The legislative clerk read as follows:

A resolution (S. Res. 304) congratulating Charles Simic on being named the 15th Poet Laureate of the United States of America by the Library of Congress.

There being no objection, the Senate proceeded to the consideration of the resolution. Mr. Reid. Mr. President, I ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 304) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

WHEREAS Charles Simic was born in Yugoslavia on May 9, 1938, and lived through the events of World War II;

WHEREAS, in 1964, at age 16 Charles Simic immigrated to the United States, and moved to Oak Park, Illinois;

WHEREAS Charles Simic served in the United States Army from 1961 to 1963;

WHEREAS Charles Simic received a bachelor's degree from New York University in 1966;

WHEREAS Charles Simic has been a United States citizen for 36 years and currently resides in Strafford, New Hampshire;

WHEREAS Charles Simic has authored 18 books of poetry;

WHEREAS Charles Simic is a professor emeritus of creative writing and literature at the University of New Hampshire, where he taught for 34 years before retiring; and

WHEREAS Charles Simic is the 5th person to be named Poet Laureate with ties to New Hampshire, including Robert Frost, Maxine Kumin, Richard Eberhart, and Donald Hall;

Now, therefore, be it

Resolved, That the Senate—

(1) congratulates Charles Simic for being named the 15th Poet Laureate of the United States of America by the Library of Congress;

(2) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to Charles Simic.

SEC. 4. DISTRESSED, AT-RISK, AND ECONOMICALLY STRONG COUNTIES.

(a) DESIGNATION OF AT-RISK COUNTIES.—Section 14526 of title 40, United States Code, is amended—

(1) in the section heading, by inserting “at-risk,” after “distressed”;

(2) in subsection (a)(1)(E), by—

(A) by redesignating subparagraph (B) as subparagraph (C);

(B) in subparagraph (A), by striking “and” at the end; and

(C) by inserting after subparagraph (A) the following:

“(D) designate as ‘at-risk counties’ those counties in the Appalachian region that are at most risk of becoming economically distressed; and”;

(b) CONFORMING AMENDMENT.—The analysis for chapter 145 of title 40, United States Code, is amended by striking the item relating to section 14526 and inserting the following:

“14526. Distressed, at-risk, and economically strong counties.”

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 14703 of title 40, United States Code, is amended to read as follows:


“(a) IN GENERAL.—In addition to the amounts made available under section 14501, there are authorized to be appropriated to the Appalachian Regional Commission to carry out this subtitle—

“(1) $95,200,000 for fiscal year 2007;

“(2) $96,650,000 for fiscal year 2008;

“(3) $102,000,000 for fiscal year 2009;

“(4) $105,700,000 for fiscal year 2010; and

“(5) $109,400,000 for fiscal year 2011.

“(b) TELECOMMUNICATIONS AND TECHNOLOGY INITIATIVE.—Of the amounts made available under subsection (a), not less than—

“(1) $8,000,000 for fiscal year 2008;

“(2) $12,400,000 for fiscal year 2009; and

“(3) $13,300,000 for fiscal year 2010.

“(c) ECONOMIC AND ENERGY INITIATIVE.—Of the amounts made available under subsection (a), not less than—

“(1) $12,000,000 for fiscal year 2007;

“(2) $12,400,000 for fiscal year 2008;

“(3) $13,900,000 for fiscal year 2009;

“(4) $13,300,000 for fiscal year 2010; and

“(5) $13,800,000 for fiscal year 2011.

“(d) AVAILABILITY.—Amounts made available under subsection (a) shall remain available until expended.

“(e) ALLOCATION OF FUNDS.—Funds approved by the Appalachian Regional Commission for a project in an Appalachian State pursuant to a congressional directive shall be derived from the total amount allocated to the State by the Appalachian Regional Commission from amounts made available to carry out this subtitle.”

SEC. 6. TERMINATION.

Section 14704 of title 40, United States Code, is amended by striking “2012” and inserting “2011”.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect on October 1, 2006.

CONGRATULATING THE 15TH POET LAUREATE

Mr. Reid. Mr. President, I ask unanimous consent that the Senate now proceed to S. Res. 304.

The PRESIDING OFFICER. The clerk will report the title of the resolution.

