SENATE—*Tuesday, June 24, 1986*

Legislative day of Monday, June 23, 1986

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Father in Heaven, we invoke Your presence and wisdom as the Senate enters the final hours on the tax reform bill. Very few Americans will be unaffected by this bill, whatever shape it takes in its final form. We thank You for the leadership by the chairman and ranking member of the committee, the hard work of committee staff, and the legislative aides of each Senator in preparing amendments and processing voluminous details of this monumental task. Mighty God, work Your will and way through the minds and hearts of the Senators in completing this definitive legislation and through the conference to an equitable and just conclusion. In His name Who said "render unto Caesar the things that are Caesar's and unto God the things that are God's."—Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator ROBERT DOLE, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND.

SCHEDULE

Mr. DOLE. Mr. President, this is sort of a recap for Members.

The leaders have 10 minutes each. That will be followed by routine morning business, not to extend beyond 9:30. At 9:30, we hope to be on the bill. There will be special orders. Hopefully, they can be interspersed throughout the day, maybe some before 9:30 and maybe some between 9:30 and 10, depending upon what happens.

There will be a vote, as I understand, at 10 o'clock. Special orders have been entered for Senators HAWKINS, PROXMIRE, HUMPHREY, EXON, MELCHER, and GORE.

At 9:30 a.m., we will resume consideration of the bill H.R. 3838. As I said, there will be a vote at 10 o'clock.

Mr. President, this is the last day of the tax reform bill. The big vote should come at 4 o'clock. We would appreciate help in that effort. I would guess we may be able to have just that final passage vote. There is about a half-hour reserved before that for the leaders and the managers to make statements on the bill itself.

Mr. President, I think we are in pretty good shape, according to the chairman, Senator PACKWOOD. I would hope that Members would come to the floor as early as they can this morning, say at 9:30. At least on this side, we will not have our normal luncheon because there will be votes throughout the noon hour.

Mr. President, I just urge my colleagues not to wait until 3 o'clock and rush over and say, "I want 30 minutes on the bill," or "I want to offer my amendment." That would cause problems later in the day.

Mr. President, at this point I wish to present a statement for the RECORD on the tax bill. I want to point out one or two things.

SENATOR RUSSELL LONG'S CONTRIBUTION TO TAX REFORM

Mr. DOLE. Mr. President, first about the bill itself, I think it is an outstanding piece of legislation. Obviously, it is not perfect. It could be improved and I think there will be improvements in the conference, maybe even improvements before we vote today. I know that many Members on both sides have reservations about the bill, about certain provisions in the bill. We are hearing from constituents on a daily basis about, "It is a good bill, but—."

I think on both sides of the aisle, we are aware of those problems and hope they can be resolved if not before the vote, then later.

Having been the chairman of the Finance Committee, I want to certainly extend my congratulations to the chairman. I think BOB PACKWOOD has performed a near miracle because this bill was about as dead as a dodo bird 6 or 7 weeks ago. In a period of 2 or 3 days, it was revived. It is now right on track.

Mr. President, this bill has broad support on both sides. It is a bipartisan effort. There has been a lot of effort by Democrats and Republicans in the committee, and we have seen it on the floor time after time after time.

And finally Mr. President, this morning I want to pay special tribute to my old Finance Committee copilot and good friend, RUSSELL LONG. This will be the last big tax bill for Senator LONG, the capstone of what can only be characterized as an illustrious career in the field of tax legislation.

Mr. President, Senator LONG was first elected in 1948 and was chairman of the Finance Committee for 15 years. Politics in America describes his leadership this way: "He had an almost uncanny ability to spot a nascent consensus in the Senate's maelstrom of conflicting views on any given issue, locate a center that would hold, and occupy it at precisely the right moment."

That is how I think most of us would describe Senator LONG and his efforts.

I do not know what else you can say about the legislator. I do know that during the 4 years that I chaired the Finance Committee and for all the years I have served on the committee, I often turned to Senator LONG to reap the benefits of his collected wisdom in tax law as well as political strategy.

There is no one in the Senate today, nor probably has there ever been, who has a wider, more thorough knowledge of the Tax Code than Senator LONG.

I can recall a number of times in the committee when we would raise some amendment and he would say, "I do not think I know very much about that," but if you go back and check you would find maybe 10 years before he started the entire thing.

So he has a vast knowledge of the Tax Code.

I just want to thank him early today because this will be a very busy day.

Mr. President, I was chairman of that committee for 4 years and he had been chairman of that committee for 15 years. When I became chairman, obviously there was a change. People were wondering what would happen, will the committee function?

The committee functioned because Senator LONG never looked back, he never tried to undercut the new chairman. He cooperated every step of the way. Obviously, we had differences, maybe political differences or policy differences. But as far as moving ahead and making my job not only bearable, but very enjoyable most of the time, it was his cooperation that made it possible, and I believe that Senator PACKWOOD will say the same thing.

This may be the last tax bill that passes here, unless there is another one this year, which I doubt, that will

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

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have RUSSELL LONG's fingerprints all over it, and his fingerprints are all over this piece of legislation.

The legacy that Senator LONG will leave behind in the field of tax reform when he retires at the end of the year will benefit generations of Americans.

I just happen to believe that if you go back to the Tax Code and look at all the provisions that are there and find out who they came from, who they benefited, you will find that a great number were initiated by this distinguished Senator from Louisiana, the former chairman, Senator LONG.

The beneficiaries by and large are not the rich, not those with power, not those with influence, but they are Americans who experienced the benefit of the earned income tax credit, for example, and many, many other provisions.

In other words, low-income Americans, middle-income Americans, Americans who were trying to make it work. They may never know it, but they owe a great deal to this distinguished Senator, RUSSELL LONG.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. WILSON). Under the previous order, the Democratic leader is recognized.

SENATOR RUSSELL B. LONG

Mr. BYRD. Mr. President, I, too, want to express my fondness for RUSSELL LONG. I shall miss him. I shall miss his friendship and I shall miss his guidance on tax matters as well as many other matters that come before the Senate from time to time which involve the Senate Committee on Finance, a committee which Senator LONG chaired for so many years and more recently on which he has served as the ranking member.

□ 0910

Mr. LONG will be especially remembered with fondness in West Virginia because of his having fathered the ESOP legislation, the employee stock ownership plan. That legislation enabled the workers and management at Weirton Steel in Weirton, WV, to save the plant from being closed down in 1982. It has preserved the jobs of 8,500 employees, and that plant has resulted in 9 consecutive quarters of profits for the company and its employees.

We shall miss RUSSELL LONG. He is a brilliant Senator. He is liked by all Senators. I especially will miss him. I join with the majority leader in saying we will miss RUSSELL and Carolyn when they no longer are with us.

A TAX REFORM BILL THAT RESTORES CONFIDENCE

Mr. BYRD. Mr. President, I join with the majority leader in expressing the hope that the overwhelming majority of the Senate will support the monumental tax bill that will pass the Senate today. It closes down tax shelters for the rich, it eliminates the corporate loophole goodies, and it strengthens the minimum tax so that profitable corporations and the very-high-income people will pay their share.

Beyond these monumental accomplishments in this bill for Americans in every income category, we have achieved something else which may not be so readily apparent as we celebrate real tax reform today. We have addressed the skepticism which has been on the increase in recent years about the ability of the Government to hear the people's voice, to address the people's concerns, and to enact the fundamental changes in the Tax Code that we will witness on the passage of this bill. Our action today, in full view of the country, on a matter that is so near and so dear to the heart and pocketbook and family of every American, will not only reverse the cynicism about the fairness of the tax system but should also go a long way toward helping to restore some of the lost confidence in, and support for, our system of government in general.

I shall cast my vote today in belief that this amazing response to the needs and the wishes of the people promotes the kind of confidence that is so essential to a representative democracy in a challenging and changing world.

Mr. President, I yield to the distinguished Senator from Wisconsin the remainder of my time should he have need for it.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 9:30 a.m., with statements therein limited to 5 minutes each.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized.

Mr. PROXMIRE. Mr. President, I thank my good friend, the minority leader, for so graciously yielding me part of his time. I deeply appreciate it.

WHAT IF GORBACHEV IGNORED STAR WARS AND NEGOTIATED AN OFFENSIVE NUCLEAR REDUCTION?

Mr. PROXMIRE. Mr. President, yesterday, I spoke on the prospect that the Secretary General of the Communist Party of the Soviet Union may surprise us and agree to an arms control treaty.

What happens if the Soviet Union surprises everyone? Suppose it agrees to a mutual reduction of 50 percent in offensive nuclear arsenals without any precondition on compliance with the ABM Treaty. As of this time, Secretary Gorbachev has agreed to negotiate the reduction provided the U.S. Government will promise full compliance with the ABM Treaty for 15 years. Why the condition? Because Gorbachev is concerned that star wars might destroy the credibility of its nuclear deterrent. After all, the United States has made star wars or SDI its top military priority. Obviously, production and deployment of antimissile—that is star wars—hardware would constitute a direct frontal repudiation of the antimissile treaty.

Consider what was the purpose of the ABM Treaty? Its purpose was to stop a race between the two superpowers to develop an antimissile system. Why was it so important to end a purely defensive missile system? Because such a system could—if it worked—destroy the deterrent effect of the adversary's nuclear arsenal.

When President Johnson and President Nixon directed the negotiation on the ABM Treaty, they were concerned that the Soviets would deploy their own star wars or antimissile capability that might destroy this country's nuclear offensive capability and would therefore mandate and all-out effort by the United States to build the offensive nuclear penetration capability that would overcome the Soviet's defense.

If our President thought the Soviet system would work, he would have had no choice. It would have been either build or give up. Arms control would be dead. And what would follow? The arms race—offensive and defensive—would be a certain fact of life. The cost for both countries would be enormous. Nuclear instability would greatly increase. The risk of a cataclysmic nuclear war would be much greater. So the antiballistic missile treaty was drafted for the express purpose of stopping the Russian star wars. This body, the United States Senate, was so convinced of the threat of the Soviet star wars that it ratified the ABM Treaty by an overwhelming bipartisan majority of 89 to 2 in 1972.

Now, Mr. President, we have one of the most ironic reversals in political history. Here is a treaty the United States vigorously pressed on a very reluctant Soviet Union. It was an American arms control treaty in the best sense. It would stop an arms race in space. It would preserve the credibility of the United States and the Soviet nuclear deterrent that had kept the peace. And it would make it practical

and possible for the superpowers to negotiate a reduction in their offensive nuclear arms in the confident knowledge that they could do so and still retain a sufficient deterrent to prevent any preemptive nuclear attack by the other side.

What would have been the United States strategy if the Soviet Union had refused to agree to the ABM Treaty? Defense Secretary McNamara and his successors made this crystal clear: This country would have gone all-out, sled-length in a buildup of our offensive nuclear force.

Now, Mr. President, the irony is that the shoe is on the other foot. It is the United States that is disregarding all its own arguments. It is the United States that is making its top military priority an antimissile program that would destroy the treaty negotiated so painstakingly by Republican as well as Democratic administrations and ratified overwhelmingly by Republican as well as Democratic Senators. What has changed in the past 14 years to make the smashing bipartisan majority that ratified the ABM Treaty wrong? Is it not still just as likely that the building and deployment of the antimissile star wars system by the United States today will provoke a Soviet offensive nuclear buildup as it was sure and obvious to all in 1972 that a Soviet antimissile star wars might provoke a United States offensive buildup? It certainly seems that way.

But just a minute, Mr. President. Nothing is sure in international negotiations. Secretary Gorbachev just might surprise all of us. He might suddenly ignore our star wars project. He might agree to a substantial cut in offensive nuclear arms in both sides. Frankly, if this Senator were in Gorbachev's shoes, I would do precisely that.

It would be a wise move from the Soviet standpoint. It would permit the Soviet Union to concentrate its far more limited resources on building up the basic foundation of its long-term military strength—its economy. It could focus its more limited technological resources on a more conventional military strengthening.

The Soviets could do this with confidence that the star wars defense would almost certainly not work. That is the overwhelming consensus of America's top scientists and physicists. And most important, even if through a series of technological miracles it could work, no President and no Congress could ever have genuine confidence that it would.

Why is that? Because the only way star wars could be effectively tested would be through an actual nuclear strike. And then this most complex technological system in human history would have to work perfectly that very first time. Why perfectly? Because our most prestigious scientific organization, the National Academy of Sciences, has told us that if only 1 percent of the Soviet arsenal strikes American cities, between 35 million and 55 million Americans would die instantly. This country would cease to exist as an organized society.

Mr. President, would any President ever have confidence that any weapon system, and especially one as infinitely complex and widely challenged by competent experts as star wars, would work with better than 99 percent efficiency the one and only time it was ever challenged or tested? The answer, Mr. President, is, of course, not.

But would not star wars add to our deterrence? Would it not increase the uncertainty of the Soviets that they could destroy our retaliatory force? The answer to that one, Mr. President, is simple and emphatic: Star wars adds nothing to our deterrent. Here's why: One-half of our enormous nuclear deterrent is deployed in submarines at sea or able to be at sea in minutes. Another 25 percent is deployed in bombers—in the air or able to take off in a very few minutes. We do not need star wars to protect our deterrent. The U.S. nuclear deterrent is largely invulnerable right now. It will continue to be without star wars and the Soviets know it.

So Secretary Gorbachev just may suddenly change his tune. He may agree with star wars or no star wars; he will negotiate a mutual reduction of the offensive nuclear arsenal of both sides with confidence that in star wars, the United States is wasting much of its economic, technological, and military resources on a gigantic turkey.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, my myth of the day is that real wages in the United States have been increasing in the past 2 years and are now higher than they were in 1979.

The facts are that from 1983 until now, real average hourly earnings for nonsupervisory workers fell by 1.7 percent. Real wages and salaries per household as well as average adult income are below their peak levels achieved in 1979.

What accounts for this shocking result?

First of all, in the early 1980's, the twin blows of double-digit inflation and deep recession combined to devastate labor markets and real wages growth. In 1980, our economy registered a pitiful decline in real average hourly earnings of 4 percent. While some recovery was made in 1982 and 1983, the trend has been negative ever since.

The recent downward trend is a consequence of our losing many high-paying jobs in the goods-producing sector to foreign competition and replacing them with relatively low-paying jobs in the service sector.

Finally, real wages have suffered from the lack of growth in productivity. Output per hour in the first quarter of 1986 was no higher than it was in 1984. As anyone who has studied basic economics can tell you, in the long run, real wages can only rise in tandem with higher productivity.

Mr. President, the consequences of the continued slump in real wages are ominous for our economy and society. If we are to provide a healthy economy, more and better jobs, and a higher standard of living to this and future generations of Americans, we must see a return to the enviable record of 2 to 3 percent annual growth in real wages which marked the accomplishments of our economy during the quarter century between 1950 and 1975.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR EXON

The PRESIDING OFFICER (Mr. HATFIELD). Under the previous order, the Senator from Nebraska [Mr. EXON] is recognized for not to exceed 5 minutes.

□ 0920

TAX REFORM

Mr. EXON. Mr. President, the Senate today will approve the most sweeping overhaul of the Tax Code in decades. I commend the chairman of the Finance Committee, Senator PACKWOOD, and the ranking Democratic member, Senator LONG, for their efforts over the last 6 months to keep the tax reform movement alive. They have done that. I also commend Senator BILL BRADLEY, the Senator who, more than any other, originated this historic tax reform bill which we will pass today.

On balance, this bill is a vast improvement over the current Tax Code and the tax bill passed by the House of Representatives. It lowers the basic tax rates for both individuals and corporations. It closes a number of tax shelters, so that business decisions for a change will be made for economic reasons, rather than tax reasons. It also strengthens the minimum corporate tax, so that profitable corporations will start paying their fair share of the tax burden.

Particularly pleasing is the positive impact that this tax bill will have on agriculture. It will permit farmers and other self-employed workers to deduct up to one-half of their health insurance costs. It attacks the tax shelters which have encouraged nonfarmers to farm the Tax Code. For example, the depreciation period for single purpose agricultural structures would be dou-

bled to 10 years. The bill greatly restricts the tax losses that can be written-off by those not earning their living primarily from agriculture.

One major disappointment with the Senate tax reform bill is the essential elimination of most individual retirement accounts. I think that is a mistake. Congress made the right decision in 1981 when we made IRA's available to all working Americans. The Senate bill would turn the clock back and penalize the 20 million Americans who took Congress at its word in 1981 and opened IRA's. With the strains on the Social Security System, the Congress should be looking for ways to encourage retirement savings and capital formation, rather than discouraging it. I am convinced that the conferees on this bill will protect at least a partial IRA benefit for all taxpayers, which has always been my goal. If this happens, it will not be because of Senate leadership. This body has, by its shortsighted vote against a reasonable compromise by a three-vote margin, turned IRA continuance over to the House of Representatives.

I am pleased that the Senate has approved our amendment to restore income averaging for those engaged in agriculture. Due to the uncertainties of weather, market prices and other factors beyond their control, the income of farmers and ranchers can vary greatly from year to year. As a result, income averaging is important to many in the agricultural sector and I am pleased that the Senate has restored that provision.

Finally, for the farmer or rancher fortunate enough to work out an arrangement with his lender to reduce his debt, the Senate incorporated our suggestion of protection from taxation on the amount of debt forgiven.

In closing, Mr. President, as a member of the Senate Budget Committee, I am concerned about the drastic yearly revenue swings that result from this bill. While the bill is revenue neutral over 5 years, the great swings each year could pose significant problems for the budget process and the economy. I look forward to working with my colleagues on the Budget Committee and others to address this problem.

This is not a perfect bill. Seldom does one pass here. Changes are necessary, and I am supporting this measure on hopes that the Senate-House conference can work out any shortcomings and necessary changes and report back a bill that will have universal support.

Mr. President, this bill will begin the process which will simplify the Tax Code and make it fairer and more efficient.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

RECOGNITION OF SENATOR MELCHER

The PRESIDING OFFICER. Under the previous order, the Senator from Montana [Mr. MELCHER] is recognized for not to exceed 5 minutes.

COMMENTS ON THE TAX BILL

Mr. MELCHER. Mr. President, in a few minutes, at 10 o'clock, we will be voting on an amendment that I and Senator HEFLIN, Senator ZORINSKY, and Senator NUNN have sponsored to do a little justice, to render partially to farmers and ranchers and agriculture throughout the country, and to woodlot owners, that is, small, private owners of woodlots, a little justice in this tax bill by giving them a part of the capital gains provisions that we have in the present law. Instead of repealing all capital gains provisions for them, we would retain a portion of it for those who make $100,000 or less in net income. It would cost $600 million, and we would get it by closing the big loophole of carryback provisions for corporations which, under present law and under this bill, can get a check out of the U.S. Treasury if they had a year's loss but have had a previous good year.

□ 0930

If that is adopted, it will help this bill, but this bill needs a lot of help. It is a well-intentioned bill. It eliminates taxes for people who are very poor. Six million of the poorest Americans will not have to file an income tax return if this bill becomes law as it is written now, and that is good. It closes the biggest loophole on corporations that are profitable, by some provisions for a minimum tax on those corporations that have been escaping paying any Federal income tax or very small amounts of Federal income tax.

So much for those points. The bill, while well-intentioned, fails on many points.

First of all, all taxpayers get an increase in 1987, next year, and then the middle-income taxpayers, close to half of them—somewhere between 35 and 40 percent—will get a tax increase forever, until it is changed—in 1987, 1988, 1989, and on.

Then there is double taxation for retirees who have contributed to their retirement funds—State, local, municipal, county, and Federal workers. Why? It does not make any sense. They will be shocked to find out, when they retire, that they can be double taxed on contributions already taxed when they set up their retirement funds.

Then, of course, if we pass this bill, we discourage savings by canceling IRA's.

I do not believe these points are wise at all. But the most telling point against this bill, in my judgment, is how it affects us in Montana and States like Montana, where we depend on the basic industries of agriculture and forest products. And mining, too—do not forget them. We depend on those industries in my State of Montana, and they are the backbone of this country. The economy is built on those basic industries, and their taxes are going to be increased.

In effect, although they are not making much money now, if they start to make money and have some recovery, then agriculture, mining, and forest products will be clobbered with increased taxes. I do not think that is wise. I do not think it is fair. I do not think it is equity. If we are thinking about how we can get this economy built on a strong basis, we will reject those provisions in this bill and not resign ourselves to letting it escape from the Senate until it is corrected.

Mr. President, on balance, I will vote against the bill, for all these reasons and others which I will outline later today. But, on balance, this is a bad bill for rural America, because it clobbers basic industries of agriculture, forest products, and mining.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

TAX REFORM ACT OF 1986

The PRESIDING OFFICER. The clerk will state the unfinished business.

The legislative clerk read as follows:

A bill (H.R. 3838) to reform the internal revenue laws of the United States.

The Senate resumed consideration of the bill.

Pending:

(1) Melcher-Zorinsky Amendment No. 2156, to allow a 30-percent capital gains exclusion for the sale of property by an individual actively engaged in the trade or business of farming or woodlot operations, and to limit net operating loss carrybacks.

(2) Mattingly Amendment No. 2133, to express the sense of the Congress that tax reform legislation remain unchanged for a period of at least 5 years from date of enactment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 0940

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

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

AMENDMENT NO. 2156

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

Mr. MELCHER. Mr. President, in a few moments we will start the procedure of voting this morning on the amendment that I offered on behalf of myself, Senator HEFLIN, Senator ZORINSKY, and Senator NUNN.

We seek to save for those engaged in agriculture whose incomes are $100,000 or less the current law on capital gains.

□ 0950

Now, in my book, capital gains is a good part of our Tax Code, but this bill repeals it. In my judgment, capital gains has been part of our tax policy for several decades because it is wise tax policy, but this bill repeals it.

If it is going to repeal it, it should not be repealed for those in agriculture, at least up to the amounts of income that I have mentioned and that is in the amendment; and if it is going to be repealed, it should not be repealed for woodlot owners. Now, woodlot owners are private individuals. They are active. They are not passive. Farmers are active; they are not passive. We do not have any big loopholes here. We have a situation where the capital gains retention is wise. And that is what our amendment seeks to do.

Over 70 percent of the forests in the United States is owned privately and a majority of that, a big majority of that 70 percent that is privately owned, is owned by small woodlot operators. And capital gains is very significant. Indeed, the Society of American Foresters wrote to all of us, every one of us, and said that this was the most critical point of woodlot owners—retention of capital gains for them. For farmers who are losing money—and, believe me, almost all of them are losing money now—retention of capital gains is only fair and equitable. And so we seek to do that.

Now, it is offset by closing a loophole or a glitch or an unintended big gaping hole in this bill for carryback provisions of corporations. Under current law, present law, the corporations can offset, and that means getting a checkout of the U.S. Treasury, if they have a losing year, offset the losing year against going back 3 years if they were profitable and get the money back out of the Treasury, a Treasury check. And the loophole is that the corporate rate up until now was 46 percent, including this year, and when the bill is fully effective would only be 33 percent. So instead of giving them 46 percent back in the check from the U.S. Treasury, it would be limited to 33 percent. And that I believe is what the Senate intends on that particular provision.

What is needed in offset for the capital gains provision for agriculture and woodlot operators? Six hundred million dollars. And like everybody else on this floor, when we look to see what were the accurate figures, we go to the Joint Tax Committee and ask them what are the costs of this type of an amendment. They wrote back to us and said $600 million. And, in a few minutes, we are going to be told by the chairman of the Finance Committee that the Joint Taxation Committee was wrong, was $10 million off, was 1½ percent wrong. And who is the source of this information? The Budget Committee.

So the people that figure the revenue on the Joint Taxation Committee are going to find out that they are not as accurate as the Budget Committee. And based on that, the chairman of the Finance Committee is going to make a point of order against the amendment of myself and Senator HEFLIN and Senator ZORINSKY, and Senator NUNN. On that technicality of the Budget Committee supposedly being accurate and the Joint Taxation Committee being inaccurate, he is going to do what has not been done on this Senate floor during all of the debate on this bill. He is going to make a point of order and say it is off by $10 million, off 1½ percent.

When he does that, of course, the amendment is supposed to fall. And then I will move that we waive section 303 and we will vote on that, supposedly. Only the chairman of the Finance Committee has been kind enough to inform me that he will move to table that, too. But at least we will have a vote. At least we will have a vote and let everyone know that the Joint Taxation Committee may be wrong and the Budget Committee may be right. And they may be more accurate, but, so what? The question, really, is what are the merits of the amendment.

So I ask you, I ask you to stand with the amendment if you believe it is meritorious. I do not know who could doubt that it is a meritorious amendment and that it would improve this bill if it were adopted. I ask all of you, in fairness, to consider the merits. Do not go on this very strange expedition of saying, "Well, it is a technicality, but so what? The Joint Taxation Committee's figures are not the revenue figures. The Budget Committee's figures are the revenue figures."

No matter how you slice it, the fact of the matter is that capital gains for agriculture and woodlot operators, to the extent we would allow it under this amendment, is absolutely sound. It is good tax policy. It is just, right, and equitable. I hope you can vote with us.

Mr. President, I yield the floor.

AMENDMENT TO RESTORE A 30-PERCENT CAPITAL GAINS EXCLUSION FOR FARMERS

Mr. ZORINSKY. Mr. President, I rise in support of this amendment to restore a 30-percent capital gains exclusion for farmers, ranchers, and woodlot owners. This is a much-needed change in the tax bill for the agricultural community, and I am proud to associate myself with it.

The amendment will permit a 30-percent exclusion for the capital gains of noncorporate, active farmers and woodlot owners who have net incomes of no more than $100,000 a year. The amendment does not restore the full 60-percent exclusion as under current law. However, I believe that the lower overall rates contained in the Senate bill will ameliorate that difference.

Mr. President, farmers from all across the United States have called me on this issue. Under the bill as it now stands, many will suffer dramatic increases in their taxes without the capital gains exclusion. This is unnecessary and unwarranted. There are too many loopholes remaining in the bill for us to deny the farmers the capital gains exclusion that they so desperately need. Our offset is just one example of these remaining loopholes.

The amendment is targeted so that the benefits accrue to those who can least afford to do without the exclusion. Such targeting should be the hallmark of Federal agricultural policies.

I urge the Senate to join me in restoring this element of fairness to the bill.

FAIRNESS FOR TIMBER PRODUCERS

● Mr. BUMPERS. Mr. President, I strongly support retaining a capital gains differential for all timber producers. this tax reform retains a capital gains differential for incorporated timber producers and it is unfair not to do so for noncorporate timber producers as well. All timber producers deserve the same tax treatment on capital gains.

Capital gains is justified for timber producers because they take real long-term risks, unlike the investor who simply buys stock in IBM and holds that stock for 6 months. Timber producers must maintain their investments for several decades before they see a return. This is precisely the type of risktaking that the capital gains exclusion should reward.

Timber producers, both corporate and noncorporate, will receive the benefits of lower tax rates, but they lose the benefits of the investment tax credit. For some timber producers, the reductions in tax rates will not offset

the value of the ITC if there is no capital gains exclusion.

The U.S. timber industry is suffering already from unfair, subsidized foreign competitors. I am hopeful that the administration will reverse its position on Canadian Government timber subsidies and that this issue can be resolved long before the current negotiations on a United States-Canadian free trade zone are concluded. But we can at least ensure that this tax reform bill does not aggravate the plight of the U.S. timber industry.

I am distressed that the Senate will not have an opportunity to vote directly on the capital gains issue. The parliamentary rules of the Senate have been manipulated to prevent a direct vote on timber capital gains. This doubles the unfairness for those of us who support the efforts of timber producers to be competitive and prosperous.●

TAX BILL AND AGRICULTURE FAIRNESS TO FARMERS

Mr. GRASSLEY. Mr. President, this Tax Reform Act helps restore some fairness to the tax system for our farmers and their families. Too often farmers have been the victims of tax policies and treated as second class citizens. The Tax Reform Act, as it was passed out of the Finance Committee, goes a long way toward dealing with these inequities.

One of the most significant provisions of this bill, and one which I sponsored, allows self-employed farmers and small business persons to deduct 50 percent of their health insurance premiums as a business expense. In the past farmers were not allowed to do this.

As a result they were at a disadvantage in relation to people whose premiums where paid by their place of employment. There is no legitimate reason why farmers and small businessmen should be treated any differently than their cousins and neighbors who are working for someone else. After all they both have the same goal of trying to protect themselves and their family from the high costs of health care.

Mr. President, we are currently experiencing a "brain drain" in agriculture. Many of our young progressive farmers are not able to start farming because credit is tight or they cannot afford the high interest rates being charged today. Many others have started farming only to be caught by the worst agricultural depression in 40 years and we are struggling to survive. I believe this trend is dangerous. We need aggressive young people in agriculture pursuing higher levels of efficiency and for competing on a world market. In order to help young people get started in farming we have extended the availability of Aggie bonds from 1986 to 1988. In addition, we have expanded the use of proceeds for the purchasing of used equipment. I believe these steps are important. Without taking steps to get and keep these young people in farming we could wake up in a few years and find that we have lost the fight for world markets simply because we don't have the troops to man our farms.

Earlier this year Congress passed a change in the tax laws that freed farmers from tax liabilities resulting from a forced sale. This was extremely important in not permanently tying farmers down with overwhelming tax debts because their lender forced them to sell. Although this bill was important it was one step too late. Our objective should be to encourage lenders to work with farmers before a forced sale.

In order to reach this goal I am happy to report that this tax bill eliminates tax consequences of a "write-down" of a farmer's principal. Under existing laws, even if a farmer and lender can agree to write-down a debt, Uncle Sam comes by and discourages that action by taxing the forgiven debt. Fortunately, this tax bill helps solve this problem and encourages negotiation rather than foreclosure or bankruptcy.

Mr. President, I believe this bill is going a long way toward helping our farmers and restoring fairness to our tax system. We must be very careful to not weaken this bill through too many amendments that change the direction this bill is taking.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ARMSTRONG. Mr. President, if I could have the attention of the chairman of the Finance Committee. At 10 o'clock, we are scheduled to have a vote and begin a series of actions. I am wondering if the chairman and others would be disposed to grant unanimous consent to let me offer my little subchapter M amendment, which I believe we can dispose of prior to 10 o'clock.

Mr. PACKWOOD. Yes, I am perfectly receptive. I know it is acceptable. We have got about 120 seconds.

AMENDMENT NO. 2161

Purpose: To modernize certain provisions of subchapter M of the Internal Revenue Code of 1954

Mr. ARMSTRONG. Mr. President, I am not one of those that thinks important matters have to take a long time, and so I do ask unanimous consent that I be permitted to offer this amendment at this time and I send it to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Colorado [Mr. ARMSTRONG] proposes an amendment numbered 2161.

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

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

The amendment reads as follows:

On page 2316, between lines 17 and 18, insert the following new subtitle:

Subtitle E—Regulated Investment Companies

SEC. 1451. AMENDMENTS TO THE REGULATED INVESTMENT COMPANY QUALIFICATION RULES.

(a) IN GENERAL.—Paragraph (2) of subsection 851(b) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof: "(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options or futures contracts) derived with respect to its business of investing in such stock, securities, or currencies;".

(b) FOREIGN CURRENCY GAINS.—Subsection 851(b) is amended—

(1) by striking out the period at the end of the next to last sentence therein and inserting in lieu thereof a semicolon;

(2) by striking out the phrase "For purposes of paragraphs (2) and (3)," at the beginning of the final sentence therein; and

(3) by striking out the period at the end of such final sentence and inserting in lieu thereof: "; and the Secretary may by regulation exclude from qualifying income foreign currency gains that are not ancillary to the company's principal business of investing in stock or securities (or options and futures thereon)".

SEC. 1452. TREATMENT OF SERIES FUNDS AS SEPARATE CORPORATIONS.

(a) IN GENERAL.—Section 851 is amended by adding at the end thereof the following new subsection:

"(q) SPECIAL RULE FOR SERIES FUNDS.—

"(1) In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

"(2) For purposes of paragraph (1) the term 'fund' means a segregated portfolio of assets, the beneficial interest in which is owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other classes or series in respect of such portfolio of assets."

(b) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company that has more than one fund on the date on which this section becomes effective, and has before such effective date been treated for Federal income tax purposes as a single corporation—

(1) the amendment made by this section, and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

(2) the tax attributes of such regulated investment company shall be appropriately allocated among it funds.

SEC. 1453. EXTENSION OF PERIOD FOR MAILING NOTICES TO SHAREHOLDERS.

The following provisions are each amended by striking out "45 days" each place it appears and inserting in lieu thereof "60 days":

(1) Paragraph (3) of subsection 852(b).

(2) Subparagraph (A) of paragraph 852(b)(5).

(3) Subsection (c) of section 853.

(4) Paragraph (2) of subsection 854(b).

(5) Subsection (c) of section 855.

SEC. 1454. PROTECTION OF MUTUAL FUNDS RECEIVING THIRD-PARTY SUMMONSES.

Paragraph (3) of subsection 7609(a) is amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding the following new subparagraph:

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof."

SEC. 1455. EFFECTIVE DATES.

(a) The amendments made by sections 1451, 1452, and 1453 shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act.

(b) The amendments made by section 1454 shall apply to summonses served after the date of the enactment of this Act.

Mr. ARMSTRONG. Mr. President, this amendment makes four modest but, nonetheless, worthy changes in the law relating to subchapter M of the Internal Revenue Code that regulates mutual funds.

The desire of the industry, which is supported, I think, without controversy or objection and enjoys the support of the Treasury Department, is to permit the mutual fund industry to make better use of income from stock options, futures contracts and options on stock industries, options and futures of foreign currencies, and foreign currency transactions.

□ 1000

At the present time, these mutual funds are required to have at least 90 percent of their income from dividend and interest. So this amendment would include in the 90-percent requirement the items I have just mentioned: stock options, futures contracts, options on stock indices, and foreign currency transactions.

Second, this provides that where there are a series of funds which are subject to the 90-percent rule, and also the existing so-called short test, that each of the funds in the series has to qualify individually.

Finally, current law requires mutal funds to mail certain dividend income and capital gains information to shareholders within 45 days after the close of the funds' taxable year.

This amendment extends that period to 60 days.

Mr. President, with that word of explanation I believe the amendment is acceptable on both sides. I ask for its adoption.

Mr. DOLE. I ask unanimous consent that we may proceed for 1 more minute on this amendment.

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

The question is on agreeing to the amendment of the Senator from Colorado.

The amendment (No. 2161) was agreed to.

Mr. ARMSTRONG. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2156

The PRESIDING OFFICER. The hour of 10 o'clock having arrived, under the previous order, the question is on agreeing to the amendment of the Senator from Montana.

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

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I make a point of order that the pending amendment affects revenues for fiscal year 1987, the budget resolution for fiscal 1987 is not yet in place, and that the amendment therefore violates section 303 of the Budget Act.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I move to waive section 303, and I suggest the absence of a quorum.

Mr. PACKWOOD addressed the Chair.

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

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DECONCINI. Mr. President, I understand there is a little time problem right now, and I would like to take just a few minutes prior to this vote to express my views of this tax bill that is before us.

The PRESIDING OFFICER. It will take unanimous consent for any debate at this point.

Mr. DOLE. I ask unanimous consent that the vote which was to occur at 10 o'clock occur at 10:20.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I thank the Chair. I thank the majority leader.

