

S. 3272

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “NIH Emergency Supplemental Appropriations Act of 2008”.

SEC. 2. SUPPLEMENTAL APPROPRIATIONS.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated for the fiscal year ending September 30, 2008, and for other purposes, namely:

(1) For an additional amount for the “Office of the Director, National Institutes of Health”, \$4,000,000,000 which shall be transferred to the Institutes and Centers of the National Institutes of Health to be used to support additional scientific research.

(2) For an additional amount for the National Cancer Institute, \$1,200,000,000 to be used to support additional scientific research.

SEC. 3. GENERAL PROVISIONS.

(a) AVAILABILITY OF FUNDS.—No part of the appropriation contained in this Act shall remain available for obligation beyond the current fiscal year.

(b) EMERGENCY DESIGNATION.—Amounts in this Act are designated as emergency requirements pursuant to section 402 of H. Con. Res. 95 (109th Congress), and pursuant to section 501 of H. Con. Res. 376 (109th Congress) as made applicable to the House of Representatives by section 511(a)(4) of H. Res. 6 (110th Congress).

By Mr. BIDEN (for himself, Mr. LUGAR, Mr. MENENDEZ, and Mr. HAGEL):

S. 3273. A bill to promote the international deployment of clean technology, and for other purposes; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, with every new scientific report, the threat of global climate change becomes clearer. With every new economic report, the energy needs of developing countries continue to grow as millions of their citizens move out of poverty.

From the beginning of the Industrial Revolution, we here in the United States, along with the other industrial nations, grew our economies using cheap energy, building up the stock of greenhouse gases now in our atmosphere. But, today, even as we try to maintain economic growth with lower emissions, developing nations threaten to overwhelm any gains we can make in the fight against climate change.

No matter what we in the U.S. do about our own energy use, the developing world’s demand for energy—in its cheapest form, from fossil fuels—will continue to rise. That would be a disaster. According to the International Energy Agency, by 2030 energy demand worldwide will increase by 55 percent, and nearly 80 percent of this rise will be in developing countries.

To address the threat of climate change, we must steer those countries onto a path of cleaner energy and cleaner development. It is in our national interest to reduce the environmental, economic, and national security threat of a changed global climate. But this is not just about avoiding

threats. This can be an opportunity for the U.S. to capture the markets of the future, the next generation of clean power technologies.

That is why I am joining today with Senators LUGAR, MENENDEZ, and HAGEL to introduce legislation to create an International Clean Technology Deployment Fund. This fund will be available to promote the international deployment of U.S. technology as a new component to our overall international economic development assistance. By supporting the market for that technology, it can help to stimulate research, investment, and job creation in industries with the potential for long-term growth. This can be a win for the planet and a win for our economy.

From its beginning in 1992, the United Nations Framework Convention on Climate Change has called for mechanisms whereby the developed, industrialized nations can provide the means for developing nations to reduce their greenhouse gas emissions. As recently as the last major meeting of the parties to that convention at Bali last December, that principle was reiterated as part of the Bali Action Plan.

In a similar vein, when President Bush submitted his budget earlier this year, he called for funding to support U.S. participation in a Clean Technology Fund, to be housed at the World Bank. That is one approach for which the resources our legislation authorizes could be used. Our allies, including Great Britain, and Japan, are among other donors interested in the establishment of that fund, whose goals are similar to those of the legislation we are introducing today.

The purpose of our legislation is, and I quote, “to promote and leverage private financing for the development and international deployment of technologies that will contribute to sustainable economic growth and the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

An important goal of our legislation is to add the consideration of climate change more consistently and systematically to our foreign assistance strategy. The majority of greenhouse gas emissions in the future will be coming from the developing countries of the world. The choice is simple—we can ignore the climate impact of our assistance programs, or we can move those programs into a comprehensive strategy of clean economic development.