OPEN GOVERNMENT ACT OF 2007

Mr. Reid. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 127, S. 849.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 849) to promote accessibility, accountability, and openness in Government by strengthening section 552 of title V, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased to note that the Senate has passed the Leahy-Cornyn Openness Promotes Effectiveness in our National Government Act (the “OPEN Government Act”), S. 849, before adjourning for the August recess. This important Freedom of Information Act legislation will strengthen and reinvigorate FOIA for all Americans.

For more than four decades, FOIA has translated the great American values of openness and accountability into practice by guaranteeing access to government information. The OPEN Government Act will help ensure that these important values remain a cornerstone of our American democracy.

I commend the bill’s chief Republican cosponsor, Senator JOHN CORNYN, for his commitment and dedication to passing FOIA reform legislation this year. Since he joined the Senate 5 years ago, Senator CORNYN and I have worked closely together on the Judiciary Committee to ensure that FOIA and other open government laws are preserved for future generations.

The passage of the OPEN Government Act is a fitting tribute to our bipartisan partnership and to openness, transparency and accountability in our government.

I also thank the many cosponsors of this legislation for their dedication to open government and I thank the Majority Leader for his strong support of this legislation. I am also appreciative of the efforts of Senator KYL and Senator BENNETT in helping us to reach a compromise on this legislation, so that the Senate could consider and pass meaningful FOIA reform this legislation before the August recess.

But, most importantly, I especially want to thank the many concerned citizens who, knowing the importance of this measure to the American people’s right to know, have demanded action on this bill. This bill is endorsed by more than 115 business, public interest, and news organizations from across the political and ideological spectrum, including the American Library Association, the U.S. Chamber of Commerce, OpenTheGovernment.org, Public Citizen, the Republican Liberty Caucus, the Sunshine in Government Initiative and the Vermont Press Association. The invaluable support of these and many other organizations is what led the opponents of this bill to come around and support this legislation.
As the first major reform to FOIA in more than a decade, the OPEN Government Act will help to reverse the troubling trends of excessive delays and lax FOIA compliance in our government and help to restore the public’s trust in their government. This bill will also improve transparency in the Federal Government’s FOIA process by:

- Restoring meaningful deadlines for agency action under FOIA;
- Imposing real consequences on federal agencies for missing FOIA’s 20-day statutory deadline;
- Clarifying that FOIA applies to government records held by outside private contractors;
- Establishing a FOIA hotline service for all federal agencies; and
- Creating a FOIA Ombudsman to provide FOIA requestors and federal agencies with a meaningful alternative to costly litigation.

Specifically, the OPEN Government Act will protect the public’s right to know, by ensuring that anyone who gathers information to inform the public, including freelance journalist and bloggers, may seek a fee waiver when they request information under FOIA. The bill clarifies that federal agencies will not automatically exclude Internet blogs and other Web-based forms of media when deciding whether to waive FOIA fees. In addition, the bill also clarifies that the definition of news media, for purposes of FOIA fee waivers, includes free newspapers and individuals performing a media function who do not necessarily have a prior history of publication.

The bill also restores meaningful deadlines for agency action, by ensuring that the 20-day statutory clock under FOIA starts when a request is received by the appropriate component of the agency and requiring that agency FOIA offices get FOIA requests to the appropriate agency component within 10 days of the receipt of such requests. The bill allows federal agencies to toll the 20-day clock while they are awaiting a response to a reasonable request for information from a FOIA requester on one occasion, or while the agency is awaiting clarification regarding a FOIA fee assessment. In addition, to encourage agencies to meet the 20-day time limit, the bill prohibits an agency from collecting search fees if it fails to meet the 20-day deadline, except in the case of exceptional circumstances as defined by the FOIA statute.

The bill also addresses a relatively new concern that, under current law, federal agencies have an incentive to delay compliance with FOIA requests until just before the court decision that is favorable to a FOIA requester. The Supreme Court’s decision in Buckley v. West Virginia Dep’t of Health and Human Resources, 532 U.S. 598 (2001), eliminated the ‘catalyst theory’ fees exemption for certain federal civil rights laws. When applied to FOIA cases, Buckley precludes FOIA requesters from ever being eligible to recover attorneys fees under circumstances where an agency provides the records requested in the litigation just prior to a court decision that would have been favorable to the FOIA requester. The bill clarifies that Buckley does not apply to FOIA requests. After a FOIA requester can obtain attorneys’ fees when he or she files a lawsuit to obtain records from the government and the government releases those records before the court orders them to do so. But, this provision would allow the requester to recover attorneys’ fees if the requester’s claim is wholly insubstantial.