Mr. President, we are about to vote on probably one of the most far-reaching tax proposals in the 10 years that I have been in the U.S. Senate. Like many of my colleagues, I have some serious doubts about this bill and particular concerns about what might happen to this bill in conference.

As I have said several times on the floor, my compliments go out to the distinguished chairman, Mr. PACKWOOD, of the Finance Committee, and the ranking member, Mr. LONG, and every one of the members on that committee for putting together such comprehensive tax reform legislation.

Whether or not this bill is real reform is going to depend a lot on what happens in the conference. For 10 years I have advocated a simple tax system. That system is not my innovation but belongs to Professors Hall and Rabushka, of the Hoover Institute at Stanford University. They have worked for years compiling a flat, simple tax system that eliminates all deductions and would have one basic rate. Recently they adjusted it, so that it has two rates, 24 and 17 percent with virtual elimination of almost every deduction, with a very generous $12,600 exemption for each family of four, and for a single taxpayer of roughly $9,000.

So I applaud the dramatic effort made in this bill to get two rates. It is a quite significant improvement we are making. I hope that the conference committee will keep these rates, and it is very, very important that we do not let these rates slip up. If anything, they should come down.

I offered an amendment that would reduce the 27-percent rate to 26 percent, and that would raise the break points for the top rate by 20 percent. Under the Finance Committee rule, $17,600 would be in the 15-percent bracket. Under the DeConcini amendment it would have been $21,120. A joint filer under the Finance Committee bill would file at 15 percent if they made $29,300 or less, under the amendment that I offered that figure would have been $35,160. For heads of households, it would have been $23,500 under the Finance bill for 15 percent, and under my amendment it would have been $28,200. For married filing separately, it would have been $14,650, under the Finance bill, and under the DeConcini amendment it would have been $17,580.

To me the important part of this bill, or any major tax reform is to give relief to the middle and lower income. This bill attempts to do that. It does

not go quite far enough in my judgment but it attempts to do that.

Second, any real reform has to lower rates substantially. This bill does that. A top rate of 27 percent is a substantial improvement over what we have had. And in fact, it will be an incentive for investment.

So I applaud these elements of the bill. Everyone can put their little twist on it and maybe make it a little bit better or perhaps a little worse.

I believe this effort is good basic tax reform. The third part of this bill is so important—that is, a tough minimum tax of 20 percent on individuals and corporations—with literally no loophole except if your income happens to be totally from tax-exempt bonds. Otherwise everyone is going to pay tax. We have heard the gory stories about General Dynamics and other industries here that pay no tax. We have heard the stories about thousands of Americans who legitimately make over $1 million a year and pay no tax. That time is coming to an end. This bill will do that.

Despite some of these positive points, this bill is by no means perfect. On the individual side, the denial of the deductibility of State and local sales tax is certainly not fair when you consider that this bill permits the deduction of income tax and property taxes paid in the State.

I worked to amend this, and there was a slight improvement in the bill but it does not go near as far as equity demands.

It goes against the American tradition of fair play to unduly penalize individuals with retroactive implementation of new tax provisions. This is a horrendous problem with this bill. Unless it is corrected in conference, I will not be able to support the conference report. These new rates are not going to take effect until mid-1987, but you are going to do away with the deductions at the begining of 1987.

□ 1010

This is not fair. To me, it is going to cause a horrendous problem and will cause this Senator to look at this bill closely when it comes from the conference.

I also am concerned about the potential giveaways in the bill. We have had a number of debates here with the Senator from Ohio, Senator METZENBAUM, who has gone out of his way to explain some of the special privileges that are in this bill. Some effort was made to eradicate those and extract them from the bill with only minor success.

I am again concerned what will happen in the conference. I understand the conference and the processes, of course, and the give and take that has to go on. But Members of the House will have their special interests and areas of legitimate concern to them. We all try to take care of our special interests. But today, as we vote on this bill and in the next few weeks during conference, the time is right to take care of the interests of the American taxpayer. That means low rates and a minimum amount of special interests and deductions in the bill.

The transition rules in this bill really trouble me a great deal. There are 174 so-called transition rules. Many of them are really old-fashioned boondoggles. I cannot say that I would not like to have some more in there for the State of Arizona. But that is not the way to make good tax laws. I would gladly give them all up if everybody would join me.

Some of them are outrageous. I cannot help but remind this body about the one that provides for a half billion dollar tax writeoff for the steel industry. It does not belong there and it is not fair.

Certainly, it is not fair when copper in the State of Arizona has suffered as much as steel over the last 4 or 5 years, and yet there is little or no provision in the bill to assist that industry.

Also, I think it is important to say that this bill indeed takes on the real estate development business. Congress for a long time encouraged people to invest in real estate, particularly housing. It gave them special incentives, special writeoffs, special carryover for losses. This bill eliminates almost all of that.

And so be it, if that is what we have to do. Yet the bill preserves the same type of tax breaks for the oil and gas industry that were denied other industries. Is that fair? I think it is clear that it is not fair.

Will it be corrected in the House conference committee? I do not know. But I hope that someone is listening who is on that conference committee. Maybe one vote is not going to make any difference in final passage when it comes back from conference, but this Senator is going to look carefully at the equalizing areas of fairness and equity.

In recent days, the newspapers have been full of articles detailing the efforts of special interests lobbying and undermining this bill, even before the Senate has completed it. We have an opportunity today, and this Senator will vote for this bill, with the objections and qualifications I have stated.

Mr. President, this is important legislation. There are those who will decide to vote against it. That is certainly their privilege and I have great respect for them.

I do agree with the Senator from Montana, Senator MELCHER, there are many additional things we should be spending our time on, such as balancing the budget or some of our defense concerns. But that is not what we are doing today or the last couple of weeks. We are on tax reform. Indeed, this Senate bill is a tax reform bill. As I said to begin with, it can be improved. The burden will fall heavily on those in the conference committee to insist on low rates, a tough minimum tax on individuals and corporations, and to insist on no additional boondoggles and special interests. I hope they will have the courage to take some of these give-aways out.

With that, Mr. President, I again thank the committee chairman, ranking member, and the committee staff. I wish to thank Laurie Sedlmayr of my staff for the great assistance she has given me in preparation so that I can reach a judgment on this bill that I think is best for the people of Arizona and the people of this country.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I wonder if I might inquire of the minority leader, will we be able to vote at 10:20.

Mr. BYRD. I will have to ask some of my staff to determine that information, if the distinguished Senator will forebear.

Mr. PACKWOOD. The time has been set for 4 days and I hate to see it drag on.

Mr. BYRD. The Senator has been very patient and forebearing. There is a tieup on the Rock Creek Parkway, as I understand it. We are doing our best to learn of the situation there. Senators who are in that tieup have no telephones in their cars and we cannot establish information on that problem.

May I say to the distinguished Senator, I will try to get back to him very quickly.

Mr. PACKWOOD. I would appreciate that.

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.

□ 1020

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

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

Mr. PACKWOOD. Mr. President, is the pending business the amendment of the Senator from Montana [Mr. MELCHER], on which I have raised a point of order and he has appealed the ruling of the Chair? Is that where we are? I cannot remember.

The PRESIDING OFFICER. There is a pending motion to waive the point of order.

Mr. PACKWOOD. I have checked with the minority leader and he said at 10:20, it would be all right for the

vote to proceed. I warn people that—well, we are at 10:20 now.

I move to lay that motion on the table. 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. BYRD. Mr. President, what is the distinguished Senator moving to lay on the table?

The PRESIDING OFFICER. The motion to waive is what the Senator is moving to lay on the table.

Mr. BYRD. I thank the chairman. I thank the Senator. I also thank the Senator from Oregon for his patience in delaying the motion.

Mr. MELCHER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MELCHER. Is what we are voting on the discrepancy between the Joint Taxation Committee saying that the amendment is revenue-neutral but the Budget Committee saying it is $10 million off? So we are merely voting on which committee's figures to accept?

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to waive. The yeas and nays have been asked for.

Mr. MELCHER. A further parliamentary inquiry: What I said is the situation, that we are going to vote on the $10 million.

The PRESIDING OFFICER. The Chair did not interpret that in that fashion.

Mr. MELCHER. What is the point of order on, Mr. President?

The PRESIDING OFFICER. Simply the motion to table the motion to waive.

Mr. MELCHER. A parliamentary inquiry: What is the original point of order?

The PRESIDING OFFICER. That the amendment violated section 303 of the Budget Act. The yeas and nays have been ordered.

Mr. PACKWOOD. Regular order, Mr. President.

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

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. McCLURE], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Connecticut [Mr. WEICKER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KERRY], the Senator from Georgia [Mr. NUNN], and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia [Mr. NUNN] would vote "nay."

I further announce that, if present and voting the Senator from Rhode Island [Mr. PELL] would vote "yea."

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

The result was announced—yeas 54, nays 39—as follows:

[Rollcall Vote No. 146 Leg.]

YEAS—54

Armstrong	Gorton	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grassley	Packwood
Boren	Hart	Proxmire
Boschwitz	Hatch	Quayle
Bradley	Hatfield	Rockefeller
Chafee	Hawkins	Roth
Cochran	Hecht	Rudman
D'Amato	Heinz	Simpson
Danforth	Helms	Specter
Dole	Humphrey	Stafford
Domenici	Kassebaum	Stevens
Durenberger	Kasten	Symms
Eagleton	Kennedy	Thurmond
East	Lautenberg	Trible
Garn	Laxalt	Wallop
Glenn	McConnell	Warner
Goldwater	Metzenbaum	Wilson

NAYS—39

Abdnor	Dodd	Mathias
Andrews	Evans	Matsunaga
Baucus	Exon	Mattingly
Bentsen	Ford	Melcher
Bumpers	Gore	Mitchell
Burdick	Harkin	Nickles
Byrd	Heflin	Pryor
Chiles	Hollings	Riegle
Cohen	Johnston	Sarbanes
Cranston	Leahy	Sasser
DeConcini	Levin	Simon
Denton	Long	Stennis
Dixon	Lugar	Zorinsky

NOT VOTING—7

Inouye	Nunn	Weicker
Kerry	Pell	
McClure	Pressler	

So the motion to lay on the table was agreed to.

□ 1040

The PRESIDING OFFICER. The point of order is well-taken, and the amendment falls.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2133

The PRESIDING OFFICER. The question recurs on the Mattingly amendment.

Mr. MATTINGLY. Mr. President, the pending business is amendment No. 2133. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that the names of Senators WILSON, QUAYLE, NICKLES, ZORINSKY, LAXALT, PELL, BOSCHWITZ, STEVENS, and GRAMM be added as cosponsors of the amendment.

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

Mr. MATTINGLY. Mr. President, we have had a long and intensive debate on the tax reform bill. There have been a few minor changes, but basically the legislation is unchanged from what passed out of the Finance Committee.

Mr. METZENBAUM. Mr. President, may we have order in the Senate? We cannot hear the Senator from Georgia.

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

Mr. MATTINGLY. Mr. President, the amendment that is pending is a sense of the Congress resolution stating that there be no changes in the Tax Code for the next 5 years, once it is signed into law.

As I said, there have been very few changes in this tax reform bill, and basically the legislation is unchanged from what was passed by the Senate Finance Committee. This is a tribute to the leadership of both the chairman of the Finance Committee, Senator PACKWOOD, and the ranking Democratic member, Senator LONG.

Over the past few weeks, I believe the Senator from Oregon has performed a miracle—a major political miracle.

Mr. BOSCHWITZ. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MATTINGLY. I thank the Chair.

Mr. President, referring to the tax bill that has been voted out of the Senate Finance Committee by a 20-to-0 vote, I think that vote demonstrates the bipartisan aspect of tax reform.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. MATTINGLY. I yield.

Mr. DOLE. I wonder whether it might be possible to get a 30-minute time agreement on this amendment, equally divided.

Mr. MATTINGLY. I object to that at this time.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. How much time does the Senator need?

Mr. MATTINGLY. I am not certain how many other Members wish to speak on the amendment. I hope to complete it as soon as possible.

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

Mr. MATTINGLY. I yield.

Mr. BUMPERS. Is it anticipated that the amendment will require a rollcall vote?

Mr. MATTINGLY. Yes.

Mr. President, I think the 20-to-0 vote demonstrated a bipartisan aspect

of the tax reform movement. There were heroes aplenty on both sides of this tax reform movement.

It was not very long ago when the only person in this country who seemed very interested in tax reform was the President of the United States. I think many members of the press and Congress laughed at the President's attempt to stir up public interest on tax reform. I think he now deserves great credit for continuing to press for tax reform.

There are Members of the Senate and people in the private sector who have spent years working on tax reform. I might add that of the many speeches on tax reform during this debate, none was more eloquent and persuasive than the speech given by Senator BRADLEY on June 4.

This will be one of the most significant pieces of legislation we will ever vote on during our years in the Senate, and to say that it is historic is an understatement. We have had Federal Tax Code changes all along, almost as long as anbody can remember, it has kept the printers, the CPA's, the accountants, and the tax lawyers happy and prosperous. Finally, at long last, we have a tax bill that is doing more than just shuffling the loopholes.

The PRESIDING OFFICER. The Senate will be in order. The Chair asks the staff who are active to please retire from the Chamber.

Mr. MATTINGLY. Mr. President, I do not see order in the Chamber.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MATTINGLY. I thank the Chair.

Mr. President, there are those who criticize the top rate of 27 percent. Some would like to have it at 38 percent, or 35 percent. Personally, I would like to have a flat rate tax of 10 percent, but that is not going happen.

Some people just yearn for the old days when the top rate was 90 percent.

The truth is that most of the rich people in this country, as well as the rich corporations, will pay more in actual dollars under this bill than they ever paid when the rate was 50 percent or 70 percent. Rates do not matter when you have thousands of pages of loopholes. It is better for us to have a 27-percent rate and collect it than to have a 50-percent rate and collect only 10 percent of the dollars.

So there is for the first time a minimum tax so everyone will be paying a fair share of the tax burden. No longer will we read about multibillion-dollar corporations avoiding any tax payment. Six million of the working poor will be taken off the tax rolls and this is only right. In some cases, the tax burden they currently face is enough to force them to use food stamps in order to make ends meet. Let those people keep their entire paychecks. The rates are simplified. This bill has just two rates, 15 and 27 percent, and one for the corporations of 33 percent. The low rate is the driving force behind this tax reform and the right stuff, so to speak, that makes it a great bill.

Certainly there are going to be changes in this bill when it goes to conference. Many Senators want to see the bill restore the full IRA. I for one hope that it will be restored, but this is a very fragile compromise. If we tinker with the rates, tax reform will lose support. It will edge back to the very complexity that we are trying to end. Everyone in the country understands 15-27-33, cutting away the brackets and making the Tax Code simpler and fairer. Everyone understands having 80 percent of the taxpayers at the 15-percent rate. Everyone understands the unfair loopholes. Everyone understands having a minimum tax. It is not complicated.

People understand and support this legislation. But after we finish with tax reform, we need tax stability. After the conference committee finishes its work, Congress votes on the final legislation, and it goes down to the White House where they will have a great signing ceremony, the drum rolls, giving all the accolades to the heroes in Congress, then Congress needs to stay out of the tax reform or tax change business for at least 5 years.

Once we make these reforms we, the Congress, should step aside and let the private sector get to work and stop worrying about what the tax laws are going to be next year. If Congress just gets off their back and out of their way, the private sector will produce. It will create jobs. It will lead us into a new, stronger period of economic growth.

The amendment I am offering is a sense of the Congress resolution that calls for no major changes in the Tax Code for a minimum of 5 years after the tax reform bill is signed into law.

Mr. BOSCHWITZ. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate is not in order. The Senator from Minnesota is correct. The Senate will be in order.

The Senate is now in order.

Mr. MATTINGLY. Thank you, Mr. President.

Mr. SYMMS. Mr. President, would the Senator add the Senator from Idaho as a cosponsor to his amendment? I compliment him for offering it.

Mr. MATTINGLY. Mr. President, I so ask unanimous consent.

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

Mr. MATTINGLY. Mr. President, Americans cannot have long-term uninterrupted economic growth with constantly changing and unreliable tax laws. The tinkering and the meddling of Congress must stop. Constant changing of the rules in the tax laws creates unstability for decision making in industry, in business, and in individuals. A nonchanging Tax Code offers stability for the decisionmakers of America.

We need to frustrate the tax increasers. We need to frustrate the Tax Code changers and encourage stability.

We are creating in this bill the opportunity for greater savings, rewards, incentives, investments, fairness, equity, capital formation, entrepreneurship, job creation, and trade. But how long is it going to last? Is it going to last 6 months, 1 year, 2 years? We need to give this new law a chance, secure it from the spur-of-the-moment knee-jerk congressional changes.

We have all listened to the questions and the concerns registered here in Congress, back in our States and across the United States. But I would wager to say that the last question or statement made by any individual or group was, "All right, Senator, I can and I will live with the law and the new tax rates, but please, please don't change the rules later on."

Stability, permanency and, reliability, is now needed as a final touch to this tax reform bill.

Who can run America best? Not the Government. But instead the American people can provided they are left alone.

Senator PACKWOOD and Senator LONG have asked us throughout this debate to keep the bill intact. I agree. After 4 p.m. today, when we vote on final passage, after the conference committees meet and come up with the final bill, after it is ratified by both the House and Senate, and after the signing ceremony at the White House, then it is America's turn. Let us give it to America and then back off for at least 5 years.

If the bill is good, and it is, let us take it one step further. Let us guarantee certainty. Let us crown this bill with a resolution of fairness and stability, Mr. President.

Mr. BENTSEN. Mr. President, will the Senator yield?

Mr. MATTINGLY. I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, I appreciate what the Senator is trying to do and what his objective is, but let me tell you, any time you pass a piece of tax legislation of this magnitude you are going to find an incredible number of things that are going to have to be fixed, have to be modified and have to be changed.

I will vote with the Senator in the spirit of what he is trying to achieve. But with 2,000 pages of legislation, we are going to see quite a number of

things that have to be corrected next year.

Mr. MATTINGLY. Let me respond to the Senator from Texas. I certainly appreciate his concern. I think we are all aware of how massive and sweeping this tax reform legislation is and how it reaches every aspect of the tax system.

I understand there are going to be some areas that need further work. I call it, as the Senator would, fine tuning, to assure that those areas conform to the bill's real goals of fairness and equity in the Tax Code.

I think that is a reality that can be expected, and this amendment does not obstruct those types of efforts.

However, the amendment does express the concern of the taxpayers in the Senator's State, in my State, and across the United States, that Congress changes the laws too often and taxpayers have said time and time again, "Please quit changing the rules of the game on us."

So the intent of the sense of the Congress is to get Congress on record to say that this is a good bill, so let us not tamper with it.

Mr. BENTSEN. I say to my good friend, I applaud the objective and I think it is great objective, and certainly the American people and the American businesses want some continuity and stability in the tax laws they have ahead. Here we are seeing a dramatic change in direction in this bill. I hope it achieves the goals we are seeking. But there is some risk in this kind of a change, where we have taken away some of the tax incentives that we would normally think are absolutely necessary for the competitiveness of our economy as we try to meet competition from abroad. We are going to have to measure that and see how it works. On balance, I decided to vote for the bill, and support it, but there are some unknowns.

I do hope that we do not have further major changes, but I do not rule them out, frankly. If we get ourselves in a recession and we find the balance of trade worsening, we may rethink the question of having some additional tax incentives for buying new machinery and equipment in this country.

Mr. MATTINGLY. I have been in the Senate 5½ years, so I recall what it was like in the private sector.

What I recall is very clearly pointed out in the letter from the National Federation of Independent Business, a letter that I will enter into the RECORD, which states there were 2,600 separate changes to the Tax Code between 1978 and 1984.

I was back there in the private sector. I remember all those changes. They were very difficult to live with. If you do not know the rules of the game it is hard to play the game.

In addition, respected economist Paul Craig Roberts has commented, in an article that appeared in the June 19, 1986 edition of Business Week, on the need for stability.

The National Federation of Independent Business has endorsed my amendment in a letter sent to all Senators.

Finally, Mr. President, in yesterday's Wall Street Journal, there was a story by Kenneth Bacon in which he noted the boost that would be given to the U.S. competitive position by adoption of such an amendment as I propose.

I ask unanimous consent that these materials be printed in the RECORD.

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

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
June 17, 1986.

Hon. MACK MATTINGLY,
U.S. Senate, Washington, DC.

DEAR MACK: The National Federation of Independent Business (NFIB), representing more than 500,000 small firms, commends the efforts of the Senate to shape true tax reform legislation. At the heart of these efforts has been the precept that simplicity is a virtue where the tax code is concerned. However, the Senate will soon have an opportunity to strike a stronger blow for simplicity when Senator Mattingly offers his amendment pledging the Senate to no new substantive changes in the tax code for five years. NFIB strongly supports this amendment and urges you to vote for it.

In the period between 1978 and 1984 over 2,600 separate changes were made to the tax laws, not counting all the additional IRS regulations that were necessary to interrupt and implement these changes. This virtually constant change of tax rules has placed a tremendous burden on all taxpayers, especially small firms.

Government estimates indicate that 68% of the small business paperwork burden is generated by IRS. In simple terms, the frequency and complexity of tax law changes has placed a huge burden on American economic productivity. Managing tax changes reduces the productive time of entrepreneurs, inhibits plans to hire new employees, and makes investment planning a nightmare.

Small firms across the nation want a respite from change after the tax reform bill has passed. This sentiment is clearly expressed by the 23 states that have passed resolutions in preparation for the upcoming White House Conference on Small Business calling for a 3 to 5 years moratorium on tax law changes.

NFIB urges you to crown the tax reform bill with a final act of fairness: put yourself on record as supporting a five year moratorium on substantive tax law changes once tax reform has become law. Senator Mattingly will be offering an amendment framing a sense of the Senate resolution that such a moratorium should be honored. On behalf of NFIB's membership, I urge your support on this Key Small Business vote.

Sincerely,

JOHN J. MOTLEY III,
Director of Federal Legislation.

A TAX BILL THAT'S UNASHAMEDLY CAPITALIST

(By Paul Craig Roberts)

When the tax cut passed in August, 1981, reporters called my office at the Treasury Dept. to inquire what would occupy us for the remaining three-and-a-half years of the President's term. I told them that the next item on the supply-side agenda was a fundamental reform of the tax system that would substitute a low, flat-rate tax for what was still, despite the tax cut, a high-rate, progressive system.

When my remarks were reported, they caused grumbling from White House aides. After only six months, they were already tired of the supply-side dominance of economic policy. The rivalry played into David A. Stockman's hands, and he skillfully used deficit hysteria to crowd out other economic policy issues. It wasn't until late 1984 that Treasury's tax reform plan was drafted.

MIXED BAGS

The tax bill that emerged was the kind of political compromise that tries to meld incompatible ideas into a single package. It was supply-side in calling for lower tax rates. But the bill also contained provisions traceable to an older generation of tax reformers whose main goal was to close loopholes for distributional reasons—regardless of their economic effects. These reformers wanted to make the rich pay with a vengeance, and they showed little concern for the adverse effects on economic opportunity caused by the multiple taxation of investment income. In their minds, the poor would be provided for by the government once the rich could be made to pay their fair share. The idea that the private economy could create opportunities for the poor, if the tax system didn't price labor and capital out of the market, wasn't part of their calculus.

The 1978 Carter tax reform plan was the last hurrah of the older generation of reformers. As a loophole-closing measure that left tax rates high, it was already an outdated approach, and Congress largely rejected it. Two years earlier, Treasury Secretary William E. Simon had proposed in *Blueprints for Basic Tax Reform* a choice of two fundamental reforms. One integrated the corporate and personal income taxes, thereby eliminating the double taxation of dividend income and reducing the tax bias against saving. It broadened the tax base by closing loopholes and dropped the top rate from 70% to 38%.

The second proposal was a cash-flow tax, or a consumption-based income tax, that excluded savings from the tax base and dropped the top rate to 40%. This reform would have eliminated the bias against saving that suppresses investment and productivity in the U.S.

Simon's proposals represented a fundamental change in thinking about taxation. Concern with incentives and economic performance clearly took precedence over income redistribution indicating that opportunity was beginning to shove aside envy as the focus of politics. Had either been enacted, U.S. industry today would be more competitive in world markets.

The tax-reform proposals that came out of the Reagan Administration were a far cry from the Simon *Blueprints*. Stockman's claim in *The Atlantic* magazine that the 1981 tax cut was a "Trojan horse"—a trick to cut taxes for the rich—made the Administration uneasy about any reform that further reduced tax rates on business and "the rich." The distributional issue was resurrected, and to deal with it, the Administration's proposal shifted the tax burden from individuals to business in a way that raised

taxes on new investments and worsened the outlook for the economy.

House Democrats took their cue from the Administration and cut tax rates with one hand while raising the cost of capital with the other, which would further erode the competitiveness of U.S. industry. The Senate Finance Committee, sensitive to the trade issue, was in a quandry and floundered around until it found the courage to cut the tax rate to 27%. This was enough to compensate for the loss of investment incentives, putting tax reform back on track.

NO MORE HYPOCRISY

The Finance bill, though not as well crafted as the Simon proposals or that of Representative Jack F. Kemp (R-N.Y.) and Senator Robert W. Kasten, Jr. (R-Wis.), is a positive achievement and worthy of support. It signals that American politics is moving away from the crippling hypocrisy that has saddled capitalism with high tax rates and destructive disincentives for most of this century. During a period when the U.S. was determinedly anti-communist, our high tax rates made it clear that we didn't really believe in our own system, either. At long last we have gained the political maturity and confidence to stop feeling guilty about capitalism.

The 27% rate may yet elude us. A pitfall in the bill is an unevenness of the revenue flows that adds $22 billion the first year and loses $20 billion the second, for a negative swing of $42 billion. If Congress uses the initial revenue gain to reduce the deficit without reducing spending, it may close the gap the following year by taking back some of the rate reductions. This possibility has prompted Senator Mack Mattingly (R-Ga.) to sponsor a resolution that mandates no changes in the tax laws for five years after the bill's passage. The battle, it seems, will continue.

[From the Wall Street Journal, June 23, 1986]

THE OUTLOOK—U.S. COMPETITIVENESS AND TAX REVISION

(By Kenneth H. Bacon)

WASHINGTON.—Over the last few years Congress has searched for ways to make U.S. industry more competitive in world markets. In 1981 it accelerated business depreciation write-offs to encourage investment and modernization. Then the Democrats tried to craft an industrial policy to support growth companies while cushioning the decline of ailing industries. When that effort failed Congress began to worry about trade policy. Last month the House passed a trade bill that would attack barriers to U.S. exports and establish an "industrial competitiveness council" designed to strengthen U.S. business.

But the House and Senate tax bills turn away from the quest for new policies or incentives to help American business compete. Both measures, and particularly the Senate bill, reject the notion that the tax system should favor certain types of investment or industries. By lowering tax rates they attempt to reduce the role of taxes in business planning, leaving resource allocation more to market forces.

The bills reflect a decision "not to use the tax system as a tool of industrial policy," says John Makin of the American Enterprise Institute. "That's a major change."

Compared to the 1981 tax law, which combined rapid depreciation with the investment tax credit to encourage new investment in equipment, the current bills almost look like deindustrialization measures. Because the plans would scrap the investment tax credit, they have "negative consequences for basic industry and capital goods companies," according to an analysis by Merrill Lynch & Co., which adds that "tax law changes are likely to hasten the demise of marginal competitors in heavy industries" by raising the cost of investment in new equipment.

Even if the dollar continues to fall. U.S. manufacturers—particularly in heavy industries—face challenges from highly productive, low-wage foreign producers that the tax advantages can't cure. The capacity of American steel producers has fallen to about 105 million tons today from 140 million in the late 1970s and will continue to decline to some 60 million or 70 million tons by the late 1990s, says Robert Crandall of the Brookings Institution. Steel industry employment, which dropped to 304,900 last year from 570,500 in 1979, will likely tumble further, aggravating pain in the Rust Belt.

The best way to reduce the stress of economic restructuring and the impact of foreign competition is to maintain a growing economy at home. The House and the Senate bills assume that lower tax rates are the key to economic growth, innovation and flexibility. "Lower rates are going to free up capital and they are going to help route it to the areas where it will be more productive," contends Sen. Lloyd Bentsen, a Texas Democrat.

The top personal tax rate would fall to 27% from the current 50% under the Senate plan and to 38% under the House plan. To help compensate for the proposed repeal of the investment tax credit, the top corporate rate would fall to 33% from 46% in the Senate version and to 36% in the House. Corporations strongly support the less onerous Senate bill over the House plan. "Business would become more efficient because tax considerations would play a smaller role in decisions," the Merrill Lynch analysis explains. Both plans increase the corporate tax burden to help pay for reductions in personal taxes and trim tax deductions to help finance lower rates.

The Senate bill is so radical that "I don't think anybody knows the effect it will have on near-term economic growth prospects," says Jerry Jasinowski, chief economist at the National Association of Manufacturers. "It's a major gamble . . . a major shift toward consumption" because of the lower rates, he says. "Over the long term it's got to be somewhat harmful to our international competitiveness because of the shift to consumption, which will decrease investment and suck in imports."

But Mr. Makin at AEI sees lasting advantages from the Senate bill: It would hold down interest rates and thus help control inflation, boost economic efficiency and encourage a reduction in debt, all of which will contribute to U.S. economic strength.

Lower tax rates increase the after-tax return from saving and boost the after-tax cost of borrowing. The Senate plan, which disallows individual deductions for most nonmortgage interest costs, would also reduce personal borrowing and restrain interest rates.

"With the advantage of lower rates and lower inflation rates, investment in unproductive capital will no longer be encouraged," an AEI report says. "Under current law, it was often profitable to invest in assets which returned to the economy less in value of output than their actual cost."

For corporations, "tax reform should encourage equity financing and may help to dampen the unsustainable tendency for debt to rise relative to national income." AEI states, adding that "equity financing helps spread risks, where debt financing often multiplies risk."

But if Congress really wants to help U.S. industry meet foreign competition, Mr. Makin says, it should pass the Senate bill and then stop tinkering with the tax laws, giving corporations the first chance in years to adjust and lay long-range plans. The U.S. would benefit from studying the Japanese tax system; "its major feature is its stability," Mr. Makin says.●

□ 1100

Mr. MATTINGLY. Mr. President, at this time, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. CHAFEE). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I would like to say that I totally agree with the objectives set forth in the proposal by the Senator from Georgia. I agree wholeheartedly with all the whereas clauses. Plainly, the uncertainty about the tax laws, the constant changes that are occurring, are a great inhibition on investment. They hold back the economy. They hold down the economy. They prevent entrepreneurial and profit opportunities and they prevent businesses from developing.

Therefore, I think I probably will vote for the proposal by the Senator from Georgia. My only concern reflects the same concerns of the Senator from Texas just now expressed. Plainly, we may find it necessary to make some changes. First, because there may be some unknown bugs in this bill that develop after it becomes law or after the conference that will require some changes. Some adjustments in fairness, some adjustments to deal with unforeseen problems may prove necessary. It may also prove necessary for some reason to increase revenues or to decrease revenues before 5 years are over, and we plainly need to have the opportunity to do that if it becomes necessary.

Furthermore, we are dealing with a bill that has been virtually unamendable in the Senate due to a rather unprecedented situation. Some changes, I believe, are in order in this bill—I hope that they will occur in the conference—such as keeping the capital gains differential, such as keeping IRA's available to all people who wish them, such as a greater tax break for people in the middle-income brackets and a lesser tax break for people in the highest-income brackets. Those changes may come and, therefore, those reasons for seeking change may

not be necessary by the time the bill becomes law.

Since what the Senator has offered is obviously a sense-of-the-Senate or sense-of-the-Congress resolution, it is not binding. It, therefore, does not put us into a totally inflexible situation. I think with the general principle that there should not be fundamental and sweeping overhauls of the tax laws again for at least 5 years, but changes only made if absolutely necessary for very obvious reasons, that it is wise to try to give assurances to the investing world and to the economic world in our country and to all concerned about their taxes that we are generally expressing the view that we do not intend to make any significant changes unless we have to.

For this reason, I am very inclined to support the Senator's proposal. I do want to hear what other Senators have to say before the vote comes.

Mr. MATTINGLY. Mr. President, I wish to thank the Senator from California. I would say that the reason I asked for the yeas and nays was so the Senate can be on record. Let us not create for ourselves too big a barn door through which we can escape the real intent of the resolution for those who may want to raise taxes.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I say to my friend from California that a reading of the resolution points out that it is the sense of the Congress that provisions that are changed in this act shall remain unchanged for at least 5 years, not other parts of the Internal Revenue Code. So we are not tying our hands. And, as the Senator knows, if we get 50 votes or 51 votes, we can make changes hereafter.

This really expresses the sense of the Senate that the policy changes that are made by this bill should remain untouched for 5 years. And there is no question in my mind that this is a good amendment. My taxpayers, and I am sure yours are as well, and I know the Senator from Georgia's taxpayers, are really reeling.

I asked the Congressional Research Service to look at how many bills we have passed that have affected the Internal Revenue Code since 1976. I know that the Senator from Georgia has referred to the fact that the NFIB, (the National Federation of Independent Businesses) has said that we have impacted 2,600 sections of provisions of the Internal Revenue Code in that period of time.

Well, the Congressional Research Service points out that in 1976, there were 21 bills that affected the Internal Revenue Code; from 1977 to 1979, 34 bills were enacted affecting the Internal Revenue Code; from 1980-81, 33 bills; in 1982, 15 bills; and from 1983-84, 21 bills. So there has been constant change.

It is an effort on the part of the Senator from Georgia—and I join him in that effort, as I know other Senators do—to give taxpayers the ability to plan, give taxpayers who really are reeling from all these changes the ability to have some sense of security that the major provisions and that the major philosophical approaches of this tax bill are going to remain unchanged.

I quite understand that we might have to raise revenues. I quite understand that there may be some technical corrections that the Senator from Texas spoke about, and that they will have to be made. But it would be my hope that this amendment sets in the minds of the Members of the Senate that the major provisions, the major thrusts of this bill, this historic bill that makes taxpayers out of all Americans, will remain unchanged for a 5-year period. The taxpayers and my constituents tell me. "Change the rules, that is fine, but leave them alone for a while." Or, "Just tell us what the rules are and we will work within them but leave them alone for a while." So I am very enthusiastic in my support of the Senator from Georgia.

It even occurs that, if real major changes are attempted in the provisions of this bill in the future, I and others may decide that we will require a 60-percent vote to make those changes. Of course, that is within the rules of the Senate to make such a requirement through the idea of extended debate.

It is important that we pass a bill, that the taxpayers have a sense that we are going to continue with the philosophy of this bill for a period of years so that they can plan and that the American economy can go forward. Clearly, the American economy cannot go forward in the same forceful way as it can if it feels that is has a tax law that it can rely upon.

So I am very much in favor of the amendment of the Senator from Georgia and I thank him for bringing it to the attention of the Senate.

Mr. CRANSTON. Will the Senator yield?

Mr. BOSCHWITZ. I yield to the Senator.

