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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, June 6, 2006, at 2 p.m.

Senate

FRIDAY, MAY 26, 2006

The Senate met at 8:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

May we pray.

Eternal, sovereign Lord, supply our needs for today.

Give strength to the weak as they shoulder heavy responsibilities. Give rest to the weary, that their tired hands will find new vigor. Give comfort to the sorrowful and compensate them for every joy that life takes away. Give all of us the presence of Your love, that we may find the peace of sins forgiven and the power to break the chains of temptation.

Use our Senators today for Your glory. Uphold them when they reach the limits of their strength.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF BRETT M. KAVANAUGH TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume the consideration of Calendar No. 632, which the clerk will report.

The legislative clerk read the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDENT pro tempore. The distinguished minority leader is recognized.

Mr. REID. Mr. President, the distinguished ranking member of the Judiciary Committee wishes to speak on the nomination of Brett Kavanaugh. I also wish to do that.

I ask that the Senator from Vermont be recognized.

The PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we are concluding the debate on the controversial nomination of Brett Kavanaugh to a seat on the Court of Appeals for the District of Columbia Circuit.

I spoke last evening, and I shall not speak longer today except to again express my concern that we are putting a person with no judicial experience on the second most powerful court in the land.

This vote will go forward, unlike the votes for two far more qualified people nominated by President Clinton who were pocket-filibustered by the Republican leadership of the Senate, along with 59 other judges nominated by President Clinton who were pocket-filibustered by the Republican leadership.

What I worry about with this nomination of Mr. Kavanaugh, whose ABA rating has been downgraded—it is almost unprecedented to see that happen—is that he is a man who in all his statements spoke of making rulings that would make President Bush proud. This is an independent branch of Government. He is not supposed to make any President—Republican or Democratic—proud. He is not supposed to be a rubberstamp for anybody.

I think when you have a Republican-controlled Congress which has refused to be a check on the Bush-Cheney administration, whether it is the war in Iraq, the lack of weapons of mass destruction, the failures of Homeland Security with Katrina, or this latest fiasco in the Veterans' Administration, there is no accountability. We at least should be able to speak to our courts and to expect our courts to be accountable.

This is an administration that has been secretly wiretapping Americans for years without warrants, despite the requirements of the law. This is an administration that refused to allow the Justice Department's own Office of Professional Responsibility to proceed

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

with an investigation into whether Justice Department lawyers violated their responsibilities or the law in establishing and justifying programs to spy on Americans. This is an internal government investigation that is being stymied by the administration.

This is an administration that has operated behind a wall of secrecy and that has issued secret legal opinions justifying the use of torture and rendition of prisoners to other countries, ignoring the dangers such tactics pose to our own soldiers and Americans around the world. This is an administration that is talking about prosecuting reporters and newspapers for trying to inform the American people about their government. This is an administration that says the law is what the President decides the law should be not what Congress passes.

What is desperately lacking throughout this administration and this Republican-controlled Congress is accountability. I will give you one example.

Yesterday, those responsible for Enron's collapse, which caused so many employees and investors to lose their savings, were held accountable in a court of law. Precious little was done by the Republican-controlled Congress to look into that. It required an independent court of law. Of course, Enron had been very generous to the President and to others and to many among the Republican leadership in the House and Senate in their contributions.

I compliment the President, who yesterday expressed some regrets over the disastrous course he charted in Iraq; he began to acknowledge the harm done to this country in Abu Ghraib—far different than during his campaign when he said he could not think of a mistake he had ever made except for some of his nominations.

Well, the President's picks for important judicial nominations continue to fare no better than his picks to head the CIA or FEMA or the VA. But bad judicial nominations will continue for lifetimes, not just the 2 years left to the Bush-Cheney administration. In just the past few months, we have learned that Judge Terrence Boyle, President Bush's pick for the Fourth Circuit and a sitting U.S. district judge, has ruled on multiple cases involving corporations in which he held an interest. The President's nominee to the Tenth Circuit, Judge James Payne, was withdrawn after it was revealed that he, too, sat on many cases where he held stock in one of the parties. Another of President Bush's nominees to the Fourth Circuit, Claude Allen, who would be a sitting Circuit Judge now if Democrats had not opposed his nomination, is now the subject of a criminal prosecution for charges akin to stealing from retail stores. And Michael Wallace, President Bush's pick for the Fifth Circuit, recently received the first unanimous not qualified rating from the ABA for a Circuit Court nominee in nearly 25 years.

Now we are considering a nominee today, Brett Kavanaugh, who is a young and relatively inexperienced, but ambitious member of the White House's inner circle. He is the President's pick to put another ally and trusted vote on the DC Circuit. He has spent most of his legal career in partisan political positions. As Staff Secretary to the President, Mr. Kavanaugh has been involved in President Bush's use of 750 Presidential signing statements designed to reserve for the President alone the power to choose whether to enforce laws passed by Congress. As an Associate White House Counsel, Mr. Kavanaugh worked with Karl Rove on the President's plan to pack the Federal bench with ideologues such as William Pryor, Janice Rogers Brown and others. He helped justify the wall of secrecy that has shrouded so many of the White House's activities.

At his hearing Mr. Kavanaugh emphasized, as if a qualification, that he had ''earned the trust of the President'' and his ''senior staff.'' All that may be useful for advancement within this President's administration or Republican circles, but those are hardly qualities or qualifications for an independent judge of this President and this administration's actions. Indeed, when pressed at his confirmation hearing to provide answers about his qualifications for this lifetime appointment and how he would fulfill his responsibilities as a judge, Mr. Kavanaugh sounded like a spokesman and representative for the administration. Over and over he answered our questions by alluding to what the President would want and what the President would want him to do. We heard from a nominee who parroted the administration's talking points on subject after subject. Rather than answer our questions, he referred us to the bland explanation offered by a former Presidential spokesman. I do not think the Senate should confirm a Presidential spokesman to be a judge on the second highest court in the land. I do not believe that Mr. Kavanaugh demonstrated that he has left his role as a member of the President's administration or that he will.

The reasons for the downgrading of Mr. Kavanaugh's ABA rating also raise concerns about his independence. Not only did those who have seen Mr. Kavanaugh in his limited legal practice describe him as ''less than adequate,'' but those who were interviewed recently raised concerns about Mr. Kavanaugh's ability to be balanced given his many years in partisan positions working to advance a political agenda. They described him as ''insulated,'' ''sanctimonious,'' and ''immovable and very stubborn and frustrating to deal with on some issues.'' These may be good qualities for a partisan political operative, but they are not qualities that make for a good judge.

My concerns about Mr. Kavanaugh's judicial independence are heightened by the fact that he has been nominated to the DC Circuit, a court which the Republicans have spent more than a decade trying to pack. They spent President Clinton's second term blocking his highly-qualified nominees, Elena Kagan, now Dean of Harvard Law School, and Allen Snyder, a former clerk to Chief Justice Rehnquist and highly respected litigator. Nonetheless, I voted to confirm Judge John Roberts to be a member of the DC Circuit and later supported his nomination to be Chief Justice of the Supreme Court.

After the Senate last year confirmed two of President Bush's nominees that I strongly opposed—Janice Rogers Brown and Thomas Griffith—Republican appointees now comprise a two-to-one majority on this important court. This is not a court that needs another rubberstamp for the President's political ally.

The Senate Republican leadership is catering to the extreme rightwing and special interest groups agitating for a fight over judicial nominations. With a number of judicial nominees ready for bipartisan confirmation, the Senate Republican leadership would rather concentrate on this controversial and divisive nominee. That this nomination has not moved forward for 3 years is indicative of the fact that even Republican Senators know what a poor nomination this is. They have made no secret of the reason for rushing this nomination through the Senate now, after it has languished for 3 years under Republican control, and after the nominee admitted to slow-walking his responses to this committee. They want to stir up a fight. They want to score cheap political points at the expense of another lifetime appointment to the courts.

The Senate Republican leadership is apparently heeding the advice of the Wall Street Journal editorial page, which wrote, ''[a] filibuster fight would be exactly the sort of political battle Republicans need to energize conservative voters after their recent months of despond.'' Rich Lowery, editor of the conservative National Review, listed a fight over judges as one of the ways President Bush could revive his political fortunes, writing that he should, ''[p]ush for the confirmation of his circuit judges that are pending. Talk about them by name. The G.O.P. wins judiciary fights.'' Republican Senators are relishing this chance for a political fight. Senator THUNE has said, ''A good fight on judges does nothing but energize our base. . . . Right now our folks are feeling a little flat.'' Senator CORNYN has said, ''I think this is excellent timing. From a political standpoint, when we talk about judges, we win.'' On May 8, 2006, the New York Times reported: ''Republicans are itching for a good election-year fight. Now they are about to get one: a reprise of last year's Senate showdown

over judges.'' The Washington Post reported on May 10: ''Republicans had revived debate on Kavanaugh and another Bush appellate nominee, Terrence Boyle, in hopes of changing the pre-election subject from Iraq, high gasoline prices and bribery scandals.''

We should not stand idly by as Republicans choose to use lifetime Federal judgeships for partisan political advantage. In a May 11, 2006, editorial The Tennessean wrote:

[T]he nation should look with complete dismay at the blatantly political angle on nominations being advocated by Senate Republicans now. . . . Republicans are girding for a fight on judicial nominees for no reason other than to be girding for a fight. They have admitted as much in public comments. . . . In other words, picking a public fight over judicial nominees is, in their minds, the right thing to do because it's the politically right thing to do. . . . Now, Republicans are advocating a brawl for openly political purposes. The appointment of judges deserves far more respect than to be an admitted election-year ploy. . . . It should be beneath the Senate to have such a serious matter subjected to nothing but a tool for political gain.

On May 3, 2006, the New York Times wrote in an editorial:

The Republicans have long used judicial nominations as a way of placating the far right of their party, and it appears that with President Bush sinking in the polls, they now want to offer up some new appeals court judges to their conservative base. But a lifetime appointment to the DC Circuit is too important to be treated as a political reward.

Our job in the Senate should not be to score political points or advance partisan agendas. Our job is to fulfill our duty under the Constitution for the American people. We must be able to assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are fair to those who enter their courtrooms and to the law.

We have heard from many who are concerned about the nomination of Mr. Kavanaugh: The AFL–CIO, United Auto Workers, and Service Employees International Union have all written to us opposing this nomination. The Leadership Conference on Civil Rights, NARAL PRO-Choice American, and the National Council of Jewish Women have all written to us opposing this nomination. The Society of American Law Teachers, National Employment Lawyers Association, and the Alliance for Justice have all written to us opposing this nomination. Earthjustice and Community Rights Counsel have written to us concerned about this nomination.

The Senate's job is to fulfill our duty under the Constitution, rather than act as a rubberstamp for the President's attempt to pack the courts with political allies. We must be able to assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are being appointed to be fair and protect their interests, rather than those of a Presidential patron. Mr. Kavanaugh has given the Senate no reason to believe he has the capacity for independence.

I am prepared to vote on Mr. Kavanaugh right now unless others on the other side would wish to talk, which, of course, would lead others to talk. As I said to the two leaders last night, I would be willing to go to a vote soon.

Mr. FEINGOLD. Mr. President, I wish to first note my concern about the procedure followed in the Judiciary Committee to report out this nomination precipitously to the floor. Our practice on nominations in the committee has been first to hold a hearing. Next, Senators are given the opportunity to review the transcript of the hearing and submit written questions. Normally, we are given a week to do that, which is a reasonable length of time. Then, once a nominee answers any written questions, the nomination can be noticed, and we have the right to hold that nomination over for 1 week. That is not an extraordinary amount of time, but it is at least sufficient for the Senators on the committee to do their jobs and have confidence that the nomination has been considered with due diligence.

There is no good reason that we couldn't follow that schedule in this case. Mr. Kavanaugh's situation is unusual because he was first nominated several years ago, but his first nomination was essentially abandoned when he decided not to respond to written questions for a full 7 months after his hearing in April 2004. Senators on the Democratic side requested a new hearing for him over a year ago, after he was renominated. His nomination lay dormant until just a few weeks ago.

Then, all of a sudden, there was a full court press to get this nomination done. Why is that? The rush to judgment in the committee, as far as I can tell, was based on nothing more than the majority leader's desire to have a floor vote on the nomination before our next recess. There was no reason for the rush except for the majority leader's political timetable. There is no crisis in the District of Columbia Circuit, which has the lowest caseload of any circuit in the country. All we were asking on the Democratic side in the committee was that we follow the regular order—a timely hearing and the opportunity to ask written questions.

I do want to note that I finally received answers the day before the committee vote to some of the questions that I first asked back in April 2004. I was not entirely satisfied with those answers, but they were certainly more complete than those the nominee provided when he first answered my questions in November 2004. The fact that these questions were finally answered just completes the record from 2004. I believe Senators deserved a chance to review the transcript of the hearing held on May 9, 2006, and ask further questions if they wanted to. A lot has happened in this country and in this administration where Mr. Kavanaugh works during the interval between his hearing in May 2004 and the hearing earlier this month. That is one of the reasons a second hearing was necessary. So it was a mistake for the chairman of the Judiciary Committee to short-circuit the process by simply decreeing that written questions would not be permitted.

Since the leader has decided to press forward on this nomination, I will vote no. I do not think Mr. Kavanaugh is the right choice for this vacancy. He is a very bright young lawyer and he has some impressive credentials. He may well be ready for appointment to a district court judgeship. But his record does not give me confidence that he is ready to serve on the District of Columbia Circuit, widely seen as the second highest court in the land.

Mr. Kavanaugh has written almost nothing that we can look to for a sense of his judicial philosophy, of his judgment, of his temperament. In addition, so much of his career after clerking has been spent in partisan political positions that it is certainly legitimate to wonder whether he can be fair and impartial in a judicial role. Partisan political work does not necessarily disqualify someone from taking the bench. As has been pointed out, many very good appellate or Supreme Court judges held political posts. But most held other positions as well that demonstrated the capacity for independence. The Senate is entitled to ask for evidence that the nominee can be nonpartisan and impartial, not just assurances. In Mr. Kavanaugh's case, there is simply no record to examine to give comfort on that score. Furthermore, we know from the latest ABA evaluation that at least some people who have come in contact with him in his work do not think that he is prepared to be an appellate judge.

Of the currently serving judges on that court, only one—Judge Douglas Ginsburg—had less legal experience when he or she was confirmed than Brett Kavanaugh now has. Ginsburg had 13 years of legal experience, including a year as a Senate-confirmed Assistant Attorney General and 8 years as a professor at Harvard Law School. He had a record that the Senate could much more easily evaluate. Other judges on that circuit had much longer careers when they were appointed. Judge Sentelle had 19 years of experience, including 10 years of private practice and 5 years as a judge; Judge Henderson had 18 years, including 4 as a U.S. district judge; Judge Randolph had 21 years of legal experience; Judge Garland, 20 years; Judge Edwards, 15 years, including 10 years as a law professor at Michigan and Harvard; Judge Tatel, 28 years; Judge Judith Rogers, 30 years, including 11 years as a judge; Judge Janice Rogers Brown, 28 years, including 11 years as a judge; Judge Griffith, 20 years.

The District of Columbia Circuit is not a place to learn the judicial ropes,

nor is it a place to reward a loyal employee. It is a court that makes decisions every day that have a huge effect on the lives and livelihoods of American citizens and American businesses. It has a caseload that demands not only a good legal mind but judgment, wisdom, and experience. Brett Kavanaugh has impressive credentials, but his limited record makes it impossible for me to be confident that he will be the fair and impartial judge that this country needs on such an important court. So I will vote no.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mrs. BOXER. Mr. President, I oppose the nomination of Brett Kavanaugh to be U.S. Circuit Judge for the District of Columbia.

Mr. Kavanaugh's lack of experience, partisan ideological leanings, lack of judicial temperament, and refusal to adequately answer questions posed by the Judiciary Committee make him unqualified to sit on the second highest court in the country.

Mr. Kavanaugh is a young lawyer who has spent most of his career in partisan positions. He lacks substantive courtroom experience and has never tried a case to a verdict. In fact, a judge before whom he appeared characterized Mr. Kavanaugh work as ''less than adequate'' and at the experience level of an associate.

Nor is Mr. Kavanaugh a noted legal scholar. The highlight of his career has been working with Kenneth Starr in the Office of the Solicitor General and at the Office of the Independent Counsel, where he spent 4 years and coauthored the infamous Starr Report.

Upon further review the nonpartisan American Bar Association panel downgraded Mr. Kavanaugh's rating from ''well-qualified'' to ''qualified.'' He was described by interviewees as ''sanctimonious,'' and ''immovable and very stubborn and frustrating to deal with on some issues.'' These are not qualities that make for a good judge. His low rating and nonjudicious demeanor put him in stark contrast to the majority of appointments to the DC Circuit who received ''well-qualified'' ratings and respectful reviews from the American Bar Association review panel.

The President can and should do better than this. The country deserves better than this.•

Mr. LEVIN. Mr. President, although I may not agree with a judicial nominee on policy matters, I will support that nominee as long as his or her values are consistent with the fundamental principles of American law and there is no indication that the nominee is so controlled by ideology that ideology distorts his or her judgment. Regardless of their political views, I will support a nominee who demonstrates fairness and openmindedness and whose reasoning is straightforward, clearly expressed, and worthy of respect.

Brett Kavanaugh is, unfortunately, not such a nominee. Because Mr. Kavanaugh does not have a judicial record to review, evaluating his fitness for the bench is not easy. We do not have written opinions from him that would reveal whether he looks objectively at both sides of an issue before making a decision. Therefore, we must judge his temperament on how he has conducted himself in interviews before the American Bar Association Standing Committee on the Federal Judiciary and how he answered questions posed by the Senate Judiciary Committee. Neither assessment gives me the confidence necessary to vote to confirm Mr. Kavanaugh to the DC Circuit.

In its 2003 assessment of Mr. Kavanaugh, the ABA record noted concerns with the breadth of Mr. Kavanaugh's professional experience. It was noted that he had never tried a case to verdict or judgment; that his litigation experience over the years was always in the company of senior counsel; and that he had very little experience with criminal cases. Specifically, the committee said: ''Indeed, it is the circumstance of courtroom experience that fills the transcripts that make the record before the Court of Appeals, and concerns were expressed about the nominee's insight into that very process.''

In its report on its recent reassessment of Mr. Kavanaugh, the ABA's Standing Committee on the Judiciary down-graded its rating of his qualifications. The report states that one judge who saw Kavanaugh's oral presentation in court said that Kavanaugh was ''less than adequate,'' and that he had been ''sanctimonious,'' and had demonstrated ''experience on the level of an associate.'' A lawyer in a different proceeding said: ''Mr. Kavanaugh did not handle the case well as an advocate and dissembled.''

According to the report, the 2006 interviews of Mr. Kavanaugh raised a new concern involving his potential for judicial temperament. Interviewees characterized Mr. Kavanaugh as, ''insulated,'' which one person commented was due to his current position as Staff Secretary to the President. Another interviewee questioned Mr. Kavanaugh's ability ''to be balanced and fair should he assume a federal judgeship.'' And another said that Kavanaugh is ''immovable and very stubborn and frustrating to deal with on some issues.''

A judge needs to be able to balance competing viewpoints and objectively determine a fair and equitable outcome. Mr. Kavanaugh's lack of judicial or courtroom or scholarly experience added to my doubts about his impartiality and lead me to vote no.

Mr. DODD. Mr. President, I rise to briefly state my reasons for opposing the nomination of Brett Kavanaugh to serve as a judge on the Court of Appeals for the District of Columbia Circuit Court.

I must say at the outset that I regret having to cast this vote. Throughout my tenure here in the Senate, I have supported the vast majority of presidential nominees—regardless of the party to which a president has belonged. With regard to the current administration, I have joined with my colleagues in voting to confirm the overwhelming majority of its judicial nominees—including those with whom I differed on matters of legal and public policy. I had assumed that, when nominated, Mr. Kavanaugh would likely be among this large group of judicial nominees to receive broad bipartisan support. After all, he has a commendable academic background, and served as a law clerk to two Circuit Court judges and one Supreme Court Justice.

However, it appears—that after emerging from a confirmation process where his conduct can be described as disappointing at best, and dismissive at worst—Mr. Kavanaugh has practically invited opposition to his nomination. In my view, there are few duties more important to the Senate than the consideration of the nomination of article III jurists. Other than considering a declaration of war or an amendment to the Constitution, nothing is more important than deciding on a judicial nominee. The reasons for that view are practically self-evident: article III judges are appointed for life, and they are appointed to lead and populate an entirely separate branch of government. Our entire constitutional framework rests on an act of faith, first taken by our Founders, that is in some respects as audacious as it is vital: that the President will nominate, and the Senate will confirm, only those judicial nominees who demonstrate the temperament, intellect, experience, and character to stand independent of the executive and legislative branches of government and hold those branches accountable to the law. If a nominee does not demonstrate those qualities during the nomination process, if he or she does not show a capacity to render independent judgments and uphold the principle of equal justice under law, then the outcome of a vote on that nomination is, in this Senator's view, a foregone conclusion: the nomination must be opposed.

During Mr. Kavanaugh's two confirmation hearings, he failed to demonstrate the requisite qualifications for the high position to which he has been nominated. He failed to provide meaningful responses to many of the questions put to him. After his first hearing, he delayed providing any answers at all to written questions for seven months. It was not until after the 2004 elections that he finally decided to provide those answers. When asked the reason for this delay, he offered only a feeble rationale, saying he took responsibility for what he termed a ''misunderstanding''. I found this explanation to be implausible, to say the least. As Associate White House Counsel, one of Mr. Kavanaugh's responsibilities was to prepare judicial nominees to successfully navigate the confirmation process. So for him to say he

had a ''misunderstanding'' about the need to promptly answer questions put to him by Senators strains credulity.

Mr. Kavanaugh also failed to provide full and candid answers to important questions about his role and views in helping to shape some of the administration's most controversial policies—from the development of legal rationales for torture to the drafting of Executive orders to reduce the public's access to presidential records. He also refused to tell the committee on what types of matters, if any, he would recuse himself if such matters came before him as a judge.

This refusal to be forthcoming with the Judiciary Committee—and by implication, with the Senate as a whole—bespeaks a dismissive attitude toward the confirmation process that I find highly troubling. We have seen in recent years a growing tendency of candidates to treat the confirmation process more as a game of hide-and-seek than a profoundly serious process designed by the Senate to provide Senators with the information that they need to make careful, reasoned decisions about nominees. If candidates do not provide vital information about their background and their views, they make it impossible for Senators to adequately discharge their constitutional duty to advise and consent with respect to article III nominees.

I would be remiss if I did not also mention two other facts about this nomination that make it highly unusual. One is that the American Bar Association, ABA, downgraded its rating of the nominee, from ''highly qualified'' to ''qualified''. Six of the eight members of the ABA committee who voted previously on this nomination voted to downgrade his nomination based on new information about his ability to act independently and his sparse record as a judge and legal practitioner. It also bears mentioning that this nominee, if confirmed, would be one of the least experienced judges to have served on this particular court. Only former Judge Kenneth Starr had less experience.

For these reasons, I must oppose this nomination. I hope that, if confirmed, this nominee will prove me wrong by growing into a wise, independent, and fair-minded jurist. But regrettably, at this time, he has given the Senate paltry and insufficient facts on which to believe he is prepared for the high office to which he has been nominated.

Mr. KENNEDY. Mr. President, the Court of Appeals for the DC Circuit is the second-highest court in the Nation. As such, its judges bear a unique responsibility.

By law, the DC Circuit has exclusive jurisdiction over many issues that other appellate courts cannot deal with. Only the judges of the DC Circuit can hear appeals under many critical laws that affect our economy, our environment, and our election system. Because the Supreme Court only hears a limited number of cases, the judges of the DC Circuit often have the final word on laws that affect the lives of millions of Americans, at home and in the workplace.

Unlike most of the members of the DC Circuit. Brett Kavanaugh is not a judge, an experienced litigator, or a legal scholar. Far from it. Mr. Kavanaugh is a political operative, a man whose ambition has placed him at the center of some of the most politically divisive events in recent memory. He is not qualified for this position. If his nomination is approved, I can say with confidence that Mr. Kavanaugh would be the youngest, least experienced and most partisan appointee to the court in decades.

Mr. Kavanaugh blatantly lacks the broad legal experience that is the hallmark of Federal judges—particularly those at the highest levels. He has never tried a case to verdict or to judgment. In fact, Mr. Kavanaugh has only practiced law for 10 years. Even counting his time as a law clerk, he still has only half of the average legal experience of nominees to the DC Circuit. To put this in context, Mr. Kavanaugh would be the least experienced member of the DC Circuit in almost a quarter century.

His lack of experience is underscored by his responses to questions from Judiciary Committee members. When he was asked to name his 10 most significant cases, Mr. Kavanaugh could only cite five cases for which he actually appeared in court, and only two cases in which he was lead counsel. He even cited two cases for which he merely wrote a friend-of-the-court brief for someone who was not a party to the lawsuit.

I am not alone in my judgment that Mr. Kavanaugh is not qualified for this position. Aside from my seven colleagues on the Judiciary Committee who voted against his appointment, organizations from around the country are united in their opposition to his nomination. The AFL–CIO, the Leadership Conference on Civil Rights, the NAACP, the National Urban League, the United Auto Workers. The list reads like a who's who of citizen representatives.

Most troubling, however, is the lukewarm evaluation of the American Bar Association, which has now conducted three separate evaluations of Mr. Kavanaugh. On the latest and perhaps closest evaluation, the ABA took the unusual step of downgrading its rating of Mr. Kavanaugh. Today, a majority of that committee does not believe Brett Kavanaugh can meet their highest standard for Federal nominees.

Why did the ABA downgrade its rating? It did so after confidential interviews with judges and lawyers familiar with his work, when numerous questions were raised about Mr. Kavanaugh's ability as an attorney and potential appellate judge.

A judge who heard Mr. Kavanaugh's oral arguments found that his presentation was ''less than adequate,'' and that he demonstrated skills ''on the level of an associate''—a young lawyer at a law firm. Lawyers familiar with his work raised additional questions about his impartiality and partisanship. One attorney specifically questioned whether Mr. Kavanaugh was capable of being ''balanced and fair should he assume a Federal judgeship.''

But Mr. Kavanaugh's lack of qualifications goes beyond years of experience or individual interviews. More important, Mr. Kavanaugh is almost completely unfamiliar with the substantive issues of law that consistently arise in the DC Circuit.

These aren't arcane concerns. The DC Circuit has a key role in upholding the rights of American workers. That court decides far more appeals than any other circuit of decisions by the National Labor Relations Board on unfair labor practices. Usually, these cases are filed by employers across the country attempting to overturn unfair labor practice findings against them by the Board. Recently, almost one in three such appeals have been heard by the DC Circuit.

During our hearings, I asked Mr. Kavanaugh whether he had any experience handling labor law matters. He couldn't provide a single example of work in this area—not one. Instead, he made vague reference to his work as a law clerk and his brief time in the Justice Department.

The DC Circuit is also important to anyone who breathes our air or drinks our water. It is the only Federal appellate court that can hear appeals on rules to protect the environment under the Clean Air Act and the Safe Drinking Water Act. It is the only Federal court that can grant a remedy when the executive branch fails to follow congressional mandates to protect the environment under these laws.

Nothing in Mr. Kavanaugh's record suggests that he would be willing to keep the executive branch in compliance with the law on these matters. More generally, nothing in his record suggests that he would be able to avoid the partisanship and politics that have marked his brief career.

In fact, partisan politics is the only area in which Mr. Kavanaugh's qualifications cannot be questioned. He has been deeply involved in some of the most bitterly divisive political events in the last decade—and always on the same side.

At the Office of the Independent Counsel, Mr. Kavanaugh authored the infamous Starr Report, wrote the articles of impeachment against President Clinton, and investigated the tragic suicide of Vince Foster.

As an Associate White House Counsel, Mr. Kavanaugh worked to support the nomination and confirmation of Jay Bybee, the author of the notorious—but then still secret—torture memo. He also was personally responsible for drafting the executive order that made presidential records less accessible to the public and the press.

This was order was so restrictive that one observer said it would ''make Nixon jealous in his grave.''

We gave Mr. Kavanaugh an opportunity to prove that he was independent and impartial in spite of his partisan past. I personally noted that this was my chief concern with his nomination, and I know that my colleagues did the same. Mr. Kavanaugh refused to specify the issues and policies on which he would recuse himself—in spite of the fact that he was at the center of a number of executive policy directives in recent years.

His answers to our questions resembled political talking points more than they did the answers we would expect from a nominee to such a prominent lifetime position in the Nation's Judiciary. He has shown nothing to suggest that he will stand up to the President when his duties require it.

Mr. Kavanaugh is not qualified for this job. Even worse, his nomination is a harsh reminder of the partisan and ideological pressures that have marked many recent judicial nominations. His nomination seems little more than a crass administration attempt to politicize the courts and provide a solid vote in favor of even the most extreme political tactics of the administration. The Federal courts need experienced, independent judges who can rise above their partisan beliefs and enforce the rights and guarantees of our Constitution and the rule of law. Mr. Kavnaugh is not such a nominee, and I urge my colleagues to oppose his nomination.

Mr. SESSIONS. Mr. President, I rise today to urge my colleagues to confirm President Bush's nomination of Brett M. Kavanaugh to be a U.S. circuit judge on the U.S. Court of Appeals for the District of Columbia Circuit.

President Bush first nominated Brett Kavanaugh to the DC Circuit on July 25, 2003. He received a hearing before the Judiciary Committee on April 27, 2004, but the committee did not vote on Mr. Kavanaugh's nomination. President Bush renominated Mr. Kavanaugh on February 14, 2005, and again on January 25, 2006. It is past time for Mr. Kavanaugh to receive an up-or-down vote on the Senate floor.

Brett Kavanaugh is a well-respected attorney with impeccable academic credentials and the background and experience necessary to serve as an excellent judge on the DC Circuit. He currently serves as Assistant to the President and staff secretary. He previously served in the White House Counsel's Office as Senior Associate Counsel and Associate Counsel to the President.

Mr. Kavanaugh graduated from Yale College, cum laude, and Yale Law School where he served as the notes editor on the Yale Law Journal. He served as a judicial law clerk for Justice Anthony Kennedy on the Supreme Court of the United States, as well as Judge Walter Stapleton of the U.S. Court of Appeals for the Third Circuit and Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit.

Prior to his Supreme Court clerkship, Mr. Kavanaugh earned a fellowship in the Office of the Solicitor General of the United States. After his clerkship, Mr. Kavanaugh served as an Associate Counsel in the Office of Independent Counsel, where he handled a number of the novel constitutional and legal issues. He was a partner at the prestigious Washington law firm of Kirkland & Ellis and has argued both civil and criminal matters before the Supreme Court and appellate courts throughout the country.

Besides his obvious academic and professional credentials, I would note that Mr. Kavanaugh believes in giving back to his community. While in private practice, Mr. Kavanaugh took on challenging pro bono matters, including representation of the Adat Shalom congregation in Montgomery County, MD, against an attempt to stop the construction of a synagogue in the county.

Those who know Mr. Kavanaugh best strongly praise his intelligence, integrity, and approach to the law. Mark Touhey III, Mr. Kavanaugh's supervisor at the Independent Counsel's Office, wrote in his support: ''Mr. Kavanaugh exhibit[s] the highest qualities of integrity and professionalism in his work. These traits consistently exemplify Mr. Kavanaugh's approach to the practice of law and will exemplify his tenure as Federal appellate judge.''

Judge Walter Stapleton said of Mr. Kavanaugh: ''He really is a superstar. He is a rare match of talent and personality.'' After arguing against Mr. Kavanaugh in the Supreme Court, Washington attorney Jim Hamilton stated, ''Brett is a lawyer of great competency, and he will be a force in this town for some time to come.''

Some of Mr. Kavanaugh's critics have tried to argue that he is too young to be a Federal appellate judge. In truth, Mr. Kavanaugh is 41 years old and has had a broad range of experience that makes him an ideal candidate for the DC Circuit.

Mr. Kavanaugh's legal work ranges from service as Associate Counsel to the President, to appellate lawyer in private practice, to experience as a prosecutor. He clerked at two of the U.S. Courts of Appeal, the Third and Ninth Circuits, and at the Supreme Court. In private practice and during his service as a prosecutor, Mr. Kavanaugh participated in appellate matters in a number of the Federal courts of appeal and in the Supreme Court.

Besides, at age 41, Mr. Kavanaugh is considerably older than many of our Nation's most distinguished judges were at the time of their nomination. In fact, all three of the judges for whom Mr. Kavanaugh clerked were appointed to the bench before they were 41. All have been recognized as distinguished jurists. Justice Kennedy was appointed to the Ninth Circuit when he was 38 years old. Judge Kozinski was appointed to the Ninth Circuit when he was 35 years old. Judge Stapleton was appointed to the district court at 35 and later elevated to the Third Circuit. There are many other examples of judges who were appointed to the bench at a young age and have had illustrious careers:

Name	Circuit	Age
Judge Harry Edwards	DC Circuit	39
Judge Douglas Ginsburg	DC Circuit	40
Judge Kenneth Starr	DC Circuit	37
Judge (now Justice) Samuel Alito	Third Circuit	40
Judge J. Michael Luttig	Fourth Circuit	37
Judge Karen Williams	Fourth Circuit	40
Judge J. Harvie Wilkinson	Fourth Circuit	39
Judge Edith Jones	Fifth Circuit	35
Judge Frank Easterbrook	Seventh Circuit	36
Judge Donald Lay	Eighth Circuit	40
Judge Steven Colloton	Eighth Circuit	40
Judge Mary Schroeder	Ninth Circuit	38
Judge Deanell Tacha	Tenth Circuit	39
Judge Stephanie Seymour	Tenth Circuit	39
Judge J.L. Edmondson	Eleventh Circuit	39

Age should not be the sole measure of a person's experience. Many Senators began their service at a young age. Senators BIDEN and KENNEDY were elected to the Senate at the age of 30, and Senator LEAHY was elected at age 34.

Some of Mr. Kavanaugh's critics have suggested that we should hold his service in the White House for President Bush against him. They seem to suggest that Mr. Kavanaugh's public service to his Nation is somehow a disqualifier for later serving on the bench. I disagree.

Public service in the executive or legislative branches of Government should not be a disqualifier for judicial office. This has never been the case, nor should it be. Justice Stephen Breyer was once the chief counsel to the Senate Judiciary Committee before being nominated and confirmed to the First Circuit by a substantial majority. I hope that none of us believe that his service on Senator KENNEDY's staff should have disqualified him.

Judge Abner Mikvah spent most of his career prior to the bench as a Democrat in elective office. He was a State legislator in Illinois and later a U.S. Congressman. In fact, he was a sitting Congressman when he was nominated to the DC Circuit. He, too, was confirmed by a substantial majority.

The Senate has not considered service as a Democratic staff member or as a Democratic Congressman a bar to service as a U.S. Circuit Judge, nor should it consider Mr. Kavanaugh's service in President Bush's White House as a strike against him. Suggesting that service in an elective branch of Government somehow tarnishes a lawyer's reputation would be a terrible message for this body to send to the legal community and to all citizens. Mr. Kavanaugh is superbly qualified to serve as a U.S. circuit judge, and he has made clear that he understands the role of a judge is different from the role of a member of the White House staff.

Some of Mr. Kavanaugh's critics have raised concerns about Mr. Kavanaugh's ABA rating. The ABA's Committee on the Federal Judiciary has consistently and unanimously

found that Mr. Kavanaugh has the integrity, professional competence, and judicial temperament to serve on the DC Circuit. Each year Mr. Kavanaugh's name has been in nomination the committee has rated Mr. Kavanaugh, and each year every member of the committee has found him ''qualified'' or ''well qualified.''

According to the ABA:

To merit a rating of ''well qualified,'' the nominee must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience and the highest reputation for integrity; and either demonstrate or exhibit the capacity for judicial temperament. The rating of ''qualified'' means that the nominee meets the Committee's very high standards with respect to integrity, professional competence and judicial temperament and that the Committee believes that the nominee will be able to perform satisfactorily all of the duties and responsibilities required by the high office of a federal judge.

In 2004 and 2005 a majority of the committee thought Mr. Kavanaugh had earned its highest rating, ''well qualified''; the rest thought he had earned a ''qualified'' rating. This year the balance changed, with more members of the committee believing he deserved a ''qualified'' rating and the rest thinking he deserved a ''well qualified'' rating.

Despite the fact that the ABA committee has included many committed Democrats, the committee remains unanimous that Mr. Kavanaugh is indisputably competent, intelligent, and qualified to serve on the DC Circuit. In response to what some of my Democratic colleagues have said about Kavanaugh's ABA rating, listen to what ABA committee chairman, Stephen Tober had to say:

Let me underscore . . . that we didn't find him not qualified. There's not a breath of that in this report or any earlier report. We found him qualified/minority well qualified. What I said at the end is what, in fact, many people said, that he has a solid reputation for integrity, intellectual capacity—a lot of people refer to him as brilliant—and an excellent writing and analytical ability. Those are great skills to bring to the court of appeals. There is just no question about that.

According to Mr. Tober, in all of the ABA's ratings, Mr. Kavanaugh's ''positive factors haven't changed a whole lot. He is found to have high integrity. He is found to be brilliant. He is a very skilled writer and legal analyst. He has those components, and I have said this before . . . he has those skills that will serve him well, certainly, on a Federal court.

Finally, Mr. Tober acknowledged that ''there is not a single not qualified vote in the picture.''

Brett Kavanaugh is a highly qualified attorney who has experience as an appellate litigator presenting arguments in court, and experience as a judicial law clerk on the other side of the bench evaluating appellate arguments. He has spent most of his career as a public servant. I am confident that he will perform his duties as a judge in a fair and even-handed manner.

Today's vote on this nominee is long past due. I urge my colleagues to confirm Brett Kavanaugh to be a U.S. circuit judge.

Mr. REID. I intend to vote against the confirmation of Brett Kavanaugh to the DC Circuit Court of Appeals. This youthful, relatively inexperienced nominee lacks the credentials to be approved for a lifetime appointment to the second most important Federal court in the country.

At the outset, let me contrast this nomination with a circuit court nomination we recently approved: the nomination of Milan Smith to the Ninth Circuit Court of Appeals. Mr. Smith is a pillar of the California legal community, a distinguished practicing lawyer with 27 years of experience in complex legal transactions. His nomination was the product of extensive consultation with Democratic Senators. The Judiciary Committee approved his nomination 18 to 0, and the full Senate gave its consent unanimously.

The Smith nomination is an example of the way the process is supposed to work. The Constitution gives the President and the Senate a shared role in filling vacancies on Federal courts. Working together, we can move highly qualified nonpartisan nominees through the process without rancor or delay.

But when the President uses judicial appointments as a reward to the extreme rightwing of the Republican Party, he invites controversy and conflict. Regrettably, that may be just the result that the White House wants.

Cesar Conda, a former domestic policy adviser to Vice President CHENEY, recently wrote in the Roll Call newspaper: ''For Bush, a renewed fight over conservative judges . . . just might be the cure to the Republican Party's current political doldrums.''

One of my Republican colleagues is quoted in the National Review earlier this month as saying: ''A good fight on judges does nothing but energize our base. Right now our folks are feeling a little flat. They need a reason to get engaged, and fights over judges will do that.''

At the same time, a lengthy debate over judges serves to distract attention from the pressing problems facing the Nation: an intractable war in Iraq, soaring gas prices, millions of Americans who lack health insurance. Instead of addressing these vital issues, this Senate has been forced to spend days and weeks and months talking about divisive judicial nominees.

The nomination of Brett Kavanaugh is nothing if not divisive. All eight Democrats on the Judiciary Committee oppose his confirmation. Every leading civil rights, environmental, and labor organization in the country has urged that he be rejected.

This nomination is not the product of consensus and consultation—it is a poke in the eye to the Senate. It is a wedge that disrupts the wonderful bipartisanship which has characterized the immigration debate over the past 2 weeks.

I recently met with Brett Kavanaugh. He seems like a bright young man. But he is a 41-year-old lawyer who has spent his short legal career in service to partisan Republican causes.

His two principal accomplishments as a lawyer are his work as an aide to Special Counsel Kenneth Starr during the misguided crusade to impeach President Clinton, and his current duty as a political lawyer in the Bush White House. Those positions do not disqualify Mr. Kavanaugh from future service, but they do not constitute the kind of broad experience in the law that we should expect from a nominee to the District of Columbia Circuit.

The DC Circuit is a uniquely powerful court. It has jurisdiction over challenges to Federal activities affecting the environment, consumer protections, workers and civil rights. This court hears appeals from the Environmental Protection Agency, the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration and other agencies.

As a result, DC Circuit judges sit in a unique position to judge Government actions that affect our lives in fundamental ways. Mr. Kavanaugh's slim, partisan record gives me no confidence he is the right person to assume this awesome responsibility.

In the 113 years since the Court of Appeals for the DC Circuit was established in 1893, 54 judges have sat on the court. Only three of those judges came to the court with less experience than Kavanaugh. DC Circuit judges have averaged over 26 years of legal experience at the time of their appointment to the DC Circuit. Mr. Kavanaugh, in contrast, graduated from law school a mere 16 years ago.

It is not just Mr. Kavanaugh's youth but his lack of practical experience that renders him unfit for this post. In his 16 years as a lawyer he has never tried a case to verdict or judgment. When questioned about this deficiency at his committee hearing, the nominee presumed to compare himself to Chief Justice John Roberts. But at the time of his appointment to the DC Circuit, Roberts had argued dozens of cases before the Supreme Court. Kavanaugh has argued just one such case, on behalf of the Starr investigation.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars. Some are sitting judges. Kavanaugh is neither. His high-ranking position in the Bush White House might constitute relevant experience, but we have little idea what he has accomplished in that role. He largely refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

We know he helped to select many of the controversial judicial nominees

who have tied the Senate in knots in recent years. We know he was the author of a far-reaching government secrecy policy, despite his own role in stripping President Clinton of every vestige of privacy and privilege during the Starr investigation. Other than that, all we know is that Mr. Kavanaugh has had a fancy west wing title.

Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction. The American Bar Association recently took the rare step of lowering its rating of this nominee.

Lawyers and judges interviewed by the nonpartisan ABA Committee described Mr. Kavanaugh as ''sanctimonious,'' ''immovable'' and ''very stubborn and frustrating to deal with on some issues.'' A judge before whom Mr. Kavanaugh appeared considered him ''less than adequate'' and said he demonstrated ''experience on the level of an associate.'' A lawyer who observed him during a different court proceeding stated: ''Mr. Kavanaugh did not handle the case well as an advocate and dissembled.''

Needless to say, these are not qualities that make for a good judge.

Still others described Mr. Kavanaugh as ''insulated.'' That is the last quality we want in a 41-year-old man who will soon begin the cloistered life of an appellate judge. Mr. Kavanaugh lacks the wide-ranging experience that breeds wisdom and judgment, and he is unlikely to acquire those qualities on the bench.

Mr. Kavanaugh's thin legal resume contrasts with the resumes of the two Clinton nominees who were blocked by the Republican-controlled Senate when they were nominated to the same court. Elena Kagan, now the Dean of Harvard Law School, had been both a practicing lawyer and a leading administrative law scholar at the time of her nomination. Allen Snyder, a former clerk to Justices Harlan and Rehnquist had been a litigation partner at the law firm of Hogan and Hartson for 26 years.

Under what definition of fairness do my Republican colleagues insist that Brett Kavanaugh is entitled to a Senate vote while Elena Kagan and Allen Snyder were denied a vote? By what standard do they consider Kavanaugh qualified to sit on the DC Circuit when these two other distinguished lawyers were denied that honor?

Unlike Kagan and Snyder, Mr. Kavanaugh will be considered by the Senate. But I will cast my vote against confirmation. This nominee's record is too sparse and the court to which he is nominated is too important to the rights that Americans hold dear.

I urge the Senate to reject this unacceptable nomination.

Mr. President, even in this Bush Presidency, I continue to believe that a judge should have experience in a courtroom. I know that is somewhat heretical in the environment we have, but I really believe that if you are going to be a judge, you should have some practical experience, at least picking a jury, arguing to a jury, appearing before a court, making your views known to the judge. That is largely lacking with this young man.

We have testimony before the Judiciary Committee from two judges for whom he worked. It is unusual that people clerk for two separate judges. These clerkships are usually a year long, and you sit back there and you shuffle papers for the judge and you draft opinions for the judge on the cases that come before the judge—but that is very different than courtroom experience as a practicing lawyer. You may go watch a few arguments, but clerking for two judges doesn't do the trick. That doesn't give you the experience to be a judge, especially a judge on the District of Columbia Circuit Court of Appeals, the second highest court in the land.

I understand that Mr. Kavanaugh has argued several appeals. But not very many, and in any event that's not the same as trying cases in my view.

I am going to vote against confirmation of Brett Kavanaugh. I want to make four brief points about this nomination.

First, Brett Kavanaugh is a youthful partisan who lacks the credentials to be approved for a lifetime appointment to the second most important Federal court in our country. He is 41 years old. He has spent his short legal career in service to Republican causes.

He worked as an aide to Special Counsel Kenneth Starr. I think the work of Kenneth Starr will go down in history as a blight on this country. This partisan investigation disrupted this country and it was aided by the nominee who is before the Senate at this time.

He has been a lawyer in the White House for President Bush. The fact that he worked for Starr and now works in the White House doesn't disqualify him, but these do not add up to the kind of experience we should have from a nominee to the District Circuit Court. It doesn't add up.

Second, Mr. Kavanaugh's lack of practical experience renders him unfit for the post. In his years as a lawyer, he has never tried a case to a verdict or to judgment.

There are other kinds of experience one might bring to an appellate court. Some nominees are respected scholars and some are sitting judges. Mr. Kavanaugh is neither.

His high-ranking position in the White House might constitute relevant experience, but we have little idea about what he accomplished in that role. He has largely refused to answer questions from the committee about the issues he has handled or the positions he has advocated.

The big push for this man comes from partisans who want to push the majority in the Senate toward the nuclear option. They think it would be a great thing to disrupt the Senate in this way.

Third, the American Bar Association recently lowered its rating of this nominee. Most nominees gain more stature over the course of their legal careers, but Mr. Kavanaugh is headed in the opposite direction, and rightfully so. Lawyers and judges of the nonpartisan ABA committee described Mr. Kavanaugh as being ''sanctimonious'' and ''frustrating to deal with.'' That says it all.

A judge before whom Mr. Kavanaugh appeared described him as ''less than adequate'' and said he demonstrated experience ''at the level of an associate.''

A lawyer who observed him during a different court proceeding stated that:

> Mr. Kavanaugh did not handle the case well as an advocate and dissembled.

Needless to say, these are not qualities which make a good judge. But the right wing wants him, and he is going to become a judge.

Finally, let me say this: The nomination of Mr. Kavanaugh is divisive. All eight Democrats on the Judiciary Committee oppose his confirmation. Every leading civil rights, environmental, and labor organization in the country urged that he be rejected.

The Constitution gives the President and the Senate a shared role in filling vacancies on the Federal court. Working together, we can move highly qualified, nonpartisan nominees through the process without rancor or delay. But when the President uses judicial appointments as a reward to the extreme rightwing of the Republican Party, it invites controversy and conflict. And that is what we have. In sum, this nominee's record is too sparse. The court to which he is nominated is too important. I hope we get a lot of votes against this nomination. I understand that everyone on the other side of the aisle will walk over here and vote for this unqualified candidate, but that is not how it should be.

If there is no one else wishing to speak, I ask that we proceed to the vote on Mr. Kavanaugh.

Mr. FRIST. Mr. President, 2 weeks ago before the Senate Judiciary Committee, Brett Kavanaugh, the President's nominee for the DC Circuit Court of Appeals, pledged that if he is confirmed:

> I will interpret the law as written and not impose personal policy preferences;
>
> I will follow precedent in all cases fully and fairly, and, above all, [I] will at all times maintain the absolute independence of the judiciary, which, in my judgment, is the crown jewel of our constitutional democracy.

Listen to the words that Brett Kavanaugh used: Fair, independent, committed to the rule of law. These are the qualities America wants in our federal judges.

We need more qualified nominees on the bench who practice judicial restraint and respect the rule of law, and Brett Kavanaugh fits that description.

President Bush nominated Mr. Kavanaugh on July 25 of 2003. And since this time, he's endured not one—

but two—hearings before the Senate Judiciary Committee.

He has been candid and forthcoming in answering countless oral and written questions from the Judiciary Committee. And he has met one-on-one with numerous Members—both Republican and Democrat.

And now it's time that Brett Kavanaugh gets the fair up-or-down vote that he's been waiting on for 3 years.

Later this morning, the Senate will give him that vote. We will fulfill our constitutional duty of advice and consent.

Over the last few weeks, we've heard a lot about his sterling credentials and professional experience.

He is a graduate of Yale College and Yale Law School and was awarded a prestigious Supreme Court law clerkship.

He has an extraordinary range of experience in both the public and private sectors.

He has dedicated more than 16 years to public service—as an appellate lawyer, a prosecutor, and an Assistant to the President.

He has argued both civil and criminal matters before the U.S. Supreme Court and appellate courts throughout the country.

And he has received the American Bar Association's stamp of approval to serve on the Federal bench on three separate occasions.

Brett Kavanaugh is respected in the legal community for his keen intellect and legal prowess. And he has earned the reputation as a man of integrity, fairness, and honesty.

In a larger sense, today's vote is about more than just Brett Kavanaugh as an individual nominee. Today's vote is another sign of progress for the judicial nominations process.

The Senate is continuing on a path we began a little more than a year ago. At that time, the Senate turned away from judicial obstruction and advanced the core constitutional principle that every judicial nominee with majority support deserves a fair up-or-down vote.

I am proud of the Senate for continuing on this path—for fairness, for principle, for the Constitution.

And I urge my colleagues to support the nomination of Brett Kavanaugh.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have not been ordered.

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

The PRESIDING OFFICER (Mr. ISAKSON). Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Brett M. Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

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

The result was announced—yeas 57, nays 36, as follows:

[Rollcall Vote No. 159 Ex.]

