

(A) in paragraphs (1), (2)(A), (2)(B), (2)(C), and (2)(D) by striking “H1-B and L” each place it appears;

(B) in paragraph (1), as amended by subparagraph (A), by striking “section 214(c)(12)” and inserting “paragraph (12) or (13) of section 214(c)”;

(C) in paragraphs (2)(A)(i) and (2)(B), as amended by subparagraph (A), by striking “(H)(i)” each place it appears and inserting “(H)(i), (H)(ii),”; and

(D) in paragraph (2)(D), as amended by subparagraph (A), by inserting before the period at the end “or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(ii)”.

(2) CONFORMING AMENDMENT.—The heading of such subsection 286 is amended by striking “H1-B AND L”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2005.

SEC. 7004. SANCTIONS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 3, is further amended by adding at the end the following:

“(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

“(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

“(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

“(iii) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

“(iv) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

“(v) In this paragraph, the term ‘substantial failure’ means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2005.

SEC. 7005. ALLOCATION OF H-2B VISAS DURING A FISCAL YEAR.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 7002, is further amended by adding at the end the following new paragraph:

“(j) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens who enter the United States pursuant to a visa or other provision of nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.”.

SEC. 7006. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H-2B NON-IMMIGRANTS.

Section 416 of the American Competitiveness and Workforce Improvement Act of 1998

(title IV of division C of Public Law 105-277; 8 U.S.C. 1184 note) is amended—

(1) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”; and

(2) by adding at the end the following new subsection:

“(d) PROVISION OF INFORMATION.—

“(1) QUARTERLY NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of House of Representatives of the number of aliens who during the preceding 1-year period—

“(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

“(B) had such a visa or such status expire or be revoked or otherwise terminated.

“(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

“(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

“(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

“(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

“(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.”.

Ms. MIKULSKI. Mr. President, today I rise to offer an amendment that is desperately needed by small and seasonal business throughout the country. This amendment is identical to the bipartisan bill I introduced in February called Save Our Small and Seasonal Business Act. It is designed to be a 2-year temporary solution to the seasonal worker shortage that many coastal States and resort States are facing.

I wish to acknowledge the need for comprehensive immigration reform, but right now small and seasonal businesses all over this Nation are in crisis and need our help. These businesses need seasonal workers before the summer begins so they can survive.

For years, they have relied on something called the H-2B visa program to meet their needs. This is a temporary guest worker program. But this year they cannot get the temporary labor they need because they have been shut out of the H-2B visa program because the cap has been reached. This is a program that lets businesses hire temporary guest workers when no American workers are available.

This amendment modeled after the Save Our Small and Seasonal Business helps employers by doing four things:

It temporarily exempts the good actor workers—those who do return home after they have worked a season—from the H-2B cap. Employers apply for and actually name those good compliant workers who have complied with the law, they name them so that they are allowed them to reenter for this temporary period.

It protects against fraud within the H-2B program.

It provides a fair and balanced allocation for the H-2B visas.

And it reports to Congress how the program is working and where the beneficiaries are.

I urge my colleagues to help small businesses by passing this amendment and save these businesses and actually save thousands of American jobs.

Thousands of small and seasonal businesses are facing a worker shortage as we approach the summer. In my home State, this is primarily in the seafood industry. This year, because the cap of 66,000 workers was reached earlier in the year, my small businesses have been effectively shut out. We have had a lot of summer seasonal business in Maryland on the Eastern Shore and Ocean City, people working on the Chesapeake Bay, and many of these businesses use the program year after year.

First of all, they do hire American workers. They hire all the American workers they can find. But at this time of the year, we need additional help to meet seasonal demands. Because that cap was reached for the second year in a row, I might add, these employers are at a disadvantage. They cannot use the program. What will it mean? It will mean that some of our businesses will actually have to close their doors.

My amendment is supported on both sides of the aisle. It does not change existing requirements for employers. Employers cannot just turn to the H-2B visa whenever they want. First of all, employers must try vigorously to recruit those workers. Then they must demonstrate to the Department of Labor that they have no U.S. workers available. Only after that are they allowed to fill seasonal vacancies with the H-2B visas.

The workers they bring in often participate in the program year after year. They often work for the same companies. They do not stay in the United States and are prohibited by law from doing so. They return to their home country, to their families, and their U.S. employer starts all over the following year.

Let me just say this: Right now in certain villages in Mexico, there are many women—mothers and their adult daughters, aunts—who are packing their bags. They are ready to come back to Maryland where they have come before to work in Clayton Seafood or Phillips Crab House, which so many of you have enjoyed in your visits to the bay, or Harrison’s seafood. Some of them have been in business 100 years. Some of them are major employers. A lot of college kids work their way through college working at Phillips Seafood, but Phillips Seafood

needs these guest workers to help these kids and to help the restaurant stay open.

These workers are not taking the jobs, they are helping American workers keep their jobs and American companies keep their doors open and, I might add, to the delight of many of you here, to the delight of people who enjoy our products, and to the delight of the people who collect the sales tax, Social Security, and so on from those American workers.

I know we need comprehensive reform, but while we are waiting for that, I have a temporary fix. By the way, working with my colleagues on both sides of the aisle, we looked for regulatory relief. We consulted with the Department of Labor and the Department of Homeland Security. Secretary Chao could not have been more gracious, more cooperative, more forthcoming, but when it came down to it, her legislative counsel said, you need to change the law. She could not change the regulations on this cap.

What does my amendment do? First, my amendment continues to protect those American jobs. It is a short-term fix because it is a 2-year solution. This amendment will only be in place for 2 years. So it allows this comprehensive reform to go forward.

What it does is exempt returning seasonal workers from the cap. That means there are no new workers. It means those people who have worked before and have gone back home are the only ones who would be eligible. In other words, in the last 3 years, they had to have worked here under the law, come in under the law, and returned home as the law requires. So it is not new people. It is not an amnesty program. It is an employment program for them and for us. These workers receive a visa, and it requires their employers to list them by name. So in all probability, they will return to the same employer. Then, at the end of the year, they will do it all over again. Remember, the only people eligible are those who have used the program in the past—the employer and the actual person coming in.

I worry about fraud, too. So we have an antifraud fee that ensures that Government agencies processing the H-2B visa will get added resources in their new sanctions. The bill creates a fair allocation of visas. Some summer businesses lose out because winter employers get all the visas. This will make the system more fair. We also simplified the reporting requirements.

I could give example after example of businesses that have been impacted. Clayton Seafood started over a century ago. They work the water of the bay supplying crab, crabmeat, and seafood. It is the oldest working crab processing plant in the world, and by employing 65 H-2B visa workers they have been able to retain all of their full-time workers.

The Friel Cannery, which began its business over 100 years ago, is the last corn cannery left out of 300. When they

could not find local workers, they turned to the H-2B visa. Since then, that business is open and thriving. Each year this program helps the company not only maintain its workforce, but 75 Americans have good paying full-time jobs in accounting and marketing and other areas, and it keeps 190 seasonal workers going and 70 farmers who would not have a cannery to go to are also able to keep their jobs.

So that is what my legislation is all about. It is a quick and simple legislative remedy. It has strong bipartisan support. It is realistic. It is specific. It is immediate, achievable, and does not exacerbate our immigration problem.

Every Member of the Senate who has heard from their constituents, whether they are seafood processors, landscapers, or other people in resort areas, know the urgency in their voice. They know the immediacy of the problem. Our companies feel urgency. They feel immediacy. They feel desperation.

I urge my colleagues to join me in passing this amendment and keeping the doors of American companies open while we also maintain control of our borders.

Mr. KENNEDY. Will the Senator yield for a question?

Ms. MIKULSKI. I yield to the Senator from Massachusetts.

Mr. KENNEDY. I, first, commend Senator MIKULSKI, and I see the Senator from Maine, Ms. COLLINS, and others who have been interested in this issue. Am I right that the earlier numbers by and large have been taken up primarily by winter tourism? The time for application comes at the time of the year when great numbers are taken up for the winter tourism, which has happened historically, and what we are trying to do with the Senator's amendment is to treat the summer tourism and the summer needs on an even playing field, as they are in my own State, which are primarily smaller mom-and-pop stores and some very small hotels that need that. So this basically creates a more even playing field, as I understand, between those who would be taken in the wintertime and those who need the help in the summer, No. 1; am I correct?