Mr. CRANSTON. Mr. President, I would just like to say that I think the Senator has made a fine further statement of the reasons for not tampering with the Tax Code for some time, but plainly pointing out that we have the flexibility that we need, if it becomes mandatory to do so for technical or for other reasons. I think the summary the Senator laid out of all the changes proposed and effectuated in tax laws in recent years bolsters the case for taking this position.

I neglected to mention one more change I hope will occur in conference, among several others, and that is the fairest possible transition rules and the fairest possible situation in regard to retroactivity. I do not think we have dealt with all of that yet as well as we should, and I hope that will be accomplished in conference.

Mr. BOSCHWITZ. I thank the Senator from California.

I would say to my friend from Texas, who spoke about the necessity of making the changes now and again, that, very frankly, I believe that we make changes in tax law before we give the preceding law a chance to work or to feel its effect and that we respond too rapidly to demands of the constituency. So the idea of leaving the tax law and the vital provisions and the basic provisions of the tax law in place for a period of years is very appealing to me.

And, as the Senator from California pointed out, I did indeed point out that one of the remedies that Members of this body have is to prevent such changes from occurring without having a 60-percent vote. And some of us will feel very strongly about doing just that if basic changes are attempted in this tax bill after it is passed. I thank the Chair.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, whenever I talk to my accountant or a whole bunch of taxpayers from Montana, one of the things that comes up on tax matters is: "Is Congress going to change the rules and the law every year affecting the Tax Code?"

□ 1110

And so in answer to my accountant, and to my constituents' accountants, and to my constituents who ask this question, I am going to say that what the Senator from Georgia has offered as a sense-of-the-Congress resolution is a sense of a whole lot of taxpayers out across the country. They would like to see what they knew was in the Tax Code remain there. Having said that, I am going to vote for it because it is a sense of the Congress, a sense that it is common sense not to always be changing the rules on taxes. But I full well know that Congress will be looking at where the flaws are in the Tax Code, flaws in this particular bill, and it will probably be necessary, indeed prudent, to change some of the provisions in this bill itself.

But nevertheless, the sense of people out across the country is to keep it uniform as much as you can year after year so we know where we are and know what we should be planning on. On that basis, it is a proper amendment. It is a proper amendment in

terms of the sense-of-the-Congress resolution. I shall vote for it.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this is a very interesting sense-of-the-Senate resolution to be added to this bill on no changes. I am going to vote for it. But I want to predict without any question that the very people who will vote for it today and those who are the cosponsors of it will themselves be back here within 5 years asking for special changes in the tax laws. And as further evidence of that, I will guess that some who are cosponsors will come to the floor yet today asking for changes in this tax bill.

My own view is that the tax bill ought to be passed without any further amendments. My own view is that maybe there ought not to be any changes in 5 years, but the reality is that you will be back, others will be back, and they will say "But this is a special situation that we need to make a change." Go forward with your sense-of-the-Senate resolution, but I am certain my prediction will be a very accurate one.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that Senator LEAHY be added as a cosponsor.

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

Mr. MATTINGLY. In answer to the statement of my friend from Ohio, I want him to know that if I were an advocate of one of the Tax Code changes, I do not think I would vote for this resolution. I was talking about making technical changes as one thing. But if someone wants to make major policy changes, they should not support this sense-of-the-Congress resolution because they are going to be on record.

If I were a constituent and you voted in support of it, and turned around and tried to make some change in the rules of game, I would be looking at you. This would be playing football. You have four downs. You are out on the field. All of a sudden they change the rules in the middle of the game, and are only going to give you three downs. So the spectators might look down onto the field and want to know what is going on.

With that, I say the sense of the Congress does something. It puts this Congress on record. If there are any technical changes in the bill, which I am certain there will be, that is one thing. If there are major policy changes in this bill, then the Congress is going to have to answer to the private sector—the sector that makes America grow.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. MATTINGLY. I yield to the Senator from Alaska.

Mr. STEVENS. I congratulate the Senator from Georgia for his initiative. But would he not agree if there are 60 votes now on this resolution that it is a tremendous symbol insofar as the enforcement of the sense of the Senate in this amendment?

Mr. MATTINGLY. Yes; I do. I know my distinguished colleague from Alaska has been an advocate, as have I, of a statute change requiring a supermajority of 60 votes to change the Tax Code. I think this is the direction we need to be headed in this Congress, so that it would take a major move by Congress to really alter anything in this Tax Code.

I hope that we can join together in passing it some time in the future.

Mr. STEVENS. I thank the Senator.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Could I ask my good friend from Georgia this question: Can I expect—I realize it is a sense of the Congress, it is not a law—that those who vote for this over the next 5 years will not be coming to the Ways and Means or Finance Committee asking for transition rules or changes in the law or things that might have some effect in their State if they vote for this resolution?

Mr. MATTINGLY. I guess you would have to get each one of them, line them up in the well, and get a pledge from each of them. I cannot speak for the others. But I know that the private sector, whether you are talking about agriculture, industry, small business, or whatever, is fed up with the changes that Congress makes in the Tax Code. I think they want some stability.

Mr. PACKWOOD. I am absolutely delighted. I will vote for this. I am delighted. But I have way down deep in my sense a feeling when we get to reconciliation this year many of the Members who vote for this resolution are going to be coming to us asking for changes that affect their State, whether it be cooperatives, or whether it be a private venture. They may say, gentlemen, I thought you wanted this sense-of-the-Congress resolution.

Mr. MATTINGLY. I say to my colleague, there may be a real flaw in this bill, for there is no bill that passes through this Chamber that does not have a flaw in it. That is the reason we have committees, the reason why Members come to them and say that this was not exactly right, and we think we would like to have a correction. I think the chairman of the Finance Committee, and Senator BENTSEN, need to do everything they can to make sure that the private sector in this country works and works efficiently.

Mr. BENTSEN. Mr. President, may I respond to that?

Mr. MATTINGLY. Yes.

Mr. BENTSEN. I well understand. I understand how tired people and businesses are of changes in the tax law, and of not being able to plan and make the kind of capital investment they have to. I think this is a fine objective that the Senator from Georgia is talking about. But I also understand the realities of the situation. When you have hundreds and hundreds of pages in a new tax bill, and then we have to go to the conference and try to resolve differences with the House, then come back and vote on it, there are going to be many things that happen in this tax bill that will have unanticipated consequences.

The other problem that we could well run into is a situation where we have a recession in the country. We could well be in the situation where we are not able to turn around what is happening. We may want to avoid the tax laws for good and legitimate reasons. And the realities are that we will.

I am going to vote for your legislation, but only because I think it is an overall objective that we want to work toward.

Mr. MATTINGLY. First, let me say, this is not a sense of the Senate. This is a sense of the Congress. I am not talking about changes you take to the House-Senate conference. We all know there are going to be changes there. But this amendment works because, if there were no resolutions on the sense of the Congress, there would probably not be any conscience, either. It is the conscience of the Congress to say that we have a resolution stating that we do not want any major policy changes in the Tax Code. We want to make certain that the free enterprise system is able to work, and individuals will have some stability in their lives. I think this would be a welcome change. Therefore, when the Congress comes to look at changes, it will remember that it passed a resolution which was a sense of the Congress that said think about it before we take any precipitous action.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I say to the distinguished Senator from Georgia that he has been persistent in his pursuit of this amendment. I respect that. I respect what he is attempting to do. I think the people want stability out there. I think if we pass this bill this year there could be some changes next year. He has said his amendment would not prevent it from making those changes.

Frankly, I will probably have to be one of the few in the Chamber to vote against the amendment because I would like to preserve the opportunity in the next 5 years to give additional tax cuts to the American people. I

view this amendment as being the amendment to argue not to change the law.

Mr. MATTINGLY. I say to my colleague from New Jersey, if he wants to cut tax rates, I will be standing right beside him.

Finally, we have gotten the attention of Congress; that the lower the rates, the less exemptions that are needed. And we should keep moving in that direction.

□ 1120

I would be happy to abrogate this sense-of-the-Congress resolution for that. I am certain the private sector would join us.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, before we have a vote on this sense-of-the-Congress amendment, I want to review a couple of points that we have to measure every amendment against.

This amendment will not cost any money. But every amendment that is proposed here that will touch the substance of the bill and change it has to become revenue neutral. That is, if we are going to have an amendment that changes some feature of the bill and there is not the same amount of revenue, then somewhere else in the bill we have to pick up that revenue.

Before this becomes ancient history, I want to describe exactly what occurred on the last amendment so that everybody can understand it.

The amendment was offered on the basis that it was revenue neutral. That is, we were going to reduce the tax revenue that would have been otherwise collected from people in agriculture, pertaining to the capital gains, and that was offset by revenue of a different nature, under the carryback procedures, where the corporations that have a loss can go back 3 years and pick up a check from Uncle Sam, from the Treasury, to reimburse them.

Who said it was revenue neutral?

The Joint Tax Committee said it was revenue neutral. They said what it would cost. It was agreed upon that it would be a wash.

The point of order that was raised by the chairman of the Finance Committee was a point of order that was not going to be raised, has not been raised during the consideration of this bill, and was not going to be raised, because the Joint Tax Committee, to be honest about it, said "If you are going to hold us to the absolute dollar of 1987 in revenue loss or revenue gain, we do not know whether we can do that in less than 60 days on every amendment that might be proposed."

Who disagreed? On what basis did the chairman of the Senate Finance Committee make the motion there was $10 million difference from what the Joint Tax Committee said it would be?

It was on the basis of the Budget Committee. They have estimators, too.

All during the consideration of this bill, as late as last Friday, he stated that he would not raise a point of order on differing figures that the Budget Committee found for 1987 as compared to the Joint Committee on Taxation, what they found for 1987 and for the life of the bill.

On that technicality the point of order was made. It was not improper, but what it means is if we would consistently follow that, every amendment would have to be cleared by the Budget Committee and by the Joint Tax Committee, to see that they were in agreement.

It is very confusing, I suppose, to the people of this country, our constituents, but, nevertheless, that is the situation.

I regret that it was raised on my amendment. I regret that it was raised only on my amendment. I do not think it should have been raised on any amendment because, after all, we are here trying to operate in the public interest, and whether something over 5 years in $10 million one way or the other, whose computer is accurate? I do not know. But I dare say that if you ask time after time the Joint Tax Committee and the Budget Committee to come up with figures, unless they doublecheck with each other, they are going to get different figures.

On the basis, the point of order prevailed. I wish we had voted on the merit of the amendment. The amendment certainly has merit. I just regret that we lost on the point of order. I would have liked to have won on the point of order. I would have liked to have voted on the merit; I would have liked to have won on that.

Mr. President, I yield the floor.

● Mr. LEVIN. Mr. President, I can understand the need for stability in the Tax Code. That is one reason why I am deeply concerned by the many retroactive features in the tax bill which is before us now. We should avoid changing the rules in the middle of the game.

But this amendment goes beyond that. By expressing the sense of the Congress that the parts of the Tax Code which are changed in this bill should not be changed for the next 5 years, this resolution would prohibit even totally prospective changes in the Tax Code. Therefore, changes which would apply to activities not yet even undertaken would be prohibited.

This amendment is troubling for two other reasons. First, it is misleading the very people we are striving to assist. There will be changes in the Tax Code over the next 5 years. The debate on this bill and on this amendment makes that clear. We should not pretend otherwise or ask people to put trust in our pretense.

Second, if we rule the income Tax Code off limits as a way to raise revenues, then we will only be left with excise taxes as a means to help achieve our deficit reduction goals. This would make a shift in the tax burden from income taxes to regressive excise taxes inevitable. The working poor, one of the groups which the authors of this tax reform bill most seek to assist, will bear the heaviest burden.●

THE PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Georgia. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Connecticut [Mr. WEICKER] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES] and the Senator from Georgia [Mr. NUNN] are necessarily absent.

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

The result was announced—yeas 50, nays 47, as follows:

[Rollcall Vote No. 147 Leg.]

YEAS—50

Andrews	Gorton	Nickles
Bentsen	Gramm	Packwood
Boren	Hatch	Pell
Boschwitz	Hatfield	Pressler
Chafee	Heinz	Quayle
Cochran	Helms	Rudman
Cranston	Humphrey	Sasser
DeConcini	Kasten	Simpson
Denton	Laxalt	Stafford
Dole	Leahy	Stevens
Domenici	Mathias	Symms
East	Mattingly	Thurmond
Evans	McClure	Trible
Exon	McConnell	Wallop
Ford	Melcher	Wilson
Garn	Metzenbaum	Zorinsky
Goldwater	Murkowski	

NAYS—47

Abdnor	Glenn	Long
Armstrong	Gore	Lugar
Baucus	Grassley	Matsunaga
Biden	Harkin	Mitchell
Bingaman	Hart	Moynihan
Bradley	Hawkins	Proxmire
Bumpers	Hecht	Pryor
Burdick	Heflin	Riegle
Byrd	Hollings	Rockefeller
Cohen	Inouye	Roth
D'Amato	Johnston	Sarbanes
Danforth	Kassebaum	Simon
Dixon	Kennedy	Specter
Dodd	Kerry	Stennis
Durenberger	Lautenberg	Warner
Eagleton	Levin	

NOT VOTING—3

Chiles	Nunn	Weicker

So the amendment (No. 2133) was agreed to.

□ 1150

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I have been asked about further votes, at least for the next hour or so.

Senator DURENBERGER has an amendment which has been cleared on both sides, and we are prepared to accept it.

Senator CHILES has a sense-of-the-Senate resolution which I think he will offer but not ask for a vote on it. I do not know whether he will pursue it.

Those are two amendments we can get out of the way. Two more amendments have been withdrawn. So I think we have a good chance of finishing the amendments, with luck, perhaps by 3 o'clock, with no more than three or four votes.

Mr. DOLE. Mr. President, we have a matter we need to pass very quickly to get to the House. It will take about 1 minute. I ask unanimous consent that we may proceed out of order.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

AUTHORIZING CHANGES IN ENROLLMENT OF S. 2414

Mr. DOLE. Mr. President, I send to the desk a concurrent resolution on behalf of the distinguished Senator from South Carolina [Mr. THURMOND], and I ask for its consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 152) authorizing changes in the enrollment of S. 2414.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

Mr. BYRD. Mr. President, there is no objection to the immediate consideration of the resolution on this side.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. THURMOND. Mr. President, this is a concurrent resolution to authorize a change in the enrollment of S. 2414, amendments to S. 49, the Firearms Owners' Protection Act. As Senators will recall, both S. 49 and S. 2414 passed the Senate by unanimous voice vote on May 6, 1986.

This resolution will do nothing more than add language to S. 2414 that signifies the clear understanding reached by all relevant parties prior to its passage. I offer this concurrent resolution to express our agreement that the provisions of S. 2414 were offered to amend three sections of S. 49, the Firearm Owners' Protection Act.

By offering this concurrent resolution, any perceived confusion as to the effect of S. 2414 should be resolved.

Mr. McCLURE. Mr. President, I have a concern regarding the use of the word "carry" in the amendments to section 926A in S. 2414. The phrase reads "any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm." As the sponsor of S. 2414, what is the intent of the Senator from South Carolina in using the word "carry" in the provision?

Mr. THURMOND. I say to the Senator that I am pleased to clarify the proper interpretation of the word "carry." The first part of the provision, "any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose" means that only persons able to lawfully possess firearms under Federal law can rely upon the safe harbor provisions in 926A to transport firearms in interstate commerce for lawful purposes. The phrase that follows, "possess and carry," also requires that persons must be allowed to transport such firearms under relevant State law. It is clear that the term "carry" in this instance is intended to mean the ability to put the firearm in a vehicle and transport it to the place of destination.

The use of the word "carry" is not intended to mean and does not mean that a State license to carry a concealed weapon is a predicate to valid use of the safe harbor provision in section 926A. Of course, wherever a permit to carry a concealed firearm is a prerequisite of State or local law, to legal transportation of an unloaded, inaccessible firearm, the safe harbor provisions does not modify such laws. However, once again, the use of the term "carry" in my bill does not in any way incorporate such a prerequisite into section 926A. I hope this addresses the concern of the Senator.

Mr. McCLURE. I thank the Senator. His intent and interpretation are consistent with my understanding that the word "carry," as it is used, means "transport."

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 152) was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, in the enrollment of the bill (S. 2414), to amend title 18 of the United States Code, shall make the following change:

At the end of the bill add the following:

This Act and the amendments made by this Act, intended to amend the Firearms Owners' Protection Act, shall become effective on the date on which the section they are intended to amend in such Firearms Owners' Protection Act becomes effective and shall apply to the amendments to title 18, United States Code, made by such Act.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

Mr. DOLE. I thank my colleagues.

This has been referred to as a sort of "son-of-a-gun" amendment. That explains it for many people who have an interest in it. That is how it came out of the committee.

TAX REFORM ACT OF 1986

The Senate continued with the consideration of H.R. 3838.

AMENDMENT NO. 2162

(Purpose: To treat certain entities as trusts for tax purposes)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follow:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 2162.

Mr. DURENBERGER. 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:

At the end of subtitle P, of title XVI, insert the following new section:

SEC. . TREATMENT OF CERTAIN ENTITIES AS TRUSTS FOR TAX PURPOSES.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1954, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

(b) ENTITY.—An entity is described in this subsection if—

(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota.

(2) such entity receives royalties from iron ore leases, and

(3) income interests in such entity are publicly traded on a national stock exchange.

(c) ELECTION.—

(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

(A) shall be made by the board of trustees of the entity, and

(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

(2) AGREEMENT.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not—

(A) sell any trust property,

(B) purchase any additional trust properties, or

(C) receive any income other than—

(i) income from long-term mineral leases, or

(ii) interest or other income attributable to ordinary and necessary reserves of the entity.

(3) PERIOD FOR WHICH ELECTION IS IN EFFECT.—An election under this subsection shall be in effect during the period—

(A) beginning on the first day of the first taxable year following the taxable year in which the election is made, and

(B) ending as of the close of the taxable year preceding the taxable year in which the entity ceases to be described in subsection (b) or violates any term of the agreement under paragraph (2).

(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

(d) SPECIAL RULES FOR TAXATION OF TRUST.—

(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 applies, and

(B) any person holding an interest in the property held by such entity as of such time shall be treated as a qualified electing shareholder for purposes of section 333 of such Code.

(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), then the tax imposed on such entity for the taxable year in which such cessation or violation occurs shall be increased by the sum of—

(A) the amount of taxes which would have been imposed on such entity during any taxable year with respect to which an election under subsection (c) was in effect if such election had not been in effect, plus

(B) interest determined for the period—

(i) beginning on the due date for any such taxable year, and

(ii) ending on the due date for the taxable year in which such cessation or violation occurs, by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

(e) The election described in Subsection (c) shall be effective for taxable years beginning after the date of enactment of this legislation. The election shall terminate five years from the date of enactment of this legislation unless the Trust petitions a court of competent jurisdiction and the court acts to remove from the trust instrument any powers deemed by the court to be inconsistent with the operation of the entity as a trust for tax purposes as described in the Internal Revenue Ruling dated November 1, 1983.

At the end of title VI, insert:

SEC. 637. MODIFICATION OF DEFINITION OF RELATED PARTY.

(a) PARTNERSHIPS.— Paragraph (2) of section 707(b) (relating to gains treated as ordinary income) is amended by striking out "80 percent" each place it appears and inserting in lieu thereof "50 percent".

(b) SALE OF DEPRECIATED PROPERTY BETWEEN CERTAIN RELATED TAXPAYERS.—

(1) IN GENERAL.—Paragraph (1) of section 1239(b) (defining related persons) is amended by striking out "80-percent owned entities" and inserting in lieu thereof "controlled entities".

(2) CONTROLLED ENTITY DEFINED.—

(A) IN GENERAL.—Section 1239(c)(1) (defining 80-percent owned entity) is amended—

(i) by striking out "80 percent or more in value" in subparagraph (A) and inserting in lieu thereof "more than 50 percent of the value",

(ii) by striking out "80 percent or more" in subparagraph (B) and inserting in lieu thereof "more than 50 percent", and

(iii) by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting ", and", and by adding at the end thereof the following new subsection:

"(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b)."

(B) CONFORMING AMENDMENT.—Section 1239(c)(1) is amended by striking out "88-percent owned entity" in the heading thereof and in paragraph (1) and inserting in lieu thereof "controlled entity",

(3) CONSTRUCTIVE OWNERSHIP.—Section 1239(c) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) CONSTRUCTIVE OWNERSHIP.—For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof)."

(4) CONFORMING AMENDMENT.—Section 453(g) is amended by striking out "80-percent Owned" in the heading thereof and inserting in lieu thereof "Controlled".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to sales after June 28, 1986, in taxable years ending after such date.

(2) TRANSITION RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales after June 20, 1986, which are made pursuant to a binding contract in effect on June 20, 1986, and all times thereafter.

Mr. DURENBERGER. Mr. President, the amendment before the Senate is a very narrowly drafted amendment which would rectify the unjust tax treatment of an iron ore trust in the State of Minnesota.

I intended to offer this amendment last evening, but concern was expressed that the amendment as drafted would have penalized the trust because of inadvertent actions in the future by the trustees of the trust. I believe we have addressed this problem by requiring the trust to go into court and seek the removal of any of its business power.

I thank in particular the Senator from Ohio for suggesting that change to us. As I understand it, the change would require the trustees to petition a court in the next 5 years to have the business powers contained in the trust instrument removed. According to the terms of the amendment, the trustees are not to exercise the business powers. If they do, they lose the tax status that is proffered them in this amendment.

So I appreciate the addition to this amendment by the Senator from Ohio. It helps us to accomplish the ends which we sought to accomplish by the amendment as originally drafted.

I have discussed this with the chairman of the committee and with the ranking minority member of the committee, and I believe there is no objection.

THE GREAT NORTHERN IRON ORE TRUST

Mr. President, the amendment I have offered today would rectify the unjust tax treatment of an iron ore trust that operates on the Mesabi Range in my State.

The Great Northern Iron Ore Trust was created in 1906, several years before the U.S. Constitution was amended to provide for an income tax. Great Northern's sole activity is receiving royalties from the long-term leasing of Minnesota Mesabi Range taconite lands and distributing the royalties to trust beneficiaries.

Although Great Northern is a trust created under Minnesota trust law and is subject to control and supervision by Minnesota courts in the same manner as other trusts, Great Northern has been ruled an "Association" taxable as a corporation by the IRS and in two Federal court decisions.

Because Great Northern was created before the Federal income tax was even in existence, it was created as an irrevocable trust with a separately owned reversionary interest. It therefore does not have the opportunity to model its trust agreement to fit the requirements of Treasury regulations.

Let me give you some of the history of Great Northern. Following passage of the first Tax Act, the IRS ruled that Great Northern was not an "Association" and should be taxed as a trust. However, in 1942, IRS revoked its prior ruling and ruled GNI taxable as an association. A court of appeals upheld the IRS ruling, finding that the trust instrument gives the trustees business powers and also because the trustees managed and directed the controlled corporations whose stock the trust owned.

In the 1950's and 1960's, many mineral corporations were liquidated, including the controlled corporations owned by the Great Northern trustees. For most corporate stockholders, this meant that there would no longer be corporate tax on the royalty income. However, since GNI was itself an "Association," it was unable to remove double taxation through liquidation of the controlled corporations.

In 1978, the Minnesota Supreme Court held that the Great Northern trustees are subject to the normal common law trust rules in regard to their management of the trust assets. The court ruled that the trustees do not actively conduct a mining operation but, "similar to any family trust, simply holds lands which they let under long-term royalty leases and col-

lect the income for distribution to the certificate holders."

Because Great Northern is a common law trust created under a 1906 irrevocable trust instrument, it does not have the flexibility enjoyed by business corporations of reorganizing to fit either the requirements for fixed investment trusts, Treasury Regulation 301.7701-4(c) or the limited partnerships, Treasury Regulation 301.7701-3.

Great Northern has requested an advance ruling from the IRS that if the trust instrument were amended by order of a local court to remove its business powers, Great Northern would no longer be taxable as an association. The IRS turned down Great Northern's request because the Service found the trust instrument still appears to grant it business powers that would classify it as an association. This, despite the fact that the trust does not utilize these powers and has been classified under State law as a trust. Therefore, the trustees decided that it would be futile to ask a court to remove its business powers since the IRS, for reasons that appear completely arbitrary, refuses to reclassify Great Northern as a trust.

As a result, Great Northern appears to be the only mineral trust operating in America that is subject to double taxation. Because it is a flow through trust, double taxation occurs when the income is taxed at the trust level, and again when the income is distributed to income beneficiaries. Other mineral trusts, including Mesabi Trust, Apache Petroleum, Houston Oil Royalty Trust, Mesa Royalty Trust, all are taxed as trusts and, thus, not subject to double taxation.

Mr. President, the arbitary and unfair treatment of Great Northern is exacerbated by the fact that the Mesabi Trust, whose sole activity like Great Northern is to collect royalties from the long-term leasing of Minnesota taconite lands, was granted an IRS ruling that it is not an association. Mesabi operates in a fashion identical to Great Northern. But by a quirk of an IRS bureaucrat's decision, Mesabi is taxed at much lower rates than Great Northern.

As a result of arbitrary IRS decisionmaking, some Great Northern Trust beneficiaries receive only 30 cents of every dollar of trust income. That's because the income is taxed to the trust at a combined Federal and Minnesota corporate rate of 40 percent. Second, the after-tax balance available for distribution to the trust beneficiaries is taxed to them as dividend income at rates up to 50 percent. Thus, the total tax burden to Great Northern beneficiaries can be as high as 70 percent.

The amendment I am offering would remedy this unfair situation by allowing Great Northern to file an election with the IRS to be taken out of "Association" status and be taxed as a trust. By making the election, the trustees would surrender the right to exercise any business powers included in the trust instrument. And to ensure that Great Northern never exercises these business powers, Great Northern would agree that, if it violates the conditions of the election, it would be subject to an assessment for all back taxes at corporate rates, plus interest.

Under the election, Great Northern could not sell any trust property, purchase any additional trust properties, or receive any income other than income from long-term mineral leases, or interest or other income attributable to ordinary and necessary reserves of the trust.

Mr. President, this amendment will serve to promote fairness and tax equity for the beneficiaries of the Great Northern Trust. It would be wrong to further prolong the confiscatory tax burden that this one single trust must endure. It has shown a total and complete willingness to give up any conceivable residue of business powers that would classify it as an association. It doesn't use those powers, has not used those powers and does not intend to use those powers in the future. Arbitrary IRS decisionmaking should not stand in the way of promoting equity and fairness.

To offset the $8 million revenue cost associated with this amendment, the definition of "related party" for purposes of the installment sale rules would be modified to include a person and all entities more than 50 percent owned, directly or indirectly, with respect to that person. Related persons would also include entities more than 50 percent owned, directly or indirectly, by the same person. Under current rules, a related person includes a person and all entities that are 80 percent owned, directly or indirectly, with respect to that person.

As a result, installment sale treatment would not be available for transactions between related parties unless it is established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose of the sale.

The PRESIDING OFFICER. Is there further debate?

Mr. LONG. Mr. President, I have looked at the amendment. I am not certain of any objection on this side of the aisle, and I urge that the amendment be agreed to.

Mr. METZENBAUM. Mr. President, the Senator from Minnesota states the matter right on target. There were some concerns we had that the trust would be able to go back and forth and take advantage of the tax laws. The amendment has been changed in such a way to keep that from happening or making that possible.

The Senator from Minnesota has been very cooperative. I think the amendment is very fair in the manner in which it is presently drafted.

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

The amendment (No. 2162) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

(Mrs. KASSEBAUM assumed the chair.)

Mr. PACKWOOD. Madam 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.

□ 1210

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

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

Mr. CHILES. Madam President, last year Congress approved the Gramm/Rudman/Hollings deficit reduction law. It says—year-by-year—through 1991, we will reduce the deficit by specified amounts until we eliminate the deficit altogether.

The tax bill is called revenue neutral. The tax burden is rearranged, but the net effect is to neither add to or subtract from the deficit. And over the long-range path of the tax bill, that's just about the way it works.

The Finance Committee did its job very well. They did their work on income distribution and tax equity. The bottom line over 5 years is revenue neutrality. But when it comes to the job the Budget Committee has to do, the Finance Committee overlooked the fact that we have a deficit to fight on an annual basis.

In 1986 and in 1987, the tax bill actually produces an increase in revenues of nearly $31 billion. While it is true the tax bill gives a revenue windfall in 1986 and 1987, the picture for 1988 and 1989 changes drastically. In those 2 years, we actually lose a total of at least $42 billion.

If we use the tax windfall this year and next year, and rely on it for deficit reduction, it would give us what amounts to deficit reduction written in disappearing ink. And it will disappear in 1988 and 1989. We would have to wake up in 1988 and 1989 to what we gave away in 1986 and 1987.

The point I want to make is this. Let us not trick ourselves into thinking we can put deficit-reduction and tax reform together in a way where one drains the other dry. It cannot be done.

How can we avoid the problem? Actually, there are two ways, and we have to make sure we do both.

First, implement the fairshare, deficit-reduction revenues in the budget resolution. They are crucial to winning the fight against the deficit.

The second step which is also critical is to even out the fluctuations in the tax bill, so that we will not have windfalls 1 year, and dry wells the next.

The resolution that Senator DOMENICI and I are introducing today calls on the conferees to reduce the year-to-year revenue fluctuations that now exist in the tax reform bill.

The good work of the Finance Committee can be made even better if the revenue fluctuations are reduced. We would be able to proceed with the task of deficit reduction—free of the false windfall in 1987 and facing less of a challenge in 1988.

Let us be clear about what this resolution says. It calls on the conferees to achieve actual revenue smoothing by altering some of the provisions of the Finance Committee's bill.

We must focus on the actual cashflows to and from the Treasury. It is the actual revenue path that influences credit demands, interest rates and the economy.

The Domenici-Gramm scorekeeping amendment does not eliminate the need for the conferees to reduce the actual revenue fluctuations.

But their scorekeeping amendment and this one are complementary. We are saying that the fluctuations should be reduced. The Domenici-Gramm amendment tells us how to score the fluctuations that remain.

There is ample leeway to achieve a more stable revenue path. The Joint Committee on Taxation has provided us with estimates of the revenue smoothing that could be achieved by altering some of the effective dates and phasing in certain tax provisions. In addition, there are significant differences in the House and Senate base-broadening provisions—over $25 billion worth over 5 years—that provide plenty of room to iron out these large revenue swings.

We continue to believe that we can have both tax reform and deficit reduction. But having both will be far easier if our revenue path is more stable. I urge my colleagues to join in support of this resolution.

I ask unanimous consent to place in the RECORD estimates of some of the major options for reducing the revenue fluctuations.

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

REVENUE SMOOTHING OPTIONS

	1987	1988	1989	1990	1991
Accounting provisions (100 percent recovery in 1988)	−3.6	+6.0	+4.0	−3.0	−3.0
Timing Shifts (1987 to 1988):					
Tax rule changes	−1.4	+1.4			
Tax deferral for trusts	−1.1	+1.1			
Payment of income tax on estates and trusts	−0.4	+0.1	+0.3		
Change effective date of individual rate reduction to Jan. 1987	−13.5	−11.0			
Phase-in individual rate reduction (30, 30, 27, 27, 27)	+10	+18	+8	0	0
Change effective date of corporate tax rate reduction to Jan. 1987 and phase-in rate reduction	−3.7	+2.7	+9.0	+3.7	0
House base broadeners not in Senate plan	+3.5	+4.5	+5.6	+6.3	+6.5
Straightline 30 percent individual rate for third bracket	+.5	+.5	+.5	+.5	+.5
Straightline 32 percent rate in third bracket	+1	+2	+2	+2	+2
Raise individual rate 1 percent	+3	+6	+6	+6	+6

AMENDMENT NO. 2163

(Purpose: To express the sense of the Senate that the year-to-year revenue fluctuations produced by the Committee on Finance amendment to H.R. 3838 should be reduced in conference)

Mr. CHILES. Madam President, at this time I send to the desk my amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr CHILES], proposes an amendment numbered 2163.

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

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

The amendment is as follows:

At the appropriate place in the amendment, insert the following new section:

SEC. . SENSE OF THE SENATE ON REVENUE FLUCTUATIONS.

(a) FINDINGS.—The Senate finds that—

(1) the Committee on Finance amendment to H.R. 3838 (an Act to reform the internal revenue laws of the United States) produces revenues that—

(A) exceed current-law revenues (the Congressional Budget Office (CBO) revenue baseline) by—

(i) $7,000,000,000, in fiscal year 1986,

(ii) $23,000,000,000, in fiscal year 1987, and

(iii) $11,000,000, in fiscal year 1991, and

(B) fall below current-law revenues by—

(i) $21,000,000,000 in fiscal year 1988,

(ii) $21,000,000,000 in fiscal year 1989, and

(iii) $400,000,000 in fiscal year 1990;

(2) the Committee amendment satisfies revenue neutrality over a six-year period, but the revenue shortfalls in fiscal years 1988 and 1989 will make the attainment of the Gramm-Rudman deficit goals more difficult;

(3) numerous options for restraining yearly revenue fluctuations without affecting the fundamental fabric of the Committee amendment are available to the committee of conference on H.R. 3838, in the form of altering effective dates, phasing-in certain provisions, and resolving the major differences in the provisions for broadening the tax base contained in H.R. 3838 and the Committee Amendment;

(4) in some instances, leveling the revenue fluctuations could result in a further reduction in tax burdens on individuals and corporations in 1987; and

(5) altering the provisions of the Committee amendment to achieve a more stable revenue outlook would eliminate the need to resort to artificial accounting conventions, such as the use of a trust fund that would deviate from the actual cash flows to and from the Treasury.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the committee of conference on H.R. 3838 should report Federal tax reform legislation that produces a revenue path with minimal revenue fluctuations.

Mr. CHILES. I pretty well discussed what I think the amendment does. I hope it will be acceptable.

Mr. LONG. Madam President, I have no objection.

Mr. PACKWOOD. We have no objection on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 2163) was agreed to.

Mr. CHILES. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1220

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

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

FINAL PASSAGE OF H.R. 3838, THE TAX REFORM BILL

Mr. DIXON. Madam President, the upcoming vote on final passage represents a real landmark for the Senate. The Senate does not get very many opportunities to make real history—the vote we will cast on H.R. 3838, however, is truly historic.

The Senate bill is a fundamental overhaul and reform of the Internal Revenue Code. It meets the fundamental objectives of tax reform. It is simple, and it is fair. It ensures that wealthy taxpayers and profitable corporations will not be able to avoid paying taxes. It ensures that investments will be made for economic reasons, rather than tax reasons. It ensures that those making the same income are paying roughly the same tax, instead of the wildly varying levels that are possible today.

The Senate bill is not perfect, though. There are real problems. The bill does not adequately handle the

issue of deductibility of State sales taxes. Ending the deductibility of individual retirement accounts for many taxpayers is also, in my view, a real mistake. Further, the bill does not provide as much tax relief for middle-income taxpayers as the House bill does. In fact, under the Senate bill, a significant number of middle-income taxpayers could end up paying higher taxes.

I have spoken on many of these subjects earlier in this debate, so I will not take the time of my colleagues to reiterate my concerns now. I continue to believe these issues must be addressed before we send any final legislation to the President for his signature.