In this legislation, we establish an International Clean Technology Deployment Fund, to support the export of U.S. clean energy technology and expertise to developing nations. The Fund will be administered by a Board composed of relevant executive branch officials. They are authorized to distribute money in a number of ways, provided certain triggers are met. These ways include through multilateral trust funds, bilateral initiatives,

existing U.S. programs such as USAID and technical assistance programs.

Funds can only go to eligible countries. A country, to be eligible, first must be a developing country. More importantly, it must take on its own climate change commitments, either through an international agreement to which the U.S. is a party, or by taking on what the Board certifies are sufficient binding national commitments. Additionally, every distribution of funding will require prior congressional notification.

Our bipartisan coalition, in consultation with many interested groups, worked to achieve a structure that will ensure that we have a range of options to help developing countries grow on a cleaner path, but still achieve real reductions in global greenhouse gas emissions.

The Bali Action Plan, which the U.S. agreed to last December, sets the goal of reaching a new global agreement by December 2009, when parties will meet in Copenhagen. This is an ambitious schedule, made more complicated by our election schedule here at home.

With the time so short, it is our hope that this bill will begin to address some part of the Bali Action Plan, which includes support for developing countries in addressing technology deployment, adaptation, and deforestation. Our legislation addresses just one part of that framework, but it is an important one.

It can put the developing countries on a path of clean, sustainable economic growth, protect us and our children from the economic and security threats of global climate change, and help us create the industries and jobs of the future.

By Mr. GRASSLEY (for himself and Mr. SPECTER):

S. 3276. A bill to provide for the application of sections 552, 552a, and 552b of title 5, United States Code, (commonly referred to as the Freedom of Information Act and the Privacy Act) and the Federal Advisory Committee Act (5 U.S.C. App.) to the Smithsonian Institution, and for other purposes; to the Committee on Rules and Administration.

Mr. GRASSLEY. Mr. President, the Smithsonian Institution is an important icon to many Americans. It houses treasures of our national history in its museums across the country. The Smithsonian Institution is not just a museum but also an educational institution and a research complex. It consists of 19 museums and galleries, 9 research facilities, and has 144 affiliated museums around the world. The Smithsonian manages this vast array of facilities and receives 70 percent of its funding directly from the federal government through congressional appropriations. There is no debate that the Smithsonian is an important part of our country.

However, over the last few years I have been critical of the management

of the Smithsonian Institution, beginning with story after story detailing the “Champagne lifestyle” the former Secretary of the Smithsonian enjoyed at institution expense. Through my oversight of the Smithsonian as a tax-exempt entity, and investigative reporting by the Washington Post, other egregious examples have emerged. These revelations have detailed the Smithsonian’s management failures and lax accountability over the spending of millions of institution dollars.

The former secretary spent millions of institution dollars on the redecoration of his office, housing allowances, and household expenses including chandelier cleaning and a new heater pump for his lap pool. He and his wife enjoyed first-class plane travel and top hotels.

Ultimately, Secretary Small resigned on March 26, 2007.

The deputy secretary and chief operating officer of the Smithsonian Institution, announced her resignation on June 18, 2007, after earning more than \$1.2 million in 6 years for outside duties, including highly compensated seats on corporate boards, and that she and other top executives were frequently absent from their Smithsonian duties.

An independent management report released in June 2007 concluded that Smithsonian leaders took extraordinary measures to keep secret top executives’ compensation, expense-account spending, ethical missteps, and management failures.

In August 2007, the Smithsonian replaced Gary M. Beer as chief executive of Smithsonian Business Ventures after an inspector general’s report found he had abused his institution-issued credit card and billed thousands of dollars in expenditures that were unauthorized or lacked evidence of a business purpose.

In December 2007, W. Richard West, Jr., who was the founding director of the National Museum of the American Indian, retired after disclosures that he spent extensive time away from the museum and spent more than \$250,000 in 4 years on trips to places including Paris, Venice, Singapore, and Indonesia.

