $1,975,183,000 for medical care for veterans; to the Committee on Appropriations.

By Mr. MCCAIN:

S. 1291. A bill to provide for the acquisition of subsurface mineral interests in land owned by the Pascua Yaqui Tribe and land held in trust for the Tribe; to the Committee on Indian Affairs.

By Mr. SANTORUM:

S. 1292. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for expenses incurred in teleworking; to the Committee on Finance.

By Mr. BUNNING (for himself, Mr. CONRAD, Mr. LOTT, Mr. SMITH, and Mrs. LINCOLN):

S. 1293. A bill to amend the Internal Revenue Code of 1986 to permit the consolidation of life insurance companies with other companies; to the Committee on Finance.

By Mr. LAUTENBERG (for himself and Mr. MCCAIN):

S. 1294. A bill to amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN:

S. 1295. A bill to amend the Indian Gaming Regulatory Act to provide for accountability and funding of the National Indian Gaming Commission; to the Committee on Indian Affairs.

By Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, Mr. KYL, and Mr. SMITH):

S. 1296. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. CORZINE (for himself, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 1297. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BINGAMAN, and Mr. PRYOR):

S. 1298. A bill to amend titles XIX and XXI of the Social Security Act to permit States to cover low-income youth up to age 23; to the Committee on Finance.

By Ms. CANTWELL:

S. 1299. A bill to encourage partnerships between community colleges and 4-year institutions of higher education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM (for himself and Mr. CORNYN):

S. 1300. A bill to amend the Agricultural Marketing Act of 1946 to establish a voluntary program for the provision of country of origin information with respect to certain agricultural products, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. ENSIGN (for himself, Mr. CRAIG, Mr. CRAPO, Mr. CORNYN, Mr. COBURN, and Mr. INHOFE):

S. 1301. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 3 circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. DEMINT (for himself, Mr. SANTORUM, Mr. GRAHAM, Mr. CRAPO, Mr. COBURN, Mr. SUNUNU, Mr. ISAKSON, Mr. ENZI, Mr. CORNYN, Mr. LOTT, Mr. BROWNBACK, and Mr. CRAIG):

S. 1302. A bill to amend the Social Security Act and the Internal Revenue Code of 1986 to stop the Congress from spending Social Security surpluses on other Government programs by dedicating those surpluses to personal accounts that can only be used to pay Social Security benefits; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. REED, Mr. LAUTENBERG, Mr. CORZINE, Mr. SARBANES, and Mr. KERRY):

S. 1303. A bill to amend the Social Security Act to guarantee comprehensive health care coverage for all children born after 2006; to the Committee on Finance.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. FEINGOLD, Mrs. BOXER, and Mr. DAYTON):

S. 1304. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK:

S. 1305. A bill to amend the Internal Revenue Code of 1986 to increase tax benefits for parents with children, and for other purposes; to the Committee on Finance.

By Ms. MURKOWSKI:

S. 1306. A bill to provide for the recognition of certain Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY (for himself, Mr. FRIST, and Mr. REID) (by request):

S. 1307. A bill to implement the Dominican Republic-Central America-United States Free Trade Agreement; to the Committee on Finance pursuant to section 2103(b)(3) of Public Law 107–210.

By Mr. BAUCUS:

S. 1308. A bill to establish an Office of Trade Adjustment Assistance, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. COLEMAN, and Mr. WYDEN):

S. 1309. A bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. Res. 180. A resolution supporting the goals and ideals of a National Epidermolysis Bullosa Awareness Week to raise public awareness and understanding of the disease and to foster understanding of the impact of the disease on patients and their families; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself, Mr. SALAZAR, Mr. CRAIG, Mr. CRAPO, Mr. BURNS, and Mr. FEINGOLD):

S. Res. 181. A resolution recognizing July 1, 2005, as the 100th Anniversary of the Forest Service; considered and agreed to.

ADDITIONAL COSPONSORS

S. 258

At the request of Mr. DEWINE, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 258, a bill to amend the Public Health Service Act to enhance research, training, and health information dissemination with respect to urologic diseases, and for other purposes.

S. 331

At the request of Mr. JOHNSON, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 331, a bill to amend title 38, United States Code, to provide for an assured adequate level of funding for veterans health care.

S. 333

At the request of Mr. SANTORUM, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 350

At the request of Mr. LUGAR, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 350, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes.

S. 392

At the request of Mr. LEVIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 392, a bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

S. 721

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 721, a bill to authorize the Secretary of the Army to carry out a program for ecosystem restoration for the Louisiana Coastal Area, Louisiana.

S. 733

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 733, a bill to amend the Outer Continental Shelf Lands Act to provide a domestic offshore energy reinvestment program, and for other purposes.

S. 734

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 734, a bill to provide for agreements between Federal agencies to partner or transfer funds to accomplish erosion goals relating to the coastal area of Louisiana, and for other purposes.

S. 735

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 735, a bill to amend the Submerged Lands Act to make the seaward boundaries of the States of Louisiana, Alabama, and Mississippi equivalent to the seaward boundaries of the State of Texas and the Gulf Coast of Florida.

S. 736

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 736, a bill to amend the Outer Continental Shelf Lands Act to promote uses on the Outer Continental Shelf.

S. 769

At the request of Ms. SNOWE, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Montana (Mr. BURNS) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 769, a bill to enhance compliance assistance for small businesses.

S. 842

At the request of Mr. KENNEDY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 842, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 852

At the request of Mr. SPECTER, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 852, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

S. 900

At the request of Mr. MCCAIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 900, a bill to reinstate the Federal Communications Commission's rules for the description of video programming.

S. 935

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 935, a bill to regulate .50 caliber sniper weapons designed for the taking of human life and the destruction of materiel, including armored vehicles

and components of the Nation's critical infrastructure.

S. 954

At the request of Mr. DEWINE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 954, a bill to amend title 18, United States Code, to prohibit the sale of a firearm to a person who has been convicted of a felony in a foreign court, and for other purposes.

S. 962

At the request of Mr. GRASSLEY, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 962, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued to finance certain energy projects, and for other purposes.

S. 974

At the request of Mr. ALLARD, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 974, a bill to amend the National Trails System Act to clarify Federal authority relating to land acquisition from willing sellers for the majority of the trails in the System, and for other purposes.

S. 986

At the request of Mr. NELSON of Nebraska, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 986, a bill to authorize the Secretary of Education to award grants for the support of full-service community schools, and for other purposes.

S. 1022

At the request of Mr. SMITH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

S. 1047

At the request of Mr. SUNUNU, the names of the Senator from Wisconsin (Mr. KOHL), the Senator from Mississippi (Mr. LOTT), the Senator from Illinois (Mr. OBAMA) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 1047, a bill to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes.

S. 1088

At the request of Mr. KYL, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 1088, a bill to establish streamlined procedures for collateral review of mixed petitions, amendments, and defaulted claims, and for other purposes.

S. 1120

At the request of Mr. DURBIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1120, a bill to reduce hunger in the United States by half by 2010, and for other purposes.

S. 1129

At the request of Mr. LUGAR, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1129, a bill to provide authorizations of appropriations for certain development banks, and for other purposes.

S. 1132

At the request of Mr. COLEMAN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1132, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

S. 1145

At the request of Mr. SMITH, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1145, a bill to provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

S. 1171

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1171, a bill to halt Saudi support for institutions that fund, train, incite, encourage, or in any other way aid and abet terrorism, and to secure full Saudi cooperation in the investigation of terrorist incidents, and for other purposes.

S. 1214

At the request of Ms. SNOWE, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1214, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 1227

At the request of Ms. STABENOW, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1227, a bill to improve quality in health care by providing incentives for adoption of modern information technology.

S.J. RES. 12

At the request of Mr. HATCH, the names of the Senator from Ohio (Mr. VOINOVICH) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S.J. Res. 12, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. RES. 39

At the request of Mr. KYL, his name was added as a cosponsor of S. Res. 39, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

S. RES. 134

At the request of Mr. SMITH, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Res. 134, a resolution expressing the sense of the Senate regarding the massacre at Srebrenica in July 1995.

AMENDMENT NO. 810

At the request of Mr. SCHUMER, the names of the Senator from Arizona (Mr. KYL) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of amendment No. 810 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 813

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of amendment No. 813 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 825

At the request of Mr. KERRY, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Iowa (Mr. HARKIN), the Senator from New York (Mr. SCHUMER), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 825 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 840

At the request of Mr. SMITH, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 840 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 851

At the request of Mr. OBAMA, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 851 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 857

At the request of Mr. BURR, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of amendment No. 857 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 865

At the request of Mr. FEINGOLD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 865 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 885

At the request of Ms. CANTWELL, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of amendment No. 885 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 891

At the request of Mr. SHELBY, his name was added as a cosponsor of

amendment No. 891 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. CORNYN, his name was added as a cosponsor of amendment No. 891 proposed to H.R. 6, supra.

AMENDMENT NO. 901

At the request of Ms. SNOWE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of amendment No. 901 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 902

At the request of Mr. DURBIN, the names of the Senator from Connecticut (Mr. DODD), the Senator from Washington (Ms. CANTWELL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. REED), the Senator from California (Mrs. BOXER) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 902 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

AMENDMENT NO. 925

At the request of Mr. INHOFE, his name was added as a cosponsor of amendment No. 925 proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

At the request of Mr. BOND, the name of the Senator from Missouri (Mr. TALENT) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of amendment No. 925 proposed to H.R. 6, supra.

AMENDMENT NO. 977

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 977 intended to be proposed to H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. MCCAIN:

S. 1291. A bill to provide for the acquisition of subsurface mineral interests in land owned by the Pascua Yaqui Tribe and land held in trust for the Tribe; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President, I am pleased to introduce the Pascua Yaqui Mineral Rights Act of 2005 to provide for acquisition of subsurface mineral interests in land owned by the Pascua Yaqui tribe and land held in trust for the Tribe.

The Pascua Yaqui tribe has purchased in fee four parcels of land, totaling approximately 436 acres, from the State of Arizona. These parcels are adjacent to the Tribe's reservation near Tucson, AZ. The Tribe subsequently applied to have these lands taken into trust pursuant to the 25 CFR Part 151 process. The Bureau of Indian Affairs approved the trust application. However, the State of Arizona objected because it still owns the subsurface mineral rights when it conveys its Trust lands. Based on the State of Arizona's objection, the Tribe's trust application was stayed pending resolution of the mineral rights title issue. Arizona law prevents the State from selling these mineral interests and I understand that the only way they can be acquired is through an act of condemnation brought by the United States pursuant to 40 U.S.C. §3113. The State of Arizona has conditionally consented to a condemnation action.

It has since been discovered that an additional 140 acres of the reservation was also former State of Arizona trust land that was purchased in fee by the Tribe and taken into trust without obtaining the mineral estate. The State of Arizona has also conditionally consented to a condemnation action with regard to these additional 140 acres.

In additional to the mineral interests condemnation, this legislation covers another subject. Under 360 acres of the reservation, the United States owns the mineral interests for itself, rather than in trust for the tribe. Although that acreage was originally purchased in fee, it was previously patented by the U.S. and the U.S. retained the mineral interests to that property for its own benefit, currently administered by the Bureau of Land Management. This legislation would authorize the Bureau of Land Management to transfer those mineral interests to the U.S., to be held in trust for the Pascua Yaqui tribe.

The result of the legislation I introduce today would be to allow the United States to obtain and/or consolidate ownership of the mineral interest only, in its name, in trust for the Pascua Yaqui tribe. These mineral interests are under the surface of land already either owned by the Pascua Yaqui tribe, or held in trust for the Tribe by the United States.

Finally, under the terms of its current gaming compact with the State of Arizona, the Tribe has already constructed the maximum number of casinos it can operate on its reservation at this time. This bill will not authorize additional reservation casinos.

I look forward to working with my colleagues to enact 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. 1291

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 ''Pascua Yaqui Mineral Rights Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) STATE.—The term ''State'' means the State of Arizona.

(3) TRIBE.—The term ''Tribe'' means the Pascua Yaqui Tribe.

SEC. 3. ACQUISITION OF SUBSURFACE MINERAL INTERESTS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, in coordination with the Attorney General of the United States and with the consent of the State, shall acquire through eminent domain the following:

(1) All subsurface rights, title, and interests (including subsurface mineral interests) held by the State in the following tribally-owned parcels:

(A) Lot 2, sec. 13, T. 15 S., R. 12 E., Gila and Salt River Meridian, Pima County Arizona.

(B) Lot 4, W½SE¼, sec. 13, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(C) NW¼NW¼, N½NE¼NW¼, SW¼NE¼NW¼, sec. 24, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County Arizona.

(D) Lot 2 and Lots 45 through 76, sec. 19, T. 15 S., R. 13 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(2) All subsurface rights, title, and interests (including subsurface mineral interests) held by the State in the following parcels held in trust for the benefit of Tribe:

(A) Lots 1 through 8, sec. 14, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(B) NE¼SE¼, E½NW¼SE¼, SW¼NW¼SE¼, N½SE¼SE¼, SE¼SE¼SE¼, sec. 14, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(b) CONSIDERATION.—Subject to subsection (c), as consideration for the acquisition of subsurface mineral interests under subsection (a), the Secretary shall pay to the State an amount equal to the market value of the subsurface mineral interests acquired, as determined by—

(1) a mineral assessment that is—

(A) completed by a team of mineral specialists agreed to by the State and the Tribe; and

(B) reviewed and accepted as complete and accurate by a certified review mineral examiner of the Bureau of Land Management;

(2) a negotiation between the State and the Tribe to mutually agree on the price of the subsurface mineral interests; or

(3) if the State and the Tribe cannot mutually agree on a price under paragraph (2), an appraisal report that is—

(A)(i) completed by the State in accordance with subsection (d); and

(ii) reviewed by the Tribe; and

(B) on a request of the Tribe to the Bureau of Indian Affairs, reviewed and accepted as complete and accurate by the Office of the Special Trustee for American Indians of the Department of the Interior.

(c) CONDITIONS OF ACQUISITION.—The Secretary shall acquire subsurface mineral interests under subsection (a) only if—

(1) the payment to the State required under subsection (b) is accepted by the State in full consideration for the subsurface mineral interests acquired;

(2) the acquisition terminates all right, title, and interest of any party other than the United States in and to the acquired subsurface mineral interests; and

(3) the Tribe agrees to fully reimburse the Secretary for costs incurred by the Secretary relating to the acquisition, including payment to the State for the acquisition.

(d) DETERMINATION OF MARKET VALUE.—Notwithstanding any other provision of law, unless the State and the Tribe otherwise agree to the market value of the subsurface mineral interests acquired by the Secretary under this section, the market value of those subsurface mineral interests shall be determined in accordance with the Uniform Appraisal Standards for Federal Land Acquisition, as published by the Appraisal Institute in 2000, in cooperation with the Department of Justice and the Office of Special Trustee for American Indians of the Department of Interior.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions with respect to the acquisition of subsurface mineral interests under this section as the Secretary considers to be appropriate to protect the interests of the United States and any valid existing right.

SEC. 4. INTERESTS TAKEN INTO TRUST.

(a) LAND TRANSFERRED.—Subject to subsections (b) and (c), notwithstanding any other provision of law, not later than 180 days after the date on which the Tribe makes the payment described in subsection (c), the Secretary shall take into trust for the benefit of the Tribe the subsurface rights, title, and interests, formerly reserved to the United States, to the following parcels:

(1) E½NE¼, SW¼NE¼, sec. 14, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(2) W½SE¼, SW¼, sec. 24, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(b) EXCEPTIONS.—The parcels taken into trust under subsection (a) shall not include—

(1) NE¼SW¼, sec. 24, except the southerly 4.19 feet thereof;

(2) NW¼SE¼, sec. 24, except the southerly 3.52 feet thereof; or

(3) S½SE¼, sec. 23, T. 15 S., R. 12 E., Gila and Salt River Base & Meridian, Pima County, Arizona.

(c) CONSIDERATION AND COSTS.—The Tribe shall pay to the Secretary only the transaction costs relating to the assessment, review, and transfer of the subsurface rights, title, and interests taken into trust under subsection (a).

By Mr. SANTORUM:

S. 1292. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for expenses incurred in tele-working; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I rise to introduce legislation that would help people who ''telework'' or work from home, to receive a tax credit. Teleworkers are people who work online from home—whether a few days a week or their entire work schedule—using computers and other information technology tools. Nearly 40 million Americans telework today, and according to experts, 40 percent of the nation's jobs are compatible with telework.

I am introducing the Telework Tax Incentive Act to provide a $500 tax credit for telework. The legislation provides an incentive to encourage more employers to consider telework for their employees. Telework should be a regular part of the 21st century workplace.

The best part of telework is that it improves the quality of life for everyone—both the employee, the employer and the community. Telework reduces traffic congestion and air pollution. It reduces gas consumption and our dependency on foreign oil. Encouraging telework is good for families—giving working parents the flexibility to meet everyday demands. Telework provides people with disabilities greater job opportunities. It can also be a good option for retirees and others who choose to work part-time.

A task force on telework initiated by former Virginia Governor James Gilmore recommended the establishment of a tax credit toward the purchase and installation of electronic and computer equipment that allow an employee to telework. For example, the cost of a computer, fax machine, modem, phone, printer, software, copier, and other expenses necessary to enable telework could count toward a tax credit, provided the person worked at home a minimum number of days per year.

My legislation would provide a $500 tax credit ''for expenses paid or incurred under a teleworking arrangement for furnishings and electronic information equipment which are used to enable an individual to telework.'' An employee must telework a minimum of 75 days per year to qualify for the tax credit. Both the employer and employee are eligible for the tax credit, but the tax credit goes to whomever absorbs the expense for setting up the at-home worksite.

On October 9, 1999, President Clinton signed into law legislation that I introduced in coordination with Representative FRANK WOLF from Virginia as part of the annual Department of Transportation appropriations bill for Fiscal Year 2000. S. 1521, the National Telecommuting and Air Quality Act, created a pilot program to study the feasibility of providing incentives for companies to allow their employees to telework in five major metropolitan areas including Philadelphia, Washington, D.C., Los Angeles, Houston and Denver.

President Bush signed legislation on July 14, 2000, that included an additional $2 million to continue telework efforts in the 5 pilot cities, including Philadelphia, to market, implement, and evaluate strategies for awarding telecommuting, emissions reduction, and pollution credits established through the National Telecommuting and Air Quality Act. I am excited that Philadelphia continues to use this opportunity to help to get the word out about the benefits of telecommuting for many employees and employers.

Telecommuting improves air quality by reducing pollutants, provides employees and families flexibility, reduces traffic congestion, and increases productivity and retention rates for businesses while reducing their overhead costs. It's a growing opportunity and option which we should all include in our effort to maintain and improve quality of life issues in Pennsylvania and around the Nation. According to statistics available from 1996, the Greater Philadelphia area ranked number 10 in the country for annual person-hours of delay due to traffic congestion. Because of this reality, all options including telecommuting should be pursued to address this challenge.

The 1999 Telework America National Telework Survey, conducted by Joan H. Pratt Associates, found that today's 19.6 million teleworkers typically work 9 days per month at home with an average of 3 hours per week during normal business hours. Teleworkers seek a blend of job-related and personal benefits to enable them to better handle their work and life responsibilities; however these research findings demonstrate the impact on the bottom line for employers as well. Employers may save more than $10,000 per telework employee simply from reduced absenteeism and increased employee retention. Thus an organization with 100 employees, 20 of whom telework, could potentially realize a savings of $200,000 annually, or more, when productivity gains are added.

When I introduced this legislation in the 107th Congress, it was endorsed by a number of groups including including the International Telework Association and Council (ITAC), Covad Communications, National Town Builders Association, Litton Industries, Orbital Sciences Corporation, Consumer Electronic Association, Capnet, BTG Corporation, Electonic Industries Alliance, Telecommunications Industry Association, American Automobile Association Mid-Atlantic, Dimensions International Inc., Capunet, TManage, Science Applications International Corporation, AT&T, Northern Virginia Technology Council, Computer Associates Incorporated, and Dyn Corp.

Work is something you do, not someplace you go. There is nothing magical about strapping ourselves into a car and driving sometimes up to an hour and a half, arriving at a workplace and sitting before a computer, when we can access the same information from a computer in our homes. Wouldn't it be great if we could replace the evening rush hour commute with time spent with the family, coaching little league or volunteering at a local charity?

I urge my colleagues to consider cosponsoring this legislation that promotes telework and helps encourage additional employee choices for the workplace.

By Mr. BUNNING (for himself, Mr. CONRAD, Mr. LOTT, Mr. SMITH, and Mrs. LINCOLN):

S. 1293. A bill to amend the Internal Revenue Code of 1986 to permit the consolidation of life insurance companies with other companies; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce legislation to allow affiliated life and non-life insurance companies to file consolidated tax returns. The current outdated rules do not allow such consolidation.

Consolidated return provisions under current law were enacted so that the members of an affiliated group of corporations could file a single tax return. The right to file a ''consolidated'' return is generally available to businesses of all natures conducted by the affiliated corporations. The purpose behind consolidated returns is simply to tax a complete business as a whole rather than its component parts individually. Whether an enterprise's businesses are operated as divisions within

one corporation or as subsidiary corporations with a common parent company, a business entity should generally be taxed as a single entity and be allowed to file its return accordingly.

Corporate groups which include life insurance companies are denied the ability to file a single consolidated return until they have been affiliated for at least 5 years. Even after this 5-year period, they are subject to two additional limitations that are not applicable to any other type of group. First, non-life insurance companies must be members of the affiliated group for five years before their losses may be used to offset life insurance company income. Second, non-life insurance affiliate losses, including current year losses and any carryover losses, that may offset life insurance company taxable income are limited to the lesser of 35 percent of life insurance company's taxable income or 35 percent of the non-life insurance company's losses.

There are no clear reasons why affiliated groups that include life insurance companies are denied the same unrestricted ability to file consolidated returns that is available to other financial intermediaries, and corporations in general. Allowing members of an affiliated group of corporations to file a consolidated return prevents the business enterprise's structure from obscuring the fact that the true gain or loss of the business enterprise is the conglomeration of each of the members of the affiliated group. The limitations contained in current law are clearly without policy justification and should be repealed.

Our legislation will repeal the two 5-year limitations for taxable years beginning after this year, and it will phase out the 35 percent limitation over 7 years. The staff of the Joint Committee on Taxation has recommended repeal of two of the three limitations addressed by my bill on the grounds of needless complexity. The third limitation is, in effect, merely a minimum tax on life insurance company income. That limitation should have been repealed when the alternative minimum tax was enacted, and certainly has no place in the current tax laws. I should also note that Congress included in the tax cut vetoed by then-President Clinton in 1999 much of what is contained in this legislation.

I thank Senators CONRAD, LOTT, SMITH and LINCOLN for joining me in sponsoring this legislation. We hope you will join us as cosponsors of this bipartisan, much-needed legislation.

By Mr. LAUTENBERG (for himself and Mr. MCCAIN):

S. 1294. A bill to amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services; to the Committee on Commerce, Science, and Transportation.

Mr. LAUTENBERG. Mr. President, I rise to introduce the ''Community Broadband Act of 2005.'' I am pleased to be joined in this effort by Senator MCCAIN of Arizona.

This legislation will promote economic development, enhance public safety, increase educational opportunities, and improve the lives of citizens in areas of the country that either do not have access to broadband or live in a location where the cost for broadband is simply not affordable.

A recent study by the Organization for Economic Cooperation and Development shows that the United States has dropped to 12th place worldwide in the percentage of people with broadband connections. Many of the countries ahead of the United States have successfully combined public and private efforts to deploy municipal networks that connect their citizens and businesses with high-speed Internet services.

It is in this context that President Bush has called for universal and affordable broadband in the United States by the year 2007. If we are going to meet President Bush's goals, we must not enact barriers to broadband development and access. Unfortunately, fourteen States have passed legislation to prohibit or significantly restrict the ability of local municipalities and communities to offer high-speed Internet to their citizens. More States are considering such legislation. The ''Community Broadband Act'' is in response to those efforts by States to tell local communities that they cannot establish networks for their citizens even in communities that either have no access to broadband or where access is prohibitively expensive.

The ''Community Broadband Act'' is a simple bill. It says that no State can prohibit a municipality from offering high-speed Internet to its citizens; and when a municipality is a provider, it cannot abuse its governmental authority as regulator to discriminate against private competitors. Furthermore, a municipality must comply with Federal and state telecommunications laws.

Mr. President, this bill will allow communities to make broadband decisions that could: Improve their economy and create jobs by serving as a medium for development, particularly in rural and underserved urban areas; aid public safety and first responders by ensuring access to network services while on the road and in the community; strengthen our country's international competitiveness by giving businesses the means to compete more effectively locally, nationally, and internationally; encourage long-distance education through video conferencing and other means of sharing knowledge and enhancing learning via the Internet; and create incentives for public-private partnerships.

A century ago, there were efforts to prevent local governments from offering electricity. Opponents argued that local governments didn't have the expertise to offer something as complex as electricity. They also argued that businesses would suffer if they faced competition from cities and towns. But local community leaders recognized that their economic survival depended on electrifying their communities. They knew that it would take both private investment and public investment to bring electricity to all Americans.

We face a similar situation today. Municipal networks can play an essential role in making broadband access universal and affordable. We must not put up barriers to this possibility of municipal involvement in broadband deployment.

Some local governments will decide to do this; others will not. Let me be clear this is not going to be the right decision for every municipality. But there are clearly examples of municipalities that need to provide broadband, and those municipalities should have the power to do so.

Today's Wall Street Journal notes the small town of Granbury, TX, population 6,400, that initiated a wireless network after waiting years for private industry to take an interest. In Scottsburg, IN, a city and its 6000 residents north of Louisville, KY, could not get broadband from an incumbent telephone company. When two important businesses threatened to leave unless they could obtain broadband connectivity, municipal officials stepped forward to provide wireless broadband throughout the town. The town retained the two businesses and gained much more. There are many Granburys and Scottsburgs across the country.

There are also underserved urban areas, where private providers may exist, but many in the community simply cannot afford the high prices. Dianah Neff, Philadelphia's chief information officer, knows this all too well. ''The digital divide is local,'' Neff has said, commenting that while 90 percent Philadelphia's affluent neighborhoods have broadband, just 25 percent in low-income areas have broadband. When the city of Philadelphia announced plans for wireless access, it immediately faced opposition and the Pennsylvania legislature passed legislation to counter this municipal power.

Community broadband networks have the potential to create jobs, spur economic development, and bring a 21st century utility to everyone. I hope my colleagues will join Senator MCCAIN and me in our effort to enact the Community Broadband Act of 2005.

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. 1294

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 ''Community Broadband Act of 2005''.

SEC. 2. COMMUNITY BROADBAND CAPABILITY AND SERVICES.

Section 706 of the Telecommunications Act of 1996 (47 U.S.C. 157 note) is amended—

(1) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

''(c) LOCAL GOVERNMENT PROVISION OF ADVANCED TELECOMMUNICATIONS CAPABILITY AND SERVICES.—

''(1) IN GENERAL.—No State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such provider.

''(2) ANTIDISCRIMINATION SAFEGUARDS.—To the extent any public provider regulates competing private providers of advanced telecommunications capability or services, it shall apply its ordinances and rules without discrimination in favor of itself or any advanced telecommunications services provider that it owns.

''(3) SAVINGS CLAUSE.—Nothing in this section shall exempt a public provider from any Federal or State telecommunications law or regulation that applies to all providers of advanced telecommunications capability or services using such advanced telecommunications capability.''; and

(2) by adding at the end of subsection (d), as redesignated, the following:

''(3) PUBLIC PROVIDER.—The term 'public provider' means a State or political subdivision thereof, any agency, authority, or instrumentality of a State or political subdivision thereof, or an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), that provides advanced telecommunications capability, or any service that utilizes such advanced telecommunications capability, to any person or public or private entity.''.

Mr. MCCAIN. Mr. President, I am pleased to join in sponsoring the Community Broadband Act of 2005. In the simplest of terms, this bill would ensure that any town, city, or county that wishes to offer high-speed Internet services to its citizens can do so. The bill also would ensure fairness by requiring municipalities that offer high-speed Internet services do so in compliance with all Federal and State telecommunications laws and in a nondiscriminatory manner.

This bill is needed if we are to meet President Bush's call for ''universal, affordable access for broadband technology by the year 2007.'' When President Bush announced this nationwide goal in 2004, the country was ranked 10th in the world for high-speed Internet penetration. Today, the country is ranked 16th. This is unacceptable for a country that should lead the world in technical innovation, economic development, and international competitiveness.

Many of the countries outpacing the United States in the deployment of high-speed Internet services, including Canada, Japan, and South Korea, have successfully combined municipal systems with privately deployed networks to wire their countries. As a country, we cannot afford to cut off any successful strategy if we want to remain internationally competitive.

I recognize that our Nation has a long and successful history of private investment in critical communications infrastructure. That history must be respected, protected, and continued. However, when private industry does not answer the call because of market failures or other obstacles, it is appropriate and even commendable, for the people acting through their local governments to improve their lives by investing in their own future. In many rural towns, the local government's high-speed Internet offering may be its citizens only option to access the World Wide Web.

Despite this situation, a few incumbent providers of traditional telecommunications services have attempted to stop local government deployment of community high speed Internet services. The bill would do nothing to limit their ability to compete. In fact, the bill would provide them an incentive to enter more rural areas and deploy services in partnership with local governments. This partnership will not only reduce the costs to private firms, but also ensure wider deployment of rural services. Additionally, the bill would aid private providers by prohibiting a municipality when acting as both ''regulator'' and ''competitor'' from discriminating against competitors in favor of itself.