YEAS—57

Alexander	Crapo	Martinez
Allard	DeMint	McCain
Allen	DeWine	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Nelson (NE)
Brownback	Enzi	Roberts
Bunning	Frist	Santorum
Burns	Graham	Sessions
Burr	Grassley	Shelby
Byrd	Gregg	Smith
Carper	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Kyl	Thomas
Collins	Landrieu	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner

NAYS—36

Akaka	Feinstein	Menendez
Baucus	Harkin	Mikulski
Bayh	Jeffords	Murray
Biden	Johnson	Nelson (FL)
Bingaman	Kennedy	Obama
Cantwell	Kerry	Pryor
Clinton	Kohl	Reed
Dayton	Lautenberg	Reid
Dodd	Leahy	Sarbanes
Dorgan	Levin	Schumer
Durbin	Lieberman	Stabenow
Feingold	Lincoln	Wyden

NOT VOTING—7

Boxer	Inouye	Thune
Conrad	Rockefeller	
Dole	Salazar	

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

GENERAL MICHAEL V. HAYDEN TO BE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to a vote on Executive Calendar No. 672, which the clerk will report.

The legislative clerk read the nomination of General Michael V. Hayden, United States Air Force, to be Director of the Central Intelligence Agency.

Ms. MIKULSKI. Mr. President, there are five criteria I use to evaluate all executive branch nominees: competence, integrity, commitment to the core mission of the department, commitment to the Constitution, and independence. Based on what I know about General Hayden after working closely with him for more than 5 years, and based on his testimony last week, I will support his nomination to be Director of the Central Intelligence Agency, CIA. I have no question about his competence or personal integrity and expect him to remain an independent voice, committed to the Constitution not just with words but with deeds.

My confidence in General Hayden should not be interpreted as confidence in this administration. I have flashing yellow lights about the Bush administration's willingness to politicize this important intelligence agency. I am also concerned that this administration sometimes pays lip service to the law of the land, as we have seen with recent revelations about the warrantless surveillance program.

In more than 35 years as military intelligence officer, General Hayden has clearly demonstrated his competence, both in his work as Director of the National Security Agency, NSA, and as Deputy Director of National Intelligence. He led NSA at a critical time in the Agency's history, as the United States took the offensive against those who had attacked us. He inherited an agency that needed to be transformed: from its Cold War orientation, from analogue to digital, from concentrating on the Soviet threat to looking at multiple threats and nonstate actors. He accomplished this transformation at breathtaking speed. As Deputy Director of National Intelligence, General Hayden helped stand-up a brand new intelligence organization, recruiting a top-notch team, breaking down ''stove pipes'' between agencies, and helping to unify the entire intelligence community.

I have known and worked closely with General Hayden since 1999, when he came to NSA. I have no question about his personal integrity. He has always been a candid reformer. But recent revelations about the warrantless surveillance program have raised serious questions: questions about the integrity of surveillance programs that may have side-stepped the law; questions about a decision at the highest level to keep most members of the Senate Select Intelligence Committee in the dark about these programs; and questions about whether a candid reformer has become a cheerleader for this administration. I discussed my concerns with Hayden during the confirmation hearing, and he promised to ''speak truth to power.'' I take him at his word, but the proof will be in his deeds.

I have no question about General Hayden's commitment to the mission of the intelligence community. He has worked in almost every aspect of collecting and analyzing intelligence. But his expertise is technical intelligence, known as signals intelligence, SIGINT, and the CIA is our Nation's lead agency for human intelligence, HUMINT.

These two disciplines have very different challenges, different technology, and different cultures. Many have asked if a SIGINT expert is the right choice to lead a HUMINT agency. General Hayden addressed this question in our hearing. He believes his long career in intelligence has prepared him for this challenge. He has a plan to improve HUMINT tradecraft and develop common standards among all HUMINT agencies, including the Defense Intelligence Agency. He will also invest in research and development of the cutting-edge technology our men and women at the CIA need to accomplish their mission. General Hayden has promised to focus our human intelligence activities on understanding tomorrow's threats, not just responding to today's headlines. I believe he will bring to the CIA the same leadership, passion for reform, and respect for our intelligence workers that he brought to the NSA. He will be a strong advocate for the CIA as it struggles to redefine itself.

I have two flashing yellow lights about this nomination. First, I have serious questions about the Bush administration's commitment to protecting the Constitution. Second, I believe that we need a CIA Director who will be independent.

I believe General Hayden is committed to protecting the Constitution while he works to protect our country from terrorists. But I am concerned that others in this administration pay lip service to the law of the land. We all take an oath when we take office. We swear to support and defend the Constitution of the United States. We don't swear to a President or to a party. We know there are real threats, predators, actors who want to kill Americans. And we know that some of the tools that keep us safe must remain secret. Which is why our commitment to the Constitution is more important than ever. We can not protect the American people and ignore their Constitution when nobody's looking. Support for the Constitution must be more than lip service. We need a real commitment to put the Constitution first. The Framers gave Congress the responsibility for oversight over the President's policies. We must be informed about significant intelligence activities, as the law requires, so we can exercise our responsibility to protect the Constitution as we protect our Nation from the threats we face.

I am very concerned about the independence of the CIA. We need an independent voice at the CIA, someone who is willing to speak truth to power to whomever is President and also to the congressional oversight committees. The last few years have been difficult ones for the CIA, in part because American people have lost confidence in its leaders. The Agency has had too many ''yes'' men, too few independent voices. I asked General Hayden how he would avoid another Powell, when our distinguished Secretary of State was sent to the United Nations with wrong information, because CIA analysis had become too politicized. General Hayden said that his job at the CIA will be to let intelligence analysts do what comes naturally: provide unvarnished intelligence analysts, independent of political concerns. He said, ''My job is to keep anything from getting in the way'' of their work. He promised to consider implementing a dissent channel to allow intelligence workers an avenue for expressing their concerns without leaking classified information to the press.

In conclusion, Mr. President, I believe General Hayden is qualified to lead the CIA, and I will vote for his confirmation. But I have serious concerns about how the Bush administration has politicized this important intelligence agency. The Senate Select Committee on Intelligence must keep a close eye on the CIA as it struggles to redefine itself and its role in our reformed intelligence community.

Mr. KERRY. Mr. President, I opposed the nomination of GEN Michael Hayden to serve as Director of the Central Intelligence Agency.

General Hayden has many qualifications as an intelligence professional, but I am sad to say that he is the wrong person for the job.

Over the last years, the abuse of the CIA by the Rumsfeld Pentagon and the Cheney White House has hurt our national security and our credibility around the world, as the CIA was bullied into becoming a client of administration ideologues, yielding unfounded claims of ''slam dunk'' evidence for mythical weapons of mass destruction in Iraq.

I am not confident that General Hayden is the person best equipped to restore the CIA's independence and credibility, not just because he comes from Secretary Rumsfeld's Pentagon but because he was the Administration's principal spokesperson and defender of an illegal domestic spying program.

We are reminded again and again of the administration's determination to keep the extent of their illegal domestic spying program secret. All we have to do is look at the news that the Department of Justice abruptly ended an investigation into the conduct of Department lawyers who approved the program—not because the approving lawyers were cleared of wrongdoing but because investigators were denied the information to conduct the investigation.

The question before us is not whether we are committed to destroying terrorists and preventing terrorist attacks before they happen. We all are. In fact, we can wage and win a far more effective war on terror. No, the question is whether we can restore checks and balances between the executive and legislative branch and what can be done to restore accountability for an administration that too often appears run by people who hold themselves above the law. How many times will Government secrecy shield decisionmakers from any kind of accountability?

The fact that General Hayden was the key architect and, more recently, the principal defender of a program that listened to phone calls of Americans without a warrant, a program the administration refuses to come clean about, resides at ground zero of this debate.

The goal of General Hayden's program was appropriate: to find al-Qaida operatives who would do us harm. But the administration, instead of relying on the consent of the people through the American Congress and the court created under the Foreign Intelligence Surveillance Act, chose, unnecessarily, to assert the President's unfettered authority as a war-time commander to execute this program.

We must use every tool at our disposal to protect America. But the administration has no reason to assert unchecked Executive power when Congress is more than willing to work to create the mechanisms to keep America safe while we still preserve our essential liberties.

America has been the strongest, safest, most secure Nation on the planet for more than 200 years without ever having to choose between security and freedom. We can have both. But it requires an executive branch that respects the co-equal branches of Government. After the terrorist attacks of September 11, 2001, the Nation was united behind the President. Congress was—and is—prepared to do anything necessary to win the war on terror and ready to work with the President. If President Bush believed the domestic eavesdropping laws were insufficient, then all he had to do was ask Congress to improve them immediately. But the President didn't do that. Instead, he decided he was above the law.

General Hayden was the architect of that plan, and to this day he clings to an unnecessarily expansive interpretation of Executive power. That is not what America needs in the next Director of the Central Intelligence Agency.

We take our civil rights very seriously—and we should. It is our heritage and our birthright—one generation's gift to the next, earned in the blood of Americans since our revolution.

The mistrust, the anger, the lack of confidence so many Americans feel about this program is a reflection of our love of liberty. Regrettably, it is also the result of the way this administration has conducted itself: asserting its right to act by executive branch dictate because we are a nation at war. In one moment, the President of the United States says we are not listening to domestic calls without a warrant; in another, the Attorney General says he can't rule it out.

We are a nation at war with global jihaadists, a war that, as the Department of Defense calls it, will be a ''long war.'' Ad hoc and secret solutions to issues that demand a reasoned balance between security and the freedom of

law abiding Americans cannot simply be handed over to the executive branch—of any party.

This Congress has much work to do before we can say we have effectively insisted on that balance and done our duty. Before we do, it would be a mistake to support General Hayden's nomination.

Mr. KENNEDY. Mr. President, I intend to vote against General Hayden.

I respect General Hayden's lifetime of public service, and his testimony included some encouraging signs that he learned important lessons from the way intelligence was used to defend the Iraq war.

However, I cannot support General Hayden's nomination in light of the very serious questions about the scope and legality of the NSA domestic surveillance programs that he helped design, implement, and defend.

Until there is a full accounting of the surveillance program, I cannot in good conscience support a promotion for its chief architect.

We all want the administration to have strong leaders and the necessary means to gather the best possible intelligence for our foreign policy and national security, especially the war on terrorism.

Those critical goals require a Director of Central Intelligence who will work with Congress—not against us—in our efforts to prevent terrorism and improve our national security laws. We must protect the country while preserving our constitutional freedoms.

Mr. THUNE. Mr. President, today the Senate will vote on confirmation of three of President Bush's nominations. Once again, the President has nominated experienced, well-qualified individuals who deserve confirmation by the Senate.

The President has nominated Brett Kavanaugh to serve as a judge on the U.S. Court of Appeals for the DC Circuit. Mr. Kavanaugh has extensive experience in the law, having formerly served as a law clerk to Supreme Court Justice Anthony Kennedy. He later served as Associate White House Counsel, where he worked on a wide variety of legal and constitutional issues. Mr. Kavanaugh also practiced law as a partner in the Washington, DC, law firm of Kirkland & Ellis, and most recently serves as Assistant to the President and staff secretary at the White House.

Yesterday I voted in favor of the motion to invoke cloture on Mr. Kavanaugh's nomination, which now allows the Senate to give him an up-or-down vote. I am pleased that the Senate will now be allowed to vote on Mr. Kavanaugh's nomination, and I hope the Senate will continue to give fair up-or-down votes to the other well-qualified judicial nominees the President forwards to the Senate.

The President has also nominated GEN Michael Hayden as Director of the Central Intelligence Agency. General Hayden is a career Air Force officer with a distinguished history of service to our country. His previous service as Director of the National Security Agency will serve him well in his new role at the CIA, where I believe he will continue to be a strong leader in service to our Nation.

Finally, the President has nominated Gov. Dirk Kempthorne to serve as Secretary of the Department of the Interior. Governor Kempthorne has an impressive career in public service, having served as a United States Senator representing the State of Idaho in this body for 6 years. I am confident that his career of public service and his Western State perspective will help him be an effective and responsible steward of our country's public lands, waters, and other natural resources.

Unfortunately, a family obligation prevents me from being present during these votes. However, I support each of these nominees and, if present, would vote to confirm them. I therefore ask that the record reflect my support for each of these nominations.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mrs. BOXER. Mr. President, had I been present to vote on the nomination of Gen. Michael Hayden to be Director of the Central Intelligence Agency, I would have cast a vote of ''no''.

I oppose General Hayden's nomination because of his role in the administration's program to conduct warrantless electronic surveillance on U.S. persons—a practice I believe is unlawful under the Foreign Intelligence Surveillance Act.

During his nomination hearing before the Senate Intelligence Committee, General Hayden admitted to participating in the design of the electronic surveillance program during his tenure as director of the National Security Agency. And as the Principal Deputy Director of National Intelligence, General Hayden became the chief advocate for the electronic surveillance program, even taking the unusual step of appearing before the National Press Club to defend the Administration's program.

We are all united in fighting terrorism, but we can do it in a legal and constitutional way that gets the bad guys and protects our values and freedoms.

While I oppose the nomination of General Hayden because of the controversy surrounding the electronic surveillance program, I wish him the very best and hope that he will turn out to be a strong and independent leader at the CIA.

But I also hope that the Intelligence Committees in the House and Senate will conduct careful and thorough oversight over General Hayden and the CIA to ensure that the civil liberties of U.S. citizens are protected.●

Mr. NELSON of Florida. Mr. President, today I voted to confirm the nomination of General Michael Hayden to be Director of the Central Intelligence Agency replacing my friend and Florida colleague Porter Goss. I voted to confirm General Hayden based on his impressive record as a career intelligence officer in a broad spectrum of strategic intelligence activities and programs. He is widely regarded as one of the most qualified intelligence planners and managers among military or civilian intelligence professionals.

Despite my vote in favor of his confirmation I remain deeply concerned that recent revelations regarding domestic intelligence collection by the National Security Agency may have violated our laws. In hearings before the Senate Select Committee on Intelligence General Hayden often deferred questions about the program, the President's and Justice Department's statements about the program, and his own involvement in the NSA's activity to closed sessions. My Intelligence Committee colleagues pursued these questions and ultimately recommended approval of the nomination on a bipartisan 12–3 vote. I still have many questions about this program and how it was conceived and operated, and I will continue to seek answers to them. However, General Hayden has sufficiently demonstrated his objectivity, independence and openness that I am comfortable with confirming his nomination.

Given the threats our Nation faces today and challenges that our intelligence system has had coping with those threats, General Hayden should bring to this position much needed efficient, effective and, most importantly, independent leadership and management. That should be good for our intelligence agencies and good for the Nation.

Mr. JEFFORDS. Mr. President, I am casting my vote today in favor of GEN Michael V. Hayden to be Director of Central Intelligence. General Hayden has a strong background in intelligence. He has spent his career in national security and particularly intelligence, serving as Commander of the Air Intelligence Agency and as Director of the National Security Agency. General Hayden has served overseas in leadership positions with the U.S. Government in South Korea and Bulgaria, and is currently Principal Deputy Director of National Intelligence, serving directly under Director of National Intelligence, John Negroponte. General Hayden was straightforward in his answers to tough questions during his confirmation process, showing a clear command of the issues of national security and the challenges facing the intelligence community.

The confirmation process has also brought to light General Hayden's leadership qualities. At this time of change and realignment at the CIA, strong leaders are clearly needed. The agency has had a difficult time adapting to the changes in the intelligence community structure and has suffered a decline in morale and sense of mission. By all accounts, General Hayden

will bring a welcome change at the top, hopefully infusing the agency with a new sense of direction and relevance that is badly needed.

I remain very concerned, however, that the wiretapping activities of the NSA have been insufficiently investigated. General Hayden insisted in his confirmation hearings that he was given unequivocal legal advice each step of the way. I do not doubt that this is true, but I believe that significant and compelling questions still remain about the validity of the legal foundation for the wiretapping programs. I have yet to be convinced that these activities are legal. Even if they are found to be legal, I question whether we really want our Government to be engaged in these activities.

But the debate on the NSA activities is far larger than just General Hayden. This debate must go on in depth and focus on the legal and policy issues at stake, not on the personalities of those involved.

We need to get the CIA back onto its feet and functioning properly. I believe that General Hayden is capable of doing that. I trust he will put his considerable skills to work in earnest on this task, as its success is critical to our national security.

Mr. CHAMBLISS. Mr. President, the men and women at the CIA today represent the best intelligence professionals in the world, and they deserve the best leadership and support. I have known General Hayden for some time, and I am convinced that he is the right person for this job.

My initial concern regarding a military officer directing the world's most sophisticated civilian intelligence agency have been addressed by General Hayden in private conversation as well as at the public hearing. The role and mission of the intelligence community at the Department of Defense where General Hayden has been for over 30 years is different from the role and mission of the CIA. General Hayden has convinced me that he can make the transition from the military side to the civilian side of the intelligence community while continuing to move the CIA in a positive direction of change and transition.

General Hayden has been instrumental in building our intelligence capabilities to meet the challenges of the 21st century. Even before becoming the Principal Deputy Director of National Intelligence, General Hayden has demonstrated his willingness to express his opinion and speak his mind. His credibility and integrity are second to none. He brings all these traits to his position as the Director of the Central Intelligence Agency.

He also brings with him the experience of leading an organization in transformation when he was at the National Security Agency. Today the CIA is in transformation to position itself from the preeminent intelligence organization during the Cold War to becoming an intelligence organization focused on new threats and national security issues such as countering terrorism, preventing countries such as Iran and North Korea from obtaining nuclear weapons, and protecting America's interests in Asia, Latin America, and elsewhere.

General Hayden will face challenges as he continues this transformation to ensure that the CIA continues to be the world class organization it must be to address these threats. This means continuing efforts to replace the old, risk adverse system that was not positioned to address the threats we are facing now and may face in the future. It also means ensuring the Agency does not reverse course by infusing ideas that previously opposed change, information sharing, or oversight.

Throughout his career, General Hayden has proven his management and leadership abilities. He will provide the enthusiastic and dedicated officers at CIA the ''top cover'' necessary for them to undertake the innovative approaches to intelligence gathering that is required to penetrate the hard targets of today, and I am confident he will be able to keep the CIA moving on the right course.

Finally, General Hayden will head an organization that is responsible for managing our national human intelligence effort. His military experience combined with his experience as the Principal Deputy Director of National Intelligence will serve him well as he integrates the human intelligence efforts of the Department of Defense, the FBI, and others into the National Clandestine Service, recognizing the requirements and capabilities of those organizations as he establishes common standards designed to further strengthen our country's intelligence capabilities.

I believe General Hayden is a qualified and dedicated person to lead the CIA at this critical juncture, and I look forward to working closely with him as the Director of the CIA.

Mr. FEINGOLD. Mr. President, I will vote against the nomination of Michael Hayden to be Director of the CIA because I am not convinced that the nominee respects the rule of law and Congress's oversight responsibilities. General Hayden is highly experienced and talented. And some of his testimony before the Intelligence Committee, including his acknowledgment that the intelligence process was manipulated in the lead-up to the war in Iraq, was encouraging.

It was therefore particularly disappointing that General Hayden failed to dispel serious concerns about his direction and defense of a program to illegally wiretap Americans on American soil without the required warrants. Having finally been briefed about this program last week, I am more convinced than ever that this program is illegal. I am equally convinced that there is no reason that this program could not have been briefed to the congressional intelligence committees 4½ years ago, as is required by law. Yet General Hayden expressed no doubts or concerns about the legality of the program or the administration's failure to inform Congress.

It is not sufficient for General Hayden to say that the lawyers told him it was okay. He has an independent obligation to abide by the law. No one can force him to break the law—not the lawyers and not the President. Nor were the legal issues especially complex or beyond the understanding of a very intelligent and experienced intelligence professional. For years, General Hayden had been conducting surveillance in compliance with the FISA law. For years, the NSA had been notifying the congressional intelligence committees about its programs. Then, one day, everything changes. FISA no longer applies—and, by the way, don't tell Congress. We know from General Hayden's testimony in 2002 that he understands the importance of the legal protections that FISA provides regarding surveillance of U.S. persons. His decision that it was OK to secretly bypass those protections is inexcusable.

The Congress must stand up for the law and for our constitutional system of checks and balances. I believe that the President must be held accountable for breaking the law and for insisting that he can continue to do so. I am deeply concerned that, unless this body speaks, it will be seen by history as having consented to this illegal action.

But those who carried out and defended this program also have some responsibility. We know, from Attorney General Gonzales' testimony to the Judiciary Committee, that this administration acknowledges virtually no limits to its authority. Under the theories put forward by the administration's lawyers, whenever national security is supposedly at stake, no laws are binding and Congress is merely an inconvenience. These assertions are contrary to our constitutional system and they are dangerous. And they cannot serve as an excuse for experienced leaders like General Hayden who know better.

My decision to vote against General Hayden is not simply about responsibility for past conduct, although that is important. I will vote against this nominee because, given his recent actions and his less than reassuring testimony, I am not convinced that he will abide by the laws relevant to the position of the Director of the CIA. When I asked General Hayden about legally binding restrictions on the authorities of the CIA, such as those prohibiting the CIA from engaging in domestic security, he spoke about Presidential authority and consultations with Government lawyers. That was also his response to questions about illegal warrantless wiretapping as well. We know what this administration's lawyers have to say about following the law, and General Hayden provided no reassurance that he will see things any differently.

General Hayden's conduct and testimony also raise serious questions

about his willingness to respect congressional oversight. He was complicit in the administration's failure to inform the full congressional intelligence committees about the warrantless surveillance program, even though this notification is required by law. In his testimony, he repeatedly failed to explain or criticize the administration's failure to inform the full committees about the program. As Director of the CIA, General Hayden would have a legally binding duty to keep the congressional intelligence committees informed of CIA activities. If General Hayden does not acknowledge this duty, we cannot be assured that the Congress will be kept fully and currently informed, as is required by law.

Finally, I remain concerned about previous misleading testimony by General Hayden regarding warrantless surveillance and his explanation for that testimony. In 2002, he told a joint congressional committee that, under FISA, persons inside the United States ''would have protections as what the law defines as a U.S. person and I would have no authorities to pursue it.'' In fact, the President had already authorized the NSA to bypass those legal protections. General Hayden's explanation for this statement, that he was speaking in open session at the time and had earlier given a fuller briefing to the committee in closed session, does not justify a public misleading statement.

Our country needs a CIA Director who is committed to fighting terrorism aggressively without breaking the law or infringing on the rights of Americans. General Hayden's role in implementing and publicly defending the warrantless surveillance program does not give me confidence that he is capable of fulfilling this important responsibility.

The stakes are high. Al-Qaida and its affiliates seek to destroy us. We must fight back and we must join this fight together, as a nation. But when administration officials ignore the law and ignore the other branches of Government, it distracts us from fighting our enemies.

I am disappointed that the President decided to make such a controversial nomination at this time. In keeping with Senate historical practices, I defer to Presidents in considering nominations to positions in the executive branch. I do not believe it is the role of the Senate to reject nominees simply because they share the ideology of the person who nominated them. But we should not confirm a nominee for this position of great responsibility when his conduct and testimony raise such troubling questions about his adherence to the rule of law.

(At the request of Mr. LEVIN, the following statement was ordered to be printed in the RECORD.)

• Mr. ROCKEFELLER. Mr. President, the Senate today considers the nomination of GEN Michael Hayden to be Director of the Central Intelligence Agency. I support General Hayden's confirmation. He is the right person to lead the CIA out of a period of turmoil and controversy.

Without question General Hayden has the necessary credentials. He is a career Air Force intelligence officer who led the National Security Agency for longer than anyone in the history of that agency. When he took over the NSA it was no longer at the cutting edge of information technology as it had been during the Cold War. Not everything he tried worked but he led the agency's turnaround. We no longer worry, as we did in 1999, that the NSA is on the verge of going deaf.

General Hayden left the NSA a year ago to become the Principal Deputy Director of National Intelligence—the number two job in the new organization created by Congress to modernize the intelligence community. He has helped Director John Negroponte start the process of building a cohesive community from the 16 disparate intelligence agencies. Now he will have a chance to continue working on that integration as the Director of the agency that is the lynchpin for U.S. intelligence, the CIA.

While his qualifications are obvious, General Hayden's selection is not without controversy. As Director of the NSA he designed and implemented a warrantless surveillance program, authorized by the President, to intercept communications inside the United States. The goal of this program is to find terrorists, something every Member of this body supports. But the program's questionable legal underpinnings and the decision to keep it hidden from most Members of Congress have raised questions about General Hayden's judgment and independence.

I wrote Director Negroponte in February expressing my view that General Hayden's role in the public defense of the NSA program was inappropriate for an intelligence official. I reiterated that concern directly to General Hayden in a letter to him prior to his confirmation hearing last week. Officials of the intelligence community must avoid even the appearance of politicization.

General Hayden addressed this issue in his hearing and responded privately to my letter. After carefully considering his answers and his response, I am convinced that he believes the NSA program is legal. I also believe his public appearances were in large part his effort to defend the men and women of the NSA. I still believe his participation in the White House public relations campaign was inappropriate, but I believe his explanation is sincere.

I raise this issue because it gets to the heart of what I think will be General Hayden's challenge at the CIA—rebuilding the agency's credibility and reestablishing its independence. The CIA was established in 1947 to be an independent source of intelligence for the President and other senior policymakers. We have no less a need for that independence now than we did then. The Government, both the executive branch and the Congress, must have intelligence that is timely, objective, and independent of political considerations. This is not just a goal; it is the standard set in law.

Unfortunately, over the past few years we have witnessed a pattern of cynical manipulation of intelligence for political purposes. This politicization has damaged the credibility of the intelligence community and undermined America's efforts to deal with critical national security challenges. General Hayden must take steps to assert his and the CIA's independence.

The situation in the period prior to the Iraq war must never be repeated. Administration officials accepted without question any nugget of intelligence, no matter how poorly sourced, if it supported the decision to go to war with Iraq. In areas where the intelligence did not support the administration's preconceived view, such as alleged Iraqi ties to al-Qaida and the 9/11 attacks, the administration badgered the intelligence community to find a link, ignored the intelligence that showed there was none, and set up a rogue intelligence operation at the Defense Department to aggressively push the alleged connection.

But perhaps the most blatant abuse of the intelligence process was and continues to be the leaking and selective declassification of intelligence information to support particular policy goals. Many of my colleagues have decried the unauthorized disclosures that regularly appear in the press. I join them in condemning these damaging leaks. But it is important to understand that most disclosures of intelligence information are generated by executive branch officials pushing a particular policy, and not by the rank-and-file employees of the intelligence agencies. This has been the pattern of the current administration, particularly related to Iraq.

Based on his past performance I am sure that General Hayden will stand up to blatant attempts to influence intelligence judgments. I also believe he has the character to speak out when he believes the intelligence process is being misused by senior policymakers.

General Hayden also will need to regain the trust of the Congress. The administration's repeated refusal to allow effective oversight of some of the most important intelligence programs has endangered critical intelligence capabilities and alienated the Intelligence Committees when their support is most needed. Signals intelligence and intelligence obtained from detainees are critical elements of our efforts to detect and stop terrorists. But the administration's ill-advised attempts to shield these programs from oversight have created suspicion and undermined public support for our counterterrorism efforts. Sustaining

these kinds of intelligence programs over the long term requires the Congress to be a full partner from the beginning. Our mutual goal should be to ensure that critical intelligence programs receive the attention and support they need to be effective.

Some have questioned the wisdom of a military officer serving in this position. While I want to make sure that General Hayden is outside of the military chain of command, I am convinced that General Hayden's military experience will enable him to successfully manage the important and sometimes difficult relationship between the CIA and the Department of Defense. As CIA Director he also will be the national manager of human intelligence collection activities across all agencies, including the Defense Department. This function is essential to ensuring effective coordination of our sensitive intelligence operations overseas. We cannot afford the creation of redundant capabilities or any confusion as to who is in charge of these delicate operations.

General Hayden will take over the helm of the CIA at a time of rapid expansion of the workforce and following a period of dramatic decline in employee morale. Under his predecessor's tenure the CIA lost many of its most experienced and talented officers. He will need to move quickly to convince the current workforce that the days of political litmus tests are over and experienced professionals will be in charge rather than political cronies.

I cannot overstate the importance of the job General Hayden is undertaking. The CIA and our other intelligence agencies are the front line of our defense. The CIA must find better ways to penetrate targets such as Iran and North Korea while continuing to adapt to the ever changing tactics of the international terrorist movement.

The Senate Intelligence Committee's 2004 review of Iraq intelligence exposed some glaring problems in the collection and analysis of intelligence. The CIA has been undergoing its own internal review and has begun integrating the lessons it has learned. It will be General Hayden's job to see that the CIA embraces the reforms needed to deal with the challenges of the 21st century. I am confident he is the right person for the task.●

Mr. LEVIN. Mr. President, the CIA must at all costs avoid a repeat of the pre-Iraq war intelligence fiasco, when CIA Director Tenet said the case for weapons of mass destruction in Iraq was a ''slam dunk,'' and then proceeded to distort and exaggerate underlying intelligence in order to support the administration's Iraq policy. The CIA needs an independent Director who will speak truth to power and provide objective assessments of a professional intelligence community, and not try to please policymakers by telling them what they want to hear.

General Hayden not only promises to be independent and objective, General Hayden has proven he has the backbone to do so.

For instance, General Hayden is perhaps the only high-level official who has criticized the Department of Defense policy office of Douglas Feith. That office, before the war began, undertook to use a direct pipeline to the White House for distorted intelligence assessments, bypassing mechanisms in place which are intended to produce balanced, objective assessments.

General Hayden has done more than speak openly of his concerns about the Feith operation. He acted upon them by placing a cautionary disclaimer on the reporting of his agency relative to the links that Feith and others were trying to create between Saddam Hussein and al-Qaida, so that his agency's reports could be misused for that purpose.

Again, speaking truth to power, General Hayden showed independence when he stood up against the positions being urged by Secretary of Defense Donald Rumsfeld during the recent reforms of the intelligence community.

As to the surveillance activities of the National Security Agency, which General Hayden formerly led, many of us have concerns. But those concerns as to the legality and as to the decision to implement the alleged collection of phone numbers called by millions of Americans should be placed at the doorstep of the Attorney General and the White House.

I am one of those being briefed on the program, and I have a number of concerns. But my concerns are with the legality and privacy intrusions and effectiveness of the program authorized by the President, and given the legal imprimatur of the Attorney General. I know of no evidence that General Hayden acted beyond the program's guidelines as set up by the President and the Attorney General.

I will vote for General Hayden's confirmation.

Mrs. FEINSTEIN. Mr. President, I rise in support of the nomination of GEN Michael Hayden to be the next Director of the CIA.

I support his confirmation first because I think General Hayden's vision for the future of the CIA is right on point.

He has pledged to make the collection of human intelligence a top priority—a necessary move in understanding our Nation's enemies and the threats we face.

At the same time, General Hayden understands the failures of analysis prior to the Iraq war and is committed to making major changes.

Only time will tell, but I am hopeful that General Hayden has what it takes to put the agency on the right path after recent collection and analytic failures.

Secondly, I think General Hayden brings with him the overarching view of the entire intelligence community needed to carry out the vision and transition the CIA to deal with the new asymmetric threat posed by the terrorist world. I think this is critically important at this time.

General Hayden served 6 years as the Director of the National Security Agency, the largest intelligence agency in the intelligence community.

He ably led a transformation from a Cold War institution to a key component of our Nation's counterterrorism efforts.

Additionally, he served as Principal Deputy Director of National Intelligence under Ambassador Negroponte for the past year.

In this role, he oversaw the day-to-day operations of the Office of the DNI, and many of the DNI's accomplishments to date can be directly attributed to General Hayden's service.

Third, I am pleased that General Hayden made a commitment to me to appoint experienced intelligence professionals to serve on his direct staff and in senior positions across the agency.

I also support the administration's intention to name Stephen Kappes as the Deputy Director of the CIA.

Mr. Kappes brings a wealth of experience in the clandestine service to the agency's senior leadership.

Perhaps more importantly, his return to the agency has already gone a long way to assure operators that they are well represented in management and that their concerns will be met.

General Hayden will come to the agency at a time of major personnel problems.

But he has already taken steps to move the agency beyond the problems of the past and that is good news.

There is no question that the concerns that have been raised about General Hayden are legitimate and important.

Before my meeting with General Hayden and his appearance at the confirmation hearings, I was concerned that he will not be sufficiently independent of the Department of Defense. On this point, I have been reassured.

General Hayden has shown his independence in the past, and has committed that if he finds his uniform to be a hindrance in any way, he will ''take it off.''

Similarly, the Intelligence Committee will need to pay close attention to intelligence activities of the Department of Defense, especially in the area of human intelligence.

I have concerns that the Pentagon is going too far in this area, and I want to make sure that the CIA remains the leader and primary provider of this type of intelligence collection.

My greatest concern about General Hayden is that he was not more forthcoming in his answers during the open confirmation hearing.

Many members asked important questions on the NSA domestic surveillance program and on detention, interrogation and rendition policies.

In my view, the public deserved more forthcoming answers than those provided by General Hayden.

For example, I felt that General Hayden should have stated clearly, in full

public view, whether he believes that certain interrogation techniques constitute torture. He could say yes or no without disclosing sources and methods.

It is my hope that General Hayden will be more forthcoming once he is confirmed as Director of the CIA.

The challenge ahead of General Hayden is daunting, but it is absolutely critical to our nation's security that he succeed.

I believe General Hayden is the sound intelligence professional the CIA needs to regain its footing as the world's premier spy service and the hub of our nation's intelligence analysis and research and development capabilities.

I look forward to working with him to protect the American people.

Mr. LEAHY. Mr. President, in several crucial respects, the CIA today is in disarray, and fixing our premier intelligence agency must be a top priority. The CIA must become as effective as we need it to be in combating terrorism and in serving all of our national security interests. The keys to a strong and competent CIA are the independence and proficiency of its leadership.

I had a lengthy private discussion with General Hayden in deciding how I would vote on his confirmation. Our discussion confirmed the confidence that I have long had in General Hayden's professionalism and competence. I remain outraged about the controversial domestic surveillance initiatives that the NSA has overseen at the White House's direction, but the fact remains that President Bush and Vice President CHENEY—not General Hayden—were the ''deciders'' in ordering this surveillance of Americans, with then-White House Counsel Gonzales acting in his capacity to validate a program that was structured and operated outside the checks and balances of existing law.

The CIA right now is in desperate need of professionalism after the debacle of the Agency's outgoing leadership, and my discussions with General Hayden have led me to conclude that he has the competence, the experience, and the independence to serve capably in helping to repair the damage that has been done to the Agency. I will vote for his confirmation.

Mr. REID. Mr. President, I rise in support of the nomination of General Hayden as the new Director of the Central Intelligence Agency. Based on my review of his long record as a career intelligence man and his answers to some important questions during his confirmation hearing, I am hopeful General Hayden will provide the CIA the kind of non-partisan leadership it has sorely lacked for the past several years.

And I am also hopeful that this nomination signifies that the Bush administration has recognized, finally, that professionals, not partisans should be put in charge of national security.

General Hayden has impeccable credentials and a career in intelligence matters that is as impressive as it is long. Anyone can read the public record and quickly see that this man is more than qualified for this job.

And my personal meeting with General Hayden shortly after he was nominated only served to reinforce that impression. I met with him privately—one on one—in my office just off this floor, for more than 45 minutes.

During the course of that meeting, we discussed General Hayden's career in the Air Force from 1969 until today and his dedicated service to America's intelligence community that ultimately earned him a fourth star.

My meeting convinced me that General Hayden understands and respects the role of Congress in national security matters. He seems to grasp how essential it is that he consult regularly with the congressional leadership on these critical issues. And he seems to recognize the need to keep the congressional oversight committees fully informed about the intelligence community's activities.

All of these are important because we are a nation at war and actions by the Bush administration have left our intelligence community—this Nation's eyes and ears on those who mean us harm in disarray.

As a direct result of this administration's actions, the Central Intelligence Agency and those it placed under contract have been directly implicated in numerous instances of abuse of detainees that have given this nation a black eye around the world and been counterproductive to winning the fight against terrorism.

The findings of our intelligence community are increasingly questioned by the American people and the world.

And scores of incredibly talented and experienced career intelligence professionals have been driven from their jobs because they insisted on speaking the truth rather than tow the Administration's line.

Things apparently got so out of hand at CIA in recent months that the President's intelligence advisory board finally had to intervene and recommend change.

All of these developments have harmed national security and placed Americans at greater risk. And it is against this difficult backdrop that the Senate debates the nomination of General Hayden. As Senator LEVIN said in the confirmation hearings, ''The next Director must right this ship and restore the CIA to its critically important position.''

I want to briefly lay out the three major challenges that I believe General Hayden faces in ensuring that he achieves the success the Senate expects of his tenure.

The first challenge is independence.

General Hayden needs to speak truth to power and call the shots as he sees them, not as he thinks his boss wants them seen. Rebuilding the independence of intelligence also means ending its politicization. General Hayden must stand up to an administration that has either attempted to bully the intelligence community into saying what it wanted or worked around it when it couldn't get the answers it needed. General Hayden must provide assurances to Congress that intelligence assessments, and professional intelligence civil servants, will be protected from outside interference, not politicized.

The second challenge is openness to oversight.

This administration has refused to follow the law and Senate rules that require keeping the intelligence committees fully and currently informed of important intelligence practices. Administration ideologues have apparently authorized detention and interrogation practices that have backfired in our efforts in the war on terror, and concocted controversial legal arguments for presidential powers backing a warrantless surveillance program that circumvents the law—all without keeping Congress properly informed as required under the law. General Hayden must ensure that Congress is able to carry out its constitutional obligations on critical national security matters.

The third challenge is fixing our strategy in the war on terror.

After more than 4 years of the war on terror, Osama bin Laden remains at large and al-Qaida and other radical fundamentalist terrorist organizations pose a grave threat to our security. Terrorist attacks have increased not decreased on this administration's watch. Two of the three so-called axes of evil are more dangerous today than they were when President Bush first uttered that memorable phrase and the third, Iraq, is on the verge of becoming what it was not before the war—a haven and launching pad for international terrorists. And America's standing in the world has reached record lows in critical regions of the world.

In the short run, General Hayden must insist that the Bush administration redouble and refocus its efforts that go after ''high value targets''. It is a travesty—a travesty—that nearly 5 years after 9/11, the Bush administration has not captured or killed Osama bin Laden. The CIA must lead efforts to understand the challenge posed by Iran and North Korea and their nuclear ambitions.

General Hayden must also build a global human intelligence capability over the next several years with diverse officers who understand the cultures and speak the languages of every key target across the entire globe. The CIA must play a leading role in understanding how to help win the battle of ideas going on within the Islamic world, and how to change the calculus of the young so that new generations of terrorists are not created.

These are all large and important challenges, with grave consequences for America and the world. Based on

everything I have seen I am hopeful he is up to the task. And I am hopeful this administration will let him do the job for which it nominated him.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of General Michael V. Hayden, United States Air Force, to be Director of the Central Intelligence Agency?

Mr. LEAHY. 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 legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

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

The result was announced—yeas 78, nays 15, as follows:

[Rollcall Vote No. 160 Ex.]

YEAS—78

Akaka	Domenici	McCain
Alexander	Ensign	McConnell
Allard	Enzi	Mikulski
Allen	Feinstein	Murkowski
Baucus	Frist	Murray
Bennett	Graham	Nelson (FL)
Biden	Grassley	Nelson (NE)
Bingaman	Gregg	Pryor
Bond	Hagel	Reed
Brownback	Hatch	Reid
Bunning	Hutchison	Roberts
Burns	Inhofe	Santorum
Burr	Isakson	Sarbanes
Byrd	Jeffords	Schumer
Carper	Johnson	Sessions
Chafee	Kohl	Shelby
Chambliss	Kyl	Smith
Coburn	Landrieu	Snowe
Cochran	Lautenberg	Stabenow
Coleman	Leahy	Stevens
Collins	Levin	Sununu
Cornyn	Lieberman	Talent
Craig	Lincoln	Thomas
Crapo	Lott	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner

NAYS—15

Bayh	Dorgan	Kerry
Cantwell	Durbin	Menendez
Clinton	Feingold	Obama
Dayton	Harkin	Specter
Dodd	Kennedy	Wyden

NOT VOTING—7

Boxer	Inouye	Thune
Conrad	Rockefeller	
Dole	Salazar	

The nomination was confirmed.

Mr. DODD. Mr. President, I would like to say a few words about the nomination of General Michael V. Hayden to be Director of the Central Intelligence Agency. I regret that I was not able to vote to confirm his nomination at this time, and I would like to take a few minutes to explain my vote.

As my colleagues may know, I voted to confirm General Hayden when he was nominated to be the Deputy Director of National Intelligence, DNI. I stand by that vote for two reasons. First, General Hayden is obviously qualified on paper to fill the position. Second, he was serving as Deputy to the current DNI, John Negroponte. So there was a clear line of authority.

But today when the Senate voted on his nomination to be Director of the CIA, these two circumstances were significantly different. First, issues like the potentially illegal wiretapping of American citizens' phone lines by the National Security Agency—a program which General Hayden reportedly designed and ran—have come to light. And second, he will no longer be serving as a deputy but as head of one of our Nation's premier intelligence agencies—yet he is not resigning his commission as a uniformed officer. That raises the question of whether and to what degree he will be independent from decisions made at the Pentagon.

Some of my colleagues have insisted that Secretary of Defense Donald Rumsfeld will no longer be in the chain of command overseeing General Hayden in his position at the CIA. Certainly, there is precedent for uniformed officers serving as head of the CIA. However, when we look at this precedent we also have to realize that circumstances have changed. A not insignificant part of the reason that we invaded Iraq is because our Nation's intelligence was politicized, and because intelligence activities were manipulated to justify a predetermined conclusion—that Iraq had weapons of mass destruction.

Much of this intelligence manipulation was performed by intelligence bureaus within the Pentagon, under the supervision of Secretary Rumsfeld, who has been steadily expanding the Pentagon's role in U.S. intelligence activities. It would seem to this Senator that given Secretary Rumsfeld's track record, concentrating intelligence in his hands would be unwise to say the least.

The truth is that we don't really know how much independence General Hayden will show with respect to the Secretary of Defense. After all, he is a military officer, with an active commission. And the record is mixed with respect to predicting how the cards will fall. On one hand, there are reports that he stood up to Secretary Rumsfeld and other political appointees in the President's Cabinet on certain occasions. On the other hand, he reportedly designed and strongly supported a program to wiretap the homes of American citizens, whose legality is in question.

If he was just following orders, these circumstances raise serious questions about his ability to exercise independence as Director of the CIA. If, as is widely believed, he was the driving force behind the NSA's wiretapping program, then I question his ability to balance the important need to defend our Nation from threats with the equally important need to protect constitutional rights of all Americans.

I frankly think it is a shame that Congress didn't take a few more days, or even a couple of weeks, to more deeply probe these fundamental issues of security and liberty. Indeed, if this body had taken sufficient steps to get answers about the NSA's wiretapping program, and if General Hayden had considered leaving his role as an active military officer during his tenure as CIA Director, then it is possible that the concerns I mentioned might have been alleviated.

I also regret the fact, however, that President Bush didn't pick somebody who was equally qualified but not tied in to controversial programs such as collecting telephone information and listening in to conversations between American citizens. Because in this time of difficulty for the CIA, we don't just need someone who is qualified, we also need someone who is credible. While the extent of General Hayden's involvement in these activities is as yet unclear, I am concerned that his role could potentially undermine his ability to carry out his duties as head of the CIA.

Mr. President, despite some opposition, General Hayden was confirmed earlier this morning by the Senate. At this juncture, I can only hope that he proves my concerns to be unfounded. I wish him only the best in pursuing a goal that I know we all share—the safety and well-being of American citizens in this time of war.

The PRESIDING OFFICER. The President will be immediately notified.

The majority leader is recognized.

Mr. FRIST. Mr. President, I know Senator NELSON will have 2 minutes of remarks to make; 30 seconds for me. The next vote will be our last. We anticipate a voice vote on the confirmation of Dirk Kempthorne after cloture is invoked. We are working on agreement for when we return. I expect the next votes to occur on the morning of Tuesday, June 6.

100 HOURS OF SERVICE AS PRESIDING OFFICER

Two quick congratulations: On behalf of the entire Senate, I congratulate two Senators for their presiding service. Earlier this week, Senator VITTER reached the 100-hour mark and will receive the Golden Gavel Award; and later this morning, Senator ISAKSON will get his 100th hour of service. We thank them both for their efforts in the Chair.

(Applause, Members rising.)

NOMINATION OF GENERAL MICHAEL V. HAYDEN TO THE POSITION OF GENERAL IN THE U.S. AIR FORCE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to Executive Calendar No. 693, which the clerk will report.

The legislative clerk read the nomination of the following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

GEN Michael V. Hayden

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the confirmation of the nomination of GEN Michael V. Hayden to the position of general in the United States Air Force.

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

Senator NELSON is recognized for 5 minutes.

Mr. NELSON of Florida. Mr. President, I rise today as a voice to counter that of the giant multinational oil corporations. It has been during three decades of my public service that I have held fast to a promise to fight to keep big oil away from Florida's coastlines, to keep that industry from soiling our homes and from ruining our economy.

In Florida, a clean, healthy environment is the infrastructure of our tourism-driven economy, and it is the source of sustenance for millions of residents and visitors alike. In America, where we have only 3 percent of the world's oil reserves, our addiction to ''black gold'' will not be broken just by more drilling but by mounting an aggressive effort to fully exploit greater efficiencies in alternative fuels.

As part of my promise to Florida, I have said that I could not support an Interior Secretary who would advance this administration's willingness to acquiesce to the oil lobby and its ever-increasing desire for greater profits beyond the recent record levels.

Mr. President, I know this nominee is a person deserving of our respect. He is a gentleman. In fact, he will receive an overwhelming vote of support from the Senate. But I must stand on my principles to oppose this nomination. I do so for the future of Florida and for the future of our country.

I thank the Chair.

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 Executive Calendar No. 630, the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) and the Senator from South Dakota (Mr. THUNE) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. CONRAD), the Senator from Hawaii (Mr. INOUYE), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. SALAZAR) are necessarily absent.

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

The result was announced—yeas 85, nays 8, as follows:

[Rollcall Vote No. 161 Ex.]

YEAS—85

Akaka	Dorgan	McCain
Alexander	Durbin	McConnell
Allard	Ensign	Menendez
Allen	Enzi	Murkowski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (NE)
Bennett	Frist	Obama
Bingaman	Graham	Pryor
Bond	Grassley	Reed
Brownback	Gregg	Reid
Bunning	Hagel	Roberts
Burns	Hatch	Santorum
Burr	Hutchison	Sarbanes
Byrd	Inhofe	Sessions
Cantwell	Isakson	Shelby
Carper	Jeffords	Smith
Chafee	Johnson	Snowe
Chambliss	Kennedy	Specter
Coburn	Kohl	Stabenow
Cochran	Kyl	Stevens
Coleman	Landrieu	Sununu
Collins	Lautenberg	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Vitter
Crapo	Lieberman	Voinovich
DeMint	Lincoln	Warner
DeWine	Lott	Wyden
Dodd	Lugar	
Domenici	Martinez	

NAYS—8

Biden	Harkin	Nelson (FL)
Clinton	Kerry	Schumer
Dayton	Mikulski	

NOT VOTING—7

Boxer	Inouye	Thune
Conrad	Rockefeller	
Dole	Salazar	

The PRESIDING OFFICER. On this vote, the yeas are 85, the nays are 8. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. MENENDEZ. Mr. President, I am not here to cast doubt on the qualifications of Governor Kempthorne to be the next Secretary of the Interior. In fact, I believe he is eminently qualified for the job. Unfortunately, that is also the problem. I fear that the Governor is all too qualified to take the helm of an agency that, in the past 5 years, has drastically shifted its mission from one of conservation and protection, to one of exploitation and commercialism. Governor Kempthorne's record as a Senator, where he cast one vote in favor of the environment in six years, does not give me much hope that he will be able to reverse the trend.

If we are to ensure that our grandchildren will be able to marvel at the majestic grandeur of this country's untouched wide open spaces, or learn of their Nation's heritage at our historic treasures, or observe the beauty of the astounding array of wildlife that roams the continent—it is essential that the next Secretary of the Interior recommits the Department to being a good steward of the land for all the people, and not a good server of it for the oil, mining, and timber companies. Given his consistently held positions for drilling in protected areas of the Arctic and off our coastlines, weakening the Endangered Species Act, and opposing the protection of roadless areas in National Forests, among others, I do not believe that Governor Kempthorne will make a change in the direction of the Interior Department.

I want it to be clear that the real problem is not with the nominee. The real problem is with the policies of the administration, and the willingness of the Secretary to carry them out without question. This administration has certainly been no friend to the environment, and the previous Secretary of the Interior was particularly adept at enabling its primary impulses. Whether it is in the waters off our beaches, in the sensitive lands of the Arctic, or the wild places of the West, the administration has consistently appeared to be working for the interests of the oil and gas companies first, and the interests of the public second. They have consistently pushed for opening the Alaska National Wildlife Refuge. They have proposed opening the Mid-Atlantic to oil and gas drilling—barely 75 miles off the coast of New Jersey. And, according to the Government Accountability Office, they more than tripled the number of drilling permits approved for the West—to the point where GAO found that the Bureau of Land Management was having trouble meeting its environmental responsibilities.

The administration's disdain of public lands extends to the point that they have now proposed selling it off to fund other programs or reduce the deficit. To his credit, the Governor flatly stated that he did not approve of reducing the deficit this way, but he was not nearly as clear about whether he would use public land sales to fund other programs. The Governor should not treat our public lands as if they were an inventory that needed to be gotten rid of, but rather as an asset that needs to be protected and nurtured for future generations.

In New Jersey, we don't have an overabundance of public land, which makes us value what we do have a great deal. Even in the most densely populated State in the Nation, we have a number of treasures valued by all New Jerseyans—the Pinelands, the Highlands, the Delaware Water Gap, our National Wildlife Refuges, our historic sites, and more. This is where we take our children to show them the beauty of nature, where we learn about our

past, where we take our vacations, and where we welcome visitors from other States and other countries. But many of these would not exist without the help of the Land and Water Conservation Fund. The Fund has not only helped the Federal Government preserve these and other sites, it has also helped the State create parks, ballfields, and other recreation areas. Liberty State Park, a green oasis in the middle of the New Jersey metropolitan area, less than a half mile from Ellis Island and the Statue of Liberty, would still be a tangle of deserted railroad tracks if it wasn't for the help of the Land and Water Conservation Fund. Unfortunately, the administration has been carrying on a multi-year assault on the fund, slicing it from $573 million in 2002 to $142 million this year, and proposing only $85 million for 2007. For the second straight year, they have proposed eliminating the State grant program entirely. This is not the way to run a program that is supposed to provide $900 million each year for land acquisition.