There will therefore be a very heavy burden on the upcoming House-Senate conference on the tax bill, Mr. President. I believe we should have resolved many of these issues on the Senate floor, rather than passing resolutions urging the conferees to do so. Because of the Senate's failure to do so, the conference will be the body that determines whether the tax reform effort will produce final legislation that lives up to its early promise.

I am voting for final passage today because I support tax reform, because this bill has considerable merit, and because there is still an opportunity to address the serious issues that were not handled here on the Senate floor. I am confident that the conference committee can resolve the remaining issues in a way that will put to rest the lingering doubts that I and many others have about this bill. I look forward to seeing and voting for the improved conference bill.

I yield back my time, Madam President, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURENBERGER. Madam President, the Senate has come to the end of a historic debate on a truly extraordinary tax reform bill. We have had so-called "Tax Reform Acts" before—1969, 1976, 1981, and—just 2 years ago—the Tax Reform Act of 1984.

As the amendment that was on the floor a few minutes ago by the Senator from Georgia indicated, maybe this place is getting tired of tax reform.

But I believe this bill is unlike any of its predecessors. It marks a fundamental shift in the philosophy of the Government of the United States and the role it plays in directing the resources and priorities of the Nation's and, inevitably, the world's economy.

Historians will judge this legislation a revolutionary step in the evolutionary process of reshaping how the Government taxes the earnings of its citizens.

The first phase of the tax reform process has focused almost exclusively on the question of what is the maximum percentage of income the Federal Government can demand from its citizens. The rate of income taxation has been the central question ever since the 1960's, when the top rate was reduced from 91 percent to 70 percent. It was in the 1960's when we used inflation and indexed income increases to drive the growth in Federal tax revenues.

But the tax reform rate revolution really got underway in 1978 when our late distinguished colleague in the House, Bill Stieger, of Wisconsin, fought almost singlehandedly to cut the captial gains rate to 28 percent.

It was since 1978 when the majority of the people, Madam President, in this body came to this Senate: BILL BRADLEY, who is also referred to as one of the fathers of this particular philosophy of tax rate; DICK GEPHARDT in the House; the occupant of the chair [Mrs. KASSEBAUM], myself, and others, having arrived here since 1978, and the Bill Steiger rate reduction tax reform.

The Economic Recovery Tax Act (ERTA) initiated by President Reagan in 1981 brought all income tax rates down not just capital gains. By enacting ERTA, we can all claim credit for reducing the top tax rate from 70 percent to 50 percent.

But, more importantly, we ended the tax policy that began in the 1960's of automatically increasing tax revenue to the Federal Government by increasing inflation.

ERTA reduced all individual rates by 25 percent over 3 years and ended the insidious "bracket creep" which forced every taxpayer in the country to pay higher taxes simply because of inflation.

Madam President, today we are at the end of the beginning of the second phase of the income tax resolution. In the span of a mere 5 years, we will have brought the top tax rate down from 70 to 27 percent. But this phase of the tax revolution is different because this bill recognizes that low rates can only be achieved with a broad base of income subject to tax. And the ultimate broad-based tax is a fair tax because it ensures that all Americans, except the poorest members of our society, pay some portion of their earnings in taxes.

The base broadening achieved in this bill, however, does not go far enough. There remain many "off limits" parts of the tax base that this bill does not address. This bill still favors certain types of consumption over others. It does nothing to address tax subsidies provided for health and welfare expenditures which benefit only certain groups of citizens.

I am certain that we will again seek to broaden the tax base and ultimately bring rates down even further, making the income tax system fairer and more equitable for all citizens.

It was for that reason that I opposed the amendment that was on this floor a short while ago. We can broaden the base further. We can reduce the rates further. This, Madam President, is but a start.

But even after we accomplish that goal, the tax revolution will not be complete until we restructure the payroll tax system which represents the most inequitable and unfair tax imposed by Federal and State Governments.

I am reminded at this time of the words of Thomas Jefferson who said that if our ideals are to survive, this society must undergo a succession of revolutions. Passage of this bill today is such a revolutionary event. However, the revolution has yet to be consummated; for, in the future, we must take a hard look at those portions of the tax base which in 1986 remain off limits.

□ 1230

This bill removes nearly 6 million of the working poor from the tax rolls—a staggering accomplishment. And that means 1 in 4 adults in America—44 million people will pay not a single dime in Federal income taxes. Although I applaud this accomplishment, I note with sadness that millions of these working poor are still required to pay more than 7 percent of their earnings in Social Security taxes.

That leaves only 33 million Americans out of 100-some million taxpayers who will find it necessary to file more than a simple one-page 1040A tax return.

Economic equity is an important element of this bill. This legislation adopts many of the concepts embodied in the Economic Equity Act which I have authored each year since 1981. Although the bill does not address all of the inequities that women still endure, it is a milestone in the annual battles we are winning in the war to eliminate legislated economic discrimination against women in America.

We broadened retirement plan coverage rules and cut in half the retirement plan vesting rules so that more younger workers and working women will have greater economic security in their retirement years. We have also preserved child care credits which are essential for today's women to remain in the job force.

All families in America will surely benefit from the higher standard de-

duction and an almost doubled personal and dependent exemption. I have assured that we maintain special tax benefits for those families who adopt special-needs children—those who grow up with certain disabilities. And this bill takes special notice of the farming families of rural America who are enduring a prolonged economic and psychological depression.

We have made several important tax changes that will help preserve the tradition of the family farm. Under this bill, financially troubled farmers will be able to renegotiate their bank loans and not pay taxes on the loan writedown. And for those troubled farmers who lost their land through foreclosure, we have extended tax-exempt bond financing so they can buy a new farm and some equipment and start their lives over again. When they turn the financial corner, they will get a break on their taxes because we have retained income averaging for farmers.

Farmers and other self-employed people will also be able to share in some of the tax-free fringe benefits that up until now have only been available to corporate employees.

For the first time, self-employed workers will be able to take a tax deduction for a portion of their health insurance costs. This is a badly needed reform that has been too long in coming.

This legislation injects a much needed element of fairness into our Tax Code. By drastically cutting rates, closing loopholes and limiting the ability to deduct paper losses, we have closed the door on the tax shelter merchants who have distorted economic decisionmaking, especially in agriculture and real estate. Small Minnesota farmers trying to eke out a living will no longer have to compete with tax shelter farmers whose only interest in farming is to generate tax losses.

This bill will make certain that hard-working Americans will no longer read stories in the press about how companies earning billions of dollars pay no taxes, and how millionaires wind up paying less in taxes then a middle-class family earning $25,000. Thanks to the alternative minimum tax provisions in this bill, every corporation and every wealthy individual will have to pay some tax.

The American tradition of charitable giving is strongly encouraged through this bill.

Although many of us would have preferred that we could continue the full nonitemizer charitable deduction, I believe this legislation will encourage even greater charitable giving by Americans because they will have more disposable income and because we have preserved full deductibility of charitable contributions for people who itemize. It is this latter group that accounts for more than 70 percent of charitable contributions. In addition, we ended a threat to hospitals, universities, and other nonprofit institutions that gifts of appreciated property would be included in the minimum tax.

In the area of fiscal federalism, we have taken some important steps forward in redefining what public policy goals we should strive to encourage through State and local government financing. Although I strongly oppose restricting the deductibility of sales taxes—the leading source of revenue to all State governments—I am encouraged that this inequity will be overturned in the conference committee.

We have made some tough public policy choices that will affect how State and local governments will deliver services to their citizens.

While a greater share of the cost of downtown redevelopment projects will be borne by private developers instead of taxpayers, cities and States will not be handcuffed in financing the rebuilding of their infrastructure that will provide lasting benefits for today's and future generations.

This legislation encourages greater reliance on public-private partnerships in delivering essential public services. In so doing, we have redefined public policy goals so that public financing will no longer be available for building more sports stadiums, trade show facilities, and parking lots.

We removed multifamily rental housing from State volume cap limits and gave such housing a shorter depreciation life than commercial real estate. And, for the first time, we will allow State and local governments to issue tax-exempt bonds for the construction of hazardous waste treatment facilities.

This bill represents a giant step in what I would call "industrial equity." For too long, the retail, high-tech, and service sector has been subsidizing tax breaks for traditional basic industries. We can no longer justify such cross-industry subsidies in an economy inevitably moving further and further toward less dependence on manufacturing. I believe that whatever future subsidies we provide our basic industries—and we must—must be financed more explicitly and more directly; therefore, more efficiently.

The current disparities between effective tax rates paid by different industries just is not fair. Is there any reason that utilities pay an effective U.S. tax rate of less than 11 percent while the pharmaceutical industry pays nearly 33 percent? The effective tax rate of the chemical industry, according to the Joint Tax Committee, is less than 4 percent. By contrast, the trucking industry pays more than a 38-percent rate. These disparities will significantly narrow as a result of this legislation.

Madam President, I represent the State of Minnesota—a State which is half basic industries and half high-tech, high-service business. It is half high tax rate and half low tax rate. Half love this revolution and half are hurt by it. The prolonged debate on the floor of the Senate these closing days has been over this conflict and over the transition into this new approach to taxation.

I do not mind saying to my colleagues that I have used my position on the Finance Committee to the advantage of the people of Minnesota, as I have done in the tax bills of 1981, 1982, and 1984. I have used my position to get special rules for my people that have saved and built hundreds and thousands of jobs in my State.

In so doing, I have helped to expand the availability of public facilities from stadiums, convention centers, and race tracks to district heating and cooling, alcohol fuel plants, and airlines. I have used these tax bills to provide low- and moderate-income housing at rates that would not otherwise have been affordable. And I am glad I did.

As with any revolutionary change, this legislation carries with it a certain degree of risk. It may serve to hasten the decline of our basic manufacturing and raw material industries. It may put additional stresses on rental housing.

The rules in this bill restricting deductions for contributions to individual retirement accounts may further discourage Americans from building up savings. And the elimination of the capital gains differential may discourage investors from taking risks in emerging sectors of the economy that would otherwise provide jobs and growth for the future.

I hope none of this happens. I hope the supply-siders are right. Only by following a compass that points somewhere can we get anywhere. This tax bill—unlike any of its predecessors—points in the direction of a new national policy on the taxation of income. It removes some incentives for debt-financed consumption. And that is an important first step toward the goal of evolving a system that taxes consumption not the savings and investment income that is vitally needed for continued economic prosperity.

Madam President, the revolutionary changes we have fashioned through this tax bill are but steps in an evolutionary process that began in 1776 and will be continuing into the 21st century. Our Tax Code reflects our changing values as a people in relation to their Government. And this legislation reflects a renewed confidence in our individual citizens, and a diminished reliance on a government and the membership of a tax-writing commit-

tee which substitutes its priorities for those of the governed.

Yet I believe the revolution that this bill represents is but a beginning, not the end, of our search to make the tax laws fairer and more equitable. For, as I mentioned earlier, this legislation addresses only a small part of the problems that we as a society must soon come to grips with.

The central question that will dominate the remainder of this century is inextricably tied to taxation: "What do we want from Government and how much are we willing to pay for it, and from what form of tax?" Despite the promises of economic growth by supply-side economists, this legislation does not really address that question. Until we do, our economy will continue to teeter on the edge of uncertainty.

□ 1240

We are kidding ourselves if we do not recognize the economic and social disaster we are courting with huge and hemorrhaging deficits. We will have to reexamine our tax laws, along with our spending priorities, and decide how much debt we are willing to pile on our children and grandchildren.

This bill does make the tax laws fairer for today's taxpayers. But how can we call a tax system "fair" which ensures that tomorrow's taxpayers will be forced to pay the ever-mounting interest on the debt we are accumulating at unheard of levels?

Before we can tell our constituents that we in Washington made the tax system fairer, we will have to take a long and hard look at the most onerous, regressive, discriminatory, and unfair tax that the Federal Government levies—the payroll tax.

Workers and businesses now must contribute more than $6,000 per worker per year to fund a Social Security system that will provide little, if any, retirement security for today's generation of young workers.

Under the current laws, payroll taxes are going in only one direction—up; while the chances that young workers today will see any Social Security benefits are going down, down, down.

The payroll tax system stands the concepts of fairness and equity on their head. There is nothing fair about a tax system where a young two-earner couple earning $45,000 a year pays $214 more in just Social Security payroll taxes than an executive earning $100,000. Add in their unemployment and workers compensation taxes and the inequity further widens. How can we justify a payroll tax system which requires of a worker earning $20,000 that he contribute 7.15 percent of his pay to Social Security, while an executive earning $300,000 contributes barely 1 percent?

The payroll taxes we levy on employees and employers are designed to afford income security to all Americans. Through payroll taxes we seek to provide retirement security through Social Security; health insurance for the elderly through Medicare; and unemployment compensation for workers in transition. At the State level, we add further tax burdens to pay for unemployment and workers compensation and for disability insurance.

If we can look into the future, I suspect we will integrate the payroll taxes for these social insurance programs and replace payroll taxes with a tax on consumption. A consumption tax will not only replace the payroll tax but can also be used to diminish the burden of income taxes and ultimately end the taxation of savings.

If we truly want to reform the tax on income, we must overcome our reluctance to look at the hidden tax subsidies of employee fringe benefits. Where is the equity, the fairness, and the justification for allowing million dollar executives of large corporations to receive tax free health benefits while a Minnesota farmer, who can barely survive, has to pay for health insurance out of his hard-earned after-tax income?

Now that we are headed for a two-bracket income tax, it will become more obvious to the small businessmen and the self-employed person that they are subsidizing too much of the excessive consumption of health and welfare benefits by the highest income Americans and the employees of the Fortune 500 companies.

Until we place a limit on the tax-free nature of employer-provided health insurance, and allow all citizens to get a tax deduction for their health insurance, it will be difficult to claim true fairness in the taxation of income.

Madam President, I have appreciated the opportunity to be part of this revolutionary process.

Madam President, we can pause for a time now and congratulate ourselves on what we have accomplished in this bill. But there is much more work we have to do if we are to achieve our goal of making the tax system of America the most equitable and fair in the world. President Reagan called tax reform "the second American revolution." I believe the second American revolution has just begun.

AMENDMENT NO. 2164

(Purpose: To extend the common paymaster rule for FICA taxes to partnerships, estates, and trusts)

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN] proposes an amendment numbered 2164.

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

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

The amendment is as follows:

At the end of title XVII, insert:

SEC. —. EXTENSION OF FICA AND FUTA COMMON PAYMASTER RULES.

(a) FICA.—Section 3121(s) (relating to concurrent employment by 2 or more employers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a partnership shall be treated as if it were a corporation."

(b) FUTA.—Section 3306(p) (relating to concurrent employment by 2 or more employers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a partnership shall be treated as if it were a corporation."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid or incurred after December 31, 1986

Mr. MOYNIHAN. Madam President, the amendment I have sent to the desk would correct an inequity in our existing Tax Code relating to the collection of employment taxes in the situation where an employee works concurrently for two related employers. It would also make a technical change to the general transition rule provided in the bill for hydroelectric energy generating facilities. Both portions of the amendment are very simple and straightforward.

Where an employee works concurrently for two related corporations, the so-called common paymaster provisions of current law provide relief from double taxation at the employer level. However, if that same employee were to work for a corporation and its related partnership, no such relief currently is available. In both cases, present law corrects for any double taxation of the employee by an offset against that employee's income tax. Thus, it is only the double taxation of the employer with which my amendment is concerned, double taxation that under current law has been only partially corrected.

This amendment corrects a very simple technical problem with existing law by making the common paymaster provisions available now only to related corporations equally applicable in the case of a corporation and a related partnership where the same persons own, directly or indirectly, more than 50 percent in value of the corporation's outstanding stock and more than 50 percent of the capital or profits interest in the partnership. This tracks the control test now in effect for related corporations.

I am advised that the Finance staff has reviewed this amendment and think it is an appropriate change to the law.

Current law already recognizes that double taxation of an affiliated group is inappropriate and undesirable. This amendment is designed to remove the unfair discrimination visited by current law upon corporations and affiliated partnerships.

In summary, Madam President, this proposes a change in the Social Security tax rules that have to do with the situation of a common payment. This situation arises when an individual works simultaneously for two corporations. It is not a common arrangement but it does exist, and in that situation the law enables one of the corporations to pay the employer contribution to the FICA tax, thereby avoiding double taxation. However, it has been for some time recognized that the exact wording of the statute does not permit this common paymaster arrangement to be made where an individual works simultaneously for a corporation and a partnership. These situations do exist.

They appear with somewhat greater frequency and a somewhat higher incidence in the economy at this time, and the change we propose simply says that in this particular arrangement the common paymaster provision will apply as well and there will not be the double taxation and there will not be the request for refunds and such matters; the Social Security Administration has better work to do.

This amendment, Madam President, has been cleared on both sides of the aisle. It has the full support of the Administration, in the sense the Social Security Administration is desirous that a change should be made.

I do not see at this point either of the managers of the bill on the floor.

Mr. McCONNELL. Madam President, it is my understanding this has been cleared on this side of the aisle. There is no objection.

Mr. MOYNIHAN. That is very kind of the Senator from Kentucky, and I can speak to my understanding that it had been cleared on this side of the aisle. In that circumstance, Madam President, hearing no objection, I move the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? Hearing no further debate and no objection, the question is on agreeing to the amendment.

The amendment (No. 2164) was agreed to.

Mr. MOYNIHAN. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Madam President, seeing no Senator on his or her feet, 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. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Madam President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

Mr. LONG. Madam President, at the end of this year I will have served for 38 years in the Senate and for 34 years as a member of the Committee on Finance. During that time I have proudly supported many revenue measures which did much to advance the national interest.

The measure before us may well prove to be the best of them all. None of us can predict with certainty whether a measure will meet our high expectations, but I know of 10 reasons why I should support this bill.

This bill makes dramatic improvements in the individual income tax.

First, at the lower end of the income scale, 6 million low-income individuals will be dropped from the rolls. This implements the policy that families below the official poverty line should not be paying income taxes. This increases the reward for work, and makes it easier for low-income families to work their way out of poverty.

Second, in the middle range of the income scale, there are a number of benefits, aside from the tax cut contained in the bill.

Third, the bill increases the standard deduction, so that many families will not have to itemize their deductions. This represents substantial tax simplification in and of itself.

Fourth, the staff of the Joint Tax Committee estimates that, if the bill were enacted, only about 31 percent of tax returns would have itemized deductions. That is down from 44 percent, if current law were in effect in 1988. In a country where people file slightly over 100 million tax returns a year, we will be dropping about 13 million taxpayers from the long form onto the short form, which is far simplier and easier to comply with.

□ 1250

Fifth, the bill also increases the reward for work and saving to the middle class. It provides that 80 percent of the taxpayers will pay no higher than a 15-percent tax rate. It also provides that no matter how much an individual increases his income through success in a career or in savings, the Federal income tax will never take more than 27 percent.

Sixth, the bill also provides average taxpayers with the assurance that everyone will pay their fair share. The bill contains tough minimum tax and anti-shelter rules to require profitable corporations and wealthy individuals to pay a reasonable amount of taxes. With these rules in place, the average taxpayer can pay taxes on all of his income without feeling as if more prosperous taxpayers are getting away with less.

Seventh, for higher-income individuals, the bill sweeps away the confusion of a tax system that encourages people to divert time and money into tax shelter investments that they may not understand.

Eighth, this bill sends a message to the workers and investors of the country. The message is that people should spend their time working at what they do best, and investing where they think they have the best chance to make money and preserve their savings.

Ninth, when rates are this low, tax considerations will not interfere as much with economic decisions. When tax shelters cannot offset salary, interest and dividends, most people will not bother with them. Instead, they will go about their business. They will know any success they might achieve will bring them mostly money in their own pocket, instead of bringing them mostly tax problems.

Tenth, this bill should be popular in part, because it provides an overall tax cut of about 6.4 percent. Preliminary estimates indicate that about 81 percent of taxpayers would either receive a cut or have no change in their taxes, with a cut for about 56 percent and no change for about 25 percent.

In the long run, the bill will be popular for other reasons. It will be popular because it is fair and because low rates are the right way to go in our income tax system.

I am pleased that the Finance Committee reported the bill by a unanimous vote of 20 to 0. I am pleased that the full Senate has supported the work of the committee during the amendment process. I am also pleased that President Reagan strongly supports the committee bill.

I urge that the Senate give a strong bipartisan vote of confidence on final passage of the bill. The bill may not be perfect in everyone's eyes, and I am sure it is not. On the whole, however, it is a long stride toward a tax system that is fair to all taxpayers and good for our Nation.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2165

(Purpose: To provide a transition rule for a certain public housing project, while maintaining revenue neutrality)

Mr. KENNEDY. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself and Mr. KERRY, proposes an amendment numbered 2165.

Mr. KENNEDY. Madam 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 2265, after line 25, insert the following:

(3) TRANSITION RULE.—

(A) IN GENERAL.—With respect to a project described in subparagraph (B)—

(i) the amendments made by this section (other than subsections (f)(3), (f)(4), and (g)(5)(A) of section 43 of the Internal Revenue Code of 1954) shall apply,

(ii) the amendments made by section 201 shall not apply, and

(iii) the amendments made by section 302 shall not apply.

(E) PROJECT DESCRIBED.—A project is described in this subparagraph if—

(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

(ii) a zoning commission map amendment was granted on July 17, 1985, and

(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a project described in subparagraph (P), for each residential rental unit occupied by individuals whose income is 32 percent or less of area median gross income (as determined under section 43(g)(2) of such Code), 1 additional unit with respect to which a credit under section 43 of such Code is not otherwise claimed shall be eligible for a credit determined under subsection (a)(2)(A)(i) of section 43 of such Code, if such unit is within a project which also meets the following criteria:

(i) Rents charged for units in such project are restricted by State regulations.

(ii) The annual cash flow of such project is restricted by State law.

(iii) The project is located on land owned by or ground leased from a public housing authority.

(iv) Construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990.

(v) For a 20-year period, 20 percent or more of the residential rental units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

The total credits allowed under this subparagraph shall not exceed 25 percent of the total basis of such project.

(D) SECTION 43.—For purposes of this paragraph any reference to section 43 of the Internal Revenue Code of 1954 is a reference to such section as added by this section.

At the appropriate place in title V, insert the following new section:

SEC. . TAX-EXEMPT ORGANIZATIONS WITH UNRELATED BUSINESS INCOME SUBJECT TO CORPORATE ESTIMATED TAX PAYMENTS RULES.

(a) IN GENERAL.—Section 6154 (relating to installment payments of estimated income tax by corporations) is amended by inserting at the end thereof the following new subsection:

"(h) CERTAIN TAX-EXEMPT ORGANIZATIONS.—This section and section 6655 shall apply to any organization subject to the tax imposed by section 511, and for purposes of this section and section 6655, such tax shall be treated as a tax imposed by section 11."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

Mr. KENNEDY. Madam President, this amendment concerns the rehabilitation of the Columbia Point housing project in Boston.

The failure of our early crude efforts at urban renewal is nowhere more evident than in the massive, forbidding and empty megastructure built at Columbia Point in Boston in the early 1950's. The Columbia Point housing project was constructed on an isolated spit of land previously used as a municipal dump. It was built without access to public transportation, shopping, or recreation—in fact without access to the rest of the city at all.

Almost from the date of its construction, it began to deteriorate. Inadequate budgets and rising maintenance costs took their inevitable toll and by the early 1970's the project was over half-empty. Today less than 400 families continue to live at Columbia Point.

In Boston, Columbia Point has become more than a symbol of the failure of one phase of urban renewal. It is also a symbol of our continued failure to address the real issue of inner city development and social integration. Year after year, the residents of Columbia Point have been promised that rehabilitation would occur, that development would take place, that a new plan was just around the corner.

Sadly, these promises were broken as often as they were made. Despite additional development in the area, including a new campus for the University of Massachusetts, the Columbia Point housing project remained isolated and continued to deteriorate.

At last, however, after three decades of decay, a ray of hope emerged. When Mayor Ray Flynn was elected in 1983, he made development at Columbia Point a major priority. Working with the university, the State housing finance agency, the Department of Housing and Urban Development, and Columbia Point's tenant association, the city redevelopment authority put together a proposal that can work.

The depth of the deterioration and the decline of Federal support for rehabilitation required the developers to use every source of State and local assistance available. The State was forthcoming, providing mortgage assistance and rental subsidy assistance. The city was forthcoming, providing UDAG and urban initiatives assistance. The private developers were forthcoming, agreeing to restrictions which prohibit subsequent sale and allow all the remaining tenants to live in the new project, and also agreeing to unprecedented restrictions on cash flow and rents. The restrictions on rents extend to all of the units at Columbia Point, not just the 400—a full one-fifth of the project—which are set aside for very low-income families.

The developers relied in good faith on the current Tax Code, and proposed to complete their financing package by syndicating the losses. As is true in any project of this kind, especially one so constrained by public policy, there is no underlying economic value. Syndication could only succeed if the tax losses were available. The bill before us eliminates the use of such syndications and I applaud that step. But the change threw the carefully crafted and delicately balanced Columbia Point plans out the window.

The amendment I am offering would not reopen the passive loss issue in the bill. Rather, it provides a one-time targeted additional tax credit to permit the developers to replace the equity which they hoped to raise in their syndication. The credit will be subject to all of the other constraints the committee has proposed. It will confer no special treatment on investors and it will not go beyond the levels of assistance promised by current law. This is precisely what a transition rule should accomplish.

This unique project ought to go forward. The legacy of a failed urban renewal policy ought to be put behind us. The city, State, and community organizations have done their part. They acted in good faith and overcame the long odds which had frustrated every previous attempt to stop the blight. Now we should do our part, and I hope this amendment will be accepted.

I have had an opportunity to talk this matter over with the managers of the bill for some period of time, working out some of the particular challenges affecting Columbia Point. I think it has been worked out in a satisfactory way with the chairman of the committee.

Mr. KERRY. Madam President, I am pleased that the Finance Committee has resolved the issue of the Tax Reform Act's potential impact on the Columbia Point housing project, and that this vital rental housing project can be developed with the benefit of the low-income housing tax credit contained in the bill.

Built in 1953, Columbia Point has become synonymous with urban blight and public housing failure. Although the project is located on 50 acres of prime Boston harborfront property, it has an extremely negative image as an unsafe area. At present, only 350 families live in the 1,150-unit complex.

Numerous efforts to revitalize the Columbia Point project have been attempted over the past decade, and unfortunately, each has failed, dashing the hopes and aspirations not only of the Columbia Point project, but of all of us in Massachusetts who care about the quality of life available to the less fortunate in our society.

The redevelopment project currently underway seeks to transform an extremely deteriorated and blighted community to a thriving community of mixed-income residents.

Columbia Point is a complex public/private redevelopment project that draws its funding from a combination of State, Federal, and local agencies as well as from the private sector. Upon its completion Columbia Point will be renamed Harbor Point as a symbol of its revitalization and will consist of 400 low-income and 882 market-rate housing units. Every family currently living in Columbia Point is guaranteed residency in the redeveloped complex.

Madam President, the Columbia Point project represents a unique opportunity to fulfill the policy of neighborhood preservation and to address the very serious housing problem we face in Boston in a positive and cooperative way. It is very much a public project and the time, energy and commitment displayed among the tenants, developers and public agencies involved should be applauded. For more than 10 years the residents of Columbia Point have endeavored to make their community one of which they could be proud.

It would have been tragic if we had allowed the changes in the tax bill to threaten the future of this project because of changes which could not possibly have been foreseen at the time the project's financing was planned and construction agreements negotiated.

The Columbia Point project will provide affordable and decent housing; not only for current residents, but for low-income families as well, creating an economically and racially integrated community. In addition to helping the neighborhood grow, the redevelopment project will provide the residents of Columbia Point with a sense of pride, a better future and a place to call home. I applaud the efforts of those who have put the time, energy and resources into making the Columbia Point dream a reality.

Mr. PACKWOOD. Madam President, the amendment has been cleared on this side.

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

The amendment (No. 2165) was agreed to.

Mr. KENNEDY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. SIMON. Madam President, I have given much thought to how I will vote on this tax bill and, frankly, it has not been an easy decision. It is a close call. There is much that is good about this bill, and I compliment the chairman of the Finance Committee, the ranking minority member, and all the members for their hard work here.

I am going to be one of a small minority, however, who is going to vote against the bill, and I will vote against it for these reasons:

No. 1, I really do not think it makes sense to massively overhaul the Tax Code and not deal with the fundamental economic problem this country faces, and that is the deficit.

No. 2, I still really believe in a progressive tax structure, and we are moving away from that. As Senator MITCHELL pointed out when his amendment was brought up, one-half of 1 percent of the population gets 16 percent in benefits. The top 5 percent get 27 percent of the benefits.

No. 3, people who have to borrow money to put their children through college and buy a car are truly at a disadvantage. They are not going to be able to deduct that anymore. We have gone too far in even deducting on meals or clothing and all kinds of things, but I am concerned about where we are going here.

No. 4, I have been one who for some time has said that corporations ought to bear their fair share of the tax burden, and part of this bill is a minimum tax on corporations. That is much needed. I am not sure, however, when we go from where we are now and the pendulum swings over so that corporations are going to pick up an additional $100 billion in taxes, that the pendulum may not be swinging too far, discouraging particularly the manufacturing sector in our economy.

No. 5, I am concerned about what is going to happen in housing. I think that inevitably we are going to see rental increases, fairly substantially, within the next 3 years.

No. 6, the retroactive feature of the bill concerns me. Tax breaks were given that should not have been given. When you offer someone a $1,000 bond and you come back later and say, "Sorry, this is only worth $700," that would not be fair. So, when Government says to people who are going to invest, "If you make this investment, we'll give you these tax breaks," I do not think we should be going back on our word on that.

No. 7, while two-thirds of middle-income Americans will receive tax breaks, it is also true that one-third are going to get tax increases.

Finally, I have an uneasy fear—and I hope I am wrong—that the net effect of this will be negative on our economy.

□ 1300

We are going to be discouraging the kind of investment that we ought to make.

Again, I have to tell you this has been a close call for me. I could have reached the conclusion that I was going to vote for it, because there is so much that is good in the bill, but, on balance, I believe it is not wise policy to proceed in this way. I hope the conference will make some improvements, but I will be casting one of the votes against the bill.

Mr. President, if no one wishes the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COCHRAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MATHIAS. Mr. President, we love our friends in spite of their faults and not because they are faultless. The same attitude apparently must govern our approach to tax reform.

In adopting tax reform we must not be blind to some of the defects in the current bill. During the tax reform debate, I have talked about some of these problems in the hope that the Senate might address and correct them. This will probably not occur before final passage by the Senate, but the committee of conference will have wide latitude to consider a wide range of options between the Senate version of tax reform and that approved in the other body.

One of the problems not likely to be solved at this time is the impact of the American tax system on the competitive position of American business in international markets. This is a complex issue and will require broad education and serious effort.

The other major issue that may be more likely to command the attention of the committee on conference is the tax treatment of capital gains. In fact, the conference will not be able to avoid it. Personally, I hope the conference will look long and hard at the question of whether capital gains should be given the same tax treatment as ordinary income. I think it should not.

It may be a reflection of my old-fashioned upbringing, but I was taught that it was somewhat immoral to spend principal as if it were income. That distortion is destroyed by the Senate bill, and the destruction may be reflected in investment practices and in reduced formation of capital.

The future is impossible to predict, and human response to tax laws is especially unpredictable. But by treating capital gains as ordinary income we shall probably encourage business in general and risk takers in particular to rely on borrowed funds for growth. The fact that interest will be deductible while capital gains will be fully taxed can be expected to promote such a trend, rather than to promote the long-term formation of capital as the product of successful ventures. I urge the committee of conference to consider that probability very carefully.

The bill's elimination of the long-term capital gains exclusion is coupled with retention of existing law's restrictions of the deductibility of long-term capital losses. Thus, short-term capital losses will be fully deductible, while long-term capital losses will be deductible only against capital gains. These provisions, taken together with the elimination of the long-term capital gains exclusion, may well encourage investors in the capital markets to take a very short-range view. This treatment may favor the speculator, as contrasted with the investor. If so, the result will not be helpful to the economy.

There are, of course, arguments on the other side to the effect that there is no adequate economic justification for distinct tax treatment of capital gains. These arguments can be countered by careful and realistic definitions of capital gains. It is hard to defend the market operator who is in and out of the market in 30 or 60 days as a true venturer in the classic sense. The genuine risk taker is in for the long haul in the challenge to create a new and successful venture. Such a commitment is long term and the definition should contemplate that fact. Capital gains should be defined as being the result of holding for a period of years, perhaps as long as 5 years. That would create a genuine economic justification for separate tax treatment of capital gains.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1310

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

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

Mr. BENTSEN. Mr. President, I will vote for this bill. I like this bill. I support this bill. But it gives me some concern, too.

What you are seeing is a very dramatic turning point in American tax law. It tells the American people that tax rates are going to be as low as they can possibly be. It tells them they can make their daily decisions on spending, savings, and investment without the interference of a high tax rate, without the distortion of numerous special tax exemptions. It tells them they ought to use their capital in the most productive way, where it will produce goods, services, jobs, and income, not just tax benefits.

This bill tells the American people they no longer have to worry about success. The American entrepreneur, if he is successful, will understand that taxes are only going to take a quarter of his profits away from him—not half. Instead of being boosted into higher and higher brackets, the entrepreneur will face a maximum tax rate of only 27 percent. That is a prescription for innovation, for creativity, for hard work, and for risk taking.

Furthermore, we ought to have an improved allocation of capital under this bill. Instead of having a surplus of office buildings, perhaps we can have more new, modern businesses. Instead of having a growing tax shelter industry, perhaps we can have a growing economy.

Also I think this bill is going to lower interest rates across the country. People are going to think twice before they go out and buy consumer goods on personal credit if they cannot deduct that interest. They will have to take the full cost of interest into consideration instead of just the after-tax cost. If demand for consumer credit is dampened, business borrowers will be the beneficiaries because that ought to bring some lower interest rates.

By now we know all the other main features of this bill: That 80 percent of American families are going to have a maximum of a 15-percent tax rate, that we are going to have a stiff alternative minimum that will ensure that wealthy individuals and profitable corporations are going to have to pay a tax, that corporations are not going to be able to make hundreds of millions of dollars without paying a tax. The higher personal exemption and standard deduction are going to provide relief for our country's middle-income families. And thanks to provisions like that, the American people in general have embraced this tax reform. This tax reform is not cosmetic. It is not superficial. It is substantive, and the American people have come to recognize that.

But let me say, too, Mr. President, this bill is no direct ticket to prosperity. It is actually something of a gamble, and we ought to understand that. It is something of a gamble because we repeal the investment tax credit, and thereby to a degree that cuts back on the tax incentives in manufacturing and other heavy industry.

The unanswered question is how are corporations going to use the lower tax rate? Will they use that differential to buy machinery and equipment, and will that in turn overcome what they have lost in the investment tax credit? What will be the motivation in the boardroom? What will be the motivation for the individual, for the small businesses that make that decision?

In plain terms, for some of these businesses this bill is going to raise the after-tax cost of investments in plant and machinery. That gives me some concern when we have a $150 billion trade deficit. That figure is probably going to be higher this year.