Several newspapers have endorsed the concept of allowing municipalities to choose whether to offer high speed Internet services. USA Today rightfully questioned in an editorial, ''Why shouldn't citizens be able to use their own resources to help themselves?'' The Washington Post editorialized that the offering of high speed Internet services by localities is, ''. . . the sort of municipal experiment we hope will spread.'' The San Jose Mercury News stated that a ban on localities ability to offer such services is ''bad for consumers, bad for technology and bad for America's hopes of catching up to other countries in broadband deployment.'' Finally, the Tampa Tribune lectured Federal and State legislators, ''don't prohibit local elected officials from providing a service their communities need.''

My home State of Arizona boasts the largest approved municipal broadband system in the United States, for example. The city of Tempe's wireless system will serve all of the city's 40 square miles and a population of 159,000, including the campus of Arizona State University. Citizens will have Internet access from anywhere at any time, and police, fire, water and traffic services personnel will use the system to enhance their efficiency.

In addition to Tempe, several Native American tribal governments offer high-speed Internet access services to their citizens. This bill would ensure that such offerings could continue to assist Indian country and their ability to connect to the Internet.

Our country faces some real challenges. We need to find ways to use technology to help our citizens better compete. We need to help our businesses capitalize on their ingenuity so that they can become more internationally competitive. That is why we need to do all we can to eliminate barriers to competition and create incentives for the delivery of high-speed Internet services for public suppliers of broadband services, private suppliers of broadband services, and public-private partnerships as well.

I hope my colleagues will join us in sponsoring the Community Broadband Act of 2005.

By Mr. MCCAIN:

S. 1295. A bill to amend the Indian Gaming Regulatory Act to provide for accountability and funding of the National Indian Gaming Commission; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President, I am pleased to introduce the National Indian Gaming Commission Accountability Act of 2005 to amend provisions of the Indian Gaming Regulatory Act regarding NIGC funding and accountability.

The Indian gaming industry has undergone tremendous growth since the enactment of the Indian Gaming Regulatory Act in 1988. The regulatory responsibilities of the NIGC, the Federal agency responsible for oversight of the industry, has likewise grown. In recent years the NIGC's budgeting needs have consistently exceeded the $8 million statutory cap, necessitating short-term authorizations to exceed the cap to enable it to adequately enforce the Act.

Rather than merely raising the cap on funding, this legislation amends IGRA's equation for funding the NIGC by allowing the funding to adjust in direct proportion to the revenues of the Indian gaming industry, with funding expanding or contracting as the Indian gaming industry grows or recedes. Under that equation—which provides that fees cannot exceed .08 percent of gross gaming revenues—the NIGC's budget for fiscal 2007 would be capped at approximately $14.5 million.

As the agency's needs have grown, so has the scrutiny of the regulated community and affected parties. It is therefore appropriate that the agency's budgetary choices and program plans be subject to transparency. Therefore, this legislation increases not only the agency's funding, but also its accountability by directing that the NIGC be subject to the Government Performance and Results Act (GPRA). As a result, the agency would be required to develop a Strategic Plan, and annual performance plans and performance reports, all of which will provide critical information to the regulated stakeholders.

I look forward to working with my colleagues on both sides of the aisle to enact this timely and balanced legislation. I ask unanimous consent that the full 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. 1295

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 ''National Indian Gaming Commission Accountability Act of 2005''.

SEC. 2. COMMISSION ACCOUNTABILITY AND FUNDING.

(a) POWERS OF THE COMMISSION.—Section 7 of the Indian Gaming Regulatory Act (25 U.S.C. 2706) is amended by adding at the end the following:

''(d) APPLICATION OF GOVERNMENT PERFORMANCE AND RESULTS ACT.—

''(1) IN GENERAL.—In carrying out any action under this Act, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 1030962; 107 Stat. 285).

''(2) PLANS.—In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 1030962; 107 Stat. 285), the Commission shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.''.

(b) COMMISSION FUNDING.—Section 18(a)(2) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)(2)) is amended by striking subparagraph (B) and inserting the following:

''(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this Act.''.

By Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, Mr. KYL, and Mr. SMITH):

S. 1296. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on the Judiciary.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that my bill, the Ninth Circuit Judgeship and Reorganization Act of 2005, be printed in the RECORD.

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

S, 1296

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 ''Ninth Circuit Judgeship and Reorganization Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FORMER NINTH CIRCUIT.—The term ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this Act.

(2) NEW NINTH CIRCUIT.—The term ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 3(2)(A).

(3) TWELFTH CIRCUIT.—The term ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by section 3(2)(B).

SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking ''thirteen'' and inserting ''fourteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	California, Guam, Hawaii, Northern Marianas Islands.'';

and

(B) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''.

SEC. 4. JUDGESHIPS.

(a) NEW JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 5 additional circuit judges for the new ninth circuit court of appeals, whose official duty station shall be in California. The judges authorized by this paragraph shall not be appointed before January 21, 2006.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENT OF JUDGES.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional circuit judges for the former ninth circuit court of appeals, whose official duty stations shall be in California.

(2) EFFECT OF VACANCIES.—The first 2 vacancies occurring on the new ninth circuit court of appeals 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by this subsection shall not be filled.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 5. NUMBER OF CIRCUIT JUDGES.

The table contained in section 44(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	19'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	14''.

SEC. 6. PLACES OF CIRCUIT COURT.

The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	Honolulu, San Francisco.'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Phoenix, Portland, Missoula.''

SEC. 7. LOCATION OF TWELFTH CIRCUIT HEADQUARTERS.

The offices of the Circuit Executive of the Twelfth Circuit and the Clerk of the Court of the Twelfth Circuit shall be located in Phoenix, Arizona.

SEC. 8. ASSIGNMENT OF CIRCUIT JUDGES.

Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this Act—

(1) is in California, Guam, Hawaii, or the Northern Marianas Islands shall be a circuit judge of the new ninth circuit as of such effective date; and

(2) is in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington shall be a circuit judge of the twelfth circuit as of such effective date.

SEC. 9. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this Act may elect to be assigned to the new ninth circuit or the twelfth circuit as of such effective date and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 10. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 8, or

(2) who elects to be assigned under section 9,

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 11. APPLICATION TO CASES.

The following apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former ninth circuit:

(1) Except as provided in paragraph (3), if the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this Act had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) If a petition for rehearing en banc is pending on or after the effective date of this Act, the petition shall be considered by the court of appeals to which it would have been submitted had this Act been in full force and effect at the time that the appeal or other proceeding was filed with the court of appeals.

SEC. 12. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.

Section 291 of title 28, United States Code, is amended by adding at the end the following:

''(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit.

''(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit.''.

SEC. 13. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.

Section 292 of title 28, United States Code, is amended by adding at the end the following:

''(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may in the public interest—

''(1) upon request by the chief judge of the Twelfth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit, or a division thereof, whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit.

''(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

''(1) upon request by the chief judge of the Ninth Circuit, designate and assign 1 or more

district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit, or a division thereof, whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit.

''(h) Any designations or assignments under subsection (f) or (g) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.''.

SEC. 14. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this Act may take such administrative action as may be required to carry out this Act and the amendments made by this Act. Such court shall cease to exist for administrative purposes 2 years after the date of enactment of this Act.

SEC. 15. EFFECTIVE DATE.

Except as provided in section 4(c), this Act and the amendments made by this Act shall take effect 12 months after the date of enactment of this Act.

By Mr. CORZINE (for himself, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 1297. A bill to amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident physicians to ensure the safety of patients and resident-physicians themselves; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to reintroduce my legislation, the Patient and Physician Safety and Protection Act of 2005, to limit medical resident work hours to 80 hours a week and to provide real protections for patients and resident physicians who are negatively affected by excessive work hours. I feel strongly that as Congress begins to consider proposals to reduce medical malpractice premiums and improve quality of care, we must consider the role that excessive work hours play in exacerbating medical liability problems and reducing quality of care.

It is very troubling that hospitals across the Nation are requiring young doctors to work 36 hour shifts and as many as 120 hours a week in order to complete their residency programs. These long hours lead to a deterioration of cognitive function similar to the effects of blood alcohol levels of 0.1 percent. This is a level of cognitive impairment that would make these doctors unsafe to drive—yet these physicians are not only allowed but in fact are required to care for patients and perform procedures on patients under these conditions. In fact, a study by Harvard Medical School researchers published in the October 28, 2004 issue of the New England Journal of Medicine found that medical residents made 35.9 percent more serious medical errors when they worked extended shifts of more than 24 hours.

The Patient and Physician Safety and Protection Act of 2005 will limit medical resident work hours to 80 hours a week. Not 40 hours or 60 hours—80 hours a week. It is hard to argue that this standard is excessively strict. In fact, it is unconscionable that we now have resident physicians, or any physicians for that matter, caring for very sick patients 120 hours a week and 36 hours straight with fewer than 10 hours between shifts. This is an outrageous violation of a patient's right to quality care.

In addition to limiting work hours to 80 hours week, my bill limits the length of any one shift to 24 consecutive hours, while allowing for up to three hours of patient transition time, and limits the length of an emergency room shift to 12 hours. The bill also ensures that residents have at least one out of seven days off and 'on-call' shifts no more often than every third night.

Since I first introduced the Patient and Physician Safety and Protection Act in the 107th Congress, the medical community and the Accreditation Council for Graduate Medical Education, ACGME, specifically have taken critical steps to address the problem of excessive work hours. On July 1, 2003, the ACGME issued resident work-hour guidelines aimed at addressing this important issue. While I commend ACGME leadership for taking the initiative, I remain very concerned that the ACGME's policy lacks the enforcement mechanisms that are essential to ensure compliance with the new work hour rules. The ACGME's only sanction against hospitals that overwork residents or provide inadequate supervision is the threat of lost accreditation of residency programs. Medical residents who have already ''matched'' into a program and invested years there are understandably reluctant to report violations that might result in the closure of their residency. Furthermore, the ACGME usually gives hospital administrators 90–100 days notice before inspecting a residency program. While the ACGME policy establishes more stringent work hours regulations, it fails to create effective enforcement and oversight tools. These rules are meaningless without enforcement mechanisms.

That is why Federal legislation is necessary. The Patient and Physician Safety and Protection Act of 2005 not only recognizes the problem of excessive work hours, but also creates strong enforcement mechanisms. The bill also provides funding support to teaching hospitals to implement new work hour standards. Without enforcement and financial support, efforts to reduce work hours are not likely to be successful.

Finally, my legislation provides meaningful enforcement mechanisms that will protect the identity of resident physicians who file complaints about work hour violations. The ACGME's guidelines do not contain any whistleblower protections for residents that seek to report program violations. Without this important protection, residents will be reluctant to report these violations, which in turn will weaken enforcement.

My legislation also makes compliance with these work hour requirements a condition of Medicare participation. Each year, Congress provides $8 billion to teaching hospitals to train new physicians. While Congress must continue to vigorously support adequate funding so that teaching hospitals are able to carryout this important public service, these hospitals must also make a commitment to ensuring safe work conditions for these physicians and providing the highest quality of care to the patients they treat.

In closing I would like to read a quote from an Orthopedic Surgery Resident from Northern California, which I think illustrates why we need this legislation.

I quote, ''I was operating post-call after being up for over 36 hours and was holding retractors. I literally fell asleep standing up and nearly faceplanted into the wound. My upper arm hit the side of the gurney, and I caught myself before I fell to the floor. I nearly put my face in the open wound, which would have contaminated the entire field and could have resulted in an infection for the patient.''

This is a very serious problem that must be addressed before medical errors like this occur. I hope every member of the Senate will consider this legislation and the potential it has to reduce medical errors, improve patient care, and create a safer working environment for the backbone of our Nation's healthcare system.

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. 1297

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 ''Patient and Physician Safety and Protection Act of 2005''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Federal Government, through the medicare program, pays approximately $8,000,000,000 per year solely to train resident-physicians in the United States, and as a result, has an interest in assuring the safety of patients treated by resident-physicians and the safety of resident-physicians themselves.

(2) Resident-physicians spend as much as 30 to 40 percent of their time performing activities not related to the educational mission of training competent physicians.

(3) The excessive numbers of hours worked by resident-physicians is inherently dangerous for patient care and for the lives of resident-physicians.

(4) The scientific literature has consistently demonstrated that the sleep deprivation of the magnitude seen in residency training programs leads to cognitive impairment.

(5) A substantial body of research indicates that excessive hours worked by resident-physicians lead to higher rates of medical error, motor vehicle accidents, depression, and pregnancy complications.

(6) The medical community has not adequately addressed the issue of excessive resident-physician work hours.

(7) The Federal Government has regulated the work hours of other industries when the safety of employees or the public is at risk.

(8) The Institute of Medicine has found that as many as 98,000 deaths occur annually due to medical errors and has suggested that 1 necessary approach to reducing errors in hospitals is reducing the fatigue of resident-physicians.

SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION REGARDING WORKING HOURS OF MEDICAL RESIDENTS, INTERNS, AND FELLOWS.

(a) IN GENERAL.—Section 1866 of the Social Security Act (42 U.S.C. 1395cc) is amended—

(1) in subsection (a)(1)—

(A) by striking ''and'' at the end of subparagraph (U);

(B) by striking the period at the end of subparagraph (V) and inserting '', and''; and

(C) by inserting after subparagraph (V) the following new subparagraph:

''(W) in the case of a hospital that uses the services of postgraduate trainees (as defined in subsection (k)(4)), to meet the requirements of subsection (k).''; and

(2) by adding at the end the following new subsection:

''(k)(1)(A) In order that the working conditions and working hours of postgraduate trainees promote the provision of quality medical care in hospitals, as a condition of participation under this title, each hospital shall establish the following limits on working hours for postgraduate trainees:

''(i) Subject to subparagraphs (B) and (C), postgraduate trainees may work no more than a total of 24 hours per shift.

''(ii) Subject to subparagraph (C), postgraduate trainees may work no more than a total of 80 hours per week.

''(iii) Subject to subparagraph (C), postgraduate trainees—

''(I) shall have at least 10 hours between scheduled shifts;

''(II) shall have at least 1 full day out of every 7 days off and 1 full weekend off per month;

''(III) subject to subparagraph (B), who are assigned to patient care responsibilities in an emergency department shall work no more than 12 continuous hours in that department;

''(IV) shall not be scheduled to be on call in the hospital more often than every third night; and

''(V) shall not engage in work outside of the educational program that interferes with the ability of the postgraduate trainee to achieve the goals and objectives of the program or that, in combination with the program working hours, exceeds 80 hours per week.

''(B)(i) Subject to clause (ii), the Secretary shall promulgate such regulations as may be necessary to ensure quality of care is maintained during the transfer of direct patient care from 1 postgraduate trainee to another at the end of each shift.

''(ii) Such regulations shall ensure that, except in the case of individual patient emergencies, the period in which a postgraduate trainee is providing for the transfer of direct patient care (as referred to in clause (i)) does not extend such trainee's shift by more than 3 hours beyond the 24-hour period referred to in subparagraph (A)(i) or the 12-hour period referred to in subparagraph (A)(iii)(III), as the case may be.

''(C) The work hour limitations under subparagraph (A) and requirements of subparagraph (B) shall not apply to a hospital during a state of emergency declared by the Secretary that applies with respect to that hospital.

''(2) The Secretary shall promulgate such regulations as may be necessary to monitor and supervise postgraduate trainees assigned patient care responsibilities as part of an approved medical training program, as well as to assure quality patient care.

''(3) Each hospital shall inform postgraduate trainees of—

''(A) their rights under this subsection, including methods to enforce such rights (including so-called whistle-blower protections); and

''(B) the effects of their acute and chronic sleep deprivation both on themselves and on their patients.

''(4) For purposes of this subsection, the term 'postgraduate trainee' means a postgraduate medical resident, intern, or fellow.''.

(b) DESIGNATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall designate an individual within the Department of Health and Human Services to handle all complaints of violations that arise from a postgraduate trainee (as defined in paragraph (4) of section 1886(k) of the Social Security Act, as added by subsection (a), who reports that the hospital operating the medical residency training program for which the trainee is enrolled is in violation of the requirements of such section.

(2) GRIEVANCE RIGHTS.—A postgraduate trainee may file a complaint with the Secretary concerning a violation of the requirements under such section 1886(k). Such a complaint may be filed anonymously. The Secretary may conduct an investigation and take corrective action with respect to such a violation.

(3) ENFORCEMENT.—

(A) CIVIL MONEY PENALTY ENFORCEMENT.—Subject to subparagraph (B), any hospital that violates the requirements under such section 1886(k) is subject to a civil money penalty not to exceed $100,000 for each medical residency training program operated by the hospital in any 6-month period. The provisions of section 1128A of the Social Security Act (other than subsections (a) and (b)) shall apply to civil money penalties under this paragraph in the same manner as they apply to a penalty or proceeding under section 1128A(a) of such Act.

(B) CORRECTIVE ACTION PLAN.—The Secretary shall establish procedures for providing a hospital that is subject to a civil monetary penalty under subparagraph (A) with an opportunity to avoid such penalty by submitting an appropriate corrective action plan to the Secretary.

(4) DISCLOSURE OF VIOLATIONS AND ANNUAL REPORTS.—The individual designated under paragraph (1) shall—

(A) provide for annual anonymous surveys of postgraduate trainees to determine compliance with the requirements under such section 1886(k) and for the disclosure of the results of such surveys to the public on a medical residency training program specific basis;

(B) based on such surveys, conduct appropriate on-site investigations;

(C) provide for disclosure to the public of violations of and compliance with, on a hospital and medical residency training program specific basis, such requirements; and

(D) make an annual report to Congress on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

(c) WHISTLEBLOWER PROTECTIONS.—

(1) IN GENERAL.—A hospital covered by the requirements of section 1866(k) of the Social Security Act, as added by subsection (a), shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensation, terms, conditions, or privileges of employment, who in good faith (as defined in paragraph (2)), individually or in conjunction with another person or persons—

(A) reports a violation or suspected violation of such requirements to a public regulatory agency, a private accreditation body, or management personnel of the hospital;

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by such requirements;

(C) informs or discusses with other employees, with a representative of the employees, with patients or patient representatives, or with the public, violations or suspected violations of such requirements; or

(D) otherwise avails himself or herself of the rights set forth in such section or this subsection.

(2) GOOD FAITH DEFINED.—For purposes of this subsection, an employee is deemed to act ''in good faith'' if the employee reasonably believes—

(A) that the information reported or disclosed is true; and

(B) that a violation has occurred or may occur.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first July 1 that begins at least 1 year after the date of enactment of this Act.

SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.

There are hereby appropriated to the Secretary of Health and Human Services such amounts as may be required to provide for additional payments to hospitals for their reasonable additional, incremental costs incurred in order to comply with the requirements imposed by this Act (and the amendments made by this Act).

Mr. ENSIGN. Mr. President, I come before the Senate today about a very serious issue that is threatening the disbursal of justice in the western United States.

My home State of Nevada, along with eight other States, has been part of an unbelievable population boom over the last several decades. As a result, we face the frustrating challenges of increased traffic congestion, crowded schools, and a shortage of many services. However, there is one consequence of that growth that has reached a critical level because it is delaying and denying justice for too many Americans.

That is the situation with the Court of Appeals for the Ninth Circuit. The largest circuit in the country, it encompasses 20 percent of the entire Nation's population. The Ninth Circuit has the highest cases per jurist ratio. And the trend is not changing. The Circuit is just too large. Each of the States covered by the Ninth Circuit saw population growths over the last decade, and three of the States—Nevada, Idaho, and Arizona—are in the top five in the country for population growth. Something must be done, or the Ninth Circuit will continue to bust at the seams.

That is why I am introducing legislation today that would divide the current Ninth Circuit into 3 new circuits. The new Ninth Circuit would include California, Hawaii, Guam, and the Northern Marianas Islands. The new

Twelfth Circuit would be comprised of Arizona, Nevada, Idaho, and Montana. And the new Thirteenth Circuit would contain Oregon, Washington, and Alaska.

This splitting of the Ninth Circuit is absolutely necessary if the residents of Nevada and the other western states are to have equal access to justice. Right now, citizens living under the Ninth Circuit face incomparable delays and judicial inconsistencies. Recently, the Ninth Circuit had more cases pending for more than one year than all other circuits combined.

And because of the sheer magnitude of the number of judges in the Ninth Circuit, it has become increasingly difficult for judges to track the opinions of the other judges in the circuit. In fact, it happened that on the same day, 2 different 3-judge panels in the Ninth Circuit issued different legal standards to resolve the same issue. Can you imagine the headache this causes for district judges who are supposed to follow the standard set by the Ninth Circuit? It compromises the system of justice that is the cornerstone of our democracy.

As a Nevadan, I am also angered by some of the decisions made by the Ninth Circuit Court. I know how Nevadans feel about issues such as the Pledge of Allegiance. Like me, they were outraged that the phrase ''under God'' was ruled unconstitutional by the Ninth Circuit. This wasn't the only case of the Ninth Circuit misinterpreting the Constitution and our laws. In 1997 alone, the United States Supreme Court overruled 27 out of 28 Ninth Circuit decisions. I wish I could say that was just an ''off' year for the court, but their track record wasn't much better in the 6 years before that.

Rather than continue down this path of judicial destruction, it is time to use a forward looking approach to the access of justice in the western United States. I urge my colleagues to join me in our Constitutional duty to establish courts for the sake of justice in this country. Failure to act will cost the citizens of my state, and many other western states, dearly.

By Mr. DEMINT (for himself, Mr. SANTORUM, Mr. GRAHAM, Mr. CRAPO, Mr. Coburn, Mr. SUNUNU, Mr. ISAKSON, Mr. ENZI, Mr. CORNYN, Mr. LOTT, Mr. BROWNBACK, and Mr. CRAIG).

S. 1302. A bill to amend the Social Security Act and the Internal Revenue Code of 1986 to stop the Congress from spending Social Security surpluses on other Government programs by dedicating those surpluses to personal accounts that can only be used to pay Social Security benefits; to the Committee on Finance.

Mr. DEMINT. Mr. President, it's time to stop the raid on Social Security. For over twenty years, Congress has maintained the misguided practice of overcollecting Social Security taxes and spending them on other government programs. Congress has used the Social Security Trust Fund to promote the false notion that Social Security actually saves the money workers pay in, and it is time to end this abusive practice. It is time we start saving these resources in personal accounts that politicians cannot spend.

Money cannot have 2 masters—it either belongs to the government or to individual Americans. The only way to prevent Congress from spending Social Security surpluses is to rebate these funds back to a worker in a personal account with their name on it. The only true lock-box is a personal account.

President Bush has done a good job helping Americans understand the problem. Now it is up to Congress to build consensus around some solutions. Every American and nearly everyone in Congress agree on at least one core principle: Social Security money should only be spent on Social Security. Before we can have an honest debate on long-term solutions, we must restore trust with Americans.

Stopping the raid will strengthen Social Security and is the first step toward long-term reform.

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. 1302

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 ''Stop the Raid on Social Security Act of 2005''.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) President Franklin Roosevelt's January 17, 1935, message on Social Security declared that, ''First, the system adopted, except for the money necessary to initiate it, should be self-sustaining in the sense that funds for the payment of insurance benefits should not come from the proceeds of general taxation.''.

(2) Social Security's financial integrity is maintained by requiring that benefit payments do not exceed the program's dedicated tax revenues and the interest earned on the balances in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund over the long term.

(3) The separation of Social Security from other budget accounts also serves to protect Social Security benefits from competing against other Federal programs for its funding resources.

(4) Comprehensive reforms should be enacted to—

(A) fix Social Security permanently;

(B) ensure that any use of general revenues for the program is temporary; and

(C) provide for the eventual repayment of any revenue transfers from the general fund to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

TITLE I—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

SEC. 101. ESTABLISHMENT OF THE SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM.

(a) IN GENERAL.—Title II of the Social Security Act is amended—

(1) by inserting before section 201 the following:

''PART A—INSURANCE BENEFITS'';

and

(2) by adding at the end of such title the following new part:

''PART B—SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS PROGRAM

''DEFINITIONS

''SEC. 251. For purposes of this part—

''(1) PARTICIPATING INDIVIDUAL.—The term 'participating individual' has the meaning provided in section 253(a).

''(2) ACCOUNT ASSETS.—The term 'account assets' means, with respect to a social security personal retirement account, the total amount transferred to such account, increased by earnings credited under this part and reduced by losses and administrative expenses under this part.

''(3) CERTIFIED ACCOUNT MANAGER.—The term 'certified account manager' means a person who is certified under section 258(b).

''(4) BOARD.—The term 'Board' means the Social Security Personal Savings Board established under section 258(a).

''(5) COMMISSIONER.—The term 'Commissioner' means the Commissioner of Social Security.

''(6) PROGRAM.—The term 'Program' means the Social Security Personal Retirement Accounts Program established under this part.

''ESTABLISHMENT OF PROGRAM

''SEC. 252. There is hereby established a Social Security Personal Retirement Accounts Program. The Program shall be governed by regulations which shall be prescribed by the Social Security Personal Savings Board. The Board, the Executive Director appointed by the Board, the Commissioner, and the Secretary of the Treasury shall consult with each other in issuing regulations relating to their respective duties under this part. Such regulations shall provide for appropriate exchange of information to assist them in performing their duties under this part.

''PARTICIPATION IN PROGRAM

''SEC. 253. (a) PARTICIPATING INDIVIDUAL.—For purposes of this part, the term 'participating individual' means any individual—

''(1) who is credited under part A with wages paid after December 31, 2005, or self-employment income derived in any taxable year ending after such date,

''(2) who is born on or after January 1, 1950, and

''(3) who has not filed an election to renounce such individual's status as a participating individual under subsection (b).

''(b) RENUNCIATION OF PARTICIPATION.—

''(1) IN GENERAL.—An individual—

''(A) who has not attained retirement age (as defined in section 216(l)(1)), and

''(B) with respect to whom no distribution has been made from amounts credited to the individual's social security personal retirement account,

may elect, in such form and manner as shall be prescribed in regulations of the Board, to renounce such individual's status as a 'participating individual' for purposes of this part. Upon completion of the procedures provided for under paragraph (2), any such individual who has made such an election shall not be treated as a participating individual under this part, effective as if such individual had never been a participating individual. The Board shall provide for immediate notification of such election to the Commissioner of Social Security, the Secretary of the Treasury, and the Executive Director.

''(2) PROCEDURE.—The Board shall prescribe by regulation procedures governing the termination of an individual's status as 'participating individual' pursuant to an election under this subsection. Such procedures shall include—

''(A) prompt closing of the individual's social security personal retirement account established under section 254, and

''(B) prompt transfer to the Federal Old-Age and Survivors Insurance Trust Fund as general receipts of any amount held for investment in such individual's social security personal retirement account.

''(3) IRREVOCABILITY.—An election under this subsection shall be irrevocable.

''SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS

''SEC. 254. (a) ESTABLISHMENT OF ACCOUNTS.—Under regulations which shall be prescribed by the Board in consultation with the Secretary of the Treasury—

''(1) the Board shall establish a social security personal retirement account for each participating individual (for whom a social security personal retirement account has not otherwise been established under this part) upon initial receipt of a transfer under subsection (b) with respect to such participating individual, and

''(2) in any case described in paragraph (2) of section 257(b), the Board shall establish a social security personal retirement account for the divorced spouse referred to in such paragraph (2).

''(b) TRANSFERS TO SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS.—

''(1) IN GENERAL.—Under regulations which shall be prescribed by the Secretary of the Treasury in consultation with the Board, as soon as practicable during the 1-year period after each calendar year, the Secretary of the Treasury shall transfer to each participating individual's social security personal retirement account, from amounts held in the Federal Old-Age and Survivors Insurance Trust Fund, amounts equivalent to the personal retirement account deposit with respect to such participating individual for such calendar year.

''(2) PERSONAL RETIREMENT ACCOUNT DEPOSIT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the personal retirement account deposit for a calendar year with respect to a participating individual is the product derived by multiplying—

''(i) the sum of—

''(I) the total amount of wages paid to the participating individual during such calendar year on which there was imposed a tax under section 3101(a) of the Internal Revenue Code of 1986, and

''(II) the total amount of self-employment income derived by the participating individual during the taxable year ending during such calendar year on which there was imposed a tax under section 1401(a) of the Internal Revenue Code of 1986, by

''(ii) the surplus percentage for such calendar year determined under subparagraph (B),

increased by deemed interest on each amount transferred for such calendar year for the period commencing with July 1 of such calendar year and the ending on the date on which such amount is transferred, computed at an annual rate equal to the average annual rate of return on investments of amounts in the Government Securities Investment Fund for such calendar year and the preceding 2 calendar years (except that, for purposes of the first 3 calendar years for which deemed interest is computed, this sentence shall be applied by substituting 'Federal Old-Age and Survivors Insurance Trust Fund' for 'Government Securities Investment Fund') and decreased by the administrative offset amount determined under subparagraph (D).

''(B) SURPLUS PERCENTAGE.—For purposes of subparagraph (A)(ii), the surplus percentage for a calendar year is the ratio (expressed as a percentage) of—

''(i) the net surplus in the Federal Old-Age and Survivors Insurance Trust Fund for such year, to

''(ii) the sum of—

''(I) the total amount of wages paid to participating individuals during such calendar year under section 3101(a) of the Internal Revenue Code of 1986, and

''(II) the total amount of self-employment income derived during taxable years ending during such calendar year by participating individuals under section 1401(a) of such Code.