To address concerns about the growing costs of FOIA litigation, the bill also creates an Office of Government Information Services in the National Archives and creates an ombudsman to mediate agency-level FOIA disputes. In addition the bill ensures that each federal agency will appoint a Chief FOIA officer who will monitor the agency’s compliance with FOIA requests, and a FOIA Public Liaison who will be available to FOIA to resolve FOIA related disputes.

Finally, the bill does several things to enhance the agency reporting and tracking requirements under FOIA. Tracking numbers are not required for FOIA requests that are anticipated to take ten days or less to process. The bill creates a tracking system for FOIA requests to assist members of the public and the media. The bill also establishes a FOIA hotline service for all federal agencies, either by telephone or on the Internet, to enable requestors to track the status of their FOIA requests.

In addition, the bill also clarifies that FOIA applies to agency records that are held by outside private contractors, no matter where those records are located. And to create more transparency, the bill clarifies that statutory exemptions under FOIA, the bill ensures that FOIA statutory exemptions that are included in legislation enacted after the passage of this bill clearly cite the FOIA statute and clearly state the intent to be exempt from FOIA.

The Freedom of Information Act is critical to ensuring that all American citizens can access information about the workings of their government. But, for years four decades this open government law needs to be strengthened. I am pleased that the reforms contained in the OPEN Government Act will ensure that FOIA is reinvigorated so that it works more effectively for the American people.

I am also pleased that, by passing this important reform legislation today, the Senate has reaffirmed the principle that open government is not a Democratic issue or a Republican issue. But, rather, it is an American issue that upholds the American value. I commend all of my Senate colleagues, on both sides of the aisle, for unanimously passing this historic FOIA reform measure. I hope that the House of Representatives, which overwhelmingly passed a similar measure earlier this year, will promptly take up and pass this bill and that the President will then promptly sign it into law.

Mr. KYL. Mr. President, I rise today to comment on S. 849, the OPEN Government Act. As a result of negotiations between Senators CORNYN, LEAHY, and me, we have reached an agreement on an amendment to this bill that addresses my concerns about the legislation while keeping true to the bill’s intended purposes. When this bill was marked up in the Senate Judiciary Committee several months ago, I filed a number of amendments intended to address problems with the bill. Senator LEAHY asked me at the mark up to withhold offering my amendments in favor of addressing my concerns through negotiations with him and with Senator CORNYN. I agreed to do so, and later submitted a statement of additional views to the committee report for this bill that described the nature of some of my concerns, and that included as an attachment the Justice Department’s lengthy Views Letter on S. 849. After following up with the Justice Department and Office of Management and Budget to elucidate the nature of some of those agencies’ concerns and to try to come up with compromise language, negotiations members of the Senate Intelligence Committee and other members of the Senate, I am pleased to report that those negotiations have proved fruitful. Our negotiations have benefited from extensive assistance from the Justice Department and other parts of the executive branch, as well as from the input of various journalists’ organizations.

While none of these parties has gotten exactly what it wants, I do believe that we now have a bill that strikes the right balance with regard to FOIA—a bill that will make FOIA work more simply and effectively.

Allow me to describe some of the changes that my amendment will make to the underlying bill. Section three of the original bill broadened the definition of media requesters to include anyone who “intends” to broadly disseminate information. My concern, which was also expressed by the Justice Department, was that in the age of the internet, anyone can plausibly intend to broadly disseminate information, even if they do not.

Mr. KYL. Mr. President, the OPEN Government Act strengthens FOIA by imposing real consequences on federal agencies for missing FOIA’s 20-day statutory deadline and precludes FOIA requesters from ever recovering attorneys fees under circumstances where an agency provides the records requested in the litigation just prior to a court decision that would have been favorable to the FOIA requester. This is a significant priority, and I urge the Senate Judiciary Committee and the Judiciary Committee in the House of Representatives to address this issue.