Ms. MIKULSKI. The Senator from Massachusetts has accurately assessed what has created the crisis: that given the time of application and when they want the people to work, the winter needs then take up practically all 66,000. We acknowledge our colleagues who do need the winter help, but we need their help for the summer help. You are also correct that my legislation would create a more even playing field between the two and, again, this is a temporary legislative remedy while we assess the entire situation of the need for comprehensive reform, how we keep American jobs, how we keep American companies open, and yet retain control of our borders.

Mr. KENNEDY. Am I correct this is a rather modest increase in terms of the demand? In my own State, the numbers

are approximately 6,000 for the summertime. The numbers the Senator has are going to be nationwide, so this is very modest based upon the need. The final point which the Senator has emphasized, but I think it is very important to underline, is these are people who have been here before, who have gone home and came back and therefore have demonstrated over the course of their life that they return back home and are in conformity with both the immigration and labor laws that exist today.

Ms. MIKULSKI. The Senator, again, has made an accurate assessment. This bill is only applicable to employers and guest workers who have complied with the law. If a worker has not been here before and they have not demonstrated that they have complied with the law, not returned to their home country, they would not be eligible. That is why I say we need to help American business but keep control of the border.

Mr. KENNEDY. I thank the Senator for her response and urge my colleagues to give strong support for her amendment.

Ms. MIKULSKI. I thank the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as many are well aware, the cap in current law on the number of H-2B visas is too restrictive, and it's imposing needless hardships on many businesses that rely on seasonal workers to meet the heavy demands of the tourism industry. Once again, these small industries are facing a crisis this summer if the number of visas isn't increased immediately. Senator MIKULSKI's timely amendment will provide the much-needed relief they deserve, and I urge the Senate to support it.

For several years in a row, the cap has created a crisis for the tourism industry in Massachusetts and nationwide. Countless small, family-run businesses depend on the ability to hire more workers for the summer season, and they can't possibly find enough U.S. workers to fill the need. Without this amendment, many of these firms can't survive because the seasonal business is the heart of their operation.

This fiscal year's allocation of 66,000 visas was exhausted just a few months on into the year. Senator MIKULSKI will make about 30,000 additional visas available, and it should be enacted as soon as possible, so that these firms can make their plans for the coming months.

Obviously, this amendment is only temporary relief. It should be achieved through comprehensive immigration reform. We all know our immigration system is broken, and many other reforms are needed as well. The Nation needs a new immigration policy that reflects current economic realities, respects family unity and fundamental fairness, and upholds our enduring tradition as a Nation of immigrants.

Enacting these other reforms will take time—time we don't have if we want to rescue countless seasonal employers around the country. Senator

MIKULSKI's proposal provides the immediate relief needed to enable employers counting on H-2B workers to keep their doors open this summer, and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise in strong support of the amendment offered by my colleague along the Chesapeake Bay, Senator MIKULSKI. This amendment would make minor, temporary changes to the non-immigrant, seasonal visa program known as the H-2B visa program. This program allows small businesses in the Commonwealth of Virginia to hire temporary workers for non-agricultural jobs.

As many of my colleagues know that for each fiscal year, which starts on October 1, there has been a statutory limitation on the number of admissions to the U.S. under the H-2B visa category since 1990. In 2004, the statutory cap of 66,000 H-2B visas was reached on March 9. This year the H-2B cap was reached much earlier on January 3.

As a result of reaching this cap for the second year in a row, many businesses, mostly summer employers, have been unable to obtain the temporary workers they need because the cap was filled prior to the day they could even apply for the visas. Consequently, these businesses have and will continue to sustain significant economic losses unless Congress acts.

Our amendment helps fix this problem by making common-sense reforms to our H-2B visa program that will allow our small and seasonal companies an opportunity to remain open for business.

First, the bill would reward good workers and employers. Those workers who have faithfully abided by the law for one of the past 3 years would be exempted from the cap. This exemption will help keep together workers and employers who have had a successful track record of working together.

Second, the bill would make sure that the Government agencies processing the H-2B visas have the resources they need to detect and prevent fraud. Starting on October 1, 2005, employers participating in the program would pay an additional fee that would be placed in a Fraud Prevention and Detection account. The Departments of State, Homeland Security, and Labor could use these funds to educate and train their employees to prevent and detect fraudulent visas.

Finally, the bill would implement a visa allocation system that would be fair for all employers. Half of the 66,000 visas would be reserved for employers needing workers in the winter and the other half would be reserved for companies needing workers for the summer. This provision would allow both winter employers and summer employers an equal chance to obtain the workers they desperately need.

Without these modifications, these employers will continue to struggle in their efforts to find the necessary em-

ployees to keep their businesses running. Many in the seafood industry in Virginia have come to my office, looked me straight in the eye, and told me that their businesses are not going to make it another year if something is not done soon. Only through passage of this amendment can this detrimental cycle be interrupted and these businesses can be saved.

Unfortunately, the only real opposition to this legislation is "perception." I have the utmost respect for those in this Chamber that may not fully support this amendment. Their perception on this matter stems from good principles. Illegal immigration has grown to be a substantial problem in this country, especially in the area of domestic security, and I agree that changes must be made to make our policy work.

However, the temporary changes this amendment proposes does not belong in the debate on immigration or illegal immigration. The H-2B program is a seasonal, non-immigrant worker visa program. In fact, it may be one of the last programs we have to provide a legal, seasonal workforce for our small businesses, allowing them to fill the gaps where domestic workers cannot be found.

More importantly, these changes do not belong in the immigration debate because they deal with an economic issue. Over 75 percent of net new jobs in this country come from small businesses. This amendment proposes changes to help save our small businesses. In many parts of the country, for every temporary H-2B worker that is hired, two more full-time domestic workers are sustained.

There are some criticisms of this program which I am sure some will raise. Let's take a moment and examine some of these mis-perceptions surrounding the H-2B program.

H-2B employers do not do enough to recruit U.S. workers. They could just pay more. Virginia employers have not found this to be the case. The Department of Homeland Security and the Department of Labor set stringent guidelines on recruitment and wages.

First, U.S. employers must prove that they have exhausted all opportunities to hire U.S. workers. One H-2B employer agent in Virginia, who assists employers in this process, have told me that they have already spent in excess of \$250,000 on such ads on behalf of its 300 plus clients for the 2005 employment season. This was out of over 6,000 job openings for 300 plus employers in 30 plus States.

Even after this campaign, they only succeeded in locating and hiring less than 50 U.S. workers who expressed an interest in the H-2B jobs. They were all hired, but unfortunately, less than half of these workers started work and even less completed the entire season.

In regard to the seafood industry, over the past 15 years, Americans have slowly withdrawn from their workforce. It is common for motivated

workers to make \$75-\$100 dollars in a 7-hour day shucking oysters, picking crabs, or packing the product. Those in the seafood industry have told me that despite this earning potential, "frequently U.S. workers will work for a day or two and then never return. It is difficult to function on the uncertainty of our local work force, but we never give up on them."

In addition, the Department of Labor requires H-2B workers and U.S. workers to be paid the same wages for the same work. Additionally, all of the same taxes taken out of a domestic worker's salary are taken out of the H-2B worker's salary; however, the H-2B worker by regulation are ineligible to receive any benefits from the taxes withheld from their paycheck.

The H-2B program encourages illegal immigration; or, there's nothing more permanent than a temporary worker, a long review of the management of this program reveals otherwise. The employers have successfully ensured that the workers return to their home country. If they do not, employers are not able to participate in the program next year, and neither are the workers. Most consulates in their home countries require the workers to present themselves personally to prove that they have returned home.

Believe me, I am a strong supporter of efforts to help those Americans who want to work get the skills they need to be successful in the workforce. But these H-2B workers are not taking jobs from Americans, they are filling in the gaps left vacant by Americans that do not want them. Like I have said before, this program actually helps to sustain domestic jobs.

The future success of the H-2B visa program rests on the ability of businesses to participate in it, but right now, many will be denied access to the program for the second year in a row. The amendment introduced today helps fix this problem by focusing on three main objectives to help make the H-2B program more effective and more fair.