In February 2008, Pilar O’Leary, the head of the Smithsonian Latino Center, resigned after an internal investigation found that she violated a variety of rules and ethics policies by abusing her expense account, trying to steer a contract to a friend and soliciting free tickets for fashion shows, concerts, and music award ceremonies. Ultimately, the Smithsonian Inspector General concluded that there were 14 violations of ethical and conflict of interest policies. The public did not learn of the reason for her resignation until April 15, 2008, when the Washington Post published a story after requesting under the Freedom of Information Act and ultimately receiving a heavily redacted copy of the Smithsonian Inspector General’s report on Ms. O’Leary.

When Ms. O’Leary’s resignation was announced to Smithsonian staff, the Smithsonian’s official e-mail did not mention ethical lapses and in fact praised her work.

Only upon the specter of public disclosure did the Smithsonian’s acting secretary say in a second e-mail to staff that O’Leary had “engaged in behavior that violated our Standards of Conduct and other Smithsonian policies between August 2005 and September 2007.”

The acting secretary at the time said such reports from the Inspector General were not always public, but Smithsonian officials determined O’Leary “held a position of such significant responsibility and public visibility that disclosure . . . was warranted.”

This raises a series of disturbing questions. What if a Post reporter had not somehow learned of the O’Leary report and formally asked the Smithsonian for a copy? Would the circumstances of Ms. O’Leary’s resignation ever have seen the light of day? Once the report was released in a redacted form, was it appropriately redacted or was it redacted beyond what is reasonable to protect the privacy of third parties? Does the Smithsonian withhold other potentially embarrassing reports? If the individual had not been the head of a Smithsonian agency, and had a lower stature, would the report ever have been disclosed in any form?

If the past is prologue, probably not. The Smithsonian points out that it is not subject to the Freedom of Information Act, FOIA.

Many people would naturally think that the Smithsonian is subject to FOIA and must comply with requests. I know that I believed it was, especially given that taxpayer funds make up 70 percent of its budget. However, because the creation of the Smithsonian was different than the creation of other Federal Government agencies, there is an open question as to what open government and good governance statutes apply to the Smithsonian. For example, the Smithsonian’s own website states, “The Smithsonian Institution is not an executive branch agency and is not required by statute to provide documents to the public.” However, the Smithsonian does state that it is guided by “internal policy, and by FOIA and other relevant law” when providing documents to the public. What this highly technical answer means is that the Smithsonian doesn’t believe it is required to respond under FOIA but it will as long as its interests are in line with the release.

The legal status of the Smithsonian is also an open question with the prevailing law finding that for purposes of the Privacy Act and FOIA, the Smithsonian is not a government “agency” subject to the requirements. Instead, the Smithsonian calls itself a “trust instrumentality of the United States.” However, the Smithsonian takes a different position when it is faced with a

lawsuit filed under the Federal Tort Claims Act and considers itself a “federal agency.” Taken together, these decisions have given the Smithsonian the best of both worlds—they are a government entity when information is sought that could embarrass them, but when they are sued, they get all the defenses of a government entity.

In light of the oversight findings and the many scandals that have raised questions about accountability and mismanagement at the Smithsonian, I’m introducing the Open and Transparent Smithsonian Act of 2008. This bill simply states that for the purposes of FOIA, the Privacy Act, and the Federal Advisory Committee Act, the Smithsonian shall be considered a Federal Government agency. This is a simple, straightforward way to bring transparency and accountability to the Smithsonian without expending additional Federal resources. This is especially important given that the Smithsonian received continual increases in congressional appropriations from fiscal years 1999–2008, now totaling \$682 million in taxpayer dollars for fiscal year 2008.

On July 1, Wayne Clough took over as only the 12th secretary in Smithsonian history. He comes at a critical juncture. Will the Smithsonian recover from a series of scandals and regain its sterling reputation? Or will it backslide into bad old habits that could lead to more scandals?