''(C) NET TRUST FUND SURPLUS.—For purposes of subparagraph (B), the term 'net surplus' in connection with the Federal Old-Age and Survivors Insurance Trust Fund for a calendar year means the excess, if any, of—

''(i) the sum of—

''(I) the total amounts which are appropriated to such Trust Fund under clauses (3) and (4) of section 201(a) and attributable to such calendar year, and

''(II) the total amounts which are appropriated to such Trust Fund under section 121 of the Social Security Amendments of 1983 and attributable to such calendar year, over

''(ii) the amount estimated by the Commissioner of Social Security to be the total amount to be paid from such Trust Fund during such calendar year for all purposes authorized by section 201 (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under section 201(l)(1), but reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from such Account).

''(D) ADMINISTRATIVE OFFSET AMOUNT.—For purposes of subparagraph (A), the administrative offset amount determined with respect to a personal retirement account deposit for a calendar year is the amount equal to the product of—

''(i) the amount of such deposit determined for that year without regard to a reduction under this subparagraph; and

''(ii) the administrative cost percentage attributable to the Program determined by the Board for that year (including reasonable administration fees charged by certified account managers under the Program), but in no event to exceed 30 basis points per year of the assets under management).

''(3) TRANSITION RULE.—Notwithstanding paragraph (1), amounts payable to social security personal retirement accounts under paragraph (1) with respect to the first calendar year described in paragraph (1) ending after the date of the enactment of the Stop the Raid on Social Security Act of 2005 shall be paid by the Secretary of the Treasury as soon as practicable after such Secretary determines that the administrative mechanisms necessary to provide for accurate and efficient payment of such amounts have been established.

''(4) TRANSFER OF GENERAL REVENUES TO ENSURE CONTINUED SOLVENCY OF FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—Whenever the Secretary of the Treasury makes a transfer under paragraph (1), the Secretary of the Treasury also shall transfer, to the extent necessary, from amounts otherwise available in the general fund of the Treasury, such amounts as are necessary to maintain a 100 percent ratio of assets of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund to the annual amount required to pay the full amount of benefits payable under part A for each year occurring during the period that begins with the year in which such transfer is made and ends with 2041.

''(c) REQUIREMENTS FOR ACCOUNTS.—The following requirements shall be met with respect to each social security personal retirement account:

''(1) Amounts transferred to the account consist solely of amounts transferred pursuant to this part.

''(2) In accordance with section 255, the account assets are held for purposes of investment under the Program by a certified account manager designated by (or on behalf of) the participating individual for whom such account is established under the Program.

''(3) Disposition of the account assets is made solely in accordance with sections 256 and 257.

''(d) ACCOUNTING OF RECEIPTS AND DISBURSEMENTS UNDER THE PROGRAM.—The Board shall provide by regulation for an accounting system for purposes of this part—

''(1) which shall be maintained by or under the Executive Director,

''(2) which shall provide for crediting of earnings from, and debiting of losses and administrative expenses from, amounts held in social security personal retirement accounts, and

''(3) under which receipts and disbursements under the Program which are attributable to each account are separately accounted for with respect to such account.

''(e) CORRECTION OF ERRONEOUS TRANSFERS.—The Board, in consultation with the Commissioner, shall provide by regulation rules similar to paragraphs (4) through (7) and (9) of section 205(c) and section 205(g) with respect to the correction of erroneous or omitted transfers of amounts to social security personal retirement accounts.

''INVESTMENT OF ACCOUNTS

''SEC. 255. (a) DESIGNATION OF CERTIFIED ACCOUNT MANAGERS.—Under the Program, a certified account manager shall be designated by or on behalf of each participating individual to hold for investment under this section such individual's social security personal retirement account assets.

''(b) PROCEDURE FOR DESIGNATION.—Any designation made under subsection (a) shall

be made in such form and manner as shall be prescribed in regulations prescribed by the Board. Such regulations shall provide for annual selection periods during which participating individuals may make designations pursuant to subsection (a). Designations made pursuant to subsection (a) during any such period shall be irrevocable for the one-year period following such period, except that such regulations shall provide for such interim designations as may be necessitated by the decertification of a certified account manager. Such regulations shall provide for such designations made by the Board on behalf of a participating individual in any case in which a timely designation is not made by the participating individual.

''(c) INVESTMENT.—Any balance held in a participating individual's social security personal retirement account under this part which is not necessary for immediate withdrawal shall be invested on behalf of such participating individual by the certified account manager as follows:

''(1) INVESTMENT IN MARKETABLE GOVERNMENT SECURITIES.—In a representative mix of fixed marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the date of investment.

''(2) ADDITIONAL AND ALTERNATIVE INVESTMENTS.—Beginning with 2008, in such additional and alternative investment options in broad-based index funds that are similar to the index fund investment options available within the Thrift Savings Fund established under section 8437 of title 5, United States Code, as the Board determines would be prudent sources of retirement income that could yield greater amounts of income than the investment described in paragraph (1) and a participating individual may elect.

''DISTRIBUTIONS OF ACCOUNT BALANCE AT RETIREMENT

''SEC. 256. (a) PART A AND SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNT BENEFITS COMBINED.—Upon the date on which a participating individual becomes entitled to old-age insurance benefits under section 202(a), the Executive Director shall determine the total amount which would (but for this section) be payable as benefits under subsection (a), (b), (c), or (h) of section 202, subsection (e) or (f) of section 202 other than on the basis of disability, or any combination thereof, to any individual who is a participant on the basis of the wages and self-employment income of such individual or any other individual under part A for any month and provide for the following distributions from the individual's social security personal retirement account (in accordance with regulations which shall be prescribed by the Board):

''(1) PART A BENEFIT PROVIDES AT LEAST A POVERTY-LEVEL ANNUAL BENEFIT.—If such total amount would be sufficient to purchase a minimum annuity, the participating individual shall elect to have the Executive Director provide for the distribution of the balance in the participating individual's social security personal retirement account in the form of—

''(A) a lump-sum payment; or

''(B) an annuity which meets the requirements of subsection (b) (other than the requirement that the annuity provides for payments which, on an annual basis, are equal to at least the minimum annuity amount), the terms of which provide for a monthly payment equal to the maximum amount that such account can fund.

''(2) PART A BENEFIT COMBINED WITH ACCOUNT BALANCE PROVIDES AT LEAST A POVERTY-LEVEL BENEFIT.—

''(A) IN GENERAL.—If such total amount when combined with all or a portion of the balance in the participating individual's social security personal retirement account would be sufficient to purchase a minimum annuity, the Executive Director shall, subject to subparagraph (B)—

''(i) use such amount of the balance in a participating individual's social security personal retirement account as is necessary to purchase an annuity which meets the requirements of subsection (b) (other than the requirement that the annuity provides for payments which, on an annual basis, are equal to at least the minimum annuity amount), the terms of which provide for an annual payment that, when combined with the total amount of annual old-age insurance benefits payable to the participating individual, is equal to the annual amount that a minimum annuity would pay to the individual; and

''(ii) provide for the distribution of any remaining balance in the participating individual's social security personal retirement account in the form of a lump-sum payment.

''(B) OPTION FOR INCREASED ANNUITY.—A participating individual may elect to have the Executive Director use the balance of the individual's social security personal retirement account to purchase an annuity which meets the requirements of subsection (b), the terms of which provide for the maximum monthly payment that such account can fund, in lieu of using only a portion of such balance to purchase an annuity which provides a monthly payment equal to the amount described in subparagraph (A)(i).

''(3) DISTRIBUTION IN EVENT OF FAILURE TO OBTAIN AT LEAST A POVERTY-LEVEL BENEFIT.—If such total amount when combined with all of the balance in the participating individual's social security personal retirement account would not be sufficient to purchase a minimum annuity, the participating individual may elect to have the Executive Director—

''(A) distribute the balance in the participating individual's social security personal retirement account in the form of a lump-sum payment; or

''(B) if such balance is sufficient to purchase an annuity which meets the requirements of subsection (b) (other than the requirement that the annuity provides for payments which, on an annual basis, are equal to at least the minimum annuity amount), purchase such an annuity on behalf of the individual.

''(b) MINIMUM ANNUITY DEFINED.—For purposes of this subsection, the term 'minimum annuity' means an annuity that meets the following requirements:

''(1) The annuity starting date (as defined in section 72(c)(4) of the Internal Revenue Code of 1986) commences on the first day of the month beginning after the date of the purchase of the annuity.

''(2) The terms of the annuity provide for a series of substantially equal annual payments, subject to adjustment as provided in subsection (d), payable monthly to the participating individual during the life of the participating individual which are, on an annual basis, equal to at least the minimum annuity amount.

''(c) MINIMUM ANNUITY AMOUNT.—For purposes of this subsection, the term 'minimum annuity amount' means an amount equal to 100 percent of the poverty line for an individual (determined under the poverty guidelines of the Department of Health and Human Services issued under sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981).

''(d) COST OF LIVING ADJUSTMENT.—The terms of any annuity described in subsection (b) shall include provision for increases in the monthly annuity amounts thereunder determined in the same manner and at the same rate as primary insurance amounts are increased under section 215(i).

''(e) ASSUMPTIONS.—The assumptions under subsection (b) include the probability of survival for persons born in the same year as the participating individual (and the spouse, in the case of a joint annuity), future projection of investment earnings based on investment of the account assets, and expected price inflation. Determinations under this subsection shall be made in accordance with regulations which shall be prescribed by the Board, otherwise using generally accepted actuarial assumptions, except that no differentiation shall be made in such assumptions on the basis of sex, race, health status, or other characteristics other than age. Such assumptions may include, for determinations made prior to 2009, an assumed interest rate reflecting investment earnings of the Federal Old-Age and Survivors Insurance Trust Fund.

''(f) OFFSET OF PART A BENEFITS.—Notwithstanding any other provision of this title, in the case of a participating individual to which subsection (a)(1) applies, the total amount of monthly old-age insurance benefits payable as benefits under subsection (a), (b), (c), or (h) of section 202, subsection (e) or (f) of section 202 other than on the basis of disability, or any combination thereof, to such individual determined under subsection (a) shall be reduced so that the amount of such monthly old-age insurance benefits payable to the individual does not exceed the amount equal to the difference between—

''(i) such monthly old-age insurance benefits (determined without regard to a reduction under this subsection); and

''(ii) the ratio of—

''(I) what would have been the monthly annuity payment payable to the individual from an annuity if the individual's personal retirement account balance had earned the rate of return specified in section 254(b)(2)(A); to

''(II) the expected present value of all future potential benefits payable under section 202 on the basis of the wages or self-employment income of the participating individual (determined as of the date the participating individual becomes entitled to old-age benefits under section 202(a)).

''ADDITIONAL RULES RELATING DISPOSITION OF ACCOUNT ASSETS

''SEC. 257. (a) SPLITTING OF ACCOUNT ASSETS UPON DIVORCE AFTER 1 YEAR OF MARRIAGE.—

''(1) IN GENERAL.—Upon the divorce of a participating individual for whom a social security personal retirement account has been established under this part, from a spouse to whom the participating individual had been married for at least 1 year, the Board shall direct the appropriate certified account manager to transfer—

''(A) from the social security personal retirement account of the participating individual,

''(B) to the social security personal retirement account of the divorced spouse,

an amount equal to one-half of the amount of net accruals (including earnings) during the time of the marriage in the social security personal retirement account of the participating individual.

''(2) TREATMENT OF DIVORCED SPOUSE WHO IS NOT A PARTICIPATING INDIVIDUAL.—In the case of a divorced spouse referred to in paragraph (1) who, as of the time of the divorce, is not a participating individual and for whom a social security personal retirement account has not been established—

''(A) the divorced spouse shall be deemed a participating individual for purposes of this part, and

''(B) the Board shall establish a social security personal retirement account for the divorced spouse and shall direct the appropriate certified account manager to perform the such transfer.

''(3) PREEMPTION.—The provisions of this subsection shall supersede any provision of law of any State or political subdivision thereof which is inconsistent with the requirements of this subsection.

''(b) CLOSING OF ACCOUNT UPON THE DEATH OF THE PARTICIPATING INDIVIDUAL.—

''(1) IN GENERAL.—Upon the death of a participating individual, the Executive Director shall close out any remaining balance in the participating individual's social security personal retirement account. In closing out the account, the Executive Director shall certify to the certified account manager the amount of the account assets, and, upon receipt of such certification, the certified account manager shall transfer from such account an amount equal to such certified amount to the Secretary of the Treasury for subsequent transfer to—

''(A) the social security personal retirement account of the surviving spouse of such participating individual,

''(B) if there is no such surviving spouse, to such other person as may be designated by the participating individual in accordance with regulations which shall be prescribed by the Board, or

''(C) if there is no such designated person, to the estate of such participating individual.

''(2) TREATMENT OF SURVIVING SPOUSE WHO IS NOT A PARTICIPATING INDIVIDUAL.—In the case of a surviving spouse referred to in paragraph (1) who, as of the time of the death of the participating individual, is not a participating individual and for whom a social security personal retirement account has not been established—

''(A) the surviving spouse shall be deemed a participating individual for purposes of this part, and

''(B) the Board shall establish a social security personal retirement account for the surviving spouse and shall direct the appropriate certified account manager to perform the such transfer.

''(c) CLOSING OF ACCOUNT OF PARTICIPATING INDIVIDUALS WHO ARE INELIGIBLE FOR BENEFITS UPON ATTAINING RETIREMENT AGE.—In any case in which, as of the date on which a participating individual attains retirement age (as defined in section 216(l)), such individual is not eligible for an old-age insurance benefit under section 202(a), the Commissioner shall so certify to the Executive Director and, upon receipt of such certification, the Executive Director shall close out the participating individual's social security personal retirement account. In closing out the account, the Executive Director shall certify to the certified account manager the amount of the account assets, and upon receipt of such certification from the Executive Director, the account manager shall transfer from such account an amount equal to such certified amount to the Secretary of the Treasury for subsequent transfer to the participating individual.

''(d) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—Under regulations which shall be prescribed by the Board, account assets are available in accordance with section 254(b)(2)(D)(ii) for payment of the reasonable administrative costs of the Program (including reasonable administration fees charged by certified account managers under the Program), but in no event to exceed 30 basis points per year of the assets under management.

''(2) TEMPORARY AUTHORIZATION OF APPROPRIATIONS FOR STARTUP ADMINISTRATIVE COSTS.—For any such administrative costs that remain after applying paragraph (1) for each of the first five fiscal years that end after the date of the enactment of this part, there are authorized to be appropriated such sums as may be necessary for each of such fiscal years.

''ADMINISTRATION OF THE PROGRAM

''SEC. 258. (a) GENERAL PROVISIONS.—

''(1) ESTABLISHMENT AND DUTIES OF THE SOCIAL SECURITY PERSONAL SAVINGS BOARD.—

''(A) ESTABLISHMENT.—There is established within the Social Security Administration a Social Security Personal Savings Board.

''(B) NUMBER AND APPOINTMENT.—The Board shall be composed of 6 members as follows:

''(i) two members appointed by the President who may not be of the same political party;

''(ii) one member appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

''(iii) one member appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives;

''(iv) one member appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and

''(v) one member appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

''(C) ADVICE AND CONSENT.—Appointments under this paragraph shall be made by and with the advice and consent of the Senate.

''(D) MEMBERSHIP REQUIREMENTS.—Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

''(E) TERMS.—

''(i) IN GENERAL.—Each member shall be appointed for a term of 4 years, except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this section.

''(ii) TERMS OF INITIAL APPOINTEES.—Of the members first appointed under each clause of subparagraph (B), one of the members appointed under subparagraph (B)(i) (as designated by the President at the time of appointment) and the members appointed under clauses (iii) and (v) of subparagraph (B) shall be appointed for a term of 2 years, and the remaining members shall be appointed for a term of 4 years.

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

''(F) POWERS AND DUTIES OF THE BOARD.—

''(i) IN GENERAL.—The Board shall have powers and duties solely as provided in this part. The Board shall prescribe by regulation the terms of the Social Security Personal Retirement Accounts Program established under this part, including policies for investment under the Program of account assets, and policies for the certification and decertification of account managers under the Program, which shall include consideration of the appropriateness of the marketing materials and plans of such person.

''(ii) BUDGETARY REQUIREMENTS.—The Board shall prepare and submit to the President and to the appropriate committees of Congress an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31, United States Code. The Board shall provide for low administrative costs such that, to the extent practicable, overall administrative costs of the Program do not exceed 30 basis points in relation to assets under management under the Program.

''(iii) ADDITIONAL AUTHORITIES OF THE BOARD.—The Board may—

''(I) adopt, alter, and use a seal;

''(II) establish policies with which the Commissioner shall comply under this part;

''(III) appoint and remove the Executive Director, as provided in paragraph (2); and

''(IV) beginning with 2008, provide for such additional and alternative investment options for participating individuals as the Board determines would be prudent sources of retirement income that would yield greater amounts of retirement income than the investment described in section 255(c)(1).

''(iv) INDEPENDENCE OF CERTIFIED ACCOUNT MANAGERS.—The policies of the Board may not require a certified account manager to invest or to cause to be invested any account assets in a specific asset or to dispose of or cause to be disposed of any specific asset so held.

''(v) MEETINGS OF THE BOARD.—The Board shall meet at the call of the Chairman or upon the request of a quorum of the Board. The Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board. Four members of the Board shall constitute a quorum for the transaction of business.

''(vi) COMPENSATION OF BOARD MEMBERS.—

''(I) IN GENERAL.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such member is engaged in performing a function of the Board. Any member who is such an officer or employee shall not suffer any loss of pay or deduction from annual leave on the basis of any time used by such member in performing such a function.

''(II) TRAVEL, PER DIEM, AND EXPENSES.—A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of title 5, United States Code, while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

''(vii) STANDARD FOR BOARD'S DISCHARGE OF RESPONSIBILITIES.—The members of the Board shall discharge their responsibilities solely in the interest of participating individuals and the Program.

''(viii) ANNUAL REPORT.—The Board shall submit an annual report to the President, to each House of the Congress, and to the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund regarding the financial and operating condition of the Program.

''(ix) PUBLIC ACCOUNTANT.—

''(I) DEFINITION.—For purposes of this subparagraph, the term 'qualified public accountant' shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

''(II) ENGAGEMENT.—The Executive Director, in consultation with the Board, shall annually engage, on behalf of all individuals for whom a social security personal retirement account is established under this part, an independent qualified public accountant,

who shall conduct an examination of all records maintained in the administration of this part that the public accountant considers necessary.

''(III) DUTIES.—The public accountant conducting an examination under clause (ii) shall determine whether the records referred to in such clause have been maintained in conformity with generally accepted accounting principles. The public accountant shall transmit to the Board a report on his examination.

''(IV) RELIANCE ON CERTIFIED ACTUARIAL MATTERS.—In making a determination under clause (iii), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such clause.

''(2) EXECUTIVE DIRECTOR.—

''(A) APPOINTMENT AND REMOVAL.—The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board. The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans. The Board may, with the concurrence of 4 members of the Board, remove the Executive Director from office for good cause shown.

''(B) POWERS AND DUTIES OF EXECUTIVE DIRECTOR.—The Executive Director shall—

''(i) carry out the policies established by the Board,

''(ii) administer the provisions of this part in accordance with the policies of the Board,

''(iii) in consultation with the Board, prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this part, and

''(iv) meet from time to time with the Board upon request of the Board.

''(C) ADMINISTRATIVE AUTHORITIES OF EXECUTIVE DIRECTOR.—The Executive Director may—

''(i) appoint such personnel as may be necessary to carry out the provisions of this part,

''(ii) subject to approval by the Board, procure the services of experts and consultants under section 3109 of title 5, United States Code,

''(iii) secure directly from any agency or instrumentality of the Federal Government any information which, in the judgment of the Executive Director, is necessary to carry out the provisions of this part and the policies of the Board, and which shall be provided by such agency or instrumentality upon the request of the Executive Director,

''(iv) pay the compensation, per diem, and travel expenses of individuals appointed under clauses (i), (ii), and (v) of this subparagraph, subject to such limits as may be established by the Board,

''(v) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of title 5, United States Code, including per diem as authorized by section 5702 of such title, and

''(vi) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate.

''(3) ROLE OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner shall—

''(A) prescribe such regulations (supplementary to and consistent with the regulations prescribed by the Board and the Executive Director) as may be necessary for carrying out the duties of the Commissioner under this part,

''(B) meet from time to time with, and provide information to, the Board upon request of the Board regarding matters relating to the Social Security Personal Retirement Accounts Program, and

''(C) in consultation with the Board and utilizing available Federal agencies and resources, develop a campaign to educate workers about the Program.

''(b) CERTIFICATION AND OVERSIGHT OF ACCOUNT MANAGERS.—

''(1) CERTIFICATION BY THE BOARD.—

''(A) IN GENERAL.—Any person that is a qualified professional asset manager (as defined in section 8438(a)(8) of title 5, United States Code) may apply to the Board (in such form and manner as shall be provided by the Board by regulation) for certification under this subsection as a certified account manager. In making certification decisions, the Board shall consider the applicant's general character and fitness, financial history and future earnings prospects, and ability to serve participating individuals under the Program, and such other criteria as the Board deems necessary to carry out this part. Certification of any person under this subsection shall be contingent upon entry into a contractual arrangement between the Board and such person.

''(B) NONDELEGATION REQUIREMENT.—The authority of the Board to make any determination to deny any application under this subsection may not be delegated by the Board.

''(2) OVERSIGHT OF CERTIFIED ACCOUNT MANAGERS.—

''(A) ROLE OF REGULATORY AGENCIES.—The Board may enter into cooperative arrangements with Federal and State regulatory agencies identified by the Board as having jurisdiction over persons eligible for certification under this subsection so as to ensure that the provisions of this part are enforced with respect to certified account managers in a manner consistent with and supportive of the requirements of other provisions of Federal law applicable to them. Such Federal regulatory agencies shall cooperate with the Board to the extent that the Board determines that such cooperation is necessary and appropriate to ensure that the provisions of this part are effectively implemented.

''(B) ACCESS TO RECORDS.—The Board may from time to time require any certified account manager to file such reports as the Board may specify by regulation as necessary for the administration of this part. In prescribing such regulations, the Board shall minimize the regulatory burden imposed upon certified account managers while taking into account the benefit of the information to the Board in carrying out its functions under this part.

''(3) REVOCATION OF CERTIFICATION.—The Board shall provide, in the contractual arrangements entered into under this subsection with each certified account manager, for revocation of such person's status as a certified account manager upon determination by the Board of such person's failure to comply with the requirements of such contractual arrangements. Such arrangements shall include provision for notice and opportunity for review of any such revocation.

''(c) FIDUCIARY RESPONSIBILITIES.—

''(1) IN GENERAL.—Rules similar to the provisions of section 8477 of title 5, United States Code (relating to fiduciary responsibilities; liability and penalties) shall apply in connection with account assets, in accordance with regulations which shall be issued by the Board. The Board shall issue regulations with respect to the investigative authority of appropriate Federal agencies in cases involving account assets.

''(2) EXCULPATORY PROVISIONS VOIDED.—Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void.

''(d) CIVIL ACTIONS BY BOARD.—If any person fails to meet any requirement of this part or of any contract entered into under this part, the Board may bring a civil action in any district court of the United States within the jurisdiction of which such person's assets are located or in which such person resides or is found, without regard to the amount in controversy, for appropriate relief to redress the violation or enforce the provisions of this part, and process in such an action may be served in any district.

''(e) PREEMPTION OF INCONSISTENT STATE LAW.—A provision of this part shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of this part, except to the extent that such provision of State law is inconsistent with this part, and then only to the extent of the inconsistency.''.

(b) CONFORMING AMENDMENT TO PART A.—Section 202 of such Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

''Adjustments Under Part B

''(z) The amount of benefits under subsection (a), (b), (c), or (h), subsection (e) or (f) other than on the basis of disability, or any combination thereof which are otherwise payable under this part shall be subject to adjustment as provided under section 256(f).''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—(1) Section 701(b) of the Social Security Act (42 U.S.C. 901(b)) is amended by striking ''title II'' and inserting ''part A of title II, the Social Security Personal Retirement Accounts Program under part B of title II,''.

(2) Section 702(a)(4) of the Social Security Act (42 U.S.C. 902(a)(4)) is amended by inserting ''other than those of the Social Security Personal Savings Board'' after ''Administration'', and by striking ''thereof'' and inserting ''of the Administration in connection with the exercise of such powers and the discharge of such duties''.

SEC. 102. ANNUAL ACCOUNT STATEMENTS.

Section 1143 of the Social Security Act (42 U.S.C. 1320b0913) is amended by adding at the end the following new subsection:

''Performance of Social Security Personal Retirement Accounts

''(d) Beginning not later than 1 year after the date of the first deposit is made to an eligible individual's Social Security personal retirement account, each statement provided to such eligible individual under this section shall include information determined by the Social Security Personal Savings Board as sufficient to fully inform such eligible individual annually of the balance, investment performance, and administrative expenses of such account.''.

TITLE II—TAX TREATMENT

SEC. 201. TAX TREATMENT OF SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS.

Section 7701 of the Internal Revenue Code of 1986 (relating to definitions) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

''(o) TAX TREATMENT OF SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS.—All social

security personal retirement accounts established under part B of title II of the Social Security Act shall be exempt from taxation under this title.''.

SEC. 202. BENEFITS TAXABLE AS SOCIAL SECURITY BENEFITS.

(a) SPECIAL RULES RELATING TO DISTRIBUTION OF CLOSED ACCOUNT UNDER SECTION 257(D) OF SOCIAL SECURITY ACT.—Section 86(a) of such Code (as amended by paragraph (2)) is amended by adding at the end the following new paragraph:

''(4) EXTENSION OF PARAGRAPH (2)(b) TO DISTRIBUTIONS OF CLOSED ACCOUNT UNDER SECTION 257(d) OF SOCIAL SECURITY ACT.—Notwithstanding any other provision of this subsection, in the case of any amount received pursuant to the closing of an account under section 257(d) of the Social Security Act, paragraph (2)(B) shall apply to such amounts, and for such purposes the amount allocated to the investment in the contract shall be zero.''.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the end of the calendar year in which this Act is enacted.

(c) ESTATE TAX NOT TO APPLY TO ASSETS OF SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS.—

(1) IN GENERAL.—Part IV of subchapter A of chapter 11 of such Code (relating to taxable estate) is amended by adding at the end the following new section:

''SEC. 2059. SOCIAL SECURITY PERSONAL RETIREMENT ACCOUNTS.

''For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of the assets of a social security personal retirement account transferred from such account by the Secretary under section 257 of the Social Security Act.''.

(2) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter A of chapter 11 of such Code is amended by adding at the end the following new item:

''Sec. 2059. Social security personal retirement accounts''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to decedents dying in or after the calendar year in which this Act is enacted.

By Mr. ROCKEFELLER (for himself, Mr. REED, Mr. LAUTENBERG, Mr. CORZINE, Mr. SARBANES, and Mr. KERRY):

S. 1303. A bill to amend the Social Security Act to guarantee comprehensive health care coverage for all children born after 2006; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today with my friends and colleagues—Senators REED, LAUTENBERG, CORZINE, SARBANES, and KERRY—to introduce an important piece of legislation, the MediKids Health Insurance Act of 2005. This legislation will provide health insurance for every child in the United States by 2012, regardless of family income. My long-time friend from California, Congressman STARK, is introducing a companion bill in the House. He has worked tirelessly to improve access to health care for all Americans, and I am pleased to be joining him once again to advocate on behalf of America's children.

We have introduced this legislation in each of the last three Congresses because we know how vital health insurance is to a child. Children with untreated illnesses are less likely to learn and therefore less likely to move out of poverty. Such children have an inherent disadvantage when it comes to being productive members of society. We can have a positive impact on our children's lives today as well as tomorrow by guaranteeing health insurance coverage for all. Children are inexpensive to insure, but the rewards for providing them with health care during their early education and development years are enormous.

Despite the well-documented benefits of providing health insurance coverage for children, there are still over 8 million uninsured children in America. We can and must do better. Our children are our future. No child in this country should ever be without access to health care. This is why I am proud to reintroduce the MediKids Health Insurance Act of 2005.

This legislation is a clear investment in our future—our children. Every child would be automatically enrolled at birth into a new, comprehensive Federal safety net health insurance program beginning in 2007. The benefits would be tailored to meet the needs of children and would be similar to those currently available to children through the Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. Families below 150 percent of poverty would have no premiums or co-payments, and there would be no cost sharing for preventive or well-child visits for any child.

MediKids children would remain enrolled in the program throughout childhood. When families move to another state, Medikids would be available until parents can enroll their children in a new insurance program. Between jobs or during family crises, Medikids would offer extra security and ensure continuous health coverage to our Nation's children. During that critical period when a family is just climbing out of poverty and out of the eligibility range for means-tested assistance programs, MediKids would fill in the gaps until the parents can move into jobs that provide reliable health insurance coverage. The key to our program is that whenever other sources of health insurance fail, MediKids would stand ready to cover the health needs of our next generation. Ultimately, every child in America would be able to grow up with consistent, continuous health insurance coverage.

Like Medicare, MediKids would be independently financed, would cover benefits tailored to the needs of its target population, and would have the goal of achieving nearly 100 percent health insurance coverage for the children of this country—just as Medicare has done for our Nation's seniors and disabled population over its 40-year history. At the time we created Medicare, seniors were more likely to be living in poverty than any other age group. Most were unable to afford needed medical services and unable to find health insurance in the market even if they could afford it. Today, it is our Nation's children who shoulder the burden of poverty. Children in America are nearly twice as vulnerable to poverty as adults. It's time we make a significant investment in the future of America by guaranteeing all children the health coverage they need to make a healthy start in life.