These seasonal businesses just cannot find enough American workers to meet their business needs. And ultimately, that is why this program is so important. Without Americans to fill these jobs, these businesses need to be able to participate in the H-2B program. The current system is not treating small and seasonal businesses fairly and must be reformed if we want these employers to stay in business.

I congratulate the distinguished Senator from Maryland for raising this issue. I have joined her as a cosponsor on this amendment. In my some quarter of a century that I have been privileged to be in the Senate I have watched in my State the loss of the textile industry and the furniture industry. Peanuts have disappeared, tobacco has disappeared, and now the seafood industry is disappearing.

The distinguished Senator from Maryland and I have paralleled our careers, and my recollection is there used

to be about 150 oyster-picking and crab-picking small businesses in my State. If there is one thing about this legislation, it is for the small person operator, man and woman. I doubt if there is now more than 40 out of the 150 or more picking houses remaining in my State, and these folks have come to see me. They are very quiet when they come in. They do not have any high-paid lobbyist. They come up themselves. Maybe they take off their overalls, but by and large they come right in the office in a very courteous way and they do not beg for anything. They just want to have an opportunity to remain in existence. Most of these small operations have been handed down from family to family.

Throughout Virginia, we take great pride in the Virginia crabcake. We are in competition with the Maryland crabcake. Now, I know Marylanders will come over and steal the Virginia crabmeat to put in their crabcakes. I say to my dear friends, the two Senators from Maryland, they know that, but pretty soon there may not be any crabmeat left for the crabcakes from either State to put on their menus.

Likewise, the oysters have declined, but that, I cannot say, is entirely due to this labor situation. It is more because of the Chesapeake Bay and the problems we are having with the balance of nature. The oysters are disappearing for a variety of reasons, but I will not get into that. Then a number of the seafood houses that provide bait for fishing are dependent on these workers.

I ask my colleagues to listen carefully to two letters that were written to me, and then I will yield the floor. The first one is from Cap'n Tom's Seafood. He states:

My name is Tom Stevens, I am owner and operator of Cap'n Tom's Seafood located in Lancaster County in the Northern Neck of Virginia.

By the way, that is one community I have tried to help because those counties have great pride, but they do not have as strong an economy as they once did. He continues:

I'm located less than 30 minutes from businesses like The Tides Inn, Indian Creek Yacht Club and Windmill Point. These businesses are large consumers of seafood. I also have many customers in the Richmond area.

When I opened my plant, for years I tried to operate using local help. However, it has become much harder to operate. Not only is the local force scarce and unreliable, but the younger generation is not interested, in learning the trade. On holidays, such as Thanksgiving and Christmas when oysters are in demand, shuckers are nowhere to be found.

As you are aware, in this business, oysters must be shucked and crabs must be picked soon after they arrive. I have tried to get local help by advertising in the local newspapers and through the employment agency without success. I finally got help through the H2 B workers program.

Speaking for myself and several others in the industry, we could not operate our businesses if it weren't for the H2 B program. I can not emphasize enough how important this program is for the seafood industry of

Virginia. These workers are reliable, hard working, and with excellent work ethics. Their main purpose is to earn money to improve their lives and the lives of their families in their country of origin. I pay them as I do my other workers, not the minimum I was told I could, but the top of the pay scale for the seafood industry. I deduct their taxes including Social Security and pay unemployment, even though they do not claim it.

I sincerely hope that you will continue to support the H2 B workers program and to strengthen the program by increasing the quota. The future of the seafood industry is dependent entirely on this program. It is important that our industry remains strong and healthy for the welfare of the State of Virginia.

Sincerely,

TOM STEVENS.

The other letter is from Bevans Oyster Company, Inc., in Kinsale, VA, a small community:

I am Ronald Bevans, President and owner of Bevans Oyster Company. My company relies on the Federal H2-B temporary foreign visa program to provide the legal, reliable, seasonal labor which my company needs in order to stay in business. We have used this program since 1996 to obtain fish packers from March 1 to December 31. Our workers, for the most part, return to us each year. Some of them have been with us since we started the program in 1996.

And on and on it goes. One sentence in here stands out:

Our seafood business cannot survive without the H2-B workers.

Mr. President, I strongly support this amendment, and I hope my colleagues in the Senate will join with me to help these small and seasonal businesses by agreeing to this amendment.

I ask unanimous consent to have this letter and other letters printed in the RECORD and yield the floor.

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

BEVANS OYSTER COMPANY, INC.,
Kinsale, VA, January 6, 2005.

Hon. JOHN W. WARNER,
U.S. Senator,
Washington, DC.

DEAR SENATOR: I am Ronald Bevans, president and owner of Bevans Oyster Company, Inc. My company relies on the federal H-2B temporary foreign visa program to provide the legal, reliable, seasonal labor which my company needs in order to stay in business. We have used this program since 1996 to obtain fish packers from March 1 to December 31. Our workers, for the most part, return to us each year. Some of them have been with us since we started utilizing the program in 1996.

This year we requested 110 workers. Our filing agent, Mid-Atlantic Solutions, tells us that our application is still at the U.S. Department of Labor awaiting certification to be used for the next step of the approval process. Although our application was filed as early as legally possible, it did not get to the Citizenship and Immigration Service (CIS) before the H-2B statutory cap of 66,000 annual visas was met. Consequently, we will be unable to employ our H-2B seasonal workforce.

Our seafood business cannot survive without the H-2B workers.

I make every effort to hire American workers for these positions, and have Americans working here wherever possible. However, our experience has been that there is an in-

sufficiency of Americans willing to do the type of work required for these positions. Generally those who are hired quit within the first week. We have a loyal local workforce, but they are getting older and their number diminishes each year.

It is critical that you understand that without the help of our foreign workers Bevans Oyster Company will have to shut down and the American workers currently employed here will lose their jobs as well.

I opened Bevans Oyster Company in 1966 and have owned and operated it myself ever since. Over the years, my business has continued to grow. When the need arose for additional workers and I could not find reliable help in my area, I turned to the H-2B program to meet my seasonal labor shortfall. With the help of this program over the past eight years, my business has grown and flourished and is now a vital part of the Northern Neck community. This business is my life. By suspending the H-2B program, the government is not only preventing me from accessing my employees, it is taking my livelihood and everything I have worked so hard to build.

The lack of seasonal workers for our fish season will have a domino effect on many other people and industries. Our fish suppliers will either have to find a new market for their bait fish or dock their fishing boats. Our customers, which are located along the entire east coast and along the Gulf from Florida to Texas, who have come to depend on us over the years for their bait needs, will suffer from the lack of product, causing their customers to suffer, and so on.

As you well realize, the Virginia seafood industry is located in rural counties and provides many needed jobs for U.S. citizens in these communities. The loss of Virginia seafood H-2B workers will lead to the loss of the American jobs the seafood industry provides.

I go to extraordinary lengths to ensure that my workers are legally employed and that U.S. workers jobs are protected. The wages I pay are above the prevailing wage for this area and industry. I make sure my workers are housed in decent, safe, and affordable housing. These workers have told me that the opportunity to work in the U.S. has improved their quality of life as well as that of their families and their home communities. The money earned and returned to their home country is an important contribution to that economy. Workers build homes and educate their children. Without the H-2B program, they would never realize these dreams.

My company desperately needs some type of relief from this cap. I don't know all the answers. All I know is that we need our workers, and they need us. Please keep the H-2B program operating until a comprehensive solution to the immigration issue is reached. Thank you for your consideration of this request.

Sincerely,

RONALD W. BEVANS.

LITTLE RIVER SEAFOOD, INC.,
Reedville, VA, March 24, 2005.

To: Mr. John Frierson.
From: J. Gregory Lewis.
Re: H-2B Program.

DEAR MR. FRIERSON: Thank you for your phone call yesterday regarding the H-2B program and our needs as an employer of immigrant workers. This program has enabled us to meet our reasonable labor needs for many years. Our seasonal jobs, (crab picking, crab packing, etc.), are manual, repetitive tasks—unskilled labor.