The new secretary deserves the best possible chance to succeed. One of the best tools Congress can give him is a clear, definitive statement through legislative action that the Freedom of Information Act does indeed apply to the Institution, and that the Smithsonian’s business is the people’s business.

In addition to adding the Smithsonian to FOIA and Privacy Act, section 3 of this bill includes another important transparency fix to the Privacy Act. Currently, the Privacy Act provides that disclosure of information by a government agency is limited unless an enumerated exception applies. One of the most widely used exceptions allows for the disclosure of information to “either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof.” However, the Department of Justice has interpreted this to only allow for disclosures to chairmen of committees, excluding information from ranking minority members.

In a December 2001 letter opinion, the Department of Justice concluded, “the Privacy Act prohibits the disclosure of Privacy Act-protected information to the ranking minority member.” The rationale for this decision was that longstanding executive branch practice on this question shows that “ranking minority members are not authorized to make committee requests.” This opinion clearly looks past the plain language of the statute that says that the exception applies to “either House

of Congress or to the extent of matter within its jurisdiction, any committee or subcommittee thereof." This interpretation clearly bypasses the inclusion of the word "or" and instead reads that Congress only intended it to apply to committee chairman. Conveniently, this opinion has been repeatedly used to block information requested from ranking members.

Section 3 of the bill corrects this erroneous interpretation by clearly adding in that chairman and ranking members may qualify for the exception under the Privacy Act. This provision is consistent with the intent of the Privacy Act exception and the goals of making the government more transparent and accountable under good governance statutes.

This bill is a simple, straightforward effort to make our Federal Government more accountable to the American taxpayers. Further, it will help ensure that Congress has the necessary access to documents from the executive branch so it can conduct its constitutionally required duty of oversight. I am pleased that Senator SPECTER has joined as an original cosponsor and urge my colleagues to support swift passage of this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 614—DESIGNATING THE MONTH OF AUGUST 2008 AS "NATIONAL MEDICINE ABUSE AWARENESS MONTH"

Mr. BIDEN (for himself and Mr. GRASSLEY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 614

Whereas over-the-counter and prescription medicines are extremely safe, effective, and potentially lifesaving when used properly;

Whereas the abuse and recreational use of over-the-counter and prescription medicines can be extremely dangerous and produce serious side effects;

Whereas in a recently sampled month, 7,000,000 individuals aged 12 or older reported using prescription psychotherapeutic medicines for nonmedical purposes;

Whereas abuse of prescription medicines, including pain relievers, tranquilizers, stimulants, and sedatives is second only to marijuana, the number 1 illegal drug of abuse in the United States;

Whereas recent studies indicate that 2,400,000 children, or 1 in 10 children aged 12 through 17, have intentionally abused cough medicine to get high from the ingredient dextromethorphan;

Whereas 4,500,000, or 1 in 5, young adults have used prescription medicines for nonmedical purposes;

Whereas according to research from the Partnership for a Drug-Free America, more than 1/3 of teens mistakenly believe that taking prescription drugs, even if not prescribed by a doctor, is much safer than using more traditional street drugs;

Whereas the lack of understanding by teens and parents of the potential harms of these powerful prescription drugs makes raising public awareness about the dangers of the misuse of such drugs more critical than ever;

Whereas misused prescription drugs are most often obtained through friends and relatives;

Whereas misused prescription drugs are also obtained through rogue Internet pharmacies;

Whereas parents should be aware that the Internet gives teens access to websites that promote medicine abuse;

Whereas National Medicine Abuse Awareness Month promotes the messages that over-the-counter and prescription medicines should be taken only as labeled or prescribed, and that taking over-the-counter and prescription medicines for recreational uses or in large doses can have serious and life-threatening consequences;

Whereas National Medicine Abuse Awareness Month will encourage parents to become educated about prescription drug abuse and talk to teens about all types of substance abuse;

Whereas observance of National Medicine Abuse Awareness Month should be encouraged at the national, State, and local levels to increase awareness of the misuse of medicines;