If we are going to make headway against that kind of a trade deficit, it is terribly important that we increase the productivity of this country and that we continue to modernize its productive capacity. Yet, we know that capital investment in this last six months has actually decreased.

The tax bill poses a risk of hindering the process of modernization unless corporate directors take the lower overall corporate tax rate and use that to buy new equipment and plants. So I am hopeful they will.

I am also concerned that in part this bill will spur consumption despite the restrictions that we have put on consumer credit, and on the interest on that credit. The people of this country have a great propensity for consumption. This bill certainly does not seriously discourage that. The plain facts are that we have cut taxes for individuals by slightly in excess of $100 billion over five years. My concern is that Americans will not use sufficient amount of that additional income to put away in savings, that they will buy goods, and that they will buy imports. That is one thing that seems sure. They are going to buy some imports.

Economists say we all have a certain marginal propensity to import; that when we have more money to spend, we buy more imports. Given the great trade deficit we have, that gives me a concern.

I also have some concern about the repeal of the capital gains preference. One of the things that is unique about this country is the creation of new businesses, and the facts that startup companies create so many jobs, and that we have capital for that purpose. No one has fought more than I to bring the capital gains tax down. Many in the Senate have fought for that objective. There is much evidence that lower rates on capital gains were responsible for much of the increase

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in venture capital in the late 1970's and early 1980's. Venture capital finds its place in high-risk startup companies that often bring about the technological advances that keep this country growing.

So there are some problems with this bill, as you find with any major legislation. And we have to evaluate that. But once again, when it came to the tradeoffs, I felt it was worth the risk involved, and that the lower interest rates likely to come about by this would be enough to make up the difference. That is the bottom line.

No one should discount to what extent low tax rates can be a powerful fuel for our economy. We have not tried that for half a century. I think it is worth a try.

I am one who believes still that you can put certain incentives in the tax system to achieve economic and social objectives for the country, but the problem that we run into is we keep adding and adding and adding them. At the time they were put on they served the purpose and were worthwhile. But as conditions and times have changed, many of them have outlived their usefulness. But there are still vested interests some place fighting for them and the Congress does not show the political courage to remove them.

□ 1320

This time the Senate has done it in spades. We have really purged the system of special interests, tax loopholes, and tax shelters.

We have tried to produce a tax system that the American people will perceive as fair; where people with equal incomes pay equal amounts of taxes; where profitable corporations will not escape paying their fair share.

To achieve all of this, the vast majority of this Senate is willing to take the risk.

Mr. President, I wish this bill would be finished after we vote today, but, unfortunately, that is not going to be the case. The next step is the conference with the House, and there are some substantial differences. It will be a long and difficult bargaining session. We have many, many special issues to deal with, including the deductions for sales tax, IRA's, capital gains, depreciation, the tax rates, the treatment of real estate, the effective date of the rate cuts.

I think most of us concur that we have to find a way to move that rate cut up to January 1, 1987. We see a situation today where the last report show unemployment increasing slightly and show capital investment down. Those kinds of things could be the harbingers of a downturn in the economy. If you couple that with the fact that this bill picks up another $25 billion in extra tax in 1987, that can add substantially to the problem and help accelerate a recession. We must not let that happen. I, for one, am going to do my best to see that that tax cut is moved up to January 1.

Lastly, Mr. President, I want to commend the distinguished chairman of the Finance Committee, Senator PACKWOOD, for his tenacity, his creativity in putting this bill together, and for moving it through the committee and on the floor.

I also want to commend Senator LONG, who brought his decades of experience to bear in moving this bill forward. I look forward to working with these gentlemen and others in putting the final touches on this bill in conference.

Mr. President, I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I join with the distinguished Senator from Texas in praising Senator PACKWOOD and Senator LONG, but also in praising the distinguished Senator from Texas and all the members of the Finance Committee. I think they deserve our thanks, both Republican and Democrat our thanks, for producing this remarkable legislation.

During the 12 years that I have been here it is the first piece of tax legislation that I see really going toward true tax reform. I think it is because of the dedication, and I know the around-the-clock dedication in a number of instances, by members of the Finance Committee that we have a chance to even have this legislation on the floor.

Mr. President, this bill cuts taxes for the average Vermont family by 27 percent, $729. In our State, that is no small matter.

But at the same time, it increases tax fairness. It removes 6 million working poor families from the tax rolls. It provides an incentive for low-income workers to continue working rather than to accept public assistance.

It also says enough, to those people who have been corporate freeloaders. Last year, one corporation received a tax refund of $104 million, notwithstanding the fact they had $1.6 billion in profits.

Put that in perspective for my State and that refund they got was nearly a quarter of all the Federal taxes paid in my State. That is what they got for a refund, having made $1.6 billion in profit. This means now they have to pay taxes on their fair share.

The committee tax reform bill also slams the door on $50 billion in tax shelters while promoting real investment. The bill encourages home ownership, one investment within the reach of most middle-income Americans, by preserving the deduction for mortgage interest payments on first and second homes.

It is good for business. For instance, important research and development tax credits are extended. The tax reform bill also stimulates investment in our communities by preserving the deduction for State and local property and income taxes.

The State and local deduction was first introduced more than 12 years ago by Congressman Justin Morrill, of Vermont. To this date, the deduction prevents double taxation. It also gives Vermont communities the flexibility to raise revenues and provide essential services without increasing the total tax burden of Vermonters.

Mr. President, I was elected to the Senate to represent the people of Vermont, not to rubberstamp the work of any committee, whether the Finance Committee or any other. That is why I refused to join the group of Senators opposing any and all amendments to the Finance Committee tax reform bill because even as good as this bill is, and as remarkable as it is, it is still not perfect. So I voted for some changes in IRA's. I feel they should be in there. I hope that the conferees will retain the deduction for contributions to IRA's. I voted for Senator MITCHELL's amendment to cut taxes for the average Vermont family by an additional $120. I voted against every single amendment that would raise taxes for the average Vermont family.

Vermont, unfortunately, is the only State in the Union with a budget deficit, one inherited about a year ago. As a result, Vermonters have been forced to pay a higher total tax burden to pay off that debt. I do not want tax reform to add to that heavy burden.

I also voted to eliminate several sweetheart deals in the bill for big corporations and foreign real estate syndicators. A tax reform bill that limits the deduction for health care costs and State and local sales taxes—tax breaks for average Vermonters—should not provide any special treatment for those who can most afford to sacrifice.

I also voted to retain the deduction for charitable contributions by the 60 percent of all taxpayers who do not itemize their deductions. Last year, I cosponsored legislation to make the so-called above the line deduction for charitable contributions permanent, because this provision of the Tax Code will generate some $12 billion in giving next year to churches, colleges and universities and countless other institutions in the nonprofit, independent sector.

Some of the changes I supported were adopted. Others were not. But all in all, Mr. President, the Finance Committee tax reform bill remains a monumental accomplishment, and an accomplishment for middle income Vermonters, middle-income Americans

everywhere. I urge the Senate to strongly support this legislation.

Even those of us who may have had differences with one part or another must cast a very strong and unanimous a vote as possible for it, to send the chairman and the ranking member to the committee of conference with strong bipartisan support from this body because the bill does make our tax system more fair, it creates investments and creation of jobs, and by creating the need for literally dozens of tax reforms it makes our complicated tax system much more simple. In short, we did something right, let us not mess it up.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I thank the Senator from Vermont [Mr. LEAHY] and the Senator from Texas [Mr. BENTSEN] for their kind words.

I must say that the Senator from Texas most certainly contributed to the committee's work with his fine knowledge of tax matters. He made a great contribution.

AMENDMENT NO. 2166

(Purpose: Making technical corrections)

Mr. PACKWOOD. I now send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD] proposes an amendment numbered 2166.

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

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

(The text of the amendment is printed in today's RECORD under Amendments Submitted.)

Mr. LONG. Mr. President, this is a technical amendment.

Mr. President, I want to compliment the chairman on offering this amendment. I also want to compliment him on resisting pressure to put something in here that, in my judgment, does not belong in technical amendments. A number of Senators have been under pressure to put something into the technical amendments which goes beyond our tradition and practice of merely cleaning up the language to make it mean what it was explained to mean in the committee, or merely correcting unintended errors, misspellings of words, improper punctuation, and technical matters. My view, which has always been the Senate's view, is that these technical amendments should involve no matter of substance. Insofar as any change of language, it should only be to do what the committee agreed to do, and what the committee report says the language does.

May I say to the Senator that in years gone by, the Senator from Louisiana has managed very controversial bills. On occasion, this Senator has sent up technical amendments and has been challenged, only to have the challenger find that the amendments did exactly the same thing the Senator is doing here, which is to make corrections of technical errors that do not change at all the intent or substance of the measure.

I would hope that the Senate would maintain that tradition, because I think that once we send up technical amendments they ought to be respected in the conference. I compliment the chairman on this, knowing that he, likely, has been subject to pressures to go beyond this. I have assured Senators that insofar as what they sought to achieve, it can be accomplished in conference in any event, whether the language quite said that or whether it did not.

It is not necessary for us to use technical amendments to change the substance of some amendment.

I thank the Senator.

□ 1330

Mr. PACKWOOD. Mr. President, I thank the distinguished ranking member of the Finance Committee [Mr LONG] and appreciate the fact that he was willing to stick with me shoulder to shoulder with this one. We both had to turn down requests from Members who would come to us and say, "Oh, this is just a little technical amendment." But it was not just a little technical amendment, it was not even a transitional amendment. It was a substantive amendment.

If we are going to deal in good faith on the floor, when we send forward a technical amendment, it must be a technical amendment. When drafting a bill of this size, when you ar moving as fast as we have been moving, you have to be sure—computers will make a mistake and drop a line or two out of the bill. But I can assure the Senate that both Senator LONG and I have been firm with each other and with our staffs that nothing was to go in this bill that would by any reasonable man's or woman's definition fit any other definition but technical.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. METZENBAUM. Mr. President, the technical amendment, I think, is 89 pages long. The manager of the bill has been very cooperative in this respect, as he has been throughout the entire handling of this measure, in making available to the Senator from Ohio and others interested information concerning the amendment. We have had an opportunity to examine the technical changes and agreed that they are indeed technical changes.

After we had an opportunity to examine those 89 pages, we were told that additional changes were made that were stylistic, that were really not substantive at all. I think I know the answer to this question, but I want to ask the manager of the bill. Am I correct in my undestanding that the stylistic changes that have been made to the technical amendment package which was originally submitted to us are indeed that and nothing more?

Mr. PACKWOOD. The Senator from Ohio is correct. The changes were made to conform to the style recommended by the Parliamentarian and others, but there has been no change at all in what was in that amendment except those stylistic changes.

Mr. METZENBAUM. I thank the managers of the bill on both the majority and minority side. I have been on this floor long enough that on previous occasions, that which was considered to be a technical amendment was not technical at all, but had real substance to it. We are satisfied that these were technical amendments that had to be made, and I thank the Senator.

Mr. LONG. Mr. President, let me read a few of the technical amendments.

On page 1757, line 17, strike "(b)" and insert "(c)".

On page 1758, line 16, insert "only" after "apply".

On page 1763, line 9, insert "(d)" before "Every".

On Page 1763, line 19, insert "the" before "Philippines".

Those, Mr. President, are technical amendments, insert the word "the" or strike the word "a", and they do not cost the Treasury any money.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2166) was agreed to.

Mr. PACKWOOD. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I, as a number of other Senators, have wrestled with the tax bill. I intend now to vote for it. I think there have been some improvements that have been made in the tax bill. I think the Finance Committee has done a good job. I do not think any committee can come up with a perfect tax reform bill. There are some things that I hope occur in conference that strengthen it, improve it. I feel that there has been floor action here that has improved the bill and taken care of some sub-

stantial policy needs, such as the efforts to help the farmer. But I am still bothered by what I might call misplaced priorities.

In my judgment, we have gotten our priorities misplaced. With our ever increasing deficit approaching astronomical figures, Congress and the President should be concerned with reducing deficit spending instead of allocating potential resources toward nonproductive efforts.

This administration has cut nonmilitary Government spending substantially during the past 5½ years. Some of these cuts have been wise, but some have been very harmful to certain segments in our economy and society.

We are faced with the ultimate fact that if we are going to maintain strong military strength to deter military aggression from our enemies and reduce deficit spending, there is no question that additional revenues and further nonmilitary program cutting are going to be necessary.

When we look at potential areas of additional revenues, we dig our heels firmly in the Earth and state we are opposed to increased taxation on the individual or taxation which would prevent business growth and expansion. In my opinion, this is a correct position.

There are clearly areas where revenues can be found without harm to overall business growth and without causing problems to the average taxpayer. But unfortunately, this tax bill will eliminate the potential use of most of these areas for deficit reduction.

Yes, we need to close loopholes. But when loopholes are closed, the revenues acquired should be directed toward deficit reduction. Tax shelters need to be eliminated but when they are eliminated, the gained revenues should be used to reduce the deficit.

Large corporations and some small corporations which have been paying no taxes year after year need to pay taxes, but when such taxes are paid, they should be directed toward the deficit.

I have heard administration officials brag to business groups that the maximum income tax rate on individuals has been reduced from 70 percent to 27 percent under this administration. Newton's third law of motion states that for every action, there is an equal and opposite reaction.

What is the reaction for reducing the tax rate from 70 percent to 27 percent? The answer comes through loud and clear—triple the national debt. To me there was justification for the label placed on some Members of Congress as being the "tax and spend crowd," but I think that there are many that now must bear the title of "the borrow and spend crowd." We must face up to the facts that after the tax bill passes, there will be few loopholes to close, fewer shelters to dismantle, the minimum corporate tax will have been misdirected. In other words, many palatable sources of revenue that could have been used to fight the battle of deficit reduction are no longer available.

□ 1340

The malady that I fear is a disease known as "rate creep." Since the tax base now will be much broader, we will not be confronted with the difficult task of facing a 10- or 15-percent tax increase vote, but in the future I am afraid I will hear rhetoric ringing forth in this Chamber and in the House of Representatives that the people will understand and accept a 2- or 3-percent tax increase this year. Then the next year I fear we will hear the same arguments again.

Perhaps a good analogy for rate creep is "weight creep." If you are not careful, you can gain 3 pounds a year and it is not too noticeable. Whether it be "rate creep" or "weight creep," 3 pounds or 3 percent a year amounts to 30 pounds or 30 percent over a 10-year period. Hopefully, 10 years from now we will not see tax rates back where they are today with no deductions. "Rate creep" is a disease for which we must find a preventive cure.

It is my sincere hope that today we are not like Dr. Frankenstein, we gave life to a noble idea only to find our good intentions created an uncontrollable monster. I call on my present and future colleagues to preserve the low rates in this bill. We must direct our attention to deficit spending. Obviously, there has to be cuts in deficit spending. I feel that this bill is needed. We need tax reform, but I believe we have misdirected our priorities and that our No. 1 priority should have been the reduction of deficits and a movement toward a balanced budget. But nevertheless, there is great movement for this tax reforn bill, a bill which I think will go down in history as perhaps the outstanding tax reform of this century.

The bill reduces the number of tax brackets from 15 to 2. It cuts the top marginal tax rate almost in half, from 50 percent to 27 percent. According to the Finance Committee over 80 percent of taxpayers will have a tax rate of 15 percent or less while more than 6 million Americans will be taken off the tax rolls. Furthermore, the personal exemption would be raised to $2,000 for lower- and middle-income taxpayers. But, as good as the committee bill is, I believe we have made some important improvements to the bill during the 3 weeks of Senate debate. However, I remain concerned with several provisions in the bill and these should be addressed by the conference committee and future Congresses.

I am also concerned with a provision in the bill which would establish a tax administration trust fund. In my judgment, this could potentially turn IRS agents into "bounty hunters." This proposed provision ties IRS pay raises and promotions to the amount of interest and penalties which IRS agents assess. This creates a definite conflict of interest between the fair administration of the Tax Code and the financial well-being of IRS personnel. Not only may this system be struck down as unconstitutional under the U.S. Supreme Court's decisions regarding justices of the peace, but may also violate a constitutional provision prohibiting the expenditure of money without congressional appropriation.

Next, I would like to address the elimination of the deduction for capital gains. Historically, a taxpayer has been able to deduct 60 percent of his net long-term capital gain in determining his taxable income. This deduction was inserted into the Tax Code to encourage investment, promote capital formation and assist in the development of new enterprise. The committee bill unwisely removes the deduction for long-term capital gains. This poses an unnecessary impediment to capital formation in our economy. Without this deduction there will be reduced incentive for taxpayers to invest in start-up companies and other high-risk ventures. These high-risk companies often grow into the leading and innovative firms which drive our economy. I urge the conferees to restore the capital gains deduction so as to promote the formation of new capital and prevent stagnation in our economy.

As I noted before, Mr. President, we have made great improvements in this bill on the the floor of the Senate. We have particularly aided rural America, a sector of our economy which has not shared in the economic recovery the rest of our Nation has enjoyed. First, we have restored income average for farmers. This provision will be used by farmers to even out their highly volatile income. Income averaging guarantees that a farmer with large swings in income will not have to pay a tax many times greater than that of a taxpayer with an equal, but constant, income. The retention of income averaging for farmers restores equity to the Tax Code and provides needed and necessary help to the backbone of our Nation—the family farmer.

Another important change made on the floor of the Senate is the restoration of investment tax credits for farmers. Farming, with its tractors, combines, plows and other equipment costing tens or hundreds of thousands of dollars, is a heavily capitalized business. This will allow farmers to utilize the investment tax credits to which they are entitled but are unable to use because of the recent unprofitable years in farming.

I was also greatly pleased that the Senate overwhelming approved a sense-of-the-Senate resolution urging the conferees to the tax bill to reinstate the deduction for contributions to individual retirement accounts. Eliminating this deduction would abolish the only safety net millions of people have in the private retirement savings system. IRA's allow all Americans to secure a small measure of confidence in their retirement security. To eliminate the IRA deduction and thus the incentive to save for retirement would be a grave error.

Mr. President, I feel that the changes we have made on the floor of the Senate have been improvements to the committee bill and will go far to assure the continued recovery of the American farmer and economy. But, Mr. President, I urge my colleagues on the conference committee to eliminate the tax administration trust fund and to restore the capital gains deduction for individuals. I must also warn Senators in the future to resist the propensity for "rate creep" and to hold marginal tax rates at the levels we set today.

I congratulate the chairman of the committee for his diligent work, for his intelligent craftiness in bringing this about, along with the other members of the Finance Committee. I congratulate Senator BRADLEY, who first came forth with an idea many years ago in the Bradley-Gephardt bill. I congratulate the many, many people who have had a lot to do with the craftsmanship of this bill. I think it needs further improvement, it needs to be fine tuned, but it is a good bill.

I do consider that we have misplaced our priorities, and that as we look to the future, hopefully we have not created a monster. With this in mind, I feel reforms are needed in the tax laws. I will vote for the bill, I do have reservatioans about the priorities that have been given to this measure at this time.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER (Mr. ABDNOR). The Senator from Rhode Island.

Mr. PELL. Mr. President, I am very glad to join the chorus of my colleagues in supporting this bipartisan tax reform bill, congratulating its original cosponsors, the very original pioneer, the Senator from Louisiana [Mr. LONG] and the Senator from New Jersey [Mr. BRADLEY].

This is not a perfect piece of legislation; indeed, there are a number of areas in the bill I believe could be improved and I hope and expect that improvements will be made before this legislation is sent to the President for his signature.

But we should make no mistake about it, this bill represents a major revolution in our outdated tax laws and is a watershed in terms of making our tax laws simpler, more favorable, and fairer. The bill provides a modest but real tax cut for most individual taxpayers and shifts a portion of the tax burden from individuals to business, thus correcting the excessive tax reduction provided to corporations by the 1981 Tax Act. By reducing the number of tax brackets, deductions, and tax shelters, the bill would make real progress toward the long-sought goal of simplifying our tax system for the vast majority of our individual taxpayers. Moreover, the bill would remove from the tax rolls millions of low-income workers and families, whose income is barely sufficient to meet essential needs and who should not be required to pay Federal income taxes.

One area of the bill I strongly believe should be improved in conference—the Senate bill limits deductions for individual retirement accounts to people who are not already covered by some form of retirement plan. This is a mistake, in my view, and I urge the conferees from both the House and the Senate to restore deductions for IRA accounts. The IRA's have become a part of the retirement dreams of millions of Americans, and we should encourage private savings by providing a tax deduction—or, at the very least, a tax credit—for individual retirement accounts. During the Senate's consideration of the tax reform bill, I joined those supporting the Dodd amendment that provided a $300 tax credit for an IRA contribution of $2,000. This amendment was narrowly tabled by a vote of 51 to 48 and I strongly hope that the conferees will note the close division of the Senate on this issue and continue to provide a tax deduction or credit for IRA contributions.

In addition, I remain concerned that the bill before us, while allowing for deduction of State and local income taxes and property taxes, denies a deduction for State and local sales taxes. The State of Rhode Island, in combination with its towns and cities, has all three forms of taxes—income taxes, property taxes, and sales taxes—but in my view the Federal Government should not use the Federal Tax Code to tell our State and local governments the kinds of taxes they should use to finance their operations. So I hope the deductibility of sales taxes will be restored before the tax reform bill is sent to the White House.

In addition, I regret that while the bill before us eliminates many tax credits and deductions that have served as tax shelters, there continues some exceptions for oil, gas and other resource industries that I believe are unjustified, and I hope those will be eliminated by the conference committee of House and Senate Members.

Overall, however, I am convinced that the tax reform bill marks a major improvement in our tax system.

Will Rogers once said that the income tax had made more liars among the American people than anything he knew, with the possible exception of golf. By reducing the tax rates and eliminating tax shelters as well as deductions, we are removing the incentive for tax avoidance, as well as tax evasion, and encouraging a more rational economic world in which decisions on purchase and investments will be based, as they should, more on marketplace forces and less on how those decisions will affect one's taxes. In these past years, we have seen so many business decisions based, not on the marketplace but on what the incentive will be to reduce taxes. That is not the way to encourage the healthy growth of our Nation.

This is landmark legislation, certainly the most far-reaching and important domestic bill we will adopt during President Reagan's second term. I intend to vote for it with enthusiasm and pride in the bipartisan coalition which has, at last, given us meaningful tax reform.

□ 1350

Mr. EXON. Mr. President, I have sent a letter, after discussions, to the chairman of the Finance Committee and the ranking minority member of the committee with regard to transition rules that I feel are absolutely essential with regard to four historic preservation projects underway in Nebraska.

I ask unanimous consent to have the letter printed in the RECORD.

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

U.S. SENATE,
Washington, DC, June 23, 1986.

Hon. BOB PACKWOOD,
Chairman, Senate Committee on Finance, U.S. Senate, Washington, DC.

DEAR BOB: As we discussed last week, I need your assistance on transition rules for four historic preservation projects currently under way in Nebraska.

The projects are well on the way to completion and I believe they should be completed under the provisions of current law, as a matter of equity. The four projects are: (1) Waterpark, in Lincoln, Nebraska; (2) Stacy Fruit Building, in Lincoln, Nebraska; (3) H.P. Lau Building and Annex, in Lincoln, Nebraska; and (4) The McKesson Robbins Project, in Omaha, Nebraska. I have attached a copy of an amendment drafted by the Legislative Counsel on these projects as well as revenue estimates from the Joint Committee on Taxation. As you can see, that Committee estimates that the revenue loss for each of these projects would be less than $5 million over five years.

Bob, it is essential that these projects be exempted from two changes in the Senate bill: (1) exempted from the reductions in the historic preservation tax credit, and (2)

exempted from the March 4 binding contract requirement dealing with the changes in depreciation.

I would greatly appreciate any assistance you could provide on behalf of these projects.

With best wishes.

Sincerely,

J. JAMES EXON,
U.S. Senator.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. PACKWOOD. Mr. President, there are now only four or five amendments remaining, and another two or three have been withdrawn since I last made an announcement.

It is 2 o'clock, and I do not know if any of those amendments that remain are going to be offered. But if Members want to offer them and debate them and have any chance of having them adopted, I think they would be wise to come now and debate them; because my hunch is that any amendment that is called up at a quarter to 4, 10 to 4, or 5 to 4, and is not discussed, will have less chance of adoption than if it were offered now and discussed.

So I urge Senators to come forward if they are going to offer amendments.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order of the quorum call be rescinded.

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

AMENDMENT NO. 2167

(Purpose: to make certain changes relating to irrevocable estate elections)

Mr. PACKWOOD. Mr. President, on behalf of the Senator from California [Mr. WILSON], I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD], for Mr. WILSON, proposes an amendment numbered 2167.

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

The amendment is as follows:

At the appropriate place in the amendment, add the following new section:

"SEC. . IRREVOCABLE ESTATE ELECTIONS

"(a) Section 2056(b)(5) is amended by adding the following at the end of such paragraph:

'Should the Commissioner determine that property does not qualify under this paragraph as claimed by an executor, with a reasonable basis therefore and in good faith, on a return filed under section 2001, upon receipt of written notice of such a determination by the Commissioner, the executor shall have 90 days to make an irrevocable election under section 2056(b)(7)(v) as to any such property which qualifies under such section.'.

"(b) The provisions of this section shall not apply to the estate of any decedent if the statute of limitations with respect to the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 has expired before the date of enactment of this Act.".

(By request of Mr. PACKWOOD, the following statement was ordered to be printed in the RECORD:)

● Mr. WILSON. Mr. President, this amendment is very simple, and is intended to solve a catch-22 situation that currently exists with regard to the taxation of estates.

The catch/22 relates to the fact that certain elections for estate purposes are irrevocable. Yet, if a decision is made to not make a certain election, based on an understanding of our tax laws, which understanding ultimately proves to be incorrect, the earlier election cannot be made.

Specifically, my amendment would affect elections made under section 2056(b)(5) of the Internal Revenue Code. It states that if a decision to take a deduction under that section is disallowed by the IRS, an earlier election under section 2056(b)(7) may be changed by the executor of the estate.

Mr. President, I do not believe that this present situation if fair, and it needs some redress. That is why I offer the amendment, and I hope that it can be quickly agreed to.●

Mr. PACKWOOD. Mr. President, basically this amendment simply corrects a catch-22 situation in the code relating to elections for estate tax purposes for certain persons who find themselves in an either/or situation and cannot win in either event. This corrects it. It has been cleared on all sides, and I know of no objection.

Mr. LONG. Mr. President, I am pleased to support the amendment.

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

The amendment (No. 2167) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

THE ENRON EXPROPRIATION AMENDMENT

Mr. ZORINSKY. Mr. President, I rise today to continue my discussion of amendment No. 2115 concerning Enron's Peruvian expropriation. There are several specific concerns I would like to address.

The first is the assertion that no expropriation has in fact occurred. I find this position difficult to believe. The assets were taken at gunpoint. I have with me a picture of the Peruvian soldiers at the factory gate as Enron officials are being forced to leave.

There is simply no question that Peru has expropriated Enron's assets, its oil operations and its bank accounts, and the State Department has said as much. I would like to enter into the RECORD a letter I received from the State Department. The opening sentence of the third paragraph expressly refers to this whole episode as an "expropriation."

I ask unanimous consent to have the letter printed in the RECORD.

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

U.S. DEPARTMENT OF STATE,
Washington, DC, April 29, 1986.

Hon. EDWARD ZORINSKY,
U.S. Senate.

DEAR SENATOR ZORINSKY: Thank you for your inquiry regarding Belco Petroleum of Peru.

President Alan Garcia of Peru was inaugurated on July 28, 1985. On August 28 he unexpectedly rescinded the contracts of Belco Petroleum, Occidental Petroleum, and the U.S./Argentine consortium Oxy-Bridas to produce petroleum for Peru's state-owned oil company, claiming that the firms improperly benefited from investment tax credits under Peruvian law and that insufficient exploration had been carried out. The companies were given 90 days, later extended by 30 days to December 26, to renegotiate their contracts. On December 27 the Peruvian government and Occidental, as well as Oxy-Bridas, signed an agreement in principle governing continued operations in Peru. These agreements were later concluded on March 22, 1986. When agreement was not reached with Belco Petroleum after the December 26 deadline expired, Garcia announced that the government was taking over the company. At the same time, he announced the appointment of a commission, to be made up of representatives of the government and Belco Petroleum, which would evaluate the assets of Belco for the purpose of providing the company with compensation. That commission is now taking an inventory of Belco's assets. Belco's parent company, HNG/InterNorth, now called Enron, has met on several occasions with officials of the Peruvian government in an attempt to get the Peruvian Government's agreement for Belco to return to its former areas and/or to develop a compensation package and consider Peru's proposals for other investment opportunities.

The Department of State has followed the Belco expropriation closely. We have carefully monitored developments to ensure that the government of Peru is negotiating in good faith. This past week both the Minister of Foreign Affairs and the Minister of Energy reiterated to Enron executives their government's intention to compensate Belco fully as soon as possible. The Peruvians also agreed to a proposal by Enron for an accel-

erated compensation procedure. We are obviously concerned about assuring that Peru provide Belco with prompt, adequate and effective compensation in accordance with international law. The Department of State will continue to do whatever is possible to assure a favorable outcome.

Sincerely,

ROBERT S. GELBARD,
Deputy Assistant Secretary for Inter-American Affairs.

Mr. ZORINSKY. Mr. President, I believe that the State Department has the final word on whether an expropriation has actually taken place, and it is clear that they believe one has in fact taken place.

The second concern I would like to address is the nature of the deduction I am seeking to allow. The Securities and Exchange Commission requires Enron to declare a loss of $218 million due to the expropriation. The assets seized were valued at $393 million; $175 million of that will be recovered from insurance companies or the Peruvian Government. That leaves $218 million unrecovered. This company is absorbing a $218 million loss. Even the SEC says so. My amendment simply allows Enron to recognize this $218 million loss for tax purposes.

Some have said that Enron gambled when it acquired the Peruvian assets and assumed the old $175 million basis when the actual cost was around $400 million. Mr. President, I contend that, in fact, Enron made a wise and prudent decision given the facts at the time. If the possibility of expropriation was given the weight that opponents of my amendment seem to believe appropriate, no company would make any investments. I do not think it is overly risky to assume that an overseas operation—an operation which has paid substantial taxes to the foreign government and provided jobs for many of the citizens—is safe from expropriation. To assume otherwise under the circumstances would be overly cautious and result in poor investments.

Finally, Mr. President, I refer to Enron's annual report to demonstrate that the company has paid its fair share of taxes in the past. This is not a company that shirks its obligations to the Federal Government. Enron's effective Federal tax rate for 1985, 1984, and 1983 was 45.9 percent, 45.4 percent, and 46.9 percent, respectively. The company paid Federal taxes of $38 million in 1985, $153 million in 1984, and $133 million in 1983. Clearly, Enron has supported this country, and I do not believe it is asking too much that this country support Enron.

Mr. President, I believe the Senate would not support the amendment were I to offer it at this time. I regret this position for the cause is a worthy one. However, given the present sentiments. I believe Enron's interests are best served if the amendment is not offered. Instead, I ask that the chairman of the Senate Finance Committee included this amendment on his "transition list" for consideration in the conference.

Mr. BOREN. Mr. President, at the request of Senator EXON and Senator ZORINSKY, neither of whom serve on the Senate Finance Committee, I raised for consideration during the committee markup an issue of great concern to the Senators from Nebraska. At their request I discussed the recent expropriation of HNG-Internorth's facility in Peru. I believe that their request deserves our serious consideration.

Under the current Internal Revenue Code, the recovery for a foreign expropriation loss is generally limited to a taxpayer's basis in the property. When the U.S. parent company acquired the Peruvian operation in 1983, the transaction was structured in such a way that the buyer carried over the old tax basis. Therefore, when the amount of any potential recovery for insurance or otherwise is netted out, under current tax rules the U.S. company will not get the needed deduction for tax purposes. It seems only fair that the company be permitted to deduct in the year of expropriation the amount of its net cash invested in the Peruvian subsidiary reduced, of course, by any potential recovery. Again, I believe this deserves careful consideration.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INFRASTRUCTURE STATEMENT

Mr. DOMENICI. Mr. President, I wish to discuss the tax legislation in relation to this Nation's public works investment—what some refer to as our infrastructure.

The problem is that variations on H.R. 3838 are likely to have a severe and limiting effect on future public works investment.

Such a depressing impact on investment must be minimized in conference. I urge my friend from Oregon [Mr. PACKWOOD] and others who will serve on the conference to work hard to encourage public capital investment.

Mr. President, Federal spending on public works has been in steady decline over the past 20 years. In real dollars, and as a proportion of Federal spending, we have shifted away from public works investments. As one example, Federal spending on water resources projects has dropped by about 75 percent in real terms.

As a nation, we spend a lower percentage of our gross national product on infrastructure than any other major industrialized nation. The Japanese, by comparison, spend a percentage three times the American share.

The Congress has basically taken the approach that these investments are essentially local in nature, and should be the responsibility of State or local governments.

I do not quarrel with that shift. In many cases, it has resulted in greater attention to local priority needs, greater attention to cost-effective investments.

In fact, I have sought to foster this shift. Through various legislative proposals in water resources, infrastructure banks, and other techniques, I have tried to encourage a greater Federal-local-user partnership. I shall continue to do so.

Under my direction, the Senate Budget Committee has established a Private Sector Advisory Panel on Infrastructure Financing, seeking to develop a broader understanding of how local governments can and do pay for public works.

The panel has concluded its hearings and will file its report with the committee later this year.

What does all of this have to do with H.R. 3838? How is H.R. 3838 related to the erosion of our national public investment?

The answer is quite simple. Both bills make it more difficult and more costly for non-Federal governments to fix up our streets, to expand our sewer systems, and to improve our drinking water systems.

In my judgment, the House bill does far more damage to the ability of local government to finance their infrastructure than does the Senate bill. Therefore, I urge the floor managers, and those who will become conferees on this bill, to hold firm on the Senate's provisions. The Senate provisions, regretably, are not as good as current law. But the Senate provisions are far better than the House provisions.

Let me explain. Infrastructure projects are usually financed, built, and operated with financing from a variety of sources—Federal grants, State and local taxes, tax-exempt bond issues, user fees, and, increasingly, private capital. Federal grants will, at best, hold steady under the current budget constraints. State and local taxes and user fees are unlikely to be affected. But the House version of H.R. 3838 threatens directly tax-exempt bonds and investment by the private capital.

The House's tax-exempt bond provisions could constrain severely State and local governments in using this traditional investment tool. The house bill increases enormously the complexity, the cost, and the overall burden confronted by local governments in ad-

ministration and compliance with the law.

The House bill imposes restrictions and requirements for the issuance of tax-exempt bonds that will be difficult and, in some cases, literally impossible for local governments to comply with. In the name of reform, the House bill prevents local governments from using legitimate cash management techniques to obtain the greatest value for the bonds issued.

Thus, the House bill will make it difficult to obtain tax-exempt financing for sewage, solid waste, and water supply facilities, placing them under a low volume cap in competition with many other types of bonds. The House bill seems certain to discourage important classes of investors from purchasing tax-exempt bonds.

Because I believe it is short-sighted to hamper public financing in this manner, I joined Senator DURENBERGER in introducing S. 2166. That bill addressed many of these concerns. Many of the provisions of S. 2166 have been incorporated into the Finance Committee version of the bill.