I am also very concerned about the overall direction that the National Park Service has been moving in under this administration. First, the administration has inexplicably proposed rewriting the National Park Service's management policies to take away the clear mandate to preserve the parks for future generations. We have not gotten any satisfactory answers as to why they have proposed this, but it is completely at odds with my view of why we have national parks, which is to protect our natural treasures for our children and our grandchildren. But even if the policies are not rewritten, our parks are in danger of simply falling apart. The National Parks Service faces a multibillion-dollar maintenance backlog, yet the administration has proposed slashing the account to fund that maintenance by over 30 percent.

This does not bode well for Ellis Island, where a large number of historic buildings are in danger of disappearing forever into crumbled brick because the National Park Service has been stalling for years instead of approving a redevelopment plan for the south side of the island. This part of the island belongs to New Jersey, and a dedicated nonprofit group has spent years raising millions of dollars to prepare for the rehabilitation of these structures, only to be thwarted by the National Park Service.

Right next door, the Statue of Liberty has been held hostage by fear since 9/11. The pedestal has been reopened, but visitors are still forbidden from making the unforgettable climb up to her crown to look out onto the harbor. Just yesterday, the Senate passed the amendment, offered by Senator SCHUMER and myself, that would require the Secretary of the Interior to take the necessary security precautions and open the stairway to Lady Liberty's crown once more. There is no reason it should have taken this long to take the precautions necessary to ensure that the statue is safe to climb, and there is no reason any longer for it to be held hostage to fear.

The National Park Service is not the only agency in the Interior Department facing crippling budget cuts that threaten its very mission. Wildlife refuges throughout New Jersey are going to be losing staff in the upcoming fiscal year; at least one refuge will be left without any staff at all. The largest of our refuges, Edwin B. Forsythe, is going to have to close one of its offices, and make due with only one law enforcement officer for its 47,000 acres. This doesn't just detract from the experience for visitors. It also makes it tougher to protect against vandalism, littering, and other activities that harm the tens of thousands of birds and mammals that depend on the refuge as a sanctuary in a highly urbanized region.

This last point is extremely important. Making sure that wildlife has access to the habitat it needs to thrive is absolutely essential, particularly if endangered species are to survive. But right now the endangered species act is under attack. Last year, the other chamber passed a bill that would severely weaken a number of crucial protections under that Act, including the elimination of critical habitat. The Governor has a long record on endangered species issues, and much of it gives me great cause for concern. I hope that he will take a careful look at this issue and not simply endorse policies designed to protect developers first and endangered species second.

I have just scratched the surface of the antienvironmental policies of the current administration. As I have limited myself to discussing the Department of the Interior, I have not mentioned the misguided policies designed to rollback the progress we have made in cleaning our air, our lakes, and our rivers, or the refusal of the administration to face the facts on global warming. We quite simply might never have the time to completely cover that ground. But Governor Kempthorne has demonstrated himself in the past to be aligned with the environmental philosophy of this administration, and therefore I cannot support his nomination as Secretary of Interior. I have no illusions, however. I am fully aware that he will be confirmed, and I hope that he proves me wrong. Because we are in danger of making mistakes that we can not easily correct. And we need to reaffirm our commitment to being good stewards of the land for future generations. As Theodore Roosevelt said: ''I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us.'' I hope that the administration will take these words to heart.

Mr. CRAPO. Mr. President, I am pleased to be able to recognize the distinguished achievement of my friend and fellow Idahoan Dirk Kempthorne, who will be sworn in today as the 49th Secretary of the Interior of the United States. Throughout years of public service from mayor of Idaho's capitol, United States Senator, Governor, and now Interior Secretary, Dirk is a man of many accomplishments and is of the highest character and integrity.

I have known Dirk since the 1980s when we both served the public in Idaho. As a matter of fact, I kind of owe my current job to him, as I won his seat when he left the Senate to go back to Idaho to become Governor.

Dirk has dedicated his life to public service. From his time in the Idaho Department of Lands, as mayor, as Senator, and as Governor, he has always been recognized by those from both sides of the aisle for his tremendous leadership skills. He utilizes his thorough understanding of policy together with cultured consensus-building abilities to see the most effective policies carried out through legislation and governance. These qualities will serve the nation well as he takes on the many challenges facing the Department of the Interior in the 21st century.

Through the diversity of his public service, especially as mayor and Governor, Dirk understands the real value of federalism, one that recognizes that the Government closest to the people is asked to do the most, often with fewest resources. His service as mayor taught him the lessons that ultimately led to his leadership in many relevant and important issues during his time in the Senate.

A further reflection of that approach is his pioneering work on Endangered Species Act issues. In addition to taking his seat in the Senate, Dirk preceded me as chairman of the Environment Subcommittee with jurisdiction over species conservation. In that capacity, he led a bipartisan effort to update and improve our Nation's laws to better protect and promote the recovery of endangered and threatened species while recognizing the funding challenges. As Governor, Dirk kept up this beacon call and launched a successful public education initiative through the National Governors Association and Western Governors Association on the importance of ESA issues. Dirk is a respected national authority on resource issues and a promoter of collaborative decisionmaking to solve environmental conflicts.

As Governor, he has also forged a strong working relationship with the five nationally recognized Native American tribes that reside in Idaho. Dirk recognizes the complexity of our trustee relationship with our tribes and has continuously sought to work cooperatively on matters that affect both the State and Native Americans.

As chief steward of Idaho for the past 8 years, Dirk has vigorously championed innovation in environmental and natural resource sciences. Under

his guidance, the State has taken a leadership role in applying scientific and technological innovation and research to the complex world of environmental and natural resource management. Dirk has also worked to advance the environmental mission of the Department of Energy's Idaho National Laboratory. He understands that Idaho's diversifying economy and unique resources require a dynamic mix of natural resource protection, appropriate rural economic development, and smooth integration of scientific advancements, educational research, and business know-how.

Following the wildfires of 2000, Dirk worked with his fellow Governors and Federal officials to help bring a new approach to forest health and wildfire management. Under his leadership, Idaho has established effective and well-received wolf and grizzly bear management plans aimed at enhancing the State's responsibilities as Federal management is removed.

There is no question in my mind that Dirk Kempthorne will make a superlative Secretary and establish a proud and esteemed legacy, and I congratulate him on this remarkable achievement and high honor.

Mr. LAUTENBERG. Mr. President, the position we are voting on, Secretary of the Interior Department, holds great importance for our country. The Department determines the fate of many of our public lands, including national parks and wildlife refuges. Of great importance to New Jersey, the Secretary of Interior determines what activities can take place on the Outer Continental Shelf. The Secretary of Interior implements critical laws like the Endangered Species Act, and administers some of our most important conservation programs like the Land and Water Conservation Fund. It should be a job for somebody who believes in protecting our nation's great natural heritage, not selling it off to the highest bidder.

I served in the Senate with Governor Kempthorne, and we were members of the Environment and Public Works Committee at the same time. He is a skilled legislator and a congenial person, and I will vote to invoke cloture on his nomination, and for his confirmation. But I do want to take this opportunity to express some concerns about Governor Kempthorne's record on the environment, and about the Bush administration's record, as well.

The League of Conservation Voters has given Governor Kempthorne a lifetime score of 1 percent, meaning he voted against the environment as judged by LCV 99 percent of the time. That does not give me great confidence on how he will address issues of preserving wilderness, protecting wildlife, or defending our coastal waters. Of course, these are areas where the administration has already compiled a poor record.

I am also concerned about whether Governor Kempthorne will continue the pattern of pressuring scientists to alter their views to suit ill-advised Bush administration policies.

Last year, we learned that an administration official named Philip Cooney—an oil lobbyist before and after his White House stint—had altered scientific documents to change their conclusions about global warming. This year, we have seen numerous reports of Bush administration political appointees trying to intimidate and muzzle climate scientists at the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration.

Similar concerns have been raised at Interior-based agencies. Twenty percent of Interior scientists who answered a survey by the Union of Concerned Scientists responded that they had been ''directed to inappropriately exclude or alter technical information from a scientific document.'' Moreover, 44 percent of the respondents said that they have been ''directed, for non-scientific reasons, to refrain from making findings that are protective of species.''

The Fish & Wildlife Service fired a whistleblower who exposed the Bush administration's use of flawed science to favor development projects over protecting habitat for the Florida Panther.

This administration's contempt for science is deeply disturbing, and it would be a great disappointment if Governor Kempthorne were to continue to pursue policies based on ignoring, suppressing, or intimidating scientists.

Our country is blessed with countless national treasures from coast to coast and, in my view, the Interior Secretary's most important job is to restore and preserve those treasures. Despite the serious reservations I have raised here, I will support this nomination in the hope that Governor Kempthorne will shift this administration's unwise policy emphasis on development over preservation, and I urge him to respect unfettered scientific inquiry in the agencies he will oversee.

Mr. FEINGOLD. Mr. President, I am mindful of Wisconsin's historic dedication to conservation and am keenly aware of the legacy of Gaylord Nelson, John Muir, Aldo Leopold, and Sigurd Olson. My constituents regularly remind me of Wisconsin's environmental heritage and they expect their leaders to help build a positive environmental future.

As the Secretary of the Interior, Governor Kempthorne will have the opportunity to chart a responsible course for managing our Nation's public lands—a course very different from the one that the American people have endured over the past 5 years. I am encouraged by Governor Kempthorne's reputation for collaboration and consensus. While Governor Kempthorne's environmental record does give me cause for concern, it has been my practice to defer to presidents in considering nominees for Cabinet positions. Consistent with that practice, I will vote to confirm this nominee.

In his testimony before the Energy and Natural Resources Committee, Governor Kempthorne stated his belief that ''there is a no more beautiful cathedral than the outdoors.'' I will take Governor Kempthorne at his word and hope that he will lead the Department of the Interior in a manner consistent with those words.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the vote on the nomination of Dirk Kempthorne, and following that vote that Senator LANDRIEU be recognized for 10 minutes, Senator STEVENS for 10 minutes, Senator REED for 10 minutes, to be followed by Senator BYRD.

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

The question is, Will the Senate advise and consent to the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior?

The nomination was confirmed.

Mr. STEVENS. 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.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 10 minutes.

Ms. LANDRIEU. Mr. President, I wish to speak about Governor Kempthorne's nomination, and now confirmation by this body, to be Secretary of the Interior, and I hope he will help us work through a compromise that has eluded this Nation for some 45 years.

The Secretary of the Interior is in a pivotal position to help bring reason and rationale to this debate. I think that we, by confirming him this morning, have put the right man in the job for what is ahead.

The Secretary of the Interior helps lead the debate and discussion about the Nation's energy policies. There are many facets of that policy, and it is multidimensional. It is one of the toughest issues faced by this Congress. Because it is so regional, it brings very passionate debate on both sides of the issue.

I was pleased to cast my vote this morning for Governor Kempthorne, a former Member of this body, and a man who has shown a great deal of ability in terms of mediating very difficult issues. He showed that skill when he was a Member of the Senate, and I have no doubt that he will show the same skill as he becomes Secretary of the Department of the Interior.

One of the issues on which I look forward to working with him and my colleagues is the issue I have spoken about so many times on the Senate floor relative to offshore oil and gas drilling, a balance, a partnership of mutual respect between the Gulf Coast States and the Nation regarding a partnership that is mutually beneficial.

As the Nation struggles to find new ways to produce oil and gas using the

great minds of this Nation and the great technology that has been developed; as the Nation needs so desperately more oil and more gas, particularly natural gas; with the prices so high so that supplies can be increased and, hopefully, demand can be reduced, prices can come down, prices can stabilize, and the entire economy, from the Midwest to the Northeast to the far West can benefit from that effort, I wanted to show a graph of what I am speaking about because I think a picture is worth a thousand words, and I know I only have a few more minutes. This is why I continue to come to the Senate floor to say that the gulf coast is America's only energy coast.

This represents the miles and miles of pipeline, rigs, and infrastructure that have been developed in the Gulf of Mexico since the first well was drilled off of Creole, LA, in the gulf in the 1940s. By the way, that community was just completely wiped out in the last hurricanes, Hurricanes Rita and Katrina. But right off of Creole, a tiny little community in southwest Louisiana, the first offshore oil platform was drilled. Subsequently, over decades this infrastructure has been built and it has been built better and better and stronger using better technology, and as a result this country has benefited significantly from this contribution.

Another way to look at it is the oil and gas leasing that has occurred—which Secretary Kempthorne will now be responsible for, how these leases occur, where they occur, and when they occur. As you can see, Alabama, Mississippi, Louisiana, and Texas have served as hosts to this industry, and we have served proudly. But there is a crisis now in the Gulf of Mexico, and it was brought to the televisions of every American—every American—with the landfall of Katrina and Rita and the subsequent flooding.

This is the devastation that has occurred along the gulf coast, the flooding in the city of New Orleans and in communities throughout Louisiana, and the frightening and real erosion of America's only coastal wetlands the coastal wetlands of Louisiana. We have lost over a million square miles of wetlands, and we are losing 33 football fields a day. Thirty-three football fields a day are being lost in this great and extraordinary wetland.

When people say: Senator, how are the beaches in Louisiana?

I say: We don't have beaches in Louisiana. We love the beaches that are in Florida, Alabama, and Mississippi. We have vacationed on them our whole lives. But we have the greatest delta system in America, built over a million years by the Mississippi River itself, the land that we actually live on. On this land are great wetlands that supply fishing, that host and serve as the home of the mighty Mississippi River, and serve as a platform for oil and gas.

As the Secretary will come to know, this oil and gas could not be retrieved or mined from the Gulf of Mexico without the partnership of these Gulf Coast States. So what we are asking for is fairness. We are asking for a percentage, a percentage in dollars, from this drilling to come back into this area and help us restore our wetlands and invest in the infrastructure necessary to protect this great coast so that we can provide our people with a bright and strong economic future.

I am going to submit a longer statement for the RECORD. Again, I submit, looking at this chart, and just showing one more, that when we say the gulf coast is America's energy coast, these are the pipelines that come from the Gulf of Mexico. You can see even the Rocky Mountains. We are proud of the production that goes out West. We are proud of that production. But as you can see, a lot of our gas is coming from Canada and, hopefully, more of our gas will come from Alaska.

I see my friend and colleague from Alaska, the senior Senator, on the Senate floor. We hope we can get more gas from Canada and from Alaska because we need it. But I want people to see where the gas is coming from. The gas is coming from Louisiana, and if you want more of it, then, No. 1, help us to save our State from washing away in the gulf; and, No. 2, help us to share in some of these revenues that will go right back into these communities to support the industry and the people and the schools and the churches and the towns that make this all possible. And, if not, then go find your gas somewhere else. I mean that. Go find it somewhere else because we have a lot of it down here. We are happy to give it, but we need some respect and cooperation on this point.

The Senator from Alaska is here to speak, and I am going to be back later this afternoon to finish the remarks that I want to put in the RECORD. I see Secretary Kempthorne standing here. I appreciate him being on the floor to hear these remarks. I am looking forward to having him come to Louisiana. I said he is not much use to us with a broken foot, so he has to get that foot fixed and then come on back so we can take him out to offshore oil and gas rigs. He has promised to do that, and I am sure he will get up to Alaska sometime soon to see the great work that Alaska does. He, of course, is very familiar, having been the Governor of Idaho, with the West. But, Governor, we are looking forward to having you come down and visit us on the gulf coast.

I yield the floor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The PRESIDING OFFICER. The Senator from Alaska is recognized for 10 minutes.

Mr. STEVENS. Mr. President, I would like to change the order in terms of the time agreement. I ask that I be recognized for 10 minutes. Following my presentation, Senator REED be recognized for 10 minutes, Senator SPECTER for 10 minutes, Senator BYRD for such time that he may require, and following Senator BYRD, Senator MCCONNELL be recognized for such time as he may require.

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

ENERGY

Mr. STEVENS. Mr. President, yesterday the House of Representatives passed the bipartisan American-Made Energy and Good Jobs Act. This bill directs the Secretary of the Interior to establish and implement a leasing program to enable the exploration, development, and production of Alaska's oil and gas resources in the Arctic Coastal Plain.

I come today to commend our House colleagues for taking this action. Opening the Coastal Plain to development will help stabilize energy prices, spur economic growth, and enhance our national security. The Coastal Plain is believed to be the second largest oilfield ever discovered in North America, capable of producing at least 1 million barrels of oil per day. The National Defense Council estimates the development of the resources in our Coastal Plain will create between 700,000 and 1 million American jobs.

A majority in both Houses of this Congress and 70 percent of all Americans support exploration and development of Alaska's Coastal Plain. Our Senate colleagues should join those in the House and act to authorize development of these domestic resources.

Going forward, the United States must increase domestic production to secure our energy independence. Our Nation is in the midst of an energy crisis. In 2003, gasoline cost $1.56 per gallon. This week, prices at the pump are averaging $2.88 per gallon in my State and in some places over $4 a gallon.

In the 1990s, natural gas prices in the lower 48, as we call it, averaged $2.50 per thousand cubic feet. Today, natural gas costs approximately $6 per thousand cubic feet, more than twice as much. This situation will only grow more serious. It is estimated that our LNG imports will increase by 500 percent in the near future. We also now face increased competition for that LNG from foreign nations.

In the last 14 years, India's oil consumption has doubled. China was the second largest oil importer in the world in 2004. According to the Energy Information Administration, by 2025, the world energy consumption will increase by 57 percent.

Americans cannot conserve our way out of this problem, and we cannot suspend the law of supply and demand. If we continue to lock up our lands, this country will not have the energy needed to keep up with the global economy. Conservation and alternative fuels are part of the overall solution, but to end

this crisis, we must also increase our domestic production of oil and gas resources.

In 2004, Congress provided the financial incentives to move forward with the Alaska natural gas pipeline. This pipeline, constructed to move 35 trillion cubic feet of gas known to be in the Prudhoe Bay area, when completed, will deliver about 4 billion cubic feet of natural gas per day to the American market.

I now have serious concerns about the process for this pipeline being constructed. Federal officials told me that it would take 44 months once the Federal Energy Regulatory Commission receives an application to proceed with it. Congress can shorten this timeframe by declaring a state of emergency, and we have to realize that it is a national emergency with regard to our future gas supply. Congress cannot intervene, however, until the State of Alaska has taken action on this gas pipeline. The pipeline is to move gas from State lands, lands which the State of Alaska is the owner of, and the Alaska Natural Gas Pipeline Act of 2004 stipulated that if an application was not received by the Federal Government by 2006 for the construction of this pipeline, the Department of Energy could study the feasibility of a pipeline to be built and owned by the Federal Government. This study is now underway.

While Federal ownership is not the preferred course of action, given our Nation's current energy crisis and the emergency we face, this Nation must ensure that this project moves forward as quickly as possible.

Earlier this week, the Wall Street Journal published an interview with Lord John Browne, the chief executive officer of the British Petroleum Company. Lord Browne told the paper: ''The growth for us in Alaska is gas.'' He was talking about, of course, the BP Company.

He said: ''Oil will continue, but gas will flip over and replace oil as the economic driver.'' He is talking about the enormous potential of gas in the Alaska economy. And he added that: ''Once our pipeline is approved, we can look forward to 50 years''—we can look forward to 50 years—''of increased gas supplies.''

Now, our State and the Federal Government have to act quickly so that we can begin to lay the foundation for this next 50 years of increased domestically produced natural gas.

Alaska's energy resources are needed now. Our State's potential is staggering. Trillions—I am told 32,000 trillion—of cubic feet of gas hydrates lie beneath the permafrost under the North Slope lands of Alaska. We have half the Nation's coastline. It holds some of the world's greatest prospects for ocean and tidal energy. Two-thirds of the Continental Shelf of the United States is off our State. In addition to that, we hope someday we will join the producers of ethanol. Ethanol can be made from wood chips. Our State forests contain millions of acres—millions of acres—of trees that are available for harvest, including particularly the Birch trees which I am told is a good source of material for this type of fuel to make ethanol.

Alaskans are pioneers, but we are also realists. It will take decades before our Nation can fully commercialize alternative energy sources. Solving our country's energy crisis will require conservation. It will require development of alternative fuels, but it also requires domestic production of our domestic oil and gas resources. Those who advocate only one or two of these approaches are misleading the American public. There is an urgent need for us to develop our domestic resources now, and there is an urgent need for us to develop alternative fuels and to conserve. We must do all of that, Mr. President.

Federal action is required and State action is required immediately if we are to develop this gas pipeline. This gas pipeline project must go forward, and authorization of the development of our resources in our Coastal Plain and the ANWR proposal is absolutely necessary. I urge the Senate to join the House in authorizing the development which was authorized by the Congress in 1980. For over 25 years we have had a majority in the Senate which approves the development and exploration and development of oil and gas resources of the Arctic plain. It is only a filibuster that has stopped us. America needs these resources to meet the increased demand for our energy and to provide for relief from our continued increased dependence upon foreign sources for energy. I urge the Senate to join our colleagues in the House and authorize development of our Coastal Plain. I also urge my own State of Alaska to move quickly to approve the application for the natural gas pipeline so it can move forward also.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

NOMINATION OF GENERAL MICHAEL HAYDEN

Mr. REED. Mr. President, a short time ago the Senate approved the nomination of GEN Michael Hayden to be the Director of the Central Intelligence Agency. I think it was an appropriate confirmation by this body, but I do think it is also appropriate to comment on the nomination of General Hayden.

Twenty months ago, I came to the Senate floor to oppose the nomination of Porter Goss for the same position, as Director of the Central Intelligence Agency. At that time, I stated that the Director of Central Intelligence is a unique position. It should stand above politics. The citizens of the United States have the right to assume that the Director of Central Intelligence is providing objective information and analysis to allow the President to make the best possible decisions.

I didn't believe that a partisan choice was the proper choice then, and it seems in fact that was the case. Mr. Goss is an example of where this administration believed that its political agenda was more important than the security of our country. The CIA was in turmoil then, and it is in turmoil now. The Agency's assessments were distrusted then and are still subject to skepticism now. Many more experienced operatives have resigned. Mr. Goss, a political operative chosen by President Bush to lead the Central Intelligence Agency through a difficult period while engaged in a war, failed in this mission. So the administration is trying again.

This time, the President has chosen an intelligence veteran. General Hayden has served our Nation for the past 37 years as a distinguished intelligence officer in the U.S. Air Force. He has most recently held positions as Director of the National Security Agency and the Principal Deputy Director of National Intelligence. General Hayden is well versed in intelligence matters, he is well known in the community, and I do not believe he is a partisan political operative. There is evidence that General Hayden has been and can be independent and objective. General Hayden is a better choice, a much better choice, than Mr. Goss. However, I still have some concerns.

First, there has been much discussion about General Hayden's position in the military and his ability to be independent from the Defense Department in his assessments and in his operations. While the law has always allowed a military officer to serve in this position, I believe there is a valid reason for concern. The fiscal year 2007 national Defense authorization bill addresses this issue. It states that flag and general officers assigned to certain positions in the Office of the Director of National Intelligence and the CIA shall not be subject to the supervision or control of the Secretary of Defense or exercise any supervision or control of military or civilian personnel in the Department of Defense, except as authorized by law. I believe this is an important provision and only one reason the Defense authorization bill should be considered as soon as possible, to get this position on the books of law.

However, I also believe we have to go a step further. I think if a military officer is chosen as the Director of National Intelligence or Director of Central Intelligence, that position should be a terminal assignment. That position should be recognized by the officer and by other members in the Department of Defense and the administration as the final assignment of that particular officer. I believe it best for our national security if an officer who takes one of these top intelligence positions is free from considerations about his future military career—what

assignments he might be given, who he might be angering in the Department of Defense, who he might be pleasing within the Department of Defense, either consciously or subconsciously.

As I said earlier, intelligence should be above politics, and it also should be above the politics within the Pentagon of assignments and of budgets and of other considerations. A law stating that the position as Director of Central Intelligence or National Intelligence is a final military assignment would help clarify this position in detail. It is an issue I will raise again during the consideration of the Defense authorization bill.

General Hayden has agreed, in consultation with Senator WARNER and also in consultation with his family, that it is his intent to make this his final military assignment. I have no doubt that he will do that, but I believe it is important to formalize this provision in the law. That is why I will bring this to the attention of our colleagues when the Defense authorization bill comes to the floor.

There is another issue, of course, that is of concern. That issue is the administration's terrorist surveillance program. General Hayden headed the National Security Agency when the program was proposed and implemented. From what we know today, that program conducted electronic surveillance of international telephone calls and collected millions of domestic phone records. Let me be clear. A vote in support of General Hayden should not be construed as an endorsement of this administration's surveillance program. Nor should concerns about the administration's programs be viewed as an unwillingness to adopt aggressive intelligence activities against those who truly threaten this country. I believe we still do not know enough of the facts about these programs. From what I do know, however, I have grave concerns.

A thorough investigation must be conducted and must be conducted in a timely manner, but General Hayden was not the creator of the program, nor was he the one to provide the legal authority for the program. He stated he needed authority to implement such a surveillance program and the administration provided him with the authority he felt was sufficient. On this issue, at this time I will give General Hayden the benefit of the doubt.

I did support the nomination of General Hayden. I am certain he knows he is taking a very difficult job at a very difficult moment.

Many other honorable men and women have joined this administration. They have come to this administration with years of experience and expertise, and they have found themselves in very difficult dilemmas, where their experience and their expertise was challenged by this administration. Their objectivity, their sense of duty—not to a particular President but to the country overall—has been seriously challenged. In certain cases, the only remedy for these individuals is to resign rather than continue to support policies that they feel in their hearts and in their minds are not serving the best interests of this country. General Hayden might come to such a decision point, and I hope, given his skill, his experience, and his dedication to duty, that he would take the harder right than the easier wrong.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

CONGRESSIONAL NOTIFICATION UNDER THE NATIONAL SECURITY ACT

Mr. SPECTER. Mr. President, I voted against General Hayden for the position of Director of Central Intelligence as a protest vote against the administration's policy of not informing the Congress, with special emphasis on the Judiciary Committee, in a way which enables the Congress and the Judiciary Committee to do our constitutional job on oversight. I have no quarrel with General Hayden. He is a man with an outstanding record. I have no objection to his retaining his military status. He has testified in a way, before the Intelligence Committee, which was candid. I would be especially pleased to support a fellow Pennsylvanian. But in light of what the administration has done on the NSA program, which he has headed for many years, I feel constrained to vote ''no'' as a protest.

The administration has not complied with the National Security Act of 1947, which requires notification of all members of the Intelligence Committee. That was only done in the few days prior to the confirmation hearings on General Hayden. In fact, the administration for years notified only the so-called Gang of 8, the majority and minority leaders of the House and Senate, and the chairmen, vice chairman, and ranking members of the Intelligence Committees. Just because that had been the practice, it is not justification for violating the express language of the National Security Act of 1947, which requires notification of all members of the Intelligence Committees.

During the 104th Congress, I chaired the Intelligence Committee, and for that period of time I was a member of the so-called Gang of 8. Candidly, I don't think the administration told the Gang of 8 very much about what went on.

Be that as it may, admittedly the administration did not tell anybody but the Gang of 8 about their electronic surveillance program until it was disclosed by the New York Times on December 16 and the Judiciary Committee brought in the Attorney General and had pressed on in a series of hearings; then, belatedly, a subcommittee was formed in the Intelligence Committee and seven additional members were informed. Then, at first, the House resisted to having only part of their Intelligence Committee informed, but, finally, 11 Members of the House were informed. Then, in the wake of the Hayden nomination, the administration finally complied with the Act by informing all of the members of the Intelligence Committee—I think, plainly, so that they could get General Hayden confirmed.

When the Judiciary Committee called in Attorney General Gonzales on February 6, which was the first day we could do it after the mid-December disclosures and the hearings which we had scheduled on Justice Alito, it was an embarrassing performance. The Attorney General refused to say anything of substance about what the program was. We were ready to retire into a closed session, had that been productive, but it was a situation where the Judiciary Committee was stonewalled, plain and simple.

The Attorney General then wrote us a letter on February 28 seeking to clarify and explain what he had testified to before—and only more questions were raised. We have still not resolved the issue as to whether we will recall the Attorney General before the Judiciary Committee, but there is a question as to its value and whether we can get anything from a repeat performance from Attorney General Gonzales. As I say, that remains an open question.

In the interim, I have proposed legislation which would turn over the administration's surveillance program to the Foreign Intelligence Surveillance Court. That court has a record of expertise. That court has a record for not leaking and we could have it make the determination as to the constitutionality of the program.

We had a hearing where we brought in four ex-judges of the Foreign Intelligence Surveillance Court who know its operations in great detail. They made some suggestions which were incorporated into my proposed legislation, thereby improving it. They answered the questions about the possibility of an advisory opinion and the issue of the case in controversy requirement.

I have since conferred with Senator FEINSTEIN and Congresswoman JANE HARMAN, ranking member on Intelligence in the House, about working on legislation. Both of those individuals have been privy to briefings by the administration on the program. There was a suggestion that, with additional resources and with some structural changes—for example, expanding the 3-day period to 7 days—the FISA Court would be in a position to pass, on an individual basis, the program. Whether that is so or not, I don't know, but that is a possibility.

When the disclosures were made about the telephone companies providing substantial information to the administration and the NSA, the Judiciary Committee scheduled a hearing. We had it set for June 6. Yesterday, in an executive session, the issue was considered about subpoenas, since two of

the four telephone companies had requested subpoenas; the issue was also raised as to a closed session.

There were objections raised by some members of the committee about calling in the telephone companies. Suggestions were made by other members of the committee about calling in other members of the administration.

Since we were in the middle of the debate on immigration, we held a very brief meeting in cramped circumstances in the President's Room off the Senate floor. It was decided to defer the hearing with the telephone companies by 1 week to give the committee an opportunity on June 6, the same date we had previously scheduled a hearing, to consider these issues and decide them at greater length.

An interesting suggestion was made by one of the members of the committee—that in the past, when that member of the Judiciary Committee was on the Intelligence Committee, he had called for a secret session of the full Senate to discuss matters which had been disclosed to him in the Intelligence Committee which he was barred from saying publicly. That is an avenue which I am currently pursuing.

The stonewalling of the Congress—and particularly the Judiciary Committee and precluding the Judiciary Committee from discharging our constitutional duty of oversight—is particularly problemsome in light of a pattern of expanding executive authority.

A ranking member of the administration reportedly told a ranking member of Congress that ''we don't have to tell you anything.'' We have scheduled a hearing on signing statements where the President has asserted his authority to pick and choose what he likes and what he doesn't like in legislation which was passed by the Congress and signed by the President.

The Constitution gives the President the authority to veto but not to cherry pick.

We have the case of Judith Miller, the newspaper reporter put in jail for 85 days during an investigation of a national security issue as to whether the identity of the CIA agent had been disclosed, but there was also an investigation as to whether there had been perjury or obstruction of justice during the national security investigation. Perjury and obstruction of justice are serious charges, but they do not rise to the level of a national security issue, which would be the threshold for such action as jailing a reporter for 85 days.

We now have the situation where the Attorney General, on a Sunday talk show last week, raised the possibility of prosecuting newspapers under a World War I espionage statute.

We have the situation where the congressional quarters of Congressman JEFFERSON were subject to a search and seizure warrant without prior notification of the Speaker of the House of Representatives or someone in the House, with very serious questions raised there.

I am advised by one of the members of those informed on the administration's surveillance program that, reportedly, the FBI now seeks to question Members of Congress about disclosures on the administration's surveillance program.

These are all circumstances and situations which pose very substantial peril to the separation of powers, and Congress has not asserted its Article I powers and ought to do so.

I have talked to FBI Director Mueller and to the Deputy Attorney General about the search and seizure on Congressman JEFFERSON. This is a matter which ought to be inquired into—perhaps quietly—to see if a protocol can be arrived at about what would be done if this situation were to reoccur in the future.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 852 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BYRD. Mr. President, for how long am I to be recognized?

The PRESIDING OFFICER. For as much time as the Senator consumes.

Mr. BYRD. I thank the Chair.

Mr. President, I yield to my distinguished friend from Montana so that he may speak for not to exceed 10 minutes, and that I then be recognized in my own right.

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

The Senator from Montana is recognized for 10 minutes.

Mr. BAUCUS. Mr. President, thank you, and I thank my good friend from West Virginia. I know what he is going to speak on. The person he is going to speak about was a great person, a person I very much admired, as I admire the Senator from West Virginia—a wonderful relationship, wonderful, wonderful. It is a model for so many of us in the Senate and the country. I thank my very good friend.

Mr. BYRD. Mr. President, I thank my dear friend, Senator BAUCUS, for his kind remarks.

SENATOR LLOYD BENTSEN

Mr. BAUCUS. Mr. President, it is with great sadness that I join my colleagues in mourning the passing of a great man, an extraordinary statesman, and a good friend: Senator Lloyd Bentsen.

Lloyd Bentsen was the noblest of Americans. Courtly, thoughtful, and soft-spoken, Senator Bentsen embodied the finest traditions of America.

Lloyd Bentsen and I shared a perspective. It was based on the states that we came from. I used to tease Senator Bentsen that Montana is what Texas would be like, if all the things that Texans say about Texas were true.

We shared an outlook born in the wide open spaces of our great Land. We came from states that are larger than counties in Europe. You can go great distances in Montana or Texas without seeing another soul. And with that comes a view that values our fellow man.

We also shared a view of this Senate. We could not have been more compatible. We shared a goal, always to accomplish something good on behalf of the American people.

We also shared a hallway on the 7th floor of the Hart Senate office building. I had good fortune to get an office next door to Senator Bentsen's. Our two teams were very closely woven together.

Very often I would wonder where in the world my staff was. They would be down the hall talking to Bentsen's staff because they we are so compatible and had such good ideas.

My staff would often go to his for sage advice, as I would go to him. We would often walk over together for votes.

Senator Bentsen was a role model. He was smart, tough, and disciplined. He was always focused. He always maintained his temper. And he always kept his integrity. He was a Senators' Senator.

Lloyd Bentsen was a singular person. He was reserved, even-tempered, and fair. He reserved judgment, learned the facts, and listened to all points of view. And then he would take a strong position. And more often than not, that position would prevail.

Lloyd Bentsen had the strongest commitment to duty. Even after 14 hours of floor work, he would walk into a room for all-night budget negotiations. He would not complain. He would say: ''This is what I signed up for.''.

Lloyd Bentsen contributed greatly to this Country. He served bravely in the Air Force. He served 6 years in the House of Representatives. He served 22 years in this Senate. He served 6 years as chairman of the Finance Committee. And he served 2 years as Secretary of the Treasury.

Lloyd Bentsen stood for responsibility, probity, and civility. He was a champion of sound tax policy. He fought for and achieved some of the most significant deficit reduction in our Nation's history. He played key roles in the 1990 budget summit and President Clinton's 1993 deficit reduction legislation.

And Senator Bentsen was a leader in international trade. We worked closely together for more than a decade, early on, to develop a Democratic position that supported free trade. We did so with an aggressive policy that broke down international trade barriers to American products. We worked closely on a series of initiatives, for at least a decade.

Chairman Bentsen skillfully and successfully worked to win passage of the 1988 Trade and Competitiveness Act. He guided the United States-Canada Free Trade Agreement through the Senate.

And in Texas, he is known as the father of the North American Free Trade Agreement.

Senator Bentsen ran against the first President Bush twice. Bentsen ran against and beat Bush in the election for Senator from Texas, in 1970. And later, Senator Bentsen ran with Governor Dukakis on the 1988 Presidential ticket.

But after that election, Chairman Bentsen was still for giving President Bush authority to negotiate trade agreements. He simply thought that it was the right thing for the country.

Senator Bentsen embodied the finest characteristics of public service. Some might say that he embodied a different era of the United States Senate. If that is so, then we are the poorer for having lost it. We are certainly the poorer for having lost him.

Our hearts go out to B.A., and the entire Bentsen family, on their great loss. Lloyd Bentsen was always very sweet and deferential to B.A. He often said the B.A. stood for ''best asset.'' Lloyd and B.A. Bentsen were married for 63 years.

Very often I would see the two of them together. It reminds me of the relationship of Senator and Mrs. Byrd.

They were very close; teasing each other. It was a wonderful relationship to behold. I have many memories of Lloyd and B.A. being together, whether flying on a plane to South America or here in the Senate, wherever.

My heart goes out to you B.A. and to your family.

Henry Wadsworth Longfellow wrote:

Were a star quenched on high,
For ages would its light,
Still travelling downward from the sky,
Shine on our mortal sight.

So when a great man dies,
For years beyond our ken,
The light he leaves behind him lies
Upon the paths of men.

Senator Lloyd Bentsen was a great man. And for years beyond our ken, the light that Lloyd Bentsen leaves behind will lie upon the paths of men, upon the paths of the United States, and upon the paths of this Senate.

I very much thank my friend from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Montana, Mr. BAUCUS, for that lovely thought to which he refers by the great poet Longfellow, in his alluding to our former fellow colleague, Lloyd Bentsen.

I thank the Senator from Montana for speaking as he has about our late former colleague, Lloyd Bentsen.

Lloyd and I served in the House together, too. We had a great admiration for him there. I said, ''There is a young man going places''—and he went. He went places.

I join with my colleague, Senator BAUCUS, today in his message as words of reverence for Lloyd Bentsen, and for B.A., Lloyd's lovely wife. I suppose she is in Texas today.

Mr. BAUCUS. She is.

Mr. BYRD. I want to associate myself, again, may I say, with my colleague in every word he has chosen to speak about Lloyd Bentsen.

Mr. President, for how much time am I recognized?

The PRESIDING OFFICER. For as much time as the Senator wishes to consume.

Mr. BYRD. Mr. President, I thank the Chair.

REMEMBERING OUR FALLEN HEROES

Mr. BYRD. Mr. President, I speak today in memory of our fallen heroes. Next Monday, the last Monday in May, the Nation honors the men and women who have given their lives in battle.

In the aftermath of the Civil War, the practice of decorating the graves of those who died in battle was already an established custom in many places, especially in the South, but it was a tribute to the healing of the Nation that both sides were able to put aside their past differences to mourn the fallen together after that terrible conflict.

Although many communities lay claim to being the birthplace of Memorial Day, since World War I, when the holiday changed from honoring just those who died fighting in the Civil War to honoring those who were lost in battle in any war—those Americans—Memorial Day belongs to us all.

Mr. President, death knows no divisions or political views. Death knows no distinctions between uniforms or battlegrounds. The Nation knew that all too well after the Civil War. Death unites the fallen—death unites the fallen—in God's care. And death heaps grief and loss in equal measure on all those left to mourn.

It is a lesson that some strident few today need to be reminded of, as they use military burials as a place of protest. No matter what views one may hold about the current conflict in Iraq and Afghanistan, or indeed of any conflicts anywhere, there is no place for intrusions during these solemn rites, no cause worth offering further pain to the families of the fallen.

The men and women in our military who don the uniform of the United States are not, as someone has so inelegantly put it, ''the deciders.'' They must, instead, put aside their personal views and focus on working seamlessly with the other members of their unit, so that the unit survives.

Every death is accompanied by stories of heroism, from the one who sacrificed his all to keep his fellow soldiers safe, to the heroes who brought the fallen home. No protests can change, and none should mar, those acts of bravery or those honored dead.

Memorial Day is a day to put aside our own schedules and to spend some time remembering those who have risked all and lost all in service to the Nation. It is a day to recall and revere their bravery, their duty, their strength, and their humanity. It is a day of tribute to them, and to their families, to whom the Nation owes so much.

The poet Joyce Kilmer, himself a sergeant with the ''Fighting 69th'' Division, who lost his own life in 1918 during World War I, wrote a poem called ''Memorial Day.''

The bugle echoes shrill and sweet,
But not of war it sings to-day.
The road is rhythmic with the feet
Of men-at-arms who come to pray.

The roses blossom white and red
On tombs where weary soldiers lie;
Flags wave above the honored dead
And martial music cleaves the sky.

Above their wreath-strewn graves we kneel,
They kept the faith and fought the fight.
Through flying lead and crimson steel
They plunged for Freedom and the Right.

May we, their grateful children, learn
Their strength, who lie beneath this sod,
Who went through fire and death to earn
At last the accolade of [Almighty] God.

In shining rank on rank arrayed
They march, the legions of the Lord;
He is their Captain unafraid,
The Prince of Peace . . . Who brought a sword.

Mr. President, all too often these days, Memorial Day is just another 3-day weekend, an opportunity to work on the yard a little bit, an opportunity to go shopping, or to host a backyard barbecue. Fewer and fewer Americans honor the men and women in uniform and their fallen compatriots. Fewer, still, visit military cemeteries or actually decorate graves in the old-fashioned way.

But for those who went to Arlington National Cemetery on Thursday, May 25, I say you may have witnessed the beautiful scene known as ''Flags-In.'' Just prior to each Memorial Day weekend, every available soldier from the 3rd U.S. Infantry Division, the Old Guard, honors their fallen brethren by placing a small American flag before each of the more than 220,000 gravestones and 7,300 niches at the cemetery's columbarium. An additional 13,500 flags are set in place at the Soldier's and Airman's Home National Cemetery, also in Washington, DC.

Flags are placed at the graves of each of the four individuals at the Tomb of the Unknowns by the tomb sentinels. Then, in order to ensure that each flag remains in place and standing proudly, the Old Guard patrols the cemetery throughout the weekend, watching over their fallen comrades. It is a stirring sight to see that, truly, none of these great sacrifices are forgotten, and to witness how seriously these young soldiers take their duty.

There will be speeches on Memorial Day—formerly referred to as Decoration Day. And I have made many of those speeches in my long years on Memorial Day. And on this coming Memorial Day, there will again be speeches, and wreaths will be laid. A moment of silence will be observed. For these few moments, our Nation both mourns and celebrates. Privately, we mourn the loss of so many young men and women, fathers and mothers, sons and daughters, friends and relatives.

Our hearts and our prayers go out to all the families who have lost a loved one in the Nation's service, and especially to those families who have borne their tragedies so recently and whose tears are still so close to the surface.

The Senate's thoughts and prayers are also with those whose family members have been wounded and who fight now for their lives.

As a nation, we celebrate and we honor the patriotism and the heroism that have kept us free, kept us united, and kept us strong for these past two and a third centuries. It is on the shoulders of these brave legions of the fallen and their comrades in uniform, past and present, that our Nation is carried to greatness.

Technological and scientific progress is a source of pride and strength, economic prosperity a boon, and our Constitution—thank God—a blessing. But none of these gifts is sustainable without the will and the resolve to defend them, to the death if necessary.

Those we honor on Memorial Day have gone that extra mile. They have worn the uniform with pride, and they have won and kept our freedom with their effort and their sacrifice. They have fought together around the globe, in the dark, in the mud, in the dust, on holidays, anniversaries, and weekends. Some have missed the births of their children. Some have missed growing old with their loved ones. They will enjoy no more 3-day weekends, no family vacations, no backyard barbecues. But in our moment of silence, as the flags snap in front of the rows upon rows of marble markers, let us think on all that they have given for us, and be humbled.

Edgar Guest, a prolific poet of the first half of the last century, wrote many favorite poems of mine. His work was published in the newspapers, for he worked for the Detroit Free Press. His poem, Memorial Day, suggests a fitting tribute to all those we honor on Memorial Day.

Let me read a few lines.

The finest tribute we can pay
unto our hero dead today,
is not a rose wreath, white and red,
in memory of the blood they shed;
it is to stand beside each mound,
each couch of consecrated ground,
and pledge ourselves as warriors true
unto the work they died to do.

Into god's valleys where they lie
at rest, beneath the open sky,
triumphant now o'er every foe,
as living tributes let us go.

No wreath of rose or immortelles
or spoken word or tolling bells
will do to-day, unless we give
our pledge that liberty shall live.

Our hearts must be the roses red
we place above our hero dead;
today beside their graves we must
renew allegiance to their trust;
must bare our heads and humbly say
we hold the flag as dear as they,
and stand, as once they stood, to die
to keep the stars and stripes on high.

The finest tribute we can pay
unto our hero dead today
is not of speech or roses red,
but living, throbbing hearts instead,
that shall renew the pledge they sealed
with death upon the battlefield:
that freedom's flag shall bear no stain
and free men wear no tyrant's chain.

Mr. President, I have another statement which I must give. I see the distinguished Senator from Kentucky, Mr. MCCONNELL, on the floor. I will yield to him if he wishes.

I thank the distinguished Senator for his characteristic courtesy.

MEMORIAL DAY, MAY 29, 1937

Mr. BYRD. Mr. President, Monday next is Memorial Day. Monday next, being May 29, my memory goes back to May 29, 1937. It was a Saturday. I was working in the meat shop as a meat cutter at the Koppers Store in Stotesbury, Raleigh County, WV. It was a coal mining community. I started working there in the gas station for Koppers Store for $50 a month. I walked 4 miles to work and 4 miles back home, unless I might catch a bread truck or a milk truck.

But on that Saturday, May 29, 1937, at 5 o'clock p.m., my two senior meat cutters at the Koppers Store in Stotesbury, WV, and I closed up the meat department and went home. I put on my best suit—actually, my only suit—and where did I go? I headed off to Sophia, 4 miles away, to the house of the local hard-shell Baptist preacher U.G. Nichols. And there I met with my high school sweetheart, Erma Ora James. May God bless her sweet memory. She was the beautiful daughter of a coal miner. This was a coal miner who helped to teach me to play the old fiddle tunes long ago: ''Sally Goodin,'' ''Mississippi Sawyer,'' ''Arkansas Traveler,'' and ''She'll Be Comin Round the Mountain,'' and so on.

At 6 o'clock that evening, Preacher Nichols pronounced Erma—God bless her sweet name—and me ''husband and wife.'' That union, I am very proud to say, endured for 68 years, 9 months, and 24 days. So on May 29, 3 days from now, Erma and I would have celebrated our 69th wedding anniversary. That is something to brag about. Dizzy Dean said it was all right to brag, if you have done it, and Erma and I did it. Erma didn't quite go all the way. But on May 29, Erma and I would have celebrated our 69th wedding anniversary. That is something not heard about very often these days, a 69th wedding anniversary.

The Scriptures tell us that ''whoso findeth a wife findeth a good thing and obtaineth favour of the Lord.'' Well, on that blessed day in 1937—a long time ago—I certainly found a good thing. In looking back on the life that Erma and I shared, I can say, in accordance with the scriptural passage, that I must have been favored by the Lord.

''The joys of marriage are the heaven on earth,'' wrote the English dramatist, John Ford, five centuries ago. How right John Ford was. When I think of Erma, I still think of the beautiful line from a song that I used to hear and play, I believe, when I played the fiddle: ''She came like an angel from the sky.'' For almost 69 years, this angel from the sky not only tolerated me, but she was the guiding light for me. She was my teacher. She taught me how to drive an automobile. She was my banker, my accountant.

Very early in our marriage, as a matter of fact, on Sunday, the day after the Saturday evening on which Erma and I made our vows, I turned to her and said: ''Here is my wallet.'' I think I had saved up probably $300. I said: ''You keep it. When I need a dollar, I'll come to you and ask for it.'' That is the way it was, and that is the way it has been throughout our 69 years.

What a job she did from the meager paychecks, and they were meager. Can you imagine. I started at $50 a month, and by the time I married, I had advanced. I was getting $70 a month when I married that sweetheart. She bought from this meager paycheck the things that we needed, our groceries. She paid the bills. She saved some money for a rainy day, and she gave me a monthly allowance.

Erma was my greatest critic, and she was my greatest supporter.

When I left the West Virginia Legislature to come to Congress, the other body, the House of Representatives, and this body, which also makes up the Congress, I was carrying 22 credit hours at Marshall College, now Marshall University, but she, Erma, managed our little grocery store. She took care of our two daughters, and she kept the home fires burning.

When I was attending law school while serving in the U.S. Congress, she would drive from our home at that time in Arlington, VA. She would meet me on Capitol Hill here, around 5:30 p.m., and she would give me my supper. She brought it to me in a paper bag. I would eat my supper while Erma drove me in our car to American University Law School for my classes at 6 p.m. Then she would return later that evening, 8 o'clock or 9 o'clock, to pick me up and take me to our home in Arlington.

I also said, quite truly, that Erma had put three kids through school: our two daughters and me. Erma was the mother of two most wonderful children, my daughters Mona Carole and Marjorie Ellen. Marjorie Ellen was here yesterday with me as we had lunch with some friends in recognition—one might call it celebration, but I call it in recognition—of our 69th wedding anniversary. These two daughters have grown up to become outstanding women and mothers themselves. Marjorie was here with me and with her husband, John Moore. Like me, those daughters owe so much to the marvelous and wonderful woman they called ''mother.''

Through the years, Erma was my constant companion. She was there with me, by my side, on the campaign trails. She was with me in 1958 when, as

a Congressman, I made a tour of the economically depressed areas of the State and other parts of the country. She was with me in April 1969, in Mexico City, Mexico, when I served as a delegate to the Mexico-United States Interparliamentary Conference. She was with me on all my trips to Europe and Asia. She was always there. Erma was always there with me at my side.

She is with me today, I know. For nearly 69 years, that woman, the greatest woman I ever met—I have met queens and great women of the world—was with me. She was always with me. She is with me now, I know. For nearly 69 years, she was my comfort in times of sorrow. She was stoic and brave. She never flinched in times of trouble.

We have lived and loved together through many changing years; we have shared each other's gladness and wept each other's tears; I have known ne're a sorrow that was long unsoothed by Erma; for thy smiles can make a summer where darkness else would be.

I quoted from the lines of Charles Jeffries, ''We Have Lived and Loved Together.''

This quiet, self-contained coal miner's daughter confronted demonstrators and protesters in front of our home in Arlington. She spent many evenings alone when I had to stay late at the Capitol attending the Nation's business. She always was most comfortable with the unassuming, down-to-earth West Virginia folks, back in the hills of West Virginia, like those back in the hills of Kentucky from which my friend, Senator MITCH MCCONNELL, comes. She met with kings and shahs, princes and princesses, Governors and Senators, Presidents. She entertained the high and the mighty, the powerful and the wealthy of this Nation in a foreign land because it was important to her husband who served as the majority leader of this Senate and various other Senatorial offices. She did it all with an innate, inherent graciousness, incredible patience, and a soft, warm smile. She was a remarkable lady of great wisdom, but most of all, great gentleness, yet she could be tough when she saw injustice or unfairness.