Whereas some groups, including the Consumer Healthcare Products Association and the Community Anti-Drug Coalition of America, have taken important steps by creating educational toolkits, including "A Dose of Prevention: Stopping Cough Medicine Abuse Before it Starts", which provides guides to educate parents, teachers, law enforcement officials, doctors and healthcare professionals, and retailers about the potential dangers of abusing over-the-counter cough and cold medicines;

Whereas the Partnership for a Drug-Free America and community alliance and affiliate partners have undertaken a nationwide prevention campaign utilizing research-based educational advertisements, public relations and news media, and the Internet to inform parents about the negative teen behavior of intentional abuse of medicines so that parents are empowered to effectively communicate the facts about this dangerous trend with teens and to take necessary steps to safeguard prescription and over-the-counter medicines at home; and

Whereas educating the public about the dangers of medicine abuse and promoting prevention is a critical component of what must be a multi-pronged effort to curb the disturbing rise in medicine misuse: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of August 2008 as "National Medicine Abuse Awareness Month"; and

(2) urges communities to carry out appropriate programs and activities to educate parents and youth about the potential dangers associated with medicine abuse.

Mr. BIDEN. Mr. President, I rise today to introduce a resolution marking August 2008 as National Medicine Abuse Awareness Month. The intentional misuse of prescription and over-the-counter drugs remains a serious problem in this country. This resolution builds on the progress we have made in raising teens' and parents' awareness of the issue, and it seeks to expand our educational efforts even further.

While recent studies indicate that overall use of illegal drugs has remained relatively stable and use among teens has declined since 2002, the misuse of so-called "legal" medications is a serious and growing problem. The figures speak for themselves: 1 in 5

teens has misused a prescription drug, and more people age 12 or older have recently started abusing prescription pain relievers than started smoking marijuana.

Abuse of over-the-counter cough and cold medicines is also alarming. While over-the-counter and prescription medicines are extremely safe and effective when used properly, the abuse and recreational use of these medicines can be lethal. A study by the Partnership for a Drug-Free America indicates that 1 in 10 young people aged 12 through 17, or 2.4 million kids, have intentionally abused cough medicine to get high off its active ingredient, Dextromethorphan, or DXM. In March, I chaired a hearing in the Judiciary Crime and Drugs Subcommittee where-at Misty Fetko told the tragic story of her son Carl's overdose death from a combination of painkillers and over-the-counter cough and cold medicine. These tragedies continue and we have got to work to stop this abuse.

Educating teens and parents about the dangers of medicine abuse is an important component of solving this multifaceted problem. Too many teens think that prescription and over-the-counter medicines are safe anytime, in any dose, and even without a prescription or doctor supervision. They are gravely mistaken. Prescription drug abuse, without a valid prescription and close monitoring by a physician, can lead to dependency, overdose, and even death. Misuse of over-the-counter medicines can similarly cause harmful results.

Another reason driving this abuse is the fact that these drugs are cheap and easy to obtain. A bottle of cough syrup costs a few dollars at the local drug store and prescription drugs can often be found in unguarded medicine cabinets at home. A February 2007 report released by the office of National Drug Control Policy revealed that a shocking 47 percent of youth got their prescription drugs for free from a relative or friend. Parents are becoming their kids' drug dealers and don't even know it.

But we can turn these numbers around through robust education, awareness, and enforcement efforts—and that's just what National Medicine Abuse Awareness Month tries to accomplish by promoting the message that over-the-counter and prescription medicines must be taken only as labeled or prescribed, and that when used recreationally or in large doses they can have serious and life-threatening consequences. The resolution will help remind parents that access to drugs that are abused doesn't just happen in alleys and on the streets, but can often occur right in their medicine cabinets at home.

A number of groups have proactively worked to curb this abuse and I hope this resolution pushes their efforts even further. For example, the Consumer Health Care Products Association and the Community Anti-Drug Coalition of America have teamed up to