In addition, the House bill will significantly decrease the private capital that is available for infrastructure. As I mentioned earlier, State and local governments have turned to an increasing degree to private sources to fill the gap between the financing that is available from public sources and the annual need—a gap that the Congressional Budget office estimates at $18 billion a year.

Local governments have been able to attract private investment into sewage treatment, solid waste disposal, and water supply facilities because the tax treatment compensated them for returns on investment that were otherwise low and protracted. Under the current accelerated cost recovery system, most of the property in sewage, solid waste, and water supply facilities are given a 5-year depreciation. Under the depreciation system of H.R. 3838, such facilities would be scattered among several classes, with recovery lives ranging from 10 years for solid waste facilities to 30 years for water supply systems.

Worse still, if the property is financed with tax-exempt bonds, the depreciation period is stretched even farther. For water supply work financed with tax-exempt bonds, the depreciation period is 50 years under the House bill.

Such changes will make it far more difficult and costly to lure private investment into water facilities.

Is that what we want to do? I doubt it.

This Nation cannot afford to eliminate private investment in water supply and in environmental enhancement facilities that dispose of wastes. We already face a shortage of funds in this area. The House version of H.R. 3838 could turn a problem into a crisis.

The Finance Committee bill, on the other hand, retains many aspects of current law with regard to the tax-exempt financing of sewage, solid waste, and water supply facilities. In fact, it improves on current law by removing these facilities from the volume cap if they are owned by government yet privately managed.

Further, the Senate bill does not stretch out the depreciation schedules on these facilities so drastically as the House bill.

And neither the depreciation changes nor the tax-exempt bond changes would take effect until the bill had actually been enacted and signed into law.

Senator PACKWOOD and the committee are to be commended for their decision to amend the House proposals to address the concerns of State and local groups. It is my hope that the Senate conferees will fight vigorously for this more farsighted approach in conference.

In choosing between the House and Senate approaches, it comes down to the local people who will try to finance these facilities and the local people who will benefit from the services provided. They will be the ones who will suffer from higher State and local taxes required to cover higher debt costs; they will be the ones who will pay higher user fees; they will be the people who will be forced to rely on old and outmoded facilities, or on no facilities at all, because the capital is simply not available to modernize.

As is so often the case, those jurisdictions with lots of money will be less affected than those with little cash.

The House version of H.R. 3838 may be intended to make the Tax Code fairer and more progressive, but at the State and local level it will have a regressive effect.

Congress must not approve any provisions that will undermine the ability of State and local governments to finance infrastucture needs.

Changes that are adopted must not be retroactive, but should take effect on January 1, 1987.

It certainly is not "reform" to enact provisions that jeopardize the efforts of State and local governments to protect our health and safety and to provide the basic support systems on which economic activity depends.

The Senate conferees should also stand firm on rejecting the House's 10-percent "nongovernmental" test, retaining the current law classifications of tax-exempt bonds; allowing tax-exempt financing for privately owned and managed water supply facilities; removing governmentally owned and privately managed sewage, solid waste, and water supply facilities from the volume cap; excluding tax-exempt interest from minimum tax; and favoring depreciation for sewage, solid waste, and water facilities.

The Senate conferees must insist on the elimination of such onerous House provisions as the rule requiring 5 percent of the proceeds of a bond to be spent within 30 days after it is issued.

We Americans usually take for granted the clean water we receive from our taps, and the sanitary disposal we obtain for our sewage. If we take away the tools that State and local government needs to finance these basic facilities, we will find these services far more expensive. We will find local government returning to Washington for assistance.

This is why I am calling on the members of the Finance Committee who will be conferees on tax reform to stand firm, and not to recede to the House.

I urge the Finance Committee conferees to listen to the public officials in our Nation, the men and women who must provide public services.

I urge our conferees to develop a final tax reform bill that does not shrink the capital available to finance our Nation's infrastructure.

No doubt must be left in the minds of those on the House side of the table that the Senate will not accept a tax reform bill that undermines State and local governments in their efforts to provide the public facilities and services that are essential to our health, safety, and economic well-being.

Mr. MATSUNAGA. Mr. President, I wish to take this opportunity to commend the chairman and the ranking minority member of the Finance Committee and a relatively junior member of the committee, the Senator from New Jersey [Mr. BRADLEY] for their work on this tax reform measure.

During the last markup session, every member of the committee was taking 5 to 10 minutes in praising the work that the chairman had done. Just when I was to be called, the bells rang for a rollcall vote on the floor.

□ 1400

When I was called, I asked the chairman, "How much time do I have?" Chairman PACKWOOD said, "90 seconds." So I responded, "Good heavens, Mr. Chairman, I had intended to take 5 minutes just to speak in praise of the chairman." Chairman PACKWOOD then stated, "You have 6½ minutes."

Well, I think Members of this body ought to be aware of amount of time that the chairman of the Finance Committee devoted to this effort. He met with every single member of the committee for a full hour on a one-to-one basis, not on one occasion but on two occasions, in his effort to craft his first tax package.

When that effort failed, he again set out to come forth with a package which gained the support of every

member of the committee. In fact, as the record will show, the vote in the committee to report this bill out was 20 to 0.

During the entire period, of course, the ranking member on the minority side was in full support of the chairman. This may be the last major tax bill upon which the senior Senator from Louisiana may be voting. Senator LONG leaves a great impression in this body and has served at least as my inspiration, in the U.S. Senate. Not only has he been my model in the Finance Committee, but he has been my hero, because had it not been for Senator RUSSELL LONG of Louisiana, I would not be serving as a U.S. Senator today. I say that because Senator LONG, who initially opposed Hawaiian statehood, took the time to visit Hawaii and found that Hawaii was fully prepared for statehood. RUSSELL LONG came back to the Senate, took the floor, and announced that he was now for Hawaiian statehood. It was his leadership that broke the Southern bloc opposition and the Senate passed the Hawaiian statehood admission bill before the House did.

So I take this opportunity to thank the senior Senator from Louisiana. I do hope he will be around not as a Member of the Senate, perhaps, but maybe as an adviser to the members of the Finance Committee as they consider the next major tax measure.

So I congratulate all concerned, especially the chairman, the ranking minority member, and Senator BRADLEY of New Jersey, for having provided so much of the intellectual effort in devising the bill.

I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I thank the Senator from Hawaii for his very kind words and for the fact that he has been one of the most cooperative members on the Finance Committee, not just on this tax bill, but in the years he and I have served on the committee. He is a pleasure to work with and he always makes a positive contribution.

Mr. President, as soon as the minority leader is here, it is my intention to propose a unanimous-consent request for the order of speaking, as the bill is closed, that has been agreed upon by both the majority and minority side. But I know the minority leader wants to be here at the time it is proposed. I think I can indicate what it will be when he does arrive.

That is, regardless of any other unanimous-consent agreement with respect to the passage of this bill, that 30 minutes before the final passage there would be 5 minutes allotted to the minority leader, or his designee; 5 minutes for the majority leader, or his designee; 10 minutes for the Senator from Louisiana, Mr. LONG, or his designee; and 10 minutes for the Senator from Oregon, myself, or my designee. I do not propose that right yet, because I am waiting for the Senator from West Virginia to arrive.

I see the Senator from New Jersey is asking for 10 minutes. I wonder if I might suggest now—if he is ready to go, or ready to go soon—we are down now to only four amendments. And I think, unless I miss my guess, two of them are not going to be called up. So we are going to have a little bit of time between now and 3:15. If the Senator from New Jersey is ready to go, I think we would be ready.

Mr. BRADLEY. Mr. President, let me say to my friend, the chairman, I am not ready right now. There are two or three other things I must do that relate to the other amendments. I will be ready in just a few minutes.

Mr. PACKWOOD. Mr. President, I will withhold posing the unanimous-consent request.

If I might do this, I will yield so the Senator from Idaho may speak but ask if the Senator from Idaho would yield to me to pose that unanimous-consent request when the minority leader arrives.

Mr. SYMMS. Yes, I would be happy to do that.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, as this historic time on the floor of the Senate winds down and we come closer to passing the bill that truly could be called tax reform—many bills around here have been called tax reform, but this one I think fits what people would consider real tax reform by reducing tax benefits, loopholes, if you will, or preferences in the Code, and reducing the tax rates. I think that is something that the American people are asking for.

I compliment the chairman, the Senator from Oregon, for his distinguished leadership in accomplishing this. I compliment my good friend from Louisiana, Senator LONG. I thank him for his tireless work and service in this body.

I hope that I can have the attention of the chairman of the committee and the ranking Democrat, Senator LONG. I see Senator LONG is about to leave.

What I am fishing for is a little help here. There is still a problem. I hope the distinguished Senator from Ohio is here, because there is one problem in this bill that I would still like to offer an amendment on that we have been unable to get to.

Due to the parliamentary situation the other day when the Chafee amendment was taken down, this amendment that relates to athletic programs on the collegiate campuses in the United States has not yet been dealt with. It may be that it can be dealt with in the reconciliation package or another revenue bill or some technical matter that might come up. But I wish to speak about this amendment here for a couple of minutes.

Mr. President, if any of my colleagues can come up with a reasonable way to pay for this, I hope that it could still be accepted by the Senate.

What this amendment does is clarify the treatment of contributions to tax-exempt organizations who accept contributions for college and university athletics. The amendment is necessary because of the problems caused by overzealous revenue agents and specifically revenue ruling 86-63, issued on April 28, 1986.

Many tax-exempt organizations, Mr. President, are set up for the sole purpose of soliciting contributions to further athletics at universities and colleges. These organizations collect the contributions from donors annually, and periodically they turn the funds over to the college or the university athletic department with no strings attached.

Those funds are what motivate some of the fine football and basketball programs that we have in the United States. Those programs pay for the minor sports, a lot of women's sports, and make athletics something that all of the students in all of the country can participate in, in addition to those that are participating at the extreme levels of NCAA competition in the major colleges in football and basketball and even some of the smaller colleges.

□ 1410

The IRS has attempted to disallow these contributions if the institution gives the contributors special treatment as to seat location when they purchase tickets. You understand they are still purchasing the ticket, still paying for the ticket, but if they donate so much money to the Boosters Club or whatever institution it is they are allowed in some cases to buy tickets at a preferential place in the stadium.

The amendment provides that as long as the ticket is purchased at a regular ticket price, any contributions to the nonprofit organization will be allowed as a charitable contribution. This would end any uncertainty about the future nature of the payments.

The amendment also sets forth a formula to be used in situations where seats in the facility are provided for an extended period of time and a contribution is made at the same time.

We recently, had a situation at Boise State University where a nonprofit organization undertook the responsibility to raise half of the cost of the facility, or over $7 million. The remaining half is being paid for by increased student fees. The people who made large

contributions were given the use of the seats in the facility for life. But the overzealous IRS agents came in and denied any portion of these payments as a contribution.

This amendment provides a formula to determine the value of the tickets as the present value of future benefits to be received. So if the amount paid is greater than the present value of future benefits, the difference is allowed as a charitable contribution.

The amendment further provides a safeguard for both the Government and the taxpayer by requiring that the value used in the formula is used in valuing any tickets contributed back to the school.

I am trying to clarify this situation so there will be an incentive and encouragement for people to make contributions to tax-free foundations who donate money for athletic departments at our institutions. Contributions of this nature are used by the institutions primarily for football and basketball scholarships.

At most schools the football and basketball programs provide for most of the funding for all other sports, including women's sports. For years these programs have been financed in this manner.

This amendment merely sets forth in statutory form what has been done for years and is only necessary because of recent action last April by the IRS to try to change the tax treatment. This amendment is important to most colleges and universities in the United States.

I know in the State of Idaho it is very important to the University of Idaho, to Idaho State University, to Boise State University. It is also important to other small institutions like Northwest Nazarene College in Nampa, and the College of Idaho in Caldwell, which have about a thousand students. They have very extensive basketball programs which are an attraction to these schools and provide financing for the minor sports.

At a time when athletics is under increasing financial attack, with television revenues down and the likelihood of a deep cut in the deductibility of the tickets as a business expense, college athletic programs are hard hit. They are being asked to do considerably more, especially in the area of women's athletics and nonrevenue minor sports with considerably less income. Denying the schools access to private funds will simply cause the institutions to seek public funds or run the risk of further cutting back athletic programs.

When the bill goes to conference and the question of ticket deductibility is brought up, I ask the chairman: Would that in any way open up this area in conference so this can be looked at by the conferees?

Mr. PACKWOOD. There is no question about the 80-percent deductibility. As you are well aware, the National Colleagiate Athletic Association directors testified before the committee on that subject. What they were afraid of most of these major universities, public universities, and the Oregon States, the Idaho States, are not located in the biggest towns in their State. They are normally in a smaller town, heavily supported by the local business community and the business communities have been deducting the tickets for business expense. There is no question but what football and basketball end up supporting all of the minor sports and almost all of the women's sports. They are concerned.

It is hardly a leading desire to want to be able to support golf, tennis, women's track, and things like that.

I think it is subject for conference.

As I indicated to the Senator from Idaho before, I think, considering what we have already opened up in this bill between the House and Senate, this is clearly subject to conference, and I will look very favorably upon trying to achieve the end that you desire.

Mr. SYMMS. I thank the distinguished chairman for that statement. That gives me hope that this may be resolved.

Mr. President, before the Senate concludes consideration of the tax reform bill, I want to make a few remarks on the event of this most historic occasion.

First, Mr. President, I would like to commend the foresight of my committee chairman, Senator PACKWOOD, for his herculean efforts in shepherding this bill through the Finance Committee and now through the floor of the Senate. I am hopeful that my colleague's efforts in putting together this package will be recognized by our counterparts in the House when the conference committee begins to meet in July.

Second, I would like to commend the support and guidance that was given to the Senate Finance Committee and more recently the Senate as a whole by Senator LONG, the ranking minority member on the Senate Finance Committee, who as we all know served as the leader of that committee for a good number of years prior to 1981. Senator LONG who has given me much appreciated guidance during my brief tenure on the committee is leaving the Senate at the end of this Congress to retire after a long and distinguished career in this body. Or, so Senator LONG says. Personally, I cannot help but believe that it will not be long before my colleague from Louisiana again feels the "tug" of public service and, in some way, again joins the fold of those devoting their time to trying to make life in this country a little better. Nevertheless, I cannot think of a better tribute to Senator LONG than the passage of this bill. It is a fitting finale to a man who has had a distinguished career as a member of the Senate Finance Committee.

Third, I believe that the Senate should give a round of applause to our leader, Senator BOB DOLE, the former chairman of the Senate Finance Committee. Without his leadership and guidance during this process, I am not sure that the Senate could have concluded consideration of this major piece of legislation in such a timely and organized fashion.

Fourth, I want to commend the minority leader, Senator ROBERT BYRD, for his support in aiding the timely passage of this historic bill.

Fifth, the House of Representatives certainly deserves a note of praise in this speech for being the first to take the "plunge" and for keeping the process going on tax reform. Without the continued commitment of the chairman of the House Ways and Means Committee, Congressman DAN ROSTENKOWSKI, it is unlikely that the tax reform process would have had more than "one life," and the "life" would have been very short. While I believe that the package being reported by the Senate is in many ways a better bill than the one received by the House, the Senate should keep in mind that the House had the very difficult task of being the "first" to consider this major piece of legislation. As the House and Senate prepare for the conference committee, it is my hope that we can both approach the process with the thought that our overriding goal should be to improve on both the House and Senate packages, so that the final bill will be the best effort of both Houses.

Finally, I would like to commend the individual most responsible for this legislation. I want to praise the President of the United States, Ronald Reagan, for his courage and foresight in first proposing the idea and the outline of tax reform, and then actually having the fortitude and the political stamina to continue to support the effort when it did not seem either politically popular or feasible.

In November 1980, when the American people elected Ronald Reagan, they elected a candidate who was committed to fundamental change; committed, no matter what, to constructing a long-term program that would set right 40 years of economic debauchery born out of the vision in Washington that extended to the next ballot box. With the election of President Reagan, we reached a true watershed in American politics and economic thinking. I believe that we have and will continue to experience a phenomenon that is much larger than current political and economic debate

would indicate. In 1980, we reached a point where it was necessary to change the way we thought about our economy, ourselves, and the management of our political and economic lives. This President established long-term objectives and has remained committed to policies which achieve our objective of a sound, growing and prosperous economy. This tax bill is a culmination of a major part of the President's long-term economic plan.

The overriding philosophy of the President, and the philosophy which was the driver on developing this tax bill, is the firm belief in our economic system—democratic capitalism. This President and I believe in the power of capitalism to deliver more freedom, more opportunity, more social mobility and more abundance than any other system devised by man. Capitalism rewards the risktaker, and it is a system that believes in profit as an incentive and in the widest possible distribution of justice, as well as wealth.

Franklin Roosevelt used to say that the inherent vice of capitalism was the unequal sharing of blessings—while the inherent virtue of socialism was the equal sharing of misery. In the past, too many Americans have believed that capitalism was not very noble, that somehow our economic system was something to apologize for. In the land of John Kenneth Galbraith and John Maynard Keynes, profit was not always regarded as a positive thing, and capitalism was often regarded as the handmaiden of greed.

But those worn out beliefs have been changed because of the leadership of our President. The kind of capitalism that he believes in, and that I believe in, demands more than creature comfort. It demands a fair distribution of profit—and a widespread assumption responsibility. For there can be no real prosperity in a land where millions are denied a chance at success. Profit itself has little justification unless it becomes the fuel for social progress and capitalism must have an underlying morality if it is not to degenerate into mere acquisition on a grand scale.

It is that vision of responsible capitalism that I hold, and that has been held by President Reagan. As the last half century has seen a constant narrowing of the old gulf between business and the humanities, so government has come to assume an ever greater role in economic affairs. For 50 years, we have turned to Washington to feed the hungry, house the homeless, provide work for the unemployed. As Government swelled to meet these demands, it came to confuse responsibility with dictation. It promised to realize our dreams—but instead spent much of its time sleepwalking. It vowed to raise the floor beneath the poor—but lowered the ceiling on everyone else. It sought to divide existing wealth more evenly—rather that foster the creation of new wealth for millions of Americans.

Government set out with the best of intentions—and somewhere along the way it became little more than a costly burden. An assembly line of do's and don'ts, seeking to be compassionate, forgetting to be competent. And nowhere did its mismanagement have more disastrous or ironic effects than in the economic realm. Compassion is a word used extensively by the media today. And, like all words, it is vulnerable to distortion. Real compassion does not tolerate double digit inflation. It does not accept welfare lines in lieu of lasting jobs. It is not comfortable with a spider's web of redtape that cripples the small businessman or woman without adding materially to the protection of anything—except the size of the bureaucracy.

Real compassion is contained in a weekly paycheck with a reduced tax bite—a grocery or gas bill that doesn't force a choice between eating or heating. Real compassion offers a handup instead of a handout. Real compassion defines the ultimate social justice as the right of individual self support.

Real compassion and capitalism of the American brand have always been comfortable partners. For it was capitalists who cursed the darkness and replaced it with light; who replaced cold with heat; scarcity with plenty; and squalor with comfort. Capitalists put Americans on the road—and sent other Americans to space. Capitalists have brought better hygiene to the underdeveloped world—more food to feed hungry mouths—and more hope in lands where that most precious commodity would now be extinct.

Capitalism succeeds best when allied with "moral obligation." It reaches its zenith in an atmosphere of democracy, equity, fairness, and real compassion. It is based on the genius of individual men and women, and thrives where those individual rights are protected and wherever their diversity is maintained.

The philosophy of capitalism was not only born in 1776 with the Declaration voted in Philadelphia, but also with a book published in Edinburgh, Scotland. That was the year Adam Smith published his classic work, "An Inquiry into the Nature and Causes of the Wealth of Nations." Smith, for the first time in history, asked the right question. Even today most of the social science studies ask about the causes of poverty, which is the wrong question. The more important question is what is the cause of wealth. Adam Smith was the first to imagine that wealth could be systematically increased in a sustained way. He saw for the first time that economic development could occur, that the world was not trapped in an eternal cycle where you must forever have 7 fat years followed by 7 lean years.

In looking at the New World from Scotland, Smith observed two experiments taking place. He observed that South America had far richer resources than North America: fabulous gold, silver, and lead, in comparison to the humble crops of corn and tobacco, the mainstays of a good but hard living being eked out by the people strung out along the Atlantic Coast. The rank and quality of people, too, favored South America: aristocrats, generals, colonels, brave soldiers rewarded for their services; while in North America there were many more commoners, dissidents, the poor, criminals, refugees.

But Smith predicted, in spite of all this, that South America would end in poverty and oppression because it was reproducing a bankrupt idea—the idea of the Holy Roman Empire, dominated by great landed estates with nobility and peasants, a close union of church and state, a political economy run essentially by large landholders and the military. That system, he argued, could not thrive economically; it had never thrived in 1,000 years of European history prior to 1776.

By contrast, Adam Smith argued that despite the relative poverty of North America, there would emerge on this continent unprecedented liberty and unparalled prosperity. He attributed this, again, not to natural resources or population, but to its systemic idea. The founders knew they were launching a new experiment in political economy, and so did Adam Smith, watching it from abroad, even before it was formalized in the Constitution.

Smith noted and admired two overriding characteristics of this new idea that was emerging in North America. One was the separation of church from the state, and the separation of the press from the state, and the separation of the universities from the state. This grew out of the principles that you cannot trust political leaders to make decisions of conscience or ideas or information, because the life of the spirit is too important to leave to politicians. It was an important idea, and a fairly new one, though it had already been established in Geneva and some free republics of Europe, and it was to a certain extent observed in Great Britain itself.

The second principle was even more striking; namely, that you can't trust political leaders to make economic decisions either. Therefore you must separate economic institutions as much as possible from the state. This was far more original. It was in place hardly anywhere in Europe, although some free cities had been built around this principle.

In the United States, a whole continent was to be built around these two separations, these three quite independent systems.

There was to be a demographic political system, with human rights, electoral suffrage, constitutional procedures, checks and balances.

Then there was to be a capitalist economic system based on private property, market, and incentives, meaning systemic inequalities.

And finally there was a third, separate moral-cultural system, with free-standing churches, universities, newspapers, later radio and television, associations of poets and philosophers—quite rich sets of institutions in the moral-cultural sphere, institutions not entirely beholden to either the political system or the economic system.

The genius of the system is that by dividing the powers you allow no one to control all of it. The founders' vision was not socialist or libertarian because the democratic capitalist system imagines itself as "empowering" people, not managing them. It puts in place those institutions which permit free people to build a better life for themselves through individual action and voluntary association.

The tax bill being considered today gets away from the idea of the Government managing our economy through the Tax Code. The bill attempts to reinstate some of the prerequisites of development in a democratic capitalist economic system. Our system is a thoroughly American idea, and has proven to be very effective throughout our history.

The key to the success of our system is pluralism. A society is more likely to be creative and more likely to build community if it allows for a vast variety of human beings, attitudes, viewpoints, and values, providing ways for all of them to argue out their differences in public. Fire will be struck from these arguments, and a much larger range of possibilities will be conceived than if we were all homogeneous. This vision of the possibilities of pluralism depends very much on an antiutopian recognition that you can't trust human beings too much, although it is the applied intelligence of man—human resourcefulness—that continually rejuvenates the system.

Our system recognizes that there are important roles for government, for the polity. We allow for a great range of invention and possibility in the economic system. And we allow for an enormous range of moral and cultural values. Within this wide frame of reference we find it quite easy to learn lessons from almost anywhere and apply them, remake them, do them our way, and absorb them into our system.

The vitality, the ability to make a better life for our people, and for all peoples, the vision to respond positively to the future, are overwhelmingly present in America because of our unique system of democratic capitalism.

It is our responsibility, in the Congress, to defend that system. The basic defense of our unique system is to insure that the Government does not interfere with the continuing life of that system.

By lowering rates and taking away the Government mandated tax incentives to invest in specific ventures, we are significantly contributing to the defense and maintenance of our system of democratic capitalism. The low rates will allow taxpayers to reach their highest potential without feeling that they are in partnership with the Internal Revenue Service or having their every economic decision determined by the Internal Revenue Code.

Instead of "mining the Tax Code" for profits, taxpayers will hopefully explore new horizons in generating profits and growth in this economy.

Some have questioned the wisdom of paring back some of the incentives that were enacted in the Economic Recovery Tax Act of 1981 and using that revenue to lower rates. When we passed ERTA, the economy was operating in an environment of high interest rates and high rates of inflation. The incentives that were enacted at that point were implemented in an effort to counter the economic effects of high inflation and interest rates. Since that time, interest rates and inflation rates have fallen significantly, and yet, the tax incentives were never adjusted to reflect the changed economic circumstances.

As a result, huge surpluses have been built up in just about everything for which the Tax Code provides an incentive. Capital investment has declined over the past year in large part because of that surplus. Consequently, the tax benefits that currently exist are not being fully utilized. Paring back or eliminating those overly generous tax benefits and using those revenues to finance rate reductions will spur tremendous growth in this economy, and the future growth will be more evenly distributed throughout the economy.

While I am fully convinced that the Senate bill remains a blueprint for economic growth, I do want to mention some specific concerns that I have with regard to this bill. In some circumstances, we have gone "overboard." I feel confident that the conferees will address some of these concerns, but given the nature of Congress, I am sure that we will be addressing some of these issues in future tax bills. That is not meant as a criticism of this body, but meant simply as a statement of recognition of the workings of Congress.

First, the bill continues on a trend that was established in the 1984 tax bill to tax the time value of money. I was opposed to implementing this concept in 1984, and I remain opposed to this principle because it is inconsistent to tax the time value of money, but not reimburse for the time value of money. This concept is embodied in the accounting changes incorporated in the bill, and I expect that the Congress will be faced with major technical problems in this area in future years.

Second, this bill establishes a trust fund which will finance the operations of the Internal Revenue Service. As I understand it, the IRS will be taken "off-budget" and will no longer be subject to the annual appropriations process. In my opinion, Congress will regret the day that it does not subject the IRS to the annual appropriations process. A significant number of regulations will have to be written implementing this tax bill as well as all of the other tax bills we have passed in the last few years. Controlling the IRS' "purse strings" is one significant way by which Congress can keep control of the regulations projects, and maintain control over the intent of the laws it passes. Relinquishing the authority we presently have is a mistake.

Third, this bill implements an entirely new concept in our tax system by "deconsolidating" the individual tax return. This concept is embodied in the "passive loss" provisions in this bill. Besides retroactively taxing taxpayers who made good faith investments under the current tax law, the bill establishes a concept which, in my opinion, will slow economic growth in the future. If Congress believes that the depreciation losses associated with a particular investment are too generous, then the Congress should correct the depreciation system so that they more accurately reflect "economic" losses and not "tax" losses. At the very least, the conference will hopefully reduce or eliminate the retroactive penalty imposed on taxpayers who made a good faith investment under the current set of tax rules.

Fourth, this bill limits the amount of investment interest that can be written off to the amount of investment income earned. This is an attempt to eliminate "leverage" in our economy, which is somehow perceived by some staff and Treasury bureaucrats as an economic ill. Leverage has been and will continue to be a major part of the way business does business not only here in this country, but worldwide. Leverage, contrary to the myopic views of some, increases the ability to create wealth and stimulate growth in our economy. It is good for the economy as long as individuals and companies are leveraging to make investments and not to consume.

Fifth, the Senate bill and the House bill both establish a 'dual" tax system, under the guise of a minimum tax. The utility of a second, alternate tax system in an environment where the regular tax has been reformed and rates have been lowered should be questioned. The reforms made in the regular tax will ensure that taxpayers will pay substantial taxes annually, except for taxpayers that are carrying forward or carrying back net operating losses. If there is a belief that the few remaining incentves are too generous, then they should either be scaled back or eliminated in the regular tax.

This bill retains many of the capital formation incentives, but for regular tax purposes only. And, the improvements in the capital formation area in the regular tax actually broaden the base for the alternative minimum tax, thereby driving even more taxpayers into the alternative tax structure—a structure that does not retain any capital formation incentives.

The taxpayers most impacted by this newly revised alternative minimum tax will be marginally, and possibly, moderately profitable taxpayers who make significant investments in the U.S. economy—thereby increasing the cost of capital for any investment that less profitable, start-up companies or companies that are in a declining industry. It creates a competitive advantage for highly profitable companies who either do not make significant investments in assets that are labeled as "preference" items, or who are diversified enough to be able to fully utilize tax attributes of the capital investments they may make.

Furthermore, the "book" preference item adds an entirely new dimension to our current tax system. In some circles, it is being referred to as "code within a code." The basic premise for accounting for book purposes and accounting for tax purposes is at odds. Public accountants generally require their clients to delay recognition of income for book purposes until the income has actually been realized, while at the same time requiring their clients to recognize losses as soon as possible. The principles for tax accounting are in direct contrast to those general guidelines. The timing differences between the two systems will present numerous problems for taxpayers and tax collectors because taxpayers could easily be taxed on the same income two or three times. In addition, the "book" preference will impose a rather harsh "retroactive" tax on taxpayers because "book income" includes depreciation, tax-exempt income, investments in preferred stock, net operating losses, and so forth, from previously made investments.

Before enacting this dual tax structure, I am hopeful that the conferees will critically examine the impact of implementing two separate tax systems that are integrated.

Sixth, and perhaps most important, are my concerns over the fact that the rate reductions for individuals and corporations are delayed until July 1, 1987, while deductions are eliminated January 1, 1987. The timing difference actually imposes a tax increase on taxpayers in 1987, and will thereby delay for at least 1 year the economic benefits of reducing the rates. Furthermore, the 1987 tax hike could stymie growth in 1987. Since there is a revenue pick-up in the first 2 years of this tax bill, I am hopeful that the conferees will use that revenue to finance the cost of rate reductions on January 1, 1987. In my opinion, the out-year revenue loss associated with January 1, 1987 rate cuts do not reflect the revenue that will flow from the growth that this bill will foster.

In closing, I would again like to commend all of those who worked long and hard on developing this bill, and I encourage my colleagues to support its passage.

Mr. PACKWOOD. Mr. President, I believe this unanimous consent has now been cleared on both sides.

I ask unanimous consent that notwithstanding the unanimous-consent agreement entered into on June 19, with respect to H.R. 3838, that 45 minutes prior to the final passage vote on H.R. 3838, there be time allotted in the following fashion, in the following order, for debate only: 10 minutes for Senator BRADLEY; 5 minutes for Senator METZENBAUM; 5 minutes for the minority leader, or his designee; 5 minutes for the majority leader, or his designee; 10 minutes for the Senator from Louisiana [Mr. LONG], or his designee; and 10 minutes for the Senator from Oregon [Mr. PACKWOOD], or his designee.

Mr. MATSUNAGA. Mr. President, that request has been cleared on this side.

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

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I have a statement I would like to make. I believe I will require somewhat less than the 15 minutes I have reserved.

Mr. President, perhaps all this talk about taxes really started some years ago with Fritz Mondale. Fritz Mondale said in San Francisco, "I am going to raise your taxes."

Where are you now, Fritz? Where are you when these taxes are going to be raised for a lot of people?

President Reagan, as a candidate, said he would not raise taxes. As President, he continues saying he is not going to raise taxes, but he submitted a tax bill and asks Congress to pass it that will raise taxes in 1987.

The House Ways and Means Committee worked out their tax bill—lo and behold, they also have additional taxes in it for 1987.

Then the Senate Finance Committee gets its package together, and there are some big tax increases in it for 1987—$22 billion, we are advised, of tax increases for 1987.

How did that come about?

Well, you all remember Rube Goldberg, the fellow who created contraptions. The Senate Finance Committee found him, they hired him, and they built this contraption, pulleys, gears, bells, whistles, a typically Rube Goldberg-crafted contraption.

They brought it to the floor and said, "This bill cannot be changed. This bill cannot have an amendment because that would make it collapse, and we can't have that because there are going to be 6 million of the very poor Americans taken off the tax rolls by this bill.

Well, that sounds good.

"Then we have a minimum tax," they said, "for corporations. And we are going to close loopholes for individuals who escape paying taxes."

Well, that sounds good.

Also, there are only two tax rates of 15 percent and 27 percent for individuals."

That sounds good, just two rates.

Then they say, "Those people who wear the black hats—you have seen them, the ones with passive tax shelters; we are going to close down those loopholes. We are going to eliminate those tax shelters."

Sounds good.

They also talk of simplicity and fairness.

Sounds good, again.

Well, before you tell your CPA you do not want him anymore, you better read this bill.

Before you determine it is fair, you better look at it, have your CPA look at it, or H&R Block. But have somebody look at it.

The committee said, "We have this bill constructed in such a way that if you remove this gear or this whistle or that bell or that pulley, like in any Rube Goldberg contraption, it all falls down, it comes apart. It all comes apart."

They said "unravels."

But they don't talk about raising taxes in 1987. It has never been explained by President Reagan, the House Ways and Means Committee, or the Senate Finance Committee, just why almost everybody's tax will have to go up in 1987.

The IRS will be making out the W-2 forms and schedules late in December, and everybody will see an extra cash bite in 1987.

Would it make this tax bill come apart if we corrected this? Would it come apart and unravel, if most young

people on their own, just starting out with their first, second, or third job, did not have to pay more taxes? And that is what will happen. If this bill is not changed, most young people on their own, earning $10,000, will pay a little more taxes, not just in 1987 but 1988 and afterward.

Or the young married couple—must we take a bigger bite out of them because we remove the marriage deduction in the case where both young married people are working in one household?

Really, will this thing all unravel for the retirees who have contributed and had taxes taken out of their contributions during their working years, if we corrected this bill so that they don't have another income tax bite on them when they start drawing those pension funds out? That is double taxation. Will correcting this make the bill all unravel?

What about retroactive taxes?

□ 1430

You know, these are taxes that are in the bill that change the tax rules for years past. These are changes made in the middle of the game. Is that right?

Will this bill really come apart? After all, what was all this talk about lowering taxes on the middle-income taxpayers because they are paying more than their share. Let us see. These middle-income people are going to pay more in 1987—everybody is. That is locked in there, unless it is changed somewhere along the line. It is not going to be changed here, in the Senate, as it should have been. But they are also going to pay more taxes in 1988 and afterward—that is, if you make more than $20,000 to $30,000, one out of four—that is 25 percent—are going to pay more. For those with $30,000 to $40,000 in income, 33 percent are going to pay more in taxes.

Well, so much for promises.

And what about IRA's? When you are already on a pension fund, forget about buying an IRA. Forget about that great incentive for saving. That is one of the most forward-looking, progressive additions to the Tax Code of recent decades, encouraging Americans to save. Would this bill all unravel if we kept the IRA?

Well, there may be a euphoria in this Chamber, and maybe all around this town inside the Beltway, generated because of this Rube Goldberg contraption—but it is hard to fool the American public.

Let me talk about Roper's Public Opinion Poll, taken early this month, a national poll. What Roper found out is this: He described, early this month, the Senate committee bill in as glowing terms as we have heard from the Finance Committee. Then he asked the question: Do you want that or do you want to stay with present law? Yes or no.

Fifty percent of the people polled said, they wanted to stay with present law. They said they did not want the Senate Finance Committee bill.