Mr. President, I am pleased that the reforms contained in this bill will protect the public’s right to know, by ensuring that anyone who gathers information to inform the public, including freelance journalists and bloggers, may seek a fee waiver when they request information under FOIA. The bill also restores meaningful deadlines for agency action, by ensuring that the 20-day statutory clock under FOIA starts when a request is received by the appropriate component of the agency and requiring that agency FOIA offices get FOIA requests to the appropriate agency component within 10 days of the receipt of such requests. The bill allows federal agencies to toll the 20-day clock while they are awaiting a response to a reasonable request for information from a FOIA requester on one occasion, or while the agency is awaiting clarification regarding a FOIA fee assessment. In addition, to encourage agencies to meet the 20-day time limit, the bill prohibits an agency from collecting search fees if it fails to meet the 20-day deadline, except in the case of exceptional circumstances as defined by the FOIA statute.

The bill also clarifies that FOIA applies to agency records that are held by outside private contractors, no matter where those records are located. And to create more transparency, the bill clarifies that statutory exemptions under FOIA, the bill ensures that FOIA statutory exemptions that are included in legislation enacted after the passage of this bill clearly cite the FOIA statute and clearly state the intent to be exempt from FOIA. The Freedom of Information Act is critical to ensuring that all American citizens can access information about the workings of their government. But, for years four decades this open government law needs to be strengthened. I am pleased that the reforms contained in the OPEN Government Act will ensure that FOIA is reinvigorated so that it works more effectively for the American people.

I am also pleased that, by passing this important reform legislation today, the Senate has reaffirmed the principle that open government is not a Democratic issue or a Republican issue. But, rather, it is an American issue that upholds the American value. I commend all of my Senate colleagues, on both sides of the aisle, for unanimously passing this historic FOIA reform measure. I hope that the House of Representatives, which overwhelmingly passed a similar measure earlier this year, will promptly take up and pass this bill and that the President will then promptly sign it into law.
requests. These requesters usually know what they want and they want to get it quickly. But if virtually any requester could be exempted from search fees by claiming that he intends to widely disseminate the information, search fees would no longer serve as a tool for encouraging requesters to focus their requests. Overall, this would waste FOIA resources and slow down processing of all requests. Such a result would not be in anyone’s interest.

The compromise language included in my amendment clarifies the definition of media requester in a way that protects internet publications and freelance journalists but that still preserves commonsense limits on who can claim to be a journalist. At the suggestion of some media representatives, we have incorporated into the amendment the definition of media requester that was announced by the DC Circuit in National Security Archive v. U.S. Department of Defense, 880 F.2d 1381 (D.C. Cir. 1989). That definition focuses on public interest in the collected information, the use of editorial skill to process that information into news, and the distribution of that news to an audience. I am mindful in my view that we need to protect publishers of newsletters and other smaller news sources, as well as, obviously, the types of organizations described in that opinion. On the other hand, given that this construction of the term used in the FOIA has been in effect for 17 years, I do not think that anyone can reasonably fear that codifying it will turn the world upside down. I was amused to see that Judge Ginsburg’s analysis of the statute’s definition of news media relied in part on conflicting legislative statements made by Senators HATCH and LEAHY, two members with whom I currently serve on the Senate Judiciary Committee, regarding the meaning of the 1986 amendments to FOIA. By incorporating a judicially crafted definition of news media, I believe that my amendment spares the courts the indignity of being compelled to parse conflicting Senate floor statements in order to divine the meaning of that term.

The remainder of my amendment’s changes to section 3 codify language that has been adopted by some administrative agencies to clarify who is a media requester. For the record, I note that agency editors, that agency language has been modified in my amendment only to make express that news-media entities include periodicals that are distributed for free to the public. This will protect the fee status of the numerous free newspapers that have become common in American cities in recent years. The agency language codified here also extends express protection to freelance journalists.

Overall, this language should guarantee news-media status for new electronic formats and for anyone who would logically be considered a journalist, even when that journalist’s method of news distribution takes on new means and forms. But the language should also prevent gamesmanship by individuals who cannot logically be considered journalists but who are willing to assert that they are journalists in order to avoid paying search fees.

The modified bill also makes important changes to section 6 of the bill. The original version of this section eliminated certain important FOIA exemptions as a penalty for an agency’s failure to comply with FOIA’s 20-day response deadline. I commented at length on this provision of the bill at the beginning of my additional views to the committee report for the bill. This provision was far and away the most problematic provision of the original bill and I am relieved that Senators LEAHY and CORNYN have agreed to abandon this approach to deadline enforcement.