Congress cannot rest on the success we achieved by expanding Medicaid and passing the State Children's Health Insurance Program (CHIP). Although each was a remarkable step toward reducing the ranks of the uninsured, particularly uninsured children, we still have a long way to go. Even with perfect enrollment in CHIP and Medicaid, there would still be a great number of children without health insurance. What's more troubling is the fact that both Medicaid and CHIP are in serious jeopardy because of the budget cuts being proposed by the current Administration.

It's long past time to rekindle the discussion about how we are going to provide health insurance for all Americans. The bill we are introducing today—the MediKids Health Insurance Act of 2005—is a step toward eliminating the irrational and tragic lack of health insurance for so many children and adults in our country. I urge my colleagues to move beyond partisan politics and to support this critical step toward universal coverage.

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. 1303

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; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''MediKids Health Insurance Act of 2005''.

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

(c) FINDINGS.—Congress finds the following:

(1) More than 9 million American children are uninsured.

(2) Children who are uninsured receive less medical care and less preventive care and have a poorer level of health, which result in

lifetime costs to themselves and to the entire American economy.

(3) Although SCHIP and Medicaid are successfully extending a health coverage safety net to a growing portion of the vulnerable low-income population of uninsured children, they alone cannot achieve 100 percent health insurance coverage for our nation's children due to inevitable gaps during outreach and enrollment, fluctuations in eligibility, variations in access to private insurance at all income levels, and variations in States' ability to provide required matching funds.

(4) As all segments of society continue to become more transient, with many changes in employment over the working lifetime of parents, the need for a reliable safety net of health insurance which follows children across State lines, already a major problem for the children of migrant and seasonal farmworkers, will become a major concern for all families in the United States.

(5) The medicare program has successfully evolved over the years to provide a stable, universal source of health insurance for the nation's disabled and those over age 65, and provides a tested model for designing a program to reach out to America's children.

(6) The problem of insuring 100 percent of all American children could be gradually solved by automatically enrolling all children born after December 31, 2006, in a program modeled after Medicare (and to be known as ''MediKids''), and allowing those children to be transferred into other equivalent or better insurance programs, including either private insurance, SCHIP, or Medicaid, if they are eligible to do so, but maintaining the child's default enrollment in MediKids for any times when the child's access to other sources of insurance is lost.

(7) A family's freedom of choice to use other insurers to cover children would not be interfered with in any way, and children eligible for SCHIP and Medicaid would continue to be enrolled in those programs, but the underlying safety net of MediKids would always be available to cover any gaps in insurance due to changes in medical condition, employment, income, or marital status, or other changes affecting a child's access to alternate forms of insurance.

(8) The MediKids program can be administered without impacting the finances or status of the existing Medicare program.

(9) The MediKids benefit package can be tailored to the special needs of children and updated over time.

(10) The financing of the program can be administered without difficulty by a yearly payment of affordable premiums through a family's tax filing (or adjustment of a family's earned income tax credit).

(11) The cost of the program will gradually rise as the number of children using MediKids as the insurer of last resort increases, and a future Congress always can accelerate or slow down the enrollment process as desired, while the societal costs for emergency room usage, lost productivity and work days, and poor health status for the next generation of Americans will decline.

(12) Over time 100 percent of American children will always have basic health insurance, and we can therefore expect a healthier, more equitable, and more productive society.

SEC. 2. BENEFITS FOR ALL CHILDREN BORN AFTER 2006.

(a) IN GENERAL.—The Social Security Act is amended by adding at the end the following new title:

''TITLE XXII—MEDIKIDS PROGRAM

''SEC. 2201. ELIGIBILITY.

''(a) ELIGIBILITY OF INDIVIDUALS BORN AFTER DECEMBER 31, 2006; ALL CHILDREN UNDER 23 YEARS OF AGE IN FIFTH YEAR.—An individual who meets the following requirements with respect to a month is eligible to enroll under this title with respect to such month:

''(1) AGE.—

''(A) FIRST YEAR.—As of the first day of the first year in which this title is effective, the individual has not attained 6 years of age.

''(B) SECOND YEAR.—As of the first day of the second year in which this title is effective, the individual has not attained 11 years of age.

''(C) THIRD YEAR.—As of the first day of the third year in which this title is effective, the individual has not attained 16 years of age.

''(D) FOURTH YEAR.—As of the first day of the fourth year in which this title is effective, the individual has not attained 21 years of age.

''(E) FIFTH AND SUBSEQUENT YEARS.—As of the first day of the fifth year in which this title is effective and each subsequent year, the individual has not attained 23 years of age.

''(2) CITIZENSHIP.—The individual is a citizen or national of the United States or is permanently residing in the United States under color of law.

''(b) ENROLLMENT PROCESS.—An individual may enroll in the program established under this title only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed by the Secretary consistent with the provisions of this section. Such regulations shall provide a process under which—

''(1) individuals who are born in the United States after December 31, 2006, are deemed to be enrolled at the time of birth and a parent or guardian of such an individual is permitted to pre-enroll in the month prior to the expected month of birth;

''(2) individuals who are born outside the United States after such date and who become eligible to enroll by virtue of immigration into (or an adjustment of immigration status in) the United States are deemed enrolled at the time of entry or adjustment of status;

''(3) eligible individuals may otherwise be enrolled at such other times and manner as the Secretary shall specify, including the use of outstationed eligibility sites as described in section 1902(a)(55)(A) and the use of presumptive eligibility provisions like those described in section 1920A; and

''(4) at the time of automatic enrollment of a child, the Secretary provides for issuance to a parent or custodian of the individual a card evidencing coverage under this title and for a description of such coverage.

The provisions of section 1837(h) apply with respect to enrollment under this title in the same manner as they apply to enrollment under part B of title XVIII. An individual who is enrolled under this title is not eligible to be enrolled under an MA or MA-PD plan under part C of title XVIII.

''(c) DATE COVERAGE BEGINS.—

''(1) IN GENERAL.—The period during which an individual is entitled to benefits under this title shall begin as follows, but in no case earlier than January 1, 2007:

''(A) In the case of an individual who is enrolled under paragraph (1) or (2) of subsection (b), the date of birth or date of obtaining appropriate citizenship or immigration status, as the case may be.

''(B) In the case of another individual who enrolls (including pre-enrolls) before the month in which the individual satisfies eligibility for enrollment under subsection (a), the first day of such month of eligibility.

''(C) In the case of another individual who enrolls during or after the month in which the individual first satisfies eligibility for enrollment under such subsection, the first day of the following month.

''(2) AUTHORITY TO PROVIDE FOR PARTIAL MONTHS OF COVERAGE.—Under regulations, the Secretary may, in the Secretary's discretion, provide for coverage periods that include portions of a month in order to avoid lapses of coverage.

''(3) LIMITATION ON PAYMENTS.—No payments may be made under this title with respect to the expenses of an individual enrolled under this title unless such expenses were incurred by such individual during a period which, with respect to the individual, is a coverage period under this section.

''(d) EXPIRATION OF ELIGIBILITY.—An individual's coverage period under this section shall continue until the individual's enrollment has been terminated because the individual no longer meets the requirements of subsection (a) (whether because of age or change in immigration status).

''(e) ENTITLEMENT TO MEDIKIDS BENEFITS FOR ENROLLED INDIVIDUALS.—An individual enrolled under this title is entitled to the benefits described in section 2202.

''(f) LOW-INCOME INFORMATION.—

''(1) INQUIRY OF INCOME.—At the time of enrollment of a child under this title, the Secretary shall make an inquiry as to whether the family income (as determined for purposes of section 1905(p)) of the family that includes the child is within any of the following income ranges:

''(A) UP TO 150 PERCENT OF POVERTY.—The income of the family does not exceed 150 percent of the poverty line for a family of the size involved.

''(B) BETWEEN 150 AND 200 PERCENT OF POVERTY.—The income of the family exceeds 150 percent, but does not exceed 200 percent, of such poverty line.

''(C) BETWEEN 200 AND 300 PERCENT OF POVERTY.—The income of the family exceeds 200 percent, but does not exceed 300 percent, of such poverty line.

''(2) CODING.—If the family income is within a range described in paragraph (1), the Secretary shall encode in the identification card issued in connection with eligibility under this title a code indicating the range applicable to the family of the child involved.

''(3) PROVIDER VERIFICATION THROUGH ELECTRONIC SYSTEM.—The Secretary also shall provide for an electronic system through which providers may verify which income range described in paragraph (1), if any, is applicable to the family of the child involved.

''(g) CONSTRUCTION.—Nothing in this title shall be construed as requiring (or preventing) an individual who is enrolled under this title from seeking medical assistance under a State medicaid plan under title XIX or child health assistance under a State child health plan under title XXI.

''SEC. 2202. BENEFITS.

''(a) SECRETARIAL SPECIFICATION OF BENEFIT PACKAGE.—

''(1) IN GENERAL.—The Secretary shall specify the benefits to be made available under this title consistent with the provisions of this section and in a manner designed to meet the health needs of enrollees.

''(2) UPDATING.—The Secretary shall update the specification of benefits over time to ensure the inclusion of age-appropriate benefits to reflect the enrollee population.

''(3) ANNUAL UPDATING.—The Secretary shall establish procedures for the annual review and updating of such benefits to account for changes in medical practice, new information from medical research, and other relevant developments in health science.

''(4) INPUT.—The Secretary shall seek the input of the pediatric community in specifying and updating such benefits.

''(5) LIMITATION ON UPDATING.—In no case shall updating of benefits under this subsection result in a failure to provide benefits required under subsection (b).

''(b) INCLUSION OF CERTAIN BENEFITS.—

''(1) MEDICARE CORE BENEFITS.—Such benefits shall include (to the extent consistent with other provisions of this section) at least the same benefits (including coverage, access, availability, duration, and beneficiary rights) that are available under parts A and B of title XVIII.

''(2) ALL REQUIRED MEDICAID BENEFITS.—Such benefits shall also include all items and services for which medical assistance is required to be provided under section 1902(a)(10)(A) to individuals described in such section, including early and periodic screening, diagnostic services, and treatment services.

''(3) INCLUSION OF PRESCRIPTION DRUGS.—Such benefits also shall include (as specified by the Secretary) benefits for prescription drugs and biologicals which are not less than the benefits for such drugs and biologicals under the standard option for the service benefit plan described in section 8903(1) of title 5, United States Code, offered during 2005.

''(4) COST-SHARING.—

''(A) IN GENERAL.—Subject to subparagraph (B), such benefits also shall include the cost-sharing (in the form of deductibles, coinsurance, and copayments) which is substantially similar to such cost-sharing under the health benefits coverage in any of the four largest health benefits plans (determined by enrollment) offered under chapter 89 of title 5, United States Code, and including an out-of-pocket limit for catastrophic expenditures for covered benefits, except that no cost-sharing shall be imposed with respect to early and periodic screening and diagnostic services included under paragraph (2).

''(B) REDUCED COST-SHARING FOR LOW INCOME CHILDREN.—Such benefits shall provide that—

''(i) there shall be no cost-sharing for children in families the income of which is within the range described in section 2201(f)(1)(A);

''(ii) the cost-sharing otherwise applicable shall be reduced by 75 percent for children in families the income of which is within the range described in section 2201(f)(1)(B); or

''(iii) the cost-sharing otherwise applicable shall be reduced by 50 percent for children in families the income of which is within the range described in section 2201(f)(1)(C).

''(C) CATASTROPHIC LIMIT ON COST-SHARING.—For a refundable credit for cost-sharing in the case of cost-sharing in excess of a percentage of the individual's adjusted gross income, see section 36 of the Internal Revenue Code of 1986.

''(c) PAYMENT SCHEDULE.—The Secretary, with the assistance of the Medicare Payment Advisory Commission, shall develop and implement a payment schedule for benefits covered under this title. To the extent feasible, such payment schedule shall be consistent with comparable payment schedules and reimbursement methodologies applied under parts A and B of title XVIII.

''(d) INPUT.—The Secretary shall specify such benefits and payment schedules only after obtaining input from appropriate child health providers and experts.

''(e) ENROLLMENT IN HEALTH PLANS.—The Secretary shall provide for the offering of benefits under this title through enrollment in a health benefit plan that meets the same (or similar) requirements as the requirements that apply to Medicare Advantage plans under part C of title XVIII (other than any such requirements that relate to part D of such title). In the case of individuals enrolled under this title in such a plan, the payment rate shall be based on payment rates provided for under section 1853(c) in effect before the date of the enactment of the Medicare Prescription Drug, Modernization, and Improvement Act of 2003 (Public Law 108-173), except that such payment rates shall be adjusted in an appropriate manner to reflect differences between the population served under this title and the population under title XVIII.

''SEC. 2203. PREMIUMS.

''(a) AMOUNT OF MONTHLY PREMIUMS.—

''(1) IN GENERAL.—The Secretary shall, during September of each year (beginning with 2006), establish a monthly MediKids premium for the following year. Subject to paragraph (2), the monthly MediKids premium for a year is equal to 1/12 of the annual premium rate computed under subsection (b).

''(2) ELIMINATION OF MONTHLY PREMIUM FOR DEMONSTRATION OF EQUIVALENT COVERAGE (INCLUDING COVERAGE UNDER LOW-INCOME PROGRAMS).—The amount of the monthly premium imposed under this section for an individual for a month shall be zero in the case of an individual who demonstrates to the satisfaction of the Secretary that the individual has basic health insurance coverage for that month. For purposes of the previous sentence enrollment in a medicaid plan under title XIX, a State child health insurance plan under title XXI, or under the medicare program under title XVIII is deemed to constitute basic health insurance coverage described in such sentence.

''(b) ANNUAL PREMIUM.—

''(1) NATIONAL PER CAPITA AVERAGE.—The Secretary shall estimate the average, annual per capita amount that would be payable under this title with respect to individuals residing in the United States who meet the requirement of section 2201(a)(1) as if all such individuals were eligible for (and enrolled) under this title during the entire year (and assuming that section 1862(b)(2)(A)(i) did not apply).

''(2) ANNUAL PREMIUM.—Subject to subsection (d), the annual premium under this subsection for months in a year is equal to 25 percent of the average, annual per capita amount estimated under paragraph (1) for the year.

''(c) PAYMENT OF MONTHLY PREMIUM.—

''(1) PERIOD OF PAYMENT.—In the case of an individual who participates in the program established by this title, subject to subsection (d), the monthly premium shall be payable for the period commencing with the first month of the individual's coverage period and ending with the month in which the individual's coverage under this title terminates.

''(2) COLLECTION THROUGH TAX RETURN.—For provisions providing for the payment of monthly premiums under this subsection, see section 59B of the Internal Revenue Code of 1986.

''(3) PROTECTIONS AGAINST FRAUD AND ABUSE.—The Secretary shall develop, in coordination with States and other health insurance issuers, administrative systems to ensure that claims which are submitted to more than one payor are coordinated and duplicate payments are not made.

''(d) REDUCTION IN PREMIUM FOR CERTAIN LOW-INCOME FAMILIES.—For provisions reducing the premium under this section for certain low-income families, see section 59B(d) of the Internal Revenue Code of 1986.

''SEC. 2204. MEDIKIDS TRUST FUND.

''(a) ESTABLISHMENT OF TRUST FUND.—

''(1) IN GENERAL.—There is hereby created on the books of the Treasury of the United States a trust fund to be known as the 'MediKids Trust Fund' (in this section referred to as the 'Trust Fund'). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and such amounts as may be deposited in, or appropriated to, such fund as provided in this title.

''(2) PREMIUMS.—Premiums collected under section 59B of the Internal Revenue Code of 1986 shall be periodically transferred to the Trust Fund.

''(3) TRANSITIONAL FUNDING BEFORE RECEIPT OF PREMIUMS.—In order to provide for funds in the Trust Fund to cover expenditures from the fund in advance of receipt of premiums under section 2203, there are transferred to the Trust Fund from the general fund of the United States Treasury such amounts as may be necessary.

''(b) INCORPORATION OF PROVISIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), subsection (b) (other than the last sentence) and subsections (c) through (i) of section 1841 shall apply with respect to the Trust Fund and this title in the same manner as they apply with respect to the Federal Supplementary Medical Insurance Trust Fund and part B, respectively.

''(2) MISCELLANEOUS REFERENCES.—In applying provisions of section 1841 under paragraph (1)—

''(A) any reference in such section to 'this part' is construed to refer to title XXII;

''(B) any reference in section 1841(h) to section 1840(d) and in section 1841(i) to sections 1840(b)(1) and 1842(g) are deemed references to comparable authority exercised under this title;

''(C) payments may be made under section 1841(g) to the Trust Funds under sections 1817 and 1841 as reimbursement to such funds for payments they made for benefits provided under this title; and

''(D) the Board of Trustees of the MediKids Trust Fund shall be the same as the Board of Trustees of the Federal Supplementary Medical Insurance Trust Fund.

''SEC. 2205. OVERSIGHT AND ACCOUNTABILITY.

''(a) PERIODIC GAO REPORTS.—The Comptroller General of the United States shall periodically submit to Congress reports on the operation of the program under this title, including on the financing of coverage provided under this title.

''(b) PERIODIC MEDPAC REPORTS.—The Medicare Payment Advisory Commission shall periodically report to Congress concerning the program under this title.

''SEC. 2206. INCLUSION OF CARE COORDINATION SERVICES.

''(a) IN GENERAL.—

''(1) PROGRAM AUTHORITY.—The Secretary, beginning in 2007, may implement a care coordination services program in accordance with the provisions of this section under which, in appropriate circumstances, eligible individuals under section 2201 may elect to have health care services covered under this title managed and coordinated by a designated care coordinator.

''(2) ADMINISTRATION BY CONTRACT.—The Secretary may administer the program under this section through a contract with an appropriate program administrator.

''(3) COVERAGE.—Care coordination services furnished in accordance with this section shall be treated under this title as if they were included in the definition of medical and other health services under section 1861(s) and benefits shall be available under this title with respect to such services without the application of any deductible or coinsurance.

''(b) ELIGIBILITY CRITERIA; IDENTIFICATION AND NOTIFICATION OF ELIGIBLE INDIVIDUALS.—

''(1) INDIVIDUAL ELIGIBILITY CRITERIA.—The Secretary shall specify criteria to be used in making a determination as to whether an individual may appropriately be enrolled in

the care coordination services program under this section, which shall include at least a finding by the Secretary that for cohorts of individuals with characteristics identified by the Secretary, professional management and coordination of care can reasonably be expected to improve processes or outcomes of health care and to reduce aggregate costs to the programs under this title.

''(2) PROCEDURES TO FACILITATE ENROLLMENT.—The Secretary shall develop and implement procedures designed to facilitate enrollment of eligible individuals in the program under this section.

''(c) ENROLLMENT OF INDIVIDUALS.—

''(1) SECRETARY'S DETERMINATION OF ELIGIBILITY.—The Secretary shall determine the eligibility for services under this section of individuals who are enrolled in the program under this section and who make application for such services in such form and manner as the Secretary may prescribe.

''(2) ENROLLMENT PERIOD.—

''(A) EFFECTIVE DATE AND DURATION.—Enrollment of an individual in the program under this section shall be effective as of the first day of the month following the month in which the Secretary approves the individual's application under paragraph (1), shall remain in effect for one month (or such longer period as the Secretary may specify), and shall be automatically renewed for additional periods, unless terminated in accordance with such procedures as the Secretary shall establish by regulation. Such procedures shall permit an individual to disenroll for cause at any time and without cause at re-enrollment intervals.

''(B) LIMITATION ON REENROLLMENT.—The Secretary may establish limits on an individual's eligibility to reenroll in the program under this section if the individual has disenrolled from the program more than once during a specified time period.

''(d) PROGRAM.—The care coordination services program under this section shall include the following elements:

''(1) BASIC CARE COORDINATION SERVICES.—

''(A) IN GENERAL.—Subject to the cost-effectiveness criteria specified in subsection (b)(1), except as otherwise provided in this section, enrolled individuals shall receive services described in section 1905(t)(1) and may receive additional items and services as described in subparagraph (B).

''(B) ADDITIONAL BENEFITS.—The Secretary may specify additional benefits for which payment would not otherwise be made under this title that may be available to individuals enrolled in the program under this section (subject to an assessment by the care coordinator of an individual's circumstance and need for such benefits) in order to encourage enrollment in, or to improve the effectiveness of, such program.

''(2) CARE COORDINATION REQUIREMENT.—Notwithstanding any other provision of this title, the Secretary may provide that an individual enrolled in the program under this section may be entitled to payment under this title for any specified health care items or services only if the items or services have been furnished by the care coordinator, or coordinated through the care coordination services program. Under such provision, the Secretary shall prescribe exceptions for emergency medical services as described in section 1852(d)(3), and other exceptions determined by the Secretary for the delivery of timely and needed care.

''(e) CARE COORDINATORS.—

''(1) CONDITIONS OF PARTICIPATION.—In order to be qualified to furnish care coordination services under this section, an individual or entity shall—

''(A) be a health care professional or entity (which may include physicians, physician group practices, or other health care professionals or entities the Secretary may find appropriate) meeting such conditions as the Secretary may specify;

''(B) have entered into a care coordination agreement; and

''(C) meet such criteria as the Secretary may establish (which may include experience in the provision of care coordination or primary care physician's services).

''(2) AGREEMENT TERM; PAYMENT.—

''(A) DURATION AND RENEWAL.—A care coordination agreement under this subsection shall be for one year and may be renewed if the Secretary is satisfied that the care coordinator continues to meet the conditions of participation specified in paragraph (1).

''(B) PAYMENT FOR SERVICES.—The Secretary may negotiate or otherwise establish payment terms and rates for services described in subsection (d)(1).

''(C) LIABILITY.—Care coordinators shall be subject to liability for actual health damages which may be suffered by recipients as a result of the care coordinator's decisions, failure or delay in making decisions, or other actions as a care coordinator.

''(D) TERMS.—In addition to such other terms as the Secretary may require, an agreement under this section shall include the terms specified in subparagraphs (A) through (C) of section 1905(t)(3).

''SEC. 2207. ADMINISTRATION AND MISCELLANEOUS.

''(a) IN GENERAL.—Except as otherwise provided in this title—

''(1) the Secretary shall enter into appropriate contracts with providers of services, other health care providers, carriers, and fiscal intermediaries, taking into account the types of contracts used under title XVIII with respect to such entities, to administer the program under this title;

''(2) beneficiary protections for individuals enrolled under this title shall not be less than the beneficiary protections (including limits on balance billing) provided medicare beneficiaries under title XVIII;

''(3) benefits described in section 2202 that are payable under this title to such individuals shall be paid in a manner specified by the Secretary (taking into account, and based to the greatest extent practicable upon, the manner in which they are provided under title XVIII); and

''(4) provider participation agreements under title XVIII shall apply to enrollees and benefits under this title in the same manner as they apply to enrollees and benefits under title XVIII.

''(b) COORDINATION WITH MEDICAID AND SCHIP.—Notwithstanding any other provision of law, individuals entitled to benefits for items and services under this title who also qualify for benefits under title XIX or XXI or any other Federally funded health care program that provides basic health insurance coverage described in section 2203(a)(2) may continue to qualify and obtain benefits under such other title or program, and in such case such an individual shall elect either—

''(1) such other title or program to be primary payor to benefits under this title, in which case no benefits shall be payable under this title and the monthly premium under section 2203 shall be zero; or

''(2) benefits under this title shall be primary payor to benefits provided under such title or program, in which case the Secretary shall enter into agreements with States as may be appropriate to provide that, in the case of such individuals, the benefits under titles XIX and XXI or such other program (including reduction of cost-sharing) are provided on a 'wrap-around' basis to the benefits under this title.''.

(b) CONFORMING AMENDMENTS TO SOCIAL SECURITY ACT PROVISIONS.—

(1) Section 201(i)(1) of the Social Security Act (42 U.S.C. 401(i)(1)) is amended by striking ''or the Federal Supplementary Medical Insurance Trust Fund'' and inserting ''the Federal Supplementary Medical Insurance Trust Fund, and the MediKids Trust Fund''.

(2) Section 201(g)(1)(A) of such Act (42 U.S.C. 401(g)(1)(A)) is amended by striking ''and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII'' and inserting '', the Federal Supplementary Medical Insurance Trust Fund, and the MediKids Trust Fund established by title XVIII''.

(c) MAINTENANCE OF MEDICAID ELIGIBILITY AND BENEFITS FOR CHILDREN.—

(1) IN GENERAL.—In order for a State to continue to be eligible for payments under section 1903(a) of the Social Security Act (42 U.S.C. 1396b(a))—

(A) the State may not reduce standards of eligibility, or benefits, provided under its State medicaid plan under title XIX of the Social Security Act or under its State child health plan under title XXI of such Act for individuals under 23 years of age below such standards of eligibility, and benefits, in effect on the date of the enactment of this Act; and

(B) the State shall demonstrate to the satisfaction of the Secretary of Health and Human Services that any savings in State expenditures under title XIX or XXI of the Social Security Act that results from children enrolling under title XXII of such Act shall be used in a manner that improves services to beneficiaries under title XIX of such Act, such as through expansion of eligibility, improved nurse and nurse aide staffing and improved inspections of nursing facilities, and coverage of additional services.

(2) MEDIKIDS AS PRIMARY PAYOR.—In applying title XIX of the Social Security Act, the MediKids program under title XXII of such Act shall be treated as a primary payor in cases in which the election described in section 2207(b)(2) of such Act, as added by subsection (a), has been made.

(d) EXPANSION OF MEDPAC MEMBERSHIP TO 19.—

(1) IN GENERAL.—Section 1805(c) of the Social Security Act (42 U.S.C. 1395b–6(c)) is amended—

(A) in paragraph (1), by striking ''17'' and inserting ''19''; and

(B) in paragraph (2)(B), by inserting ''experts in children's health,'' after ''other health professionals,''.

(2) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(A) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1805(c)(3) of the Social Security Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the 2 additional members of the Commission provided for by the amendment under subsection (a)(1) are as follows:

(i) One member shall be appointed for 1 year.

(ii) One member shall be appointed for 2 years.

(B) COMMENCEMENT OF TERMS.—Such terms shall begin on January 1, 2006.

(3) DUTIES.—Section 1805(b)(1)(A) of such Act (42 U.S.C. 1395b–6(b)(1)(A)) is amended by inserting before the semicolon at the end the following: ''and payment policies under title XXII''.

SEC. 3. MEDIKIDS PREMIUM.

(a) GENERAL RULE.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to determination of tax liability) is amended by adding at the end the following new part:

''PART VIII—MEDIKIDS PREMIUM

''Sec. 59B. MediKids premium

''SEC. 59B. MEDIKIDS PREMIUM.

''(a) IMPOSITION OF TAX.—In the case of a taxpayer to whom this section applies, there is hereby imposed (in addition to any other tax imposed by this subtitle) a MediKids premium for the taxable year.

''(b) INDIVIDUALS SUBJECT TO PREMIUM.—

''(1) IN GENERAL.—This section shall apply to a taxpayer if a MediKid is a dependent of the taxpayer for the taxable year.

''(2) MEDIKID.—For purposes of this section, the term 'MediKid' means any individual enrolled in the MediKids program under title XXII of the Social Security Act.

''(c) AMOUNT OF PREMIUM.—For purposes of this section, the MediKids premium for a taxable year is the sum of the monthly premiums (for months in the taxable year) determined under section 2203 of the Social Security Act with respect to each MediKid who is a dependent of the taxpayer for the taxable year.

''(d) EXCEPTIONS BASED ON ADJUSTED GROSS INCOME.—

''(1) EXEMPTION FOR VERY LOW-INCOME TAXPAYERS.—

''(A) IN GENERAL.—No premium shall be imposed by this section on any taxpayer having an adjusted gross income not in excess of the exemption amount.

''(B) EXEMPTION AMOUNT.—For purposes of this paragraph, the exemption amount is—

''(i) $19,245 in the case of a taxpayer having 1 MediKid,

''(ii) $24,135 in the case of a taxpayer having 2 MediKids,

''(iii) $29,025 in the case of a taxpayer having 3 MediKids, and

''(iv) $33,915 in the case of a taxpayer having 4 or more MediKids.

''(C) PHASEOUT OF EXEMPTION.—In the case of a taxpayer having an adjusted gross income which exceeds the exemption amount but does not exceed twice the exemption amount, the premium shall be the amount which bears the same ratio to the premium which would (but for this subparagraph) apply to the taxpayer as such excess bears to the exemption amount.

''(D) INFLATION ADJUSTMENT OF EXEMPTION AMOUNTS.—In the case of any taxable year beginning in a calendar year after 2005, each dollar amount contained in subparagraph (C) shall be increased by an amount equal to the product of—

''(i) such dollar amount, and

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

''(2) PREMIUM LIMITED TO 5 PERCENT OF ADJUSTED GROSS INCOME.—In no event shall any taxpayer be required to pay a premium under this section in excess of an amount equal to 5 percent of the taxpayer's adjusted gross income.

''(e) COORDINATION WITH OTHER PROVISIONS.—

''(1) NOT TREATED AS MEDICAL EXPENSE.—For purposes of this chapter, any premium paid under this section shall not be treated as expense for medical care.

''(2) NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The premium paid under this section shall not be treated as a tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit allowable under this chapter, or

''(B) the amount of the minimum tax imposed by section 55.

''(3) TREATMENT UNDER SUBTITLE F.—For purposes of subtitle F, the premium paid under this section shall be treated as if it were a tax imposed by section 1.''.

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 6012 of such Code is amended by inserting after paragraph (9) the following new paragraph:

''(10) Every individual liable for a premium under section 59B.''.

(2) The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

''PART VIII. MEDIKIDS PREMIUM''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 2006, in taxable years ending after such date.

SEC. 4. REFUNDABLE CREDIT FOR CERTAIN COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

''SEC. 36. CATASTROPHIC LIMIT ON COST-SHARING EXPENSES UNDER MEDIKIDS PROGRAM.