Thirty-three percent of the people said they did not want to stay with present law, they wanted to have the Senate Finance Committee bill. Seventeen percent said they did not know or they guessed it would be the same. They really had no opinion one way or the other.

What is unusual about it is that Roper described this bill very well, with a lot of enthusiasm, letting them know the fine points. But 50 percent of the people said, no, they did not want it, they did not trust it. Only 33 percent of the people polled said, yes, they wanted it.

Mr. President, there are a lot of people who, perhaps, worry as I do. They have looked at this bill and they have analyzed it to a certain extent. They have talked to CPA's, they have looked at studies of it. They wonder what it is doing to be basic industries of the United States.

Mr. President, these basic industries of agriculture, forest products, and mining are down. They are not making any money. So, in one sense, they are not paying much in taxes because they are not making any money. But built into our Tax Code is what can probably be described as tax incentives. Those tax incentives are important in capital formation. They are important in what the basic industries have to face if they are going to survive and recover.

The big problem with the basic industries is that there is no money for their commodities, because prices are so low. If they are going to recover, they are going to have to have capital formation. We wipe the incentive for capital formation out in this bill.

They lose the opportunity for investment tax credit. Then there is the question of capital gains. That is significant. That is an incentive. That too is repealed.

So we have tax policy changes that are very far reaching.

I mentioned H&R Block earlier. What is H&R Block's analysis of the bill? They say, on balance, it goes too far.

Data Research, Wharton's, Manhattan Financial Institute and the University of St. Louis have all analyzed the bill now, this month. They agree on four points:

They agree that the result of the bill will be lower gross national product, less productivity, perhaps more unemployment and, fourth, a higher deficit.

Could we do what needs to be done to the Tax Code without going so far? Could we adjust the Code so that the very poor will not pay any taxes? Yes. Could we get the minimum tax on corporations and individuals that are escaping paying tax? Yes.

Yes, we can do these things and not clobber the basic industries or these other groups. We do not need double taxation on retirees—we can still have the IRA's. We can do all of these things without really causing the hurts and damages this bill will do to many working Americans.

But there is one loophole in this bill that was not even touched—a big loophole. What about profits made overseas by corporations that operate over there and admittedly have a good deal on their profits made there? Those loopholes stay just exactly the way they are.

How about this capital formation? Where is it going to go as we make the changes in this bill? A lot of it will go in overseas investment. That results in lost jobs here, in the United States, and lost opportunities here, in the United States, and almost always results in more imports. Is that the direction we really want to go in for the country? I think not.

Finally, I think there is a large segment of Americans that are entirely forgotten and ignored in this tax bill. I am talking about rural America. That area stretches from coast to coast, whether it is a fishing village or whether it is the small communities—the scores of thousands of small communities of rural America that serve the basic industries of this country, whether it is agriculture, those farming communities and ranching communities; whether it is mining towns serving the miners; or whether it is those small towns and some not so small that serve the loggers and the sawmill workers out across this country.

They are going to be hurt because the basic industries are hurt. When you hurt those basic industries, you lose jobs; you cause liquidation; you cause businesses to go broke, farms to disappear, because the farmers have to move off and the ranchers have to leave after liquidation. And the communities shrink, and their schools. How many teachers do you need after your community has shrunk? And the hospitals; you have to let go some nurses. And how many doctors leave town?

How many barbershops are closed? Does the feed mill stay open? How about implement dealers?

That is what is being hurt when you clobber the basic industries of this country. It is not just the loggers, the miners, the farmers, and the ranchers who are hurt. It is all of rural America.

At the outset of the debate on this bill a couple of weeks ago, I said that I would measure this bill against how high and wide and deep the bill is and how fairly it treats Americans. This bill does not fairly and equitably treat

rural America, because it hurts the basic industries of this country. I shall not vote for it. I shall vote against it.

And I shall vote against it based on those measurements. It is higher taxes for almost everybody in 1987, and certainly higher taxes for the basic industries of farming, ranching, forest products, and mining if they come out of their tailspin, their downward tailspin, and start to recover. It will clobber them with higher taxes, the very people we should help.

How wide is it? It does not do anything about closing the widest loophole that we have in the Tax Code. That is on foreign investment. So it is a backward step in that regard.

And how deep is it? It is just as deep as any Rube Goldberg contraption—one that will reach deeper in the taxpayers' pockets, and those very taxpayers who least can afford it, those very taxpayers who, we hope, will have the chance at economic recovery so that the entire economy of the United States could be in better shape.

□ 1440

I vote against this bill. I vote "No" for all of these reasons.

Mr. President, I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, our debate, which has in one sense extended now over the better part of 18 months, is drawing to a close. There is 1 hour and 20 minutes before we will vote on the Tax Reform Act of 1986, and I think the passing of this legislation will be recorded as a seminal event in the history of taxation, not just in our country, but in a subject that has bedeviled organized societies for many years.

A number of fellow Senators have spoken to aspects of this legislation which are new and important, some of which are not so much new as important. In that respect the reduction of tax rates, and in the number of rates, are changes in the tradition of the Tax Code—others like it have both found and lost favor over time. But there is one other measure, one particular feature of this legislation contained in title XIV of the bill which has never appeared in our Tax Code and is altogether new—even among the myriad proposals that have arisen from the administration's Treasury I, Treasury II, and the bill that has been passed by the House. I refer to the deductibility of passive losses against positive income. This is the arrangement which, sooner or later, all tax shelters provide, and it has been a source of concern on the Finance Committee, in the Senate, I think in the Nation at large. Though there has been this concern about using tax shelter losses to reduce other income, still the decision to eliminate the deductibility of passive losses has come with a measure of swiftness that I think none of us anticipated.

The central fact is that tax shelters were a pervasive but somewhat stable aspect of our Tax Code and our tax arrangements for several generations. It was only in the 1970's accelerated by what events I do not think any of us can say with certainty. It may be that a measure of sophistication about the Tax Code came into being when persons learned of an opportunity they did not know about. Then, indeed, in 1981 even as we closed a set of tax shelters that were known as commodity tax straddles we set in place a depreciation system that made possible, in combination with tax credits of other kinds, limited partnerships which could produce very large nominal paper losses in very short periods of time. The 1981 legislation made it much easier to shelter income, and to a degree that had not been previously known. The practice spread to an extent that had not previously been known.

Time and again in our Finance Committee deliberations, not just privately but in public, one or another of our members would speak of having a conversation with a constituent who would say, "You know, I pay taxes but I'm the only person I know who does."

And we have one witness to the problem in a real position to know—the previous Commissioner of Internal Revenue, Mr. Roscoe Egger, who has just retired and taken the great regard, I think, of the Finance Committee with him. In an interview in the New York Times in March 1984, Commissioner Egger was asked what was the one thing he would most like to change in the tax system.

This was his response, and I quote:

> I would go back and look at the whole question of the ability to offset losses from one type of business activity against income that is totally unrelated.

Commissioner Egger, a man of considerable experience and reputation, had seen the Internal Revenue Service's audit workload of tax shelter cases nearly double in 4 years.

□ 1450

Indeed, one of the aspects of this legislation—one of the byproducts, we hope—will be to free up a huge portion of the ranks of auditors of the Internal Revenue Service who now do nothing but chase the newest tax shelters around and around and around, some of which are caught, most of which are not. Most tax shelters are perfectly legal, in any event. The fact that so much of the Service's resources must deal with the marginally questionable ones only suggests how pervasive this pattern has been.

In this bill, we introduce the distinction which Commissioner Egger posed and which we have been dealing with on the committee in one form or another for the last 4 years.

The proposal originates with the New York State Bar Association tax section. I introduced it in 1983 as a feature that would affect the calculation of the minimum tax. That is to say, persons who had managed to zero out—or nearly so—their tax liability under present arrangements would eventually have to pay a minimum tax—some tax, no matter how large their income, you might say. In order to obtain that result, the measure sought to forbid the use of passive loss deductions the purposes of the minimum tax computation.

That feature was reintroduced in this 99th Congress by myself and the Senator from Rhode Island [Mr. CHAFEE]. In the deliberations in the Finance Committee this year, it was decided that rather than provide this as a provision in the calculation of the minimum tax, we would raise it to the level of a principle of taxation in the entire Tax Code, that henceforth passive losses could not be deducted from active income.

The principle puts a passive investor in a limited partnership in a position that is essentially no different from that of a person who invests in stock in a corporation. If the stock goes down during the year, or the corporation has losses, he cannot take those losses off his income tax. This new proposal says you do not take off your nominal losses from feedlots, railroad cars, barges, apartment buildings, almond groves—the list goes on and on—until you have actually realized them—made the money or lost the money, by disposing of your investment.

Mr. President, a very limited form of this provision exists in the House bill, but only as part of the minimum tax. It does not appear in any of the tax return proposals sent to us by the President. Therefore, one of the great challenges of our conferees will be to hold on to this feature in title 14 of our bill. It is absolutely the heart of tax fairness in this country, requiring persons to pay tax on their real income, not to avoid it by artificial passive losses.

I see that the majority leader has risen, and I certainly do not wish to keep him from speaking in these final moments, but I did wish to call attention to this singular provision which was adopted by the core group in its early debates and for which we are very much indebted to the staff of the Joint Committee on Taxation, which saw the potential in revenue of such a measure. We phase it in so that the actual gains are not so great in this legislation. But were we to put this principle in operation in its fullest form immediately, as it will be in 4

years' time, we would gain $50 billion over the period of the tax bill. That is a measure of the tax avoidance now taking place and a measure of importance of the bill.

This will be the last occasion on which I speak on this subject on this part of the cycle, so I would not want to sit down without expressing, for my part, what I think would be the judgment of any member of the Finance Committee, our great gratitude to the members of the Joint Committee on Taxation, and in particular its chief of staff, Mr. David Brockway. The joint committee staff has been known to refer to themselves as the "anonymous drones of tax reform," and I shall not here invade that status. Yet they have been the indispensible helpmates of the enterprise.

On the Finance Committee staff, we have the extraordinary, able leadership of Bill Diefenderfer, with the girth and the stamina of the first mate of an old "Yankee Clipper." I have seen him "stand on deck" in the committee sessions some 18 hours, and it never occurred to him to sit down.

Our chief tax counsel, John Colvin has been an example of support and courage, as has been Bill Wilkins, who is the chief of staff for the minority. They have brought together a bill of such compelling quality that it was reported by the committee unanimously.

It remains only for me to express my admiration and affection for our chairman, Senator PACKWOOD, for whom we have extraordinary regard, and our always formidable, always willing and, in the end, daringly adventurous and innovative ranking minority member, the Senator from Louisiana [Mr. LONG].

Mr. President, I yield the floor.

Mr. NUNN. Mr. President, I would like to address a question to the distinguished chairman of the Senate Finance Committee. Oglethorpe Power Corp., an electric membership cooperative operating in Georgia, has planned and hopes to enter into a sale leaseback transaction on a generating plant. This plant is under construction pursuant to a binding contract in effect prior to March 1, 1986. The purpose of the question is to clarify the interpretation of transitional rules relating to the required timing of such a sale leaseback transaction. The language of the bill provides that a sale leaseback must take place within 90 days after the in-service date of the qualified property. Is it correct to interpret the transitional rules to mean that a sale leaseback transaction is allowed to occur on any date prior to and including the in-service date, as well as on any of the first 90 days immediately following the in-service date?

Mr. PACKWOOD. The Senator from Georgia is correct in his interpretation. The binding contract transitional rule provides that if a taxpayer such as Oglethorpe sells, prior to its in-service date, qualified property that is being constructed pursuant to a binding contract in effect as of March 1, 1986, the provisions of the bill do not apply to the property in the hands of the transferee. The special sale leaseback transitional rule extends the allowable sale date with respect to such a transaction to any date within 90 days after the in-service date. Thus, Oglethorpe's proposed sale leaseback transaction will not be subject to the provisions of the bill if it takes place on any date prior to and including the in-service date or on any of the first 90 days immediately following the in-service date.

Mr. MATTINGLY. I wish to join my colleague, the distinguished Senator NUNN, in thanking the distinguished chairman of the Senate Finance Committee for making this clarification. As a rapidly growing State, Georgia is heavily dependent on increased power supply. The project to which my colleague refers is of tremendous economic importance to our State. We join together in expressing our appreciation.

Mr. TRIBLE. As you know, the House Ways and Means Committee report accompanying H.R. 3838 contains some commentary on section 264(a)(2) of the code concerning limitations on the deductibility of interest on life insurance loans. One observation in that report states that that section's limitation "applies to all contracts other than those where the nonpayment of premiums would cause the policy to lapse." It is my understanding that this observation is an incorrect recitation of current law, and would improperly deny the deduction for interest on loans under universal life insurance policies. Neither the Finance Committee's version of H.R. 3838, nor the Finance Committee's report accompanying the bill, addresses this issue. I want to make certain that our silence does not evidence approval of the import of this language.

Mr. PACKWOOD. The Senator is correct. The language referred to in the House report is an overbroad statement to the extent that it suggests that universal life insurance policies are always treated as single premium contracts. Of course, this is essentially a transition issue for individual taxpayers under the Senate bill because the bill would eliminate the deduction for interest on consumer loans.

Mr. COCHRAN. Reserving the right to offer an amendment, I would like to ask one question concerning section 1216(e)(6) of the bill, as it relates to qualified offset arrangements. The bill permits an employer to maintain a qualified offset arrangement if the employer maintains such arrangement on April 16, 1986. I wish to clarify that if the employer maintains such an arrangement on April 16, 1986, all employees who become eligible to participate after such date, for example, due to an extension of the arrangement to union employees, or the extention to subsidiaries, divisions or similar business units which become a member of the employer's controlled group after such date, may be covered under the offset arrangement.

Mr. PACKWOOD. An amendment is unnecessary because the committee intends that the offset arrangement may be extended in such cases. However, the arrangement could not be extended to the members of a controlled group of corporations that acquired control of the controlled group maintaining an arrangement on April 16, 1986. Thus, the acquiring group could not adopt the offset arrangement, but the acquired group could continue such arrangement. Is that acceptable?

Mr. COCHRAN. It is.

Reserving the right to offer an amendment, I would like to ask one question concerning section 1216(e)(6) of the bill as it relates to qualified offset arrangements. The provision in the bill permits an employer to consider benefit accruals under the defined benefit plan as matching contributions under such rules as the Secretary of Treasury may prescribe. Is it correct that an employer may in its discretion aggregate accurals under a defined benefit plan, pursuant to such rules as the Secretary of Treasury may prescribe, in testing matching contributions?

Mr. PACKWOOD. The committee intends that an employer may in its discretion count such accruals in testing for discrimination, but such employer is not required to do so.

Mr. MATHIAS. The National Cancer Institute maintains a Government-owned, contractor-operated facility in Frederick, MD, the Frederick Cancer Research Facility. The employees employed in this facility are currently covered by a qualified offset arrangement consisting of a cash or deferred compensation arrangement and a defined benefit plan. This plan is identical to that described in section 1216(e)(6) of the committee bill. Section 1216(e)(6) would permit these plans to meet the requirements of section 401(k)(4) of the Internal Revenue Code as amended by this bill provided that the plan meets several tests. The plan maintained at the Frederick Cancer Research Facility meets all of these requirements. However, there is an ambiguity in the committee passed bill which I would like the chairman of the Finance Committee to address. Under the bill the qualified offset arrangement must satisfy these conditions "with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter."

As I noted earlier, the Frederick Cancer Research Facility is a Government-owned, contractor-operated facility under the National Cancer Institute. The current contractor is Program Resources, Inc. This contractor has operated the facility since 1982, under a contract that expires in 1987. Normally, the National Cancer Institute holds a new competition for the contract to operate this facility every 5 years.

In 1982 when the current contractor won the contract competition to operate this facility the Government determined that in order to facility contract recompetitions, and to minimize costs to the Government, a pension plan should be designed to address the particular needs of the employees of the Frederick Cancer Research Facility. The intention was to create a pension program that would remain in effect regardless of changes in contractor organizations which may occur over time as a result of the competitive contracting process. I would also point out that the facility is operated on a cost-plus basis. The pension plan currently in effect was developed under this cost-plus contract so any changes would involve direct costs to the Government. In addition, any changes would adversely impact the employees of the facility since, because of their special skills, they tend to remain at the facility regardless of which company is acting as the contractor administering the facility.

I am concerned that if there is a change in the contractor, the plan would no longer be within the scope of section 1216(e)(6) of the bill because the new contractor would not be considered the employer maintaining the arrangement on April 16, 1986. Could the Senator from Oregon provide any guidance on the impact of this provision of the bill in these circumstances?

Mr. PACKWOOD. In response to the statement of the Senator from Maryland [Mr. MATHIAS], it was the committee's intention that an employer who currently maintains a qualified offset arrangement should be allowed to continue to maintain such an arrangement for its employees. I believe that in the situation you have described, the committee intended that individuals employed at the facility, without regard to the contracting organization, should be eligible to participate in the qualified offset arrangement since it was those individuals we wished to protect. Thus, the "employer" maintaining the arrangement on April 16, 1986, in the case of individuals working at the National Cancer Institute Frederick Cancer Research Facility, would be the facility itself, without regard to the particular contractor in charge of the facility operations.

Mr. MATHIAS. I thank the Senator from Oregon for his clarification of the committee's intent.

Mr. MATTINGLY. I would like to address some comments to the distinguished chairman of the Finance Committee. As the Senator from Oregon is aware, on May 9, 1985, the board of directors of Fort Howard Paper Co. passed a resolution committing the company to the construction of one of the largest North American industrial projects in 1985, a $1 billion paper mill in Effingham County, GA. The mill, which will recycle wastepaper and manufacture tissue, towel, and napkin products, is a long-term construction project which will not be completed until 1992. Fort Howard's commitment to this project far predates H.R. 3838, yet due to the pending tax reform legislation the project will be unable to receive investment tax credits. Fort Howard's commitment to build the Savannah River mill cannot be retracted to offset the investment tax credits. Building a paper mill is an unstoppable project.

The House of Representatives and Senate Finance Committee have recognized the fundamental fairness and equity of providing transition rules to grant relief from the harsh consequences of changes in the tax law. Such relief is granted in those cases which taxpayers have relied upon existing law in making financial commitments and have acted and commited their resources before changes in the tax law became imminent. Such is the case of Fort Howard.

I would like to ask the chairman for his assistance during conference in working to ensure that this worthwhile project is treated fairly and included as a transition rule.

Mr. PACKWOOD. I appreciate the Senator from Georgia bringing this important matter to my attention. I might add that he has been working long and hard with me on this project, as well as other matters in this tax reform bill of interest to his State of Georgia. I can assure the Senator that I will consider the problems that are facing Fort Howard as we go into conference with the House of Representatives, and will do all I can to ensure that Fort Howard is treated fairly and equitably.

SUBSCRIPTION SERVICES

Mr. GRASSLEY. I rise to clarify the committee's intent as it pertains to the application of the installment sales rules of sections 311 and 312 of the bill. Specifically it was the committee's intention to restrict the application of the change in the installment sales rules to the sale of tangible personal or certain real property and not the sale of a service.

Wouldn't it be correct to say that it was not the intention of the committee to apply the installment sales rules in sections 311 and 312 of the bill to the sale of a service, such as a magazine subscription service, but only to the sale of tangible personal property and certain real property?

Mr. PACKWOOD. That would be a correct interpretation of the committee's intent.

TECHNOLOGY TRANSFER

Mr. DECONCINI. Mr. President, I send to the Chair an amendment. Title XIII of the Finance Committee's amendment to H.R. 3838, includes a number of changes to the Tax Code relating to research and development. I strongly support the committee's decision to include, in particular, those amendments designed to increase research activities at universities and facilitate the interrelationship between universities and private companies. However, in order to completely carry out the intent of the committee in approving this provision, a technical correction amendment is needed to facilitate further the transfer of the technology developed through university research to the marketplace.

In my State, a nonprofit, tax-exempt organization was formed in 1913, prior to the enactment of the 1969 private foundation rules, to provide grants and technology transfer services to universities and other tax-exempt research centers at no cost to those centers. In order to allow the technology transfer program to be operated in a more efficient manner outside the private foundation rules, the foundation will transfer the program to a taxable but still nonprofit organization. My amendment will facilitate the transfer of these assets by clarifying that the chapter 42 penalty taxes will not be assessed on this transaction. The private foundation has also submitted a ruling to the IRS on the issue of whether this transfer would subject it to the chapter 42 penalty taxes.

Mr. President, because my amendment is intended to clarify the intent of the Congress in this area, I would like to ask the distinguished chairman of the Finance Committee what his understanding is of the committee's intent with the respect to technology transfers in this bill, and also, the Congress' intent with respect to technology transfers in this bill, and also, the Congress' intent with respect to the private foundation rules as they impact organizations that provide technology transfers services in furtherance of their tax-exempt purposes.

Mr. PACKWOOD. I thank the Senator from Arizona. During the Finance Committee's deliberations on the tax bill, we clearly intended to foster expanded transfers of technology between universities and the marketplace when we specifically approved the new university basic research credit under section 1301(d) of the bill.

The amendment proposed by the Senator from Arizona is intended to clarify that chapter 42 penalty taxes would not apply to a transfer of assets from a private foundation providing technology transfer services to another nonprofit, but taxable entity formed to provide these services in furtherance of the foundation's exempt purposes. The amendment would also further the committee's goal to facilitate technology transfers already incorporated in the bill.

This amendment, however, is unnecessary, since current law is not intended to impose the chapter 42 penalty taxes under these circumstances.

Mr. DECONCINI. I thank the chairman. Based upon this clarification, I withdraw my amendment.

Mr. DURENBERGER. The bill contains a rule to address the inequity suffered by a certain mutual life insurance company by permitting it to separate certain of its nonparticipating business in a stock life insurance company. As one of the conditions to such treatment, the bill provides that the stock life insurance company cannot take a deduction for any policyholder dividends. It is my understanding that reasonable administrative and marketing fees paid to a group policyholder would not be treated as policyholder dividends.

Mr. PACKWOOD. The Senator's understanding is correct.

SUPPLY OR SERVICE CONTRACTS TRANSITION RULE FOR THE INVESTMENT TAX CREDIT

Mr. MATSUNAGA. I would like to ask the distinguished managers of the bill, the Senator from Oregon and the Senator from Louisiana, to clarify the supply or service contract transition rule. Section 202(d)(3) of the bill establishes a transition rule for purposes of depreciation and the investment tax credit. It is my understanding that the proposed depreciation and investment tax credit changes do not apply to property readily identifiable with and necessary to carry out a written supply or service contract which the parties have made legally binding by the qualification date.

The committee report explains that this transition rule covers situations where the written binding contract requires the construction or acquisition of property, but the contract is not between the person who will own the property and the person who will construct or supply the property. Is this Senator's understanding correct, that the transition rule would cover a taxpayer who entered into a written binding power sales contract by the qualification date and is required to construct or have constructed facilities that will produce the power necessary to fulfill this contractual obligation?

Mr. PACKWOOD. The Senator is correct.

Mr. LONG. The Senator is correct in his understanding.

Mr. MATSUNAGA. I would like to ask the bill managers to clarify another point. The supply or service contract transition rule requires that the property be readily indentifiable with and necessary to carry out the contract. The committee report explains that the specifications and the amount of the property must be readily ascertainable from the terms of the contract or from related documents.

Is this Senator's understanding correct that the requirement is met when a binding power purchase contract specifies the type of generating equipment in terms of primary energy source and specifies the amount of generating equipment in terms of total generating capacity of the turbines necessary to produce the contracted power? In other words, the rule does not require the technical details of the generating property to be spelled out.

Mr. PACKWOOD. The Senator from Hawaii is correct.

Mr. LONG. The Senator's understanding is correct.

Mr. MATSUNAGA. I thank the distinguished managers of the bill for their clarifications.

Mr. BENTSEN. Mr. President, there are many areas in the pending tax bill that must be refined in the upcoming conference with the House on this legislation. One area that I believe we should give more attention to in conference is the taxation of the land title insurance industry.

The provisions in both the Senate and House bills relating to property and casualty insurance company taxation also swept in title insurers. I am concerned that certain of these proposed changes would impose a substantial burden on the title industry.

I would like to ask the distinguished Finance Committee chairman if I can receive some assurance that the Senate conferees will give this issue additional consideration and seek to make any refinements necessary to ensure that title insurers are treated fairly in the final version of this legislation.

Mr. PACKWOOD. I am pleased to assure my good friend from Texas that we will carefully reexamine the land title issue in conference and seek to make any appropriate refinements.

401(k) & RURAL ELECTRICS

Mr. BOREN. Mr. President, I wish to engage my colleague from Oregon in a colloquy to clarify an important provision in the bill.

Mr. President, the bill provides that certain pension plans of rural electric cooperatives may incorporate 401(k) arrangements. Most rural electric cooperatives have adopted pension plans through participation in a master pension plan sponsored and maintained by their national association. This bill permits the incorporation of a 401(k) arrangement into that existing master pension plan.

I understand that a master plan with a 401(k) arrangement would not presently be accepted for an opinion letter ruling by the Internal Revenue Service. Because of the structure of master pension plans, such a ruling is necessary before a 401(k) arrangement is made available to rural electric cooperatives on a national basis through a master pension plan.

My question of the gentleman is, What is the appropriate action the Internal Revenue Service should take concerning this matter, once this legislation is enacted?

Mr. PACKWOOD. It is expected that a master pension plan sponsored or maintained by a rural electric organization will be accepted by the Internal Revenue Service for opinion letters after the enactment of this bill.

Mr. BOREN. I thank the Senator for clarifying this matter.

Mr. GORTON. I rise on behalf of myself and Senator CRANSTON to express my concern regarding the tax treatment of high technology scientific and computer-linked instruments. These state-of-the-art instruments include analytical instruments and other instruments designed to function together with computers in their normal application. Their emerging use throughout a broad range of industries for research and product design, quality control, and regulatory compliance constitutes a major technological development. They help American companies to develop and manufacture better and newer products and therefore to compete more effectively in world markets.

Because these instruments incorporate computer technology in their design and use and because of the rapid pace of technological change that affects computers and a broad range of high technology products, high technology instruments rapidly become technologically obsolete. Every 3 or 4 years new generations of instruments are developed which do more sophisticated tasks at a faster rate and a lower cost.

Under the Finance Committee bill I understand these instruments are treated as general industry assets and are depreciated over a single life for all equipment used in a particular industry rather than a separate life for the instruments themselves—which studies show is approximately 5 years. Thus, for example, instruments used in specific industries such as petroleum refining and food processing are depreciated over 10 years under the regular income tax. Similarly, under the minimum tax, high technology instruments are generally depreciated over periods as long as 15 or 18 years—even though their economic life is about 5 years. This treatment of instruments is in contrast to the treatment of computers and certain tele-

communications equipment which have a separate 5-year class under the bill.

Because obtaining treatment more comparable to computers is of major importance to U.S. companies that manufacture high-technology instruments for the U.S. market, I have seriously considered an amendment which would provide a separate depreciation class for high-technology scientific and computer-linked instruments. However, my real concern is that the issue ultimately be resolved in the conference between the House and the Senate on the tax bill. Thus, if Chairman PACKWOOD, on behalf of the Senate conferees, can indicate that he will exercise his best efforts to resolve this issue favorably in conference, I will forgo offering any amendment.

Mr. PACKWOOD. I fully understand and appreciate the issue which the Senator from Washington addresses. Like computers, semiconductor manufacturing equipment and many types of telecommunications equipment, high-technology instruments are affected by the rapid pace of technological change, and in fact have very short, useful lives. They should be permitted depreciation which reflects their short lives. Accordingly, it is my hope that in conference the House conferees can be persuaded to permit the establishment of a separate depreciation class for these instruments that provides tax treatment comparable to that provided for computers and other high-technology equipment under both the regular income tax and the minimum tax. There is plenty of room within the rules relating to the scope of conference to achieve this result, and I can assure the Senator that I and the other conferees will do our best to achieve it.

Mr. GORTON. The Senator from California and I am most grateful to the chairman for his interest and commitment to this important issue. Given his statement, I believe that an amendment is not necessary, and I look forward to seeing the issue resolved favorably in conference.

ELIGIBILITY OF CERTAIN SOFTWARE DEVELOPMENT COSTS FOR THE R&D CREDIT

Mr. DANFORTH. Mr. President, I would like to address two questions to the distinguished chairman of the Committee on Finance [Mr. PACKWOOD] concerning the definition of qualified research expenditures for purposes of the incremental research tax credit, which is extended for 4 years under the committee amendment.

The amendment generally does not provide rules for determining the credit-eligibility of costs of developing new or improved software that differ from the rule for determining the credit-eligibility of costs of developing new or improved hardware. In either case, for example, the requirement relating to a process of experimentation must be satisfied, and the exclusions from credit-eligible research apply to both hardware and software activities. However, under a specific rule in the committee amendment, research with respect to computer software that is developed by or for the benefit of the taxpayer primarily for the taxpayer's own internal use is ineligible for the credit except to the extent provided in Treasury regulations, or except where the software is used in qualified research undertaken by the taxpayer or in a production process involving a component that qualifies for the credit. Thus, the costs of developing software are not eligible for the credit, for example, when the software is developed primarily for internal use in general and administrative functions—such as payroll, bookkeeping, personnel management, or inventory control—except to the extent permitted by Treasury regulations.

My first question involves the situation where the taxpayer is not developing computer software primarily for the taxpayer's own internal use, but where for business reasons the taxpayer tests the software in its own business prior to any field testing and prior to subsequent commercial production for sale or licensing. It is my understanding that if the taxpayer can establish that it is not developing the software product primarily for its own internal use, but is developing the product for sale, lease, or licensing to customers, then testing of the software by the taxpayer in its own operations prior to production or licensing does not subject the software to the specific rule in the committee amendment that applies to internal-use computer software. Is my understanding correct?

Mr. PACKWOOD. The Senator from Missouri [Mr. DANFORTH] is correct. It is the committee's intent that where for business reasons a taxpayer that is developing software tests the software in its own business prior to the beginning of commerical production, the taxpayer's internal testing activities conducted for a period needed for testing and evaluating the product would not trigger the specific rule applicable to internal-use computer software if the taxpayer can establish that it is not developing the software product primarily for its own internal use, but is developing the product for sale, lease, or licensing to customers.

For example, assume that a computer company develops a new inventory control software package that is not designed for purposes of the company's own use, but for purposes of sale, lease, or licensing to manufacturers. The new software is intended to reduce inventory costs of manufacturing businesses through more efficient tracking and control of raw materials and components used in manufacturing and more efficient storage of inventory items.

After initial development of the package, but prior to sale, lease, or licensing to customers, the company decides to install the package in its own manufacturing processes, in order to evaluate its effectiveness in actual operation. After evaluating the effectiveness of the new software package and incurring additional development costs to improve the package further, the company sells, leases, or licenses the software to unrelated customers. Because the software is not designed for the company's own use and because the software after development and testing was sold, leased, or licensed to unrelated customers, the special rule in the committee amendment applicable to internal-use computer software development costs would not apply with respect to the inventory control software package in this example.

Mr. DANFORTH. My second question involves the situation where the taxpayer develops a package of software and hardware together as a single product, of which the software is an integral part, where the product is used directly by the taxpayer in its trade or business in providing to customers technological services—as contrasted with consulting, accounting, banking, or other personal services. I would like the chairman to clarify how the specific rule concerning internal-use computer software relates to the development costs of such a software-hardware package.

Mr. PACKWOOD. The specific rule in the committee amendment under which internal-use computer software generally is ineligible for the incremental research tax credit—except to the extent permitted by Treasury regulations—does not apply to the development costs of a new or improved package of software and hardware developed together by the taxpayer as a single product, of which the software is an integral part, that is used directly by the taxpayer in providing technological services in its trade or business to customers. For example, the specific rule would not apply where a taxpayer develops together a new or improved high technology medical or industrial instrument containing software that processes and displays data received by the instrument, or where a telecommunications company develops a package of new or improved switching equipment plus software to operate the switches. In these cases, eligibility for the incremental research tax credit is to be determined by examining the combined hardware-software product as a single product, and thus the specific rule applicable to internal-use computer software would not apply to the combined hardware-software product.

Mr. DANFORTH. I thank the distinguished chairman for his clarification of these two matters.

Mr. ARMSTRONG. In addition to reducing the deductibility of business meal expenses and entertainment expenses, from 100 percent to 80 percent, the Finance Committee also tightened the compliance requirements for deductibility of the business meal. Under the Finance Committee proposals, in order to be deductible, the business meal must have "a clear business purpose currently related to the active conduct of a trade or business."

My question, is whether the deductibility of entertainment expenses will continue to be governed by current law. That is, to be deductible, expenses, such as food or beverages provided for hospitality rooms, receptions, dinners, or theater and sporting events will still be deductible if they are directly related to, or associated with a substantial and bona fide business discussion.

Mr. PACKWOOD. That is correct. In addition to reducing the deductibility in these areas from 100 percent to 80 percent, the legislation provides a stricter standard for the business meal. The legislation does not change the standards for deductibility established for entertainment expenses including food or beverage expenses which fall into that category. Such items, of course, will be only 80 percent deductible.

Mr. ARMSTRONG. I thank the chairman for his clarification and wish to assure him that I support the compliance changes which provide for a more strict standard than current law for deductibility of business meals.

Mr. Chairman, in reading the committee report, I am concerned that the committee's intent is not fully developed. For example, an overzealous regulator might decide that restaurateurs providing meals to their own employees, a standard industry practice, might not fall within the provision for employer provided meals excludable under section 132, relating to de minimis fringes.

Mr. PACKWOOD. Of course the committee does not intend to limit the deductibility of such meals. Meals provided restaurant employees by their employers would be considered de minimis fringe exceptions and this is what the committee intended.

Mr. ARMSTRONG. I thank the chairman for his help in this matter.

Mr. CHILES. Mr. President, I would like to engage the distinguished chairman of the Finance Committee in a colloquy regarding material participation under the loss limitation rules for "passive activities" as it relates to citrus groves.

In the Senate report accompanying the tax bill, the deduction of losses is to be disallowed under title XIV, subtitle A for any activity in which the taxpayer does not materially participate on a regular, continuous and substantial basis. The committee report goes on to state that a taxpayer working full time elsewhere as an employee or in a professional service business is less likely to materially participate in a general partnership or S corporation which is engaged in a business involving orange groves than a taxpayer whose primary business is the growing of oranges.

I believe it should be clear that the material participation criterion can be met by the taxpayer who works elsewhere as an employee or in a professional service business if he or she participates actively in the management decisions concerning the citrus grove. This would include planting, grove care, maintenance, harvesting, and the negotiation of contracts for sale of the fruit decisions.

The nature of the citrus business is such that the assistance of experienced, grove care professionals in the daily operation of the grove is essential, even when the owning participants are involved in most of the important operational decisions. Furthermore, many active citrus grove owners are also owners and operators of other agricultural enterprises. When a taxpayer is also engaged in a business other than growing citrus fruit, he or she should not be foreclosed from meeting the material participation standard solely because of his or her noninvolvement in the day-to-day physical labor connected with citrus grove management.

Would the distinguished chairman of the Finance Committee agree that as long as these citrus grove owners are making regular decisions about the management and upkeep of their groves and are participating in the sale of their fruit, they should be allowed to utilize the deductions from citrus ownership even though they may be employed elsewhere?