I was always so proud of her. In fact, the entire State of West Virginia took pride in Erma. That is why she was named West Virginia Daughter of the Year in 1990. Oh, could we call back the vanished years. And she was named West Virginia Mother of the Year a few years later.

Marriage is a sacred institution. It is more than the result of repeating a few vows. Marriage is an oath, an oath before God. I have admired the ancient Romans so much, as did Montesquieu, because they would not break an oath. They would go to their death rather than break an oath. The ancient Romans. So marriage is an oath before God, a sacred and noble contract between a man and a woman. Read it in the Bible.

It is a glorious commitment, a commitment of love, of caring, and of sacrifice. It is a commitment that Erma and I honored and enjoyed for almost 69 years, through the bad times as well as the good, down the rough roads as well as the smooth ones. Our life's journey was not always smooth and easy traveling. In fact, it was as bumpy at some times and as curvy as a West Virginia mountain road. But over the years, Erma and I learned that the challenge of a marriage is the ability to overcome imperfections, not just to ignore them. We always remembered our devotion to each other, despite our shortcomings and despite the difficulties we encountered along life's way.

And when Erma and I married on that blessed Saturday evening nearly 69 years ago, we were so proud and we were so poor that I could not even take a day off from work. We did not have the money for a honeymoon, so after the wedding we went to a square dance, where I played the fiddle and she danced. On Monday morning, where was I? I was back at work in the grocery store in that coal-mining camp of Stotesbury. I was back at the meat counter in a coal-mining camp of Stotesbury. Although our fortunes did change, allowing us the opportunity to celebrate our anniversary in more special ways over the years, my Erma, my Erma never changed. She never changed. From being the wife of a meatcutter at the Koppers store in Stotesbury, WV, to being the wife of the majority leader of the U.S. Senate, Erma never stopped being herself. Her enduring patience and her steadfast support were the stabilizing constants in our marriage.

Could I have made this journey without her? Could I have accomplished as much as I have accomplished—whatever that may have been—without her? I think not. The more important point is that I did it with Erma, and I would not have had it any other way. She was God's greatest gift to me.

I don't know what I ever did to deserve her, but somewhere along the line, I must have done something that was especially good. The good Lord, the King, the Lord of Hosts, smiled down on me at 6 o'clock in the evening on May 29, 1937.

So may I close with these few words that come from a poem, ''An Old Sweetheart of Mine,'' by James Whitcomb Riley.

Is this her presence here with me,
Or but a vain creation of a lover's memory?
A fair, illusive vision that would vanish into air,
Dared I even touch the silence with the whisper of a prayer?
Nay, let me then believe in all the blended false and truth—
The semblance of the old love and the substance of the new,
The then of changeless sunny days—the now of shower and shine,
But love forever smiling—as that old sweetheart of mine.

Mr. President, I simply say that I give thanks to Almighty God for a long and good marriage and the richness which that hallowed institution has given to my life because of one very extraordinary woman.

May God bless her and hold her to his bosom in Heaven until I come to be with her—this extraordinary woman, the daughter of a coal miner, Erma James Byrd.

Mr. President, these are a few lines which were the favorite lines of Erma. The author's name is Isla Pascal Richardson. The lines are these:

If I should ever leave you,
Whom I love
To go along the silent way,
Grieve not,
Nor speak of me with tears.

But laugh and talk of me
As if I were there beside you.
For I will come—I'll come!
Would I not find a way?
Were tears and grief not be barriers?

And when you hear a song or see a bird I loved,
Please do not let your thoughts of me be sad.
For I am loving you just as I always have . . .
You were so good to me.

There are so many things I wanted still to do—
So many things to say to you . . .
Remember, that I did not fear death.
It was just leaving you that was so hard to face.

We cannot see beyond this life
But this you know . . . I loved you so
Never doubt that I am with you still!

Mr. President:

Love does not die with the body
And nothing in heaven or on earth
Can keep apart those who love one another.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

A GREAT MARRIAGE

Mr. MCCONNELL. Mr. President, I congratulate my good friend from West Virginia on his extraordinary reminiscence of his remarkable wife of 68, almost 69 years. I think those of us in the Senate are well aware that the marriage of Robert and Erma Byrd was one of the great marriages of American history. No two people were ever more right for each other, ever more committed to each other, or provided a better example for our country than Senator and Mrs. Byrd.

Mr. BYRD. Mr. President, I appreciate from my heart the kind words of my dear friend, Senator MITCH MCCONNELL, from our neighboring State of Kentucky. I am not sure that I was meant to have all these blessings, but I am sure of one thing: Erma was the perfect woman, the greatest woman I have ever met. And today I have no doubt that she is in Heaven. I also have no doubt that I can meet her.

Let me thank again my friend, MITCH MCCONNELL. How lovely were his words. How nice of him. I thank the Senator very much.

TRIBUTE TO FIRST LIEUTENANT ROBERT LEWIS HENDERSON II

Mr. MCCONNELL. Mr. President, I ask the Senate to pause for a moment

today in loving memory and honor of 1st Lt Robert Lewis Henderson II.

Lieutenant Henderson of Alvaton, KY, served with the 2123rd Transportation Company in the Kentucky Army National Guard, based in Owensboro, KY. On April 17, 2004, he gave his life in defense of our country in the city of Ad Diwaniyah, Iraq. He had served his Nation as a citizen-soldier for 16 years—nearly half his life. Lieutenant Henderson was 33 years old.

On that day in April 2 years ago, as night approached, Lieutenant Henderson and three of his fellow soldiers were escorting a convoy of the Army's 1st Armored Division.

Their mission was to transport the 1st Armored Division, with its essential M1A1 Abrams tanks and missile launchers, toward the fierce fighting in Al Najaf, where Coalition forces battled terrorists.

Staff Sergeant Michael Grimes, a fellow Kentuckian who was with Lieutenant Henderson in the Humvee, recalls that Rob ''was proud to be in the Kentucky Guard and on the mission that day.''

Lieutenant Henderson and his team drove through an area of Ad Diwaniyah that our troops have come to call ''ambush alley.'' The foreboding nickname proved apt as Lieutenant Henderson's convoy, driving up the street, came upon an overturned tractor trailer in an intersection.

Lieutenant Henderson, who was driving the lead Humvee, tried to go around the obstacle, but as the escort team slowed, terrorists ambushed them.

Lieutenant Henderson sustained what proved to be a fatal gunshot in the leg, but he still managed to drive his team to a strategic position where they could return fire and then warn the convoy of impending danger. His final act was to protect his friends and fellow soldiers.

His actions ''probably saved hundreds of lives,'' said Kentucky National Guard Adjutant GEN Donald Storm.

For his valorous service, Lieutenant Henderson was awarded the Bronze Star Medal and the Purple Heart. And he was awarded the Kentucky Distinguished Service Medal, for demonstrating all the qualities of a great soldier, remaining combat-focused while decisively engaged with the enemy, performing his duties, and accomplishing his mission.

Rob enlisted in the Kentucky National Guard in 1988, when he was just 17 years old, as a student at Warren Central High School in Bowling Green, KY. His mother, Lillian Henderson, recalls when he told her, ''If you don't sign for me at 17, I'll sign for myself at 18.''

Surely Rob knew the honor and the sacrifice that came with serving one's country. Rob's father, Robert ''Lou'' Henderson, served in the Army during the Korean War. Lou passed away after a struggle with cancer in 1994, but his son continued the family legacy.

After 8 years as an enlisted soldier, Rob felt he still had more to give. In 1997, he went to Officer Candidate School at Fort Eustis, VA. By 1998, he had made first lieutenant.

Lieutenant Henderson deployed to Kuwait in January 2004. Rob and his unit were charged with transporting convoys of heavy armored units which traveled from Kuwait to the front lines in Iraq.

As platoon leader, Rob was tasked with overseeing the complicated logistics of these missions. From scheduling maintenance on the heavy trucks to securing fuel, Rob's duties encompassed ''most everything,'' recalled his friend SGT Doug Pollard, who also served in the Kentucky Guard.

Sergeant Pollard, who met Rob when Rob first enlisted, said that ''from day one, Rob was about nothing less than hard work and taking care of other soldiers.''

Lieutenant Henderson ''led from the front,'' a popular Army expression for officers who lead by example on the front lines. Sergeant Grimes said, ''Rob would never ask a man to do anything that he wouldn't have done himself.''

1SG Michael Oliver, also of the Kentucky Guard, agreed. ''Normally, as an officer you sit back, supervise and direct,'' he said. ''Lieutenant Henderson loved . . . to get right in there.''

Rob's passion for life shone through in his civilian duties as well. He worked as a sales manager at a Lowe's hardware store in Bowling Green. He had worked at several Lowe's stores throughout Kentucky, being promoted with each new post.

Working as much as 60-plus hours a week, Rob fulfilled his Guard training on the weekends, with the same commitment he showed in all aspects of life. While working at Lowe's, Rob also met Lisa, the love of his life. They married in January 2003.

Raised in Rockfield, a small Warren County town outside Bowling Green, Rob Henderson grew up playing football and baseball and cheering for the University of Notre Dame. He also had a fascination with trucks.

Rob worked hard on his home—especially the outside. Lisa Henderson recalls her husband's attention to detail, saying, ''he was obsessed with mowing the grass, and just insisted that our yard look better than any of our neighbors.'' Often seen in jeans and work boots, he loved playing with his and Lisa's two dogs.

Rob was excitedly awaiting the birth of his and Lisa's first child. Lisa recalls hearing the excitement in Rob's voice when she called to tell him they would be having a baby. Rob was training with his platoon in Greenville, KY, and he was so thrilled that he raced off the phone to go tell his whole unit.

Peyton Joshua Henderson was born in July 2004, 3 months after a memorial service was held for Lieutenant Henderson in a small chapel erected at Camp Arifjan, Kuwait.

More than 150 of Lieutenant Henderson's fellow soldiers gathered inside. Dozens more clustered outside the entrance, all to pay their respects to their fallen leader, brother soldier, and friend. .

We thank Rob's wife Lisa for sharing her stories of Rob with us. She and young Peyton join us in the Capitol today. We are also honored that Rob's mother, Lillian Henderson, has shared her memories of her son. And today we are thinking of Rob's sister, Jackie Hawkins, and his half-sister, Monica Walker, as well.

Mr. President, I cannot help but feel humbled when I think of Lieutenant Henderson's final selfless act. A good soldier to the end, he put his men first. It is easy to see his heroism now, but when I look back at the brave 17-year-old who stepped forward to honor his father and his country, I can see the heroism was already there.

This Nation can never repay our heroes or their families, but we will never forget them.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

FORMATION OF A NEW IRAQI GOVERNMENT

Mr. LEVIN. Mr. President, last evening, during his press conference with Prime Minister Blair relative to Iraq, President Bush stated:

> The formation of a new government represents a new beginning for Iraq and a new beginning for the relationship between Iraq and our coalition.

I hope that is not overly optimistic, but, frankly, I am afraid that it is because of the incompleteness of the Iraqi Government. Its two most important positions—the Minister of Defense and the Minister of the Interior—have not been filled. These are critical positions because numerous police and army units have been dominated by militia members who are loyal to sectarian or political leaders and not to the central Government, and because many militia members outside the police and the army are engaged in a rampage against innocent civilians.

While there have been disagreements on a number of issues related to Iraq, almost everyone has agreed that the new Iraqi Government would have to be a government of national unity with specific emphasis on independent nonsectarian choices for the positions of Minister of Defense and Minister of the Interior if there was to be a chance of quelling the sectarian violence and defeating the insurgency.

Our senior military leaders have been telling us for years that there is no military solution to the violence in Iraq and no way to defeat the insurgency without a political solution among the Iraqis themselves.

The Government that was announced last weekend and approved by the Iraqi Council of Representatives does not represent a political solution because it did not include the two most important ministries: the Ministry of Defense and the Ministry of the Interior.

The plain truth is that the various Iraqi political actors were not willing to make the compromises necessary to bring about a government of national unity within the time allotted by the Iraqi Constitution. And they still haven't. We hope they will at any time, but they still haven't.

Secretary of State Condoleezza Rice, appearing on FOX News last Sunday, minimized the lack of selections for these two positions when she said:

People are dramatizing the fact that they didn't get certain posts that they hoped to get.

She went on to say:

. . . let's give them three days or four days, or five or six days, to come up with the best possible interior ministry. You know, the five days that they will take to vet people more thoroughly, to make sure they have the right person, will be well worth it.

On ''Meet the Press'' that afternoon, Secretary Rice even spoke of that failure as a plus, a positive, saying:

. . . I think it actually shows some maturity that they were able to go ahead with the formation of the government so that they can start working, but that they can take a little bit longer.

How is that a sign of maturity? In my view, both the mature and the necessary thing under the constitution of Iraq was for the Iraqi political leaders to make the compromises necessary to form the entire Government, including, in particular, the Minister of Defense and the Minister of the Interior, the two most important ministries.

It was also disappointing that neither President Bush nor our Secretary of State mentioned anything about the need to amend the Iraqi Constitution. General Casey noted in testimony before the Senate Armed Services Committee:

We've looked for the constitution to be a national compact, and the perception now is that it's not, particularly among the Sunni.

The Iraqi Constitution itself provides for the appointment of a committee to propose amendments to their constitution. That committee has 4 months to complete its work and to recommend amendments to the constitution to the full Parliament.

For a long time, I have been calling for President Bush and officials of his administration to put pressure on the Iraqis, to meet the timetables they have set in their own constitution to form a unity government and to make the changes in the constitution that would make it a unifying document. I have called for that pressure to be in the form of conditioning our continued presence in Iraq on Iraqis meeting their self-imposed deadlines.

The President told me in the presence of several Members of the Congress and in the presence of his own security team that position is actually helpful. For us to tell the Iraqis that our continued presence depends upon their doing what only they can do, which is to meet their self-imposed deadlines for a full government to be appointed and for them to amend their constitution to make it a unifying document.

These are critically important matters. There needs to be a government of national unity. We can't save Iraqis from themselves. We can't form a government of national unity. We can't amend their constitution. If they want a nation, it is up to them to get on with it according to their own constitutional deadlines.

It is not going to happen if we just tell the Iraqis we are there as long as they need us. That is an open-ended commitment which cannot stand because the American people will not stand for it and should not stand for it.

I hope the President and the Secretary of State and the U.S. Ambassador are saying privately what they haven't yet said publicly: that it is up to the Iraqis to determine their fate and to pull together a national unity government because that is the only hope they have of defeating the insurgency and avoiding civil war.

THE ENRON CONVICTIONS

Mr. LEVIN. Mr. President, 5 years ago, the Enron Corporation, the seventh largest publicly traded corporation in America with a $100 billion in annual revenue, collapsed. Its sudden plunge into bankruptcy destroyed the savings of thousands, eliminated the jobs of tens of thousands more, and, more fundamentally, damaged Americans' faith in U.S. capital markets. In the years following, the extent of Enron's misconduct became clear—the dishonest accounting, nonpayment of taxes, excessive executive compensation, collusion with banks and brokers, the lies to the investing public and their own employees.

Many Enron executives have since pleaded guilty and accepted responsibility for their role in the Enron disaster. Enron's two most senior executives, however, did not. They spent the last 5 years denying responsibility and fighting all efforts to hold them accountable. But yesterday, a jury found Ken Lay and Jeffrey Skilling guilty of 25 counts of securities fraud, wire fraud, false statements, and other misconduct. The jury held both men accountable for Enron's misdeeds.

Some want to portray those convictions as the end of an era of corporate corruption. They are already urging Congress to weaken the Sarbanes-Oxley Act, the law enacted to prevent future Enron catastrophes. For example, they want to exempt 80 percent the publicly traded companies from rules requiring internal controls to ensure that their books accurately reflect their finances. They want to weaken or eliminate the Public Company Accounting Oversight Board that now polices the accounting industry. They want to weaken other corporate reforms as well, from rules requiring oversight of hedge funds to rules requiring mutual funds to have independent directors.

But corporate corruption is not over. Just this year, AIG, one of the country's largest financial firms, agreed to pay $1.6 billion to settte State and Federal allegations of securities fraud and bid-rigging. Fannie Mae, an American symbol of financial success and affordable housing, paid $400 million to settle allegations of accounting fraud. In April, the former chief executive of Computer Associates, a leading high tech company, pled guilty to securities fraud and obstruction of justice. Another 20 publicly traded corporations are currently under investigation for playing games with the timing of stock option grants to maximize the profits that their top executives could pocket. The list, unfortunately, goes on.

The message that should be taken from the Enron convictions is not that corporate oversight is too tough, but that corporate executives must and can be held accountable when they misuse funds, abuse their positions, and mislead the investing public.

I am told that some corporations are waiting for my good friend, PAUL SARBANES to leave the Senate before attacking the law that he championed. They want him out of the way first. But my friend fought too hard and too long for the corporate reforms embodied in Sarbanes-Oxley to be tossed aside or watered down. This country cannot afford more Enrons, and I, for one, believe the Senate cannot and will not turn back the clock on corporate oversight.

SENATOR ROBERT BYRD AND ERMA BYRD

Mr. LEVIN. Mr. President, I wish to add one comment to Senator MCCONNELL about Senator BYRD's comments about his holy marriage, a marriage which has inspired every person and every couple who is familiar with Robert and Erma Byrd.

My wife Barbara and I have been here now for 28 years. When we came here, we noted right away this wonderful love affair between Robert and his beloved wife Erma. Many things that Senator BYRD does inspires every one of us in the Senate—his love of this institution, his passionate commitment to this institution, and all the unique features of it, his love affair with the constitution of the United States. But I guess as powerful and potent as those two commitments are and remain and always will in his heart and in our hearts, hopefully, his relationship with his wonderful, extraordinary wife Erma tops them all.

I thank him for that inspiration and thank him for all those other things that he does which help to keep this body, this unique body in the history of the world.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I shant leave this floor until I have said thank you to my noble friend, the able Senator from Michigan, the chairman of

the committee on which I serve, the committee which authorizes the expenditures we must make if we are to keep our Nation strong, the Armed Services Committee. I thank him. He has been and is an inspiration to me. His dedication, his thoughtfulness, his courtliness—I thank him for all.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. In my capacity as a Senator from Georgia, I ask unanimous consent that the quorum call be rescinded.

Without objection, it is so ordered.

In my capacity as a Senator from Georgia, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 12:30 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 2:42 p.m., when called to order by the Presiding Officer (Mr. BENNETT).

The PRESIDING OFFICER. The majority leader is recognized.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period of morning business for Senators permitted to speak for up to 10 minutes each.

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

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

VOTE EXPLANATION

● Mr. SALAZAR. Mr. President, I was necessarily absent during confirmation vote on the nomination of Michael Hayden to be the Director of the Central Intelligence Agency because I had returned to Colorado to honor commitments to my family. I want the RECORD to reflect that had I been here, I would have voted in favor of confirmation.

I was also necessarily absent during the cloture vote on the nomination of Dirk Kempthorne to be Secretary of the Interior. I support this nomination, and I want the RECORD to reflect that had I been here, I would have voted in favor of invoking cloture.

And I was necessarily absent during confirmation vote on the nomination of Brett Kavanaugh to be a U.S. Circuit Judge for the DC Circuit. I want the RECORD to reflect that had I been here, I would have voted against confirmation.●

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mrs. BOXER. Mr. President, had I been present for the vote to invoke cloture on the nomination of my former colleague, Dirk Kempthorne, to be Secretary of the Interior, I would have cast a vote of ''aye''.●

HONORING OUR ARMED FORCES

MEMORIAL DAY

Mr. LAUTENBERG. Mr. President, this week we are in a rush to finish our business so we can head home for the Memorial Day Recess.

Memorial Day signals the beginning of summer, when children are out of school and families get to spend time together.

It's a time for vacations and trips to the shore, and backyard barbecues.

But most important of all, Memorial Day is also the time when we remember the brave soldiers who have made the ultimate sacrifice for our country.

This year there are almost a thousand more names on that list than last Memorial Day.

In total 2,750 troops have lost their lives in Iraq and Afghanistan: 2,455 in Iraq and 295 in Afghanistan.

Almost 18,000 more have been seriously wounded.

I keep a gallery of the pictures of the fallen outside my office in the Hart building. More and more people come to visit it, and I encourage my colleagues, their staff and our constiuent guests to view it and honor the memories of these heroes.

New Jersey families have lost 71 troops in Iraq and Afghanistan.

Last year, near Memorial Day, I read the names of New Jersey's fallen troops into the CONGRESSIONAL RECORD, where they would be enshrined for all time.

Fifteen more New Jerseyans have died since then. Today, with your indulgence, I would like to read their names and hometowns into the RECORD:

SSG Jeremy A. Brown, whose mother lives in West Orange; SPC Armer N. Burkart, Blairstown; PFC Ryan D. Christensen, whose mother lives in Brick; LTC Terrence K. Crowe, member of the U.S. Army Reserve in Lodi, NJ; SFC Michael Egan, his mother resides in Pennsauken; SGT Clarence L. Floyd, his mother resides in Newark; CPT James M. Gurbisz, Eatontown; SSG Edward Karolasz, Kearny; SPC Gennaro Pellegrini, Jr., whose father resides in Wildwood; CPT Charles D. Robinson, Haddon Heights; LCpl Edward A. Schroeder, South Orange; SSG Stephen J. Sutherland, West Deptford; 2LT Dennis W. Zilinski, Howell; SSG Christian Longsworth, Newark; and SGT Matthew Fenton, Little Ferry.

On this Memorial Day, I hope every American will pause to give thanks for the brave soldiers who gave their lives for our country.

TRIBUTE TO NANCY JEAN PRICE

Mr. GRAHAM. Mr. President, next week, on June 2, Ms. Nancy Jean Price will retire from my office having served the people of South Carolina for over 30 years as a congressional constituent liaison. I rise today to recognize the outstanding service and dedication she demonstrated throughout her extensive and distinguished career.

A native South Carolinian, Jean is the daughter of Mr. Joe B. and Mrs. Trula W. Price. She graduated from Lander University in Greenwood and began her career as a congressional staffer in the office in the officer of former U.S. Representative Butler Derrick, who represented South Carolina's Third Congressional District from 1974 to 1994. Jean wore many hats for Congressman Derrick in his Anderson, SC, district office. Whether working as a constituent liaison, a special events coordinator, a caseworker, or even as a manager, Jean went above and beyond what was required to address any task or challenge she confronted.

Following Congressman Derrick's retirement in 1994, I was elected to Congress and was fortunate Jean accepted a constituent services position in my Aiken office. After my election to the Senate in 2002, I promoted Jean to low-country regional director, and she helped establish our office in Mt. Pleasant.

In the 12 years Jean has worked on my staff, she has consistently and selflessly served constituents, answered questions, and solved countless problems. In doing so, Jean has garnered the personal and professional respect and admiration of her friends and colleagues. She is an upstanding member of society. She represents the very finest in Christian values dedicating much of her free time to church and community work in various leadership and service positions. But above all, Jean has been dedicated to her family.

While well deserved, Jean's retirement is a great loss for me and the State of South Carolina. Her service heart will serve as the gold standard for all staff that follow behind her. I will miss Jean, but I wish her a prosperous retirement and great success and happiness in the future.

THE PATRIOT LOAN ACT OF 2006

Mr. CRAIG. Mr. President, I rise to comment on legislation introduced yesterday, S. 3122, the Patriot Loan Act of 2006. It is called the Patriot Loan Act for that is who the legislation is intended to benefit, patriot citizen-soldiers who are called from their employment at America's small businesses to serve our country in uniform. I am proud to join with Senator OLYMPIA SNOWE, who serves as the chair of the Senate Committee on Small Business and Entrepreneurship, as an original cosponsor of this important bill.

All of us in the Senate come from States affected by the mobilization of our Guard and Reserve personnel. In my home State, the Idaho National Guard's 116th Brigade Combat Team turned last fall from its 18-month deployment to Iraq. I visited members of the 116th while they were in Iraq and discovered that a good number of them

left jobs at small businesses across Idaho. I also held a hearing in Idaho last August regarding the reemployment rights of returning Guard and Reserve members, with particular focus on how those rights would impact members of the 116th. At that hearing it was emphasized that, while legal rights to reemployment are critical, they do little good for those who have no employer, or no small business, to return to. I resolved then to find some way to assist small businesses to cope with the financial hardships of frequent and lengthy mobilizations of its employees or owners during the war on terrorism. I believe S. 3122 will provide some of that needed assistance.

The legislation would enhance the U.S. Small Business Administration's Military Reservist Economic Injury Disaster Loan, or ''MREIDL,'' Program. That program provides loan assistance to small businesses to help them meet ordinary and necessary operating expenses after essential employees are called to active duty in their roles as citizen soldiers.

S. 3122 would raise the maximum military reservist loan amount from $1.5 million to $2 million. It would also allow the Small Business Administration's administrator, by direct loan or through banks, to offer unsecure loans of up to $25,000, an increase from the current $5,000 loan limit: So that there are no processing delays, S. 3122 would require the SBA administrator to give these loan applications priority, and would require that loan applicants be adequately assisted during the application process by utilizing existing support networks, such as Small Business Development Centers.

Finally, S. 3122 would ensure proactive outreach about the MREIDL Program for Guard and Reserve members by requiring SBA and the Department of Defense to develop a joint Web site and printed materials with information about the program, and it would require a joint SBA and DD feasibility study on other methods of possible assistance.

Just as the Guard and Reserve are serving us now, we must do what we can to ensure that their sacrifices do not place them in financial harm's way on their return home. I strongly urge my colleagues to support this measure, and I, again, thank Senator SNOWE for her leadership in introducing it.

CATASTROPHE INSURANCE

Mr. NELSON of Florida. Mr. President, yesterday, I introduced four bills, 3114, 3115, 3116, and 3117 that are aimed at providing a comprehensive solution to strengthen our Nation's property and casualty insurance market. Without serious reform, the Federal Government will be forced to continue to spend billions of dollars of taxpayer money to cover the costs of natural disasters in the United States. Worse, without Federal action, property insurance soon will become more expensive and harder to find, preventing some consumers from insuring their homes and businesses.

As we know too well, the last few years have brought a devastating cycle of natural catastrophes in the United States. In 2004 and 2005, we witnessed a series of powerful hurricanes that caused unthinkable human tragedy and property loss. Hurricanes Katrina and Rita alone caused over $200 billion in total economic losses, including insured and uninsured losses.

Recently in my own home State of Florida, eight catastrophic storms in 15 months caused more than $31 billion in insured damages. Now Florida is witnessing skyrocketing insurance rates, insurance companies are canceling hundreds of thousands of policies, and Florida's State catastrophe fund is depleted.

In short, the inability of our private markets to fully handle the fallout from natural disasters has made our Nation's property and casualty insurance marketplace unstable. This market instability repeatedly has forced the Federal Government to absorb billions of dollars in uninsured losses. This is a waste of taxpayer money, especially when we know there are ways to design the system to anticipate and plan for the financial impacts of catastrophes.

As insurance companies struggle to maintain their businesses, costs are passed on to homeowners and small businesses in Florida and in other States. In essence, the people who can least afford it are being forced to bear the disproportionate share of the billions of dollars of losses caused by natural catastrophes.

Many Floridians have seen their insurance bills double in the last few years. As I travel around Florida, I hear repeatedly from my constituents that they may soon be unable to afford property and casualty insurance. That is a frightening proposition for people living in a State where increasingly vicious hurricane seasons are predicted. I am sure we all agree—consumers never should be put in the untenable position of having to choose between purchasing insurance and purchasing other necessities.

While our Nation's property and casualty insurance system is not yet completely broken, it is clear that Congress needs to act now to shore up the system. Private sector insurance is currently available to spread some catastrophe-related losses throughout the Nation and internationally, but most experts believe that there will be significant insurance and reinsurance shortages. These shortages could result in future dramatic rate increases for consumers and businesses and the unavailability of catastrophe insurance.

Let me be clear: these issues will not just affect Florida or the coastal States. Natural catastrophes can strike anywhere in our country. For example, a major earthquake fault line runs through several of our Midwestern States. We also saw firsthand the devastating effects of a volcano eruption at Mount St. Helens in Washington State.

In the past few decades, major disasters have been declared in almost every State. As I mentioned earlier, the Federal Government has provided and will continue to provide billions of dollars and resources to pay for these catastrophic losses, at huge costs to all American taxpayers.

Congress has struggled with these issues for decades. Although we have talked about these issues time and again, nothing much has gotten accomplished. The most notable step Congress did take was to create the National Flood Insurance Program. But Congress needs to do much more. It is time for a comprehensive approach to solving our Nation's property and casualty insurance issues.

These matters are usually within the purview of the States, and I cannot undersate the importance of State-based solutions to these insurance issues. Nonetheless, the Federal Government also has a critical interest in ensuring appropriate and fiscally responsible risk management of catastrophes.

For example, mortgages require reliable property insurance, and the unavailability of reliable property insurance would make most real estate transactions impossible. Moreover, the public health, safety, and welfare demand that structures damaged or destroyed in catastrophes be reconstructed as soon as possible.

Therefore, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable Americans to obtain property insurance coverage in the private sector endangers the national economy and our public health, safety, and welfare.

In order to help protect consumers and small businesses, today I am introducing four bills as part of a comprehensive approach to fixing our troubled insurance system. Let me summarize each of the four bills and tell you how this integrated approach makes good policy sense.

The first piece of legislation I am introducing today is the Homeowners Protection Act of 2006, S3117. This bill is a companion bill to a bipartisan piece of legislation introduced by Florida Representatives BROWN-WAITE, HASTINGS, and others.

This bill would establish a fund within the U.S. Department of Treasury, which would sell Federal catastrophe insurance to State catastrophe funds, like the fund I helped to set up in Florida. State catastrophe funds essentially act as reinsurance mechanisms for insurance companies who lack resources to compensate homeowners for their losses.

Under this bill, State catastrophe funds would be eligible to purchase reinsurance from the Federal fund at sound rates. However, a State catastrophe fund would be prohibited from

gaining access to the Federal fund until private insurance companies and the State catastrophe fund met their financial obligations.

Why is this good for homeowners? Because this backup mechanism will improve the solvency and capacity of homeowners insurance markets, which will reduce the chance that consumers will lose their insurance coverage or be hit by huge premium increases.

Importantly, the Homeowners Insurance Protection Act of 2006 also recognizes that part of the problem with our broken property and casualty insurance system lies with outdated building codes and mitigation techniques. Noted insurance experts and consumer groups have been pointing out this problem for many years. So, under the bill, the Secretary of the Treasury would establish an expert commission to assist States in developing mitigation, prevention, recovery, and rebuilding programs that would reduce the types of enormous damage we have seen caused by recent hurricanes.

I note that this bill covers not just hurricanes, but catastrophes such as earthquakes, cyclones, tornados, catastrophic winter storms, and volcanic eruptions. These are disasters that can—and do—occur in many different States. Again, every State and every taxpayer is affected by this problem, not just Florida.

This bill has widespread support from a broad range of stakeholders, including ProtectingAmerica.org, a national coalition of first responders, businesses, and emergency managers. This organization is cochaired by former FEMA Director James Lee Witt, one of the most respected names in disaster prevention and preparedness.

The second bill I am introducing today is the Catastrophe Savings Accounts Act of 2006, S. 3115. The companion bill was introduced in the House of Representatives by a bipartisan group of Members including TOM FEENEY and DEBBIE WASSERMAN SCHULTZ.

This bill proposes changing the Federal Tax Code to allow homeowners to put money aside—on a tax-free basis—to grow over time. If and when a catastrophe hits, a homeowner could take the accumulated savings out of the account to cover uninsured losses, deductible expenses, and building upgrades to mitigate damage that could be caused in future disasters. Homeowners could even reduce their insurance premiums because their tax-free savings would allow them to choose higher deductibles.

The benefits of this approach are pretty straightforward and very consumer friendly. Homeowners would be encouraged to plan in advance for future disasters, and they wouldn't be taxed to do it. Moreover, homeowners wouldn't be as dependent on insurance companies to help them out immediately after a disaster. As one expert has noted, why should a consumer continue to give insurance companies thousands of dollars each year when the consumer could deposit the same amount of money annually in a tax-free, interest-bearing savings account controlled by the consumer?

The third bill I am introducing today is the Policyholder Disaster Protection Act of 2006, S. 3116. This bill was introduced in the House of Representatives by MARK FOLEY and has eight cosponsors.

Under this bill, insurance companies would be permitted to accumulate tax-deferred catastrophic reserves, much the way that homeowners would be permitted under the bill I just discussed. Depending on their size, insurance companies could save up to a certain capped amount, which would grow over time.

Our current Federal Tax Code actually provides a disincentive for insurance companies to accumulate reserve funds for catastrophes. Under the current system, insurance companies can only reserve against losses that already have occurred, instead of future losses. The United States is the only industrialized nation that actually taxes reserves in this way. It is time for reform, so that consumers are better protected.

Make no mistake though—this bill is not a giveaway to the insurance companies. Instead, the Policy Disaster Protection Act of 2006 would strictly regulate when and how insurance companies could access their reserves, to make sure the money is used only for its intended purposes.

If implemented correctly, this bill could result in approximately $15 billion worth of reserves being saved up by insurance companies, which later could be spent to pay for policyholder claims and to keep insurance policies available and affordable. Consumers could feel more protected knowing that their insurance company would have the money saved to help them out after a major disaster. Moreover, this approach should help make the insurance market more stable and less prone to insurers going bankrupt.

Finally, the fourth bill, S. 3114, that I am introducing as part of my comprehensive reform package is the Commission on Catastrophic Disaster Risk and Insurance Act of 2006.

Under this bill, Congress would create a Federal commission—made up of a cross-section of the best experts in the Nation—to quickly recommend to Congress the best approach to addressing catastrophic risk insurance. The experts on the commission would be required to analyze the three bills that I am introducing today, along with other potential approaches to reforming our insurance system.

Creating a Federal commission is not always the best answer, especially if it can slow down reform efforts. But in this case, the opposite would occur. I say that with cofidence—because I am following a successful model that I used when I was insurance commissioner for the State of Florida in the 1990s. After Hurricane Andrew devastated South Florida in 1992, I created a nonpartisan commission comprised of university presidents.

I asked the Florida commission to study the problems with the property and casualty insurance market and recommend what legislative reforms were necessary to restore health to Florida's system. Within months, the commission acted—breaking through the deep political logjam and inertia—to recommend the legislative reforms that ultimately became State law.

That model worked then, and I think it can work now on a Federal level. Without the work of an expert, neutral commission to help guide us in these incredibly complex matters, I fear that Congress will never find the consensus necessary to reform the system and bring stability.

Let me emphasize again what we need to accomplish to reform our current insurance system and to effectively plan for catastrophic losses.

We need a comprehensive approach that will make sure the United States is truly prepared for the financial fallout from natural disasters. We need a property and casualty insurance system that is not forced to spend valuable taxpayer dollars after a catastrophe strikes. We need a system that protects consumers and small businesses from losing their insurance policies or being forced to pay exorbitant insurance rates. We need ways to encourage responsible construction and mitigation techniques. And we need a system that helps insurance companies use their resources in cost-effective ways so that they will not go insolvent after major disasters.

Our American economy depends on a healthy property and casualty insurance system. By enacting meaningful reforms, we can ensure that our economy remains protected and remains the most resilient economy in the world. I know this complicated process won't be easy for us—but let's roll up our shirtsleeves and get it done.

I request that the four bills I discussed—S. 3114, S. 3115, S. 3116, and S. 3117—be printed in the CONGRESSIONAL RECORD.

PASSAGE OF S. 2611

Mr. FEINGOLD. Mr. President, this was a truly historic week for the Senate. With passage of the Comprehensive Immigration Reform Act of 2006, S. 2611, we have succeeded in maintaining several key components of the bill that passed out of the Judiciary Committee 2 months ago—components that I believe are crucial to fixing our broken immigration system.

For starters, supporters of comprehensive reform in the Senate banded together to defeat efforts to remove or further weaken provisions in this bill that will allow the estimated 11 million to 12 million undocumented immigrants currently living in the United States to earn legal status. As both the

President and the Secretary of Homeland Security have said, mass deportation is not a realistic option. Neither is amnesty. This legislation would require those who are here illegally to come forward, pay hefty fines, pay taxes, learn English and civics, work, and wait in the back of the line—before earning the privilege of permanent resident status and ultimately a path to citizenship if they choose to pursue it. These core provisions remain in the bill, and that is critical.

However, I am disappointed in the changes to the legalization process that were made as part of the Hagel-Martinez compromise when the bill was first taken up on the Senate floor in April. The compromise would treat differently those people who have been here for more than 5 years and those who entered the country illegally in the last 2 to 5 years. This approach is overly complicated and difficult to administer, and it is unfair to treat these two categories of people differently. During floor consideration, I voted to remove these arbitrary distinctions from the bill. Unfortunately, that vote failed, and I believe we must accept this compromise as the only way to move forward with comprehensive immigration reform this year.

I am pleased that efforts to gut the guest worker program were not successful and that the Senate added additional measures to strengthen labor protections for U.S. workers. We need a guest worker program that allows employers to turn to foreign labor as a last resort when they genuinely cannot find American workers to do the job. But it is important that any guest worker program contain strong labor protections, as the program outlined in the legislation does. These protections will help ensure that the program does not adversely affect wages and working conditions for U.S. workers, and that we do not create a second-class of workers, who are subject to lower wages and fewer workplace protections. Furthermore, by permitting these workers to enter the country legally, we can try to avoid a future flow of undocumented workers who would otherwise create a new underground economy.

New border security measures are, of course, an absolutely critical element of any immigration reform bill. This bill contains important provisions to increase and improve the personnel, equipment, infrastructure, and other resources our country needs to protect the border, and I strongly support those measures. But border security alone is not enough. According to a recent Cato Institute report, the probability of catching an illegal immigrant has fallen over the past two decades from 33 percent to 5 percent, despite the fact that we have tripled the number of border agents and increased the enforcement budget tenfold. We also must create realistic legal channels for immigrants to come to the United State and that allow undocumented immigrants who pass background checks to earn legal status. This reform of our immigration system is important to our national security because it will enable our border agents to focus their efforts on terrorists and others who pose a serious threat to Nation.

The bill contains other important proposals, such as the DREAM Act, which provides higher education opportunities for children who are long-term U.S. residents and came to this country illegally through no fault of their own; and the AgJOBS bill to help agricultural workers; and family reunification. These provisions may not have been subject to as much debate as other elements of the bill, but they are just as important.

The amendment process also brought improvements to title III of the bill, which creates a new mandatory, nationwide electronic employment verification system. If not implemented correctly, such a system could result in countless U.S. citizens and other work-authorized individuals being denied work as a result of errors or discrimination, a result that none of us want. The new version of title III contains important privacy, due process, and labor protections to ensure that implementation of this system is as fair and accurate as possible. That said, this system is a dramatic expansion of an existing pilot program that has faced a variety of serious problems, and I have concerns about expanding it to a nationwide mandatory scheme. Its implementation will require robust congressional oversight to ensure that citizens and work-authorized immigrants are not turned down for jobs because of mistaken results.

Although the border security measures and the core reforms to our immigration system that are in this bill are very important, I do have concerns about some aspects of this bill, including some changes that were made to this bill during the amendment process on the Senate floor.

One successful floor amendment would require the Government to build 370 miles of fence along the southern border. Every Member of this body recognizes that border security is critical to our Nation's security, but I opposed the border fencing amendment because I cannot justify pouring Federal dollars into efforts that have questionable effectiveness. Border fencing costs between $1 million and $3 million per mile. And yet we will be committing vast resources to an initiative that I have serious doubts will even work. While fencing can be effective in urban areas, adding hundreds of miles of fencing in rural sections of the border will not stem the flow of people who are willing to risk their lives to come to this country.

I was also disappointed that the Senate approved the amendment making English the national language of the United States. Instead of considering divisive English-only amendments that fan the flames of tension over the issue of immigration, we should be providing recent immigrants with more opportunities to learn English. I also am concerned that this amendment's language could limit the ability of the Federal Government to communicate with its citizens, which could have potentially devastating consequences in situations like national emergencies. That is why I supported an alternative amendment proposed by Senator SALAZAR, which simply recognized English as the ''common and unifying'' language of the United States.

I continue to have serious concerns about some provisions in title II of the bill. Despite improvements that were made in the Judiciary Committee, title II still contains provisions that are both ill-advised and unnecessary. Title II contains measures that require excessive deference to executive agency decisionmaking in a variety of immigration contexts; that expand the categories of individuals subject to the most draconian immigration consequences and apply some of these changes retroactively; and that require that civil immigration violators be put in the central criminal database used by local, State and Federal agencies around the country. Eroding due process rights for people in this country will not make us safer, nor is it in keeping with our Nation's values of fairness and justice. It will be important that we work to improve some of these provisions in the conference process.

I was very pleased, however, that the Senate voted in favor of an amendment that I offered on the floor to strike a provision in title II that could have had devastating consequences for asylum seekers. The provision would have made it harder for asylum seekers, victims of trafficking, and other immigrants to get a temporary stay of removal while they pursue their appeal than it would be to win on the merits. This absurd result has been rejected by seven courts of appeals, and the Senate is now on record as well. Although there are many other problems with title II of the bill, this was a significant improvement and reinstates a critical due process protection.

An amendment offered by Senator ENSIGN relating to Social Security benefits, which was tabled, has been the subject of a great deal of misinformation. Under current law, undocumented immigrants are not entitled to Social Security benefits, and there is nothing in the underlying bill that would change this. Under the Ensign Social Security amendment, immigrants who paid into Social Security and later earned legal status would have been prevented from having their earnings that they already paid into the system count toward their retirement benefits. The amendment, which I opposed, would have limited the Social Security benefits only of U.S. citizens and those

in the country legally. This amendment would have harmed elderly or disabled individuals who would be impoverished despite having paid into the Social Security system for many years and would deny innocent American children who are born to these workers survivor benefits, regardless of how long their mother or father worked and paid taxes in the United States. In addition, the Ensign amendment would have forced taxpayers to pay more for the means-tested welfare programs to which these impoverished individuals would have had to turn. For these reasons, I opposed the Ensign amendment, and I am pleased that the majority of my colleagues did as well.

Mr. President, the end result of several weeks of hard work is bipartisan, compromise legislation that will bring meaningful reforms to a system that has long been broken. The bill is far from perfect, but on balance, I believe it is a victory for supporters of comprehensive reform. But as the saying goes, it ain't over 'til it's over. In order for this legislation to become law, we need our colleagues in the House to work with the Senate during the conference committee process and to adopt a comprehensive approach to this issue. And we need the President, who has come out in favor of comprehensive reform, to stay invested in this process. He has spoken, but now he must act. We will need his help in convincing members of the House to abandon ill-conceived notions like criminalizing undocumented people and those who provide humanitarian support to them, and chiseling away at due process rights. The President's leadership, and the willingness of House leaders to work with the Senate, will be crucial in order to retain the important reform provisions contained in this bill during the conference process.

This is a defining moment for America, and I am hopeful that the Senate, the House, and the President will work together so that we can build on this success and enact a comprehensive reform bill by the end of this Congress.

COSPONSORSHIP OF S. 1112

Mr. BURNS. Mr. President, I would like to lend my support to S. 1112, the College 529 InvEST Act of 2005, which I cosponsored today. A college education is more important today then it has ever been before. As the intrinsic value of a college education has increased, so too has the financial costs associated with it. In the last 10 years, the cost of a 4-year college education at a public institution increased 59 percent, while in public institutions it has grown by 42 percent. This increased cost dramatically outpaces average family income growth during the same time period.

It is not surprising that Montanans have expressed concerns about how they will pay such a hefty pricetag for their children's futures. It is our responsibility in the Senate to make saving for college manageable for many families who also struggle to save for their own retirement and may live from paycheck to paycheck. Federal programs can defray some of the costs, but this alone cannot pay the bills. Tax relief passed in 2001 permitted States to implement their own plans, creating a tax benefit for those families who chose to invest in them. Since 1998, 12,539 qualified tuition program accounts total more than $146 million in Montana alone.

Without congressional action, the tax benefits of these plans will expire in 2010. Withdrawals made after 2010 will be subjected to taxation that means in just a little over 3 years from now, parents who invested in these 529 plans for the tax benefits will face an unanticipated tax liability. This sunset provision casts serious doubt on the likelihood a family would set up a 529 plan given such uncertainty. S. 1112 would make the tax provisions of these important plans permanent, providing much-needed certainty to parents and their children heading off to college in the future.

HOLD ON NOMINATION OF DAVID BERNHARDT

Mr. WYDEN. Mr. President, I rise today to attempt, once again, to raise awareness of the plight of countless rural communities due to the impending expiration of the Secure Rural Schools and County Self-Determination Act. I regret that the lack of concern at the White House and the inertia in Congress forces me to put a hold on David Bernhardt, the administration's nominee for Interior Solicitor. It is time for everyone to focus their attention on the needs of the more than 700 rural counties in over 40 States that are depending on the reauthorization of this county payments legislation.

Thus far, the administration's solution to funding county payments is unacceptable. The county payments law, which provides a stable revenue source for education, roads, and other county services in rural areas, is due to expire at the end of this year. In early 2005, I coauthored a bipartisan bill, S. 267, to reauthorize county payments for another 7 years. The bill has 26 Senate cosponsors. In February, the administration proposed reauthorizing the law for only 5 years while cutting funding by 60 percent and funding that reduced portion with a controversial Federal land sale scheme. In response, Senator BAUCUS proposed a sensible, alternative funding source for county payments, a proposal which I was pleased to cosponsor. Our legislation fully funds county payments by ensuring that a portion of Federal taxes are withheld from payments by the Federal Government to government contractors. The Federal Government currently does not withhold taxes when it pays government contractors. Recently, however, over my objections, Congress approved a major tax bill that uses the Baucus proposal to instead provide tax cuts for this country's most fortunate few. This lack of regard for the historic obligations of the Federal Government to rural counties severs a vitally important funding lifeline to communities throughout the country.

I will hold this nominee—and many nominees coming after him, if need be—until the administration finds an acceptable way to fund county payments.

DO THE WRITE THING CHALLENGE 2006

Mr. LEVIN. Mr. President, the Do the Write Thing Challenge, or DtWT, is a national program that gives middle school students the opportunity to reflect on and express themselves about youth violence in their communities. DtWT combines classroom discussion with a writing contest that focuses on personal responsibility in solving youth violence problems. Since it was created in 1994, more than 350,000 middle school students have participated in DtWT activities, and the program has grown to include participants from 28 different jurisdictions, including Detroit, MI.

In 2005, more than 32,000 students participated in the DtWT writing contest. To participate, students are asked to write an essay, poem, play, or song that addresses the impact of violence on their life, the causes of youth violence, and the things that they can do to prevent youth violence around them. As part of their participation in the contest, students are also asked to make a personal commitment that they will put their thoughts into action by working to help stop youth violence in their daily lives.

Each year, a DtWT Committee made up of community, business, and governmental leaders from each participating jurisdiction reviews the writing submissions of the students and picks two national finalists, one boy and one girl, from their area. I am pleased to recognize this year's national finalists from Detroit, Demetrius Adams and Tiffini Baldwin, for their outstanding work and dedication to the prevention of youth violence.

Both Demetrius and Tiffini wrote about the serious effect that guns, gangs, and drugs can have on the lives of teenagers. Their writings demonstrate a deep understanding of the impact that a single act of violence can have on an entire community. I am impressed by the maturity they have shown in their work and congratulate them on being selected as national finalists.

In July, Demetrius and Tiffini will join the other DtWT national finalists in Washington, DC, for National Recognition Week. During the week's activities, the national finalists will attend a recognition ceremony and have their work permanently placed in the Library of Congress. In addition, they will have the opportunity to share

their thoughts on youth violence with Members of Congress and other policymakers. In the past, students have had the opportunity to meet with the Secretary of Education, the Attorney General, and other representatives from the Department of Justice.

I know my colleagues join me in celebrating the work of all of the DtWT participants from around the country. I would also like to thank the DtWT organizers for their commitment to engaging with and educating children about nonviolence. Their important efforts help to increase awareness of the issue and facilitate the development of local solutions to the youth violence problem in our Nation.

While it is important that we recognize the hard work of the DtWT participants and organizers, it is also important that we support their efforts through our actions in the Senate. I urge my colleagues to join me in supporting legislation that would help prevent youth violence by increasing the number of police officers on our streets, by increasing resources for school and community violence prevention programs, and by making it more difficult for children and criminals to acquire dangerous firearms.

REVEREND WILLIAM SLOANE COFFIN

Mr. LEAHY. Mr. President, I rise today to remember my friend Rev. William Sloane Coffin who passed away in Vermont on April 12, 2006, at his home in Strafford.

Bill Coffin was an extraordinary man who leaves behind a legacy of inspired service for social justice that few Americans have matched. He dedicated his life to speaking out on behalf of those who would otherwise be forgotten, to improving the lives of the underprivileged, and to calling for justice for victims of discrimination in our society.

As chaplain of Yale University, Bill used that pulpit like none before him, to serve not only the Yale community but to inspire the entire Nation. While many Senators may remember him best for his moral leadership and courageous activism during the Vietnam War, Bill also established himself as a dedicated leader for racial and social justice. He was a member of the Freedom Riders who rode interstate buses in the South to challenge segregation laws. He was a visionary and powerful leader in pointing out the hypocrisy of religious and sexual discrimination

Mr. Gary Trudeau, creator of the cartoon ''Doonesbury'' and fellow Yale graduate, may have immortalized Bill Coffin in his Reverend Sloan character. But that was only one chapter of a lifetime of using his ministry to fight injustice. After his long service at Yale, Bill became pastor of Riverside Church in New York City where he continued to advocate for the downtrodden all over the world. Bill continued to be a forceful presence for good long after he left Riverside.

Mr. President, Vermonters were fortunate to have Bill Coffin as a resident of our unique State. Vermonters have a long history of independent thought, of standing up for what is right, and Bill Coffin set a standard for all of us. I was privileged to know him personally and to be able to call him a friend. I know his other friends and neighbors felt the same way. We were all made better, and felt better about ourselves, when we were in the company of Bill Coffin.

I ask unanimous consent that a column by William F. Buckley and an editorial in the Valley News be printed in the CONGRESSIONAL RECORD so that other Senators may have a further appreciation of this great and good man.

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

[From the Valley News, April 14, 2006]

WILLIAM S. COFFIN

The Upper Valley has its share of accomplished and prominent residents, but we can think of few whose presence seemed such a gift as did that of The Rev. William Sloane Coffin, who lived here full time from the late 1980s until his death Wednesday at his home in Strafford.