''(a) IN GENERAL.—

''In the case of a taxpayer who has a MediKid (as defined in section 59B) at any time during the taxable year, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the excess of—

''(1) the amount paid by the taxpayer during the taxable year as cost-sharing under section 2202(b)(4) of the Social Security Act, over

''(2) 5 percent of the taxpayer's adjusted gross income for the taxable year.''.

(b) COORDINATION WITH OTHER PROVISIONS.—The excess described in subsection (a) shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a).

(c) TECHNICAL AMENDMENTS.—

(1) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting before such item the following new item:

''Sec. 36. Catastrophic limit on cost-sharing expenses under MediKids program''.

(2) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ''or 36'' after ''section 35''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 5. REPORT ON LONG-TERM REVENUES.

Within one year after the date of the enactment of this Act, the Secretary of the Treasury shall propose a gradual schedule of progressive tax changes to fund the program under title XXII of the Social Security Act, as the number of enrollees grows in the outyears.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. FEINGOLD, Mrs. BOXER, and Mr. DAYTON):

S. 1304. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I rise today to introduce a piece of legislation to fix a huge oversight in pension policy.

In the early 1990s, a large number of U.S. companies began a process of switching their traditional defined benefit pension plans to what's referred to as ''cash balance'' pension plans. A cash balance pension is insured, like a traditional plan, through the PBGC. However, it looks more like a defined contribution plan to participants because the benefit is expressed as some percent of play plus some guaranteed interest rate. This isn't necessarily a bad idea, in and of itself. However, in practice, many of the employees working for these companies were not told what these changes would mean for them. Some companies had their employees work for years without earning any more benefits. Many of those employees didn't figure that out for a very long time. Unfortunately, their lack of understanding in this situation was a key benefit to management. However, once they figured out what was happening, the retirees were furious.

As two consultants who helped put these plans together said at an Actuaries conference in 1998:

''I've been involved in cash balance plans five or six years down the road and what I have found is that while employees understand it, it is not until they are actually ready to retire that they understand how little they are actually getting.''

''Right, but they're happy while they're employed.''

One of the most abusive practices in cash balance conversions is known as ''wear away. '' The company freezes the value of the benefits employees already earned, which by law cannot be taken away once given. However, the employer opens a cash balance account for that worker at a much lower dollar level. So they end up working for years contributing to this lower cash balance account, not realizing that contribution is meaningless because their old benefits were higher. At the same time, younger workers do get money added to their account every day. This is clearly age discrimination, and bad pension policy.

In 1999, I introduced a bill to make it illegal for corporations to wear away the benefits of older workers during conversions to cash balance plans. I offered my bill as an amendment. Forty-eight Senators, including 3 Republicans, voted to waive the budget point of order so we could consider this amendment. We did not have enough votes then, but I believe the tide is turning.

After that vote, more and more stories came out about how many workers were losing their pensions. In September of 1999, the Secretary of the Treasury put a moratorium on conversions from defined benefit plans to cash balance plans. That moratorium has

been in effect now for over three years. In April of 2000, I offered a Sense-of-the-Senate resolution to stop this practice, and it passed the Senate unanimously.

There are hundreds of age discrimination complaints currently pending before the EEOC based on some of these abusive cash balance conversions. Clearly, something must be done to address this issue that's been floating around now unresolved for over five years.

Before, I said that wear-away is the least fair practice during conversion. And I have to say that now, public sentiment is really coming around to acknowledge that unfairness. However, aside from wear-away, there's another problem in shifting from a traditional pension to cash balance. In a traditional plan, you accrue most of the benefits toward the end of your career, because there's usually some kind of formula that multiplies top pay times years of service. People tend to earn more salary toward the end of their careers, and if that is multiplied times more years served, the pension grows quickly in later years. But in a cash balance plan, younger workers do better because they are given a flat percent of pay plus some guaranteed interest credit. Interest is good for young people, they have many years to accrue and compound it. So if you get caught in mid-life, mid-career in one of these transitions, you get the downside of both plans.

Before I go any further, I want to be clear on one point—cash balance pensions can be a great deal for workers. Some. And they may help fill a needed niche in the pension world to cover the half of the workforce that currently has no pension. But I will continue my long battle to oppose the unilateral decision of a company to cut off a promise for an older worker, give that money to a younger worker, and not view it as age discrimination.

That is what this issue is all about. It is fairness. It is equity. I know discussion of pension law can become very convoluted. But this can be boiled down pretty simply. It is about what we think a promise from an employer ought to mean.

There is one thing that has distinguished the American workplace from others around the world. We have valued loyalty. At least we used to. That is one of the reasons pension plans exist—the longer you work somewhere, the more you earn in your pension program. Obviously, the longer you work someplace, the better you do your job, the more you learn about it, the more productive you are. We should value that loyalty.

But here, companies are able to take away the benefits of the longest serving workers. What kind of a signal does that send to the workers? It tells workers they are fools if they are loyal because if you put in 20 or 25 years, the boss can just change the rules of the game, and break their promise. It tells younger workers that it would be crazy to work for a company for a long time, that it's best to hedge your bets and move on as soon as it is convenient. It's crazy to trade current pay for the promise of future benefits. So why even take into account the fact that you're being offered a pension plan? This is a very dangerous road to go down.

This destroys the kind of work ethic we have come to value and that we know built this country. But some of these cash balance conversions counter all of that. Here is an analogy. Imagine I hire someone for 5 years with a promise of a $50,000 bonus at the end of 5 years of service. At the end of 3 years, however, I renege on the $50,000 bonus. But the employee has 3 years invested. Had they known that the deal was going to be off, perhaps they would not have gone to work for me. They could have gone to work someplace else for a total higher compensation package. Now imagine that they hire a new guy to join the team, and they give him part of that $50,000 bonus they promised me. Is that the way we want to treat workers in this country, where the employer has all the cards and employees have none, and employers can make whatever deal they want, but can change the rules at any time?

That is why I am introducing this legislation. It is simple. It says that you have to give older, longer serving employees a choice, at retirement, when their pension plan is converted to a cash balance plan to get the benefits earned in the old plan instead. It also says that employers must start counting the new cash balance benefits where the old defined benefit plan left off, instead of starting the cash balance plan at a lower level than an employee had already earned.

This isn't a radical idea. I was very pleased that in February of 2004, the Administration came out with a cash balance proposal that recognized that these transitions are hard on workers. It not only prohibits wear-away but provides for 5 year transition credits for workers caught in the middle of a conversion. Treasury reaffirmed its commitment to this approach in this year's budget request.

I was excited when Treasury first came to the table with a proposal to do more to protect workers here. I was so encouraged by this that I convened a series of meetings over the course of last summer to get all interested parties to the table—everyone from participant rights advocates to industry groups to consultants. I heard some really great ideas, and some that I didn't agree with. But I think there is still room to find answers to this problem. So I'm putting my plan back on the table today. And I really hope that we can continue a meaningful dialog on this issue.

If we do that, this year, we can enact meaningful participant protections moving forward so that there is another pension option out there to cover the roughly half of Americans with no pension at all. But I also want to make it clear that this Senator will never sit idly by as older workers get the rug pulled out from under them just as they thought they were on solid ground for their retirement. I won't stand idly by and watch their money redistributed in an age-discriminatory way. We can have this dialog and we can find a way to fix what's broken here, but not by blessing some of these blatant abuses.

By Mr. BROWNBACK:

S. 1305. A bill to amend the Internal Revenue Code of 1986 to increase tax benefits for parents with children, and for other purposes; to the Committee on Finance.

Mr. BROWNBACK. Mr. President, I rise today to introduce the Parents Tax Relief Act.

The Parents Tax Relief Act would help restore to families the pride-of-place, which they enjoyed during the early days of the income tax.

This important legislation would relieve the growing tax burden on families with children; provide a realistic option for one parent to stay at home and care for the children; and acknowledge the indispensable social value of the time and effort that parents put into rearing and forming their children.

Letting parents keep more of their hard-earned money for family-related expenses leaves the childcare decision to parents. Given this opportunity to make their own decision about childcare, many will choose to stay at home and care for their children themselves.

This legislation is necessary because parents have been hit especially hard by increasing taxes over the past half-century. In 1948, the average family with children paid 3 percent of its income in Federal taxes; today, that same average family with children pays almost 25 percent of its income in Federal taxes.

It is time for the Federal Government to step back and recognize the contributions of the American family. As a matter of policy, I believe we should work to further reduce taxes on families with children in order to make it easier for parents to be parents and care for their own children at home. Outside of abusive situations, nothing is better for our children than spending time with their parents.

The Parents Tax Relief Act takes a modest step towards empowering and strengthening the family. It builds on Marriage Penalty Tax Relief and the Child Tax Credit, making both permanent. While the Child Tax Credit was significant in leveling a three-decade trend of an increasing percentage of married mothers with preschool children who work outside the home full-time, more needs to be done to give parents the chance to decrease this percentage.

To accomplish this end, the Parents Tax Relief Act would increase deductions for young and elderly dependents.

It would equalize existing Federal preferences between parents who choose to stay at home with their children and parents Who choose to work outside of the home and place their children in paid daycare.

The bill would make it easier for a parent to spend more time with their children through provisions that encourage telecommuting and home businesses. And it recognizes the societal contributions of parents by granting 10 years worth of Social Security credits to a spouse who leaves the workforce during their prime-earning years to care for a young child.

The Parents Tax Relief Act is about investing in human capital. The hard-working American family, instilling traditional values to children, has been the bedrock of American society. As the family goes, so goes the Nation.

In recent years, the Federal Government has engaged in a massive experiment with paid, out-of-home daycare. As a national policy, through Federal subsidies, we have encouraged parents to place their children in daycare, and further, we have increasingly become a Nation where it is necessary for both husband and wife to be in the workforce just to cover a family's basic needs. The end result is that children are getting less of their parents' time when they need their parents the most.

Make no mistake, both men and women have made valuable contributions to our national workforce. Our Nation's productivity is strong, and we have enjoyed a great period of national prosperity. But how long will it last when our children are spending less time with mom and dad? Sociological data confirms time and again that children do best when raised by a mother and a father, where one spouse works and the other spouse stays at home with the children.

Unfortunately—and I believe that most mothers, especially, would tend to agree—we have reached a point where a family has to make a truly great sacrifice for one parent to stay at home to raise the children. I have heard so many stories of mothers wanting to stay home with their children, but between paying a mortgage and taxes, they feel helpless. They feel that they must work in order that their family can enjoy and maintain a middle-class lifestyle.

It is time for us to acknowledge, through Federal policy, the sacrifices that parents make to invest in the upbringing of their children when they stay at home. That is goal of the Parents Tax Relief Act, and it is the reason why I am introducing this important measure.

It costs a great sum to raise children these days, and it is essential to our Nation's social and economic welfare that we ensure Federal tax policy does not infringe on a parent's ability to afford that great sum.

The Parents Tax Relief Act would establish a new national tax policy that would allow parents to invest more time and effort in the formation of their children. In the end, this type of investment in human capital may be the most effective way for the Federal Government to ensure our future economic growth and competitiveness.

The legislative road to this new policy begins today, and I look forward to working with my colleagues on both sides of the aisle to make it a reality.

By Ms. MURKOWSKI:

S. 1306. A bill to provide for the recognition of certain Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, at the very beginning of the Alaska Native Claims Settlement Act of 1971 there are a series of findings and declarations of Congressional policy which explain the underpinnings of this landmark legislation.

The first clause reads, ''There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims.'' The second clause states, ''The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives.''

Thirty three years have passed since the Alaska Native Claims Settlement Act became law and still the Native peoples of five communities in Southeast Alaska—Haines, Ketchikan, Petersburg, Tenakee and Wrangell—the five ''landless communities'' are still waiting for their fair and just settlement.

The Alaska Native Claims Settlement Act awarded approximately $1 billion and 44 million acres of land to Alaska Natives and provided for the establishment of Native Corporations to receive and manage such funds and lands. The beneficiaries of the settlement were issued stock in one of 13 regional Alaska Native Corporations. Most beneficiaries also had the option to enroll and receive stock in a village, group or urban corporation.

For reasons that still defy explanation the Native peoples of the ''landless communities,'' were not permitted by the Alaska Native Claims Settlement Act to form village or urban corporations. These communities were excluded from this benefit even though they did not differ significantly from other communities in Southeast Alaska that were permitted to form village or urban corporations under the Alaska Native Claims Settlement Act. This finding was confirmed in a February 1994 report submitted by the Secretary of the Interior at the direction of the Congress. That study was conducted by the Institute of Social and Economic Research at the University of Alaska.

The Native people of Southeast Alaska have recognized the injustice of this oversight for more than 33 years. An independent study issued more than 11 years ago confirms that the grievance of the landless communities is legitimate. Legislation has been introduced in the past sessions of Congress to remedy this injustice. Hearings have been held and reports written. Yet legislation to right the wrong has inevitably stalled out. This December marks the 34th anniversary of Congress' promise to the Native peoples of Alaska—the promise of a rapid and certain settlement. And still the landless communities of Southeast Alaska are landless.

I am convinced that this cause is just, it is right, and it is about time that the Native peoples of the five landless communities receive what has been denied them for more than 30 years.

The legislation that I am introducing today would enable the Native peoples of the five ''landless communities'' to organize five ''urban corporations,'' one for each unrecognized community. These newly formed corporations would be offered and could accept the surface estate to approximately 23,000 acres of land. Sealaska Corporation, the regional Alaska Native Corporation for Southeast Alaska would receive title to the subsurface estate to the designated lands. The urban corporations would each receive a lump sum payment to be used as start-up funds for the newly established corporation. The Secretary of the Interior would determine other appropriate compensation to redress the inequities faced by the unrecognized communities.

It is long past time that we return to the Native peoples of Southeast Alaska a small slice of the aboriginal lands that were once theirs alone. It is time that we open our minds and open our hearts to correcting this injustice which has gone on far too long and finally give the Native peoples of Southeast Alaska the rapid and certain settlement for which they have been waiting.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1306

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 ''Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) In 1971, Congress enacted the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) (referred to in this section as the ''Act'') to recognize and settle the aboriginal claims of Alaska Natives to the lands Alaska Natives had used for traditional purposes.

(2) The Act awarded approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives and provided for the establishment of Native Corporations to receive and manage such funds and lands.

(3) Pursuant to the Act, Alaska Natives have been enrolled in one of 13 Regional Corporations.

(4) Most Alaska Natives reside in communities that are eligible under the Act to form a Village or Urban Corporation within the geographical area of a Regional Corporation.

(5) Village or Urban Corporations established under the Act received cash and surface rights to the settlement land described in paragraph (2) and the corresponding Regional Corporation received cash and land which includes the subsurface rights to the land of the Village or Urban Corporation.

(6) The southeastern Alaska communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell are not listed under the Act as communities eligible to form Village or Urban Corporations, even though the population of such villages comprises greater than 20 percent of the shareholders of the Regional Corporation for Southeast Alaska and display historic, cultural, and traditional qualities of Alaska Natives.

(7) The communities described in paragraph (6) have sought full eligibility for lands and benefits under the Act for more than three decades.

(8) In 1993, Congress directed the Secretary of the Interior to prepare a report examining the reasons why the communities listed in paragraph (6) had been denied eligibility to form Village or Urban Corporations and receive land and benefits pursuant to the Act.

(9) The report described in paragraph (8), published in February, 1994, indicates that—

(A) the communities listed in paragraph (6) do not differ significantly from the southeast Alaska communities that were permitted to form Village or Urban Corporations under the Act;

(B) such communities are similar to other communities that are eligible to form Village or Urban Corporations under the Act and receive lands and benefits under the Act—

(i) in actual number and percentage of Native Alaskan population; and

(ii) with respect to the historic use and occupation of land;

(C) each such community was involved in advocating the settlement of the aboriginal claims of the community; and

(D) some of the communities appeared on early versions of lists of Native Villages prepared before the date of the enactment of the Act, but were not included as Native Villages in the Act.

(10) The omissions described in paragraph (9) are not clearly explained in any provision of the Act or the legislative history of the Act.

(11) On the basis of the findings described in paragraphs (1) through (10), Alaska Natives who were enrolled in the five unlisted communities and their heirs have been inadvertently and wrongly denied the cultural and financial benefits of enrollment in Village or Urban Corporations established pursuant to the Act.

(b) PURPOSE.—The purpose of this Act is to redress the omission of the communities described in subsection (a)(6) from eligibility by authorizing the Native people enrolled in the communities—

(1) to form Urban Corporations for the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell under the Act; and

(2) to receive certain settlement lands and other compensation pursuant to the Act.

SEC. 3. ESTABLISHMENT OF ADDITIONAL NATIVE CORPORATIONS.

Section 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1615) is amended by adding at the end thereof the following new subsection:

''(e)(1) The Native residents of each of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, Alaska, may organize as Urban Corporations.

''(2) Nothing in this subsection shall affect any entitlement to land of any Native Corporation previously established pursuant to this Act or any other provision of law.''.

SEC. 4. SHAREHOLDER ELIGIBILITY.

Section 8 of the Alaska Native Claims Settlement Act (43 U.S.C. 1607) is amended by adding at the end thereof the following new subsection:

''(d)(1) The Secretary of the Interior shall enroll to each of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell those individual Natives who enrolled under this Act to the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, respectively.

''(2) Those Natives who are enrolled to an Urban Corporation for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell pursuant to paragraph (1) and who were enrolled as shareholders of the Regional Corporation for Southeast Alaska on or before March 30, 1973, shall receive 100 shares of Settlement Common Stock in such Urban Corporation.

''(3) A Native who has received shares of stock in the Regional Corporation for Southeast Alaska through inheritance from a decedent Native who originally enrolled to the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, which decedent Native was not a shareholder in a Village or Urban Corporation, shall receive the identical number of shares of Settlement Common Stock in the Urban Corporation for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell as the number of shares inherited by that Native from the decedent Native who would have been eligible to be enrolled to such Urban Corporation.

''(4) Nothing in this subsection shall affect entitlement to land of any Regional Corporation pursuant to section 12(b) or section 14(h)(8).''.

SEC. 5. DISTRIBUTION RIGHTS.

Section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606) is amended—

(1) in subsection (j), by adding at the end thereof the following new sentence: ''Native members of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell who become shareholders in an Urban Corporation for such a community shall continue to be eligible to receive distributions under this subsection as at-large shareholders of the Regional Corporation for Southeast Alaska.''; and

(2) by adding at the end thereof the following new subsection:

''(s) No provision of or amendment made by the Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act shall affect the ratio for determination of revenue distribution among Native Corporations under this section and the '1982 Section 7(i) Settlement Agreement' among the Regional Corporations or among Village Corporations under subsection (j).''.

SEC. 6. COMPENSATION.

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new section:

''URBAN CORPORATIONS FOR HAINES, KETCHIKAN, PETERSBURG, TENAKEE, AND WRANGELL

''SEC. 43. (a) Upon incorporation of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, the Secretary, in consultation and coordination with the Secretary of Commerce, and in consultation with representatives of each such Urban Corporation and the Regional Corporation for Southeast Alaska, shall offer as compensation, pursuant to this Act, one township of land (23,040 acres) to each of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, and other appropriate compensation, including the following:

''(1) Local areas of historical, cultural, traditional, and economic importance to Alaska Natives from the Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell. In selecting the lands to be withdrawn and conveyed pursuant to this section, the Secretary shall give preference to lands with commercial purposes and may include subsistence and cultural sites, aquaculture sites, hydroelectric sites, tidelands, surplus Federal property and eco-tourism sites. The lands selected pursuant to this section shall be contiguous and reasonably compact tracts wherever possible. The lands selected pursuant to this section shall be subject to all valid existing rights and all other provisions of section 14(g), including any lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act).

''(2) $650,000 for capital expenses associated with corporate organization and development, including—

''(A) the identification of forest and land parcels for selection and withdrawal;

''(B) making conveyance requests, receiving title, preparing resource inventories, land and resource use, and development planning;

''(C) land and property valuations;

''(D) corporation incorporation and startup;

''(E) advising and enrolling shareholders;

''(F) issuing stock; and

''(G) seed capital for resource development.

''(3) Such additional forms of compensation as the Secretary deems appropriate, including grants and loan guarantees to be used for planning, development and other purposes for which Native Corporations are organized under the Act, and any additional financial compensation, which shall be allocated among the five Urban Corporations on a pro rata basis based on the number of shareholders in each Urban Corporation.

''(b) The Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, shall have one year from the date of the offer of compensation from the Secretary to each such Urban Corporation provided for in this section within which to accept or reject the offer. In order to accept or reject the offer, each such Urban Corporation shall provide to the Secretary a properly executed and certified corporate resolution that states that the offer proposed by the Secretary was voted on, and either approved or rejected, by a majority of the shareholders of the Urban Corporation. In the event that the offer is rejected, the Secretary, in consultation with representatives of the Urban Corporation that rejected the offer and the Regional Corporation for Southeast Alaska, shall revise the offer and the Urban Corporation shall have an additional six months within which to accept or reject the revised offer.

''(c) Not later than 180 days after receipt of a corporate resolution approving an offer of the Secretary as required in subsection (b), the Secretary shall withdraw the lands and convey to the Urban Corporation title to the surface estate of the lands and convey to the Regional Corporation for Southeast Alaska title to the subsurface estate as appropriate for such lands.

''(d) The Secretary shall, without consideration of compensation, convey to the Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, by quitclaim deed or patent, all right, title, and interest of the United States in all roads, trails, log transfer facilities, leases, and appurtenances on or related to the land conveyed to the corporations pursuant to subsection (c).

''(e)(1) The Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell may establish a settlement trust in

accordance with the provisions of section 39 for the purposes of promoting the health, education, and welfare of the trust beneficiaries and preserving the Native heritage and culture of the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, respectively.

''(2) The proceeds and income from the principal of a trust established under paragraph (1) shall first be applied to the support of those enrollees and their descendants who are elders or minor children and then to the support of all other enrollees.''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as shall be necessary to carry out this Act and the amendments made by this Act.

By Mr. BAUCUS:

S. 1308. A bill to establish an Office of Trade Adjustment Assistance, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I introduce the Trade Adjustment Assistance for Firms Reorganization Act.

The Trade Adjustment Assistance for Firms program assists hundreds of mostly small and medium-sized manufacturing and agricultural companies in Montana and nationwide when they face layoffs and lost sales due to import competition. Qualifying companies develop adjustment plans and receive technical assistance to become more competitive, so that they can retain and expand employment.

The program is very cost effective. It requires the firms being helped to match the Federal assistance with their own funds, and it pays the government back in federal and State tax revenues when the firms succeed.

For example, TAA for Firms is helping Montola Growers from Culbertson, Montana, to develop cosmetic applications for its safflower oil. And it is helping Porterbilt Company of Hamilton to expand its product line.

Currently, TAA for Firms clients receive assistance preparing petitions and adjustment plans from twelve Trade Adjustment Assistance Centers, which are Commerce Department contractors. Program and policy decisions are made by a small headquarters staff in the Commerce Department's Economic Development Administration.

In the Trade Act of 2002, Congress voted to reauthorize this important program for seven years and to increase its authorized funding level. The program seemed headed toward some years of smooth sailing. But it turns out that is not the case.

For reasons unrelated to TAA for Firms, EDA began more than a year ago to move all its headquarters programs to its six regional offices. For TAA for Firms, that means clients will still get the same local services from the TAACs, but decisions will be made in six regional offices plus a national policy office. The likely result is more personnel needed to run the program, more layers of government, less centralized and consistent decision making, and less accountability—all without any likely improvement in customer service.

In preparation for this reorganization, EDA transferred or otherwise eliminated most of its experienced TAA staff in the Washington office. But to date it has not completed the transfer and hired or trained the necessary regional staff. So the program is in limbo.

Meanwhile, the President recently announced a multi-agency consolidation of economic development programs that will eliminate EDA and its regional offices. Not surprisingly, the latest word from EDA is that plans to complete the move of TAA for Firms to the regional offices are now on indefinite hold. The President's fiscal year 2006 budget zeroes out TAA for Firms, even though Congress has authorized the program through fiscal year 2007. With funding in doubt and the Washington-based management structure for TAA for Firms already largely dismantled, this program is on the verge of a crisis.

TAA for Firms was not broken until someone decided to fix it. Now it is doomed to stay in limbo unless Congress acts to clean up the mess.

The bill I am introducing today solves these problems by moving administration of the TAA for Firms program from EDA into a different part of the Commerce Department—the International Trade Administration. I introduced this same bill last year with 15 co-sponsors.

Relocating the program to ITA makes sense. ITA has experience running this program, which was located there prior to 1990. Relocating TAA for Firms to ITA will result in fewer lays of government and more centralized and accountable program management than running it through EDA's regional offices or some new economic development agency.

Relocating the program also creates synergies by allowing better coordination of the TAA for Firms program with other trade and trade remedy programs administered by ITA. And it enhances the ability of the Finance Committee to carry out its oversight responsibilities for this program and for trade policy in general.

I do not want to see this important TAA program die of neglect. This legislation is a simple matter of good, sensible government. I encourage my colleagues to lend it their support.

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. 1308

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 ''Trade Adjustment Assistance for Firms Reorganization Act''.

SEC. 2. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.) is amended by inserting after section 255 the following new section:

''SEC. 255A. OFFICE OF TRADE ADJUSTMENT ASSISTANCE.

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Trade Adjustment Assistance for Firms Reorganization Act, there shall be established in the International Trade Administration of the Department of Commerce an Office of Trade Adjustment Assistance.

''(b) PERSONNEL.—The Office shall be headed by a Director, and shall have such staff as may be necessary to carry out the responsibilities of the Secretary of Commerce described in this chapter.

''(c) FUNCTIONS.—The Office shall assist the Secretary of Commerce in carrying out the Secretary's responsibilities under this chapter.''.

(b) CONFORMING AMENDMENT.—The table of contents for the Trade Act of 1974 is amended by inserting after the item relating to section 255, the following new item:

''Sec. 255A. Office of Trade Adjustment Assistance''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking ''2007'' and inserting ''2012''.

By Mr. BAUCUS (for himself, Mr. COLEMAN, and Mr. WYDEN):

S. 1309. A bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I introduce the Trade Adjustment Assistance Equity for Service Workers Act.

Frankly, I am disappointed to be here introducing this bill yet again.

Just last week, the substance of the bill was adopted by a majority of members of the Finance Committee as an amendment to the implementing legislation for the United States-Central America-Dominican Republic Free Trade Agreement. But today, the administration sent us the final implementing bill with the amendment stripped out.

President Bush likes to say that trade is for everyone. That we all share the benefits, including workers. And he claims to care a lot about having a skilled workforce that can keep American businesses competitive in global markets.

This amendment presented the President with the perfect opportunity to put his money where his mouth is.

He could have said to the American people—as President Clinton did when Congress considered the NAFTA—that just as all Americans share in the benefits of trade, we all bear a responsibility for its costs. Trade liberalization and trade adjustment go hand in hand. And then he could have provided America's service sector workers with access to the one program designed to make that happen—Trade Adjustment Assistance.

But by submitting the CAFTA implementing bill stripped of the Trade Adjustment Assistance amendment passed by the Finance Committee, he chose not to.

Since 1962, Trade Adjustment Assistance—what we call ''TAA''—has provided retraining, income support, and other benefits so that workers who lose their jobs due to trade can make a new start.

The rationale for TAA is simple. When our government pursues trade liberalization, we create benefits for the economy as a whole. But there is always some dislocation from trade.

When he created the TAA program, President Kennedy explained that the Federal Government has an obligation ''to render assistance to those who suffer as a result of national trade policy.''

For more than 40 years, we have met that obligation through TAA, which is principally a retraining program designed to update worker skills.

The TAA program has not been static over time. Congress periodically revises the program to meet new economic realities. Most recently, in the Trade Act of 2002, Congress completed the most comprehensive overhaul and expansion of the TAA program since its inception.

I am proud to have played a leading role in passing this landmark legislation. But I am also the first to admit that our work is not done. Economic realities continue to change, and TAA must continue to change with them.

One fundamental aspect of TAA that has remained unchanged since 1962 is its focus on manufacturing. We only give TAA benefits to workers who make ''articles.''

Excluding service workers from TAA may have made sense in 1962, when most non-farm jobs were in manufacturing and most services were not traded across national borders.

But today, most American jobs are in the service sector. And the market for many services is becoming just as global as the market for manufactured goods.

In 2002, the service sector accounted for three quarters of U.S. private sector gross domestic product and nearly 80 percent of non-farm private employment.

Trade in services is a net plus for the U.S. economy. Although trade in goods continues to dominate, services accounted for 29 percent of the value of total U.S. exports in 2002 and the service sector generated a trade surplus of $74 billion.

Just as we have seen with trade in manufactured goods, however, there are winners and losers from trade. Trade in services will inevitably cost some workers their jobs.

Indeed, there have been some well-publicized examples in the papers. Software sign. Technical support. Accounting and tax preparation services. Not long ago, a group of call center workers in Kalispell, MT saw their jobs move to Canada and India.

Examples abound of service sector jobs—even high tech jobs—relocating overseas. A series of studies estimate that between a half million and over 3 million U.S. service sector jobs would be moved offshore in the next 5 to 10 years.

That doesn't mean the total number of jobs in the U.S. economy is shrinking. But the fact that jobs may be available in a different field is cold comfort to a worker whose own skills are no longer in demand.

That is why this legislation is so important. It is a simple matter of equity.

When a factory relocates to another country, those workers are eligible for TAA. But when a call center moves to another country, those workers are not eligible for TAA. They should be.