Regarding our questions about payment to these laborers, when Little River Seafood,

Inc., hires an employee, that person, local or immigrant, completes the necessary W-4 federal withholding form and the State of Virginia withholding form. We withhold the required social security tax, and federal and state taxes on all employees. In addition, we pay the employer's share of social security tax and pay the federal and state unemployment taxes.

Though our pickers are guaranteed a wage of \$5.25 per hour, which is the prevailing wage, they are paid by the "piece rate" per pound of crabmeat. Most pickers end up earning between \$7 and \$9+ per hour depending upon how quickly they learn, their level of ability, and ultimately, their productivity. All pickers, immigrant or local, are paid in the same way.

As our older local employees have retired, the younger locals do not seek employment in this field. Because we are stabilized by the use of legally documented H-2B seasonal workers, we are able to continue in the crab processing business, make crab purchases from our local watermen (some of whom are students), and keep our local workers employed, some on a year-round basis. Without the H-2B employees, our ability to stay in business, keep our local workers employed, and contribute to the economy would be severely jeopardized.

Regarding your questions as to recruitment of employees, Little River Seafood advertises each year, prior to the crabbing season, in our local newspapers. Response to these advertisements has been minimal. Our local Virginia Employment Commission is made aware of our employee needs, and of course, because we are in a small, rural community, these needs are also spread by word-of-mouth. Local response is almost nil. We have employed a few students during the summer for miscellaneous jobs around the plant, and, as mentioned, we do make crab purchases from students that are crabbers learning the business.

We certainly appreciate your phone call and your interest in learning more about the necessity of keeping the H-2B program in effect allowing countless small businesses in the United States to remain in business and continue to contribute to the economy.

Please let us know if we can provide you with further information.

J. GREGORY LEWIS,
President.

GRAHAM & ROLLINS, INC.,
Hampton, VA, January 12, 2005.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER, I am in receipt of your letter dated January 10, 2005, concerning H-2B workers for Graham & Rollins, Inc. My two sons and I appreciate your timely action in pursuit of reconsideration of our petition, however painful, it apparently is not to be. It is a shame that a small fourth generation family business must vanish because our government has become so impersonal to communicate a simple omission of just two names before closing the door and rejecting our petition irrespectively of the consequence from such an act. We have examined all options to save the company concluding that we must by June or July obtain the Mexican H-2B skilled laborers we have trained over the years. As a final act towards this object, we ask if you would consider sponsoring a bill similar in nature to the one you introduced last year exempting returning H-2B visa holders (beneficiaries/workers) from the annual FY 66,000 H-2B program cap, or raising the cap to accommodate the needs of entitled businesses that have been left out. We have reason to believe there are many small businesses such as our own faced

with the same crisis, and congressional action is required to keep those institutions whole. The H-2B program was created to accomplish the work not being done in this country because of unavailability of the domestic work force to meet the needs of our work place.

Taking away the employees we have trained and become dependent upon through this program is like sabotage. This cannot and must not happen to the many small companies like Graham & Rollins affected by the reduction of the visa cap. I trust and hope you are in agreement and will expedite congressional action to accomplish exempting the returning H-2B workers or raising the cap. Please let us know as soon as possible if you are supportive of this request and if we can help by contacting our other representation.

Sincerely,

JOHN B. GRAHAM, Sr.

R&W MARINE CONSTRUCTION, INC.,
Cobbs Creek, VA, March 29, 2005.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

R&W Marine Construction, Inc. has been operating in Virginia for 38 years as a small construction business specializing in marine construction and excavation. We engage in heavy construction consisting of building piers, bulkheads, riprap (stone) installation along shorelines and landscaping work. This type of work is not easy and requires hard physical labor.

Over the years of operating my business, I have continuously dealt with labor problems. It is very difficult to hire domestic workers that are dependable, reliable and are willing to do this type of work. I have hired some excellent supervisors over the years but they can not work without the laborers. We have frequently advertised in the local and regional newspapers and also contacted the employment agencies for job referrals. We pay competitive rates and offer benefits to all domestic workers. We accept employment applications year round and only receive a very small quantity. Most of these applicants will not accept a labor position or are not suitable for this line of work. R&W Marine also recruits students for summer time positions.

We were introduced and participated in the H2B Program in 2000. It has been very successful to the livelihood of my business and has created the workforce needed to meet the work demand. The pay rates for the H2B workers are specified by the U.S. Department of Labor. The wages are subject to all state and federal taxes. These workers arrive in the spring and return to their country within 10 months of their arrival. They always return home within this time frame. I have never had a problem with a worker not abiding by the immigration policies. R&W Marine has had many of the same workers return consecutively for the past 5 years and are all legal workers.

If businesses are not able to acquire the number of H2B workers needed to operate their business, they may be forced to hire illegal workers. This will increase the problems for the Immigration Service of keeping up with who will be entering the U.S. and the security of our country. Also, if businesses are forced to shut down or minimize their services they provide to the public, there may be a significant reduction in our American domestic workforce.

I thank you for your time and consideration in this matter. Please continue to gain support for the H.R. 793, the H2B cap fix bill.

Sincerely yours,

RICHARD E. CALLIS,
President/Owner.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, first of all, if I could just say preliminarily, in order not to split the united front in support of this amendment, I am not going to get into a debate between the quality of the Virginia crabcake and the Maryland crabcake, although I must note it is the Maryland crabcake that has always held preeminence in that discussion.

Mr. WARNER. Mr. President, I object to that statement.

Mr. SARBANES. I commend my colleague from Maryland for a very innovative and carefully reasoned response to a crisis situation. This is a clear example of legislative craftsmanship that addresses the issue and does it in a way that does not open up a lot of unintended consequences or other possibilities. It does not constitute any major restructuring of the immigration laws or anything of that sort. This is really an effort in a very focused, almost laser-like way, to address this specific problem.

The problem is the following: Under the administrative set up, an employer cannot seek an H-2B visa until within 120 days of when it would be used or exercised. That means that people who need summer employees cannot come in right at the beginning of the year to seek the H-2B visas. What happened, of course, this year is people in the earlier part of the year—the winter people in a sense—came in, and used up all of the 66,000 visas that were available so people who have relied on this program over the years to carry out their businesses were shut out altogether. Of course, that raises very dire prospects for the operation of these small businesses all across the country.

We have underscored the crisis confronting the seafood business in Maryland and Virginia, but innkeepers in Maine, hotel operators in Florida, and businesses all across the country confront similar problems with respect to being able to bring in these H-2B visa workers.

This amendment maintains all the requirements that existed previously. In other words, the employers must still demonstrate they have sought to find American workers for these jobs. That is a current requirement. That is maintained in this amendment.

These employers, some of them, have made extraordinary efforts to do that, visiting college campuses, attending job fairs, exploring every possible way they can find workers. Many have gone well beyond what I think has been previously required in terms of meeting that requirement. But, they have not been able to find the workers. They need these H-2B workers.

What my colleague, Senator MIKULSKI, has done—I think in a very measured way—is, if you previously brought in an H-2B worker and that worker has then gone back at the end of the limited time during which they were permitted to come into the country to do

to exercise her right as the next in line.

So if the Senator from California could be patient for a minute to get clarification, he could be a time-filler. Would that be a good way to do it?

Mr. INHOFE. That would be fine.

Ms. MIKULSKI. It is a klutzy way of talking about it, but it is, nevertheless, where we are.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I will make this very quick. And I appreciate this very much from the Senators from Maryland and California.

Mr. President, I just want to get on the record.

Last summer, I had an intern in my office from Rwanda. I have been active in Rwanda in kind of a mission thing for quite some time. She came to this country 10 years ago after the genocide that was taking place. She went through all the problems in becoming a legal resident. And, of course, she is going to actually become a citizen.

I have been privileged for a number of years to be chosen to speak at the various naturalization ceremonies in Oklahoma. These people go through all of the procedures. I daresay that most of those who go through the naturalization process become better citizens than some who are born here.

Certainly, they know more about the history of this country. That is one of the reasons I have opposed, historically, any type of an amnesty program.