The Upper Valley phase of Coffin's life showcased the same devotion to social justice as his earlier chapters as pastor of Riverside Church in New York City and chaplain of Yale University. His focus shifted somewhat—the Vietnam War and black Americans' civil rights while he worked in New Haven, Conn., and New York City; nuclear disarmament, gay Americans' civil rights and the environment while in Vermont—but the larger theme remained constant. He was committed to speaking truth to power, and he did that by talking about the issues of the day with striking clarity and wisdom.

One of the last op-eds he wrote for the Valley News appeared just a few weeks after the Sept. 11 attacks, and reviewing it now, more than four years later, makes us wish it had had more of an impact in guiding this nation's leaders about the topic at hand—how to best respond to terrorism.

''What Americans do realize now,'' Coffin wrote, ''is that life can change on a dime. On Sept. 11, we lost, and lost forever, our sense of invulnerability and invincibility. Hard as that may be, let us not grieve their passing; they were illusions.

''Today it is the Devil's strategy to persuade Americans to let go of the good to fight evil. I hope we will resist. I hope that first we will present to the world conclusive evidence of whom these hijackers were, from whence they came, and who knowingly harbored them.

''Then I hope we shall try to build international consensus for appropriate measures, both to halt the violence and the circumstances that gave rise to it.''

Here in the Upper Valley, though, we had the opportunity not only to appreciate the power of Coffin's message but also to witness the force of his personality. Whether at a dining room table, behind a church pulpit, at a piano or on a stage at a political rally, Coffin commanded, enjoyed and rewarded attention. The message was difficult to separate from the virtuoso performance of high-spiritedness, humor and insight. Not even a failing body, including the slurred speech left in the wake of a stroke, blunted the force of his personality. Strafford Selectwoman Kay Campbell had it just right when she noted that Coffin, despite his national stature, had a knack for ''treating us like we were all special.''

Bill Coffin was an accomplished, amazing and fascinating man, and many Upper Valley residents feel blessed not just to have benefited from his wisdom but for the opportunity of seeing him in action.

[From Yale Daily News, Apr. 14, 2006]

COFFIN'S PASSION TOPPED IDEOLOGY

(By William F. Buckley, Jr.)

It was the routine, when Charles Seymour was president of Yale, that the chairman (as we were then designated) of the News should visit with President Seymour for a half hour every week, mutual conduits for information in both directions. We became friends and he told me at one meeting with some enthusiasm that the student speaker at the annual Alumni Day lunch at the Freshman Commons the day before ''gave the single most eloquent talk I have ever heard from an undergraduate.'' I thought hard about that comment one year later when I was selected to give the annual talk to the alumni, which speech moved nobody at all because the day before, the text having been examined by public relations director Richard Lee, I was asked to be so kind as to withdraw; and I did. (What I did with the speech was stick it into the appendix of ''God and Man at Yale'').

I didn't meet William Sloane Coffin '49 DIV '56 until some while later, when of course I congratulated him on electing the correct political extremity in the controversies of the day. He was never slow to catch an irony, and his wink brought on a trans-ideological friendship that induced great pleasure.

The friendship was publicly confirmed by Coffin with an extraordinary gesture. Garry Trudeau '70 ART '73 was lining up speakers for an event celebrating the reunion of his class. His reunion coincided with a reunion of my own class, and he came to me and asked if I would consent to debate with Bill Coffin as I had done for Trudeau's class in freshman year.

Well, I said, okay, though I knew that Charles Seymour's estimate of successful speakers would certainly prevail yet again. But there was a remarkable feature of that afternoon. I climbed the steps at the Yale Law School Auditorium to extend a hand to Bill Coffin—who brushed it aside and embraced me with both arms. This was a dramatic act. It was testimony not only to Coffin's wide Christian gateway to the unfaithful, but also to his extraordinary histrionic skills. I'd have lost the argument anyway. I have defended my political faith as often as Coffin did his own, but you cannot, in the end, win an argument against someone who is offering free health care and an end to nuclear bombs. But there was never any hope for survival after his public embrace.

We were always, however lightly, in touch. ''Sweet William,'' he addressed me in June 2003, enclosing a copy of a speech he had delivered at Yale the week before. ''The enclosed speech to the Class of '68, you will be sorry to hear, was received with tumultuous applause. Don't worry, however, you, alas, represent the ruling view. I hope you feel with Saint Paul, 'Though our outer nature is wasted away our inner nature is being renewed each day.' Affectionately as always, Bill.''

I replied ''Wm, I am not surprised your speech was greeted by tumultuous applause. That is what demagogy is designed to do, dear William.'' He replied some months later, enclosing a copy of a page from the Boston Globe in which both of us were quoted. ''Dear Wm, Could it be that in this time and our old age that we might be on the same page? Do let me know, affectionately, Bill.''

I replied that I had seen his new book Letters to a Young Doubter. ''... I think of you

often, and did so most directly when I published, a fortnight ago, the obituary I did on William F. Rickenbacker. He is the only other fleeted spirit I ever addressed as Dear Wm, which he always reciprocated with letters address to me as Dear Wm—both of us signing off as . . . Wm. As I am now, anxious to get a note off to you, especially since you have taken to writing books again, instead of reproachful letters to, your pal—'Wm.'''

Our disagreements were heated, and it is through the exercise of much restraint that I forebear doing more than merely to record that they were heated; on my way, heatedly, to record that Bill Coffin was a bird of paradise, and to extend my sympathy to all who, however thoughtlessly, lament his failure to bring the world around to his views.

Mrs. FEINSTEIN. Mr. President. I am pleased today to introduce legislation with Senator SPECTER to reaffirm the exclusivity of the Foreign Surveillance Intelligence Act of 1978, FISA, and streamline the process by which it works.

This measure brings the so-called Terrorist Surveillance Program being conducted by the National Security Agency under the process required by FISA. The bill will enhance our national security and provide constitutional protections against government intrusion into the privacy of ordinary Americans.

Specifically, the bill that we introduce today would:

Restate, in no uncertain terms, that FISA is the exclusive means by which our Government can conduct electronic surveillance of U.S. persons on U.S. soil for foreign intelligence purposes;

Expressly state that there is no such thing as an ''implied'' repeal of our FISA laws. No future bill can be interpreted as authorizing an exception from FISA unless it expressly makes such exception;

Increase flexibility under FISA by extending the period of emergency electronic surveillance from 72 hours to 7 days, which should cover all contingent needs; and

Authorize designated supervisors at the NSA and the FBI to initiate emergency electronic surveillance, provided that the surveillance is reported to the Attorney General within 24 hours, and approved by the AG within 3 days and the FISA Court within 7 days. The purpose of this is to prevent bureaucratic delay in an emergency circumstance.

In addition to these major provisions, the legislation we introduce today makes several additional changes to reinforce FISA's exclusivity and adapt existing FISA authorities and procedures.

These changes are designed to allow applications to move faster from the field to the FISA Court, and to allow that Court to handle any increased caseload that will result from bringing the current NSA program into the FISA regime.

These additional authorities, streamlined procedures, and additional resources respond directly to needs described by the Attorney General, current and former FISA Court judges, and outside experts. Specifically, the bill:

Allows the Attorney General to delegate his authority to approve applications going to the FISA Court to two other Senate-confirmed Justice Department officials;

Takes FISA's current allowance for 15 days of warrantless electronic surveillance following a declaration of war and extend it to the 15 days:

1. Following a Congressional authorization to use military force, or

2. A major terrorist attack against our nation for the same period of time.

Authorizes additional personnel at the NSA, the FBI, the Department of Justice, and the FISA Court, to reduce the time it takes to initiate, review, and file a FISA application.

Allows for additional judges to the FISA Court as needed to manage the caseload;

Facilitates a review of the FISA application process, culminating in a report designed to eliminate any unnecessary delay in the filings; and

Mandates the creation of a secure, classified document management system to facilitate electronic filing.

In addition to reaffirming FISA's exclusivity, as I mentioned before, the legislation:

Prohibits the use of Federal funds for any future electronic surveillance of U.S. Persons that does not fully comply with the law; and

Requires that the full Intelligence Committees be briefed on all electronic surveillance, and related, programs.

We are in a war against terrorists, who seek to attack us in unpredictable and asymmetric ways.

Intelligence is the key to our defense; we must know about the terrorists' intentions and capabilities to do us harm if we are to stop them.

Electronic surveillance, including surveillance conducted within the United States on U.S. persons, is part of our defense. The men and women at the NSA and the FBI who do this work are careful, dedicated officials.

But even in this war on terror, we should not sacrifice basic protections enshrined in the Constitution, including the fourth amendment protections against unreasonable search and seizures.

The FISA Court was created in 1978, following the Church Committee's investigation of some of our Government's worst civil rights violations—J. Edgar Hoover's spying on Martin Luther King, Jr., and Vietnam-era ''enemies lists,'' for example. These abuses were the result of domestic spying—electronic surveillance—under the guise of foreign intelligence.

In response, Congress, working with both the Ford and Carter administrations, drafted and later enacted FISA in 1978 to be the exclusive means to conduct electronic surveillance of U.S. persons. It created a special court—operating in secret—that has to approve a warrant for every domestic wiretap, and provides for careful congressional oversight.

Over the years, this FISA court has rejected only a small handful of thousands of warrant requests, and has never had a significant leak. After the PATRIOT Act was passed in October 2001, for example, the Justice Department stated that FISA has worked efficiently and well.

In the past 28 years, technology has changed, as have our enemies. And from time to time, when requested by various administrations, we have made technical changes to FISA.

But the need to protect privacy rights by requiring individual warrants from a FISA judge, and the exclusivity of FISA, have remained constant.

The domestic electronic surveillance that has been conducted since October 2001 operates, for the most part, outside of the law. In addition, the way the administration has moved forward with this program has brought us to the brink of a constitutional confrontation.

The legislation that Senator SPECTER and I are introducing today brings the surveillance program under appropriate supervision and restores the checks and balances between the branches of government.

As one who has been briefed on the details of the NSA surveillance program, I have come to believe that this surveillance can be done, without sacrifice to our national security, through court-issued individualized warrants for all content collection of U.S. persons under the FISA process.

Further, testimony and letters from the Attorney General, former Director of the NSA General Hayden, and other administration officials have provided no reason, other than that of timeliness, why the NSA program couldn't proceed under the FISA regime.

This legislation would help transform the FISA process into one agile enough to meet the administration's need for timely action, while also preserving judicial oversight and our important constitutional privacy protections.

In an April 6 hearing before the House Judiciary Committee, Attorney General Gonzales openly suggested that warrants might have been obtainable for everything that the NSA is doing, and then testified that the main ''problem'' he saw with FISA was one of ''timing.''

After the Attorney General's testimony, I wrote to him asking him why these timing problems could not be addressed directly, so that we could return to the FISA process followed by all Presidents since Jimmy Carter.

The Justice Department's response does not provide a reason why FISA's timing problems are incapable of being fixed. All it demonstrates is that this administration is not interested in trying to fix them.

This bill addresses all of the concerns noted in the Attorney General's letter.

The primary concern raised was that current law requires the Attorney General to determine that FISA's factual predicates have been met before authorizing the surveillance to begin. In other words, he suggests that there is

important surveillance he might delay, or even avoid, if he must determine in advance that a court will grant approval. But this bill eliminates the requirement for Attorney General approval before surveillance begins.

Under this bill, if the circumstances warrant, an Attorney General-designated supervisor of the NSA or FBI can begin emergency surveillance immediately. The designated officer would have to notify the Attorney General's office within 24 hours of starting, and then get approval from the AG within 72 hours. The Department of Justice would then need to obtain an emergency warrant from the FISA court within 7 days of the initiation of surveillance.

The Attorney General's role would simply be to decide whether to stop the surveillance—not authorize it on the front end. And even on this decision to stop surveillance, the bill allows him to delegate that decision to two other Department of Justice officials. If the Court does not issue a warrant, the information cannot be used in any legal proceeding.

This provision is respectful of the administration's needs. The 7-day emergency window in this bill more than doubles the existing 3-day period that exists for emergencies now. It also extends substantial additional resources to the Department of Justice and the intelligence agencies. And as I say, our bill expressly authorizes a designated agent to go ahead with necessary surveillance right away.

The Attorney General's letter also asserts that FISA is unworkable because prompt action increases the chance that the target of surveillance may ultimately be notified if the FISA Court later turns down the warrant.

The risk here is no different than the risk every prior Administration has faced. And it is also infinitesimal, since only a small handful of FISA applications—only 4 out of 18,747 from 1979–2005, according to press reports—have ever been refused by the FISA Court.

Even in the extremely rare case of where a FISA Court denies an emergency warrant, and therefore directs notification of the target of surveillance, the FISA law has a provision that exempts the Attorney General from notifying the target if he certifies that doing so would imperil national security.

Despite the remote chances of national security being compromised, the legislation gives the Attorney General the benefit of the doubt, and provides that if the Attorney General or his designees stops the NSA or FBI surveillance within 72 hours, the target of surveillance will not be notified.

Beyond the Attorney's General letter, the White House, the Department of Justice, and intelligence officials say that court review of the surveillance is not necessary for three reasons:

First, they argue that the President has the constitutional authority to order the surveillance, regardless of statutory prohibitions. This is a question for the courts to decide.

It is highly debatable whether the President has plenary article II constitutional power, but even if he does, he clearly does not have plenary authority to decide which of his powers are plenary. If he did, any Executive Branch official could open mail, or enter homes at any time without a warrant in the name of national security, and the doctrine of separation of powers as we know it would end.

Secondly, the administration argues that the NSA electronic surveillance program is subject to numerous reviews and safeguards at both the Department of Justice and the National Security Agency, thus making outside oversight unnecessary.

This argument flies in the face of our system of government. We have three separate branches of government, each with checks and balances on the other two. The framers of the Constitution did not vest the Executive Branch with the right to oversee itself; that is the responsibility of the Congress and the Courts.

We have also recently seen how this arrangement of internal reviews, even if it were acceptable, simply does not work. Within the Department of Justice, the Office of Professional Responsibility was recently asked to review the legality of the activities of those involved in the surveillance program outside of FISA, but we have learned that OPR was denied the security clearances needed to do their work.

Finally, as I noted before, the Executive Branch says that outside review by the Congress and the courts would hamstring their ability to prevent terrorist attacks. I do not believe that is true, based on the briefings I have received, but even if it were, the answer is to amend FISA, not to throw it out. The FISA law has been changed since September 11 through the PATRIOT Act and the renewal of the PATRIOT Act. It can be done again. In short, if the President sees problems with an existing law, the simple answer is that he should ask to change it—not refuse to follow the law.

This war on terror will be a long war, and it will be mostly fought in the shadows.

It is thus especially important that the Congress and the American people be assured that we are waging that war in a way that upholds our principles and follows the Constitution.

I believe that our national security and core privacy interests can both be protected, given the right tools and authorities, if each branch of government will work together to fulfill their respective roles and obligations.

Congress was able to do that more than 25 years ago when it first enacted FISA, and I am confident we can do it again today.

I have been waiting for the NSA to submit views regarding metadata—that is, information about communications that does not include content. It is my strong belief that any and all metadata collection programs should be approved by FISA on a program basis. I would hope to add such a provision to this bill at a later time or to introduce a new bill to cover this subject.

ADDITIONAL STATEMENTS

NATIONAL MIDDLE SCHOOL TEACHER OF THE YEAR

• Mr. AKAKA. Mr. President, I rise today to congratulate Gregg Agena of Mililani Middle School for being recognized as the national middle school teacher of the year by the National Association for Sports and Physical Education.

Initially, Gregg was honored by being named the Southwest District Middle School Physical Educator of the Year. The Southwest District of the National Association for Sport and Physical Education, NASPE, is a six-State region, which includes Hawaii. There were four other finalists for the national recognition, and it is with esteemed pride that I recognize and congratulate Gregg for receiving the national honor.

The award, which was announced at the NASPE national convention in Salt Lake City, UT, is a recognition of outstanding teaching at the middle school level and for motivating students to participate in physical activity throughout their entire lives. As a former educator and principal, I know firsthand of the countless hours that go into creating curricula, and it makes me proud to see outstanding teachers receive recognition for their hard work.

Gregg, who received both his undergraduate and graduate degrees from the University of Hawaii at Manoa, my alma mater, has also been recognized as the Nike Teacher of the Year, Hawaii Middle School Physical Education Teacher of the Year, and the recipient of the Ola Pono, which is Hawaii's Drug Free Award.

I would also like to recognize Kay Bicoy of Pearl City High School, who was named the Southwest District High School Physical Educator of the Year by NASPE. This was the first time that a public school teacher from the state of Hawaii was selected as a district award recipient, and it is with immense pride that I recognize not only one, but two teachers from my home State for such an accomplishment.

The dedication of Gregg and Kay to their field and to the children of Hawaii are undeniable. I congratulate them both not only for these outstanding recognitions, but especially for their dedication to educating the youth from the state of Hawaii, and I wish them the very best in their future endeavors.•

ALLAN W. MCWILLIAMS

• Mr. ALLEN. Mr. President, I am pleased today to recognize Mr. Allan W. McWilliams of Berryville, VA, who has served on the town council for 24 years. Mr. McWilliams served as ward representative from 1982 until 1991 and assumed his current role as the town's recorder in 1991.

Mr. McWilliams, who is affectionately known as ''Bugs,'' has made numerous contributions as one of the town's leaders. During his tenure on the town council, Mr. McWilliams has worked to promote fiscal responsibility, lower taxes and responsible planned growth. He has overseen the development of a professional community police force and has helped to implement a long-range capital planning project. As a resident of Berryville for more than 50 years and an owner of a business in downtown Berryville for the past 27 years, Mr. McWilliams is truly committed to the growth and success of this town.

Mr. McWilliams, who is married to Barbara and is the father to Jeffery and Michelle, has brought an innovative spirit and common-sense, principled leadership to the Town of Berryville. I am grateful for his service to the Commonwealth of Virginia and am pleased to join his colleagues, friends and family members in honoring him upon his retirement.•

CONGRATULATING GERRY FISCHBACH

• Mrs. CLINTON. Mr. President, I rise today to recognize Dr. Gerald D. Fischbach for his service as the Executive Vice President for Health and Biomedical Sciences and Dean of the Faculties of Medicine and Health Sciences at Columbia University in New York. Gerry Fischbach is a highly respected neuroscientist and educator. I have known Dean Fischbach since 1998 when he served as Director of the National Institute of Neurological Disorders and Stroke, NINDS, at the National Institutes of Health, NIH, during the Clinton administration.

As executive vice president and dean, Gerry Fischbach was charged with running the Columbia University Medical Center, CUMC, in northern Manhattan. The CUMC comprises the College of Physicians and Surgeons, the Graduate School of Arts and Sciences, the School of Nursing, the College of Dental Medicine, and the Mailman School of Public Health. Dean Fischbach worked tirelessly to advance the Medical Center's three primary missions, providing high quality patient care, conducting innovative biomedical research, and educating generations of doctors, scientists, nurses, dentists, and public health professionals.

Gerry Fischbach is a native of Mount Vernon, New York and graduated from Colgate University. After graduating from Cornell Medical School in New York City, he completed his internship at the University of Washington Hospital in Seattle. In 1966, he began his lifelong dedication to research and education at the NIH. Before coming to Columbia, Dean Fischbach held Chairmanships at both Harvard University and Washington University in St. Louis, and was Director of the NINDS at NIH.

Throughout his career, Dean Fischbach has studied the formation and maintenance of synapses, the junctions between nerve cells and their targets through which information is transferred. His work has focused on the neuromuscular junction, where he pioneered using cultured neurons and muscle cells to characterize the biochemical, cellular, and electrophysiological mechanisms underlying the development and function of this junction. Beginning in the 1970s, Dean Fischbach began to study the mechanism by which motor neurons regulate the number of acetylcholine receptors on muscle cells. In 1993, this work culminated with the purification and cloning of the acetylcholine receptor-inducing activity, ARIA, protein, which stimulates skeletal muscle cells to synthesize acetylcholine receptors. Dean Fischbach's work was key in demonstrating that synaptic development relies on biochemical mechanisms.

While at Columbia, Dean Fischbach initiated and implemented a strategic planning process and oversaw the completion and dedication of the new Irving Cancer Research Center. No stranger to Congress from his days at NINDS, he has been active in the effort to expand eligibility for federal funding for stem cell research, and has lectured, written, and testified before Congress numerous times on the subject. During his tenure, he created the Columbia Center for Neuroscience Initiatives and the CUMC Stem Cell Consortium, both to promote better understanding of the human brain and develop treatments for diseases that affect millions of Americans.

New York is blessed with an abundance of top research institutions and teaching hospitals, New York's jewels, as my predecessor Senator Moynihan used to call them, and there is no doubt that Columbia's medical center is one of the finest in the country. Columbia receives more NIH funding than any other New York institution, and two out of the past five Nobel Prize winners for Physiology and Medicine have been Columbia faculty. I have become very familiar with the outstanding clinical care provided by CUMC and the New York Presbyterian Hospital. Dr. Craig Smith, the surgeon who operated on my husband, is a Columbia faculty member.

My colleagues may have noticed that the one word I have not used in my remarks is ''retire.'' Although Gerry Fishbach may be stepping down from his current position, he is not retiring. He will remain an active CUMC faculty member and researcher. He also will serve as the Scientific Advisor for the Simons Foundation, a New York-based foundation dedicated to advancing the basic and clinical frontiers of autism research.

There will be more time to spend with his wife Ruth, a noted bioethicist, their children and grandchildren at their home in Wood's Hole, and I suspect there may be a few more rounds of golf in his future. Gerry Fischbach will continue to do what he has devoted his life to: expanding, creating, and disseminating knowledge of the brain and working on developing means to treat disease. He will also continue to be active on health and science policy issues like stem cell research and it would not surprise me, once absolved from the day-to-day responsibilities of Dean, if he is not more visible on Capitol Hill.

Dean Fischbach is leaving Columbia University Medical Center in good hands. Dr. Lee Goldman will assume the executive vice president and dean position in late June. A distinguished cardiologist, Dr. Goldman comes to Columbia from the University of California San Francisco where he is Chair of the Department of Medicine. I want to welcome Dr. Goldman to New York and look forward to working with him.

I ask that my colleagues join me in recognizing this great New Yorker, Dr. Gerald D. Fischbach. Congratulations Gerry and best to you and Ruth.•

ANNUAL NEW JERSEY LAW ENFORCEMENT MEMORIAL SERVICE

• Mr. LAUTENBERG. Mr. President, I commemorate the 21st annual New Jersey Law Enforcement Memorial Service held this week in Ocean Grove, NJ. This ceremony, which is hosted by the New Jersey State Association of Chiefs of Police, NJSACP, honors the sacrifice made by law enforcement officers who have given their lives in the line of duty. Its participants represent the entire New Jersey law enforcement community, including State and local police agencies as well as prosecutors and federal agents based in New Jersey.

Events such as the New Jersey Law Enforcement Memorial Service and last week's commemoration of National Police Week are the least we can do to express our gratitude to the brave men and women who risk their lives every day in service to our communities, States, and Nation. Our Nation lost 155 law enforcement officers in 2005. Their ultimate sacrifice and the important work they did every day must never be forgotten.

I am proud that my State of New Jersey honors these heroes in the oldest statewide law enforcement memorial service in the country, and I ask that the Senate join me in commending the NJSACP for hosting this important event.•

IN RECOGNITION OF THE UNITED STATES COAST GUARD CUTTER ICEBREAKER ''MACKINAW'' AND HER CREW

• Mr. LEVIN. Mr. President, it is with great pride that I pay tribute to the United States Coast Guard Cutter Icebreaker *Mackinaw* on her 62 years of exceptional service on the Great Lakes. The Coast Guard's largest cutter assigned to the Great Lakes, the *Mackinaw* will be decommissioned on Saturday, June 10, 2006. The power and majesty of the *Mackinaw* have made her a unique and awe-inspiring cutter, setting a high standard by which other icebreakers are measured.

Construction of the *Mackinaw* began on March 20, 1943, by the Toledo Shipbuilding Company of Ohio. With the Great Lakes serving as a vital link for industry and commerce, the Coast Guard needed a vessel that could accomplish in one pass what took smaller icebreakers three or four passes to accomplish. Out of this need was born the legendary ''Mighty Mac.'' At a length of 290 feet, a beam of 74 feet, a displacement of 5,252 tons, and a maximum speed of 16 knots, the *Mackinaw* was the most powerful icebreaker in the world when she was commissioned on December 20, 1944.

In the years since then, the *Mackinaw* has served proudly on the Great Lakes, with Cheboygan, Michigan, as her home port. In addition to her mission of breaking ice in the fall and spring, the *Mackinaw* has been called upon to serve as a buoy tender, carry fuel and supplies to light stations, serve as a training vessel and assist vessels in distress when necessary. The *Mackinaw* has completed all of these duties with distinction.

Along the way, the *Mackinaw* has captured the imagination of the people of the Great Lakes, and they call her by many names: ''The Mighty Mac,'' ''Big Mac,'' ''Ice Cream Machine,'' ''Great White Mother,'' ''Mack Attack,'' ''Guardian of the Eighth Sea,'' and ''Grand Lady of the Great Lakes.''

The great success of the *Mackinaw* is due, not only to the capabilities of the vessel herself, but also to her crew. Over the last 62 years, more then 3,000 men and women have served this country aboard the *Mackinaw*. These men and women should be saluted for their dedication, hard work, and tireless efforts in protecting and securing the safe passage of vessels on the Great Lakes.

The crew of the *Mackinaw* is also to be commended for their volunteer efforts. Since 2000, the *Mackinaw* has taken on the special mission of acting as Chicago's Christmas Ship. Each December, the crew makes the 350 mile trip from Cheboygan, Michigan to Chicago, Illinois, bringing Christmas trees to be distributed to disadvantaged families in Chicago. Since its inception, this program has provided more than 6,000 trees to families in need during the holiday season.

On the eve of her decommissioning, I would like to praise the United States Coast Guard Cutter Icebreaker *Mackinaw* for her 62 years of service on the Great Lakes. And I thank the current and former crew of this great ship for their service and commitment. The *Mackinaw* will be long remembered for a job well done.•

IN RECOGNITION OF THE UNITED STATES COAST GUARD CUTTER ''ACACIA'' AND HER CREW

• Mr. LEVIN. Mr. President, it is with great pride that I pay tribute to the United States Coast Guard Cutter *Acacia* on her 62 years of exceptional service on the Great Lakes. The ''Ace of the Great Lakes'' will be remembered for her strength, integrity, and rich maritime history. The *Acacia* is the last of the Coast Guard's classic World War II era 180 foot buoy tenders, and when she is decommissioned on Wednesday, June 7, 2006, it will be the end of an era.

The *Acacia*, constructed during World War II by the Zenith Dredge Company of Duluth, Minnesota, was launched on September 1, 1944. She was named after the U.S. Lighthouse Service *Acacia*, the only Lighthouse Service vessel sunk during World War II. In the years since her commissioning, the *Acacia* has served proudly on the Great Lakes, calling Charlevoix, Michigan, home port for the last 16 years.

Affectionately known as ''The Big A,'' the *Acacia*'s primary duties have been the maintenance of more than 210 buoys, lighthouses and other navigational aids in the Great Lakes. Servicing these aids to navigation has required travel from as far south as Calumet Harbor to as far north as Little Bay De Noc. The *Acacia*'s icebreaking capabilities were also vital to maintaining the safe passage of coal ships in the channels between Toledo, Ohio and Detroit, Michigan every winter through her participation in Operation Coal Shovel.

In addition, the *Acacia* has assisted in icebreaking and search and rescue operations on the Great Lakes and throughout the world. Internationally, the *Acacia* and her crew took part in operation Uphold Democracy in 1994, supporting the Department of Defense in patrolling the coastline of Haiti. Whether working on the Great Lakes or in international waters, the *Acacia* and her crew have completed all of their missions with class and integrity.

As we pay tribute to the *Acacia*, I want to recognize the contributions of her crew to her great success. The proud men and women who have served this country aboard the *Acacia* over the last 62 years are to be saluted for their commitment, hard work, and impressive skill in protecting and securing the safe passage of vessels on the Great Lakes.

On the eve of her decommissioning, I would like to praise the United States Coast Guard Cutter *Acacia* for her service on the Great Lakes. And I thank the current and former crew of this great ship for their service and commitment. The *Acacia* will be long remembered for a job well done.•

CORRECTED MESSAGE FROM THE HOUSE—MAY 25, 2006

The Speaker appointment in the Message from the House on May 25, 2006, did not appear in the RECORD. The appointment is as follows:

The Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United States Coast Guard Academy: Mr. TAYLOR of Mississippi.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3064. A bill to express the policy of the United States regarding the United States relationship with native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 5253. An act to prohibit price gouging in the sale of gasoline, diesel fuel, crude oil, and home heating oil, and for other purposes.

H.R. 5311. An act to establish the Upper Housatonic Valley National Heritage Area.

H.R. 5403. An act to improve protections for children and to hold States accountable for the safe and timely placement of children across State lines, and for other purposes.

H.R. 5429. An act to direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, and for other purposes.

S. 3274. 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.

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–6962. A communication from the Director, Office of Personnel Management, transmitting the report of proposed legislation to allow the Governmentwide Service Benefit Plan in the Federal Employees Health Benefits (FEHB) Program to offer more than two levels of benefits; to the Committee on Homeland Security and Governmental Affairs.

EC–6963. A communication from the Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the Administration's calendar year 2005 report on category rating; to the Committee on Homeland Security and Governmental Affairs.

EC–6964. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, the National Endowment for the Arts' updated Strategic Plan for fiscal years 2006–2011; to the Committee on Homeland Security and Governmental Affairs.

EC–6965. A communication from the Deputy Director, Office of Administration and

Information Management, Office of Government Ethics, transmitting, pursuant to law, (2) reports relative to vacancy announcements within the Agency, received on May 24, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–6966. A communication from the Chairman, Parole Commission, Department of Justice, transmitting, pursuant to law, the Commission's annual report for the year 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–6967. A communication from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the Report of the Proceedings of the Judicial Conference of the United States, September 20, 2005; to the Committee on the Judiciary.

EC–6968. A communication from the Director, Regulations Management, Office of Regulation Policy and Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Amended Delegation of Authority—Property Management Contractor'' (RIN2900–AM38) received on May 24, 2006; to the Committee on Veterans' Affairs.

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. FEINSTEIN:

S. 3241. A bill to suspend temporarily the duty on certain backpacks with a removable separate backpack or daypack; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3242. A bill to suspend temporarily the duty on certain backpacks; to the Committee on Finance.

By Mr. OBAMA:

S. 3243. A bill to suspend temporarily the duty on metsulfuron-methyl; to the Committee on Finance.

By Mr. OBAMA:

S. 3244. A bill to suspend temporarily the duty on dichlorprop-p acid, dichlorprop-p dimethylamine salt, and dichlorprop-p 2-ethylhexyl ester; to the Committee on Finance.

By Mr. OBAMA:

S. 3245. A bill to suspend temporarily the duty on 2,4-DB Acid and 2,4-DB Dimethylamine Salt; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3246. A bill to suspend temporarily the duty on Tetraconazole; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3247. A bill to reduce temporarily the duty on M-Alcohol; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3248. A bill to suspend temporarily the duty on right angle ground fault circuit interrupters; to the Committee on Finance.

By Mr. OBAMA:

S. 3249. A bill to suspend temporarily the duty on metsulfuron-methyl; to the Committee on Finance.

By Mr. OBAMA:

S. 3250. A bill to suspend temporarily the duty on 2, 4-DB Acid and 2,4-DB Dimethylamine Salt; to the Committee on Finance.

By Mr. OBAMA:

S. 3251. A bill to suspend temporarily the duty on dichlorprop-p acid, dichlorprop-p dimethylamine salt, and dichlorprop-p 2-ethylhexyl ester; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3252. A bill to suspend temporarily the duty on filament fiber tow of rayon; to the Committee on Finance.

By Mr. ALEXANDER (for himself and Mr. FRIST):

S. 3253. A bill to extend the temporary suspension of duty on DMSIP; to the Committee on Finance.

By Mr. ALEXANDER (for himself and Mr. FRIST):

S. 3254. A bill to suspend temporarily the duty on parts for use in the manufacture of certain high-performance loudspeakers; to the Committee on Finance.

By Mrs. CLINTON (for herself and Ms. MIKULSKI):

S. 3255. A bill to provide student borrowers with basic rights, including the right to timely information about their loans and the right to make fair and reasonable loan payments, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FRIST (for Mrs. DOLE):

S. 3256. A bill to suspend temporarily the duty on ground fault circuit interrupter receptacles of 15 amps or less; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3257. A bill to suspend temporarily the duty on ground fault circuit interrupter receptacles of greater than 15 amps; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3258. A bill to suspend temporarily the duty on in line ground fault circuit interrupters; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3259. A bill to suspend temporarily the duty on high current ground fault circuit interrupters; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3260. A bill to suspend temporarily the duty on plastic lamp-holder housings containing sockets; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3261. A bill to suspend temporarily the duty on porcelain lamp-holder housings containing sockets; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3262. A bill to suspend temporarily the duty on aluminum lamp-holder housings containing sockets; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3263. A bill to suspend temporarily the duty on brass lamp-holder housings containing sockets; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3264. A bill to suspend temporarily the duty on staple fibers of viscose rayon, not carded, combed, or otherwise processed for spinning; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3265. A bill to suspend temporarily the duty on staple fibers of viscose rayon, not carded; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3266. A bill to suspend temporarily the duty on staple fibers of rayon, carded, combed, or otherwise processed; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3267. A bill to suspend temporarily the duty on Butralin; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3268. A bill to suspend temporarily the duty on Butanedioic acid, dimethyl ester, polymer with 4-hydroxy-2,2,6,6,-tetramethyl-1-piperidineethanol; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3269. A bill to extend temporarily the suspension of duty on 3-amino-2′(sulfatoethyl sulfonyl) ethyl benzamide; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3270. A bill to extend duty suspension on MUB 738 INT; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3271. A bill to extend the suspension of duty on 5-amino-N-(2-hydroxyethyl)-2,3-xylenesulfonamide; to the Committee on Finance.

By Mr. FRIST (for Mrs. DOLE):

S. 3272. A bill to suspend temporarily the duty on mixtures of 1,3,5-Triazine-2,4,6-triamine,N,N‴-[1,2-ethane-diyl-bis [[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazine-2-yl] imino]-3,1-propanediyl]] bis[N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)- and Butanedioic acid, dimethylester polymer with 4-hydroxy-2,2,6 ,6-tetramethyl-1-piperdine ethanol; to the Committee on Finance.

By Mr. ALEXANDER (for himself and Mr. FRIST):

S. 3273. A bill to reduce temporarily the duty on PHBA; to the Committee on Finance.

By Mr. SPECTER (for himself and Mr. LEAHY):

S. 3274. 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; read the first time.

By Mr. ALLEN (for himself, Mr. NELSON of Nebraska, Mr. CRAIG, Mr. INHOFE, Mr. LOTT, Mrs. DOLE, Mr. VITTER, Mr. ENSIGN, Mr. MARTINEZ, Mr. BURR, Mr. CRAPO, Mr. SUNUNU, and Mr. THUNE):

S. 3275. A bill to amend title 18, United States code, to provide a national standard in accordance with which nonresidents of a State may carry concealed firearms in the State; to the Committee on the Judiciary.

By Mr. NELSON of Nebraska (for himself and Mr. JOHNSON):

S. 3276. A bill to amend title 38, United States Code, to eliminate the deductible and change the method of determining the mileage reimbursement rate under the beneficiary travel program administered by the Secretary of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. FEINSTEIN:

S. 3277. A bill to suspend temporarily the duty on wide-range high sensitivity color zoom digital security camera; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3278. A bill to suspend temporarily the duty on mini DVD camcorder; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3279. A bill to suspend temporarily the duty on mini DVD camcorder with 8G HDD; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3280. A bill to suspend temporarily the duty on mini DVD camcorder with 680K pixel CCD; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3281. A bill to suspend temporarily the duty on mini DVD camcorder with 20G HDD; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3282. A bill to suspend temporarily the duty on metal halide lamp; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3283. A bill to suspend temporarily the duty on pressure sensitive film; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3284. A bill to suspend temporarily the duty on pressure sensitive film with adhesive based on styrene-ethylene-butylene copolymer; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3285. A bill to suspend temporarily the duty on wide-range high sensitivity color

zoom digital security camera with optical lens zoom power 23x magnification; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3286. A bill to suspend temporarily the duty on wide-range high sensitivity color zoom digital security camera with optical lens zoom power 22x magnification; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 3287. A bill to suspend temporarily the duty on wide-range high sensitivity color zoom digital security cameras; to the Committee on Finance.

By Mr. ALLEN:

S. 3288. A bill to suspend temporarily the duty on handheld electronic can openers; to the Committee on Finance.

By Mr. ALLEN:

S. 3289. A bill to suspend temporarily the duty on electric knives; to the Committee on Finance.

By Mr. ALLEN:

S. 3290. A bill to suspend temporarily the duty on toaster ovens with single-slot traditional toaster opening on top of oven; to the Committee on Finance.

By Mr. ALLEN:

S. 3291. A bill to suspend temporarily the duty on ice shavers; to the Committee on Finance.

By Mr. ALLEN:

S. 3292. A bill to suspend temporarily the duty on dual-press sandwich makers with floating upper lid and lock; to the Committee on Finance.

By Mr. ALLEN:

S. 3293. A bill to suspend temporarily the duty on electric drink mixers with tilt mixing heads and two-speed motors; to the Committee on Finance.

By Mr. ALLEN:

S. 3294. A bill to suspend temporarily the duty on electric juice extractors greater than 300 watts but less than 400 watts; to the Committee on Finance.

By Mr. ALLEN:

S. 3295. A bill to suspend temporarily the duty on electric juice extractors not less than 800 watts; to the Committee on Finance.

By Mr. ALLEN:

S. 3296. A bill to suspend temporarily the duty on open-top electric indoor grills; to the Committee on Finance.

By Mr. ALLEN:

S. 3297. A bill to suspend temporarily the duty on electric coffee grinders; to the Committee on Finance.

By Mr. ALLEN:

S. 3298. A bill to suspend temporarily the duty on electric percolators; to the Committee on Finance.

By Mr. ALLEN:

S. 3299. A bill to suspend temporarily the duty on automatic drip coffeemakers other than those with clocks; to the Committee on Finance.

By Mr. ALLEN:

S. 3300. A bill to suspend temporarily the duty on automatic drip coffeemakers with electronic clocks; to the Committee on Finance.

By Mr. ALLEN:

S. 3301. A bill to suspend temporarily the duty on electronic under-the-cabinet mounting electric can openers; to the Committee on Finance.

By Mr. SPECTER:

S. 3302. A bill to reduce temporarily the duty on Nitrocellulose; to the Committee on Finance.

By Mr. ALLEN:

S. 3303. A bill to suspend temporarily the duty on food slicers and shredders with top-mounted motors and replaceable mixing bowls; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 3304. A bill to suspend temporarily the duty on Dimethyl Malonate; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 3305. A bill to suspend temporarily the duty on 1-chloro-1, 1-difluoroethane; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3306. A bill to suspend temporarily the duty on lightweight wide angle digital camera lenses; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3307. A bill to suspend temporarily the duty on digital zoom camera lenses not exceeding 20 ounces in weight; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3308. A bill to suspend temporarily the duty on lightweight digital camera lenses; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3309. A bill to suspend temporarily the duty on digital zoom camera lenses; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3310. A bill to suspend temporarily the duty on digital camera lenses; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3311. A bill to suspend temporarily the duty on certain electrical transformers; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3312. A bill to suspend temporarily the duty on certain color flat panel screen monitors; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3313. A bill to suspend temporarily the duty on certain color monitors video with a display diagonal of 35.56 cm or greater; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3314. A bill to suspend temporarily the duty on certain color monitors; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3315. A bill to suspend temporarily the duty on certain black and white monitors; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3316. A bill to suspend temporarily the duty on 6 V lead-acid storage batteries; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3317. A bill to suspend temporarily the duty on cosmetic bags with a flexible outer surface of reinforced or laminated polyvinyl chloride (PVC); to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3318. A bill to extend and amend the duty on 2 Hydroxypropyl methylcellulose; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3319. A bill to suspend temporarily the duty on Zirconyl Chloride; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3320. A bill to suspend temporarily the duty on low expansion laboratory glass; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 3321. A bill to suspend temporarily the duty on stoppers, lids, and other closures; to the Committee on Finance.

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. HAGEL, Mr. ALEXANDER, and Mr. WARNER):

S. 3322. A bill to build operational readiness in civilian agencies, and for other purposes; considered and passed.

By Mr. MENENDEZ:

S. 3323. A bill to suspend temporarily the duty on Propylene Glycol Alginates (PGA) be eliminated; to the Committee on Finance.

By Mr. LAUTENBERG:

S. 3324. A bill to provide for the liquidation or reliquidation of certain entries of Granulated polytetrafluoroethylene resin from Italy; to the Committee on Finance.

By Mr. BUNNING (for himself, Mr. OBAMA, Mr. LUGAR, Mr. BURNS, and Mr. PRYOR):

S. 3325. A bill to promote coal-to-liquid fuel activities; to the Committee on Finance.

By Mr. SPECTER:

S. 3326. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between August 2001 and February 2003; to the Committee on Finance.

By Mr. SPECTER:

S. 3327. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in September through December, 2005; to the Committee on Finance.

By Mr. SPECTER:

S. 3328. A bill to provide for the liquidation or reliquidation of certain entries of fiberboard entered in 2001, 2002, and 2006; to the Committee on Finance.

By Mr. SPECTER:

S. 3329. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in February through May, 2005; to the Committee on Finance.

By Mr. SPECTER:

S. 3330. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in August through December, 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3331. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in June through August, 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3332. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in April through June, 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3333. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in February through April, 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3334. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard; to the Committee on Finance.

By Mr. SPECTER:

S. 3335. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between May 2005 and September 2005; to the Committee on Finance.

By Mr. SPECTER:

S. 3336. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in April through August, 2001; to the Committee on Finance.

By Mr. SPECTER:

S. 3337. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between December 2002 and April 2003; to the Committee on Finance.

By Mr. SPECTER:

S. 3338. A bill to suspend temporarily the duty on polyethylene glycol branched-nonylphenyl ether phosphate; to the Committee on Finance.

By Mr. SPECTER:

S. 3339. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered in November 2003 through February 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3340. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between December 2005 and April 2006; to the Committee on Finance.

By Mr. SPECTER:

S. 3341. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between August 2001 and February 2003; to the Committee on Finance.

By Mr. SPECTER:

S. 3342. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between March 2003 and August 2003; to the Committee on Finance.

By Mr. SPECTER:

S. 3343. A bill to provide for the liquidation or reliquidation of certain entries relating to fiberboard entered between October 2001 and September 2004; to the Committee on Finance.

By Mr. SPECTER:

S. 3344. A bill to provide temporary duty reduction for certain cotton fabrics, and for other purposes; to the Committee on Finance.

By Mr. SPECTER:

S. 3345. A bill to extend the temporary suspension of duty on Acetamiprid Technical; to the Committee on Finance.

By Mr. SPECTER:

S. 3346. A bill to suspend temporarily the duty on ester gums; to the Committee on Finance.

By Mr. SPECTER:

S. 3347. A bill to suspend temporarily the duty on polymerized rosin acids; to the Committee on Finance.

By Mr. SPECTER:

S. 3348. A bill to suspend temporarily the duty on ester gums; to the Committee on Finance.

By Mr. SHELBY:

S. 3349. A bill to extend temporarily the suspension of duty on certain fluoropolymers; to the Committee on Finance.

By Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. FRIST, Mr. REID, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. DEWINE, Mrs. DOLE, Mr. DOMENICI, Mr. DURBIN, Mr. ENSIGN, Mr. FEINGOLD, Mr. HAGEL, Mr. HARKIN, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LIEBERMAN, Mr. LUGAR, Mr. MARTINEZ, Mr. MENENDEZ, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. OBAMA, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SMITH, Ms. STABENOW, Mr. SUNUNU, Mr. VOINOVICH, and Mr. WYDEN):

S.J. Res. 38. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, 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. BROWNBACK (for himself and Mr. ROBERTS):

S. Res. 496. A resolution commending the Kansas City Kansas Community College Debate Team for their National Championship victories; considered and agreed to.

By Mr. SPECTER (for himself, Mr. LEAHY, and Mr. HATCH):

S. Res. 497. A resolution relative to the death of Edward Roy Becker, Chief Judge of the Court of Appeals for the 3rd Circuit; considered and agreed to.

By Mr. VITTER (for himself, Ms. LANDRIEU, Mr. SHELBY, and Mr. LOTT):

S. Res. 498. A resolution designating the week beginning May 21, 2006, as ''National Hurricane Preparedness Week''; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 520

At the request of Mr. SHELBY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 520, a bill to limit the jurisdiction of Federal courts in certain cases and promote federalism.

S. 559

At the request of Mr. BIDEN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 559, a bill to make the protection of vulnerable populations, especially women and children, who are affected by a humanitarian emergency a priority of the United States Government, and for other purposes.

S. 604

At the request of Mr. BINGAMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 604, a bill to amend title XVIII of the Social Security Act to authorize expansion of medicare coverage of medical nutrition therapy services.

S. 707

At the request of Mr. ALEXANDER, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 707, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 1112

At the request of Mr. GRASSLEY, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1217

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1217, a bill to amend title II of the Social Security Act to phase out the 24-month waiting period for disabled individuals to become eligible for medicare benefits, to eliminate the waiting period for individuals with life-threatening conditions, and for other purposes.

S. 1479

At the request of Mr. DODD, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1479, a bill to provide for the expansion of Federal efforts concerning the prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, including the establishment of a Tick-Borne Diseases Advisory Committee.

S. 1575

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 1575, a bill to amend the Public Health Service Act to authorize a demonstration program to increase the number of doctorally-prepared nurse faculty.

S. 1998

At the request of Mrs. LINCOLN, her name was added as a cosponsor of S. 1998, a bill to amend title 18, United States Code, to enhance protections relating to the reputation and meaning of the Medal of Honor and other military decorations and awards, and for other purposes.

S. 2202

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 2202, a bill to provide for ethics reform of the Federal judiciary and to instill greater public confidence in the Federal courts.

S. 2250

At the request of Mr. GRASSLEY, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 2250, a bill to award a congressional gold medal to Dr. Norman E. Borlaug.

S. 2292

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 2292, a bill to provide relief for the Federal judiciary from excessive rent charges.

S. 2401

At the request of Mr. BAUCUS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2401, a bill to amend the Internal Revenue Code of 1986 to extend certain energy tax incentives, and for other purposes.

S. 2794

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2794, a bill to ensure the equitable provision of pension and medical benefits to Department of Energy contractor employees.

S. 2810

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2810, a bill to amend title XVIII of the Social Security Act to eliminate months in 2006 from the calculation of any late enrollment penalty under the Medicare part D prescription drug program and to provide for additional funding for State health insurance counseling program and area agencies on aging, and for other purposes.

S. 2970

At the request of Mr. KERRY, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 2970, a bill to require the Secretary of Veterans Affairs to provide free credit monitoring and credit reports for veterans and others affected by the theft of veterans' personal data, to ensure that such persons are appropriately notified of such thefts, and for other purposes.

S. 2990

At the request of Mr. VITTER, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 2990, a bill to amend title XVIII of the Social Security Act to restore financial stability to Medicare anesthesiology teaching programs for resident physicians.

S. 3064

At the request of Mr. AKAKA, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 3064, a bill to express the policy of the United States regarding the United States relationship with native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 3172

At the request of Mrs. CLINTON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3172, a bill to establish an Office of Emergency Communications, and for other purposes.

S. 3176

At the request of Mr. JEFFORDS, his name was added as a cosponsor of S. 3176, a bill to protect the privacy of veterans and spouses of veterans affected by the security breach at the Department of Veterans Affairs on May 3, 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 3239. A bill to require full disclosure of insurance coverage and noncoverage by insurance companies and provide for Federal Trade Commission enforcement; to the Committee on Commerce, Science, and Transportation.

Mr. DAYTON. Mr. President, I ask unanimous consent that the text of S. 3239, the Honesty Is the Best Insurance Policy Act of 2006, be printed in the RECORD.

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

S. 3239

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 ''Honesty is the Best Insurance Policy Act of 2006''.

SEC. 2. UNLAWFUL ACT.

Each individual policy written by a State-registered insurance company shall include on the front or first page of the policy a ''Noncoverage Disclosure'' box restating in plain English, in bold font twice the size of the text in the body of the policy, all conditions, exclusions, and other limitations pertaining to coverage under that policy, regardless of the underlying insurance product in question.

SEC. 3. ENFORCEMENT.

(a) IN GENERAL.—Any violation of this Act shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(b) REGULATIONS.—The Federal Trade Commission (referred to in this Act as the ''Commission'') shall promulgate regulations to carry out this Act.

SEC. 4. POWERS OF COMMISSION.

(a) IN GENERAL.—The Commission, acting through the Division of Financial Practices in the Bureau of Consumer Protection, shall prevent any person from violating this Act, and any regulation promulgated thereunder, in the same manner, by the same means, and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(b) PENALTIES.—Any person who violates regulations promulgated under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this Act.

(c) AUTHORITY PRESERVED.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.

By Mrs. CLINTON (for herself and Ms. MIKULSKI):

S. 3255. A bill to provide student borrowers with basic rights, including the right to timely information about their loans and the right to make fair and reasonable loan payments, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President. I rise today to introduce legislation to protect the rights of student borrowers trying to repay their loans. Students are borrowing now more than ever to pay for higher education. Need-based grant aid has stagnated while college costs have grown. The result is more students borrowing and higher levels of borrowing. In 1993, less than one-half of students graduating from 4-year colleges and universities had student loans. Now two-thirds do.

Unlike other debt, you take out student loans to invest in yourself. For most people, that is a wise investment. In the long run student loans help people earn more money and have more choices in their careers. Student borrowers must also take their responsibilities seriously, so future generations of students can also benefit from the chance to borrow money—so they do not have to burden their families.

But today it is harder to pay back loans than when I left school or when most of the Members of this Chamber did. The average debt burden for college graduates has increased 58 percent over the past decade, after accounting for inflation. And too many borrowers are overly burdened as they repay student loans. When I travel in New York, I meet young people all the time who say to me, ''You know, Senator, I'd like to go to nursing school or I'd like to be a teacher or I'd like to go into law enforcement, but I've got so much debt that I can't afford to do that.'' We need to make sure that student loans do not stand in people's way and prevent them from following their dreams.