The benefits service workers will receive under this legislation would be exactly the same as those that trade-impacted manufacturing workers now receive. They include retraining, income support, job search and relocation allowance, and a health coverage tax credit.

Hard working American service workers deserve this safety net. These benefits will always be second best to a job. But they can really make a difference in helping workers make a new start.

Truthfully, I am mystified by why the President so cavalierly dropped the TAA for Services amendment and let this opportunity pass him by. His actions are entirely inconsistent with his stated desire to make trade benefit all Americans. But, sadly, this has become a pattern.

Despite the obvious benefits of the TAA program, the Bush Administration fought tooth and nail against every penny, and against every provision in what became the Trade Adjustment Assistance Reform Act of 2002. Extending TAA to service workers was one of many needed improvements that was struck in the final version of the bill.

Again in the last Congress, the extension of TAA to service workers was offered as an amendment to the JOBS Act and opposed by the Administration. It garnered 54 votes from both sides ofthe aisle—failing only on a technicality.

The world is changing and TAA must keep up with the times. Last year's Senate vote and this year's Finance Committee vote make clear that there is wide support for extending TAA to service workers. I truly believe this bill's time has come. I will work hard to move this legislation this year.

I want to thank Senators COLEMAN and WYDEN for co-sponsoring this legislation. They have been stalwart supporters in the fight to bring equity to service workers. I look forward to working with them to make TAA for service workers a reality.

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. 1309

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 ''Trade Adjustment Assistance Equity for Service Workers Act of 2005''.

SEC. 2. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE TO SERVICES SECTOR.

(a) ADJUSTMENT ASSISTANCE FOR WORKERS.—Section 221(a)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(1)(A)) is amended by striking ''firm)'' and inserting ''firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)''.

(b) GROUP ELIGIBILITY REQUIREMENTS.—Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (1), by inserting ''or public agency'' after ''of the firm''; and

(C) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking ''like or directly competitive with articles produced'' and inserting ''or services like or directly competitive with articles produced or services provided'';

(ii) by striking subparagraph (B) and inserting the following:

''(B)(i) there has been a shift, by such workers' firm, subdivision, or public agency to a foreign country, of production of articles, or in provision of services, like or directly competitive with articles which are produced, or services which are provided, by such firm, subdivision, or public agency; or

''(ii) such workers' firm, subdivision, or public agency has obtained or is likely to obtain such services from a foreign country.'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking ''agricultural firm)'' and inserting ''agricultural firm, and workers in a service sector firm or subdivision of a service sector firm or public agency)'';

(B) in paragraph (2), by inserting ''or service'' after ''related to the article''; and

(C) in paragraph (3)(A), by inserting ''or services'' after ''component parts'';

(3) in subsection (c)—

(A) in paragraph (3)—

(i) by inserting ''or services'' after ''value-added production processes'';

(ii) by striking ''or finishing'' and inserting '', finishing, or testing'';

(iii) by inserting ''or services'' after ''for articles''; and

(iv) by inserting ''(or subdivision)'' after ''such other firm''; and

(B) in paragraph (4)—

(i) by striking ''for articles'' and inserting '', or services, used in the production of articles or in the provision of services''; and

(ii) by inserting ''(or subdivision)'' after ''such other firm''; and

(4) by adding at the end the following new subsection:

''(d) BASIS FOR SECRETARY'S DETERMINATIONS.—

''(1) INCREASED IMPORTS.—For purposes of subsection (a)(2)(A)(ii), the Secretary may determine that increased imports of like or directly competitive articles or services exist if the workers' firm or subdivision or customers of the workers' firm or subdivision accounting for not less than 20 percent of the sales of the workers' firm or subdivision certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) OBTAINING SERVICES ABROAD.—For purposes of subsection (a)(2)(B)(ii), the Secretary may determine that the workers' firm, subdivision, or public agency has obtained or is likely to obtain like or directly competitive services from a foreign country based on a certification thereof from the workers' firm, subdivision, or public agency.

''(3) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraphs (1) and (2) through questionnaires or in such other manner as the Secretary determines is appropriate.''.

(c) TRAINING.—Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by striking ''$220,000,000'' and inserting ''$440,000,000''.

(d) DEFINITIONS.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended—

(1) in paragraph (1)—

(A) by inserting ''or public agency'' after ''of a firm''; and

(B) by inserting ''or public agency'' after ''or subdivision'';

(2) in paragraph (2)(B), by inserting ''or public agency'' after ''the firm'';

(3) by redesignating paragraphs (8) through (17) as paragraphs (9) through (18), respectively; and

(4) by inserting after paragraph (6) the following:

''(7) The term 'public agency' means a department or agency of a State or local government or of the Federal Government.

''(8) The term 'service sector firm' means an entity engaged in the business of providing services.''.

(e) TECHNICAL AMENDMENT.—Section 245(a) of the Trade Act of 1974 (19 U.S.C. 2317(a)) is amended by striking '', other than subchapter D''.

SEC. 3. TRADE ADJUSTMENT ASSISTANCE FOR FIRMS AND INDUSTRIES.

(a) FIRMS.—

(1) ASSISTANCE.—Section 251 of the Trade Act of 1974 (19 U.S.C. 2341) is amended—

(A) in subsection (a), by inserting ''or service sector firm'' after ''(including any agricultural firm'';

(B) in subsection (c)(1)—

(i) in the matter preceding subparagraph (A), by inserting ''or service sector firm'' after ''any agricultural firm'';

(ii) in subparagraph (B)(ii), by inserting ''or service'' after ''of an article''; and

(iii) in subparagraph (C), by striking ''articles like or directly competitive with articles which are produced'' and inserting ''articles or services like or directly competitive with articles or services which are produced or provided''; and

(C) by adding at the end the following:

''(e) BASIS FOR SECRETARY DETERMINATION.—

''(1) INCREASED IMPORTS.—For purposes of subsection (c)(1)(C), the Secretary may determine that increases of imports of like or directly competitive articles or services exist if customers accounting for not less than 20 percent of the sales of the workers' firm certify to the Secretary that they are obtaining such articles or services from a foreign country.

''(2) AUTHORITY OF THE SECRETARY.—The Secretary may obtain the certifications under paragraph (1) through questionnaires or in such other manner as the Secretary determines is appropriate. The Secretary may exercise the authority under section 249 in carrying out this subsection.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 256(b) of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended by striking ''$16,000,000'' and inserting ''$32,000,000''.

(3) DEFINITION.—Section 261 of the Trade Act of 1974 (19 U.S.C. 2351) is amended—

(A) by striking ''For purposes of'' and inserting ''(a) **FIRM**.—For purposes of''; and

(B) by adding at the end the following:

''(b) SERVICE SECTOR FIRM.—For purposes of this chapter, the term 'service sector firm' means a firm engaged in the business of providing services.''.

(b) INDUSTRIES.—Section 265(a) of the Trade Act of 1974 (19 U.S.C. 2355(a)) is amended by inserting ''or service'' after ''new product''.

(c) TECHNICAL AMENDMENTS.—

(1) IN GENERAL.—Section 249 of the Trade Act of 1974 (19 U.S.C. 2321) is amended by striking ''subpena'' and inserting ''subpoena'' each place it appears in the heading and the text.

(2) TABLE OF CONTENTS.—The table of contents for the Trade Act of 1974 is amended by striking ''Subpena'' in the item relating to section 249 and inserting ''Subpoena''.

SEC. 4. MONITORING AND REPORTING.

Section 282 of the Trade Act of 1974 (19 U.S.C. 2393) is amended—

(1) in the first sentence—

(A) by striking ''The Secretary'' and inserting ''(a) **MONITORING PROGRAMS**.—The Secretary'';

(B) by inserting ''and services'' after ''imports of articles'';

(C) by inserting ''and domestic provision of services'' after ''domestic production'';

(D) by inserting ''or providing services'' after ''producing articles''; and

(E) by inserting '', or provision of services,'' after ''changes in production''; and

(2) by adding at the end the following:

''(b) COLLECTION OF DATA AND REPORTS ON SERVICES SECTOR.—

''(1) SECRETARY OF LABOR.—Not later than 3 months after the date of the enactment of the Trade Adjustment Assistance Equity for Service Workers Act of 2005, the Secretary of Labor shall implement a system to collect data on adversely affected service workers that includes the number of workers by State, industry, and cause of dislocation of each worker.

''(2) SECRETARY OF COMMERCE.—Not later than 6 months after such date of enactment, the Secretary of Commerce shall, in consultation with the Secretary of Labor, conduct a study and report to the Congress on ways to improve the timeliness and coverage of data on trade in services, including methods to identify increased imports due to the relocation of United States firms to foreign countries, and increased imports due to United States firms obtaining services from firms in foreign countries.''.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date that is 60 days after the date of the enactment of this Act.

(b) SPECIAL RULE FOR CERTAIN SERVICE WORKERS.—A group of workers in a service sector firm, or subdivision of a service sector firm, or public agency (as defined in section 247 (7) and (8) of the Trade Act of 1974, as added by section 2(d) of this Act) who—

(1) would have been certified eligible to apply for adjustment assistance under chapter 2 of title II of the Trade Act of 1974 if the amendments made by this Act had been in effect on November 4, 2002, and

(2) file a petition pursuant to section 221 of such Act within 6 months after the date of the enactment of this Act, shall be eligible for certification under section 223 of the Trade Act of 1974 if the workers' last total or partial separation from the firm or subdivision of the firm or public agency occurred on or after November 4, 2002 and before the date that is 60 days after the date of the enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 180—SUPPORTING THE GOALS AND IDEALS OF A NATIONAL EPIDERMOLYSIS BULLOSA AWARENESS WEEK TO RAISE PUBLIC AWARENESS AND UNDERSTANDING OF THE DISEASE AND TO FOSTER UNDERSTANDING OF THE IMPACT OF THE DISEASE ON PATIENTS AND THEIR FAMILIES

Mr. SCHUMER (for himself and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 180

Whereas epidermolysis bullosa is a rare disease characterized by the presence of extremely fragile skin that results in the development of recurrent, painful blisters, open sores, and in some forms of the disease, in disfiguring scars, disabling musculoskeletal deformities, and internal blistering;

Whereas approximately 12,500 individuals in the United States are affected by the disease;

Whereas data from the National Epidermolysis Bullosa Registry indicates that of every 1,000,000 live births, 20 infants are born with the disease;

Whereas there currently is no cure for the disease;

Whereas children with the disease require almost around-the-clock care;

Whereas approximately 90 percent of individuals with epidermolysis bullosa report experiencing pain on an average day;

Whereas the skin is so fragile for individuals with the disease that even minor rubbing and day-to-day activity may cause blistering, including from activities such as writing, eating, walking, and from the seams on their clothes;

Whereas most individuals with the disease have inherited the disease through genes they receive from one or both parents;

Whereas epidermolysis bullosa is so rare that many health care practitioners have never heard of it or seen a patient with it;

Whereas individuals with epidermolysis bullosa often feel isolated because of the lack of knowledge in the Nation about the disease and the impact that it has on the body;

Whereas more funds should be dedicated toward research to develop treatments and eventually a cure for the disease; and

Whereas the last week of October would be an appropriate time to recognize National Epidermolysis Bullosa Week in order to raise public awareness about the prevalence of epidermolysis bullosa, the impact it has on families, and the need for additional research into a cure for the disease: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of a National Epidermolysis Bullosa Awareness Week to raise public awareness and understanding of epidermolysis bullosa;

(2) recognizes the need for a cure for the disease; and

(3) encourages the people of the United States and interested groups to support the week through appropriate ceremonies and activities to promote public awareness of epidermolysis bullosa and to foster understanding of the impact of the disease on patients and their families.

SENATE RESOLUTION 181—RECOGNIZING JULY 1, 2005, AS THE 100TH ANNIVERSARY OF THE FOREST SERVICE

Mr. SMITH (for himself, Mr. SALAZAR, Mr. CRAIG, Mr. CRAPO, Mr. BURNS, and Mr. FEINGOLD) submitted the following resolution; which was considered and agreed to:

S. RES. 181

Whereas Congress established the Forest Service in 1905 to provide quality water and timber for the benefit of the United States;

Whereas the mission of the Forest Service has expanded to include management of national forests for multiple uses and benefits, including the sustained yield of renewable resources such as water, forage, wildlife, wood, and recreation;

Whereas the National Forest System encompasses 192,000,000 acres in 44 States, Puerto Rico, and the Virgin Islands, including 155 national forests and 20 national grasslands;

Whereas the Forest Service significantly contributes to the scientific and technical knowledge necessary to protect and sustain natural resources on all land in the United States;

Whereas the Forest Service cooperates with State, Tribal, and local governments, forest industries, other private landowners, and forest users in the management, protection, and development of forest land the Federal Government does not own;

Whereas the Forest Service participates in work, training, and education programs such as AmeriCorps, Job Corps, and the Senior Community Service Employment Program;

Whereas the Forest Service plays a key role internationally in developing sustainable forest management and biodiversity conservation for the protection and sound management of the forest resources of the world;

Whereas, from rangers to researchers and from foresters to fire crews, the Forest Service has maintained a dedicated professional workforce that began in 1905 with 500 employees and in 2005 includes more than 30,000; and

Whereas Gifford Pinchot, the first Chief of the Forest Service, fostered the idea of managing for the greatest good of the greatest number: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes July 1, 2005 as the 100th Anniversary of the Forest Service;

(2) commends the Forest Service of the Department of Agriculture for 100 years of dedicated service managing the forests of the United States;

(3) acknowledges the promise of the Forest Service to continue to preserve the natural legacy of the United States for an additional 100 years and beyond; and

(4) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 990. Mr. KYL (for himself, Mr. LUGAR, Mr. LOTT, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill H.R. 6, To ensure jobs for our future with secure, affordable, and reliable energy.

SA 991. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 992. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 993. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 994. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 995. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 996. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 997. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 998. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 999. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 1000. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 1001. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, supra; which was ordered to lie on the table.

SA 1002. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table.

SA 1003. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, supra; which was ordered to lie on the table.

SA 1004. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, supra; which was ordered to lie on the table.

SA 1005. Mr. CRAIG (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill H.R. 6, To ensure jobs for our future with secure, affordable, and reliable energy.

SA 1006. Mr. CRAIG (for Mr. VITTER) proposed an amendment to the bill H.R. 6, supra.

SA 1007. Mr. CRAIG (for Mr. BYRD) proposed an amendment to the bill H.R. 6, supra.

SA 1008. Mr. CRAIG (for Ms. CANTWELL) proposed an amendment to the bill H.R. 6, supra.

SA 1009. Mr. CRAIG (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) proposed an amendment to the bill H.R. 6, supra.

TEXT OF AMENDMENTS

SA 889. Ms. SNOWE (for herself and Mr. STEVENS) submitted an amendment intended to be proposed by her to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

(Submitted on Wednesday, June 22, 2005.)

On page 323, beginning with line 7, strike through line 12 on page 325 and insert the following:

SEC. 387. COORDINATION WITH FEDERAL ENERGY REGULATORY COMMISSION.

Within 180 days after the date of enactment of this Act, the Secretary of Commerce shall submit a report to the Congress on the development of a memorandum of understanding with the Commissioner of the Federal Energy Regulatory Commission for a coordinated process for review of coastal energy activities that provides for—

(1) improved coordination among Federal, regional, State, and local agencies concerned with conducting reviews under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and

(2) coordinated schedules for such reviews that ensures that, where appropriate the reviews are performed concurrently.

SEC. 387A. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This section and sections 387B through 387T of this Act may be cited as the ''Coastal Zone Enhancement Reauthorization Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents for the Coastal Zone Enhancement Reauthorization Act of 2005 is as follows:

SEC. 387B. AMENDMENT OF COASTAL ZONE MANAGEMENT ACT OF 1972.

Except as otherwise expressly provided, whenever in sections 387C through 387T of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

SEC. 387C. FINDINGS.

Section 302 (16 U.S.C. 1451) is amended—

(1) by redesignating paragraphs (a) through (m) as paragraphs (1) through (13);

(2) by inserting ''ports,'' in paragraph (3) (as so redesignated) after ''fossil fuels,'';

(3) by inserting ''including coastal waters and wetlands,'' in paragraph (4) (as so redesignated) after ''zone,'';

(4) by striking ''therein,'' in paragraph (4) (as so redesignated) and inserting ''dependent on that habitat,'';

(5) by striking ''well-being'' in paragraph (5) (as so redesignated) and inserting ''quality of life'';

(6) by inserting ''integrated plans and strategies,'' after ''including'' in paragraph (9) (as so redesignated);

(7) by striking paragraph (11) (as so redesignated) and inserting the following:

''(11) Land and water uses in the coastal zone and coastal watersheds may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from activities in these areas must be improved.''; and

(8) by adding at the end thereof the following:

''(14) There is a need to enhance cooperation and coordination among states and local communities, to encourage local community-based solutions that address the impacts and pressures on coastal resources and on public facilities and public service caused by continued coastal demands, and to increase state and local capacity to identify public infrastructure and open space needs and develop and implement plans which provide for sustainable growth, resource protection and community revitalization.

''(15) The establishment of a national system of estuarine research reserves will provide for protection of essential estuarine resources, as well as for a network of State-based reserves that will serve as sites for coastal stewardship best-practices, monitoring, research, education, and training to improve coastal management and to help translate science and inform coastal decisionmakers and the public.''.

SEC. 387D. POLICY.

Section 303 (16 U.S.C. 1452) is amended—

(1) by striking ''the states'' in paragraph (2) and inserting ''state and local governments'';

(2) by inserting ''plans, and strategies'' after ''programs,'' in paragraph (2);

(3) by striking ''waters,'' each place it appears in paragraph (2)(C) and inserting ''waters and habitats,'';

(4) by striking ''agencies and state and wildlife agencies; and'' in paragraph (2)(J) and inserting ''and wildlife management; and'';

(5) by inserting ''cooperation, coordination, and effectiveness'' after ''specificity,'' in paragraph (3);

(6) by inserting ''other countries,'' after ''agencies,'' in paragraph (5);

(7) by striking ''and'' at the end of paragraph (5);

(8) by striking ''zone.'' in paragraph (6) and inserting ''zone;''; and

(9) by adding at the end thereof the following:

''(7) to create and use a National Estuarine Research Reserve System as a Federal, state, and community partnership to support and enhance coastal management and stewardship through State-based conservation, monitoring, research, education, outreach, and training; and

''(8) to encourage the development, application, training, technical assistance, and transfer of innovative coastal management practices and coastal and estuarine environmental technologies and techniques to improve understanding and management decisionmaking for the long-term conservation of coastal ecosystems.''.

SEC. 387E. CHANGES IN DEFINITIONS.

Section 304 (16 U.S.C. 1453) is amended—

(1) by striking ''and the Trust Territories of the Pacific Islands,'' in paragraph (4);

(2) in paragraph (6)—

(A) by inserting ''(ix) use or reuse of facilities authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) for energy-related purposes or other authorized marine related purposes;'' after ''transmission facilities;''; and

(B) by striking ''and (ix)'' and inserting ''and (x);

(3) by striking paragraph (8) and inserting the following:

''(8) The terms 'estuarine reserve' and 'estuarine research reserve' mean a coastal protected area that—

''(A) may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to the estuary;

''(B) constitutes to the extent feasible a natural unit; and

''(C) is established to provide long-term opportunities for conducting scientific studies and monitoring and educational and training programs that improve the understanding, stewardship, and management of estuaries and improve coastal decisionmaking.'';

(4) by inserting ''plans, strategies,'' after ''policies,'' in paragraph (12);

(5) in paragraph (13)—

(A) by inserting ''or alternative energy sources on or'' after ''natural gas'';

(B) by striking ''new or expanded'' and inserting ''new, reused, or expanded''; and

(C) by striking ''or production.'' and inserting ''production, or other energy related purposes.'';

(6) by inserting ''incentives, guidelines,'' after ''policies,'' in paragraph (17); and

(7) by adding at the end the following:

''(19) The term 'coastal nonpoint pollution control strategies and measures' means strategies and measures included as part of the coastal nonpoint pollution control program under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b).

''(20) The term 'qualified local entity' means—

''(A) any local government;

''(B) any areawide agency referred to in section 204(a)(1) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334 (a)(1));

''(C) any regional agency;

''(D) any interstate agency;

''(E) any nonprofit organization; or

''(F) any reserve established under section 315.''.

SEC. 387F. REAUTHORIZATION OF MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 (16 U.S.C. 1454) is amended to read as follows:

''SEC. 305. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

''(a) STATES WITHOUT PROGRAMS.—In fiscal years 2006 and 2007, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state under this subsection, no subsequent grant may be made to that coastal state under this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than 4 grants under this subsection.

''(b) SUBMITTAL OF PROGRAM FOR APPROVAL.—A coastal state that has completed the development of its management program shall submit the program to the Secretary for review and approval under section 306.''.

SEC. 387G. ADMINISTRATIVE GRANTS.

(a) PURPOSES.—Section 306(a) (16 U.S.C. 1455(a)) is amended by striking ''administering that State's management program'' and inserting ''administering and implementing that State's management program and any plans, projects, or activities developed pursuant to such program, including developing and implementing applicable coastal nonpoint pollution control program components,''.

(b) EQUITABLE ALLOCATION OF FUNDING.—Section 306(c) (16 U.S.C. 1455(c)) is amended by adding at the end thereof ''In promoting equity, the Secretary shall consider the overall change in grant funding under this section from the preceding fiscal year and minimize the relative increases or decreases among all the eligible States. The Secretary shall ensure that each eligible State receives increased funding under this section in any fiscal year for which the total amount appropriated to carry out this section is greater than the total amount appropriated to carry out this section for the preceding fiscal year.

(c) ACQUISITION CRITERIA.—Section 306(d)(10)(B) (16 U.S.C. 1455(d)(10)(B)) is amended by striking ''less than fee simple'' and inserting ''other''.

(d) CONFORMING AMENDMENT.—Section 306(d)(13)(B) (16 U.S.C. 1455(d)(13)(B)) is amended by inserting ''policies, plans, strategies,'' after ''specific''.

SEC. 387H. COASTAL RESOURCE IMPROVEMENT PROGRAM.

Section 306A (16 U.S.C. 1455a) is amended—

(1) by inserting ''or other important coastal habitats'' in subsection (b)(1)(A) after ''306(d)(9)'';

(2) by inserting ''or historic'' in subsection (b)(2) after ''urban'';

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

''(5) The coordination and implementation of approved coastal nonpoint pollution control plans, strategies, and measures.

''(6) The preservation, restoration, enhancement or creation of coastal habitats.'';

(4) by inserting ''planning,'' before ''engineering'' in subsection (c)(2)(D);

(5) by striking ''and'' after the semicolon in subsection (c)(2)(D);

(6) by striking ''section.'' in subsection (c)(2)(E) and inserting ''section;'';

(7) by adding at the end of subsection (c)(2) the following:

''(F) work, resources, or technical support necessary to preserve, restore, enhance, or create coastal habitats; and

''(G) the coordination and implementation of approved coastal nonpoint pollution control plans, strategies, measures.''; and

(8) by striking subsections (d), (e), and (f) and inserting after subsection (c) the following:

''(d) SOURCE OF FEDERAL GRANTS; STATE MATCHING CONTRIBUTIONS.—

''(1) IN GENERAL.—If a coastal state chooses to fund a project under this section, then—

''(A) it shall submit to the Secretary a combined application for grants under this section and section 306;

''(B) it shall match the combined amount of such grants in the ratio required by section 306(a) for grants under that section; and

''(C) the Federal funding for the project shall be a portion of that state's annual allocation under section 306(a).

''(2) USE OF FUNDS.—Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

''(e) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY.—With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

''(f) ASSISTANCE.—The Secretary shall assist eligible coastal states in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (b).''.

SEC. 387I. CERTAIN FEDERAL AGENCY ACTIVITIES.

Section 307(c)(1) (16 U.S.C. 1456(c)(1)) is amended by adding at the end the following:

''(D) The provisions of paragraph (1)(A), and implementing regulations thereunder,

with respect to a Federal agency activity inland of the coastal zone of the State of Alaska apply only if the activity directly and significantly affects a land or water use or a natural resource of the Alaskan coastal zone.''.

SEC. 387J. COASTAL ZONE MANAGEMENT FUND.

(a) TREATMENT OF LOAN REPAYMENTS.—Section 308(a)(2) (16 U.S.C. 1456a(a)(2)) is amended to read as follows:

''(2) Loan repayments made under this subsection shall be retained by the Secretary and deposited into the Coastal Zone Management Fund established under subsection (b) and shall be made available to the States for grants as under subsection (b)(2).

(b) USE OF AMOUNTS IN FUND.—Section 308(b) (16 U.S.C. 1456a(b)) is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) Subject to appropriation Acts, amounts in the Fund shall be available to the Secretary to make grants to the States for—

''(A) projects to address coastal and ocean management issues which are regional in scope, including intrastate and interstate projects; and

''(B) projects that have high potential for improving coastal zone and watershed management.

''(3) Projects funded under this subsection shall apply an integrated, watershed-based management approach and advance the purpose of this Act to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.''.

SEC. 387K. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 (16 U.S.C. 1456b) is amended—

(1) by striking subsection (a)(1) and inserting the following:

''(1) Protection, restoration, enhancement, or creation of coastal habitats, including wetlands, coral reefs, marshes, and barrier islands.'';

(2) by inserting ''and removal'' after ''entry'' in subsection (a)(4);

(3) by striking ''on various individual uses or activities on resources, such as coastal wetlands and fishery resources.'' in subsection (a)(5) and inserting ''of various individual uses or activities on coastal waters, habitats, and resources, including sources of polluted runoff.'';

(4) by adding at the end of subsection (a) the following:

''(10) Development and enhancement of coastal nonpoint pollution control program components, strategies, and measures, including the satisfaction of conditions placed on such programs as part of the Secretary's approval of the programs.

''(11) Significant emerging coastal issues as identified by coastal states, in consultation with the Secretary and qualified local entities.'';

(5) by striking ''changes'' and inserting ''changes, or for projects that demonstrate significant potential for improving ocean resource management or integrated coastal and watershed management at the local, state or regional level,'';

(6) by striking ''proposals, taking into account the criteria established by the Secretary under subsection (d).'' in subsection (c) and inserting ''proposals.'';

(7) by striking subsection (d) and redesignating subsection (e) as subsection (d);

(8) by striking ''in implementing this section, up to a maximum of $10,000,000 annually'' in subsection (f) and inserting ''for grants to the States.''; and

(9) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 387L. COASTAL COMMUNITY PROGRAM.

The Act is amended by inserting after section 309 the following:

''SEC. 309A. COASTAL COMMUNITY PROGRAM.

''(a) COASTAL COMMUNITY GRANTS.—The Secretary may make grants to any coastal state that is eligible under subsection (b)—

''(1) to assist coastal communities in assessing and managing growth, public infrastructure, and open space needs in order to provide for sustainable growth, resource protection and community revitalization;

''(2) to provide management-oriented research and technical assistance in developing and implementing community-based growth management and resource protection strategies in qualified local entities;

''(3) to fund demonstration projects which have high potential for improving coastal zone management at the local level;

''(4) to assist in the adoption of plans, strategies, policies, or procedures to support local community-based environmentally-protective solutions to the impacts and pressures on coastal uses and resources caused by development and sprawl that will—

''(A) revitalize previously developed areas;

''(B) undertake conservation activities and projects in undeveloped and environmentally sensitive areas;

''(C) emphasize water-dependent uses; and

''(D) protect coastal waters and habitats; and

''(5) to assist coastal communities to coordinate and implement approved coastal nonpoint pollution control strategies and measures that reduce the causes and impacts of polluted runoff on coastal waters and habitats.''.

''(b) ELIGIBILITY.—To be eligible for a grant under this section for a fiscal year, a coastal state shall—

''(1) have a management program approved under section 306; and

''(2) in the judgment of the Secretary, be making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K).

''(c) ALLOCATIONS; SOURCE OF FEDERAL GRANTS; STATE MATCHING CONTRIBUTIONS.—

''(1) ALLOCATION.—Grants under this section shall be allocated to coastal states as provided in section 306(c).

''(2) APPLICATION; MATCHING.—If a coastal state chooses to fund a project under this section, then—

''(A) it shall submit to the Secretary a combined application for grants under this section and section 306; and

''(B) it shall match the amount of the grant under this section on the basis of a total contribution of section 306, 306A, and this section so that, in aggregate, the match is 1:1.

''(d) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY.—

''(1) IN GENERAL.—With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity amounts received by the state under this section.

''(2) ASSURANCES.—A coastal state shall ensure that amounts allocated by the state under paragraph (1) are used by the qualified local entity in furtherance of the state's approved management program, specifically furtherance of the coastal management objectives specified in section 303(2).

''(e) ASSISTANCE.—The Secretary shall assist eligible coastal states and qualified local entities in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (a).''.

SEC. 387M. TECHNICAL ASSISTANCE; RESOURCES ASSESSMENTS; INFORMATION SYSTEMS.