Now, the one that is before us by my very good friend from Idaho has four steps of amnesty in AgJOBS. The first one is a temporary resident status, so that this jobs bill states that upon application to DHS, the immigration status of an illegal immigrant shall—not “will,” not “may be,” but “shall”—be adjusted to lawful temporary resident status as long as the immigrant worked in an agricultural job for at least 575 hours or 100 workdays, whichever is less.

The next step is to take that same person and give them permanent resident status. The third step would be to make an adjustment not only for those individuals coming in but also for the spouses and the minor children. So we are talking about opening that gate for many more people.

Fourthly, the reentry. Now, this means if somebody left the country under any circumstances, they would be allowed to come back and go through this process.

On top of that, another thing I do not like about the legislation is it does have a taxpayer-funded legal services provision in it.

So I just want to get on record and say this is something I do not think is in the best interests of this country.

Mr. President, I do thank the Senator from California and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Ms. MIKULSKI. Reserving my right to object, may I ask what the Senator would like to do?

Mrs. FEINSTEIN. What I would like to do is put forward an amendment. I gather there will be no more votes tonight.

Ms. MIKULSKI. Well, that is what we are trying to determine. That is what I am trying to determine. I would like to have a quorum call.

The PRESIDING OFFICER. The Senator from California has the floor.

The Senator from California.

Mrs. FEINSTEIN. Yes, that is fine. I will not take long. I will just put the amendment in. I will not ask for a vote tonight.

Ms. MIKULSKI. I have no objection.

Mrs. FEINSTEIN. I thank the Senator very much.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is set aside.

Mrs. FEINSTEIN. Mr. President, I want the Senator to know it is my intention to vote for her amendment. I obviously did not want it on this bill, but since it is, it is my intention to vote for it.

AMENDMENT NO. 395

(Purpose: To express the sense of the Senate that text of the REAL ID Act of 2005 should not be included in the conference report)

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk and ask that the amendment be read.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. ALEXANDER, Mr. LEAHY, Mrs. CLINTON, and Mrs. BOXER, proposes an amendment numbered 395:

At the appropriate place, insert the following:

SEC. __. SENSE OF THE SENATE.

It is the sense of the Senate that—

(1) the Senate conferees should not agree to the inclusion of language from division B of the Act (as passed by the House of Representatives on March 16, 2005) in the conference report;

(2) the language referred to in paragraph (1) is contained in H.R. 418, which was—

(A) passed by the House of Representatives on February 10, 2005; and

(B) referred to the Committee on the Judiciary of the Senate on February 17, 2005; and

(3) the Committee on the Judiciary is the appropriate committee to address this matter.

Mrs. FEINSTEIN. I thank the clerk. This amendment is cosponsored by Senators BROWNBACK, LIEBERMAN, ALEXANDER, LEAHY, CLINTON, and BOXER.

As the clerk has read, it is a sense-of-the-Senate amendment. It relates directly to the REAL ID Act. It is the sense-of-the-Senate amendment that attempts to bind the Senate conferees to oppose the REAL ID Act in the conference on this bill. I would like to take a minute to explain why.

First of all, this was presented to the Senate in February. It has not yet been

heard by the Senate Judiciary Committee. And, once again, a very controversial bill will be considered in conference on this bill. It was put in the House bill in a preemptive way. It is there, and we have to deal with it.

I want everyone to know this bill is major in scope in what it does to change immigration hearings and much to do with immigration. It very much tightens the standards for asylum and withholding of removal. It would give judges broad discretion to deny asylum claims based on the credibility of the applicant. And possibly one reason alone could mean a negative credibility finding.

It changes the statutory requirement that an applicant must demonstrate to be granted asylum, making it much more difficult, and it eliminates judicial review by barring a court from reversing the decision of the judge or other adjudicator about the availability of corroborating evidence.

It would give the Secretary of the Department of Homeland Security the ability to unilaterally waive all laws to construct the border fence, including possibly wage and hour laws, criminal laws, labor laws, civil rights, and so on.

Now, the problem with this section—I happen to be for finishing this 3-mile stretch of California border with a border fence—is the wording in this is so broad that it appears to provide waiver authority over laws that might impede the expeditious construction of barriers and roads not just to finish the fence in Southern California but anywhere in the United States. And it would allow for no review or appeal of the decisions of the Secretary of Homeland Security relating to this.

In terms of judicial review of orders of removal, it would limit, if not eliminate, stays of removal while cases are pending. Most importantly, it would eliminate, for the first time in our Nation's history, any habeas corpus review of removal orders for both criminal and noncriminal immigrants. This is a major change. It would limit the ability of the courts of appeal to review mixed questions of law, even in cases of longtime, lawful permanent residents, if virtually any crime led to the deportation.

Further, the restrictions on reviewing mixed questions of law would apply to asylum and claims under the Convention Against Torture. Now, here is a section that causes great concern. I believe it does to Republicans as well as Democrats.

The REAL ID Act appears to essentially create bounty hunters. Let me tell you how it does that. It increases the authority of bail bondsmen to arrest and detain anyone they believe is illegal, including a financial incentive by leaving it up to a bondsman's opinion that an alien poses a flight risk which necessitates them being turned over to the Department of Homeland Security. If that is the case, the alien

forfeits his or her bond premium under very broad circumstances. Illegal aliens turned over to the Department of Homeland Security must be detained.

Now, this is at a time when immigration officials have not proven they can detain all of the aliens they apprehend today.

What this does is, it says to the bail bondsman, if you think someone is illegal, you can go after them. You can maintain custody over them and you turn them in, and they have to be detained. This is on a bail bondsman's opinion of illegality. It also would provide bail bondsmen with unfettered access to information on illegal aliens and to influence Government processes with noncitizens subject to bonding. I don't know that we should be giving bail bondsmen this authority without any hearing in the Senate or any consequential discussion in the House on this point.

It sets minimum bonds for aliens in removal proceedings at \$10,000, and it prohibits the Department of Homeland Security from releasing anyone on their own recognizance who is in removal proceedings. We don't even know if we can hold everybody. This particular section, actually more than any other, causes me enormous concern, and obviously the cosponsors of this sense of the Senate.

It does a number of other things. It holds spouses and children of an alien accountable for an alien's involvement in a terrorist organization or activity, even if they didn't know about it. I don't know that we should do that without understanding what we are doing.

With respect to driver's licenses, it creates a large unfunded mandate on the States. The CBO did a cost estimate of the costs associated with implementing the driver's license provisions and estimated that DHS would spend \$20 million over the 5-year period to reimburse States for the cost of complying with the legislation. But in addition, it would require States that participate in the driver's license agreement, which is an interstate database, to share driver information at a cost of \$80 million over 3 years, to reimburse States for the cost to establish and maintain the database. The grand total is \$100 million over 3 to 5 years.

The just-passed intelligence reform law sets up a process whereby States, the Federal Government, and interested parties will make recommendations for establishing minimum Federal standards for driver's licenses and personal identification documents. The REAL ID Act essentially countermands the rights of States in this process. Both the current law, pursuant to the intelligence reform bill, and the REAL ID Act require that States set certain minimum document requirements as well as minimum issuance standards. The difference is that the REAL ID Act eliminates the stakeholder process and proscribes a very complicated and burdensome set of requirements on States.

It also has differences between the intelligence reform bill and the REAL ID Act on the issue of driver's licenses and personal identification documents. The intelligence bill gives States 2 years to comply with minimum standards. The REAL ID Act gives States 3 years in order for these documents to be accepted by a Federal agency for official purposes.

Secondly, the intelligence reform bill requires that the Secretary of Homeland Security and the Secretary of Transportation work together to establish minimum standards for driver's licenses and personal identification documents. The REAL ID Act imposes on States what must be done.

I don't think we should do this. We passed an intelligence reform bill. We dealt with some standards in that bill. Here, without a hearing, without any committee consideration, this bill is put, by the House of Representatives, on to this supplemental and is in conference.

I don't think we should do this. The sponsors agree with me. So we have proposed a sense of the Senate that would seek to bind conferees to eliminate the REAL ID Act from this bill. That doesn't mean it is eliminated for all time. I also believe the Judiciary Committee should promptly hear the bill. We should consider amendments. We should be able to compare it in this house with the intelligence reform bill just passed and, therefore, make a decision. This is what the Senate is set up for. We are meant to be a deliberative body. We are meant to consider major and controversial pieces of legislation and, if necessary, slow them down. This is added unilaterally on this supplemental bill with no consideration by this house whatsoever. It is going to resolve itself with a very few Members of this body dealing with an enormously complicated, controversial bill that conflicts with other legislation passed by this body. We don't do our work if we let this happen.