My amendment adopts a modified version of an approach to deadline enforcement that was suggested by Senators CORNYN and LEAHY. Their approach denies search fees to agencies that do not meet FOIA deadlines. I have modified my colleagues’ proposal by incorporating the exception allowing an agency to still collect search fees if a delay in processing the request was the result of unusual or exceptional circumstances. These exceptions have been part of FOIA for many years now and have reasonably well-known meaning. I expect that these exceptions will account for virtually all of the cases where an agency cannot reasonably be expected to process a particular FOIA request within the paragraph (6) time limits.

Preserving this type of flexibility is important. A penalty that seriously punishes an agency, which I believe that denying search fees would do, would likely backfire if the penalty did not apply for requests that cannot reasonably be processed within the FOIA deadlines. If the penalties for not processing a request within the deadlines are harsh and include no exceptions, the agency will process every request within 20 or 30 days. It will simply do a sloppy job. That would not improve the operation of the FOIA and would not be in anyone’s interest.

The original bill also made FOIA’s 20-day deadline run from the time any part of a government agency or department received a FOIA request. Again, the modified bill exempts FOIA requesters from search fees if the 20-day deadline is not met and no unusual or exceptional circumstances are present. These provisions in combination would have created a perverse incentive for a FOIA requester to ignore the addressing instructions on an agency’s website and send his request to some distant post of an agency or department, in the hope that we could prevent the agency from meeting the 20-day deadline and the requester would be exempted from search fees. I would not expect more than a very small portion of FOIA requesters to engage in such gamesmanship. But given the large number of individuals and institutions that make FOIA requests, it is inevitable that some bad apples would abuse the rules if Congress were to create an incentive to do so.

My amendment makes the FOIA deadline run only from the time when the appropriate component of an agency receives the request. To address concerns that an agency might unreasonably delay in routing a request to the appropriate component, I have added language providing that the deadline shall begin to run from no later than ten days after some designated FOIA component receives the request. I think that it is reasonable to expect that requesters send their requests to some designated FOIA-receiving component of an agency, and I think that it is reasonable to expect that once a FOIA component of the agency gets the request, it will expeditiously route that request to the appropriate FOIA component.

My amendment also changes the bill’s standard for awarding attorney’s fees. The original FOIA request fees provision was ended short of a judgement or court-approved settlement. The original bill would have entitled a requester to fees whenever an agency voluntarily or unilaterally changed its position and the request was meritorious. A penalty that seriously discourages agencies from releasing documents in situations where the agency is fully within its rights to withhold a record—for example, because some clear exception applies—but senior personnel at the agency decide to produce the documents anyway. To impose fees in such a situation would be to adopt a rule that good deeds go unpunished. It would also likely discourage some disclosures. If an exemption clearly applied to the records in question, the only way that the agency could avoid being assessed fees would be to continue litigation. Also, in my view attorney’s fee shifting should only rewire litigation that was meritorious. A baseless lawsuit should not be rewarded with attorney’s fees. There is enough bad lawyering around already. FOIA component of the agency gets the request, it will expeditiously route that request to the appropriate FOIA component.

On the other hand, Senator CORNYN has presented compelling arguments that since the time when the Bankhead-Ford standard was extended to FOIA, some agencies have begun denying clearly meritorious requests and then unilaterally settling the case on the eve of trial to avoid paying attorney’s fees. Obviously, such behavior should not be encouraged. Or at the very least it should be compensated for the legal expense of forcing agency compliance with a meritorious request. Senator CORNYN has
made a strong case that the current standard denies the public access to important information about the operations of the Federal Government.

In the spirit of compromise, and out of deference to Senator CORNYN’s arguments, I have incorporated language into my amendment that does not fully address my concerns about this part of the bill and that is very generous to FOIA requesters. The language of the amendment entitles a requester to fees unless the court finds that the requester’s claims were not substantial. This is a pretty low standard. It would allow the requester to be deemed a prevailing party for fee-assessment purposes even if the government’s litigating position was entirely reasonable—or even if the government’s arguments were meritorious and the government would have won had the case been litigated to a judgment.