(a) IN GENERAL.—Section 310 (16 U.S.C. 1456c) is amended—

(1) by inserting ''(1)'' before ''The Secretary'' in subsection (a);

(2) by striking ''assistance'' in subsection (a) and inserting ''assistance, technology and methodology development, training and information transfer, resources assessment, and'';

(3) by adding at the end of subsection (a) the following:

''(2) Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.'';

(4) by striking ''and research activities,'' in subsection (b)(1) and inserting ''research activities, and other support services and activities'';

(5) by inserting after ''Secretary.'' in subsection (b)(1) the following: ''The Secretary may conduct a program to develop and apply innovative coastal and estuarine environmental technology and methodology through a cooperative program, and to support the development, application, training and technical assistance, and transfer of effective coastal management practices. The Secretary may make extramural grants in carrying out the purpose of this subsection.'';

(6) by inserting after ''section.'' in subsection (b)(3) the following: ''The Secretary shall establish regional advisory committees including representatives of the Governors of each state within the region, universities, colleges, coastal and marine laboratories, Sea Grant College programs within the region and representatives from the private and public sector with relevant expertise. The Secretary will report to the regional advisory committees on activities undertaken by the Secretary and other agencies pursuant to this section, and the regional advisory committees shall identify research, technical assistance and information needs and priorities. The regional advisory committees are not subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).''; and

(7) by adding at the end the following:

''(c)(1) The Secretary shall consult with the regional advisory committees concerning the development of a coastal resources assessment and information program to support development and maintenance of integrated coastal resource assessments of state natural, cultural and economic attributes, and coastal information programs for the collection and dissemination of data and information, product development, and outreach based on the needs and priorities of coastal and ocean managers and user groups.

''(2) The Secretary shall assist coastal states in identifying and obtaining financial and technical assistance from other Federal agencies and may make grants to states in carrying out the purpose of this section and to provide ongoing support for state resource assessment and information programs.''.

(b) CONFORMING AMENDMENT.—The section heading for section 310 (16 U.S.C. 1456c) is amended to read as follows:

''SEC. 310. TECHNICAL ASSISTANCE, RESOURCES ASSESSMENTS, AND INFORMATION SYSTEMS.

SEC. 387N. PERFORMANCE REVIEW.

Section 312(a) (16 U.S.C. 1458(a)) is amended—

(1) by striking ''continuing review of the performance'' and inserting ''periodic review, no less frequently than every 5 years, of the administration, implementation, and performance'';

(2) by striking ''management.'' and inserting ''management programs.'';

(3) by striking ''has implemented and enforced'' and inserting ''has effectively administered, implemented, and enforced'';

(4) by striking ''addressed the coastal management needs identified'' and inserting ''furthered the national coastal policies and objectives set forth'' after ''Secretary,''; and

(5) by inserting ''coordinated with National Estuarine Research Reserves in the state'' after ''303(2)(A) through (K),''.

SEC. 387O. WALTER B. JONES AWARDS.

Section 314 (16 U.S.C. 1460) is amended—

(1) by striking ''shall, using sums in the Coastal Zone Management Fund established under section 308'' in subsection (a) and inserting ''may, using sums available under this Act'';

(2) by striking ''field.'' in subsection (a) and inserting the following: ''field of coastal zone management. These awards, to be known as the 'Walter B. Jones Awards', may include—

''(1) cash awards in an amount not to exceed $5,000 each;

''(2) research grants; and

''(3) public ceremonies to acknowledge such awards.'';

(3) by striking ''shall elect annually—'' in subsection (b) and inserting ''may select annually if funds are available under subsection (a)—''; and

(4) by striking subsection (e).

SEC. 387P. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) Section 315(a) (16 U.S.C. 1461(a)) is amended by striking ''consists of—'' and inserting ''is a network of areas protected by Federal, state, and community partnerships which promotes informed management of the Nation's estuarine and coastal areas through interconnected programs in resource stewardship, education and training, monitoring, research, and scientific understanding consisting of—''.

(b) Section 315(b)(2) ((16 U.S.C. 1461(b)(2)) is amended—

(1) by inserting ''for each coastal state or territory'' after ''research'' in subparagraph (A);

(2) by striking ''public awareness and'' in subparagraph (C) and inserting ''state coastal management, public awareness, and''; and

(3) by striking ''public education and interpretation; and''; in subparagraph (C) and inserting ''education, interpretation, training, and demonstration projects; and''.

(c) Section 315(c) (16 U.S.C. 1461(c)) is amended—

(1) by striking ''RESEARCH'' in the subsection caption and inserting ''RESEARCH, EDUCATION, AND RESOURCE STEWARDSHIP'';

(2) by striking ''conduct of research'' and inserting ''conduct of research, education, and resource stewardship'';

(3) by striking ''coordinated research'' in paragraph (1)) and inserting ''coordinated research, education, and resource stewardship'';

(4) by striking ''research'' before ''principles'' in paragraph (2);

(5) by striking ''research programs'' in paragraph (2) and inserting ''research, education, and resource stewardship programs'';

(6) by striking ''research'' before ''methodologies'' in paragraph (3);

(7) by striking ''data,'' in paragraph (3) and inserting ''information,'';

(8) by striking ''research'' before ''results'' in paragraph (3);

(9) by striking ''research purposes;'' in paragraph (3) and inserting ''research, education, and resource stewardship purposes;'';

(10) by striking ''research efforts'' in paragraph (4) and inserting ''research, education, and resource stewardship efforts'';

(11) by striking ''research'' in paragraph (5) and inserting ''research, education, and resource stewardship''; and

(12) by striking ''research'' in the last sentence.

(d) Section 315(d) (16 U.S.C. 1461(d)) is amended—

(1) by striking ''ESTUARINE RESEARCH.—'' in the subsection caption and inserting ''ESTUARINE RESEARCH, EDUCATION, AND RESOURCE STEWARDSHIP.—'';

(2) by striking ''research purposes'' and inserting ''research, education, and resource stewardship purposes'';

(3) by striking paragraph (1) and inserting the following:

''(1) giving reasonable priority to research, education, and stewardship activities that use the System in conducting or supporting activities relating to estuaries; and'';

(4) by striking ''research.'' in paragraph (2) and inserting ''research, education, and resource stewardship activities.''; and

(5) by adding at the end thereof the following:

''(3) establishing partnerships with other Federal and state estuarine management programs to coordinate and collaborate on estuarine research.''.

(e) Section 315(e) (16 U.S.C. 1461(e)) is amended—

(1) by striking ''reserve,'' in paragraph (1)(A)(i) and inserting ''reserve; and'';

(2) by striking ''and constructing appropriate reserve facilities, or'' in paragraph (1)(A)(ii) and inserting ''including resource stewardship activities and constructing reserve facilities; and'';

(3) by striking paragraph (1)(A)(iii);

(4) by striking paragraph (1)(B) and inserting the following:

''(B) to any coastal state or public or private person for purposes of—

''(i) supporting research and monitoring associated with a national estuarine reserve that are consistent with the research guidelines developed under subsection (c); or

''(ii) conducting educational, interpretive, or training activities for a national estuarine reserve that are consistent with the education guidelines developed under subsection (c).'';

(5) by striking ''therein or $5,000,000, whichever amount is less.'' in paragraph (3)(A) and inserting ''therein. Non-Federal costs associated with the purchase of any lands and waters, or interests therein, which are incorporated into the boundaries of a reserve up to 5 years after the costs are incurred, may be used to match the Federal share.'';

(6) by striking ''and (iii)'' in paragraph (3)(B);

(7) by striking ''paragraph (1)(A)(iii)'' in paragraph (3)(B) and inserting ''paragraph (1)(B)'';

(8) by striking ''entire System.'' in paragraph (3)(B) and inserting ''System as a whole.''; and

(9) by adding at the end thereof the following:

''(4) The Secretary may—

''(A) enter into cooperative agreements, financial agreements, grants, contracts, or other agreements with any nonprofit organization, authorizing the organization to solicit donations to carry out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section; and

''(B) accept donations of funds and services for use in carrying out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section.

Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States for the purpose of carrying out this section.''.

(f) Section 315(f)(1) (16 U.S.C. 1461(f)(1)) is amended by inserting ''coordination with other state programs established under sections 306 and 309A,'' after ''including''.

SEC. 387Q. COASTAL ZONE MANAGEMENT REPORTS.

Section 316 (16 U.S.C. 1462) is amended—

(1) by striking ''to the President for transmittal'' in subsection (a);

(2) by striking ''zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences;'' and inserting ''zone;'' in the provision designated as (10) in subsection (a);

(3) by inserting ''education,'' after the ''studies,'' in the provision designated as (12) in subsection (a);

(4) by striking ''Secretary'' in the first sentence of subsection (c)(1) and inserting ''Secretary, in consultation with coastal states, and with the participation of affected Federal agencies,'';

(5) by striking the second sentence of subsection (c)(1) and inserting the following: ''The Secretary, in conducting such a review, shall coordinate with, and obtain the views of, appropriate Federal agencies.'';

(6) by striking ''shall promptly'' in subsection (c)(2) and inserting ''shall, within 4 years after the date of enactment of the Coastal Zone Enhancement Reauthorization Act of 2005,''; and

(7) by adding at the end of subsection (c)(2) the following: ''If sufficient funds and resources are not available to conduct such a review, the Secretary shall so notify the Congress.''.

SEC. 387R. AUTHORIZATION OF APPROPRIATIONS.

Section 318 (16 U.S.C. 1464) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

''(1) for grants under sections 306, 306A, and 309—

''(A) $90,500,000 for fiscal year 2006,

''(B) $94,000,000 for fiscal year 2007,

''(C) $98,000,000 for fiscal year 2008,

''(D) $102,000,000 for fiscal year 2009, and

''(E) $106,000,000 for fiscal year 2010;

''(2) for grants under section 309A—

''(A) $29,000,000 for fiscal year 2006,

''(B) $30,000,000 for fiscal year 2007,

''(C) $31,000,000 for fiscal year 2008,

''(D) $32,000,000 for fiscal year 2009, and

''(E) $32,000,000 for fiscal year 2010,

of which $10,000,000, or 35 percent, whichever is less, shall be for purposes set forth in section 309A(a)(5);

''(3) for grants under section 315—

''(A) $37,000,000 for fiscal year 2006,

''(B) $38,000,000 for fiscal year 2007,

''(C) $39,000,000 for fiscal year 2008,

''(D) $40,000,000 for fiscal year 2009, and

''(E) $41,000,000 for fiscal year 2010,

of which up to $15,000,000 may be used by the Secretary in each of fiscal years 2006 through 2010 for grants to fund construction and acquisition projects at estuarine reserves designated under section 315;

''(4) for costs associated with administering this title, $7,500,000 for fiscal year 2006 and such sums as are necessary for fiscal years 2007 through 2010.''; and

''(5) for grants under section 310 to support State pilot projects to implement resource

assessment and information programs, $6,000,000 for each of fiscal years 2006 and 2007.'';

(2) by striking ''306 or 309.'' in subsection (b) and inserting ''306.'';

(3) by striking ''during the fiscal year, or during the second fiscal year after the fiscal year, for which'' in subsection (c) and inserting ''within 3 years from when'';

(4) by striking ''under the section for such reverted amount was originally made available.'' in subsection (c) and inserting ''to states under this Act.''; and

(5) by adding at the end thereof the following:

''(d) PURCHASE OF OTHERWISE UNAVAILABLE FEDERAL PRODUCTS AND SERVICES.—Federal funds allocated under this title may be used by grantees to purchase Federal products and services not otherwise available.

''(e) RESTRICTIONS ON USE OF AMOUNTS.—

''(1) USE OF AMOUNTS FOR PROGRAM, ADMINISTRATIVE, OR OVERHEAD COSTS.—Except for funds appropriated under subsection (a)(4), shall not be available for other program, administrative, or overhead costs of the National Oceanic and Atmospheric Administration or the Department of Commerce.

''(2) GRANTS TO STATES.—Funds appropriated pursuant to subsections (a)(1) and (a)(2) shall be made available only for grants to States.''.

SEC. 387S. DEADLINE FOR DECISION ON APPEALS OF CONSISTENCY DETERMINATION.

(a) IN GENERAL.—Section 319 (16 U.S.C. 1465) is amended to read as follows:

''SEC. 319. APPEALS TO THE SECRETARY.

''(a) NOTICE.—Not later than 30 days after the date of the filing of an appeal to the Secretary of a consistency determination under section 307, the Secretary shall publish an initial notice in the Federal Register.

''(b) CLOSURE OF RECORD.—

''(1) IN GENERAL.—Not later than the end of the 270-day period beginning on the date of publication of an initial notice under subsection (a), except as provided in paragraph (3), the Secretary shall immediately close the decision record and receive no more filings on the appeal.

''(2) NOTICE.—After closing the administrative record, the Secretary shall immediately publish a notice in the Federal Register that the administrative record has been closed.

''(3) EXCEPTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), during the 270-day period described in paragraph (1), the Secretary may stay the closing of the decision record—

''(i) for a specific period mutually agreed to in writing by the appellant and the State agency; or

''(ii) as the Secretary determines necessary to receive, on an expedited basis—

''(I) any supplemental information specifically requested by the Secretary to complete a consistency review under this Act; or

''(II) any clarifying information submitted by a party to the proceeding related to information already existing in the sole record.

''(B) APPLICABILITY.—The Secretary may only stay the 270-day period described in paragraph (1) for a period not to exceed 60 days.

''(c) DEADLINE FOR DECISION.—

''(1) IN GENERAL.—Not later than 90 days after the date of publication of a Federal Register notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the Federal Register explaining why a decision cannot be issued at that time.

''(2) SUBSEQUENT DECISION.—Not later than 45 days after the date of publication of a Federal Register notice explaining why a decision cannot be issued within the 90-day period, the Secretary shall issue a decision.''.

SEC. 387T. SENSE OF CONGRESS.

It is the sense of Congress that the Undersecretary for Oceans and Atmosphere should re-evaluate the calculation of shoreline mileage used in the distribution of funding under the Coastal Zone Management Program to ensure equitable treatment of all regions of the coastal zone, including the Southeastern States and the Great Lakes States.

SA 990. Mr. KYL (for himself, Mr. LUGAR, Mr. LOTT, and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 621. MEDICAL ISOTOPE PRODUCTION: NONPROLIFERATION, ANTITERRORISM, AND RESOURCE REVIEW.

(a) DEFINITIONS.—In this section:

(1) HIGHLY ENRICHED URANIUM FOR MEDICAL ISOTOPE PRODUCTION.—The term ''highly enriched uranium for medical isotope production'' means highly enriched uranium contained in, or for use in, targets to be irradiated for the sole purpose of producing medical isotopes.

(2) MEDICAL ISOTOPES.—The term ''medical isotopes'' means radioactive isotopes, including molybdenum-99, that are used to produce radiopharmaceuticals for diagnostic or therapeutic procedures on patients.

(b) STUDY.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall enter into an arrangement with the National Academy of Sciences for the conduct of a study of issues associated with section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d), including issues associated with the implementation of that section.

(2) CONTENTS.—The study shall include an analysis of—

(A) the effectiveness to date of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) in facilitating the conversion of foreign reactor fuel and targets to low-enriched uranium, which reduces the risk that highly enriched uranium will be diverted and stolen;

(B) the degree to which isotope producers that rely on United States highly enriched uranium are complying with the intent of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to expeditiously convert targets to low-enriched uranium;

(C) the adequacy of physical protection and material control and accounting measures at foreign facilities that receive United States highly enriched uranium for medical isotope production, in comparison to Nuclear Regulatory Commission regulations and Department administrative requirements;

(D) the likely consequences of an exemption of highly enriched uranium exports for medical isotope production from section 134(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2160d(a)) for—

(i) United States efforts to eliminate highly enriched uranium commerce worldwide through the support of the Reduced Enrichment in Research and Test Reactors program; and

(ii) other United States nonproliferation and antiterrorism initiatives;

(E) incentives that could supplement the incentives of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) to further encourage foreign medical isotope producers to convert from highly enriched uranium to low-enriched uranium;

(F) whether implementation of section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) has ever caused, or is likely to cause, an interruption in the production and supply of medical isotopes in needed quantities;

(G) whether the United States supply of isotopes is sufficiently diversified to withstand an interruption of production from any 1 supplier, and, if not, what steps should be taken to diversify United States supply; and

(H) any other aspects of implementation of section 134 of of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) that have a bearing on Federal nonproliferation and antiterrorism laws (including regulations) and policies.

(3) TIMING; CONSULTATION.—The National Academy of Sciences study shall be—

(A) conducted in full consultation with the Secretary of State, the staff of the Reduced Enrichment in Research and Test Reactors program at Argonne National Laboratory, and other interested organizations and individuals with expertise in nuclear nonproliferation; and

(B) submitted to Congress not later than 18 months after the date of enactment of this Act.

SA 991. Mr. ALLEN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

SEC. 13____. STUDY OF FEASIBILITY AND EFFECTS OF NATURAL GAS-ONLY LEASING.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior shall initiate a study of the feasibility and effects of offering a natural gas-only option as part of lease sales held in accordance with the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(b) SUBJECTS OF THE STUDY.—The study under this section shall include—

(1) an examination of what constitutes gas, condensate, and oil;

(2) an examination of what constitutes the rights and obligations of a lessee regarding condensate produced in association with a natural gas-only lease; and

(3) an analysis of the potential effects of offering a natural gas-only option as part of a lease sale on—

(A) natural gas supplies;

(B) total hydrocarbon production; and

(C) industry interest.

(c) REPORT.—Not later than 1 year after the date of initiation of the study under this section, the Secretary shall submit to Congress a report on the findings, conclusion, and recommendations of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 992. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

Beginning on page 1, strike line 6 and all that follows through page 2, line 3, and insert the following:

Power Act (16 U.S.C. 824k(j)) is amended by striking ''October 1, 1991'' and inserting ''April 1, 2005''.

SA 993. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, Line 18–20, strike ''the consent of the Governor of the State adjacent to the lease area, as determined under section 18(i)(2)(B)(i),'' and replace with ''the consent of the Governors and State Legislatures of all other States in the Union''
2. On page 4, after ''and'' insert ''the Governors of all other States in the Union''
3. On page 5, line 17, after ''any'' insert ''time and with the consent of all other States in the Union''
4. On page 10, Line 18, strike ''20 miles'' and replace with ''4,000'' miles''
5. On page 10, Line 25, strike ''20 miles'' and replace with ''4,000'' miles''
6. On page 11, strike lies 3–20
7. On page 11, Line 9, strike ''25 percent'' and replace with ''0.1 percent''
8. On page 11, Line 14, strike ''25 percent'' and replace with ''0.1 percent''
19. On page 12, Line 2, strike ''12.5 percent'' and replace with ''0.1 percent''
10. On page 12, Line 4, strike ''$1,250,000,000'' and replace with ''$500,000''

SA 994. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, To ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 3, strike Line 18, and insert ''the consent of the Governor and State Legislatures of all other states in the Union''

SA 995. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, Line 18–20, strike ''the consent of the Governor of the State adjacent to the lease area, as determined under section 18(i)(2)(B)(i),'' and replace with ''the consent of the Governors and State Legislatures of all other States in the Union''
2. On page 4, after ''and'' insert'' the ''the Governors of all other States in the Union''
3. On page 5, line 17, after ''any'' insert ''time and with the consent of all other States in the Union''
4. On page 7, Line 14, strike ''may'' and replace with ''may, with the consent of all other States in the Union,''
5. On page 7, Line 18, replace ''State,'' with ''State.''
6. On page 7, Lines 18–20, strike ''in accordance with the lateral boundaries delineated under paragraph (2)(B)(i)
7. On page 9, Line 13, strike ''without'' and replace with ''with''
8. On page 9, Line 14, strike ''with any State'' and replace with ''with every State in the Union''
9. On page 10, Line 16, strike ''20 miles'' and replace with ''4,000'' miles''
10. On page 10, Line 17, strike ''(or the boundaries of the State as delineated under paragraph (2)(B)),''
11. On page 10, Line 25, strike ''20 miles'' and replace with ''4,000 miles''
12. On page 11, strike lines 3–20
13. On page 12, Line 2, strike ''12.5 percent'' and replace with ''0.1 percent''
14. On page 12, Line 4, strike ''$1,250,000,000'' and replace with ''$500,000''

SA 996. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, Line 18–20, strike ''the consent of the Governor of the State adjacent to the lease area, as determined under section 18(i)(2)(B)(i),'' and replace with ''the consent of the Governors and State Legislatures of all other States in the Union''
2. On page 4, after ''and'' insert'' the ''the Governors of all other States in the Union''
3. On page 5, line 17, after ''any'' insert ''time and with the consent of all other States in the Union''
4. On page 7, Line 14, strike ''may'' and replace with ''may, with the consent of all other States in the Union,''
5. On page 7, Line 18, replace ''State,'' with ''State.''
6. On page 7, Lines 18–20, strike ''in accordance with the lateral boundaries delineated under paragraph (2)(B)(i)
7. On page 9, Line 13, strike ''without'' and replace with ''with''
8. On page 9, Line 14, strike ''with any State'' and replace with ''with every State in the Union''
9. On page 10, Line 16, strike ''20 miles'' and replace with ''4,000'' miles''
10. On page 10, Line 17, strike ''(or the boundaries of the State as delineated under paragraph (2)(B)),''
11. On page 10, Line 25, strike ''20 miles'' and replace with ''4,000 miles''
12. On page 11, Line 9, strike ''25 percent'' and replace with ''0.1 percent''
13. On page 11, Line 14, strike ''25 percent'' and replace with ''0.1 percent''
14. On page 12, Line 2, strike ''12.5 percent'' and replace with ''0.1 percent''
15. On page 12, Line 4, strike ''$1,250,000,000'' and replace with ''$500,000''

SA 997. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, line 18–20, strike ''the consent of the Governor of the State adjacent to the lease area, as determined under section 18(i)(2)(B)(i),'' and replace with ''the consent of the Governors and State Legislatures of all other States in the Union with a coast''.
2. On page 4, after ''and'' insert ''the Governors of all other States in the Union with a coast''.
3. On page 5, line 17, after ''any'' insert ''time and with the consent of all other States in the Union with a coast''.
4. On page 7, line 14, strike ''may'' and replace with ''may, with the consent of all other States in the Union with a coast''.
5. On page 7, line 18, replace ''State,'' with ''State.''
6. On page 7, lines 18–20, strike ''in accordance with the lateral boundaries delineated under paragraph (2)(B)(i).
7. On page 9, line 13, strike ''without'' and replace with ''with''.
8. On page 9, line 14, strike ''with any State'' and replace with ''with every State with a coast''.
9. On page 10, line 16, strike ''20 miles'' and replace with ''4,000'' miles''.
10. On page 10, line 17, strike ''(or the boundaries of the State as delineated under paragraph (2)(B))''.
11. On page 10, line 25, strike ''20 miles'' and replace with ''4,000 miles''.
12. On page 11, line 9, strike ''25 percent'' and replace with ''0.1 percent''.
13. On page 11, line 14, strike ''25 percent'' and replace with ''0.1 percent''.
14. On page 12, line 2, strike ''12.5 percent'' and replace with ''0.1 percent''.
15. On page 12, line 4, strike ''$1,250,000,000'' and replace with ''$500,000''.

SA 998. Mr. CORZINE submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

1. On page 3, line 18–20, strike ''the consent of the Governor of the State adjacent to the lease area, as determined under section 18(i)(2)(B)(i),'' and replace with ''the consent of the Governors and State Legislatures of all other States in the Union with a coast''.
2. On page 4, after ''and'' insert ''the Governors of all other States in the Union with a coast''.
3. On page 5, line 17, after ''any'' insert ''time and with the consent of all other States in the Union with a coast''.
4. On page 7, line 14, strike ''may'' and replace with ''may, with the consent of all other States in the Union with a coast''.
5. On page 7, line 18, replace ''State,'' with ''State.''
6. On page 7, lines 18–20, strike ''in accordance with the lateral boundaries delineated under paragraph (2)(B)(i).
7. On page 9, line 13, strike ''without'' and replace with ''with''.
8. On page 9, line 14, strike ''with any State'' and replace with ''with every State with a coast''.
9. On page 10, line 16, strike ''20 miles'' and replace with ''4,000'' miles''.
10. On page 10, line 17, strike ''(or the boundaries of the State as delineated under paragraph (2)(B))''.
11. On page 10, line 25, strike ''20 miles'' and replace with ''4,000 miles''.
12. On page 11, line 9, strike ''25 percent'' and replace with ''0.1 percent''.
13. On page 11, line 14, strike ''25 percent'' and replace with ''0.1 percent''.
14. On page 12, line 2, strike ''12.5 percent'' and replace with ''0.1 percent''.
15. On page 12, line 4, strike ''$1,250,000,000'' and replace with ''$500,000''.

SA 999. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

Beginning on page 1, strike line 7: ''April 1, 2005'', and insert ''October 1, 1991.''

SA 1000. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 12, strike line 16 and insert the following:

''(5) MORATORIA OPT OUT REQUIREMENTS.—Any State with a legislative outer Continental Shelf moratorium on leasing, preleasing, and related activities protecting Federal waters adjoining the coastline of the State through the congressional appropriations process as of January 1, 2002, may opt out of the moratorium after the date of enactment of the Energy Policy Act of 2005 with respect to any portion of the coastal waters of the State only with—

''(A) the explicit concurrence of the Governor of the State and the State legislature and the Governors and State legislatures of the 2 coastal States adjoining the State; and

''(B) the concurrence of the Regional Fishery Management Council with jurisdiction over the living marine resources in Federal waters adjacent to the affected State.

''(6) USE OF FUNDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any

amount derived from lease bonuses or royalty payments under this subsection conveyed to States and political subdivisions of any producing State or any other State, shall only be used for mitigation measures and environmental restoration projects that—

''(i) have been subject to comprehensive review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) ; and

''(ii) specifically repair and restore the adverse physical and pollution impacts of onshore and offshore oil and gas facilities, transportation facilities, and related operations associated with Federal offshore oil and gas leasing, exploration, and development activities.

''(B) LIMITATION.—No funds made available to States or political subdivisions under this or any related revenue-sharing subsection may be used for—

''(i) the construction, design, or permitting ofindustrial infrastructure projects; or

''(ii) projects that further harm the coastal zone of the affected State or any adjoining State or adjacent offshore waters.

''(7) LIABILITY.—

''(A) IN GENERAL.—The State subject to an approved petition under this subsection shall be liable for any damages to coastal natural resources and ecosystems of adjoining or nearby States resulting from offshore oil and gas leasing, exploration, development, or transportation activities conducted in any Federal or State portion of the area of the outer Continental Shelf made available for leasing under this subsection.

''(B) INDEMNIFICATION.—The United States may not indemnify a State from liability under this subsection.

''(8) APPLICATION.—This subsection shall not

SA 1001. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; which was ordered to lie on the table; as follows:

On page 159, after line 23, add the following:

SEC. 211. WASTE-DERIVED ETHANOL AND BIODIESEL.

Section 312(f)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)(1)) is amended—

(1) by striking '''biodiesel' means'' and inserting the following: '''biodiesel'—

''(A) means''; and

(2) in subparagraph (A) (as designated by paragraph (1)) by striking ''and'' at the end and inserting the following:

''(B) includes ethanol and biodiesel derived from—

''(i) animal wastes, including poultry fats and poultry wastes, and other waste materials; or

''(ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and''.

SA 1002. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. Notwithstanding any other provision of this Act, each amount provided by this Act is reduced by 1.7 percent.

SA 1003. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. Any limitation, directive, or earmarking contained in either the House or Senate report must also be included in the conference report in order to be considered as having been approved by both Houses of Congress.

SA 1004. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2361, making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 233, line 9, strike ''126,264,000'' and insert ''121,264,000''.

On page 130, line 24, strike ''766,564,000'' and insert ''771,564,000''.

SA 1005. Mr. CRAIG (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

At the end of subtitle H of title II, add the following:

SEC. 2___. ENERGY POLICY AND CONSERVATION TECHNICAL CORRECTION.

Section 609(c)(4) of the Public Utility Regulatory Policies Act of 1978 (as added by section 291) is amended by striking ''of 1954 (42 U.S.C. 6303)'' and inserting ''(42 U.S.C. 6303(d))''.

SA 1006. Mr. CRAIG (for Mr. VITTER) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

On page 755, after line 25, insert the following:

SEC. 13___. SCIENCE STUDY ON CUMULATIVE IMPACTS OF MULTIPLE OFFSHORE LIQUEFIED NATURAL GAS FACILITIES.

(a) IN GENERAL.—The Secretary (in consultation with the National Oceanic Atmospheric Administration, the Commandant of the Coast Guard, affected recreational and commercial fishing industries and affected energy and transportation stakeholders) shall carry out a study and compile existing science (including studies and data) to determine the risks or benefits presented by cumulative impacts of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using the open-rack vaporization system.

(b) ACCURACY.—In carrying out subsection (a), the Secretary shall verify the accuracy of available science and develop a science-based evaluation of significant short-term and long-term cumulative impacts, both adverse and beneficial, of multiple offshore liquefied natural gas facilities reasonably assumed to be constructed in an area of the Gulf of Mexico using or proposing the open-rack vaporization system on the fisheries and marine populations in the vicinity of the facility.

SA 1007. Mr. CRAIG (for Mr. BYRD) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

Beginning on page 328, strike line 13 and all that follows through page 337, line 6, and insert the following:

Subtitle A—Clean Coal Power Initiative

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) CLEAN COAL POWER INITIATIVE.—There is authorized to be appropriated to the Secretary to carry out the activities authorized by this subtitle $200,000,000 for each of fiscal years 2006 through 2012, to remain available until expended.

(b) REPORT.—Not later than March 31, 2006, the Secretary shall submit to Congress a report that includes a 10-year plan containing—

(1) a detailed assessment of whether the aggregate assistance levels provided under subsection (a) are the appropriate assistance levels for the clean coal power initiative;

(2) a detailed description of how proposals for assistance under the clean coal power initiative will be solicited and evaluated, including a list of all activities expected to be undertaken;

(3) a detailed list of technical milestones for each coal and related technology that will be pursued under the clean coal power initiative; and

(4) a detailed description of how the clean coal power initiative will avoid problems enumerated in Government Accountability Office reports on the Clean Coal Technology Program of the Department, including problems that have resulted in unspent funds and projects that failed either financially or scientifically.