We have proposed this sense of the Senate, and I am hopeful there will be enough votes in this body so that the conferees on the Senate side will simply not accept business being done this way. Who would have thought a major piece of immigration legislation would be placed, without hearing, on this emergency supplemental which deals with the war in Iraq and critical emergency matters? It is a big mistake.

I ask for the yeas and nays, and I understand the vote will not be tonight, but this will be put in the order.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mrs. FEINSTEIN. I thank the Chair and yield the floor.

AMENDMENT NO. 387

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I call for the regular order.

The PRESIDING OFFICER. The Senator is recognized.

Ms. MIKULSKI. As I understand the regular order, the H-2B amendment I have offered is pending. I note that there are other speakers on the other side of the aisle but on the same side of the issue who wish to speak. I note the Senator from Wyoming is here and he wishes to speak. I want to continue the debate on this amendment.

The PRESIDING OFFICER. The Senator's amendment is the regular order.

The Senator from Wyoming.

Mr. THOMAS. Mr. President, I thank the Senator from Maryland. I will briefly tell of my interest and support for this idea. I am very pleased to be a cosponsor. This is an issue we have struggled over the last couple of years. Certainly it is not the overall remedy to our whole struggle on immigration. However, this is something we do need to do now that will last in the meantime while we work on the other.

Each of us who has spoken has a little different role to play in our home States with regard to this issue. In Wyoming, it is primarily the summer season, travel and vacations, Jackson Hole, WY, and other places where this has been a very important part of providing services there. Last year, of course, we were caught up in the 66,000-worker limitation, and it was kind of unfortunate for us because, as I said, it was the summer season, and therefore, the applications didn't get in as quickly as they did in some other places where their seasons started earlier. By the time our folks applied, there were no vacancies.

I am for an overhaul of immigration. When we have the needs and we want people to be able to legally come to this country, whether it is for a short while, whether it is for a longer while, come legally, I am one who thinks illegal is illegal and we shouldn't have it that way.

We have to look at the demands and then find a relatively simple way to work through it; otherwise, people tend to try to ignore it and go around, so that doesn't work.

These small businesses are in need of some relief. They cannot find workers to do these jobs. The Labor Department certifies there is indeed a labor shortage in this case and they look to willing workers.

The Mikulski amendment is quite simple, as has been explained. It doesn't count workers to the cap of 66,000 who have participated in the H-2B program during the past 3 years. It separates the allocation to two 6-month batches 2-year temporary relief. It collects new fees for fraud prevention and detection so folks who process the applications have the skills and tools to identify fraud. We need to make these changes.

I understand the difficulty with the bill that is on the floor. I think the resolution is coming clear so we can deal with some of these issues and leave the larger, longer term solutions to another time.

Mr. President, I thank the Senator from Maryland and I look forward to a very positive vote on this issue.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I thank the Senator from Wyoming for his comments in articulating the economic issues facing Wyoming. I have had the occasion to visit there myself and I know what a wonderful State it is. I am not much of a skier; I am built a little too close to the ground for that. But this shows this is not only a coastal State issue, and it also shows it is not only a seafood processing issue; this is an issue that affects our entire country, particularly those who depend upon summer seasonal workers. We understand some of our States enjoy—whether it is Massachusetts, Wyoming, or Idaho—both summer and winter. Either way, the Senator knows that we depend on summer workers. We thank him and the Senator from Idaho who spoke, as well as others.

Mr. President, I note that the hour is late and now that the Senator from Wyoming has spoken, I am not sure if there are other people who wish to speak.

I ask unanimous consent that Senator SNOWE of Maine be added as a co-sponsor.

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

Ms. MIKULSKI. Mr. President, I want to get a vote on my amendment, but it is not possible tonight. Therefore, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. COCHRAN. Mr. President, I have requests to make on behalf of managers of the bill with respect to amendments that have been cleared on both sides of the aisle.

AMENDMENT NO. 401

I send an amendment to the desk on behalf of Senator MCCONNELL.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. MCCONNELL, proposes an amendment numbered 401.

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

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

The amendment is as follows:

On page 193, line 23 of the bill, strike "\$500,000" and insert in lieu thereof: "\$1,000,000".

The PRESIDING OFFICER. Without objection, the amendment is agreed to. The amendment (No. 401) was agreed to.

AMENDMENT NO. 402

Mr. COCHRAN. Mr. President, the next amendment is on behalf of Senators MCCONNELL, LEAHY, and OBAMA that addresses the Avian flu virus in Asia, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. MCCONNELL, for himself, Mr. LEAHY, and Mr. OBAMA, proposes an amendment numbered 402.

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

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

The amendment is as follows:

(Purpose: To address the avian influenza virus in Asia)

On page 192, line 19, after "March 2005," insert "and the avian influenza virus,".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 402) was agreed to.

AMENDMENT NO. 403

Mr. COCHRAN. Mr. President, I now send to the desk an amendment on behalf of Mr. LUGAR and Mr. BIDEN. It deals with an increase in funding for the Department of State's Office of the Coordinator for Reconstruction and Stabilization with an offset.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for himself, Mr. LUGAR, and Mr. BIDEN, proposes an amendment numbered 403.

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

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

The amendment is as follows:

(Purpose: To provide additional amounts for diplomatic and consular programs and reduce the amount available for the Global War on Terror Partners Fund)

On page 171, line 13, strike "\$757,700,000" and insert "\$767,200,000".

On page 171, line 21, after "education:" insert the following "Provided further, That of the funds appropriated under this heading, \$17,200,000 should be made available for the Office of the Coordinator for Reconstruction and Stabilization:".

On page 179, line 24, strike "\$40,000,000" and insert "\$30,500,000".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 403) was agreed to.

AMENDMENT NO. 404

Mr. COCHRAN. Mr. President, I now send an amendment to the desk on behalf of Mr. LEAHY regarding environmental recovery activities in tsunami-affected countries.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. LEAHY, proposes an amendment numbered 404.

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

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

The amendment is as follows:

(Purpose: To modify language in the bill relating to environmental recovery activities in tsunami affected countries)

On page 194, line 7, delete "Aceh" and everything thereafter through "Service" on line 9, and insert in lieu thereof: "tsunami affected countries".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 404) was agreed to.

AMENDMENT NO. 405

Mr. COCHRAN. Mr. President, I send an amendment to the desk on behalf of Mr. LEAHY requiring a 5-day notification to the committees on appropriations for tsunami funds.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for Mr. LEAHY, proposes an amendment numbered 405.

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

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

The amendment reads as follows:

(Purpose: To require five day prior notification to the Committees on Appropriations for tsunami recovery and reconstruction funds)

On page 194, line 19, after colon insert the following:

Provided further, That funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations, except that such notifications shall be submitted no less than five days prior to the obligation of funds:

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 405) was agreed to.

Mr. COCHRAN. Mr. President, I thank the Senators.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Mr. President, I ask unanimous consent to lay aside the pending amendment.

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

AMENDMENT NO. 406

(Purpose: To protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation)

Mr. BAYH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Indiana [Mr. BAYH], for himself, Mr. CORZINE, and Mr. PRYOR, proposes an amendment numbered 406.

NOT VOTING—2

Durbin

Obama

The motion was agreed to.

RECESS

Thereupon, the Senate, at 3:16 p.m., recessed until 5 p.m. and reassembled when called to order by the Presiding Officer (Mr. GRAHAM).

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT, 2005—Continued

AMENDMENT NO. 387

The PRESIDING OFFICER. Under the previous order, the Senator from Maryland, Ms. MIKULSKI, will be recognized for 5 minutes, and the Senator from Virginia, Mr. WARNER, will be recognized for 2 minutes.

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise to ask my colleagues to support cloture on the amendment I offered last week on the H-2B visas. This amendment is desperately needed by small and seasonal business throughout the United States. This amendment is identical to the bipartisan bill I introduced in February called the Save Our Small and Seasonal Business Act. It is designed to be a temporary solution to the seasonal worker shortage that many coastal and resort States are facing.