The burden of student loan debt can put people in economic handcuffs, forcing them out of important but low-paying professions or forcing them to delay the purchase of a home. Today 54 percent of former students wish they had borrowed less for college, up from 31 percent in 1991. Student loan debt may even prevent borrowers from pursuing a higher degree. According to the Nellie Mae Corporation, 40 percent of college graduates who do not go to graduate school blame student loan debt. Most disturbingly, the prospect that student loans will be burdensome may prevent successful high school students from going to college. Twenty percent of low-income high school graduates who are qualified for college do not go to college.

The Student Borrower Bill of Rights will make it easier for students to repay and give them rights that are enforceable. The bill will give students the right to shop for loans in a free marketplace. It will give students access to better information about their loans. The bill will give student borrowers the right to make fair, monthly payments that do not exceed a percentage of their incomes and fair interest rates and fees. The bill would also give students the right to borrow without exploitation.

We need this bill now to help students struggling to go to college. For the average family it now takes more income to pay for a child to go to college than it did, as a percentage, 25 years ago.

So we need to do everything we can to ensure all students can afford college. It is in their best interest and it is in the Nation's best interest.

I urge my colleagues to join me in supporting the Student Borrower Bill of Rights.

By Mr. SPECTER (for himself and Mr. LEAHY):

S. 3274. 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; read the first time.

Mr. SPECTER. Mr. President, I am introducing a revised bill on asbestos reform, with the sponsorship of Senator LEAHY.

This is a subject which the Senate had considered earlier this year, and it is one which I hope we will return to.

To give impetus to that, I am introducing an amended version of the asbestos trust bill which makes very substantial improvements to satisfy interests and concerns raised by a number of Senators.

The bill provides for a more prompt recovery for the sickest claimants; stronger medical criteria; preserves the ability of the bankruptcy trusts to continue paying impaired claims; has an improved allocation formula for well-insured and financially strapped defendant companies; and it has a tighter control on so-called leakage.

Last Friday, we lost a great American judge, Judge Edward R. Becker, who made such an enormous contribution to the structuring of this asbestos reform legislation. He gave his own time, came to Washington at his own cost to preside over many meetings with the so-called stakeholders, the manufacturers, the trial lawyers, the AFL–CIO representing labor, and the insurance companies. He was working on this bill making calls to Senators right up until the time that prostate cancer took him a week ago today.

When I gave him a report of our progress when it was obvious that the end was very near, he said, ''Win one for the Gipper.'' And we want to win one for the Gipper, for Judge Becker. We want to win this one for America.

I ask unanimous consent that the full text of my prepared statement and the text of the bill be printed in the RECORD.

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

Mr. SPECTER. I have sought recognition to comment about the status of on-going developments on asbestos reform and am pleased to introduce an amended version of S.852, the Fairness in Asbestos Injury Resolution Act of 2006, The ''FAIR Act''. In introducing this legislation today, I remind the Senate of important unfinished business that it is duty-bound to complete for the sake of thousands of victims dying from asbestos-related disease who are unable to secure compensation in today's broken tort system.

Judge Edward R. Becker and I worked for nearly three years on ways to improve S. 852, even after the bill was side-tracked on the Senate floor on February 14, 2006. Sadly, Judge Becker passed away on May 19, 2006. Judge Becker—a federal Judge for 34 years—stands today as one of the greatest citizens in the history of the city of Philadelphia, one of the greatest judges in the history of the United States, and one of my most dear and trusted friends. His contributions and tireless work on this legislation helped bring the bill to its current point, and his commitment to solving the asbestos crisis in this country should be remembered as the Senate moves forward on this bill. This new bill is a product of our continued efforts to develop the most fair and rationale system to replace the broken asbestos tort system.

More than three months have past since the Senate was prematurely diverted in its consideration of this important legislation. To remind my I colleagues, the majority leader brought the committee-reported asbestos bill to the floor on February 6 and the following day this body voted overwhelmingly (98–1) to invoke cloture on the motion to proceed. While we pursued substantive debate, opponents of the bill raised a non-substantive and never-before used procedural obstacle that blocked the Senate from further considering the legislation. This obstacle, a budgetary point of order, lacked any merit because the proposed asbestos trust fund simply does not collect or spend a single penny from the American taxpayer. And let me make clear that the commitment to using private, non-taxpayer funds is iron-clad. The trust fund considered back in February and introduced again here today is capitalized exclusively by defendant companies, insurers and existing bankruptcy trusts that have known asbestos liabilities. The bill expressly provides that ''[r]epayment of moneys borrowed by the administrator . . . is limited solely to amounts available in the [Fund].'' It also states that ''Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . .'' With these explicit statements throughout the bill, it is abundantly clear that this legislation would not be a burden on the U.S. Treasury. In fact, the Congressional Budget Office confirmed these statements in a letter dated February 13, 2006, concluding that ''the legislation would be deficit-neutral over the life of the fund.'' Therefore, it is time for the Senate to set aside these obstructionist tactics and move forward with this important legislation on its merits.

The bill that I am introducing today will provide substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve asbestos claims with finality. Over the past three decades, a solution to the asbestos crisis has eluded Congress and the courts. Some 77 companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated or, because of the unfairness of the current system, see little of the awards they do win. A May 10, 2005 report released by the RAND Institute for Civil Justice estimates that nonmalignants make up about 90 percent of the litigation and most are unimpaired. According-to RAND, the number of claims continues to rise, with over 730,000 claims filed already and some 200,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today. Most of these defendants were users of the product, not asbestos manufacturers. These companies account for 85 percent of the U.S. economy and represent nearly every U.S. industry; including automakers, shipbuilders, textile mills, retailers, insurers, shipbuilders, electric utilities and virtually every company involved in manufacturing or construction in the last thirty years.

Asbestos leaves many victims in its wake. First and foremost, those who are sick and their families have suffered greatly and do not receive fair compensation in the tort system. Asbestos victims filing claims receive only about 42 cents for every dollar spent on asbestos litigation. The other 58 cents are consumed by the extremely high costs of litigation where 31 cents of every dollar go to defense costs, and 27 go to plaintiffs' attorneys and other related costs.

The flawed asbestos litigation system not only hurts the sick and their chances of receiving fair compensation, but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are jeopardized by the tidal wave of asbestos lawsuits. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. Indeed, according to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and $200 million in lost wages. To make matters worse, employees' retirement funds have shrunk by 25 percent.

Even this country's highest court has practically begged the Congress to fix this national asbestos litigation problem. In 1997—the first of several times it has commented on the growing asbestos problem—the Supreme Court observed:

> 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. . . .

To the extent anyone argues that today's bill should proceed through regular order, I would suggest that they take a hard look at the extensive consideration and analysis given to this bill beginning in early 2003 when then Chairman Hatch first introduced S. 1125. Since that time, the Judiciary Committee has held over 10 markups, 7 hearings, and, of course, countless stakeholder meetings that were moderated by the late Judge Becker. I can't think of any other bill where more time, more effort, and more man-hours have been committed to thoroughly understand and address all the complex issues in this bill. To assert that the legislation was not carefully drafted is one argument that has no basis in reality. As a result of this process, we now have before us a carefully analyzed and well thought through bill that tries to anticipate every turn, every problem and every contingency that could occur down the road if this Fund becomes law.

The legislation being introduced today builds on prior iterations of the trust fund concept. Under the proposal,

the Department of Labor would house a national no-fault asbestos trust fund privately financed and guaranteed by defendant companies and insurers with proven asbestos liabilities. The bill totally exempts small business from paying into the Fund and provides a litany of safeguards to ensure that defendant companies do not encounter insolvencies or inequities because of their contributions.

Asbestos victims would submit their claims to the fund under specific and detailed procedures and receive fair compensation for their asbestos injuries they can meet certain medical criteria. These criteria are designed to prioritize monetary compensation for those with an actual impairment from asbestos disease while providing medical monitoring to those who are not sick or unimpaired. Most important, the bill caps attorneys fees at 5 percent for any monetary compensation that a victim receives through the Fund.

The national trust fund would operate as a surrogate for the tort system which would by and large cease to operate upon enactment. Claimants with individualized cases at trial or beyond would be permitted to pursue that claim in the tort system. But such cases would be few and far between when measured against the massive amount of unimpaired consolidated lawsuits that are the prime culprit to today's litigation mess.

The bill provides for a well thought out start up process that ensures swift compensation to terminal asbestos victims and mandates a reversion to a modified tort system in the event the trust fund cannot pay claims or exhausts the entire $140 billion. This latter point is especially important to note given repeated concerns that I have heard from many members about the taxpayer being on the hook. Unlike the Black Lung Program or other federal compensation program for that matter, the asbestos trust fund will affirmatively sunset once the $140 billion is used or if the Fund cannot pay claims. The sunset enables victims to pursue their claims in court but in a more equitable tort environment that prohibits forum shopping and use of junk science to prove an asbestos claim.

Every single time a concern has been raised, Judge Becker and I have studied the issue extensively. A case in point was in September 2005, when the analysis by the Bates White firm alleged that the proposed fund would face claims of over $140 billion, I called for a hearing on this issue. The hearing, which was held by the Judiciary Committee on November 17, 2005, we heard testimony on both sides of the issue. The Bates White study proved to be fatally flawed. In fact, in December 2005, CBO confirmed its original cost estimate, reaffirming that $140 billion would be sufficient to cover claims filed for compensation under the trust fund.

The asbestos trust fund bill that I am introducing today with Senator LEAHY should come as no surprise to anyone because it essentially embodies the substitute bill that was pending on the floor months ago during the Senate's full consideration of asbestos reform last February. The trust fund bill being introduced today also includes specific floor amendments filed by Members from both sides of the aisle and a handful of additional new changes that we believe respond directly to concerns raised during the asbestos floor debate. The floor amendments incorporated in this bill include, among others, the Kyl 1.67 percent hardship amendment, Landrieu amendment on gulf coast hurricanes and World Trade Center victims, and Coburn amendment regarding B-readers.

Other changes made include measures that address the well-insured defendant problem, and limitation on so called ''dormant claims'' that are barred from recovery through the Fund. For the benefit of my colleagues and their staff, we will circulate a detailed section by section summary of the bill early next week during the recess and an index of key changes from the substitute. But for now, I would like to highlight some of the additional features that I believe respond to concerns raised by Members on both sides of the aisle:

Prompter Recovery for the Sickest Claimants: The new bill establishes safeguards to protect ''gaming'' of the start-up process so that those claimants that are the sickest receive prompt compensation. The bill also authorizes the Administrator to begin receiving, reviewing and deciding claims immediately following enactment of the FAIR Act. To ensure that claims processing begins immediately, the Administrator also is authorized to contract with entities experienced in claims processing on an expedited basis.

Stronger Medical Criteria: The new bill strengthens the medical criteria by adopting numerous amendments and suggestions offered by Dr. Coburn that would authorize random audits of affidavits, clarify that a claimant's diagnosis be made by a ''treating'' rather than ''examining physician'', require claimants to provide detailed, specific and credible affidavits as proof of significant asbestos exposure, and disqualify certain plaintiffs' friendly B-readers from participating in claims administration. The current tort system is riddled with fraud, stemming largely from the ''financially-motivated'' relationship between plaintiffs' attorneys and many of the doctors conducting medical tests and screening. While S. 852 contained provisions which addressed this issue (e.g., specified criminal penalties for falsified claims, 5 percent limit on attorneys' fees), these added measures provide increased protection against fraudulent practices in determining the eligibility of a claimant for compensation under the trust fund.

Preserves the Ability of Bankruptcy Trusts to Continue Paving Impaired Claims: The new bill allows existing bankruptcy trusts to retain at least 10 percent of their assets to continue paying pending impaired claims during the Fund start-up period. This measure ensures that impaired claimants receive compensation to pay medical bills while preventing such claimants from ''double-dipping'' by recovering more than they would receive under the FAIR Act.

Improved Allocation Formula for Well-Insured and Financially Strapped Defendant Companies: Due to the inherent financial pressures that contributions to the trust fund could impose on manufacturers, the new bill would provide for a much improved allocation formula for defendant companies who contribute to the Fund. It incorporates the Kyl 1.67 percent hardship amendment which allows companies to contribute annually 1.67 percent of their gross revenues in lieu of the tiering formula set forth in the bill. This measure is particularly helpful to those smaller to medium size companies that are assigned to the higher contribution tiers because of their significant asbestos liabilities. The bill also incorporates a provision that addresses the often-heard problem involving well insured defendants who currently pay little to no out-of-pocket costs in the tort system. Similar to the Kyl hardship provision, this proposal would allow certain smaller to medium size companies to contribute to the Fund based on 5 percent of their adjusted cash flows rather than the amount specified in their assigned tier.

Tighter Control on So-Called ''Leakage'': The new bill further addresses the ''leakage'' issue by improving the start-up process to ensure that exigent claims proceed through the trust fund rather than the tort system. The new bill also closes significant loopholes to ensure that preempted claims are not revived and prevents so-called ''dormant claims'' (e.g., inactive claims in the tort system that are still listed on court dockets) from being filed with the Fund.

The new bill remains both integrated and comprehensive and reflective of a remarkable will to enact legislation. This has become evident to me based on over a hundred meetings that I have personally had with Members and staff on the asbestos problem. The Senate plainly wants a more rational asbestos claims system, and I believe that this new legislation offers a realistic prospect of accomplishing that result.

If this amended bill is rejected, I do not see the agenda of the Senate Judiciary Committee revisiting this issue. I cannot conceive of a more strenuous effort being directed to this subject that has been done over the past three years. Let me make clear that this is the last best chance.

This said, I remain confident that during debate on the Senate floor, we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this

nightmare chapter in American legal, economic and social history. If we can summon the legislative will in a bipartisan spirit, it can be done. Anything less, would preserve the injustices of a system that even the highest court of this country has called upon the Congress to fix.

Over the coming weeks, I plan on moving ahead with this bill and will do everything in my power to see that the Senate finishes its business on asbestos reform. The Judiciary Committee has worked too hard and too long on this bill to see it all go to waste over a procedural and technical nuance. I urge the Leader to schedule time for this important legislation in the coming months, and by introducing this bill today I am hopeful that we make a first big stride in that direction. The time is now for asbestos reform and any further delay by this body will only prolong the suffering of asbestos victims, companies and their employees. I yield the floor.

S. 3274

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 ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure''. In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation''. That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported study concluded that ore shipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact

with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authority beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any

general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(20) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a nonadversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of 5 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after

startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed as follows—

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 4 members. Of the 4—

(i) 2 shall be selected to represent the interests of claimants, at least 1 of whom shall be selected from among individuals recommended by recognized national labor federations; and

(ii) 2 shall be selected to represent the interests of participants, 1 of whom shall be selected to represent the interests of the insurer participants and 1 of whom shall be selected to represent the interests of the defendant participants.

(B) The Administrator shall appoint 4 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 6 shall be appointed for a term of 1 year;

(B) 7 shall be appointed for a term of 2 years; and

(C) 7 shall be appointed for a term of 3 years, as determined by the Administrator at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual

may not receive, for services rendered in connection with the claim of an individual under the Fund, more than 5 percent of a final monetary award made (whether by the Administrator initially or as a result of administrative review) under the Fund on such claim.

(B) REVIEW OF PROPOSED DECISION.—

(i) REASONABLE FEE.—If an individual seeks a review of a proposed decision in accordance with section 114(d) and is awarded compensation, the representative of such individual may, in lieu of seeking payment for services rendered subject to the limitation described under subparagraph (A), obtain a reasonable attorney's fee to be paid from any compensation recovered by the individual.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual;

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable; and

(III) the claimant seeking a review of a proposed decision has been awarded monetary compensation by the Administrator.

(iv) NO FEE FOR NO COMPENSATION.—If the claimant is denied any compensation after review of the claim, the claimant's representative may not receive a fee from either the claimant or the Fund.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordance with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a claim to which section 403(d)(2) applies or as otherwise provided in section 402(f), stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the

date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiv) FAILURE TO MAKE OFFER.—If participants fail to make a settlement offer within the 30-day period described under clause (ix) or make amended offers within the 10 business day cure period described under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B).

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund before the stay being lifted under subparagraph (B). If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(C) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—

(i) COLLATERAL SOURCE.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) RECOVERY OF COSTS.—Any participant may recover the cost of any claim continued in court for up to the amount the claimant would receive under the Fund by deducting from the participant's next and subsequent contributions to the Fund for that amount of the payment made by such participant to the terminal health claimant.

(3) PURSUAL OF NONTERMINAL ASBESTOS CLAIMS IN FEDERAL OR STATE COURT.—

(A) IN GENERAL.—

(i) PURSUAL OF CLAIMS.—Notwithstanding any other provision of this Act, if not later than 24 months after the date of enactment of this Act, the Administrator cannot certify to Congress that the Fund is operational and paying all valid claims at a reasonable rate, any person with a nonterminal asbestos claim stayed, except for any person whose claim does not exceed a Level I claim, may pursue that claim in the Federal district court (if the claim is otherwise within the jurisdiction of the court) or State court located within—

(I) the State of residence of the claimant; or

(II) the State in which the asbestos exposure occurred.

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described under subparagraph (A) (i) or (ii), the claim may be pursued in the Federal district court or State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State law relating to venue requirements within that State which are more restrictive.

(E) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL OR NONOPERATIONAL FUND.—

(i) CREDIT OF CLAIM.—If an asbestos claim is pursued in Federal or State court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134.

(ii) OPERATIONAL CERTIFICATION.—Operational certification shall be a filing in the Federal Register confirming that the Fund is capable of operating and paying all valid asbestos claims at a reasonable rate.

(iii) OPERATIONAL PRECONDITIONS.—

(I) The Administrator may not issue a operational certification until—

(aa) 60 days after the funding allocation information required under section 221(e) has been published in the Federal Register; and

(bb) insurers subject to section 212(a)(3) submit their names and information to the Administrator within 30 days after the date of enactment of this Act and 60 days after the Administrator publishes such information in the Federal Register.

(iv) OPERATIONAL FUND.—If the Administrator issues an operational certification and notifies Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, any nonterminal asbestos claim in a civil action in Federal or State court that is not on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void.

(v) NONOPERATIONAL FUND.—Notwithstanding any other provision of this Act, if the Administrator subsequently issues a nonoperational certification and notifies Congress that the Fund is unable to become operational and pay all valid asbestos claims at a reasonable rate, all asbestos claims have been stayed or not filed may be filed or reinstated in the appropriate Federal or State court.

(4) RESERVATION OF RIGHTS.—Except as otherwise provided in this Act, participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act,

such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NONMALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any nonmalignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the nonmalignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—Subject to subparagraphs (C) and (D), if an asbestos claim that was timely filed within 10 years before the date of enactment of this Act is pending as of that date and is preempted under section 403(e), a claim under this Act for the same disease or condition may be filed with the Office under this section not later than 5 years after such date of enactment.

(B) VETERANS.—For purposes of subparagraph (A), any person with a timely filed asbestos claim shall include any person who—

(i) is a veteran, as that term is defined under section 101(2) of title 38, United States Code; and

(ii) on the date of enactment of this Act—

(I) is receiving benefits for disability, caused by exposure to asbestos, under sections 1110 (wartime disability), 1131 (peacetime disability), or 3102 (training and rehabilitation) of title 38, United States Code; or

(II) has submitted an application for such benefits to the Department of Veterans Affairs that is pending or is on administrative or judicial appeal.

(C) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a noncontingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(D) DORMANT CLAIMS.—A claimant shall have the benefit of the special limitations period under subparagraph (A) only if the claimant provides documentation that the claimant has filed a pleading, served a discovery response or request for discovery, or taken other action to prosecute the pending asbestos claim within the 3-year period ending May 25, 2006, except that the failure to take such action to prosecute the pending asbestos claim shall not preclude the application of the special limitations period under subparagraph (A) if the claimant shows either—

(i) that prosecution of the claim was stayed during all or part of the 3-year period ending May 25, 2006, by court order or operation of law; or

(ii) that the claimant has taken reasonable steps to prosecute the claim within the 3-year period ending May 25, 2006, and that the period of inactivity is the result of the ordinary, generally applicable procedures or practices of the court in which such asbestos claim was pending.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or exsmoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) PAYMENTS IF NO TIMELY PROPOSED DECISION.—If the Administrator has received a complete claim and, after the Fund has been certified subject to section 106(f)(3)(E) has not provided a proposed decision to the claimant under subsection (b) within 180 days after the filing of the claim, the claim shall be deemed accepted and the claimant shall be entitled to payment under section 133(a)(2). If the Administrator subsequently rejects the claim the claimant shall receive no further payments under section 133. If the Administrator subsequently rejects the claim in part, the Administrator shall adjust future payments due the claimant under section 133 accordingly. In no event may the Administrator recover amounts properly paid under this section from a claimant.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive

such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) REPRESENTATION.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(C) SUBMISSION OF VALID EVIDENCE.—Claimants shall be allowed to submit valid evidence if prior evidence is found unacceptable for purposes of establishing eligibility for an award under this Act.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(5) DISQUALIFICATION.—Any certified B-reader who has received compensation before the date of enactment of this Act for assigning an ILO grade level to an x-ray, where the amount of compensation depended on the assigned ILO grade level, is disqualified from inclusion on the Administrator's list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) DLCO.—The term ''DLCO'' means the single-breath diffusing capacity of the lung (carbon monoxide) technique used to measure the volume of carbon monoxide transferred from the alveoli to blood in the pulmonary capillaries for each unit of driving pressure of the carbon monoxide.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a

chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(D) EVALUATION.—The Administrator shall prescribe procedures to randomly evaluate the affidavits submitted to satisfy the exposure requirements for any disease level.

(3) TAKE HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31,

2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(5) EXPOSURE PRESUMPTIONS.—

(A) IN GENERAL.—The Administrator shall prescribe rules identifying specific industries, occupations within such industries, and time periods in which workers employed in those industries and occupations typically had substantial occupational exposure to asbestos as defined under section 121(a). Until 5 years after the Administrator certifies that the Fund is paying claims at a reasonable rate, the industries, occupations and time periods identified by the Administrator shall at a minimum include those identified in the 2002 Trust Distribution Process of the Manville Personal Injury Settlement Trust as of January 1, 2005, as industries, occupations, including proximity, and time periods in which workers were presumed to have had significant occupational exposure to asbestos. Thereafter, the Administrator may by rule modify or eliminate those exposure presumptions required to be adopted from the Manville Personal Injury Settlement Trust, if there is evidence that demonstrates that the typical exposure for workers in such industries and occupations during such time periods did not constitute substantial occupational exposure in asbestos.

(B) CLAIMANTS ENTITLED TO PRESUMPTIONS.—Any claimant who demonstrates through meaningful and credible evidence that such claimant was employed during relevant time periods in industries and occupations identified under subparagraph (A) shall be entitled to a presumption that the claimant had substantial occupational exposure to asbestos during those time periods. That presumption shall not be conclusive, and the Administrator may find that the claimant does not have substantial occupational exposure if other information demonstrates that the claimant did not in fact have substantial occupational exposure during any part of the relevant time periods.

(C) CRITERIA REQUIREMENTS.—Nothing in subparagraph (A) or (B) shall negate the exposure or medical criteria requirements in section 121, for the purpose of receiving compensation from the Fund.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening of at least grade B2 or greater, or bilateral pleural disease of grade B2 or greater;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent documented with a second spirometry;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or diffuse pleural thickening, or bilateral pleural disease of B2 or greater;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(ii) DLCO less than 40 percent of predicted, plus a FEV1/FVC ratio not less than 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—

(A) IN GENERAL.—To receive Level VI compensation a claimant shall provide—

(i) a diagnosis of a primary colorectal, laryngeal, esophageal, pharyngeal, or stomach cancer on the basis of findings by a board-certified pathologist;

(ii) evidence of a bilateral asbestos-related nonmalignant disease;

(iii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the cancer in question.

(B) REFERRAL TO PHYSICIANS PANEL.—All claims filed with respect to Level VI under this paragraph shall be referred to a Physicians Panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. If the claimant meets the requirements of subparagraph (A), there shall be a presumption of eligibility for the scheduled value of compensation unless there is evidence determined by the Physicians Panel that rebuts that presumption. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation, a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board-certified pathologist;

(ii) evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification by chest x-ray or such diagnostic methodology supported by the findings of the Institute of Medicine under subsection (f);

(iii) evidence of 12 or more weighted years of substantial occupational exposure to asbestos; and

(iv) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—A claimant filing a claim relating to Level VII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis—

(i) of a primary lung cancer disease on the basis of findings by a board-certified pathologist;

(ii)(I) of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; or

(IV) asbestosis as determined by CT Scan, the cost of which shall not be borne by the Fund. The CT Scan must be interpreted by a board-certified radiologist and confirmed by a board-certified radiologist; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(B) PHYSICIANS PANEL.—A claimant filing a claim with respect to Level VIII under this paragraph may request that the claim be referred to a Physicians Panel for a determination of whether the claimant qualifies for the disease category and relevant smoking status. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board-certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos;

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site; or

(iv) other identifiable exposure to asbestos fibers, in which case the claim shall be reviewed by a Physicians Panel under subsection (g) for a determination of eligibility.

(e) INSTITUTE OF MEDICINE STUDY.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers. The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels. The Institute of Medicine report shall be binding on the Administrator and the Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor in causing the other cancerous disease in question under subsection (d)(6). If asbestos is not a substantial contributing factor to the particular cancerous disease under subsection (d)(6), subsection (d)(6) shall not apply with respect to that disease and no claim may be filed with, or award paid from, the Fund with respect to that disease under malignant Level VI.

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) IN GENERAL.—Not later than April 1, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health of the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) FINDINGS.—The Institute of Medicine shall make and issue findings based on the study required under paragraph (1) on whether—

(A) CT scans are generally accepted in the medical profession to detect bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(B) professional standards of practice exist to allow for the Administrator's reasonable reliance on such as evidence of bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(3) REPORT.—The Institute of Medicine shall issue a report on the findings required under paragraph (2), which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(4) REPORT BINDING ON THE ADMINISTRATOR.—The Institute of Medicine report required under paragraph (3) shall be binding on the Administrator and the Physicians Panels for purposes of determining reliable and acceptable evidence that may be submitted for a Level VII claim under subsection (d)(7).

(g) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(D) CT SCAN.—A claimant may submit a CT Scan in addition to an x-ray.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicals Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award

determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator. If the ATSDR finds as a result of such study that, for any particular facility, the levels of emissions from, the resulting contamination caused by, the levels of exposure to nearby residents from, and the risks of asbestos-related disease and asbestos-related mortality to nearby residents from such facility are substantially equivalent to those of Libby, Montana, then the Administrator shall treat claims from residents surrounding such facilities the same as claims of residents of Libby, Montana, and such residents shall have all the rights of residents of Libby, Montana, under this Act. As part of the results of its study, the ATSDR shall prescribe for any such facility the relevant geographic and temporal criteria under which the exposures and risks to the surrounding residents are substantially equivalent to those of residents of Libby, Montana, and therefore qualify for treatment under this paragraph.

(10) NATURALLY OCCURRING ASBESTOS.—A claimant who has been exposed to naturally occurring asbestos may file an exceptional medical claim with the Fund.

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—

(A) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund if such claimant has been exposed to asbestos in any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; or

(ii) Hurricane Katrina or Hurricane Rita of 2005 in the Gulf Region of the United States.

(B) REVIEW OF EVIDENCE.—In reviewing medical evidence submitted by a claimant under subparagraph (A)(i) or (ii), the Physicians Panel shall take into consideration the unique nature of these disasters and the potential for asbestos exposure resulting from these disasters.

(h) GUIDELINES FOR CT SCANS.—The Administrator shall commission the American College of Radiology to develop, in consultation with the American Thoracic Society, American College of Chest Physicians, and Institute of Medicine, guidelines and a methodology for the use of CT scans as a diagnostic tool for bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund. After development, such guidelines and methodology shall be used for diagnostic purposes under the Fund.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$25,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; nonsmokers, $800,000
VIII	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; nonsmokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The

amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

(f) EFFECT OF PAYMENT.—The full payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that has been fully paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall statutory benefits under workers' compensation laws, special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) insurance carrier for insurance payments; or

(2) person or governmental entity on account of worker's compensation, health care, or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) an insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to worker's compensation, healthcare, or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are

final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its unencumbered assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 2 or 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—

(1) PAYMENT.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(A) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(B) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (d) and (m), equals the maximum aggregate payment obligation of section 202(a)(2).

(2) LIMITATION.—

(A) DEFINITION.—In this paragraph, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent.

(B) IN GENERAL.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (l) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or before December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater.

(C) EXCEPTION.—The limitation in this paragraph shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or before December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000.

(D) DETERMINATIONS.—The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient information to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this paragraph an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (l).

(E) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided under subsection (h).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(i) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the 3 fiscal years ending immediately before the application and projected financial statements for the 3 fiscal years following the application;

(ii) an analysis of capital spending and fixed charge coverage on a historical basis for the 3 fiscal years immediately preceding a defendant participant's application and for the 3 fiscal years following the application;

(iii) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11, United States Code, or any affiliate as defined under section 101(2) of title 11, United States Code;

(iv) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including payments of extraordinary salaries, bonuses, or dividends;

(v) the defendant participant's ability to satisfy its payment obligation to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(vi) the defendant participant's ability to delay discretionary capital spending; and

(vii) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in light of the financial condition of the defendant participant and its affiliated group and other relevant factors. A renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(i) IN GENERAL.—The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(ii) FINANCIAL INFORMATION.—All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared in accordance with generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this subparagraph.

(iii) CERTIFICATION.—The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a

payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a 2-tier main tier and a 2-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a 2-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) GUIDELINES.—

(i) IN GENERAL.—In determining which defendant participants may receive inequity adjustments, the Administrator shall give preference in the following order:

(I) Defendant participants that have significant insurance coverage applicable to asbestos claims, such that on the date of enactment of this Act, 80 percent or more of their available primary insurance limits for asbestos claims remains available.

(II) Defendant participants for which, under the guidance in section 404(a)(2)(E), 75 percent of the prior asbestos expenditures of such defendant participants were caused by or arose from premise liability claims.

(III) Defendant participants that can demonstrate that their prior asbestos expenditures are inflated due to an unusually large, anomalous verdict and that such verdict has caused such defendants to be in a higher tier.

(IV) Any other factor determined reasonable by the Administrator to have caused a serious inequity.

(ii) CONSIDERATION.—In determining whether a defendant participant has significant insurance coverage applicable to asbestos claims such that on the date of enactment of this Act, 80 percent or more of their available primary insurance limits for asbestos claims remains available, the Administrator shall inquire and consider—

(I) the defendant participant's expected future liability in the tort system and the adequacy of insurance available measured against future liability; and

(II) whether the insurance coverage is uncontested, or based on a final judgment or settlement.

(C) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(D) TERM.—Subject to the annual availability of funds in the defendant inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(E) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(F) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) TIER II ADJUSTMENTS FOR WELL-INSURED DEFENDANT PARTICIPANTS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''adjusted cash flow from operating activities'' means audited cash flows from operating activities as set forth in the Financial Accounting Standards Board Statement of Financial Accounting Standards No. 95 in effect on the date of enactment of this Act, adjusted for amounts—

(I) increased by cash paid for interest and taxes to the extent that such amounts are included in cash flows from operating activities;

(II) increased by payments made for asbestos indemnity, defense costs, and any payments required under this Act, to the extent that such amounts are included in cash flows from operating activities;

(III) increased by nonrecurring and unusual cash charges, including restructuring charges and other non-operating costs, to the extent that such amounts are included in cash flows from operating activities;

(IV) decreased by cash distributions to minority interests to the extent that such amounts are included in cash flows from investing activities and cash flows from financing activities;

(V) increased by cash proceeds on sales of assets net of related secured debt, affiliates, subsidiaries, and investments to the extent that such amounts are included in cash flows from investing and cash flows from financing activities;

(VI) increased by cash distributions from nonconsolidated affiliates and investments to the extent that such amounts are included in cash flows from investing activities and cash flows from financing activities;

(VII) increased by net cash flow used by, and decreased by net cash flow gained from, working capital items to the extent such amounts are not already adjusted under this subparagraph and are included in cash flows from operating activities;

(VIII) increased by net cash flow used by, and decreased by net cash flow gained from, other nonworking capital assets and liabilities, to the extent such amounts are not already adjusted under this subparagraph and are included in cash flows from operating activities;

(IX) decreased by reimbursements or cash proceeds received from asbestos insurance policies for related expenses, to the extent that such amounts are included in cash flows from operating activities; and

(X) decreased by other nonoperating cash income; and

(ii) the term ''working capital'' means current assets (excluding cash and short-term investments) less current liabilities (excluding short-term debt).

(B) ELECTION OF ALTERNATIVE ADJUSTMENT.—Except for defendant participants that consent to be assigned to Tier II under section 204(i)(7)(A), a defendant participant assigned to subtier 3, 4, or 5 of Tier II may elect the adjustment under this paragraph, which shall apply instead of an adjustment under paragraph (3).

(C) ADJUSTMENT.—Subject to subparagraphs (D) and (E), the annual payment obligation, taking into consideration the limitation under subsection (a)(2), of any defendant participant that elects the adjustment under this paragraph shall be adjusted so as not to exceed the greater of $500,000 or 5 percent of that defendant participant's adjusted cash flow from operating activities for the most recent fiscal year ending on or before December 31, 2002, or for the most recent fiscal year.

(D) LIMITATION.—The aggregate total of adjustments under this paragraph in any year may not exceed $100,000,000. If the aggregate amount of adjustments authorized under this paragraph exceeds $100,000,000, the adjustment to which each defendant participant electing such an adjustment shall be reduced pro rata until the aggregate of all adjustments equals $100,000,000.

(E) SURCHARGES.—Defendant participants receiving an adjustment under this paragraph shall also be subject to the guaranteed payment surcharge under subsection (m) and the bankruptcy trust surcharge under section 222(c). Such surcharges shall be based on the full amount of any adjustment to which the defendant participant would be entitled under subparagraph (C) without regard to the limitation under subparagraph (D).

(5) LIMITATION ON ADJUSTMENTS.—The aggregate total of inequity adjustments under paragraph (3) in effect in any given year shall not exceed $200,000,000, except to the extent that additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A).

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(D) RULES.—The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided

in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Administrator shall unless the Administrator implements a funding holiday under section 205(b), assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2); and

(ii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B);

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all

the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a nondebtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a nondebtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (d) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (m) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (h), excess monies up to a maximum of $200,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment required under subsection (h) in any given year, the Administrator shall, unless the Administrator implements a funding holiday under section 205(b), impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment required under subsection (h) as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section).

(2) LIMITATION.—

(A) DEFINITION.—In this paragraph, the term ''economically distressed industry'' means an industry, defined by a primary 5-digit NAICS code, wherein 2 or more defendant participants are in Subtier 1 of Tier II under sections 202 and 203, and at least ⅔ of such Tier II defendant participants suffered net operating losses in their United States manufacturing business in 2005.

(B) IN GENERAL.—In no case shall the Administrator—

(i) impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tier V or VI as described under section 203; or

(ii) notwithstanding paragraph (1), impose in any year a surcharge under this subsection on any defendant participant in an economically distressed industry in excess of 15 percent of the amount set forth for Subtier 1 of Tier II defendant participants under section 203(c)(2)(A).

(C) REALLOCATION.—Any amount not imposed under subparagraph (B) shall be reallocated on a pro rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (B) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Administrator shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Administrator shall publish a notice in the Federal Register of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of

all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Administrator shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—

(A) REDUCTION.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the 10th, 15th, 20th, and 25th years after the date of enactment of this Act. Except as provided under subparagraph (B), the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

(B) CALCULATION.—The reductions under this subsection shall not apply to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(a)(2) or who have received a financial hardship adjustment under section 204(d)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(a)(2) and the financial hardship adjustment under section 204(d)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(a)(2) and the financial hardship adjustment provided under section 204(d)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(a)(2) and any financial hardship adjustment provided under section 204(d)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—

(A) IN GENERAL.—Except as provided under subparagraph (B), any reduction or waiver of the defendant participants' funding obligations shall—

(i) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(ii) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(B) CALCULATION.—The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(a)(2) or who have received a financial hardship adjustment under section 204(d)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(a)(2) and the financial hardship adjustment under section 204(d)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(a)(2) and the financial hardship adjustment provided under section 204(d)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(a)(2) and any of the financial hardship adjustment provided under section 204(d)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—

(i) AMOUNT OF PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make the determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology shall be uniform for all insurer participants.

(ii) RESERVE STUDY REQUIRED.—The Commission shall conduct a reserve study (the ''Reserve Study'') to determine the appropriate reserve allocation of each insurer participant and may request information from each insurer participant, defendant participant, the Securities and Exchange Commission or any State regulatory agency for the purpose of conducting the Reserve Study. The Reserve Study shall calculate each insurer's exposure to current and future asbestos claims in the asbestos litigation environment before the date of enactment of this Act. Such calculation shall be derived from the following elements:

(I) An estimation of each defendant participant's current and future exposure to expense and loss costs in the asbestos litigation environment before the date of enactment of this Act (''Ultimate Expense and Loss'').

(II) The application of a uniform set of assumptions regarding the application of insurance and reinsurance to Ultimate Expense and Loss and an analysis of each insurer participant's unresolved or unexhausted insurance or reinsurance coverage applicable to such Ultimate Expense and Loss for each defendant participant;

(III) A projection of each insurer's exposure to claims by entities that had not yet become defendants as of the date of enactment of this Act, but might reasonably have been anticipated to become defendants in the future if the asbestos litigation environment before the date of enactment of this Act had continued. Not later than 60 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for conducting the Reserve Study and allocating payments among insurer participants on the basis of the Reserve Study. Such methodology shall be consistent with this subparagraph.

(iii) PERMITTED EXTRAPOLATION OF ULTIMATE EXPENSE AND LOSS FOR PERIPHERAL DEFENDANT PARTICIPANTS.—The Commission may establish an appropriate methodology to extrapolate Ultimate Expense and Loss for Tier VI defendant participants for the purposes of the Reserve Study. Considerations for such methodology shall include the nature of that Tier VI defendant participant's asbestos liability, the number of pending and historic asbestos claims against the Tier VI defendant participant, and the jurisdictions in which such Tier VI defendant participant had been sued for asbestos liability.

(iv) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall affect the initial payment requirement in section 212(e)(1).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or

a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for

an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under

this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

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

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Administrator's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated

groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Administrator shall publish a notice in the Federal Register and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Administrator shall publish a final notice in the Federal Register and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Administrator publishes the final notice in the Federal Register and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Administrator exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Administrator determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Administrator may rely on any information reasonably available, and may request, and use subpoena authority of the Administrator if necessary to obtain, relevant information from any such trust or its trustees.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability

insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties, or business was, directly or indirectly, transferred by any means (including by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements under this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties, or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether the participant believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties, or business of a participant'' means assets (including tangible or intangible assets, securities, and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property, or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property, or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A) a temporary restraining order or a preliminary or permanent injunction such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of nonoccupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $20,000,000 but not more than $30,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund and to prevent the sunset of the overall program under section 405(g).

(B) REVIEW.—The Administrator may reduce the amount of funding below $20,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $600,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical

monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United

States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), a notice of a distributor's adjustment under section 204(m), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i), a notice of financial hardship or inequity determination under section 204(d), or a notice of a distributor's adjustment under section 204(m), shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

''(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission under title II of the Fairness in Asbestos Injury Resolution Act of 2006 shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—

''(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Commission, to knowingly and willfully—

''(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

''(B) make any materially false, fictitious, or fraudulent statement or representation; or

''(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2006.

''(2) PENALTY.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.''.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(bb) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(cc) for any condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in paragraph (2), (3), (4), (5), (7), (8), or (9) of section 121(d) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(dd) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that the claimant would be paid (excluding any adjustments under section 131(b)(3) and (4) of the Act) for such condition under the Act most similar to the claimant's claim with the trust, such trust shall not make any payment to the claimant.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such

cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect, except that any provision of such an injunction channeling asbestos claims to such a trust for resolution shall have no force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph

shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impaneling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under subsection (d)(2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except as provided under subsection (d)(2) and section 106(f).

(4) DISMISSAL.—

(A) IN GENERAL.—Except as provided under subsection (d)(2), no judgment other than a judgment for dismissal may be entered in any action asserting an asbestos claim (including any claim described in paragraph (2)) in any Federal or State court on or after the date of enactment of this Act.

(B) DISMISSAL ON MOTION.—A court may dismiss any action asserting an asbestos claim (including any claim described in paragraph (2)) on—

(i) motion by any party to such action; or

(ii) its own motion.

(C) DENIAL OF MOTION.—If a court denies a motion to dismiss under subparagraph (B)(i), it shall stay further proceedings in any such action until final disposition of any appeal taken under this Act.

(D) EXCEPTION FOR PENDING CLAIMS IN COURT.—

(i) IN GENERAL.—Except as provided under subsection (d)(2) and clause (ii) of this subparagraph, an action asserting an asbestos claim that is pending on the date of enactment of this Act in any Federal or State court may not be dismissed under subparagraph (A), but any stay shall continue in effect, if the plaintiff (or the personal representative of the plaintiff, if the plaintiff is deceased or incompetent) in such action has filed a claim, or is still entitled under section 113(b) to file a claim, with the Fund with respect to the disease, condition, or injury forming the basis of such action.

(ii) DISMISSAL ALLOWED IF CLAIM IS ADJUDICATED.—An action exempt from dismissal under clause (i) shall be dismissed if—

(I) the plaintiff's claim under the Fund has been finally adjudicated, and—

(aa) the award, if any, to the plaintiff from the Fund has been paid in whole or in part; or

(bb) the plaintiff has been determined to be eligible for medical monitoring;

(II) the plaintiff's claim under the Fund has been finally adjudicated and the claimant is not entitled to receive a monetary award or medical monitoring under subtitle D of title I;

(III) the plaintiff's claim has been resolved and paid in full under section 106(f);

(IV) after the Administrator certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, the plaintiff's claim is pending in any venue other than a venue described under section 405(h)(3); or

(V) before the Administrator certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, the plaintiff's claim—

(aa) is subject to section 106(f)(3); and

(bb) would not be permitted to proceed in the venue in which that claim is pending under such paragraph.

(E) NOTICE.—A claimant shall provide notice to the Administrator of any pending action involving an asbestos claim in any Federal or State court in which such claimant is a plaintiff. The Administrator shall send notice to the appropriate Federal or State court of any adjudication of any claim with the Fund filed by a plaintiff in an action that has been stayed under subparagraph (D)(i).

(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit dismissal, at any time, of a claim pending in Federal or State court for reasons independent of the enactment of this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued

before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim, including a claim described under paragraph (2), is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARLY SUNSET.—The term ''early sunset'' means an event causing termination of the program under section 405(g) which relieves the insurer participants of paying some portion of the aggregate payment level of $46,025,000,000 required under section 212(a)(2)(A).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(g), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means, in the event of any early sunset under section 405(g), the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) RESTORATION OF AGGREGATE PRODUCTS LIMITS UPON EARLY SUNSET.—

(A) RESTORATION.—In the event of an early sunset, any unearned erosion amount will be deemed restored as aggregate products limits available to a defendant participant as of the date of enactment.

(B) METHOD OF RESTORATION.—The unearned erosion amount will be deemed restored to each defendant participant's policies in such a manner that the last limits that were deemed eroded at enactment under this subsection are deemed to be the first limits restored upon early sunset.

(C) TOLLING OF COVERAGE CLAIMS.—In the event of an early sunset, the applicable statute of limitations and contractual provisions for the filing of claims under any insurance policy with restored aggregate products limits shall be deemed tolled after the date of

enactment through the date 6 months after the date of early sunset.

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant, before any sunset of this Act, shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, including claims filed, pursued, or revived under section 405(h), except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR AND SUNSET OF THE ACT.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(i) termination of the program set forth in titles I and II of this Act in its entirety;

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(C) INSURER SHORTFALL ASSESSMENTS.—Beginning in year 6 of the life of the Fund, if the Administrator determines that a shortfall in payment of the annual amounts required to be paid by insurer participants under section 212(a)(3)(C) is the substantial factor that would cause the Administrator to recommend the termination of this Act under subsection (g), then the Administrator may impose shortfall assessments on insurer participants in addition to the payments imposed under section 212, except that the Administrator shall not impose such assessments if the additional amounts would not be sufficient to permit the Administrator to avoid recommending termination of this Act. During any given year, the total of such shortfall assessments shall not exceed the amount by which, during the prior year, total payments by insurer participants fell short of the aggregate amounts required to be paid under section 212(a)(3)(C). Shortfall assessments shall be allocated among insurer participants using the methodology adopted by the Asbestos Insurers Commission under section 212(a)(1)(B).

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(3) RECOMMENDATION OF TERMINATION.—Any recommendation of termination should include a plan for winding up the affairs of the Fund (and the program generally) within a defined period, including paying in full all claims resolved at the time the report is prepared. Any plan under this paragraph shall provide for priority in payment to the claimants with the most serious illnesses.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

(g) SUNSET OF ACT.—

(1) IN GENERAL.—

(A) TERMINATION.—Subject to paragraph (4), titles I (except subtitle A) and II and sections 403 and 404(e)(2) shall terminate as provided under paragraph (2), if—

(i) the Administrator has begun the processing of claims; and

(ii) as part of the review conducted to prepare an annual report under this section, the Chief Financial Officer of the Department of Labor, giving due consideration to the audit conducted under subsection (h), determines that if any additional claims are resolved, the Fund will not have sufficient nontaxpayer resources and borrowing authorized under section 221 when needed to pay 100 percent of all resolved claims while also meeting all other obligations of the Fund under this Act, including the payment of—

(I) debt repayment obligations; and

(II) remaining obligations to the asbestos trust of a debtor and the class action trust.

(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii)(II), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by multiplying the amount of assets transferred to the Fund by such debtor or class action trust by the applicable percentage set forth in the following schedule depending on the year in which a termination shall take effect under paragraph (2). The applicable percentage shall be adjusted between years by quarter-annual increments.

Year After Enactment in Which the Termination is Effective	Applicable Percentage:
1	100.00
2	93.95
3	87.98
4	82.40
5	76.97
6	71.66
7	66.50
8	61.48
9	56.61
10	52.01
11	47.65
12	43.52
13	39.62
14	35.96
15	32.55
16	29.36
17	26.39
18	23.65
19	21.11
20	18.76
21	16.62
22	14.66
23	12.86
24	11.24
25	9.78
26	8.48
27	7.32
28	6.29
29	5.37
30	4.55
31	3.83
32	3.20
33	2.66
34	2.18
35	1.77
36	1.42
37	1.13
38	0.89
39	0.70
40	0.54
41	0.40
42	0.29
43	0.19
44	0.12
45	0.05
46 and thereafter	0.00

(2) EFFECTIVE DATE OF TERMINATION.—A termination under paragraph (1) shall take effect 180 days after the date of a determination of the Administrator under paragraph (1) and shall apply to all asbestos claims that have not been resolved by the Fund as of the date of the determination.

(3) RESOLVED CLAIMS.—If a termination takes effect under this subsection, all resolved claims shall be paid in full by the Fund.

(4) EXTINGUISHED CLAIMS.—A claim that is extinguished under the statute of limitations provisions in section 113(b) is not revived at the time of sunset under this subsection.

(5) CONTINUED FUNDING.—If a termination takes effect under this subsection, participants will still be required to make payments as provided under subtitles A and B of title II. If the full amount of payments required by title II is not necessary for the Fund to pay claims that have been resolved as of the date of termination, pay the Fund's debt and obligations to the asbestos trusts and class action trust, and support the Fund's continued operation as needed to pay such claims, debt, and obligations, the Administrator may reduce such payments. Any such reductions shall be allocated among participants in approximately the same proportion as the liability under subtitles A and B of title II.

(6) SUNSET CLAIMS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term ''sunset claims'' means claims filed with the Fund, but not yet resolved, when this Act has terminated; and

(ii) the term ''sunset claimants'' means persons asserting sunset claims.

(B) IN GENERAL.—If a termination takes effect under this subsection, the applicable statute of limitations for the filing of sunset claims under subsection (h) shall be tolled for any past or pending sunset claimants while such claimants were pursuing claims filed under this Act. For those claimants who decide to pursue a sunset claim in accordance with subsection (h), the applicable statute of limitations shall apply, except that claimants who filed a claim against the Fund under this Act before the date of termination shall have 2 years after the date of termination to file a sunset claim in accordance with subsection (h).

(7) ESTABLISHMENT OF MASTER ASBESTOS TRUST.—

(A) CREATION.—Within 120 days after the determination of the Administrator under paragraph (1), the Administrator shall create a trust to be the successor to the asbestos trusts and any class action trust, to receive funds equal to the amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraph (1) (A)(iii) and (B), and to use such funds for the exclusive purpose of providing benefits in accordance with the terms of this paragraph to persons who would have held valid asbestos claims against the asbestos trusts or any class action trust had this Act not been enacted and to otherwise defray the reasonable expenses of administering the master trust.

(B) JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction, without regard to amount in controversy, over the master trust and all civil actions involving the application and construction of this subparagraph and the trust documents, including any action for the payment of benefits due under the terms of this subparagraph after exhaustion of trust remedies and any action for breach of fiduciary duty on the part of any fiduciary of the master trust.

(C) TRUSTEES.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, 3 trustees to administer the master trust. Each trustee, and any successor to each trustee, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section.

(D) TRUST ADVISORY COMMITTEE.—The Administrator, in consultation with the Advisory Committee, shall appoint 3 persons to represent the interests of trust beneficiaries as members of a trust advisory committee to consult with and advise the trustees respecting the administration of the master trust and resolution of asbestos claims. At least 1 of the members of the trust advisory committee shall be selected from among individuals recommended by recognized national labor federations, and at least 1 of the members of the trust advisory committee shall be experienced in representing the interests of trust beneficiaries.

(E) LEGAL REPRESENTATIVE.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, a legal representative of persons who may in the future have claims against the master trust for the purpose of protecting the rights of such persons respecting the master trust and consulting with and advising the trustees respecting the administration of the master trust and resolution of asbestos claims. The legal representative shall have standing to appear and be heard as a representative of the future asbestos claimants in any civil action before the district court relating to the master trust. The legal representative shall not represent the interests of any person who has filed a claim for benefits against the master trust with respect to such claim.