SEC. 402. PROJECT CRITERIA.

(a) IN GENERAL.—To be eligible to receive assistance under this subtitle, a project shall advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of the date of enactment of this Act.

(b) TECHNICAL CRITERIA FOR CLEAN COAL POWER INITIATIVE.—

(1) GASIFICATION PROJECTS.—

(A) IN GENERAL.—In allocating the funds made available under section 401(a), the Secretary shall ensure that at least 80 percent of the funds are used only to fund projects on coal-based gasification technologies, including—

(i) gasification combined cycle;

(ii) gasification fuel cells and turbine combined cycle;

(iii) gasification coproduction; and

(iv) hybrid gasification and combustion.

(B) TECHNICAL MILESTONES.—

(i) PERIODIC DETERMINATION.—

(I) IN GENERAL.—The Secretary shall periodically set technical milestones specifying the emission and thermal efficiency levels that coal gasification projects under this subtitle shall be designed, and reasonably expected, to achieve.

(II) PRESCRIPTIVE MILESTONES.—The technical milestones shall become more prescriptive during the period of the clean coal power initiative.

(ii) 2020 GOALS.—The Secretary shall establish the periodic milestones so as to achieve by the year 2020 coal gasification projects able—

(I) to remove at least 99 percent of sulfur dioxide;

(II) to emit not more than .05 lbs of NO_x per million Btu;

(III) to achieve at least 95 percent reductions in mercury emissions; and

(IV) to achieve a thermal efficiency of at least—

(aa) 50 percent for coal of more than 9,000 Btu;

(bb) 48 percent for coal of 7,000 to 9,000 Btu; and

(cc) 46 percent for coal of less than 7,000 Btu.

(2) OTHER PROJECTS.—

(A) ALLOCATION OF FUNDS.—The Secretary shall ensure that up to 20 percent of the funds made available under section 401(a) are used to fund projects other than those described in paragraph (1).

(B) TECHNICAL MILESTONES.—

(i) PERIODIC DETERMINATION.—

(I) IN GENERAL.—The Secretary shall periodically establish technical milestones specifying the emission and thermal efficiency levels that projects funded under this paragraph shall be designed, and reasonably expected, to achieve.

(II) PRESCRIPTIVE MILESTONES.—The technical milestones shall become more prescriptive during the period of the clean coal power initiative.

(ii) 2020 GOALS.—The Secretary shall set the periodic milestones so as to achieve by the year 2020 projects able—

(I) to remove at least 97 percent of sulfur dioxide;

(II) to emit no more than .08 lbs of NO_x per million Btu;

(III) to achieve at least 90 percent reductions in mercury emissions; and

(IV) to achieve a thermal efficiency of at least—

(aa) 43 percent for coal of more than 9,000 Btu;

(bb) 41 percent for coal of 7,000 to 9,000 Btu; and

(cc) 39 percent for coal of less than 7,000 Btu.

(3) CONSULTATION.—Before setting the technical milestones under paragraphs (1)(B) and (2)(B), the Secretary shall consult with—

(A) the Administrator of the Environmental Protection Agency; and

(B) interested entities, including—

(i) coal producers;

(ii) industries using coal;

(iii) organizations that promote coal or advanced coal technologies;

(iv) environmental organizations;

(v) organizations representing workers; and

(vi) organizations representing consumers.

(4) EXISTING UNITS.—In the case of projects at units in existence on the date of enactment of this Act, in lieu of the thermal efficiency requirements described in paragraphs (1)(B)(ii)(IV) and (2)(B)(ii)(IV), the milestones shall be designed to achieve an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percent for coal of more than 9,000 Btu;

(B) 6 percent for coal of 7,000 to 9,000 Btu; or

(C) 4 percent for coal of less than 7,000 Btu.

(5) ADMINISTRATION.—

(A) ELEVATION OF SITE.—In evaluating project proposals to achieve thermal efficiency levels established under paragraphs (1)(B)(i) and (2)(B)(i) and in determining progress towards thermal efficiency milestones under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4), the Secretary shall take into account and make adjustments for the elevation of the site at which a project is proposed to be constructed.

(B) APPLICABILITY OF MILESTONES.—The thermal efficiency milestones under paragraphs (1)(B)(ii)(IV), (2)(B)(ii)(IV), and (4) shall not apply to projects that separate and capture at least 50 percent of the potential emissions of carbon dioxide by a facility.

(C) PERMITTED USES.—In carrying out this section, the Secretary shall give high priority to projects that include, as part of the project—

(i) the separation or capture of carbon dioxide; or

(ii) the reduction of the demand for natural gas if deployed.

(c) FINANCIAL CRITERIA.—The Secretary shall not provide financial assistance under this subtitle for a project unless the recipient documents to the satisfaction of the Secretary that—

(1) the recipient is financially responsible;

(2) the recipient will provide sufficient information to the Secretary to enable the Secretary to ensure that the funds are spent efficiently and effectively; and

(3) a market exists for the technology being demonstrated or applied, as evidenced by statements of interest in writing from potential purchasers of the technology.

(d) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects that, as determined by the Secretary—

(1) meet the requirements of subsections (a), (b), and (c); and

(2) are likely—

(A) to achieve overall cost reductions in the use of coal to generate useful forms of energy or chemical feedstocks;

(B) to improve the competitiveness of coal among various forms of energy in order to maintain a diversity of fuel choices in the United States to meet electricity generation requirements; and

(C) to demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities, using various types of coal, that use coal as the primary feedstock as of the date of enactment of this Act.

(e) COST-SHARING.—In carrying out this subtitle, the Secretary shall require cost sharing in accordance with section 1002.

(f) SCHEDULED COMPLETION OF SELECTED PROJECTS.—

(1) IN GENERAL.—In selecting a project for financial assistance under this section, the Secretary shall establish a reasonable period of time during which the owner or operator of the project shall complete the construction or demonstration phase of the project, as the Secretary determines to be appropriate.

(2) CONDITION OF FINANCIAL ASSISTANCE.—The Secretary shall require as a condition of receipt of any financial assistance under this subtitle that the recipient of the assistance enter into an agreement with the Secretary not to request an extension of the time period established for the project by the Secretary under paragraph (1).

(3) EXTENSION OF TIME PERIOD.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may extend the time period established under paragraph (1) if the Secretary determines, in the sole discretion of the Secretary, that the owner or operator of the project cannot complete the construction or demonstration phase of the project within the time period due to circumstances beyond the control of the owner or operator.

(B) LIMITATION.—The Secretary shall not extend a time period under subparagraph (A) by more than 4 years.

(g) FEE TITLE.—The Secretary may vest fee title or other property interests acquired under cost-share clean coal power initiative agreements under this subtitle in any entity, including the United States.

(h) DATA PROTECTION.—For a period not exceeding 5 years after completion of the operations phase of a cooperative agreement, the Secretary may provide appropriate protections (including exemptions from subchapter II of chapter 5 of title 5, United States Code) against the dissemination of information that—

(1) results from demonstration activities carried out under the clean coal power initiative program; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from and first produced by a non-Federal party participating in a clean coal power initiative project.

(i) APPLICABILITY.—No technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, by 1 or more facilities receiving assistance under this Act, shall be considered to be—

(1) adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411);

(2) achievable for purposes of section 169 of that Act (42 U.S.C. 7479); or

(3) achievable in practice for purposes of section 171 of that Act (42 U.S.C. 7501).

SA 1008. Mr. CRAIG (for Ms. CANTWELL) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

On page 696, lines 24 and 25, strike ''unlawful on the grounds that it is unjust and unreasonable'' and insert ''not permitted under a rate schedule (or contract under such a schedule) or is otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest''.

SA 1009. Mr. CRAIG (for Mr. GRASSLEY (for himself and Mr. BAUCUS) proposed an amendment to the bill H.R. 6, to ensure jobs for our future with secure, affordable, and reliable energy; as follows:

On page 12 (of title XV as agreed to), after line 23, add the following:

SEC. ___. APPLICATION OF SECTION 45 CREDIT TO AGRICULTURAL COOPERATIVES.

(a) IN GENERAL.—Section 45(e) (relating to definitions and special rules), as amended by this Act, is amended by adding at the end the following:

''(11) ALLOCATION OF CREDIT TO PATRONS OF AGRICULTURAL COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any patrons under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of the patrons with or within which the taxable year of the organization ends.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year, shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this subpart or subpart A, B, E, or G.

''(D) ELIGIBLE COOPERATIVE DEFINED.—For purposes of this section the term 'eligible cooperative' means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

''(E) WRITTEN NOTICE TO PATRONS.—If any portion of the credit available under subsection (a) is allocated to patrons under subparagraph (A), the eligible cooperative shall provide any patron receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in subparagraph (B)(ii) is due.''.

SEC. ___. EXPANSION OF RESOURCES TO WAVE, CURRENT, TIDAL, AND OCEAN THERMAL ENERGY.

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking ''and'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', and'', and by adding at the end the following new subparagraph:

''(J) wave, current, tidal, and ocean thermal energy.''

(b) DEFINITION OF RESOURCES.—Section 45(c), as amended by this Act, is amended by adding at the end the following new paragraph:

''(9) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL ENERGY.—The term 'wave, current, tidal, and ocean thermal energy' means electricity produced from any of the following:

''(A) Free flowing ocean water derived from tidal currents, ocean currents, waves, or estuary currents.

''(B) Ocean thermal energy.

''(C) Free flowing water in rivers, lakes, man made channels, or streams.''

(c) FACILITIES.—Section 45(d), as amended by this Act, is amended by adding at the end the following new paragraph:

''(11) WAVE, CURRENT, TIDAL, AND OCEAN THERMAL FACILITY.—In the case of a facility using resources described in subparagraph (A), (B), or (C) of subsection (c)(9) to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2009, but such term shall not include a facility which includes impoundment structures or a small irrigation power facility.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

On page 35 (of title XV as agreed to), strike lines 10 through 16, and insert the following:

''(A) APPLICATION PERIOD.—Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).

''(B) REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATION.—An application under subparagraph (A) shall contain such information as the Secretary may require in order to make a determination to accept or reject an application for certification as meeting the requirements under subsection (e)(1). Any information contained in the application shall be protected as provided in section 552(b)(4) of title 5, United States Code.

''(C) TIME TO ACT UPON APPLICATIONS FOR CERTIFICATION.—The Secretary shall issue a determination as to whether an applicant has met the requirements under subsection (e)(1) within 60 days following the date of submittal of the application for certification.

''(D) TIME TO MEET CRITERIA FOR CERTIFICATION.—Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the criteria set forth in subsection (e)(2) have been met.

''(E) PERIOD OF ISSUANCE.—An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.''.

On page 36 (of title XV as agreed to), strike lines 14 through 23.

On page 36 (of title XV as agreed to), line 24, strike ''(6)'' and insert ''(5)''.

On page 37 (of title XV as agreed to), line 16, strike ''commitment''.

On page 37 (of title XV as agreed to), line 17, strike ''(e)(4)(B)'' and insert ''paragraph (2)''.

On page 37 (of title XV as agreed to), line 19, strike ''(f)(2)(B)(ii)'' and insert ''paragraph (2)(D)''.

On page 37 (of title XV as agreed to), line 20, strike ''commitment''.

On page 37 (of title XV as agreed to), between lines 22 and 23, insert the following:

''(C) REALLOCATION.—If the Secretary determines that megawatts under clause (i) or (ii) of paragraph (3)(B) are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.''.

On page 38 (of title XV as agreed to), line 7, strike ''or polygeneration''.

On page 38 (of title XV as agreed to), beginning with line 13 strike all through page 39, line 25, and insert the following:

''(C) the project, consisting of one or more electric generation units at one site, will have a total nameplate generating capacity of at least 400 megawatts;

''(D) the applicant demonstrates that there is a letter of intent signed by an officer of an entity willing to purchase the majority of the output of the project or signed by an officer of a utility indicating that the electricity capacity addition is consistent with that utility's integrated resource plan as approved by the regulatory or governing body that oversees electricity capacity allocations of the utility;

''(E) there is evidence of ownership or control of a site of sufficient size to allow the proposed project to be constructed and to operate on a long-term basis; and

''(F) the project will be located in the United States.

''(2) REQUIREMENTS FOR CERTIFICATION.—For the purpose of subsection (d)(2)(D), a project shall be eligible for certification only if the Secretary determines that—

''(A) the applicant for certification has received all Federal and State environmental authorizations or reviews necessary to commence construction of the project; and

''(B) the applicant for certification, except in the case of a retrofit or repower of an existing electric generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that such contract may be contingent upon receipt of a certification under subsection (d)(2).''.

On page 40 (of title XV as agreed to), strike ''(2)'' and insert ''(3)''.

On page 40 (of title XV as agreed to), line 4, strike ''subsection (d)(3)(B)(i)'' and insert ''subsection (d)(2)''.

On page 40 (of title XV as agreed to), line 5, strike ''certify capacity'' and insert ''certify capacity, in accordance with the procedures set forth in subsection (d), in relatively equal amounts''.

On page 40 (of title XV as agreed to), beginning with line 19, strike all through page 42, line 6.

On page 42 (of title XV as agreed to), line 18, strike ''the vendor warrants that''.

On page 44 (of title XV as agreed to), after line 25, insert the following:

''(h) APPLICABILITY.—No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is—

''(1) adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S. C. 7411);

''(2) achievable for purposes of section 169 of that Act (42 U.S. C. 7479); or

''(3) achievable in practice for purposes of section 171 of such Act (42 U.S.C. 7501).

On page 155 (of title XV as agreed to), line 13, strike ''2010'' and insert ''2012''.

On page 186 (of title XV as agreed to), line 2, insert ''or any mixture of biodiesel (as defined in section 40A(d)(1)) and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel'' after ''hydrogen''.

Beginning on page 211 (of title XV as agreed to), line 16, strike all through page 212, line 17, and insert the following:

''(b) LIMITATION.—The amount allowable as a credit under subsection (a) with respect to any qualified recycling equipment shall not exceed—

''(1) in the case of such equipment described in subsection (c)(1)(A)(i), 15 percent of the cost of such equipment, and

''(2) in the case of such equipment described in subsection (c)(1)(A)(ii), 15 percent of so much of the cost of each piece of equipment as exceeds $400,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED RECYCLING EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified recycling equipment' means equipment, including connecting piping—

''(i) employed in sorting or processing residential and commercial qualified recyclable materials described in paragraph (2)(A) for the purpose of converting such materials for use in manufacturing tangible consumer products, including packaging, or

''(ii) the primary purpose of which is the shredding and processing of qualified recyclable materials described in paragraph (2)(B).

''(B) EQUIPMENT AT COMMERCIAL OR PUBLIC VENUES INCLUDED.—For purposes of subparagraph (A)(i), such term includes equipment which is utilized at commercial or public venues, including recycling collection centers, where the equipment is utilized to sort or process qualified recyclable materials for such purpose.

''(C) EXCLUSION.—Such term does not include rolling stock or other equipment used to transport recyclable materials.

''(2) QUALIFIED RECYCLABLE MATERIALS.—The term 'qualified recyclable materials' means—

''(A) any packaging or printed material which is glass, paper, plastic, steel, or aluminum, and

''(B) any electronic waste (including any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or a central processing unit),

generated by an individual or business and which has been separated from solid waste for the purposes of collection and recycling.

On page 215 (of title XV as agreed to), line 23, strike ''for any'' and insert ''during any''.

On page 230 (of title XV as agreed to), between lines 2 and 3, insert the following:

SEC. ___. THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED ENERGY MANAGEMENT DEVICES.

(a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-year property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) any qualified energy management device.''.

(b) DEFINITION OF QUALIFIED ENERGY MANAGEMENT DEVICE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

''(18) QUALIFIED ENERGY MANAGEMENT DEVICE.—

''(A) IN GENERAL.—The term 'qualified energy management device' means any energy management device—

''(1) which is placed in service before January 1, 2008, by a taxpayer who is a supplier of electric energy or a provider of electric energy services,

''(2) the original use of which commences with the taxpayer, and

''(3) the purchase of which is subject to a binding contract entered into after June 23, 2005, but only if there was no written binding contract entered into on or before such date.

''(B) ENERGY MANAGEMENT DEVICE.—For purposes of subparagraph (A), the term 'energy management device' means any meter or metering device which is used by the taxpayer—

''(i) to measure and record electricity usage data on a time-differentiated basis in at least 4 separate time segments per day, and

''(ii) to provide such data on at least a monthly basis to both consumers and the taxpayer.''.

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (A)(iii) the following:

''(A)(iv) ..... 20''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.

SEC. ___. EXCEPTION FROM VOLUME CAP FOR CERTAIN COOLING FACILITIES.

(a) IN GENERAL.—Section 146 (relating to volume cap) is amended by redesignating subsections (i) through (n) as subsections (j) through (o), respectively, and by inserting after subsection (h) the following:

''(i) EXCEPTION FOR FACILITIES USED TO COOL STRUCTURES WITH OCEAN WATER, ETC..—

''(1) IN GENERAL.—Only for purposes of this section, the term 'private activity bond' shall not include any exempt facility bond described in section 142(a)(9) which is issued as part of an issue to finance any project which is designed to access deep water renewable thermal energy for district cooling to provide building air conditioning (including any distribution piping, pumping, and chiller facilities).

''(2) LIMITATION.—Paragraph (1) shall apply only to bonds issued as part of an issue the aggregate authorized face amount of which is not more than $75,000,000 with respect to any project described in such paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to projects placed in service after the date of enactment of this Act and before July 1, 2008.

On page 6 (of Senate amendment number 933 as modified and agreed to), line 12, strike ''(i)'' and insert ''(iii)''.

On page 6 (of Senate amendment number 933 as modified and agreed to), line 18, strike the last period and insert '', and''.

On page 232 (of title XV as agreed to), line 22, strike ''(iii)'' and insert ''(iv)''.

On page 255 (of title XV as agreed to), line 6, strike ''2007'' and insert ''2006''.

On page 256 (of title XV as agreed to), strike lines 3 through 15, and insert the following:

(b) NO EXEMPTIONS FROM TAX EXCEPT FOR EXPORTS.—

(1) IN GENERAL.—Section 4082(a) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate imposed in all cases other than for export)'' after ''section 4081''.

(2) AMENDMENTS RELATING TO SECTION 4041.—

(A) Subsections (a)(1)(B), (a)(2)(A), and (c)(2) of section 4041 are each amended by inserting ''(other than such tax at the Leaking Underground Storage Tank Trust Fund financing rate)'' after ''section 4081''.

(B) Section 4041(b)(1)(A) is amended by striking ''or (d)(1))''.

(C) Section 4041(d) is amended by adding at the end the following new paragraph:

''(5) NONAPPLICATION OF EXEMPTIONS OTHER THAN FOR EXPORTS.—For purposes of this section, the tax imposed under this subsection shall be determined without regard to subsections (f), (g) (other than with respect to any sale for export under paragraph (3) thereof), (h), and (l).''.

(3) NO REFUND.—

(A) IN GENERAL.—Subchapter B of chapter 65 is amended by adding at the end the following new section:

''SEC. 6430. TREATMENT OF TAX IMPOSED AT LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.

''No refunds, credits, or payments shall be made under this subchapter for any tax imposed at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuels destined for export.''.

(B) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end the following new item:

''Sec. 6430. Treatment of tax imposed at Leaking Underground Storage Tank Trust Fund financing rate.

On page 257 (of title XV as agreed to), strike lines 7 through 10, and insert the following:

(2) NO EXEMPTION.—The amendments made by subsection (b) shall apply to fuel entered, removed, or sold after September 30, 2005.

On page 257 (of title XV as agreed to), after line 11, add the following:

SEC. 1573. TIRE EXCISE TAX MODIFICATION.

(a) IN GENERAL.—Section 4071(a) (relating to imposition and rate of tax) is amended by inserting ''8.0 cents in the case of a'' before ''super single tire''.

(b) DEFINITION OF SUPER SINGLE TIRE.—Section 4072(e) (defining super single tire) is amended by striking ''13 inches'' and inserting ''17.5 inches''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after September 30, 2005.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the committee on Armed Services be authorized to meet during the session of the Senate on June 23, 2005, at 9:30 a.m., to receive testimony on U.S. military strategy and operations in Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, June 23, 2005, on pending Committee business at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, June 23, 2005, at 10 a.m., to hear testimony on U.S.-China Economic Relations.'

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 23, 2005, at 10 a.m. to hold a hearing on HIV/AIDS.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Thursday, June 23, 2005, at 9:30 a.m. in SH–216.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, June 23, 2005, at 9:30 a.m. in Senate Dirksen Office Building Room 226.

Agenda

I. Nominations: James B. Letten to be U.S. Attorney for the Eastern District of Louisiana; and Rod J. Rosenstein to be U.S. Attorney for the District of Maryland.

II. Bills: S. 1088, Streamlined Procedures Act of 2005—KYL, CORNYN; S. 155, Gang Prevention and Effective Deterrence Act of 2005—FEINSTEIN, HATCH, GRASSLEY, CORNYN, KYL, SPECTER; and S. 751, Notification of Risk to Personal Data Act—FEINSTEIN.

III. Matters: Senate Judiciary Committee Rules.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, June 23, 2005, for a committee hearing to receive testimony on various benefits-related bills pending before the Committee. The hearing will take place in Room 418 of the Russell Senate Office Building at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on June 23, 2005 at 2:30 p.m. to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Civil Rights and Property Rights be authorized to meet to conduct a hearing on ''The Consequences of Roe v. Wade and Doe v. Bolton'' on Thursday, June 23, 2005, at 2 p.m. in SD226.

Witness List

Panel I: Sandra Cano, Atlanta, GA; Norma McCorvey, Dallas, TX; and Ken Edelin, M.D., Boston, MA.

Panel II: Teresa Collett, Esq., Professor of Law, University of St. Thomas Law School, Minneapolis, MN; M. Edward Whelan, Esq., President, Ethics and Public Policy Center, Washington, DC; R. Alta Charo, Esq., Professor of Law and Bioethics, Associate Dean for Research and Faculty Development, University of Wisconsin Law School, Madison, WI; and Karen O'Conner, Professor of Government, American University, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY

Mr. FRIST. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Thursday, June 23, 2005, at 2:30 p.m. for a hearing regarding ''Addressing Disparities in Federal HIV/AIDS CARE Program''.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT—H.R. 2361

Mr. FRIST. I ask unanimous consent on Friday June 24th, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to consideration of Calendar No. 125, H.R. 2361, the Interior appropriations bill; I further ask consent that when the Senate begins the bill, the committee substitute be agreed to and considered as original text for the purpose of further amendments, with no points of order waived; provided further that all first-degree amendments be offered on Friday, June 24th, and Monday, June 27th.

The PRESIDING OFFICER. Without objection, it is so ordered.

100TH ANNIVERSARY OF THE FOREST SERVICE

Mr. FRIST. I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 181, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A bill (S. Res. 181) recognizing July 1, 2005, as the 100th anniversary of the Forest Service.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider by laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 181) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 181

Whereas Congress established the Forest Service in 1905 to provide quality water and timber for the benefit of the United States;

Whereas the mission of the Forest Service has expanded to include management of national forests for multiple uses and benefits, including the sustained yield of renewable resources such as water, forage, wildlife, wood, and recreation;

Whereas the National Forest System encompasses 192,000,000 acres in 44 States, Puerto Rico, and the Virgin Islands, including 155 national forests and 20 national grasslands;

Whereas the Forest Service significantly contributes to the scientific and technical knowledge necessary to protect and sustain natural resources on all land in the United States;

Whereas the Forest Service cooperates with State, Tribal, and local governments, forest industries, other private landowners, and forest users in the management, protection, and development of forest land the Federal Government does not own;

Whereas the Forest Service participates in work, training, and education programs such as AmeriCorps, Job Corps, and the Senior Community Service Employment Program;

Whereas the Forest Service plays a key role internationally in developing sustainable forest management and biodiversity conservation for the protection and sound management of the forest resources of the world;

Whereas, from rangers to researchers and from foresters to fire crews, the Forest Service has maintained a dedicated professional workforce that began in 1905 with 500 employees and in 2005 includes more than 30,000; and

Whereas Gifford Pinchot, the first Chief of the Forest Service, fostered the idea of managing for the greatest good of the greatest number: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes July 1, 2005 as the 100th Anniversary of the Forest Service;

(2) commends the Forest Service of the Department of Agriculture for 100 years of dedicated service managing the forests of the United States;

(3) acknowledges the promise of the Forest Service to continue to preserve the natural legacy of the United States for an additional 100 years and beyond; and

(4) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

OVERSIGHT OVER THE CAPITOL VISITORS CENTER

Mr. FRIST. I ask unanimous consent the Rules Committee be discharged from further consideration of S. Res. 179 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 179) to provide for oversight over the Capitol Visitors Center by the Architect of the Capitol.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statement be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 179) was agreed to, as follows:

S. RES. 179

Resolved,

SECTION 1. CAPITOL VISITOR CENTER.

(a) IN GENERAL.—The Architect of the Capitol shall have the responsibility for the facilities management and operations of the Capitol Visitor Center.

(b) EXECUTIVE DIRECTOR.—The Architect of the Capitol may appoint an Executive Director of the Capitol Visitor Center whose annual rate of pay shall be determined by the Architect of the Capitol and shall not exceed $1,500 less than the annual rate of pay for the Architect of the Capitol.

(c) CONGRESSIONAL OVERSIGHT.—The responsibilities of the Architect of the Capitol under this section shall be subject to congressional oversight by the Committee on Rules and Administration of the Senate and as determined separately by the House of Representatives.

(d) CAPITOL PRESERVATION COMMISSION JURISDICTION.—Nothing in this section shall be construed to remove the jurisdiction of the Capitol Preservation Commission.

ORDERS FOR FRIDAY, JUNE 24, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, June 24. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to the consideration of H.R. 2361, the Interior appropriations bill, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow, the Senate will begin consideration of the Interior appropriations bill. Under a previous agreement, we will consider amendments to the bill tomorrow and Monday, and we will begin votes in relation to amendments to the bill on Tuesday of next week. Therefore, there will be no rollcall votes during tomorrow's session. Senators who have amendments to the Interior appropriations bill, however, should make themselves available to come to the floor tomorrow and Monday to offer their first-degree amendments.

Mr. President, we had a great success today in the completion of the Energy bill, although we will not have the final vote on that bill until Tuesday morning. I congratulate the chairman and ranking member of the Energy Committee for their tremendous work—tremendous work—in getting the Energy bill to the finish line. Through their hard work and with the cooperation and hard work of our colleagues, we were able to dispose of all amendments and take the bill to third reading in 2 weeks, just as we had planned. We had said that was our goal about a month ago. And, indeed, that goal has been accomplished.

We will have the vote on passage on Tuesday morning of next week. The vote on passage will occur between 9:45 a.m. and 10 a.m. on Tuesday, and that will be our next vote. Both the chairman and ranking member of the Energy Committee will be there for that vote on Tuesday morning.

Tomorrow, Mr. President, I will update everyone with respect to next week's schedule. It will be the last week of our session prior to the Fourth of July holiday, and thus we can expect a very busy week.

At the beginning of this 4-week block, we said we would spend the last week on appropriations bills. And, indeed, with the completion of the Energy bill, we will do just that—in fact, starting a day early by beginning the Interior appropriations bill tomorrow. Also during the week, we will have other legislative or executive matters we will deal with once they have been cleared.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:03 p.m., adjourned until Friday, June 24, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 23, 2005:

ENVIRONMENTAL PROTECTION AGENCY

GRANTA Y. NAKAYAMA, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JOHN PETER SUAREZ, RESIGNED.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

KENT R. HILL, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, VICE E. ANNE PETERSON, RESIGNED.

FEDERAL LABOR RELATIONS AUTHORITY

COLLEEN DUFFY KIKO, OF VIRGINIA, TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF FIVE YEARS, VICE PETER EIDE.

MERIT SYSTEMS PROTECTION BOARD

MARY M. ROSE, OF NORTH CAROLINA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2011, VICE SUSANNE T. MARSHALL, TERM EXPIRED.

DEPARTMENT OF EDUCATION

STEPHANIE JOHNSON MONROE, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, VICE GERALD REYNOLDS.

DEPARTMENT OF JUSTICE

STEVEN G. BRADBURY, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL, VICE JACK LANDMAN GOLDSMITH III, RESIGNED.

PETER MANSON SWAIM, OF INDIANA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF INDIANA FOR THE TERM OF FOUR YEARS, VICE JAMES LORNE KENNEDY, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

KENNETH D. ORTEGA, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

CHARLES H. EDWARDS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

SLOBODAN JAZAREVIC, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DAVID M. BARTOSZEK, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

RONALD D. TOMLIN, 0000

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

RONNIE E. ARGILLANDER, 0000
ROBERT B. BAILEY, 0000
JOHN C. BLACKBURN, 0000
GREGORY D. BLYDEN, 0000
KURT P. BOENISCH, 0000
PATRICK B. CLARK, 0000
DIEGO E. CODOSEA, 0000
JAMES E. DOLING, 0000
RYAN J. GREEN, 0000
JEREMY J. HAWKS, 0000
DAVID KAISER, 0000
PAUL LEE, 0000
KARRICK MCDERMOTT, 0000
DANIEL F. MCKIM, 0000
JUAN PAGAN, 0000
BRIAN REINHART, 0000
MICHAEL P. RILEY, 0000
HENRY ROENKE, 0000
ERIC SAGER, 0000
NATHAN SHIFLETT, 0000
PHILIP G. URSO, 0000
BRYAN D. WHITE, 0000
WILLIAM J. WILBURN, 0000