My amendment helps keep American jobs, keep American companies open, and yet retains control of our borders. Small and seasonal businesses all over our country are in crisis. They need seasonal workers before the summer can begin so they can survive. For years they relied on an H-2B visa program to meet their needs. The program allows businesses to hire temporary seasonal foreign workers with a mandated return to their home country when no other American workers are available. But this year they can't get temporary labor. They have been facing this for the last couple of years because they have been shut out of the program because there is a cap and the cap is reached by the wintertime.

My amendment will help these employers by doing three things. One, it temporarily exempts good actor workers from the H-2B cap so employers can apply for and name employees who have already come back and forth to the United States. It protects against fraud, and it provides a fair and balanced allocation of the H-2B visas between winter and summer people.

Let me be clear about my amendment. First, it protects American jobs. Second, it is a short-term remedy because it is only a 2-year solution. What it does is exempt seasonal workers from the cap. That means there are no new workers. There are no new immigrants. It means no more new guest workers. It means people who have worked here before, who have played by the rules and gone back home, are

the only ones who will be eligible. They have to have been here in the last 3 years, worked in absolute compliance with the law, and returned back home to Mexico as required. So it is not new people who will be exempt. It is an employment program for them and for us.

The employer has to go through the whole Department of Labor and Homeland Security process so we are in compliance with labor rules and we also ensure our national security.

Like my colleagues, I worry about fraud, so we have very strong antifraud provisions. We also make the system better by creating this fair allocation. We recognize that States need them in the winter, but summertime people need them, too.

There is a crisis. Thousands of small businesses are affected by this. Hitting the cap so early had a great impact on my own State of Maryland. We had a lot of summer seasonal business, particularly over there on the Eastern Shore, working that wonderful, fabulous Chesapeake Bay I share with my colleagues from Virginia. Many of our businesses used this program year after year. First they hire all the American workers they can find. Then they turn to the H-2B to find additional workers. I could give example after example, but I can tell you, if they don't get this legislation, they will have to either lay off their permanent workers or close their doors.

So what my legislation is all about is a simple legislative remedy with strong bipartisan support. It is realistic. It is specific. It is narrow. It stands up for American companies, protects our borders.

I know there is great urgency about this. We absolutely need it. Many of my companies have been around for 100 years working in the Chesapeake Bay. Many of them provide the livelihoods not only on the Eastern Shore but because of our fabulous seafood processing industry. We provide jobs also in Baltimore and Bethesda and other parts. We have to pass this legislation because if they can't start to hire within the next few weeks, we are going to close American companies and end up with an even more porous border.

I urge the adoption of my amendment, but now I urge my colleagues to vote for cloture.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague from Maryland. We have in the Senate a great respect and admiration for the junior Senator from Maryland for her commitment for the little person. I cannot think of another example in her long and distinguished career in the Senate where there is a clearer case for the small business, that individual who is struggling to make an honest living and provide jobs for others.

We have before us today a tremendous challenge as it relates to immigration on a wide range of issues. This

program works. It is very small in comparison to others, but it works. It serves the small businesses, not only seafood, which we have talked about before in the context of this amendment, but other small things—the bed and breakfasts, the small hotels that are so important in our respective States and elsewhere in America.

I say to our colleagues, as they come to join us, it is essential that we pass this to help this category of small businesspersons and to lend credence to a program that works. For every one of these individuals who is brought in, it would be my judgment—and I concur, with my distinguished colleague—that there are two or three permanent American workers whose jobs are supported by their efforts. Oftentimes most of these come in for a short period, some several months, largely in the summertime; some in the fall. Then they go back to their homes beyond the borders of the United States. But the American worker then takes their work product and it enables them to have a full-time, 12-month means of employment.

This is one on which my colleagues will be proud to vote for cloture. In effect, it will enable this legislation to pass.

On behalf of the leadership of the Senate, I ask unanimous consent that the filing deadline for second-degree amendments be extended until the beginning of the cloture vote on the Mikulski amendment.

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

Ms. MIKULSKI. Mr. President, I yield whatever time I have remaining to the other Senator from Virginia.

Mr. WARNER. Do I not have a bit of time on mine? On behalf of my colleague from Virginia, I ask unanimous consent that he proceed for 2 minutes.

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

The Senator from Virginia.

Mr. ALLEN. Mr. President, I thank my colleague from Virginia and the Senator from Maryland. I urge my colleagues to support the cloture motion on this amendment. It is an immigration issue, but it is more importantly a small business issue.

There are a lot of small businesses that are seasonal in nature. It may be construction, landscaping, tourism, or the seafood industry. It is vitally important that we get this immigration, this H-2B visa issue, in order logically. These are law-abiding citizens who want to keep their small business in operation, providing the services that people in their communities so desire.

I thank the Chair and my colleagues. I hope all colleagues will vote for small businesses, to keep them operating in States all across the Nation and bring some common sense with this temporary remedy, to bring some common sense and reasonableness to a program that every year ends up in a crisis. I thank Senator MIKULSKI of Maryland and my colleague from Virginia, Senator WARNER, of course. All of us are

working together for the betterment of many family businesses.

Mr. WARNER. Mr. President, the two Senators from Virginia accept the challenge of the Senator from Maryland to a cookoff on crabcakes. Before we started this, the Senator talked about her mother's formula. We have ours.

Ms. MIKULSKI. I thank the Senator from Virginia. I accept the challenge. If it takes two of you to take me on, so be it.

Mr. WARNER. With that, I yield the floor.

CLOTURE MOTION

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Mikulski amendment No. 387 to H.R. 1268.

B.A. Mikulski, J. Lieberman, Jon Corzine, Jeff Bingaman, Byron Dorgan, Ron Wyden, Ken Salazar, Hillary Clinton, Mark Pryor, Dick Durbin, Bill Nelson, Chuck Schumer, Barack Obama, Frank Lautenberg, Patrick Leahy, Debbie Stabenow, Chris Dodd.

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 amendment No. 387, offered by the Senator from Maryland, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

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

The yeas and nays resulted—yeas 83, nays 17, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—83

Akaka	Dole	McCain
Allard	Domemici	Mikulski
Allen	Dorgan	Murkowski
Baucus	Durbin	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feingold	Nelson (NE)
Biden	Feinstein	Obama
Bingaman	Graham	Pryor
Bond	Gregg	Reed
Boxer	Hagel	Reid
Burns	Harkin	Rockefeller
Burr	Hatch	Salazar
Cantwell	Inouye	Santorum
Carper	Isakson	Sarbanes
Chafee	Jeffords	Schumer
Chambliss	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Coleman	Kohl	Stabenow
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Voivovich
DeMint	Lincoln	Warner
DeWine	Lugar	Wyden
Dodd	Martinez	

NAYS—17

Alexander	Cochran	Grassley
Brownback	Cornyn	Hutchison
Bunning	Ensign	Inhofe
Byrd	Frist	

Lott	Roberts	Shelby
McConnell	Sessions	Vitter

The PRESIDING OFFICER. On this vote, the yeas are 83, the nays are 17. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Ms. MIKULSKI. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ENZI. Mr. President, I rise today in support of the Save Our Small and Seasonal Business Act, offered as an amendment by Senator MIKULSKI to the Supplemental Appropriations Act.

As many of my colleagues have stated, this amendment is very simple and straightforward. It is a temporary fix and does not reward illegal workers. It basically allows those workers who have followed the rules and returned home at the end of their season to come back to work in the United States and not count against the H-2B visa cap.

As the situation stands right now, the many businesses across our Nation that use the visas are limited by how many can be approved each year. The demand of the visas is high and the Department of Labor has certified that there are positions that cannot be filled locally. With the cap being for the entire fiscal year, those businesses with their season in the fall and winter have a better chance of getting the employees they need. In Wyoming, we have strong summer and winter seasons. Our winter businesses have been able to get their workers and yet see the impact of not having enough employees in the summer.

The H-2B visas are used in Wyoming by small businesses in a variety of areas. I have heard from hotels, restaurants, touring companies, hunting companies, art and framing stores, and others. Many of these people depend on their return workers to keep their businesses going. While some may consider this unskilled labor, a return worker who knows the job and knows the customers is invaluable for a small business.