(F) TRUST DOCUMENTS.—The Administrator, in consultation with the Advisory Committee, shall create such trust documents as may be necessary to create and govern the operations of the master trust. The trust documents shall contain provisions that—

(i) address the payment of compensation to and reimbursement of necessary and reasonable expenses of the trustees, trust advisory committee members and legal representative, and appointment of successors to such persons, subject to approval by the district court in the case of successors to the trustees and legal representative; and

(ii) provide for the master trust's obligation to defend and indemnify the Administrator, trustees, members of the trust advisory committee, legal representative and their respective successors against and from legal actions and related losses to the extent that a corporation is permitted under the laws of Delaware to defend and indemnify its officers and directors.

(G) DUTY OF TRUSTEES.—The trustees shall administer the master trust in accordance with the terms of this subparagraph and the Trust Documents for the exclusive purpose of providing benefits to persons with valid claims against the master trust and otherwise defraying the reasonable expenses of administering the master trust, and shall manage and invest the assets of the trust with the care, skill, prudence, and diligence, under like circumstances prevailing at the time, that a prudent person acting in like capacity and manner would use.

(H) CLAIMS RESOLUTION PROCEDURES.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt claims resolution procedures that provide for fair and expeditious payment of benefits to all persons described in subparagraph (A). The claims resolution procedures adopted and implemented by the trustees shall contain—

(i) pro rata distributions of award amounts that are subject to adjustment, if necessary, based on periodic evaluations of the value of the master trust's assets and estimates of the numbers and values of present and future asbestos claims for benefits that may be awarded by the master trust and other mechanisms that provide reasonable assurance that the master trust will value, and be in a financial position to pay, similarly situated asbestos claims presented to it that involve similar diseases in substantially the same manner;

(ii) proof requirements, claim submission procedures, and claim evaluation and allowance procedures that provide for expeditious filing and evaluation of all asbestos claims submitted to the master trust;

(iii) provisions for priority review and payment of claimants whose circumstances require expedited evaluation and compensation;

(iv) exposure requirements for asbestos claimants to qualify for a remedy that fairly reflect the legal responsibility of at least 1 entity whose liabilities were channeled to an asbestos trust or any class action trust; and

(v) review and dispute resolution procedures for disputes regarding the master trust's disallowance or other treatment of claims for benefits.

(I) MEDICAL CRITERIA.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt and maintain uniform medical criteria that fairly reflect a current state of applicable law and scientific and medical knowledge. The trustees may adopt the medical criteria of section 121.

(J) AWARD AMOUNTS.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt a matrix of award amounts for disease categories that applies to all claimants who qualify for payment under the medical criteria and claims resolution procedures. The trustees may adopt the matrix of award amounts of section 131 or such other matrix that the trustees determine provides similar benefits for similar claims and fairly reflects the liability of the entities whose liabilities were channeled to the asbestos trusts and any class action trust.

(K) PAYMENTS TO CLAIMANTS.—The trustees shall pay each qualifying claimant a benefit equal to the product of the master trust payment percentage and the award amount to such claimant. The master trust payment percentage at any given time shall be determined by the trustees based on their periodic evaluation of the master trust's assets and projected claims as described in subparagraph (H)(i).

(L) AMENDMENTS.—The trustees, in consultation with the trust advisory committee and legal representative, may amend the trust documents, the claims resolution procedures, the medical criteria and the award matrix to the extent necessary to more effectively and efficiently carry out the purpose of the master trust. If the substantive consolidation of the asbestos trusts and any class action trust effected by this subsection is held to be unconstitutional, the trustees shall adopt amendments to the trust documents, claims resolution procedures, medical criteria and award matrix as may be necessary to bring the master trust in compliance with the Constitution, including if necessary, amendments requiring, for each such trust, separate claims resolution procedures, award amounts and accounting of assets and liabilities.

(8) PAYMENT TO MASTER TRUST.—The amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraph (1) (A)(iii) and (B) shall be transferred to the master trust within 90 days of termination under this subsection. Any individual with a valid asbestos claim against any asbestos trust or class action trust shall be entitled to seek relief on account of such claim from the master trust described in paragraph (7) in accordance with that paragraph.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—On and after the date of termination under subsection (g), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (g), except that any individual who would have held a valid asbestos claim against any asbestos trust or class action trust had this Act not been enacted may obtain relief on account of such claim only from the master trust described in subsection (g)(7) in accordance with the provisions of such subsection.

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(2) EXCLUSIVE REMEDY.—As of the effective date of a termination of this Act under subsection (g), an action under paragraph (1) shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the date of enactment of this Act or of the termination of this Act, except that claims against the Fund that have been resolved before the date of the termination determination under subsection (f) may be paid by the Fund.

(3) VENUE.—

(A) IN GENERAL.—Actions under paragraph (1) may be brought in—

(i) any Federal district court;

(ii) any State court in the State where the claimant resides; or

(iii) any State court in a State where the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (ii) or (iii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court or the State court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) STATE VENUE REQUIREMENTS.—Nothing in this paragraph shall preempt or supersede any State's law relating to venue requirements within that State which are more restrictive.

(4) CLASS ACTION TRUSTS.—Notwithstanding any other provision of this section, after the assets of any class action trust have been transferred to the Fund in accordance with section 203(b)(5), no asbestos claim may be maintained with respect to asbestos liabilities arising from the operations of a person with respect to whose liabilities for asbestos claims a class action trust has been established, whether such claim names the person or its successors or affiliates as defendants.

(5) EXPERT WITNESSES.—If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue in an action permitted under paragraph (1), a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if—

(A) the testimony is based upon sufficient facts or data;

(B) the testimony is the product of reliable principles and methods; and

(C) the witness has applied the principles and methods reliably to the facts of the case.

(i) AUDIT.—Any annual report to Congress required under this section shall be reviewed and certified as fairly representing the financial condition of the Fund by an independent auditor.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information

and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

(d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBESTOS.—Section 17(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656(e)) is amended—

(1) by striking ''Any'' and inserting ''(1) Except as provided in paragraph (2), any''; and

(2) by adding at the end the following:

''(2) Any employer who willfully violates any standard issued under section 6 with respect to the control of occupational exposure to asbestos, shall upon conviction be punished by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 5 years, or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine in accordance with section 3571 of title 18, United States Code, or by imprisonment for not more than 10 years, or both.''.

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY EPA AND OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor, the Environmental Protection Agency, and their State counterparts, for contributions to the Asbestos Injury Claims Resolution Fund (in this section referred to as the ''Fund'').

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall—

(A) in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668); and

(B) in consultation with the Administrator of the Environmental Protection Agency, identify all employers or other individuals who, during the previous year, were subject to final orders finding that they violated asbestos regulations administered by the Environmental Protection Agency (including the National Emissions Standard for Asbestos established under the Clean Air Act (42 U.S.C. 7401 et seq.), the asbestos worker protection standards established under part 763 of title 40, Code of Federal Regulations, and the regulations banning asbestos promulgated under section 501 of this Act), or equivalent State asbestos regulations.

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health and environmental statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

(4) LIABILITY.—Any assessment under this subsection shall be considered a liability under this Act.

(5) PAYMENTS.—Each such employer or other individual assessed for a contribution to the Fund under this subsection shall make the required contribution to the Fund within 90 days of the date of receipt of notice from the Administrator requiring payment.

(6) ENFORCEMENT.—The Administrator is authorized to bring a civil action under section 223(c) against any employer or other individual who fails to make timely payment of contributions assessed under this section.

(f) REVIEW OF FEDERAL SENTENCING GUIDELINES FOR ENVIRONMENTAL CRIMES RELATED TO ASBESTOS.—Under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the United States Sentencing Guidelines and related policy statements to ensure that—

(1) appropriate changes are made within the guidelines to reflect any statutory amendments that have occurred since the time that the current guideline was promulgated;

(2) the base offense level, adjustments, and specific offense characteristics contained in section 2Q1.2 of the United States Sentencing Guidelines (relating to mishandling of hazardous or toxic substances or pesticides; recordkeeping, tampering, and falsification; and unlawfully transporting hazardous materials in commerce) are increased as appropriate to ensure that future asbestos-related offenses reflect the seriousness of the offense, the harm to the community, the need for ongoing reform, and the highly regulated nature of asbestos;

(3) the base offense level, adjustments, and specific offense characteristics are sufficient to deter and punish future activity and are adequate in cases in which the relevant offense conduct—

(A) involves asbestos as a hazardous or toxic substance; and

(B) occurs after the date of enactment of this Act;

(4) the adjustments and specific offense characteristics contained in section 2B1.1 of the United States Sentencing Guidelines related to fraud, deceit, and false statements, adequately take into account that asbestos was involved in the offense, and the possibility of death or serious bodily harm as a result;

(5) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves the use, handling, purchase, sale, disposal, or storage of asbestos; and

(6) the guidelines that apply to organizations in chapter 8 of the United States Sentencing Guidelines are sufficient to deter and punish organizational criminal misconduct that involves fraud, deceit, or false statements against the Office of Asbestos Disease Compensation.

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

TITLE V—ASBESTOS BAN

SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PRODUCTS.

(a) IN GENERAL.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended—

(1) by inserting before section 201 (15 U.S.C. 2641) the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end the following:

''Subtitle B—Ban of Asbestos Containing Products

''SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.

''(a) DEFINITIONS.—In this chapter:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ASBESTOS.—The term 'asbestos' includes—

''(A) chrysotile;

''(B) amosite;

''(C) crocidolite;

''(D) tremolite asbestos;

''(E) winchite asbestos;

''(F) richterite asbestos;

''(G) anthophyllite asbestos;

''(H) actinolite asbestos;

''(I) asbestiform amphibole minerals; and

''(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof.

''(3) ASBESTOS CONTAINING PRODUCT.—The term 'asbestos containing product' means any product (including any part) to which asbestos is deliberately or knowingly added

or used because the specific properties of asbestos are necessary for product use or function. Under no circumstances shall the term 'asbestos containing product' be construed to include products that contain de minimus levels of naturally occurring asbestos as defined by the Administrator not later than 1 year after the date of enactment of this chapter.

''(4) DISTRIBUTE IN COMMERCE.—The term 'distribute in commerce'—

''(A) has the meaning given the term in section 3 of the Toxic Substances Control Act (15 U.S.C. 2602); and

''(B) shall not include—

''(i) an action taken with respect to an asbestos containing product in connection with the end use of the asbestos containing product by a person that is an end user, or an action taken by a person who purchases or receives a product, directly or indirectly, from an end user; or

''(ii) distribution of an asbestos containing product by a person solely for the purpose of disposal of the asbestos containing product in compliance with applicable Federal, State, and local requirements.

''(b) IN GENERAL.—Subject to subsection (c), the Administrator shall promulgate—

''(1) not later than 1 year after the date of enactment of this chapter, proposed regulations that—

''(A) prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products; and

''(B) provide for implementation of subsections (c) and (d); and

''(2) not later than 2 years after the date of enactment of this chapter, final regulations that, effective 60 days after the date of promulgation, prohibit persons from manufacturing, processing, or distributing in commerce asbestos containing products.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—Any person may petition the Administrator for, and the Administrator may grant, an exemption from the requirements of subsection (b), if the Administrator determines that—

''(A) the exemption would not result in an unreasonable risk of injury to public health or the environment; and

''(B) the person has made good faith efforts to develop, but has been unable to develop, a substance, or identify a mineral that does not present an unreasonable risk of injury to public health or the environment and may be substituted for an asbestos containing product.

''(2) TERMS AND CONDITIONS.—Except for an exception authorized under paragraph (3)(A)(i), an exemption granted under this subsection shall be in effect for such period (not to exceed 5 years) and subject to such terms and conditions as the Administrator may prescribe.

''(3) GOVERNMENTAL USE.—

''(A) IN GENERAL.—

''(i) DEPARTMENT OF DEFENSE.—Nothing in this section or in the regulations promulgated by the Administrator under subsection (b) shall prohibit or limit the manufacture, processing, or distribution in commerce of asbestos containing products by or for the Department of Defense or the use of asbestos containing products by or for the Department of Defense if the Secretary of Defense certifies (or recertifies within 10 years of a prior certification), and provides a copy of the certification to Congress, that—

''(I) use of asbestos containing product is necessary to the critical functions of the Department, which includes the use of the asbestos containing product in any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature;

''(II) no reasonably available and equivalent alternatives to the asbestos containing product exist for the intended purpose; and

''(III) use of the asbestos containing product will not result in a known unreasonable risk to health or the environment.

''(ii) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.—The Administrator of the Environmental Protection Agency shall provide an exemption from the requirements of subsection (b), without review or limit on duration, if such exemption for an asbestos containing product is sought by the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration certifies, and provides a copy of that certification to Congress, that—

''(I) the asbestos containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

''(II) no reasonable alternatives to the asbestos containing product exist for the intended purpose; and

''(III) the use of the asbestos containing product will not result in an unreasonable risk to health or the environment.

''(B) ADMINISTRATIVE PROCEDURE ACT.—Any certification required under subparagraph (A) shall not be subject to chapter 5 of title 5, United States Code (commonly referred to as the 'Administrative Procedure Act').

''(4) SPECIFIC EXEMPTIONS.—The following are exempted:

''(A) Asbestos diaphragms for use in the manufacture of chlor-alkali and the products and derivative therefrom.

''(B) Roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt, subject to a determination by the Administrator of the Environmental Protection Agency under paragraph (5).

''(5) ENVIRONMENTAL PROTECTION AGENCY REVIEW.—

''(A) REVIEW IN 18 MONTHS.—Not later than 18 months after the date of enactment of this chapter, the Administrator of the Environmental Protection Agency shall complete a review of the exemption for roofing cements, coatings, and mastics utilizing asbestos that are totally encapsulated with asphalt to determine whether—

''(i) the exemption would result in an unreasonable risk of injury to public health or the environment; and

''(ii) there are reasonable, commercial alternatives to the roofing cements, coatings, and mastics utilizing asbestos that is totally encapsulated with asphalt.

''(B) REVOCATION OF EXEMPTION.—Upon completion of the review, the Administrator of the Environmental Protection Agency shall have the authority to revoke the exemption for the products exempted under paragraph (4)(B), if warranted.

''(d) DISPOSAL.—

''(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of enactment of this chapter, each person that possesses an asbestos containing product that is subject to the prohibition established under this section shall dispose of the asbestos containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

''(2) EXEMPTION.—Nothing in paragraph (1)—

''(A) applies to an asbestos containing product that—

''(i) is no longer in the stream of commerce; or

''(ii) is in the possession of an end user or a person who purchases or receives an asbestos containing product directly or indirectly from an end user; or

''(B) requires that an asbestos containing product described in subparagraph (A) be removed or replaced.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended—

(1) by inserting before the item relating to section 201 the following:

''Subtitle A—General Provisions'';

and

(2) by adding at the end of the items relating to title II the following:

''Subtitle B—Ban of Asbestos Containing Products

''Sec. 221. Ban of asbestos containing products.''.

SEC. 502. NATURALLY OCCURRING ASBESTOS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall—

(A) conduct a study to assess the risks of exposure to naturally occurring asbestos, including the appropriateness of the existing risk assessment values for asbestos and methods of assessing exposure; and

(B) submit a report that contains a detailed statement of the findings and conclusions of such study to—

(i) the majority and minority leaders of the Senate;

(ii) the Speaker and the minority leader of the House of Representatives; and

(iii) the relevant committees of jurisdiction of the Senate and House of Representatives, including—

(I) the Environment and Public Works Committee of the Senate;

(II) the Appropriations Committee of the Senate;

(III) the Judiciary Committee of the Senate;

(IV) the Energy and Commerce Committee of the House of Representatives;

(V) the Judiciary Committee of the House of Representatives; and

(VI) the Appropriations Committee of the House of Representatives.

(2) DEVELOPMENT REQUIREMENTS.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency, in consultation with appropriate Federal and State agencies and other interested parties after appropriate notice, shall establish dust management guidelines, and model State regulations that States can choose to adopt, for commercial and residential development, and road construction in areas where naturally occurring asbestos is present and considered a risk. Such dust management guidelines may at a minimum incorporate provisions consistent with the relevant California Code of Regulation (17 C.C.R. 93105–06).

(B) DUST MANAGEMENT GUIDELINES.—Guidelines under this paragraph shall include—

(i) site management practices to minimize the disturbance of naturally occurring asbestos and contain asbestos mobilized from the source at the development site;

(ii) air and soil monitoring programs to assess asbestos exposure levels at the development site and to determine whether asbestos is migrating from the site; and

(iii) appropriate disposal options for asbestos-containing materials to be removed from the site during development.

(b) TESTING PROTOCOLS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the

Administrator of the Environmental Protection Agency, in consultation with appropriate State agencies, shall establish comprehensive protocols for testing for the presence of naturally occurring asbestos.

(2) PROTOCOLS.—The protocols under this subsection shall address both ambient air monitoring and activity-based personal sampling and include—

(A) suggested sampling devices and guidelines to address the issues of methods comparability, sampler operation, performance specifications, and quality control and quality assurance;

(B) a national laboratory and air sampling accreditation program for all methods of analyses of air and soil for naturally occurring asbestos;

(C) recommended laboratory analytical procedures, including fiber types, fiber lengths, and fiber aspect ratios; and

(D) protocols for collecting and analyzing aggregate and soil samples for asbestos content, including proper and consistent sample preparation practices suited to the activity likely to occur on the soils of the study area.

(c) EXISTING BUILDINGS AND AREAS.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue public education materials, recommended best management practices and recommended remedial measures for areas containing naturally occurring asbestos including existing—

(1) schools and parks; and

(2) commercial and residential development.

(d) MAPPING.—The Secretary of the Interior shall—

(1) acquire infrared mapping data for naturally occurring asbestos, prioritizing California counties experiencing rapid population growth;

(2) process that data into map images; and

(3) collaborate with the California Geological Survey and any other appropriate State agencies in producing final maps of asbestos zones.

(e) RESEARCH GRANTS.—The Director of the National Institutes of Health shall administer 1 or more research grants to qualified entities for studies that focus on better understanding the health risks of exposure to naturally occurring asbestos. Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process.

(f) TASK FORCE PARTICIPATION.—Representatives of Region IX of the United States Environmental Protection Agency, and the Agency for Toxic Substances and Disease Registry of the United States Department of Health and Human Services shall participate in any task force convened by the State of California to evaluate policies and adopt guidelines for the mitigation of risks associated with naturally occurring asbestos.

(g) MATCHING GRANTS.—The Administrator of the Environmental Protection Agency is authorized to award 50 percent matching Federal grants to States and municipalities. Not later than 4 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall establish criteria to award such grants—

(1) for monitoring and remediation of naturally occurring asbestos—

(A) at schools, parks, and other public areas; and

(B) in serpentine aggregate roads generating significant public exposure; and

(2) for development, implementation, and enforcement of State and local dust management regulations concerning naturally occurring asbestos, provided that after the Administrator has issued model State regulations under subsection (a)(2), such State and local regulations shall be at least as protective as the model regulations to be eligible for the matching grants.

(h) AVAILABILITY OF FUNDS.—An amount of $40,000,000 from the Fund shall be made available to carry out the requirements of this section, including up to $9,000,000 for the Secretary of the Interior to carry out subsection (d), up to $4,000,000 for the Director of the National Institutes of Health to carry out subsection (e), and the remainder for the Administrator of the Environmental Protection Agency, at least $15,000,000 of which shall be used for the matching grants under subsection (g).

(i) CONSTRUCTION.—

(1) GUIDELINES AND PROTOCOLS.—The guidelines and protocols issued by the Administrator of the Environmental Protection Agency under the specific authorities in subsections (a), (b), and (c) shall be construed as nonbinding best practices unless adopted as a mandatory requirement by a State or local government. Notwithstanding the preceding sentence, accreditation for testing will not be granted except in accordance with the guidelines issued under subsection (b)(2)(B).

(2) FEDERAL CAUSES OF ACTION.—This section shall not be construed as creating any new Federal cause of action for civil, criminal, or punitive damages.

(3) FEDERAL CLAIMS.—This section shall not be construed as creating any new Federal claim for injunctive or declaratory relief against a State, local, or private party.

(4) STATES AND LOCALITIES.—Nothing in this section shall limit the authority of States or localities concerning naturally occurring asbestos.

Mr. LEAHY. Mr. President, today, I join the chairman of the Judiciary Committee, Senator SPECTER, in introducing an amended version of S. 852, the Fairness in Asbestos Injury Resolution Act of 2006, the FAIR Act. This legislation enhances our previous trust fund bill by adopting many of the amendments filed in February by Senators on both sides of the aisle. We have incorporated amendments that further protect against fraud and make sure the sickest victims are paid as soon as possible. We added crucial provisions that make the trust fund accessible to victims who were exposed to asbestos during the attacks on the World Trade Center and Hurricanes Katrina and Rita. We clarified the bill language to ensure that inactive dormant claims cannot be revived to overwhelm the trust fund.

This legislation also contains a few additional changes that we believe respond directly to concerns raised by our colleagues during floor debate. The floor amendments incorporated in this bill include, among others, the Kyl funding amendment that will protect small and medium sized businesses. We also addressed the concerns of businesses that currently pay nothing or very little because they are well-insured. None of these changes undermine the existing guarantee on overall private funding at $140 billion.

Also importantly, we preserved the ability of the existing bankruptcy trusts to continue paying impaired victims while the trust fund becomes operational. This will smooth the transition for victims who were exposed by companies that are currently protected from suit by bankruptcy. And finally, we clarified the statute of limitations for our Nation's war veterans so they will have better access to the trust fund.

None of the additional provisions contained in this substitute diminish the bill's key principle: That the asbestos trust fund will be comprised solely of private money. Nothing in this bill will reduce the protection of victims against insurance subrogation. I am proud to report that we have also maintained our core medical criteria so that those who have been impaired by asbestos exposure will receive compensation appropriate to their injuries.

Earlier this week, we were all saddened to learn of the passing of Judge Edward R. Becker. As many of my colleagues are keenly aware, Judge Becker worked patiently with Senators and all of the stakeholders on this legislation for almost 3 years. We engaged in an exhaustive process of committee hearings, deliberations and negotiations. Judge Becker was crucial to each step in the process. We would not have made the bipartisan progress that this legislation reflects without his tireless efforts.

Unfortunately, time is running out for this session of Congress. I know that some partisans will claim that we should refrain from reaching across the aisle during an election year but this persistent problem compels us to move forward to try and help the thousands of victims of asbestos exposure. I urge the Senate majority leader to give us sufficient floor time to debate and vote on this important legislation on its merits.

By Mr. ALLEN (for himself, Mr. NELSON of Nebraska, Mr. CRAIG, Mr. INHOFE, Mr. LOTT, Mrs. DOLE, Mr. VITTER, Mr. ENSIGN, Mr. MARTINEZ, Mr. BURR, Mr. CRAPO, Mr. SUNUNU, and Mr. THUNE):

S 3275. A bill to amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry concealed firearms in the State; to the Committee on the Judiciary.

Mr. ALLEN. Mr. President, I rise today on behalf of myself, my good friend from Nebraska, Senator NELSON, and 11 other Senators—Senators CRAIG, INHOFE, LOTT, DOLE, VITTER, ENSIGN, MARTINEZ, BURR, CRAPO, SUNUNU, and THUNE—to introduce legislation to amend title 18, United States Code, to provide a national standard under which nonresidents of a State may carry concealed firearms in the State. The bill is a companion bill to H.R. 4547, which Congressmen CLIFF STEARNS of Florida and RICK BOUCHER of Virginia have introduced in the House.

Our bill would allow any person with a valid concealed carry permit or license issued by a State to carry a concealed firearm in any other State if they meet certain criteria. The laws of

each State that govern where concealed firearms may be carried would still apply and would be fully respected within its borders. The bill would simply require States to recognize each other's concealed carry permits and licenses, just as they recognize drivers' licenses. It would not create a Federal licensing system.

The right-to-carry movement has enjoyed great success throughout our Nation. To cite just one example, the murder rate in my Commonwealth of Virginia has plunged a dramatic 40 percent since the right-to-carry law that I signed as Governor took effect in 1995.

This is commonsense legislation. It recognizes that Congress has affirmed an individual's right to carry firearms for ''protective purposes in the Gun Control Act, 1968, and in the Firearm Owners' Protection Act, 1986. In addition, last year, when this Congress passed the Protection of Lawful Commerce in Arms Act on a strong bi-partisan vote, we preserved all law-abiding citizens' access to firearms and ammunition for all lawful purposes, including, of course, self-defense.

I urge all my colleagues to join with Senator NELSON and me in cosponsoring this bill to increase the safety of the many law-abiding Americans who have chosen to carry a firearm for protection against criminal attack.

By Mr. LUGAR (for himself, Mr. BIDEN, Mr. HAGEL, Mr. ALEXANDER, and Mr. WARNER):

S. 3322. A bill to build operational readiness in civilian agencies, and for other purposes; considered and passed.

Mr. LUGAR. Mr. President, this legislation is the result of a conversation begun in 2003 between members of the Senate Foreign Relations Committee and the leadership of the State Department. Since that time, the legislation has gone through a number of evolutions and has passed the committee unanimously both as a freestanding bill and as part of the State Department authorization bill. I am asking the Senate to pass it now as a freestanding bill.

International crises are inevitable, and in most cases, U.S. national security interests will be threatened by sustained instability. The war on terrorism necessitates that we not leave nations crumbling and ungoverned. We have already seen how terrorists can exploit nations afflicted by lawlessness and desperate circumstances. They seek out such places to establish training camps, recruit new members, and tap into a global black market in weapons.

In this international atmosphere, the United States must have the right structures, personnel, and resources in place when an emergency occurs. A delay in our response of a few weeks, or even days, can mean the difference between success and failure. Clearly we need a full range of tools to prevail. Our committee's focus has been on boosting the civilian side of our stabilization and reconstruction capabilities, while encouraging improved mechanisms for civilian and military agencies to work together on these missions.

Over the years, our Government has cobbled together plans, people, and projects to respond to post-conflict situations in the Balkans, in Afghanistan, in Iraq, and elsewhere. The efforts of those engaged have been valiant, but these emergencies have been complex and time sensitive. In my judgment, our ad hoc approach has been inadequate to deal quickly and efficiently with complex emergencies. In turn, our lack of preparation for immediate stabilization contingencies has made our subsequent reconstruction efforts more difficult and expensive.

This legislation builds on legislation, S. 2127, that Senators BIDEN and HAGEL and I introduced in early 2004 to encourage and support a well-organized, sufficiently resourced and strongly led civilian counterpart to the military in post-conflict zones. It is our view that the civilian side needs both operational capability and a significant surge capacity. This legislation gives statutory status to the State Department's Office of the Coordinator of Reconstruction and Stabilization and makes the position of Coordinator subject to the advice and consent of the Senate. The legislation authorizes the establishment of a civilian response corps with both Active-Duty and Reserve components and provides the office flexibility in personnel management, pay, and benefits to build that corps and create surge capacity in an emergency. Finally, it authorizes expenditures for a crisis response fund, for the civilian response corps, and for a substantial training, planning and operational capacity for the office.

The State Department has come a long way in recognizing the role it could and should be playing. It established the Office of the Coordinator of Reconstruction and Stabilization in July of 2004. Under the leadership of Carlos Pascual, the office conducted a government-wide inventory of the civilian assets that might be available for stabilization and reconstruction tasks in post-conflict zones. It has undertaken the planning necessary to recruit, train, and organize a Reserve corps of civilians for rapid deployment. It also is formulating interagency contingency plans—informed by our past experiences—for countries and regions of the world where the next crisis could suddenly arise.

In December 2005, the President signed a directive putting the Secretary of State in charge of interagency stabilization and reconstruction efforts. Last month, Secretary Rice promised to dedicate 15 of the 100 new positions she is requesting for fiscal year 2007 to the Reconstruction and Stabilization Office. This will increase staff to about 95 individuals, with seconded personnel and contractors included in that count.

Despite this good progress, significant gaps in our capabilities remain. Our legislation calls for a 250-person Active-Duty corps, in addition to the Reserves, made up of both State Department and OSAID employees. Such a corps could be rapidly deployed with the military for both initial assessments and operational purposes. They would be the first civilian team on the ground in post-conflict situations, well in advance of the establishment of an embassy. This Active-Duty corps would be able to do a wide range of civilian jobs that are needed in a post-conflict or otherwise hostile environment.

Such a 250-person corps would be no larger than the typical Army company, but it would be a force multiplier. It would be equipped with the authority and training to take broad operational responsibility for stabilization missions. Establishment of such a corps is a modest investment when seen as part of the overall national security budget. Even in peace time, we maintain Active-Duty military forces of almost 1.4 million men and women who train and plan for the possibility of war. Given how critical post-conflict situations have been to American national security in the last decade, I believe it is reasonable to have a mere 250 civilians who are training for these situations and are capable of being deployed anywhere in the world, at any time they may be needed.

This legislation also calls on the heads of other executive branch agencies to establish personnel exchange programs designed to enhance stabilization and reconstruction capacity. The Departments of Agriculture, Treasury, Commerce, Health and Human Services—indeed virtually all the civilian agencies—can make unique contributions to the overall effort.

Once the Department embraced the concept of organizing and leading the civilian effort, the main roadblock became resources. So far, only about $21 million has been provided for the operations of the office, despite administration requests for substantially more funding. For 2007, the administration has requested a $75 million crisis response fund to be made available as a contingency for stabilization and reconstruction crises. Of this amount, the administration would like to spend $25 million for the organization, training, and emergency deployment of the Reserve component of the response corps. This legislation authorizes the crisis response fund and $80 million for the operations of the new State Department office and the Active-Duty corps, including training, equipment, and travel.

So far, the office has heroically stretched dollars by recruiting personnel on detail from other agencies, taking advantage of DOD-funded training, and getting the State Department to pay for the overhead of new office space from other sources. But such a hand-to-mouth existence has obvious disadvantages. Detailed personnel rarely stay long, and institutional memory

becomes short. Relying on DOD funds puts the office in the passenger seat when it should have the resources to pursue uniquely civilian-oriented goals.

In addition, the crisis response fund outlined in our legislation has not been appropriated. On the Senate side, we were able to secure $20 million for the fund in the fiscal year 2006 Foreign Operations Appropriations bill. The entire amount, however, was eliminated in the conference committee with the House.

One stopgap measure that the Congress did pass in fiscal year 2006 was the authority to transfer up to $100 million from the Pentagon to the State Department for boosting the civilian response to particular trouble spots. However, this money will not provide the resources necessary over the long term to improve the State Department's capacity to be a capable partner in responding to complex emergencies.

The foreign affairs budget is always a tougher sell to Congress than the military budget. President Bush has attempted to reverse the downward spiral in overall foreign affairs spending that took place in the 1990s. In that decade, both the executive and legislative branches rushed to cash in on the peace dividend. But President Bush has consistently requested increases for the 150 Account in his budgets. For the fiscal year 2007 budget, he requested a 10.3-percent increase over the CBO-determined baseline of fiscal year 2006.

But, if previous years are any example, the amount appropriated will fall far short of the amount requested. Last year, the President's annual request for foreign affairs was cut by $2.1 billion. The Congress cut the fiscal 2005 annual request by a similar amount. According to a Congressional Research Service report that I requested, Congress has provided $5.8 billion less than the President has requested for foreign affairs in regular and supplemental spending bills since September 11, 2001.

Today, when we are in the midst of a global struggle of information and ideas: when anti-Western riots can be set off by the publication of a cartoon; when we are in the midst of a crisis with Iran that will decide whether the nonproliferation regime of the last half century will be abandoned; when we have entered our fourth year of attempting to stabilize Iraq; and when years of effort to move the Arab-Israeli peace process are at risk—even then, we are unable to muster the necessary support for the President's budget in foreign affairs.

As all this suggests, we have a long way to go in creating the kind of robust civilian capacity that we need. Both the State Department and the Defense Department are keenly aware of the importance of this legislation. If we cannot think this through and plan better as a government, the United States may come to depend even more on our military for tasks and functions far beyond its current role. But I remain optimistic that we can build on the progress already made to create a strong and reliable civilian component that boosts our stabilization and reconstruction capabilities. Passing this legislation will demonstrate that there is a keen understanding in the Senate that we need to move forward. It will support executive branch actions already taken and encourage further progress. I urge its passage.

By Mr. BUNNING (for himself, Mr. OBAMA, Mr. LUGAR, Mr. BURNS, and Mr. PRYOR):

S. 3325. A bill to promote coal-to-liquid fuel activities; to the Committee on Finance.

Mr. BUNNING. Mr. President, I rise today to introduce the Coal-to-Liquid Fuel Promotion Act of 2006. Last month, I chaired an Energy Committee hearing on this promising technology that can turn coal into diesel fuel. Working with industry and the scientific community, I have put together a comprehensive piece of legislation with the goal of providing the right combination of incentives to create a backbone of coal-to-liquids infrastructure in the United States.

The first step is for the Department of Energy to help with planning these large-scale coal-to-liquids plants. This legislation will create a loan program where the private sector can obtain a loan of up to $20 million, matched dollar-for-dollar by non-federal money, to pay for the significant costs of planning, permitting and engineering a coal-to-liquid facility. This program will have minimal cost to the taxpayers as these loans will be repaid, within 5 years, after a planned plant is financed. The federal government will also provide loan guarantees for coal-to-liquids facilities by expanding the program authorized in the Energy Policy Act of 2005.

It is not enough to simply help engineer plants or provide a loan guarantee—there must be an economic motivation for investors to put up the $1 to $2 billion it costs to build a large-scale coal-to-liquids plant. To that end, this bill will create a separate investment tax credit for coal-to-liquids technology. It will also extend the fuel tax credit for coal-to-liquids fuels until 2020. The combination of these incentives will be the one-two punch needed to jumpstart investment in this marketplace. This package of incentives is essential to developing a domestic coal-to-liquid fuels market.

With this domestically produced fuel from coal, we can bring down gas prices and be closer to energy independence. And these two goals, which are essential to our national security, bring me to the last part of this legislation. The Department of Defense consumes large amounts of fuel—for our airplanes, ships and tanks—and nearly all of it is based on petroleum and too much of it comes from the Middle East. It is time we ensure that our military has a safe, domestic source of transportation fuel. My legislation will authorize funding for the continued testing and evaluation of coal-to-liquid fuels by the military. It includes authorization to engage in long-term contracts with producers to ensure a stable, domestic fuel for our armed forces. This bill also authorizes the Department of Energy and Department of Defense to evaluate coal-to-liquids fuels for storage in the Strategic Petroleum Reserve and allows the government to turn to this domestic source of fuel for filling the reserve.

With this legislation America can take a huge step toward energy independence. My bill will foster a domestic marketplace for coal-to-liquids fuels, bring down gasoline costs and provide our military with a secure, domestic fuel source. I urge my colleagues to support this bill.

By Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. FRIST, Mr. REID, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. DEWINE, Mrs. DOLE, Mr. DOMENICI, Mr. DURBIN, Mr. ENSIGN, Mr. FEINGOLD, Mr. HAGEL, Mr. HARKIN, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LEAHY, Mr. LIEBERMAN, Mr. LUGAR, Mr. MARTINEZ, Mr. MENENDEZ, Ms. MIKULSKI, Ms. MURKOWSKI, Mr. OBAMA, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SMITH, Ms. STABENOW, Mr. SUNUNU, Mr. VOINOVICH, and Mr. WYDEN):

S.J. Res. 38. A joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; to the Committee on Finance.

Mr. MCCONNELL. Mr. President, today, along with my colleagues, Senators FEINSTEIN and MCCAIN, I rise to introduce an extension of the Burmese Freedom and Democracy Act.

We are joined by a host of original cosponsors: Senators FRIST, REID, ALEXANDER, ALLARD, ALLEN, BENNETT, BIDEN, BINGAMAN, BOXER, BROWNBACK, BUNNING, BURNS, BURR, CHAFEE, CHAMBLISS, CLINTON, COCHRAN, COLLINS, DEWINE, DOLE, DOMENICI, DURBIN, ENSIGN, FEINGOLD, HAGEL, HARKIN, KENNEDY, KERRY, KOHL, KYL, LEAHY, LIEBERMAN, LUGAR, MARTINEZ, MENENDEZ, MIKULSKI, MURKOWSKI, OBAMA, SALAZAR, SANTORUM, SARBANES, SMITH, STABENOW, SUNUNU, VOINOVICH, and WYDEN.

This broad bipartisan coalition reflects the overwhelming consensus within this body that the issue of freedom in Burma—and the immediate threat that that country poses to the entire region—is one of major importance. To put it simply, America has a moral obligation to continue to stand with the Burmese people against the country's dictatorial regime, the State Peace and Development Council (SPDC).

As many of you know, last year the extension of sanctions was signed into law by President Bush on July 27, 2005, and it enjoyed strong bipartisan support. It passed the Senate by a vote of 97–1.

The past year has brought more news from Burma that has ranged from the disconcerting to the horrific. First, the SPDC inexplicably decided to move the nation's capital from Rangoon to the hinterlands. Thus, instead of using state resources for the betterment of the Burmese people, who desperately need it, the SPDC will use state funds to build a brand new, unneeded capital located deep within the interior.

Second, Nobel Peace Prize winner Daw Aung San Suu Kyi and scores of other prisoners of conscience remain imprisoned by the SPDC. There are rumors that she may be released soon, and I hope they prove true.

Third, last fall the SPDC began a brutal military campaign against ethnic minorities, creating thousands of new internally displaced persons (IDPs); these thousands to be added to the approximately half million already without a home in Burma. Burma has the biggest IDP problem in Asia, Mr. President.

This bill ensures that the United States will not be a party to such brutality and oppression. As in the past, the legislation prohibits imports into the United States from Burma. The bill also maintains a freeze on the assets held by Burmese Government officials in U.S. financial institutions. In addition, the bill authorizes the President to assist democracy activists dedicated to nonviolent opposition to the regime in Burma.

America is not alone in the effort to promote freedom and democracy in that nation. In addition to our allies in Europe, the ASEAN Inter-Parliamentary Myanmar Caucus, a grouping of members of parliament from six countries in ASEAN, just this week issued a strong statement on Burma. The group called on the U.N. Security Council to ''adopt[] a resolution on Burma that would empower them to intervene in Burma's crises. It is time for real action. It is time for a new, democratic and peaceful Burma.''

Clearly, it is time for the Security Council to discuss and debate a legally-binding, nonpunitive resolution on Burma that calls for the immediate and unconditional release of Suu Kyi and all other political prisoners in that country; an end to abuses against minorities (including the use of rape as a weapon of war); and the beginning of a meaningful national reconciliation process that includes the unfettered participation of the National League for Democracy (NLD) and ethnic minorities with the SPDC.

Let me be clear that a briefing on Burma before the U.N. Security Council by U.N. Under-Secretary-General for Political Affairs Ibrahim Gambari should not serve as a substitute for a resolution on this matter. We need less talk and more action at the U.N. in support of democracy, freedom and justice in Burma.

Let me offer a comment or two about Mr. Gambari's recent visit to Burma. I do not share his optimistic view that the SPDC is ready to ''turn the page.'' In my view, the junta is only interested in deflecting and deflating growing pressure by the international community to change its repressive ways—and in avoiding the U.N. Security Council's consideration of a resolution that addresses the threat the SPDC poses to its own people and the entire region. This may explain why rumors of Suu Kyi's release abound.

However, even if Suu Kyi were to be released there is no reason—absolutely none—for anyone to decrease pressure on the junta. The SPDC is to be judged not by what it says—we've certainly heard much of the same before—but by what it does. We have yet to see any evidence of the formation of a credible reconciliation process that includes the full and unfettered participation of the National League for Democracy and ethnic nationalities—who, by the way, are being slaughtered and raped by an ongoing military offensive waged by the junta.

I am pleased to be joined by Senators FEINSTEIN, FRIST, BROWNBACK, LAUTENBERG, DURBIN, FEINGOLD, MIKULSKI and LUGAR in sending a letter to President Bush today asking that the United States work to secure a resolution at the Security Council as soon as possible.

Until the SPDC's demonstrates by its actions that it is serious about reconciliation and reform in Burma, the international community has no choice but to use more sticks—and less carrots—to increase pressure on the junta.

Mrs. FEINSTEIN. Mr. President, I rise today once again with my friend and colleague Senator MCCONNELL to introduce legislation to renew the ban on all imports from Burma for another year.

Our legislation also amends the original Burmese Freedom and Democracy Act of 2003 to allow the sanctions to be renewed, one year at a time, for up to 6 years.

It is critical that the Congress and the administration send a strong signal to the military junta, the State Peace and Development Council, that our resolve has not weakened and we are still committed to a free and democratic Burma. Unless the SPDC makes ''substantial and measurable progress'' towards a true national dialogue on national reconciliation and recognition of the results of the 1990 elections—decisively won by the National League for Democracy—the import ban must remain in place.

Let us review the facts.

Aung San Suu Kyi, Nobel Peace Prize recipient and leader of the National League for Democracy, remains under house arrest. She has spent the better part of the past 16 years imprisoned or under house arrest.

The human rights situation in Burma is deplorable and demands a clear, unified response from the international community: 1,300 political prisoners are still in jail; according to a report by the Asian human rights group, Assistance Association for Political Prisoners, 127 democracy activists have been tortured to death since 1988; 70,000 child soldiers have been forcibly recruited; the practice of rape as a form of repression has been sanctioned by the Burmese military; use of forced labor is widespread; human trafficking is rampant; and the government engages in the production and distribution of opium and methamphetamine.

Senator MCCONNELL and I coauthored the ''Burmese Freedom and Democracy Act of 2003'' which imposed a complete ban on all imports from Burma.

It was overwhelmingly renewed in 2004 and 2005, and now Congress has the opportunity to reauthorize the sanctions for one more year.

But the United States cannot act alone. The United Nations and the international community have a vital role to play.

Along with Senator MCCONNELL and others, we have repeatedly made the case that given the numerous human rights abuses, the spread of HIV/AIDS, the illicit production and trafficking of narcotics, and the trafficking of human beings by the military junta, the situation in Burma should be referred to the United Nations Security Council for debate and appropriate action.

A recent report by former Czech president Vaclav Havel and retired archbishop Desmond Tutu of South Africa—''Threat to Peace: A Call for the UN Security Council to Act on Burma''—confirms the need for U.N. intervention. It details how the situation in Burma fulfills each of the criteria used for past intervention by the Security Council: overthrow of an elected government; armed conflicts with ethnic minorities; widespread human right violations; outflow of refugees, over 700,000; and drug production and trafficking and the spread of HIV/AIDS.

It is time for the United Nations to act on this report and debate and pass a binding, nonpunitive, resolution on Burma that recognizes the threat the regime poses to the region and calls for Suu Kyi and all prisoners of conscience to be released.

Some may argue that because Suu Kyi remains under house arrest and the Burmese people lack basic human rights and a representative government, the sanctions have failed and it is time to lift the import ban.

I could not disagree more.

First, Aung San Suu Kyi and the democratic opposition continue to support a ban on all imports from Burma.

If we lift this ban now, without any measure of progress towards democracy and human rights, we will turn our backs on them and give comfort to their oppressors.

Second, the international community is coming together to put pressure on Burma.

In July 2005, ASEAN forced Burma to forgo its scheduled rotation as chairman of the organization.

On December 16, 2005, the U.N. Security Council debated the situation in Burma for the first time.

Next week, United Nations Undersecretary for Political Affairs will brief members of the Security Council on his meeting with Suu Kyi, her first meeting with a foreigner since 2004.

Why would we turn back now when the military junta is increasingly isolated and the plight of the Burmese people is on the agenda of the international community?

Indeed, while we are far from our goal of a free and democratic Burma, we are making progress and we should stay the course.

I remind my colleagues that under the provisions of this legislation, we will have the opportunity to debate sanctions on Burma every year. That is how it should be.

Sanctions are not a panacea for every foreign policy dispute. But, when they are backed by a robust international response, they can be effective and they can compel change.

Archbishop Desmond Tutu has rightly said, ''As long as [Suu Kyi] remains under house arrest, not one of us is truly free''.

Today I urge the SPDC to release Aung San Suu Kyi, recognize the 1990 elections, and engage in a true dialogue with the National League for Democracy.

I urge the United Nations Security Council to debate and pass a binding, non-punitive resolution on Burma that recognizes the threat the regime poses to the region and calls for Suu Kyi and all prisoners of conscience to be released.

And, finally, I urge United States Senate to renew the sanctions on Burma for another year.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 496—COMMENDING THE KANSAS CITY KANSAS COMMUNITY COLLEGE DEBATE TEAM FOR THEIR NATIONAL CHAMPIONSHIP VICTORIES

Mr. BROWNBACK (for himself and Mr. ROBERTS) submitted the following resolution; which was considered and agreed to:

S. RES. 496

Whereas, in 2006, the Kansas City Kansas Community College debate team won, for a third consecutive year, the 3 national championships in collegiate debate among community colleges;

Whereas the team won a third consecutive national championship at the Phi Rho Pi national tournament for community colleges in 2006;

Whereas, at the 2006 Phi Rho Pi national tournament for community colleges, the team achieved more debate victories per tournament than any other team in the esteemed history of the tournament;

Whereas the team won championship awards in the Policy Team Debate, Lincoln-Douglas Debate, and Overall Sweepstakes at the Phi Rho Pi national tournament for community colleges in 2006;

Whereas the team won a third consecutive national championship for community colleges at the Cross Examination Debate Association National Tournament in 2006; and

Whereas the State of Kansas is privileged to benefit from the dedication to education and intercollegiate debate of Kansas City Kansas Community College team head coach Darren Elliot, assistant coaches Skippy Flynn and Adrian Self, and team members Ashley-Michelle Bruce, Ryan Coyne, Clay Crockett, Peter Lawson, Candace Moore, Amanda Montee, Deandre Tolbert, and Garrett Tuck: Now, therefore, be it

Resolved, That the Senate—

(1) commends the extraordinary contributions of the Kansas City Kansas Community College debate team to the city of Kansas City, Kansas, and the State of Kansas;

(2) congratulates the team for their national championship victories; and

(3) offers its best wishes to the team for future success.

SENATE RESOLUTION 497—RELATIVE TO THE DEATH OF EDWARD ROY BECKER, CHIEF JUDGE OF THE COURT OF APPEALS FOR THE 3RD CIRCUIT

Mr. SPECTER (for himself, Mr. LEAHY, and Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. RES. 497

Whereas Edward Roy Becker was born on May 4, 1933, in Philadelphia, Pennsylvania;

Whereas Edward Roy Becker enjoyed an extraordinary career as a leading jurist in the United States;

Whereas Edward Roy Becker graduated Phi Beta Kappa from the University of Pennsylvania in 1954 and received his law degree from Yale Law School in 1957 with academic distinction;

Whereas, following his graduation from law school, Edward Roy Becker managed a distinguished law practice at the partnership of Becker, Becker, and Fryman with his father and brother-in-law;

Whereas Edward Roy Becker was active in politics, and followed his father as a Republican committeeman;

Whereas, at the age of 37, Edward Roy Becker was appointed to the United States District Court for the Eastern District of Pennsylvania in 1970, was then elevated to the Court of Appeals for the 3rd Circuit in 1982, was Chief Judge of the Court of Appeals for the 3rd Circuit from February 1998 until May 2003, and served as a Senior Judge until his passing on May 19, 2006;

Whereas, while serving as Chief Judge of the Court of Appeals for the 3rd Circuit, Edward Roy Becker authored many innovative and important opinions;

Whereas, in 2002, Edward Roy Becker received the coveted Edward J. Devitt Distinguished Service to Justice Award after being selected as the most distinguished Article III Judge in the United States ''whose career has been exemplary, measured by [his] significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole'';

Whereas, among his landmark decisions, the Supreme Court adopted 3 opinions rendered by Edward Roy Becker relating to cutting-edge issues, including the reliability of scientific evidence, the rationale of class action certification, and the standards of review relating to the Employee Retirement Income Security Act;

Whereas the University of Chicago Law Review has consistently recognized Edward Roy Becker as among the 3 circuit judges who are most often cited by the Supreme Court;

Whereas Edward Roy Becker handed down approximately 2,000 judicial opinions;

Whereas Edward Roy Becker devoted countless hours and a tremendous amount of effort for almost 3 years as an assistant to the Senate in drafting asbestos reform legislation, writing most of S. 852 (109th Congress) (commonly referred to as the ''Fairness in Asbestos Injury Resolution Act of 2005''), and holding over 50 meetings in Washington, D.C., with stakeholders and Senators;

Whereas President George W. Bush inscribed a tribute to Edward Roy Becker on the face of S. 852 (109th Congress) by designating it as the ''Becker Bill''; and

Whereas Edward Roy Becker undertook that arduous extra assignment in addition to his judicial duties, all while undergoing treatment for prostate cancer: Now, therefore, be it

Resolved, That the Senate—

(a) honors the life and accomplishments of Edward Roy Becker; and

(b) extends its condolences to the family and friends of Edward Roy Becker.

SENATE RESOLUTION 498—DESIGNATING THE WEEK BEGINNING MAY 21, 2006, AS ''NATIONAL HURRICANE PREPAREDNESS WEEK''

Mr. VITTER (for himself, Ms. LANDRIEU, Mr. SHELBY, and Mr. LOTT) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 498

Whereas the President has proclaimed that the week beginning May 21, 2006, shall be known as ''National Hurricane Preparedness Week'', and has called on government agencies, private organizations, schools, media, and residents in the coastal areas of the United States to share information about hurricane preparedness and response to help save lives and protect communities;

Whereas the official Atlantic hurricane season occurs from a period beginning June 1, 2006, and ending November 30, 2006;

Whereas hurricanes are among the most powerful forces of nature, causing destructive winds, tornadoes, floods, and storm surges that can result in numerous fatalities and cost billions of dollars in damage;

Whereas, in 2005, a record-setting Atlantic hurricane season caused 28 storms, including 15 hurricanes, of which 7 were major hurricanes, including Hurricanes Katrina, Rita, and Wilma;

Whereas the National Oceanic and Atmospheric Administration has predicted that between 13 to 16 storms will occur during the 2006 Atlantic hurricane season, with between 8 to 10 storms becoming hurricanes, of which between 4 to 6 storms could become major hurricanes of Category 3 strength or higher;

Whereas the National Oceanic and Atmospheric Administration reports that over 50 percent of the population of the United States lives in coastal counties that are vulnerable to the dangers of hurricanes;

Whereas, because the impact from hurricanes extends well beyond coastal areas, it is vital for individuals in hurricane prone areas to prepare in advance of the hurricane season;

Whereas cooperation between individuals and Federal, State, and local officials can help increase preparedness, save lives, reduce the impacts of each hurricane, and provide a more effective response to those storms;

Whereas the National Hurricane Center within the National Oceanic and Atmospheric Administration of the Department of Commerce recommends that each at-risk family of the United States develop a family disaster plan, create a disaster supply kit, and stay aware of current weather situations; and

Whereas the designation of the week beginning May 21, 2006, as ''National Hurricane Preparedness Week'' will help raise the awareness of the individuals of the United States to assist them in preparing for the upcoming hurricane season: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of the President in proclaiming the week beginning May 21, 2006, as ''National Hurricane Preparedness Week'';

(2) encourages the people of the United States—

(A) to be prepared for the upcoming hurricane season; and

(B) to promote awareness of the dangers of hurricanes to help save lives and protect communities; and

(3) recognizes—

(A) the threats posed by hurricanes; and

(B) the need for the individuals of the United States to learn more about preparedness so that they may minimize the impacts of, and provide a more effective response to, hurricanes.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Monday, June 12, 2006, at 2:30 p.m. in room SD–366 of the Dirksen Building.