Substantiability is a test that is employed in the Federal courts to determine whether a federal claim is adequate to justify retaining jurisdiction over supplemental or other State law claims. It is generally understood to require that the plaintiff’s complaint not be clearly nonmeritorious on its face and not be clearly precluded by controlling precedent. The classic and most-quoted statement of the substantiability standard appears to be that in the Supreme Court’s decision in Morin v. Motor Carriers’ Assoc., 289 U.S. 103, 105 (1933), in which Justice Sutherland explained that a claim may be “plainly unsubstantial either because obviously without merit, or because its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.” The same principle is expressed through different words in Winifrede v. The Decatur Lumber & Sawmill Co., 255 U.S. 190, 194 (1921), in which Justice Stone wrote that “a wholly insubstantial claim will not be clearly nonmeritorious on its face and not be clearly precluded by controlling precedent.”

Part of the very definition of the substantiability test is that courts can evaluate the complaint on its pleadings or without resolving factual disputes. A claim is substantial so long as “it cannot be said that [it] is obviously lacking in merit and, therefore, barred because the court construes an agreement in favor of the party or holds that there is no substantial controversy over supplemental or other State law claims. The same principle is also the law clearly applied an exemption to some agency employees to withhold information that they would otherwise have been required to release. For some recent and very thorough examples of how a substantiability analysis is actually conducted, courts and litigants should also look to Judge Williams’s panel opinion in Decatur Liquors, Inc. v. District of Columbia, 478 F.2d 306, 383–86 (D.C. Cir. 2007), on the district court’s opinion in Wal-Juice Bar, Inc. v. Elliott, 899 F.2d 1502, 1505–07 (6th Cir. 1990).

Again, I would have preferred that the Senate select some standard that protects from fee assessments an agency that releases information when the law clearly applied an exemption to the requested information. Agencies will still be protected by the discretionary factors considered in the fee-shifting system, but the lack of a reason to bring attorneys-fee shifting into this stage of FOIA. Thus my amendment eliminates the fee-shifting section’s reference to relief obtained through an administrative action.

Mr. CORNYN. Mr. President, since coming to the U.S. Senate in 2002, I have made it my mission to bring a little “Texas sunshine” to Washington. The State of Texas has one of the strongest laws expanding the right of every citizen to access records documenting what the government is up to. As attorney general of Texas, I was responsible for enforcing Texas’s open government laws. We have been proud that Texas is known for having one of the strongest and most robust freedom of information laws in the country.

Unfortunately, the Sun doesn’t shine as brightly in Washington. The Freedom of Information Act, or FOIA, which was signed into law 41 years ago, was designed to guarantee public access to records that explain what the Government is doing.

Some Federal agencies are taking years to even start working on requests. Far too often when citizens
seek records from our Government, they are met with long delays, denials and difficulties. Federal agencies can routinely and repeatedly deny requests for information with near impunity. Making the situation worse, requestors have no guarantees to seek out courts for appealing an agency’s decision. And when requestors do sue agencies, the deck is stacked in the Government’s favor.

Courts have ruled that requestors cannot recover legal fees from agencies who improperly withhold information until a judge rules for the requestor. That means an agency can withhold documents without any consequences until the day before a judge’s ruling. Then the agency can suddenly send a box full of documents, render the lawsuit moot and leave the requestor with a hefty legal bill. And the agency gets away scot-free.

In the meantime, the delay can keep mismanagement and wasteful practices hidden and unfixed. Documents obtained through FOIA helped reporters for Knight Ridder—now part of McClatchy Company—show the public that government programs that were fought bravely for our country have trouble obtaining the medical benefits they deserve upon returning home. Thousands died waiting for their benefits, many more received wrong information. Legal fees alone topped $20,000,000 along with the time and effort. Few citizens have such time and budgets.

To address problems of long delays and strengthen the ability of every citizen to hold his or her government to account, I introduced bipartisan legislation to reform FOIA.

There are, unfortunately, many issues in the Senate Judiciary Committee that have become partisan and divisive. So it is especially gratifying to be able to have worked so closely with Chairman LEAHY on an issue as important and as fundamental to our nation as openness in government. Today we are making history by passing the Openness Promotes Effectiveness in our National Government Act of 2007, also known as the OPEN Government Act. I am grateful to Senator PATRICK LEAHY and I introduced bipartisan legislation to reform FOIA.