This amendment is about helping our small and seasonal businesses survive another year—to give them a chance to stay in business until the Senate can fully debate needed changes in immigration reform. It does not provide amnesty or benefit those who have broken our laws.

This type of visa actually puts such a high level of responsibility on the employers that we should consider putting some of these requirements on other types of visas. Under Federal law, the employer must certify that they cannot hire locally, the employer must guarantee wages, and the employer accepts responsibility for the worker. The amendment we are considering today keeps that built-in protection. It also increases fraud protection

to help us ensure that those who have the visa applications approved are those who need the employees.

The support we have already heard for this amendment is evidence of the wide impact of the H-2B visa program. Businesses from mountain States and coastal States are in need of help. We have an opportunity to take positive action in support of the small businesses that drive our economy. I encourage all my colleagues to support the Mikulski amendment.

AMENDMENT NO. 555

Mr. KYL. Mr. President, I have an amendment at the desk, No. 555.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 555.

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

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

The amendment is as follows:

(Purpose: To modify the criteria for excluding certain H-2B workers from the numerical limitations under section 214(g)(1)(B) of the Immigration and Nationality Act)

On page 2, strike lines 5 through 11, and insert the following:

“(9)(A) Subject to subparagraphs (B) and (C), an alien counted toward the numerical limitations of paragraph (1)(B) during any 1 of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.

“(B) A petition referred to in subparagraph (A) shall include, with respect to an alien—

“(i) the full name of the alien; and

“(ii) a certification to the Department of Homeland Security that the alien is a returning worker.

“(C) An H-2B visa for a returning worker shall be approved only if the name of the individual on the petition is confirmed by—

“(i) the Department of State; or

“(ii) if the alien is visa exempt, the Department of Homeland Security.”

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 555) was agreed to.

Mr. KYL. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 387, AS AMENDED

Ms. MIKULSKI. Mr. President, there is no further debate on the amendment. I yield all of my time and, therefore, request a vote on my amendment, as amended.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 94, nays 6, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—94

Akaka	Dodd	Lugar
Alexander	Dole	Martinez
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Ensign	Murkowski
Bennett	Enzi	Murray
Biden	Feingold	Nelson (NE)
Bingaman	Feinstein	Obama
Bond	Frist	Pryor
Boxer	Graham	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Burr	Harkin	Salazar
Cantwell	Hatch	Santorum
Carper	Hutchison	Sarbanes
Chafee	Inouye	Schumer
Chambliss	Isakson	Smith
Clinton	Jeffords	Snowe
Coburn	Johnson	Specter
Cochran	Kennedy	Stabenow
Coleman	Kerry	Stevens
Collins	Kohl	Sununu
Conrad	Kyl	Talent
Cornyn	Landrieu	Thomas
Corzine	Lautenberg	Thune
Craig	Leahy	Voivovich
Crapo	Levin	Warner
Dayton	Lieberman	Wyden
DeMint	Lincoln	
DeWine	Lott	

NAYS—6

Byrd	Nelson (FL)	Shelby
Inhofe	Sessions	Vitter

The amendment (No. 387), as amended, was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

Mr. ENSIGN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, the next vote will be on invoking cloture on the bill. I hope we will, in fact, invoke cloture. If cloture is invoked this evening, it will be the last vote of the evening. This will give the two managers time to work through the pending amendments to determine which are germane. We will resume consideration of the bill tomorrow and complete action on it. I say this in advance of the cloture vote. If cloture is not invoked tonight, then we would have additional votes this evening.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, for the purpose of completing action on cleared amendments, there are two amendments that do not require a roll-call vote. Senator HUTCHISON has an amendment and Senator CHAMBLISS has an amendment. I ask unanimous consent that it be in order for them to offer those amendments at this time.

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

The Senator from Texas.

AMENDMENT NO. 379, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I call up amendment No. 379 and send a modification to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. SCHUMER, and Mr. DOMENICI, proposes an amendment numbered 379, as modified.

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

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

The amendment, as modified, is as follows:

(Purpose: To make unused EB3 visas available to bring nurses to the United States through Department of State procedures)

On page 231, between lines 3 and 4, insert the following new section:

RECAPTURE OF VISAS

SEC. 6047. Section 106(d)(2)(A) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1), by inserting before the period at the end of the second sentence “and any such visa that is made available due to the difference between the number of employment-based visas that were made available in fiscal year 2001, 2002, 2003, or 2004 and the number of such visas that were actually used in such fiscal year shall be available only to employment-based immigrants, and the dependents of such immigrants, and 50% of such visas shall be made available to those whose immigrant worker petitions were approved based on schedule A, as defined in section 656.5 of title 20, Code of Federal Regulations, as promulgated by the Secretary of Labor”; and

(2) in paragraph (2)(A), by striking “and 2000” and inserting “through 2004”.

Mrs. HUTCHISON. Mr. President, this is an amendment to recapture unused EB-3 visas. Senator SCHUMER, Senator KENNEDY and I have worked on this to try to assure that 50 percent of the unused EB-3 visas help resolve our serious nursing shortage. It is very important. These visas go out of existence and cannot be recaptured except by an act of Congress. They have already been authorized. We need to recapture the unused visas from 2001 to 2004, add to the number of nurses we can bring to our country, as well as the EB-3 engineers and educated workforce that are waiting in the wings.

Mr. President, I ask all of my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my colleague from Texas. This is an amendment we have worked on together. As she said, it fills some badly needed positions without increasing the overall number. I hope we will support it.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Texas.

The Senator from Georgia.

AMENDMENT NO. 418, AS FURTHER MODIFIED

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to further modify my amendment No. 418 with the changes that are at the desk, and also add a number of cosponsors whose names are also at the desk.

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

The amendment, as further modified, is as follows:

On page 169, between lines 8 and 9, insert the following:

PROHIBITION ON TERMINATION OF EXISTING JOINT-SERVICE MULTIYEAR PROCUREMENT CONTRACT FOR C/KC-130J AIRCRAFT

SEC. 1122. No funds in this Act may be obligated or expended to terminate the joint service multiyear procurement contract for C/KC-130J aircraft that is in effect on the date of the enactment of this Act.

Mr. CHAMBLISS. I thank the Chair.

Mr. PRYOR. Mr. President, I stand with Senator SAXBY CHAMBLISS and strongly support his amendment to ensure the C-130J contracts continue without interruption this year.

The C-130J has quickly been adapted to play vital and unique roles in our national defense efforts. Today, both U.S. and Allied C-130Js are performing operational missions in CENTCOM with a mission capable rate of over 90 percent. The J performs missions in Iraq in 1 day that requires the C-130E or H model 2 days. It is equally critical for relief operations like the Tsunami effort in Asia, where lives were spared due to the C-130Js quick capabilities.

I have made several visits to the Little Rock Air Force Base, the premier training facility for the C-130J, and I have seen first hand the J model's new features and capabilities. The C-130Js climb higher and faster, flies at higher cruise speeds, takes off and lands in a shorter distance, and is easier, safer and cheaper to operate than its predecessor.

The military officials and troops who I have talked with want to continue using C-130Js and they depend on the model's new features on the ground. Cutting production of the C-130Js would not only deny our soldiers the cutting-edge technology they need on today's battlefield, but it would leave the Air Force and Marine Corps with an aging and far less capable tactical airlift.

As I am sure my colleagues are aware, the Air Force recently grounded or severely restricted the flying of 90 C-130s due to old age. Eighty-four of these carriers are assigned to the Active-Duty Air Force. By further terminating the contracts for C-130Js, we would be leaving the Air Force unable to meet its future tactical requirements. The Air Force will be 116 aircraft short of requirement and the Marine Corps will be short 18 aircraft.

Terminating the C-130J contracts is short-sighted from a tactical standpoint, but it is also foolish from a financial standpoint. Terminating the current contracts could cost taxpayers more than the cost of building new carriers. Liability fees for ending the C-130J multiyear contracts are estimated at \$1.3 billion for the Air Force and \$0.3 billion for the Marine Corps for a total of \$1.6 billion. This estimate does not