The purpose of the hearing is to receive testimony regarding the implementation of Sections 641 through 645 of the Energy Policy Act of 2005, the Next Generation Nuclear Plant Project within the Department of Energy.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the, hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Clint Williamson at (202) 224–7556 or Steve Waskiewicz at (202) 228–6195.

A PRODUCTIVE WEEK

Mr. FRIST. Mr. President, over the next 20 minutes or so, we will be wrapping up what has been a very busy but very productive week, moving to a period which will begin with the celebration of this weekend, in the sense that a lot of people will be with families back at home, back with their constituents, back in their communities, but we will move very quickly to our Memorial Day recess. I will have a few statements to make, a few words to say on what will be going on, on Monday.

We have had a very successful week in the sense that we have completed another nomination thus far. We will have a few more in a little bit that we have agreed to on both sides. We have completed an immigration bill that we worked on for about a month—initially, for 2 weeks, then a pause, and then for the last 2 weeks—a bill that, as I said yesterday, does reflect the will of this body. Not everybody agrees with it. Not anybody, I think, agrees with everything in that legislation. But it is comprehensive legislation that demonstrates that we are governing, addressing the very real problems, real challenges that face us in America today.

MARRIAGE PROTECTION AMENDMENT

Mr. FRIST. When we come back we will deal with a range of issues. I will have a little more to say about that in a bit, but the first issue we will come back to has to do with another institution, the institution of marriage.

Throughout human history and culture, the union of a man and a woman has been recognized as the essential cornerstone of society. For millennia, marriage has served as a public act, a civil institution to bind men and women in the task of producing and nurturing their offspring. In some eras it has existed apart from romance, love, and mutual regard. In ours, we have embraced the ideal of marriage that deepens and enriches the bonds of love, that grows with every shared memory, endeavor, and challenge: husband and wife, father and mother, building a family and a community over a lifetime.

At its root, marriage is and always has been a public institution that formalizes that family bond—its intent to further the community's interest in successfully rearing the next generation of healthy and prosperous citizens. But now, this fundamental institution is under attack. There is a concerted effort underway to redefine marriage against millennia of human experience and against the expressed wishes of the American people. Activist courts are usurping the power to define this social institution. And if marriage is redefined for anyone, it is redefined for everyone.

The threat is real. Just last year voters in 13 States passed by enormous margins State constitutional amendments protecting marriage; 19 States have State constitutional amendments also to protect marriage, and 5 more States have amendments pending. In total, 45 States have either State constitutional amendments or laws to protect marriage.

Tennessee will give voters the opportunity to voice their opinions on the sanctity of marriage this November. It is one of seven States with similar amendments pending to their constitutions. If a marriage protection law passes in Tennessee, we will join those 45 other States that have approved legislation that defines marriage as a union between a man and a woman and, indeed, no State has ever rejected an effort to protect traditional marriage when it has been on the ballot.

So with this progress at the State level that expresses the overwhelming support of the American people, what is the problem? Why does it need to come to the floor of this body?

Voting for marriage on the State ballot is not enough to protect the institution. I need to explain. Because same sex marriage advocates cannot win at the ballot box, activists are continuing their campaign to convince State and Federal courts to rewrite traditional marriage laws. Currently, nine States have lawsuits pending challenging marriage laws. In five States, courts could redefine marriage by the end of the year—California, Maryland, New Jersey, New York, and Washington.

In California, Maryland, New York, and Washington, State trial courts have already followed Massachusetts and found the definition of marriage in their State constitutions unconstitutional. All these cases are on appeal.

Already we have seen a Federal judge in Nebraska overturn a democratically enacted Nebraska State constitutional amendment protecting marriage. That ruling is now under appeal in the Eighth Circuit. Another Federal case in Washington challenges the constitutionality of the Federal Defense of Marriage Act. The case is stayed, pending resolution of litigation in the Washington State Supreme Court.

Because of these attempts to overturn State laws and constitutional amendments, this Senate needs to act. The American people deserve a full debate on this foundational issue before marriage is redefined for everyone. That is why, when we return from the Memorial Day recess, I will bring the marriage protection amendment to the Senate floor to ensure the definition of marriage endures and remains true to the wishes of the majority of the American people.

The amendment is straightforward. The amendment is simple. It reads:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

That is it. It is simple, straightforward—it is two sentences. The truth is, on the question of marriage, the Constitution will be amended. The only question is whether it will be amended by Congress as the representative of the people or by judicial fiat. Will activist judges amend the Constitution or will the people amend the Constitution to preserve marriage as it has always been understood?

I say the people should have a voice. The American people have a right to settle the question of what marriage will be in the United States. Marriage is an issue that rightly belongs in the hands of the people, of the American people. So before the courts impose a vast, untested social experiment for which children will bear the ultimate consequence, let the people hold a thorough debate. The matter before us is critical. The debate before us is essential. Let it be held now for this and future generations of Americans, and let it ultimately lead the way forward.

MOTION TO PROCEED

Mr. President, I now move to proceed to Calendar No. 435, S.J. Res. 1, the marriage protection amendment.

I ask unanimous consent the Senate resume consideration of this motion to proceed immediately following any morning business period on Monday, June 5.

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, under the previous order, as in executive session, I ask unanimous consent that at 10:05 a.m. on Tuesday, June 6, the Senate proceed to executive session, with 10 minutes of debate equally divided between the chairman and ranking member, followed by a vote on the confirmation of the following judicial nomination on the Executive Calendar: Calendar No. 626, Renee Marie Bumb to be United States District Judge for the District of New Jersey; provided further that following the vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

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

PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE HOUSE AND SENATE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H. Con. Res. 418, the adjournment resolution; provided that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 418) was agreed to, as follows:

H. CON. RES. 418

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, May 25, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, June 6, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on any day from Thursday, May 25, 2006, through Sunday, May 28, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, June 5, 2006, or such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

MEASURE PLACED ON THE CALENDAR—S. 3064

Mr. FRIST. Mr. President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The clerk will read the bill for the second time by title.

The legislative clerk read as follows:

A bill (S. 3064) to express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

Mr. FRIST. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. The bill will be placed on the calendar.

MEASURES READ THE FIRST TIME EN BLOC—S. 3274, H.R. 5253, H.R. 5311, H.R. 5403, H.R. 5429

Mr. FRIST. Mr. President, I understand there are five bills at the desk, and I ask for their first readings en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title en bloc.

The legislation clerk read as follows:

A bill (S. 3274) to create a fair and efficient system to resolve claims of victims of bodily injury caused by asbestos exposure, and for other purposes.

A bill (H.R. 5253) to prohibit price gouging in the sale of gasoline, diesel fuel, crude oil, home heating oil, and for other purposes.

A bill (H.R. 5311) to establish the Upper Housatonie Valley National Heritage Area.

A bill (H.R. 5403) to improve protections for children and to hold States accountable for the safe and timely placement of children across State lines, and for other purposes.

A bill (H.R. 5429) to direct the Secretary of the Interior to establish and implement a competitive oil and gasoline leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, and for other purposes:

Mr. FRIST. Mr. President, I now ask for their second reading, and in order to place the bills on the calendar under the provisions of rule XIV, I object to my own requests en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will receive their second reading on the next legislative day.

JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Mr. FRIST. Mr. President, I ask unanimous consent the Committee on Veterans' Affairs be discharged from further consideration of H.R. 3829, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3829) to designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 3829) was ordered to a third reading, read the third time, and passed.

OPERATION READINESS IN CIVILIAN AGENCIES

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. 3322, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3322) to build operational readiness in civilian agencies, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

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

The bill (S. 3322) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 3322

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 ''Reconstruction and Stabilization Civilian Management Act of 2006''.

SEC. 2. FINDING; PURPOSE.

(a) FINDING.—Congress finds that the resources of the United States Armed Forces have been burdened by having to undertake stabilization and reconstruction tasks in the Balkans, Afghanistan, Iraq, and other countries of the world that could have been performed by civilians, which has resulted in

lengthy deployments for Armed Forces personnel.

(b) PURPOSE.—The purpose of this Act is to provide for the continued development, as a core mission of the Department of State and the United States Agency for International Development, of an effective expert civilian response capability to carry out reconstruction and stabilization activities in a country or region that is at risk of, in, or is in transition from, conflict or civil strife.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the United States Agency for International Development.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(3) DEPARTMENT.—Except as otherwise provided in this Act, the term ''Department'' means the Department of State.

(4) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of State.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the civilian element of United States joint civilian-military operations should be strengthened in order to enhance the execution of current and future reconstruction and stabilization activities in foreign countries or regions that are at risk of, in, or are in transition from, conflict or civil strife;

(2) the capability of civilian agencies of the United States Government to carry out reconstruction and stabilization activities in such countries or regions should also be enhanced through a new rapid response corps of civilian experts supported by the establishment of a new system of planning, organization, personnel policies, and education and training, and the provision of adequate resources;

(3) the international community, including nongovernmental organizations, and the United Nations and its specialized agencies, should be further encouraged to participate in planning and organizing reconstruction and stabilization activities in such countries or regions;

(4) the executive branch has taken a number of steps to strengthen civilian capability, including the establishment of an office headed by a Coordinator for Reconstruction and Stabilization in the Department, the Presidential designation of the Secretary as the interagency coordinator and leader of reconstruction and stabilization efforts, and Department of Defense directives to the military to support the Office of Reconstruction and Stabilization and to work closely with counterparts in the Department of State and other civilian agencies to develop and enhance personnel, training, planning, and analysis;

(5) the Secretary and the Administrator should work with the Secretary of Defense to augment existing personnel exchange programs among the Department, the United States Agency for International Development, and the Department of Defense, including the regional commands and the Joint Staff, to enhance the stabilization and reconstruction skills of military and civilian personnel and their ability to undertake joint operations; and

(6) the heads of other executive agencies should establish personnel exchange programs that are designed to enhance the stabilization and reconstruction skills of military and civilian personnel.

SEC. 5. AUTHORITY TO PROVIDE ASSISTANCE FOR RECONSTRUCTION AND STABILIZATION CRISES.

Chapter 1 of part III of the Foreign Assistance Act of 1961 (22 U.S.C. 2351 et seq.) is amended by inserting after section 617 the following new section:

''SEC. 618. ASSISTANCE FOR A RECONSTRUCTION AND STABILIZATION CRISIS.

''(a) AUTHORITY.—If the President determines that it is important to the national interests of the United States for United States civilian agencies or non-Federal employees to assist in stabilizing and reconstructing a country or region that is at risk of, in, or is in transition from, conflict or civil strife, the President may, in accordance with the provisions set forth in section 614(a)(3), notwithstanding any other provision of law, and on such terms and conditions as the President may determine, furnish assistance to respond to the crisis.

''(b) SPECIAL AUTHORITIES.—In furtherance of a determination made under subsection (a), the President may exercise the authorities contained in sections 552(c)(2) and 610 of this Act without regard to the percentage and aggregate dollar limitations contained in such sections.

''(c) AUTHORIZATION OF FUNDING.—

''(1) INITIAL AUTHORIZATION.—There is authorized to be appropriated, without fiscal year limitation, $75,000,000 in funds that may be used to provide assistance authorized in subsection (a) and, to the extent authorized under paragraph (2), for the purpose described in such paragraph.

''(2) AVAILABILITY OF FUNDS FOR RESPONSE READINESS CORPS.—Of the amount made available pursuant to paragraph (1) for fiscal year 2007, $25,000,000 may be made available for expenses related to the development, training, and operations of the Response Readiness Corps established under section 61(c) of the State Department Basic Authorities Act of 1956. The availability of such funds shall not be subject to a determination by the President under subsection (a).

''(3) REPLENISHMENT.—There is authorized to be appropriated each fiscal year such sums as may be necessary to replenish funds expended as provided under paragraph (1). Funds authorized to be appropriated under this paragraph shall be available without fiscal year limitation for the same purpose and under the same conditions as are provided under paragraph (1).''.

SEC. 6. OFFICE OF THE COORDINATOR FOR RECONSTRUCTION AND STABILIZATION.

Title I of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651 et seq.) is amended by adding at the end the following new section:

''SEC. 61. RECONSTRUCTION AND STABILIZATION.

''(a) OFFICE OF THE COORDINATOR FOR RECONSTRUCTION AND STABILIZATION.—

''(1) ESTABLISHMENT.—There is established within the Department of State the Office of the Coordinator for Reconstruction and Stabilization.

''(2) COORDINATOR FOR RECONSTRUCTION AND STABILIZATION.—The head of the Office shall be the Coordinator for Reconstruction and Stabilization, who shall be appointed by the President, by and with the advice and consent of the Senate. The Coordinator shall report directly to the Secretary and shall have the rank and status of Ambassador at Large.

''(3) FUNCTIONS.—The functions of the Office of the Coordinator for Reconstruction and Stabilization include the following:

''(A) Monitoring, in coordination with relevant bureaus within the Department of State, political and economic instability worldwide to anticipate the need for mobilizing United States and international assistance for the stabilization and reconstruction of countries or regions that are at risk of, in, or are in transition from, conflict or civil strife.

''(B) Assessing the various types of stabilization and reconstruction crises that could occur and cataloging and monitoring the non-military resources and capabilities of Executive agencies that are available to address such crises.

''(C) Planning to address requirements, such as demobilization, policing, human rights monitoring, and public information, that commonly arise in stabilization and reconstruction crises.

''(D) Coordinating with relevant Executive agencies (as that term is defined in section 105 of title 5, United States Code) to develop interagency contingency plans to mobilize and deploy civilian personnel to address the various types of such crises.

''(E) Entering into appropriate arrangements with other Executive agencies to carry out activities under this section and the Reconstruction and Stabilization Civilian Management Act of 2006.

''(F) Identifying personnel in State and local governments and in the private sector who are available to participate in the Response Readiness Corps or the Response Readiness Reserve established under subsection (b) or to otherwise participate in or contribute to stabilization and reconstruction activities.

''(G) Taking steps to ensure that training of civilian personnel to perform such stabilization and reconstruction activities is adequate and, as appropriate, includes security training that involves exercises and simulations with the Armed Forces, including the regional commands.

''(H) Sharing information and coordinating plans for stabilization and reconstruction activities, as appropriate, with the United Nations and its specialized agencies, the North Atlantic Treaty Organization, nongovernmental organizations, and other foreign national and international organizations.

''(I) Coordinating plans and procedures for joint civilian-military operations with respect to stabilization and reconstruction activities.

''(J) Maintaining the capacity to field on short notice an evaluation team to undertake on-site needs assessment.

''(b) RESPONSE TO STABILIZATION AND RECONSTRUCTION CRISIS.—If the President makes a determination regarding a stabilization and reconstruction crisis under section 618 of the Foreign Assistance Act of 1961, the President may designate the Coordinator, or such other individual as the President may determine appropriate, as the Coordinator of the United States response. The individual so designated, or, in the event the President does not make such a designation, the Coordinator for Reconstruction and Stabilization, shall—

''(1) assess the immediate and long-term need for resources and civilian personnel;

''(2) identify and mobilize non-military resources to respond to the crisis; and

''(3) coordinate the activities of the other individuals or management team, if any, designated by the President to manage the United States response.''.

SEC. 7. RESPONSE READINESS CORPS.

(a) IN GENERAL.—Section 61 of the State Department Basic Authorities Act of 1956 (as added by section 6) is amended by adding at the end the following new subsection:

''(c) RESPONSE READINESS CORPS.—

''(1) RESPONSE READINESS ACTIVE DUTY PERSONNEL.—

''(A) ESTABLISHMENT AND PURPOSE.—The Secretary, in consultation with the Administrator of the United States Agency for International Development, is authorized to establish a Response Readiness Corps (hereafter referred to in this section as the 'Corps') to provide assistance in support of stabilization and reconstruction activities in foreign countries or regions that are at risk of, in, or are in transition from, conflict or civil strife.

''(B) COMPOSITION.—The Secretary and Administrator of the United States Agency for International Development should coordinate in the recruitment, hiring, and training of—

''(i) up to 250 personnel to serve in the active duty Corps; and

''(ii) such other personnel as the Secretary, in consultation with the Administrator, may designate as members of the Corps from among employees of the Department of State and the United States Agency for International Development.

''(C) TRAINING.—The Secretary is authorized to train the members of the Corps to perform services necessary to carry out the purpose of the Corps under subparagraph (A).

''(D) COMPENSATION.—Members of the Corps hired under subparagraph (B)(i) shall be compensated in accordance with the appropriate salary class for the Foreign Service, as set forth in sections 402 and 403 of the Foreign Service Act of 1980 (22 U.S.C. 3962 and 22 U.S.C. 3963), or in accordance with the relevant authority under sections 3101 and 3392 of title 5, United States Code.

''(2) RESPONSE READINESS RESERVE DUTY PERSONNEL.—

''(A) ESTABLISHMENT AND PURPOSE.—The Secretary, in consultation with the heads of other relevant Executive agencies, is authorized to establish and maintain a roster of personnel who are trained and available as needed to perform services necessary to carry out the purpose of the Corps under paragraph (1)(A). The personnel listed on the roster shall constitute a reserve component of the Response Readiness Corps.

''(B) FEDERAL EMPLOYEES.—The Response Readiness reserve component may include employees of the Department of State, including Foreign Service Nationals, employees of the United States Agency for International Development, employees of any other Executive agency (as that term is defined in section 105 of title 5, United States Code), and employees from the legislative and judicial branches who—

''(i) have the training and skills necessary to enable them to contribute to stabilization and reconstruction activities; and

''(ii) have volunteered for deployment to carry out stabilization and reconstruction activities.

''(C) NON-FEDERAL PERSONNEL.—The Response Readiness reserve component should also include at least 500 personnel, which may include retired employees of the Federal Government, contractor personnel, nongovernmental organization personnel, and State and local government employees, who—

''(i) have the training and skills necessary to enable them to contribute to stabilization and reconstruction activities; and

''(ii) have volunteered to carry out stabilization and reconstruction activities.

''(3) USE OF RESPONSE READINESS CORPS.—

''(A) RESPONSE READINESS ACTIVE DUTY COMPONENT.—The members of the active duty Corps are authorized to be available—

''(i) if responding in support of stabilization and reconstruction activities pursuant to a determination by the President regarding a stabilization and reconstruction crisis under section 618 of the Foreign Assistance Act of 1961, for deployment in support of such activities; and

''(ii) if not responding as described in clause (i), for assignment in the United States, United States diplomatic missions, and United States Agency for International Development missions.

''(B) RESPONSE READINESS RESERVE COMPONENT.—The Secretary may deploy members of the reserve component under paragraph (2) in support of stabilization and reconstruction activities in a foreign country or region if the President makes a determination regarding a stabilization and reconstruction crisis under section 618 of the Foreign Assistance Act of 1961.''.

(b) EMPLOYMENT AUTHORITY.—The full-time personnel authorized to be employed in the Response Readiness Corps under section 61(c)(1)(B)(i) of the State Department Basic Authorities Act of 1956 (as added by subsection (a)) are in addition to any other full-time personnel of the Department or the United States Agency for International Development authorized to be employed under any other provision of law.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report on the status of efforts to establish the Response Readiness Corps under this section. The report should include recommendations for any legislation necessary to implement subsection (a).

SEC. 8. STABILIZATION AND RECONSTRUCTION TRAINING AND EDUCATION.

Section 701 of the Foreign Service Act of 1980 (22 U.S.C. 4021) is amended—

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

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

''(g) STABILIZATION AND RECONSTRUCTION CURRICULUM.—

''(1) ESTABLISHMENT AND MISSION.—The Secretary, in cooperation with the Secretary of Defense and the Secretary of the Army, is authorized to establish a stabilization and reconstruction curriculum for use in programs of the Foreign Service Institute, the National Defense University, and the United States Army War College.

''(2) CURRICULUM CONTENT.—The curriculum should include the following:

''(A) An overview of the global security environment, including an assessment of transnational threats and an analysis of United States policy options to address such threats.

''(B) A review of lessons learned from previous United States and international experiences in stabilization and reconstruction activities.

''(C) An overview of the relevant responsibilities, capabilities, and limitations of various Executive agencies (as that term is defined in section 105 of title 5, United States Code) and the interactions among them.

''(D) A discussion of the international resources available to address stabilization and reconstruction requirements, including resources of the United Nations and its specialized agencies, nongovernmental organizations, private and voluntary organizations, and foreign governments, together with an examination of the successes and failures experienced by the United States in working with such entities.

''(E) A study of the United States interagency system.

''(F) Foreign language training.

''(G) Training and simulation exercises for joint civilian-military emergency response operations.''.

SEC. 9. SERVICE RELATED TO STABILIZATION AND RECONSTRUCTION.

(a) PROMOTION PURPOSES.—Service in stabilization and reconstruction operations overseas, membership in the Response Readiness Corps under section 61(c) of the State Department Basic Authorities Act of 1956 (as added by section 7), and education and training in the stabilization and reconstruction curriculum established under section 701(g) of the Foreign Service Act of 1980 (as added by section 8) should be considered among the favorable factors for the promotion of employees of Executive agencies.

(b) PERSONNEL TRAINING AND PROMOTION.—The Secretary and the Administrator should take steps to ensure that, not later than 3 years after the date of the enactment of this Act, at least 10 percent of the employees of the Department and the United States Agency for International Development in the United States are members of the Response Readiness Corps or are trained in the activities of, or identified for potential deployment in support of, the Response Readiness Corps. The Secretary should provide such training as needed to Ambassadors and Deputy Chiefs of Mission.

(c) OTHER INCENTIVES AND BENEFITS.—The Secretary and the Administrator may establish and administer a system of awards and other incentives and benefits to confer appropriate recognition on and reward any individual who is assigned, detailed, or deployed to carry out stabilization or reconstruction activities in accordance with this Act.

SEC. 10. AUTHORITIES RELATED TO PERSONNEL.

(a) CONTRACTING AUTHORITY.—

(1) IN GENERAL.—The Secretary, or the Administrator with the concurrence of the Secretary, may enter into contracts to procure the services of nationals of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or aliens authorized to be employed in the United States as personal services contractors for the purpose of carrying out this Act, without regard to Civil Service or classification laws, for service in the Office of the Coordinator for Reconstruction and Stabilization or for service in foreign countries to assist in stabilizing and reconstructing a country or region that is at risk of, in, or is in transition from, conflict or civil strife.

(2) NOT EMPLOYEES.—Individuals performing services under contracts described in paragraph (1) shall not by virtue of performing such services be considered to be employees of the United States Government for purposes of any law administered by the Office of Personnel Management (except that the Secretary or Administrator may determine the applicability to such individuals of any law administered by the Secretary or Administrator concerning the performance of such services by such individuals).

(b) EXPERTS AND CONSULTANTS.—The Secretary and the Administrator may, to the extent necessary to obtain services without delay, employ experts and consultants under section 3109 of title 5, United States Code, for the purpose of carrying out this Act, without requiring compliance with any otherwise applicable requirements for that employment as the Secretary or Administrator may determine, except that such employment shall be terminated after 60 days if by that time the applicable requirements are not complied with.

(c) AUTHORITY TO ACCEPT AND ASSIGN DETAILS.—The Secretary is authorized to accept details or assignments of employees of Executive agencies, members of the uniformed services, and employees of State or

local governments on a reimbursable or non-reimbursable basis for the purpose of carrying out this Act. The assignment of an employee of a State or local government under this subsection shall be consistent with subchapter VI of chapter 33 of title 5, United States Code.

(d) DUAL COMPENSATION WAIVER FOR ANNUITANTS UNDER CIVIL SERVICE RETIREMENT SYSTEM AND FEDERAL EMPLOYEES RETIREMENT SYSTEM.—Notwithstanding sections 8344(i) and 8468(f) of title 5, United States Code, the Secretary or the head of another executive agency, as authorized by the Secretary, may waive the application of subsections (a) through (h) of such section 8344 and subsections (a) through (e) of such section 8468 with respect to annuitants under the Civil Service Retirement System or the Federal Employees Retirement System who are assigned, detailed, or deployed to assist in stabilizing and reconstructing a country or region that is at risk of, in, or is in transition from, conflict or civil strife during the period of their reemployment.

(e) INCREASE IN PREMIUM PAY CAP.—The Secretary, or the head of another executive agency as authorized by the Secretary, may compensate an employee detailed, assigned, or deployed to assist in stabilizing and reconstructing a country or region that is at risk of, in, or is in transition from, conflict or civil strife, without regard to the limitations on premium pay set forth in section 5547 of title 5, United States Code, to the extent that the aggregate of the basic pay and premium pay of such employee for a year does not exceed the annual rate payable for level II of the Executive Schedule.

(f) EXTENSION OF CERTAIN FOREIGN SERVICE BENEFITS.—The Secretary, or the head of another executive agency as authorized by the Secretary, may extend to any individuals assigned, detailed, or deployed to carry out stabilization and reconstruction activities in accordance with this Act, the benefits or privileges set forth in sections 412, 413, 704, and 901 of the Foreign Service Act of 1980 (22 U.S.C. 972, 22 U.S.C. 3973, 22 U.S.C. 4024, and 22 U.S.C. 4081) to the same extent and manner that such benefits and privileges are extended to members of the Foreign Service.

(g) COMPENSATORY TIME.—Notwithstanding any other provision of law, the Secretary may, subject to the consent of an individual who is assigned, detailed, or deployed to carry out stabilization and reconstruction activities in accordance with this Act, grant such individual compensatory time off for an equal amount of time spent in regularly or irregularly scheduled overtime work. Credit for compensatory time off earned shall not form the basis for any additional compensation. Any such compensatory time not used within 26 pay periods shall be forfeited.

(h) ACCEPTANCE OF VOLUNTEER SERVICES.—

(1) IN GENERAL.—The Secretary may accept volunteer services for the purpose of carrying out this Act without regard to section 1342 of title 31, United States Code.

(2) TYPES OF VOLUNTEERS.—Donors of voluntary services accepted for purposes of this section may include—

(A) advisors;

(B) experts;

(C) consultants; and

(D) persons performing services in any other capacity determined appropriate by the Secretary.

(3) SUPERVISION.—The Secretary shall—

(A) ensure that each person performing voluntary services accepted under this section is notified of the scope of the voluntary services accepted;

(B) supervise the volunteer to the same extent as employees receiving compensation for similar services; and

(C) ensure that the volunteer has appropriate credentials or is otherwise qualified to perform in each capacity for which the volunteer's services are accepted.

(4) APPLICABILITY OF LAW RELATING TO FEDERAL GOVERNMENT EMPLOYEES.—A person providing volunteer services accepted under this section shall not be considered an employee of the Federal Government in the performance of those services, except for the purposes of the following provisions of law:

(A) Chapter 81 of title 5, United States Code, relating to compensation for work-related injuries.

(B) Chapter 11 of title 18, United States Code, relating to conflicts of interest.

(5) APPLICABILITY OF LAW RELATING TO VOLUNTEER LIABILITY PROTECTION.—

(A) IN GENERAL.—A person providing volunteer services accepted under this section shall be deemed to be a volunteer of a nonprofit organization or governmental entity, with respect to the accepted services, for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

(B) INAPPLICABILITY OF EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.—Section 4(d) of such Act (42 U.S.C. 14503(d)) does not apply with respect to the liability of a person with respect to services of such person that are accepted under this section.

(i) AUTHORITY FOR OUTSIDE ADVISORS.—

(1) IN GENERAL.—The Secretary may establish temporary advisory commissions composed of individuals with appropriate expertise to facilitate the carrying out of this Act.

(2) INAPPLICABILITY OF FACA.—The requirements of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of a commission established under this subsection.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $80,000,000 for fiscal year 2007 for personnel, education and training, equipment, and travel costs for purposes of carrying out this Act and the amendments made by this Act.

COMMENDING THE KANSAS CITY, KANSAS, COMMUNITY COLLEGE DEBATE TEAM

Mr. FRIST. I ask unanimous consent the Senate now proceed to consideration of S. Res. 496, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 496) commending the Kansas City, Kansas, Community College Debate Team for their national championship victories.

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWNBACK. Mr. President, I rise today to voice my support for the Kansas City Kansas Community College Debate Team. The team, under the leadership of Head Coach Darren Elliot, recently won, for a third consecutive year, the three national championships in collegiate debate among community colleges. I congratulate Coach Elliot, along with each assistant coach and team member, on their tremendous success. Their dedication to education and intercollegiate debate is truly commendable.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 496) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 496

Whereas, in 2006, the Kansas City Kansas Community College debate team won, for a third consecutive year, the 3 national championships in collegiate debate among community colleges;

Whereas the team won a third consecutive national championship at the Phi Rho Pi national tournament for community colleges in 2006;

Whereas, at the 2006 Phi Rho Pi national tournament for community colleges, the team achieved more debate victories per tournament than any other team in the esteemed history of the tournament;

Whereas the team won championship awards in the Policy Team Debate, Lincoln-Douglas Debate, and Overall Sweepstakes at the Phi Rho Pi national tournament for community colleges in 2006;

Whereas the team won a third consecutive national championship for community colleges at the Cross Examination Debate Association National Tournament in 2006; and

Whereas the State of Kansas is privileged to benefit from the dedication to education and intercollegiate debate of Kansas City Kansas Community College team head coach Darren Elliot, assistant coaches Skippy Flynn and Adrian Self, and team members Ashley-Michelle Bruce, Ryan Coyne, Clay Crockett, Peter Lawson, Candace Moore, Amanda Montee, Deandre Tolbert, and Garrett Tuck: Now, therefore, be it

Resolved, That the Senate—

(1) commends the extraordinary contributions of the Kansas City Kansas Community College debate team to the city of Kansas City, Kansas, and the State of Kansas;

(2) congratulates the team for their national championship victories; and

(3) offers its best wishes to the team for future success.

RELATIVE TO THE DEATH OF EDWARD ROY BECKER

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 497, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 497) relative to the death of Edward Roy Becker, Chief Judge of the Court of Appeals for the 3rd Circuit.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The Resolution (S. Res. 497) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 497

Whereas Edward Roy Becker was born on May 4, 1933, in Philadelphia, Pennsylvania;

Whereas Edward Roy Becker enjoyed an extraordinary career as a leading jurist in the United States;

Whereas Edward Roy Becker graduated Phi Beta Kappa from the University of Pennsylvania in 1954 and received his law degree from Yale Law School in 1957 with academic distinction;

Whereas, following his graduation from law school, Edward Roy Becker managed a distinguished law practice at the partnership of Becker, Becker, and Fryman with his father and brother-in-law;

Whereas Edward Roy Becker was active in politics, and followed his father as a Republican committeeman;

Whereas, at the age of 37, Edward Roy Becker was appointed to the United States District Court for the Eastern District of Pennsylvania in 1970, was then elevated to the Court of Appeals for the 3rd Circuit in 1982, was Chief Judge of the Court of Appeals for the 3rd Circuit from February 1998 until May 2003, and served as a Senior Judge until his passing on May 19, 2006;

Whereas, while serving as Chief Judge of the Court of Appeals for the 3rd Circuit, Edward Roy Becker authored many innovative and important opinions;

Whereas, in 2002, Edward Roy Becker received the coveted Edward J. Devitt Distinguished Service to Justice Award after being selected as the most distinguished Article III Judge in the United States ''whose career has been exemplary, measured by [his] significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole'';

Whereas, among his landmark decisions, the Supreme Court adopted 3 opinions rendered by Edward Roy Becker relating to cutting-edge issues, including the reliability of scientific evidence, the rationale of class action certification, and the standards of review relating to the Employee Retirement Income Security Act;

Whereas the University of Chicago Law Review has consistently recognized Edward Roy Becker as among the 3 circuit judges who are most often cited by the Supreme Court;

Whereas Edward Roy Becker handed down approximately 2,000 judicial opinions;

Whereas Edward Roy Becker devoted countless hours and a tremendous amount of effort for almost 3 years as an assistant to the Senate in drafting asbestos reform legislation, writing most of S. 852 (109th Congress) (commonly referred to as the ''Fairness in Asbestos Injury Resolution Act of 2005''), and holding over 50 meetings in Washington, D.C., with stakeholders and Senators;

Whereas President George W. Bush inscribed a tribute to Edward Roy Becker on the face of S. 852 (109th Congress) by designating it as the ''Becker Bill''; and

Whereas Edward Roy Becker undertook that arduous extra assignment in addition to his judicial duties, all while undergoing treatment for prostate cancer: Now, therefore, be it

Resolved, That the Senate—

(a) honors the life and accomplishments of Edward Roy Becker; and

(b) extends its condolences to the family and friends of Edward Roy Becker.

SIGNING AUTHORIZATION

Mr. FRIST. Mr. President, I ask unanimous consent that during the adjournment of the Senate, the majority leader and the senior Senator from Virginia be authorized to sign duly enrolled bills or joint resolutions.

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

APPOINTMENT AUTHORIZATION

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the upcoming recess or adjournment of the Senate, the President of the Senate, the President pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

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

MEMORIAL DAY

Mr. FRIST. Mr. President, on May 30, 1868, mourners placed flowers on the graves of Union and Confederate soldiers at Arlington National Cemetery in Washington, DC. This marked the first observance of Memorial Day.

On Monday, America will continue this tradition by honoring our Nation's fallen soldiers in ceremonies across the country.

Ever since GEN George Washington defeated the British at Yorktown, American soldiers have honorably defended the cause of liberty in conflicts at home and, indeed, around the world.

Today, our men and women in uniform are bravely waging the war on terror, taking the battle to the enemy so that the enemy does not do battle here at home.

America thanks our soldiers for their dedication, for their determination, and for their patriotism. We honor the 25 million living veterans who have served their country in past wars with honor and courage. And we remember those patriots who have given the ultimate sacrifice in service to their country.

Two years ago, I had the privilege of attending the dedication of the National World War II Memorial. It was the largest gathering of surviving veterans in 60 years and an experience I will never forget. One of the veterans was asked how did they do it, how did ordinary young men set aside their fear in the face of extraordinary odds against determined enemies. The veteran replied simply:

There's nothing else you can do but do your best and keep firing until the ammunition runs out.

One of the inscriptions on the monument is a quote by President Truman. It embodies the patriotic spirit of this annual remembrance. It reads:

Our debt to the heroic men and valiant women in the service of our country can never be repaid. They have earned our undying gratitude. America will never forget their sacrifices.

So on Monday, we remember, we honor, and we respect America's heroes, the men and women who did their best, and we repay in small measure the debt we owe them for their service and their sacrifice.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Nos. 443, 573, 590, 591, 592, 593, 595, 615, 629, 640, 664, 665, 615, 640, 666, 667, 668, 669, 671, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 694, 695, 696, 697, 698, 700, 701, 702, and 703 and all nominations on the Secretary's desk; provided further that the Commerce Committee be discharged from further consideration of four lists of Coast Guard nominations at the desk and the Senate proceed to their consideration; I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF ENERGY

Edward F. Sproat III, of Pennsylvania, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

Raymond L. Orbach, of California, to be Under Secretary for Science, Department of Energy. (New Position)

DEPARTMENT OF TRANSPORTATION

Roger Shane Karr, of the District of Columbia, to be an Assistant Secretary of Transportation.

Tyler D. Duvall, of Virginia, to be an Assistant Secretary of Transportation.

Nicole R. Nason, of Virginia, to be Administrator of the National Highway Traffic Safety Administration.

Thomas J. Barrett, of Alaska, to be Administrator of the Pipeline and Hazardous Materials Safety Administration, Department of Transportation. (New Position)

FEDERAL COMMUNICATIONS COMMISSION

Robert M. McDowell, of Virginia, to be a Member of the Federal Communications Commission for a term of five years from July 1, 2004.

DEPARTMENT OF TRANSPORTATION

Richard Capka, of Pennsylvania, to be Administrator of the Federal Highway Administration.

Susan Davis Wigenton, of New Jersey, to be United States District Judge for the District of New Jersey.

W. Ralph Basham, of Virginia, to be Commissioner of Customs, Department of Homeland Security.

DEPARTMENT OF HOMELAND SECURITY

David L. Norquist, of Virginia, to be Chief Financial Officer, Department of Homeland Security.

OFFICE OF GOVERNMENT ETHICS

Robert Irwin Cusick, Jr., of Kentucky, to be Director of the Office of Government Ethics for a term of five years.

EXECUTIVE OFFICE OF THE PRESIDENT

Robert J. Portman, of Ohio, to be Director of the Office of Management and Budget.

NUCLEAR REGULATORY COMMISSION

Gregory B. Jaczko, of the District of Columbia, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2008.

Gregory B. Jaczko, of the District of Columbia, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2008.

Peter B. Lyons, of Virginia, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2009.

NUCLEAR REGULATORY COMMISSION

Dale Klein, of Texas, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2011.

DEPARTMENT OF STATE

Duane Acklie, of Nebraska, to be an Alternate Representative of the United States of America to the Sixtieth Session of the General Assembly of the United Nations.

Goli Ameri, of Oregon, to be a Representative of the United States of America to the Sixtieth Session of the General Assembly of the United Nations.

Robert C. O'Brien, of California, to be an Alternate Representative of the United States of America to the Sixtieth Session of the General Assembly of the United Nations.

Rajkumar Chellaraj, of Texas, to be an Assistant Secretary of State (Administration).

Patricia P. Brister, of Louisiana, for the rank of Ambassador during her tenure of service as the Representative of the United States of America on the Commission on the Status of Women of the Economic and Social Council of the United Nations.

Warren W. Tichenor, of Texas, to be Representative of the United States of America to the Office of the United Nations and Other International Organizations in Geneva, with the rank of Ambassador.

Daniel S. Sullivan, of Alaska, to be an Assistant Secretary of State (Economic and Business Affairs).

Robert F. Godec, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tunisia.

Mark C. Minton, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mongolia.

Michael D. Kirby, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Moldova.

Lisa Bobbie Schreiber Hughes, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Suriname.

David M. Robinson, of Connecticut, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Co-operative Republic of Guyana.

John A. Cloud, Jr., of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lithuania.

Robert S. Ford, of Maryland, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Democratic Republic of Algeria.

Anne E. Derse, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Azerbaijan.

April H. Foley, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Hungary.

Tracey Ann Jacobson, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tajikistan.

Robert Anthony Bradtke, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Croatia.

William B. Taylor, Jr., of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Ukraine.

Michael Wood, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Sweden.

NATIONAL INSTITUTE OF BUILDING SCIENCES

William Hardiman, of Michigan, to be a Member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 2006.

SECURITIES INVESTOR PROTECTION CORPORATION

Armando J. Bucelo, Jr., of Florida, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 2008. (Reappointment)

Todd S. Farha, of Florida, to be a Director of the Securities Investor Protection Corporation for the remainder of the term expiring December 31, 2006.

Todd S. Farha, of Florida, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 2009. (Reappointment)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

John W. Cox, of Texas, to be Chief Financial Officer, Department of Housing and Urban Development.

DEPARTMENT OF JUSTICE

Gary D. Orton, of Nevada, to be United States Marshal for the District of Nevada for the term of four years.

Erik C. Peterson, of Wisconsin, to be United States Attorney for the Western District of Wisconsin for the term of four years.

GENERAL SERVICES ADMINISTRATION

Lurita Alexis Doan, of Virginia, to be Administrator of General Services.

DEPARTMENT OF HOMELAND SECURITY

R. David Paulison, of Florida, to be Under Secretary for Federal Emergency Management, Department of Homeland Security.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

FOREIGN SERVICE

PN1331 Foreign Service nominations (87) beginning Brent Royal Bohne, and ending William J. Booth, which nominations were received by the Senate and appeared in the Congressional Record of February 17, 2006.

PN1425 Foreign Service nominations (4) beginning Craig B. Allen, and ending Daniel D. DeVito, which nominations were received by the Senate and appeared in the Congressional Record of March 30, 2006.

PN1456 Foreign Service nominations (322) beginning Anita Katial, and ending Scott R. Reynolds, which nominations were received by the Senate and appeared in the Congressional Record of April 24, 2006.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

To be lieutenant

Christiaan H. Van Westendorp

To be ensign

Mary A. Barber
Matthew P. Berg
Christopher W. Daniels
Matthew C.Davis
Nathan P. Eldridge
Francisco J. Fuenmayor
Matthew Glazewski
David M. Gothan
Sarah A. T. Harris
Meghan E. McGovern
Damian M. Ray
Lecia M. Salerno
Raul Vasquez Del Mercado
William G. Winner
Victoria E. Zalewski

UNITED STATES COAST GUARD

To be lieutenant (junior grade)

Thea Iacomino, 2763

UNITED STATES COAST GUARD

To be commander

Max A. Caruso, 9694

To be lieutenant

Josh L. Bauer, 9532

UNITED STATES COAST GUARD

To be lieutenant (junior grade)

Mark Molavi, 0397
Andrew G. Schanno, 6070

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDERS FOR MONDAY, JUNE 5, 2006

Mr. PRESIDENT. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment under the provisions of H. Con. Res. 418 until 2 p.m. on Monday, June 5. I further ask 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 resume consideration of the motion to proceed to S. Res. 1, the marriage protection amendment.

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

PROGRAM

Mr. FRIST. Mr. President, today, we confirmed Brett Kavanaugh to the DC Circuit, we confirmed General Hayden as CIA Director, and we confirmed a former colleague, Dirk Kempthorne, as Secretary of the Interior. In addition, we were able to confirm several nominations by unanimous consent.

We have had a productive stretch in the last few weeks that we have been in session. Yesterday, we did pass the comprehensive immigration reform bill after a total of 4 weeks of good debate. Again, I congratulate the managers of the bill for their dedicated work in moving the bill along for passage. I congratulate Senators MCCAIN and KENNEDY, Senators MARTINEZ and HAGEL, and the entire Judiciary Committee which generated the bill, and all of my colleagues for their participation and active debate with amendments.

When we return from the Memorial Day recess, we will continue on the

motion to proceed to the marriage protection amendment. The first vote of the week will occur in the morning on Tuesday, June 6. That vote will be on a district judge nomination.

As we head in into the Memorial Day recess, we honor all who have died serving our great Nation.

ADJOURNMENT UNTIL MONDAY, JUNE 5, 2006, AT 2 P.M.

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 provisions of H. Con. Res 418.

There being no objection, the Senate, at 3:03 p.m., adjourned until Monday, June 5, 2006, at 2 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 26, 2006:

DEPARTMENT OF ENERGY

EDWARD F. SPROAT III, OF PENNSYLVANIA, TO BE DIRECTOR OF THE OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT, DEPARTMENT OF ENERGY.

RAYMOND L. ORBACH, OF CALIFORNIA, TO BE UNDER SECRETARY FOR SCIENCE, DEPARTMENT OF ENERGY.

DEPARTMENT OF TRANSPORTATION

ROGER SHANE KARR, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION.

TYLER D. DUVALL, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION.

NICOLE R. NASON, OF VIRGINIA, TO BE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

THOMAS J. BARRETT, OF ALASKA, TO BE ADMINISTRATOR OF THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION.

FEDERAL COMMUNICATIONS COMMISSION

ROBERT M. MCDOWELL, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF FIVE YEARS FROM JULY 1, 2004.

DEPARTMENT OF TRANSPORTATION

RICHARD CAPKA, OF PENNSYLVANIA, TO BE ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION.

DEPARTMENT OF THE INTERIOR

DIRK KEMPTHORNE, OF IDAHO, TO BE SECRETARY OF THE INTERIOR.

DEPARTMENT OF HOMELAND SECURITY

W. RALPH BASHAM, OF VIRGINIA, TO BE COMMISSIONER OF CUSTOMS, DEPARTMENT OF HOMELAND SECURITY.

DAVID L. NORQUIST, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOMELAND SECURITY.

OFFICE OF GOVERNMENT ETHICS

ROBERT IRWIN CUSICK, JR., OF KENTUCKY, TO BE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS FOR A TERM OF FIVE YEARS.

EXECUTIVE OFFICE OF THE PRESIDENT

ROBERT J. PORTMAN, OF OHIO, TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.

NUCLEAR REGULATORY COMMISSION

GREGORY B. JACZKO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2008.

GREGORY B. JACZKO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2008 (RECESS APPOINTMENT).

PETER B. LYONS, OF VIRGINIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2009 (RECESS APPOINTMENT).

DALE KLEIN, OF TEXAS, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 30, 2011.

CENTRAL INTELLIGENCE AGENCY

GENERAL MICHAEL V. HAYDEN, UNITED STATES AIR FORCE, TO BE
DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

DEPARTMENT OF STATE

DUANE ACKLIE, OF NEBRASKA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SIXTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

GOLI AMERI, OF OREGON, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SIXTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

ROBERT C. O'BRIEN, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SIXTIETH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

RAJKUMAR CHELLARAJ, OF TEXAS, TO BE AN ASSISTANT SECRETARY OF STATE (ADMINISTRATION).

PATRICIA P. BRISTER, OF LOUISIANA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE COMMISSION ON THE STATUS OF WOMEN OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

WARREN W. TICHENOR, OF TEXAS, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE OFFICE OF THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA, WITH THE RANK OF AMBASSADOR.

DANIEL S. SULLIVAN, OF ALASKA, TO BE AN ASSISTANT SECRETARY OF STATE (ECONOMIC AND BUSINESS AFFAIRS).

ROBERT F. GODEC, OF VIRGINIA, TO BE AMBASSADOR TO THE REPUBLIC OF TUNISIA.

MARK C. MINTON, OF FLORIDA, TO BE AMBASSADOR TO MONGOLIA.

MICHAEL D. KIRBY, OF VIRGINIA, TO BE AMBASSADOR TO THE REPUBLIC OF MOLDOVA.

LISA BOBBIE SCHREIBER HUGHES, OF PENNSYLVANIA, TO BE AMBASSADOR TO THE REPUBLIC OF SURINAME.

DAVID M. ROBINSON, OF CONNECTICUT, TO BE AMBASSADOR TO THE CO-OPERATIVE REPUBLIC OF GUYANA.

JOHN A. CLOUD, JR., OF VIRGINIA, TO BE AMBASSADOR TO THE REPUBLIC OF LITHUANIA.

ROBERT S. FORD, OF MARYLAND, TO BE AMBASSADOR TO THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA.

ANNE E. DERSE, OF MARYLAND, TO BE AMBASSADOR TO THE REPUBLIC OF AZERBAIJAN.

APRIL H. FOLEY, OF NEW YORK, TO BE AMBASSADOR TO THE REPUBLIC OF HUNGARY.

TRACEY ANN JACOBSON, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR TO THE REPUBLIC OF TAJIKISTAN.

ROBERT ANTHONY BRADTKE, OF MARYLAND, TO BE AMBASSADOR TO THE REPUBLIC OF CROATIA.

WILLIAM B. TAYLOR, JR., OF VIRGINIA, TO BE AMBASSADOR TO UKRAINE.

MICHAEL WOOD, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR TO SWEDEN.

NATIONAL INSTITUTE OF BUILDING SCIENCES

WILLIAM HARDIMAN, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL INSTITUTE OF BUILDING SCIENCES FOR A TERM EXPIRING SEPTEMBER 7, 2006.

SECURITIES INVESTOR PROTECTION CORPORATION

ARMANDO J. BUCELO, JR., OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 2008.

TODD S. FARHA, OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 31, 2006.

TODD S. FARHA, OF FLORIDA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 2009.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

JOHN W. COX, OF TEXAS, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

GENERAL SERVICES ADMINISTRATION

LURITA ALEXIS DOAN, OF VIRGINIA, TO BE ADMINISTRATOR OF GENERAL SERVICES.

DEPARTMENT OF HOMELAND SECURITY

R. DAVID PAULISON, OF FLORIDA, TO BE UNDER SECRETARY FOR FEDERAL EMERGENCY MANAGEMENT, DEPARTMENT OF HOMELAND SECURITY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

SUSAN DAVIS WIGENTON, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY.

BRETT M. KAVANAUGH, OF MARYLAND, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

GEN. MICHAEL V. HAYDEN

DEPARTMENT OF JUSTICE

GARY D. ORTON, OF NEVADA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF NEVADA FOR THE TERM OF FOUR YEARS.

ERIK C. PETERSON, OF WISCONSIN, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WISCONSIN FOR THE TERM OF FOUR YEARS.

IN THE COAST GUARD

COAST GUARD NOMINATION OF THEA IACOMINO TO BE LIEUTENANT (JUNIOR GRADE).

COAST GUARD NOMINATIONS BEGINNING WITH MAX A. CARUSO AND ENDING WITH JOSH L. BAUER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 23, 2006.

COAST GUARD NOMINATIONS BEGINNING WITH MARK MOLAVI AND ENDING WITH ANDREW G. SCHANNO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MAY 23, 2006.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NOMINATIONS BEGINNING WITH CHRISTIAAN H. VAN WESTENDORP AND ENDING WITH VICTORIA E. ZALEWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 30, 2006.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING WITH BRENT ROYAL BOHNE AND ENDING WITH WILLIAM J. BOOTH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 17, 2006.

FOREIGN SERVICE NOMINATIONS BEGINNING WITH CRAIG B. ALLEN AND ENDING WITH DANIEL D. DE VITO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 30, 2006.

FOREIGN SERVICE NOMINATIONS BEGINNING WITH ANITA KATIAL AND ENDING WITH SCOTT R. REYNOLDS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 24, 2006.