Passage of this important legislation is a victory for the American people. From my vantage point here in Washington, DC, it is about holding accountable the politicians who continue to grow the size and scope of the Federal Government, and it is about holding accountable the bureaucrats who populate the Federal Government’s ever-expanding reach over individual liberty.

This legislation contains important congressional findings to reiterate and reinforce our belief that FOIA establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. In addition, the act contains over a dozen substantive provisions, designed to achieve four important objectives: (1) to strengthen FOIA and close loopholes, (2) to help FOIA requestors obtain timely responses to their requests, (3) to ensure that agencies have strong incentives to act on FOIA requests in a timely fashion, and (4) to provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible.

The OPEN Government Act is not just pro-openness, pro-accountability, and pro-accessibility—it is also pro-Internet. It requires government agencies to establish a hotline to enable citizens to track their FOIA requests, including Internet tracking, and it grants the same privileged FOIA fee status currently enjoyed by traditional media outlets to bloggers and others who publish reports on the Internet.

The act has the support of business groups, such as the U.S. Chamber of Commerce and National Association of Manufacturers, media groups and more than 100 advocacy organizations from across the political spectrum. Without their help, this legislation would have been impossible.

We owe it to all Americans to help them know what their government is up to and to make our great democracy even stronger and more accountable to its citizens.

Mr. President, I wish the record to reflect how much I appreciate the work of Senator LEAHY on this very important matter. The Freedom of Information Act is something that has needed amending for some time, and I am happy we are able to do it tonight.

I ask unanimous consent that the amendment at the desk be considered and agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; that any statements be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 2655) was agreed to, as follows:

(a) NEWS-MEDIA STATUS.—At page 4, strike lines 4 through 6

The term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(b) ATTORNEYS’ FEES.—At page 5, strike lines 1 through 7 and insert:

(1) A judicial order for an enforceable written agreement or consent decree; or

(2) A voluntary or unilateral change in position by the agency, provided that the complaint’s claim is not insubstantial.

(c) COMMENCEMENT OF 20-DAY PERIOD AND TOLLING.—At page 6, lines 1 through 7 and insert:

(1) In GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking “determination;” and inserting: “determination. The 20-day period shall commence on the date on which a request is first received by the appropriate component of the agency, but in any event no later than ten days after the request is first received by any component of the agency that is designated in the agency’s FOIA regulations to receive FOIA requests. The 20-day period shall not be tolled by the agency except (I) that the agency may make one request to the requester for information and tolled in the 20-day period while it is awaiting such information that it has reasonably requested from the requester; or (II) to clarify with the requester issues regarding fee assessment. In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.”.

(d) COMPLIANCE WITH TIME LIMITS.—At page 6, strike line 11 and all that follows through page 7, line 4, and insert:

(1) A Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end the following:

(2) B Section 552(a)(6)(B)(i) of title 5, United States Code, is amended by inserting between the first and second sentences the following:

(e) STATUS OF REQUESTS.—At page 7:

(1) strike lines 17 through 22 and insert:

“(1) In GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking “determination;” and inserting: “determination. The 20-day period shall commence on the date on which a request is first received by the appropriate component of the agency, but in any event no later than ten days after the request is first received by any component of the agency that is designated in the agency’s FOIA regulations to receive FOIA requests. The 20-day period shall not be tolled by the agency except (I) that the agency may make one request to the requester for information and tolled in the 20-day period while it is awaiting such information that it has reasonably requested from the requester; or (II) to clarify with the requester issues regarding fee assessment. In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.”.

(2) B Section 552(a)(6)(B)(i) of title 5, United States Code, is amended by inserting between the first and second sentences the following:

(3) The amendment (No. 2655) was agreed to, as follows:

(a) NEWS-MEDIA STATUS.—At page 4, strike lines 4 through 6

The term “a representative of the news media” means any person or entity that
“(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and”.

(2) at line 23, strike “(C)” and insert “(B)”.

(c) CLEAR STATEMENT FOR EXEMPTIONS.—At page 18, line 19 and all that follows through the end of the section and insert:

“(A) if enacted prior to the date of enactment of the OPEN Government Act of 2007, requiring the monitors be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld; or

(B) if enacted after the date of enactment of the OPEN Government Act of 2007, specifically cites to the Freedom of Information Act.”

(g) PRIVATE RECORDS MANAGEMENT.—At page 18, lines 14 through 15, strike “a contract between the agency and the entity.” and insert “Government contract, for the purposes of records management.”.

(b) AUDITS, AUDITS, AND CHIEF FOIA OFFICERS AND PUBLIC LIAISONS.—Strike section 11 and insert the following:

“SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

“(a) In General.—Section 552 of title 5, United States Code, is amended by adding at the end the following:

“(b) General Duties.—The Office of the Government Accountability Office shall, from the policies and procedures of administrative agencies under section 552, shall review compliance with section 552 by administrative agencies, and shall recommend to Congress and the President to improve the administration of section 552. The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under section 552 and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(1) The Government Accountability Office shall monitor administrative agencies on the implementation of section 552 and issue reports detailing the results of such audits.

(2) Each agency shall—

(A) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(B) monitor FOIA implementation throughout the agency and keep the head of the agency, the legal officer of the agency, and the Attorney General appropriately informed of the agency’s performance under the FOIA;

(C) recommend to the head of the agency such adjustments to agency polices, practices, personnel, and funding as may be necessary to improve its implementation of the FOIA;

(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency’s performance in implementing the FOIA; and

(E) facilitate public understanding of the purposes, processes, and statutory exemptions by including concise descriptions of the exemptions in both the agency’s FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency’s annual FOIA report, and by providing an overview, where appropriate, of certain general categories of FOIA records to which those exemptions apply.”

“(2) Designate one or more FOIA Public Liaisons who shall be appointed by the Chief FOIA Officer of the Office of Government Information Services.

GENERAL DUTIES.—FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

“(b) Effective Date.—The amendments made by this section shall take effect on the date of enactment of this Act.”

(i) CRITICAL INFRASTRUCTURE INFORMATION.—Strike section 12 of the bill.

The bill (S. 849) was ordered to be engrossed for a third reading, was read the third time, and passed.

(The bill will be printed in a future edition of the RECORD.)

AUTHORITY FOR COMMITTEES TO REPORT

Mr. REID. Mr. President, I ask unanimous consent that during the recess/adjournment of the Senate, Senate committees may file committee-reported Legislative and Executive Calendar business on Wednesday, August 29, 2007, during the hours of 10 a.m. to 1 p.m.

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

The nomination was considered and confirmed, as follows:

Tevi David Troy, of New York, to be Deputy Secretary of Health and Human Services.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate returns to legislative session.

ORDERS FOR TUESDAY, SEPTEMBER 4, 2007

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 12 noon, Tuesday, September 4; that on Tuesday, following the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that there be a period of morning session, and until 1 p.m., with Senators permitted to speak therein for up to 10 minutes each, and that the time be equally divided and controlled between the leaders or their designees; that at 1 p.m. the Senate proceed to the consideration of Calendar No. 207, H.R. 2642, the Military Construction/Veterans Affairs appropriations.

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

NOMINATION OF TEVI DAVID TROY TO BE DEPUTY SECRETARY OF HEALTH AND HUMAN SERVICES

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session, that the Finance Committee be discharged from the nomination of Tevi David Troy to be Deputy Secretary of Health and Human Services; that the nomination be confirmed, the motion to reconsider be had, and the bill be laid on the table, that any statements be printed in the RECORD, that the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

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

Mr. Reid. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 12 noon, Tuesday, September 4; that on Tuesday, following the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that there be a period of morning session, and until 1 p.m., with Senators permitted to speak therein for up to 10 minutes each, and that the time be equally divided and controlled between the leaders or their designees; that at 1 p.m. the Senate proceed to the consideration of Calendar No. 207, H.R. 2642, the Military Construction/Veterans Affairs appropriations.

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

GOLDEN GAVEL AWARD

Mr. REID. Mr. President, I have been informed the Presiding Officer has received something I have never gotten in all the many years I have been in the Senate, the Golden Gavel Award. For those who are listening, it is given for the most important legislation we dealt with today, FISA—no one worked on it any more than you. The hours you put in on that, well past midnight—you were the talk of the Judiciary Committee. Even though you are a junior member of that committee, your experience as attorney general and as a U.S. attorney, doing all the good things you have done, certainly qualified you, and people looked to you for guidance on that most important piece of legislation.

I say to my friend from Rhode Island how fortunate we are to have you in the Senate.

EXECUTIVE SESSION