Mr. PACKWOOD. The Senator is correct. Whether or not a taxpayer is materially participating in an activity will depend upon the amount of time and extent of the taxpayer's involvement in the activity. The taxpayer is not necessarily required to be involved in the day-to-day physical labor. However, the taxpayer must be involved substantially in management decisions, giving independent input and exercising independent judgment with regard to the operations of the activity.

Mr. PRYOR. My question relates to section 1702 of the bill which excludes from unrelated trade or business income revenues from the use of a tax-exempt organization's mailing list by another such organization. Am I correct that section 1702 which specifically exempts certain such revenues from the tax on unrelated business income in the future carries no inference whatever that mailing list revenues beyond its scope or prior to its effectiveness should be considered taxable to an exempt organization?

Mr. PACKWOOD. The Senator from Arkansas is correct.

Mr. KASTEN. I understand that a unique procedure applies to mortgage guaranty insurance companies under the Tax Code whereby the tax relating to amounts added to a special reserve required under State law for extraordinary losses is deposited with the Federal Government by purchasing noninterest bearing tax and loss bonds from the U.S. Treasury. These tax and loss bonds serve a dual function: They provided funds to the Treasury and they satisfy State regulatory reserve requirements. The purchase of tax and loss bonds is not treated as a payment of tax, but is equivalent to the payment of tax. However, the Finance Committee bill could be interpreted as subjecting the amounts added to this special reserve to the alternative minimum tax if such reserve is not reflected in the company's financial reports. The effect could be to subject such amounts to tax twice. Am I correct in understanding that the distinguished chairman of the Finance Committee will seek in conference to amend the alternative minimum tax to prevent the special reserves of mortgage guaranty insurance companies from being subject to tax twice?

Mr. PACKWOOD. The Senator from Wisconsin is correct.

Mr. CRANSTON. Mr. President, I would like to address a question to the attention of the floor manager of the bill. Would he clarify for me the application of the binding contract transition rules under sections 202(b) and 211(d) of the bill?

I have in mind five 30-megawatt solar electric generating plants that Luz Engineering Corp. is developing on land it acquired in the Mohave Desert near Kramer Junction, CA. On April 17, 1985, Luz signed five contracts with the Southern California Edison Co. pursuant to which Edison agreed to purchase all of the electricity produced from such plants provided that they were completed prior to April 1990 and were qualified small power production facilities for purposes of the Public Utility Regulatory Policies Act of 1978.

In September 1985, five limited partnerships, which have Luz Engineering Corp. as the general partner, signed construction contracts with Blount Construction Division of Blount International, Ltd., pursuant to which these five projects are to be constructed during the years 1986 through 1988 at an aggregate cost of approximately $500 million. Construction on two of these projects called SEGS-III and SEGS-IV commenced in January and

construction of SEGS-V will commence later this year.

Although all of these projects are covered by the binding written contract exception contained in the committee's bill for projects eligible for the investment tax credit and current law ACRS, I want to be sure that amendments to the specifications and design of the plants not result in an interpretation that construction takes place under a new contract. These projects have been acclaimed as being on the cutting edge of citing new technology. Improved engineering efficiencies have been significant during the course of construction of previous projects—which are in operation at Daggett, CA. It is most likely that experience in operation of the first two projects, and the SEGS-III and IV projects—which are under construction—will point to various ways of improving the efficiency of these plants by changing the design of the later projects. These design changes may affect the scope of work of the contractor and its subcontractors. Such changes are not likely to increase overall capital costs of the projects at all, would only be made if they resulted in cost saving efficiencies considering both capital and operating costs, and in no event would they exceed 10 percent of the original price. In my opinion it would be most unwise to inhibit implementation of such valuable changes in projects solely to avoid loss of tax benefits. Am I correct in assuming that in these circumstances such changes will not constitute substantial modifications of these contracts and therefore, will not affect the status of these five projects as being grandfathered by section 202(b)(1) of the bill and new section 49(d)(1) of the code as added by section 211 of the bill?

Mr. PACKWOOD. Yes.

Mr. CRANSTON. Section 202(d)(3) of the Senate committee bill provides a transitional rule for "property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986." The Senate Finance Committee compilation of transition rules cites five specific projects which qualify under this provision. We understand that some, and possibly all, of these projects have power sales contracts with electric utilities which were entered into on or before March 1, 1986, under the encouragement of the congressional policies embodied in the Public Utility Regulatory Policies Act of 1978. It is my understanding that other projects which have executed similar power sales contracts by the effective date would also qualify for transitional treatment. Does the chairman concur in this understanding of the Senate committee bill?

Mr. PACKWOOD. Yes. This transition rule is intended to provide equitable treatment for any project which has entered into power sales contracts with electric utilities on or before March 1, 1986. The committee felt that the efforts and expense of project development should be recognized in our transition rules. The execution of power sales contracts is the appropriate event in this context to allow transitional treatment.

Many small power producers and cogenerators have negotiated power sales contracts with electric utilities pursuant to the Public Utility Regulatory Policies Act of 1978. These include solar, geothermal and hydroelectric projects which have, in addition to negotiating such contracts which indicate a substantial commitment similar to a binding contract for construction, made substantial expenditures to keep them in place pending actual sales of power. Section 202(d)(3) of the Senate committee bill provides a transitional rule for "property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986." The House-passed Tax Reform Act of 1985 contains an identical provision. Although this provision appears to be intended to cover the type of power sales contracts described above, Senate committee report language casts some uncertainty as to the transitional status of projects covered by power sales contracts.

On the other hand, the recently released Senate Finance Committee compilation of transition rules cites five specific projects which qualify under this general transition provision. The basis of such qualification in some, if not all, of these cases is the same type of power sales contract executed by other small power producers. It would be inequitable to permit some projects to qualify under a general transition rule while others, holding the same type of qualifying agreement, do not. Accordingly, it is necessary to clarify that projects holding similar types of power sales contracts, executed before March 2, 1986, qualify under this general supplier service transition rule.

Mr. HATFIELD. I rise to commend the Senator for the excellent leadership, and the Members have given to the critical task of reforming the Tax Code and closing tax shelter loopholes. Mandating that a taxpayer must materially participate in the operation of a trade or business in order to be able to deduct losses from that trade or business from his personal income is a sound concept. As defined in the committee report, a taxpayer's material participation requires regular, continuous, and substantial involvement in the operation of the trade or business. Because of the understandable time constraints under which committee staff has been operating, the committee report does not explain the material participation standard in such a manner that it provides the precision needed by many businessmen to determine if their activities meet that standard. Therefore, it is my purpose in rising today to obtain a clarification of whether a specific fact pattern raised by one of our constituents satisfies the material participation standard of the Tax Reform Act currently before the Senate.

Mr. PACKWOOD. I appreciate the Senator's remarks and will attempt to answer his questions.

Mr. HATFIELD. Page 732 of the committee report states "Outside of the limited partnership context, the presence or absence of material participation generally is to be determined with reference to all of the relevant facts and circumstances. In order to be treated as materially participating for purposes of the provision, the taxpayer must be involved in the operations of the activity on a regular, continuous, and substantial basis." The committee report further states that, "In order to satisfy the material participation standard, the individual's involvement must relate to operations."

The committee report outlines several areas which provide guidance in determining whether a taxpayer's activities can be considered as involvement in operations in a regular, continuous, and substantial basis. With the chairman's indulgence, I would like to discuss the activity of a taxpayer who is an owner of a room or rooms in a condominium hotel involved in the business of renting said hotel room or rooms for guest lodging on a transient basis. As you are aware, on this very day over 1,380 Oregonians are employed in the daily functioning of condominium hotels in our State.

Mr. PACKWOOD. I will be happy to discuss each of the areas mentioned in the committee report with respect to the activity of concern to the Senator.

Mr. HATFIELD. The committee report makes quite clear that the operation of a hotel is not a rental activity and thus the taxpayer's participation must be the higher standard of material participation rather than merely active participation. Is that correct?

Mr. PACKWOOD. Yes, the higher standard of material participation would be required of a hotel operation, including a condominium hotel, to qualify such business as not a passive activity.

Mr. HATFIELD. Then, first, am I correct in concluding that notwithstanding that a business activity, such as the hotel room rental business, is not an individual's principal business, a taxpayer can still be considered as materially participating in that hotel room rental business?

Mr. PACKWOOD. Yes. The fact that an activity is or is not an individ-

ual's principal business is not conclusive in determining material participation. Therefore, if the taxpayer to whom you are referring is actually involved in the operations of the hotel room rental business on a regular, continuous, and substantial basis, he will meet the material participation standard even if this activity is not his principal trade or business.

Mr. HATFIELD. Second, the committee report states that a relevant factor in determining material participation "is whether and how regularly the taxpayer is present at the place or places where the principal operations of the activity are conducted." Although the committee report states that, "if a taxpayer lives hundreds of miles from the site of the activity and does not often visit the site, such taxpayer is unlikely to have materially participated in the activity," the report points out, "this factor is not conclusive."

With regard to a taxpayer involved in the hotel room rental business, if the taxpayer is substantially involved in performing functions integral to the activity, the fact that the taxpayer resides hundreds of miles from the hotel would not preclude material participation if, for example, the taxpayer visits the business on a frequent basis to conduct onsite inspections and meet with onsite management relative to operations and otherwise participates in integral functions of the business. Is that a correct conclusion?

Mr. PACKWOOD. Yes. The committee report clearly states that a taxpayer "may materially participate in an activity without being present at the activity's principal place of business." Therefore, in your example, if the taxpayer is performing functions integral to the hotel room rental business sufficient to be considered substantial involvement, this taxpayer's regular and continuous onsite inspections and meetings together with participation in other integral functions of the business away from the place of the activity would be sufficient to establish material participation.

Mr. HATFIELD. Third, the committee report states that a genuine exercise of independent discretion and judgment in management of the activity is necessary to constitute material participation. Based upon this assertion in the committee report, am I correct in concluding that the material participation standard is satisfied if a taxpayer personally reserves and exercises those powers and actions commonly reserved and exercised by owners in that trade or business?

Mr. PACKWOOD. Yes. If the taxpayer exercises such powers and actions on a regular, continuous, and substantial basis, his involvement in the operations would be considered material participation.

Mr. HATFIELD. Such a taxpayer's involvement in the hotel room rental business includes making the following management decisions which an owner of such business commonly or customarily makes in conducting such business: First, the taxpayer actively and regularly establishes the rental rate of the hotel room; second, the taxpayer participates in establishing and reviewing hiring and other personnel policies, including review of management personnel; third, the taxpayer reviews and approves periodic and annually audited financial reports; fourth, the taxpayer participates in budgeting operating costs and establishing capital expenditures; fifth, the taxpayer establishes the need for and level of financial reserves; sixth, the taxpayer selects the banking depository for rental proceeds and reserve funds; seventh, the taxpayer has frequent meetings at the hotel with his agent and onsite contract management to review operations and the business plan, and to conduct onsite inspections; eighth, the taxpayer assists in offsite business promotion activities; ninth, the taxpayer is personally assessed his owner association charges and personally pays them; tenth, the taxpayer is assessed separately and personally the property taxes against his room or rooms, must personally appeal his assessment if he thinks it incorrect and personally pays them when due; and eleventh, personally pays any debt service on his unit when due.

In your judgment, are these management activities sufficiently integral to the operation of the business, and would a taxpayer that personally reserves and actually exercises these management responsibilities and duties in the hotel room rental business meet the material participation standard of this legislation?

Mr. PACKWOOD. In my opinion, yes, they are, and yes, he would be. I would note, however, that the taxpayer's involvement in each of these functions must be more than a pro forma ratification of decisions made by management agents. If the taxpayer is not involved in a substantial way, or if the taxpayer is merely asked to approve decisions made by others, that will not constitute material participation.

Mr. HATFIELD. Fourth, the committee report states that a taxpayer having little or no knowledge of the activity is significant in determining whether such taxpayer's participation in management is likely to amount to material participation. In the situation we are discussing, if a taxpayer's involvement in the business of renting hotel rooms includes the management decisions above; that is, management decisions which an owner of such business commonly or customarily makes in conducting such business, the taxpayer's relative inexperience would not preclude a determination of material participation?

Mr. PACKWOOD. No, it would not. In such a case the taxpayer would be performing management operations to the same extent as an owner having significant experience.

Mr. HATFIELD. Fifth, in the example we are discussing, how is the determination of the taxpayer's material participation affected if he utilizes employees, an agent, and contract management services to perform daily functions in conducting the business of renting hotel rooms or similar space used for guest lodging?

Mr. PACKWOOD. The fact that a taxpayer, for periods customary in the hotel business, contracts with employees, an agent, and/or contract services to perform daily functions in conducting such a business would not prevent this taxpayer from qualifying as materially participating. The activities of employees, an agent, and contract management services cannot be attributed to the taxpayer, however; the taxpayer must still participate in management activities on a regular, continuous, and substantial basis.

Mr. HATFIELD. Thus, in the case of a taxpayer who is involved in the hotel room rental business primarily for guest lodging, the fact that such business is not the taxpayer's principal business, the fact that although the taxpayer conducts frequent onsite inspections and business reviews at the hotel site his residence is located hundreds of miles from the hotel site, and the fact that the taxpayer uses an agent, employees, and contract management services to perform daily functions in running the hotel room rental business does not preclude a determination of material participation by the taxpayer in conducting that business.

Mr. PACKWOOD. If the taxpayer can demonstrate that he had performed and is performing all those functions which you have just described which are integral to the operations of hotel room rental business and is performing them in such a way and to such an extent that it demonstrates that the taxpayer's involvement in the operation of the activity is substantial, continuous and ongoing, you are correct, such activity would be material participation in the operation of the hotel room rental business.

Mr. HATFIELD. I thank the chairman for his clarification on this matter.

Mr. DURENBERGER. I would like to insert for the RECORD my views on the application of the limitations on the use of foreign tax credits against the alternative minimum tax. These provisions are contained in section 1101 of the bill. While in principle I fully endorse the purpose of these provisions, which is to be sure that the

U.S. Treasury collects its fair share of tax from the corporations engaged in business both within and without the United States, I cannot support the proposal to limit the foreign tax credit by allowing only 90 percent of a taxpayer's minimum tax liability to be offset by foreign tax credits.

Any limitation of the foreign tax credit effectively results in double taxation, because the U.S. taxpayer is required to include in its minimum tax base the same income upon which it has already paid foreign taxes. The purpose of the minimum tax is to insure that all income is taxed—if a foreign tax credit is involved, it is axiomatic that the income has already been taxed in the foreign jurisdiction. Such double taxation will place U.S. companies, which are already struggling to compete in international markets, at an even greater competitive disadvantage against foreign companies which do not pay a double tax. This provision therefore not only violates the thrust toward fairness and equal treatment that underlies the tax reform effort; it also contradicts the rest of our foreign trade policy to encourage U.S. companies competing in international markets, which is absolutely necessary if we are to improve the disastrous balance of payments situation.

A perfect example of the inequity of the foreign tax credit limitation has come to my attention. The situation involves a business consisting of the sale and transportation of property located exclusively in Canada. Because of the relatively high Canadian tax rates, the income is generally taxed in Canada at an effective rate of greater than the United States regular tax, which is more than twice the United States alternative minimum tax. Moreover, since nearly 25 percent of the stock of the corporation is owned by Canadians and no one United States shareholder owns more than 27 percent, although each United States shareholder engages in substantial United States operations and accounts for thousands of jobs many of which are held by people in my State, there is no possibility of the tax results of the Canadian operations being consolidated with those of the United States shareholders; nor would there be any possibility to shift the income from such operations to some low taxing jurisdiction and away from the United States. Instead, the taxpayer has been paying tax in Canada on 100 percent of its income at a rate in excess of the prevailing United States rate.

Thus, unlike the reported misuse by others of the foreign tax credit provisions who often paid an effective tax rate on its worldwide income well below the prevailing United States rate, the corporation of which I speak actually paid an effective rate in Canada greater than it would paid in the United States. Such a practice, of paying full tax to the only country in which it operates at a rate greater than what it would have paid had it been able to conduct its operations instead in the United States, can hardly be regarded as motivated by U.S. tax avoidance considerations.

I believe it would be inequitable and unjust to impose a penalty upon such a taxpayer for an act that it has not and could not commit—that is shifting the stream of income from its business operations away from the United States and to some other foreign country. I believe the members of the conference committee should adopt the House provision which allows the foreign tax credit to offset the mininum tax.

Mr. CHAFEE. Mr. President the tax bill contains a set of provisions designed to govern the taxation of so-called multiple-class mortgage-backed securities. The purpose of the provisions was to facilitate the secondary mortgage market. The provisions were originally introduced by me, and cosponsored by Senator BENTSEN, in S. 1959. However, due to revenue considerations, the provisions as reported by the Finance Committee are identical to those in S. 1959. Rather, the provisions as reported by committee have been sharply criticized in the industry.

One of the main things that has alarmed the industry, I believe, is that the provisions in the bill prohibit the use of vehicles utilized under current law for issuing multiple-class mortgage-backed securities. I would hope that in the conference this could be changed to allow a phaseout of these vehicles over perhaps 5 years. It is my understanding that the Treasury Department indicated its support for some type of phaseout in testimony before the House Ways and Means Committee on June 10, 1986. It is also my understanding that the Treasury Department in the same testimony suggested other changes in these provisions that would make them more workable, and I would like to pursue those suggestions as well in the conference.

Mr. BENTSEN. Mr. President, I agree with Senator CHAFEE's assessment of the situation and his proposed solution. I have been informed that the effect of the provisions in the bill as now drafted would be to sharply curtail the secondary mortgage market. I share the Senator's concern about this matter and want to work with him in the conference to straighten it out.

Mr. CHAFEE. It is apparent that our provisions, which were intended to facilitate the secondary mortgage market, may not have that effect, and thus Senator BENTSEN and I want to clarify that it is our intention to correct any problems with this legislation in the conference. It will be our goal in the conference both to provide a phasein of the prohibitions on vehicles utilized under current law to issue multiple-class, mortgage-backed securities and to improve the rules governing the new vehicles. We want to provide guidelines that both the industry and the tax staffs agree are workable. If workable rules cannot be provided in the time available, the entire subject matter should be deleted from the bill and held over for further study and future action.

Mr. BENTSEN. I agree with the Senator from Rhode Island. If provisions cannot be worked out that facilitate the secondary mortgage market instead of hindering it, the provisions should be deleted from the bill in the conference.

Mr. PACKWOOD. I agree with the Senator from Rhode Island and the Senator from Texas. Inasmuch as the provisions were intended to facilitate the secondary mortgage market, I share their conclusion that if workable provisions cannot be drafted in the conference, the matter should be deleted from the bill for further study.

TOBACCO ROW, RICHMOND, VA

Mr. WARNER. Mr. President, the city of Richmond has made great progress in inner city redevelopment in recent years. In order to sustain that progress, one project remains.

The "Tobacco Row" project consists of 12 contiguous city blocks in downtown Richmond, upon which some 1,500,000 square feet of space in 15 currently unused or underutilized architecturally distinguished historic structures are located. This project has historic as well as economic consequences, not only for our capital city of Richmond, but for the entire Commonwealth of Virginia. Indeed, support for the project is statewide.

H.R. 3838 would deal a serious blow to the success of revitalization efforts in Richmond. The "Tobacco Row" project would mean jobs for more than 2,500 people of diverse occupations and skill levels upon completion, as well as hundreds of construction jobs over the next 6 to 8 years. In addition, this project would result in some $2 million additional tax revenue annually.

Nearly 6 years ago, shortly after the enactment of the three-tiered rehabilitation tax credit, "Tobacco Row Associates" was formed and the first parcel of property to be rehabilitated was acquired. During the succeeding several years, additional property was acquired, and a development and feasibility report was completed. The Richmond City Council approved the rezoning of approximately 50 percent of the acquired property in June 1984. Additional actions by the Richmond City Council occurred in April-July 1985 when it approved: a site adjacent to the project as a national memorial

to the Virginia statute for religious freedom; a capital budget that included expenditures relating to the rehabilitation; and, rezoning of the remaining property.

In September 1985, Tobacco Row Associates filed parts 1 and 2 of the application for certified rehabilitation of historic structures with the Virginia Historic Landmarks Commission, which application has already been approved by the commission for parts of the project. In October 1985, a construction contract for the first phase of the project was signed. Thus, the project qualifies for the general transition relief provided for rehabilitation projects under section 1412(d)(2) of the committee bill. It does not, however, receive the full transition relief provided certain "later-in-time" projects under section 1412(d)(4)(B).

Mr. President, due to this lengthy and costly effort to date, it would be inequitable to subject "Tobacco Row" to the bill's restrictions for rehabilitations for rehabilitation projects such as the reduced credit provided for transition property.

As the above chronology demonstrates, "Tobacco Row" is not a late-starting entry. It is now in its fifth year of development as a significant urban revitalization project doing exactly what the 1981 rehabilitation credits were intended to do.

Mr. President, I cannot overstate the tremendous economic, historic and symbolic value of the "Tobacco Row" project. The length of time that this project has been planned demonstrates that this is exactly the type of project that traditionally has been protected from anticipated changes to the Tax Code.

I am aware that several transition rules already in the bill have specific transition rules that would continue the current-law rehabilitation tax credit and basis recovery provisions. I ask only for the same treatment for "Tobacco Row."

Mr. PACKWOOD. I thank the Senator from Virginia and I will take note of his interest during the conference on the Tax Reform Act of 1986

KENOSHA HARBOR

Mr. KASTEN. The city of Kenosha is prevented from undertaking a redevelopment project by the failure of the Corps of Engineers to complete a confined dredge disposal facility.

The delay by the Corps of Engineers work will result in the loss of tax incentives to develop the Kenosha gateway harbor project. We should not penalize this municipality by terminating incentives that would have been available had the Federal Government lived up to its legal obligations.

Instead, I believe we should adopt a transition rule which provides that those same tax advantages would be available to this municipality as if the Corps of Engineers had fulfilled its contract.

Mr. PACKWOOD. I understand this confined dredge facility was to be completed by April 4, 1984. This means that had the corps fufilled its contract, the city would have several tax incentives available before January 1, 1987, the effective date of the Senate bill.

Mr. KASTEN. That is correct.

Mr. PACKWOOD. I am aware of the Senator from Wisconsin's concern, and am prepared to make his case for this transition rule in conference with the House of Representatives. For this reason, I will pursue inclusion of a transition rule for the Kenosha downtown redevelopment project.

This transition rule does not upset the basic principles of this legislation. Furthermore, I understand the Senator from Wisconsin is prepared to offset this transition rule by deleting a rule in existing law for another Wisconsin project.

Mr. KASTEN. The Senator from Oregon is correct. I appreciate his assistance in correcting this situation.

Mr. PACKWOOD. I thank the Senator.

TRANSITION RULE FOR KENOSHA

Mr. KASTEN. The city of Kenosha will be wrongly robbed of important incentives for downtown redevelopment if this bill passes without amendment.

I have a transition rule which I am prepared to send to the desk and ask for its immediate consideration. However, after a conversation with the manager of this bill, Senator PACKWOOD, I will withhold.

After discussion with the Senator from Oregon, I believe we can make the necessary changes to the bill. Furthermore, these changes will protect the integrity of this legislation while correcting a truly unique situation.

The city of Kenosha has been unable to initiate a downtown redevelopment project because of delay by the Federal Government in completing a contract.

This transition rule simply allows the continuation of the tax incentives that are in current law to be available for the Kenosha urban redevelopment project. Completion of this project has been delayed by the failure of the Federal Government to live up to a contract.

Specifically, the Corps of Engineers and the city of Kenosha entered into a contract for a confined dredge facility on April 4, 1974. That contract provided that the Corps of Engineers would build and operate such a facility for a period not to exceed 10 years.

That means that the corps was to have completed this facility by April 4, 1984. At that time the facility was to be returned to the city of Kenosha.

The city is prepared to undertake a major urban redevelopment project on this site. However, the city is prevented from taking this action until the Corps of Engineers completes and closes the confined dredge disposal facility.

I would like to enter into the record at this point a copy of the contract between the Corps of Engineers and the city of Kenosha. This contract, dated April 4, 1974, specifies that work is to be completed in 10 years.

In addition, I would like to add at this point in the record a description of the legislative history which describes the Kenosha dredge disposal facility and the termination date.

By failing to fulfill its contract obligations, the Federal Government has denied the City of Kenosha the tax advantages to develop this facility. I believe we should be willing to give the city what the Federal Government's failure would take away from them.

This amendment specifies that no more than $105 million of this project may take advantage of these tax incentives—investment tax credits, 19-year depreciation, and IDB's.

In all likely hood this project will be completed at a far lower cost. If the city could begin today I expect they could complete this project for less than $60 million.

In order to keep this amendment revenue neutral I am prepared to give up a transition rule which benefits a project in my State in existing law.

The material follows.

On page 1523, between lines 11 and 12, add the following new paragraph:

(29) CERTAIN URBAN REDEVELOPMENT PROJECT.—The amendments made by section 201 and subsection (b) of this section, shall not apply to an urban redevelopment project located on lands submerged under waters of a Great Lake or on adjacent lands which formerly were submerged under the waters of such Great Lake, the total cost of which is approximately $105,000,000, and which was delayed due to the failure of the Army Corps of Engineers to complete and close a confined dredge disposal facility by April 4, 1984.

On page 2234, between lines 7 and 8, insert the following new paragraph:

(3) SPECIAL RULE FOR AN URBAN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any losses in connection with an urban redevelopment project described in section 202(d)(29).

On page 2420, between lines 13 and 14, add the following new subsection:

(m) TRANSITION RULE FOR CERTAIN URBAN REDEVELOPMENT PROJECT.—The amendments made by this title shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used for an urban redevelopment project which is described in section 202(d)(29), if such obligations are issued within 3 years after the date on which the Army Corps of Engineers completes and closes the confined dredge and disposal facility located on such project lands.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND CITY OF KENOSHA, WI, FOR LOCAL COOPERATION AT KENOSHA HARBOR, WI

This agreement entered into this 4th day of April, 1974, by and between the United States of America (hereinafter called the "Government") represented by the Contracting Officer executing this Agreement and the City of Kenosha, Wisconsin (hereinafter called the "City"),

Witnesseth that:

Whereas, the River and Harbor Acts of 1899, 1907, 1935, 1950 and 1962 authorized the improvement and maintenance of Kenosha Harbor, Wisconsin; and

Whereas, the River and Harbors Acts of 1907, 1910, 1937 and 1945 authorized the improvement and maintenance of Racine Harbor, Wisconsin; and

Whereas, Section 123 of the River and Harbor Act of 1970 (Public Law 91-611, approved 31 December 1970) authorized the construction, operation and maintenance of contained spoil disposal facilities of sufficient capacity to contain the deposits of dredged materials for a period not to exceed 10 years; and

Whereas, Kenosha Harbor and Racine Harbor, its appurtenant Root River navigable areas, are within the scope of the authorization contained in the aforementioned Public Law; and

Whereas, the said River and Harbor Act provides that the Secretary of the Army shall obtain the concurrence of appropriate local governments and shall consider the views and recommendations of the Administration of the Environmental Protection Agency and shall comply with the requirements of Section 21 of the Federal Water Pollution Control Act, and of the National Environmental Policy Act of 1969; and

Whereas, said Public Law 91-611 provides that non-Federal, interests must agree in writing to furnish certain items of local cooperation, including a possible cash contribution toward construction of Contained Spoil Disposal Facilities, prior to commencement of construction of such facilities; and

Whereas, the requirements for a cash contribution by non-Federal interests of 25 per centrum of construction costs has been waived pursuant to a finding by the Administrator of the Environmental Protection Agency that for the area to which such construction applies, the State, municipality, and all other appropriate political subdivisions of the State and industrial concerns are participating in and in compliance with an approved plan for the general geographical area of the dredging activity for construction, modification, expansion, or rehabilitation of waste treatment facilities and the Administrator has found that applicable water quality standards are not being violated; and

Whereas, Section 221 of said Public Law 91-611 also provides that any agreement covering the items which non-Federal interests will provide must have the approval of the Secretary of the Army; and that every such agreement shall be enforcible in the appropriate district court of the Government; and

Whereas, Congress enacted Public Law 91-646 approved 2 January 1971, entitled the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," and

Whereas, the approved letter report of October 1972, entitled Kenosha Harbor, Wisconsin, Diked Disposal Area on the Great Lakes, Letter Report on an Alternative Disposal Method for Polluted Dredge Material, stipulates that the dredging spoil from the Kenosha and Racine Harbors together with permit dredging will be deposited in a combined contained spoil site area of approximately 32 acres, inclusive of dikes, located within the limits of the City of Kenosha; and

Whereas, the Common Council of the City of Kenosha adopted a resolution duly executed by the Mayor on 17 January 1972, in support of a local cooperation agreement with the Government to provide for an approval disposal area for dredging materials in an area within the City of Kenosha, the source of said dredging materials being the Kenosha and Racine Harbors and any appurtenant channels; and

Whereas, the City of Racine, Wisconsin, by action of its common council concurs in the plan for depositing the dredged materials to be removed from Racine Harbor and any appurtenant channels in the Contained Spoil Disposal Facility proposed at Kenosha Harbor; and

Whereas, the City hereby represents that it is the owner of the lands required for the proposed Contained Spoil Disposal Facility; that it has the authority and capability to furnish the non-Federal cooperation required by the Federal legislation authorizing the Project and by other applicable law.

Now, therefore, the parties agree as follows:

1. The City agrees that, in consideration of the Government, at the earliest permissible date, commencing construction of a Contained Spoil Disposal Facility at Kenosha Harbor, Wisconsin, substantially in accordance with the Letter Report mentioned above and Public Law 91-611, approved 31 December 1970, it will fulfill the requirements of non-Federal cooperation specified in the aforesaid legislation, to wit:

a. Furnish, prior to construction of any Contained Spoil Disposal Facility as contemplated herein and by the legislation referred to, all lands, easements, and rights-of-way necessary for construction, operation, and maintenance of the facility.

b. Hold and save the Government free from damages due to construction, operation, and maintenance of the facility;

c. Maintain the facility after completion of its use for disposal purposes in a manner satisfactory to the Secretary of the Army.

2. The City is vested with fee simple title to the lands comprising the area required for the Contained Spoil Disposal Facility, having acquired such title from the State of Wisconsin by means of an act of the State Legislature adopted in 1959. No additional lands, easements and rights-of-way are required for the project. No persons, businesses, or farms are to be dislocated on account of the project. Therefore, Public Law 91-646, approved 2 January 1971, entitled the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," is not applicable.

3. The City shall retain title to all lands, easements, and right-of-way furnished by it pursuant to paragraph 1 above. A Spoil Disposal Facility owned by a non-Federal interest or interests may be conveyed to another party only after completion of the facility's use for disposal purposes and after the transferee agrees in writing to use or maintain the facility in a manner which the Secretary of the Army determines to be satisfactory.

4. Any Spoil Disposal Facilities constructed as proposed herein for Kenosha Harbor shall be made available to Federal licensees or permittees, at both Kenosha and Racine Harbors upon payment of an appropriate charge for such use.

5. The City hereby grants and conveys to the Government, its officers, employees, agents, contractors and assigns the unqualified right to enter upon the lands, easements, and rights-of-way which the City owns or controls, for the purpose of constructing, using, operating and maintaining the Project, as contemplated by Section 123 of Public Law 91-611, and also, upon completion of the Contained Spoil Disposal Facility, and its use, as contemplated by said Section 123 of said Public Law, the City hereby grants and conveys to the Government the right to enter upon, at reasonable times and in a reasonable manner, the lands, easements and rights-of-way for the purpose of inspection. In event such inspection shows that the City for any reason is failing to complete, operate, repair, or maintain the Project in accordance with the Assurances hereunder and has persisted in such failure after a reasonable notice in writing by the Government delivered to the City or its designated representative, then, and in that event, operation, repair, or maintenance by the Government shall not operate to relieve the City of responsibility to meet its obligation as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity.

6. It is understood that the City of Racine, by action of its Common Council, concurs in construction of the proposed Contained Spoil Disposal Facility at Kenosha Harbor and the proposed use of such facility for the containment of dredged materials to be removed from Racine Harbor and any appurtenant channels thereto.

In witness thereof, the parties hereto have executed this Agreement as of the day and year first above written.

RESOLUTION NO. 90-74

Whereas, Resolution No. 9-72 was adopted by the Common Council of the City of Kenosha, Wisconsin, on January 17, 1972 supporting and agreeing to a local cooperation agreement with the Army Corps of Engineers to provide local participation and the provision of an approved disposal area for dredging materials from Kenosha and Racine in a watertight bulkhead extending 1150 feet, more or less, easterly from the existing shoreline and thence 1260 feet, more or less, northerly to the existing south pier of the Kenosha Harbor; and,

Whereas, the twenty-five (25%) per cent cost sharing has been waived for the establishment of the containment area.

Now, therefore, be it Resolved by the Common Council of the City of Kenosha, Wisconsin, that pursuant to Resolution No. 9-72, the Mayor and City Clerk be, and the same hereby are, authorized to enter into and sign the formal written contract on behalf of the City of Kenosha as described in the paragraphs above for a disposal area for dredgings from Kenosha and Racine.

ATTORNEY'S CERTIFICATE

I, Michael S. Fisher, Attorney for the City of Kenosha, Wisconsin, and being its Chief Legal Officer, hereby certify as follows:

a. That I have reviewed the foregoing Agreement entitled "Agreement Between The United States of America and City of Kenosha, Wisconsin For Local Cooperation at Kenosha Harbor, Wisconsin".

b. That the City of Kenosha is a legally constituted public body, organized in accordance with the statutes of the State of Wisconsin.

c. That the Common Council of the City authorized and directed that the said Agreement be executed on behalf of the City as attested by a certified copy of a Resolution thereto attached.

d. That in my review of the said Agreement I have carefully examined Public Law 91-611, giving particular attention to Section 221 of said Public Law, and am of the opinion that the City has the required authority and the capability to meet the requirements of the said Agreement.

e. That the City is vested with fee simple title to the lands comprising the area required for the Contained Spoil Disposal Facility, having acquired such title from the State of Wisconsin as a result of legislation enacted in 1959.

f. That the Contained Spoil Disposal Facility is being designed and will be constructed such that its capacity will provide for the use and containment of materials to be excavated and removed from Racine Harbor, Wisconsin, and any appurtenant channels thereto; however, the commitments of the City of Kenosha contained in the said Agreement are the sole responsibility of the City of Kenosha.

g. That it is my opinion that the said Agreement, when fully executed by the parties thereto and concurred in or ratified by the Common Council of the City of Racine, will become a binding contract subject to the laws of the United States and the State of Wisconsin.

MICHAEL S. FISHER,
Chief Legal Officer for the City of Kenosha, Wisconsin.

DEPARTMENT OF THE ARMY, NORTH CENTRAL DIVISION, CORPS OF ENGINEERS,
Chicago, IL, June 11, 1973.

NCDED-T
Subject: Diked Disposal Program—Great Lakes; Section 123, Public Law 91-611, Dated 31 December 1970.
HQDA (DAEN-CWO-M)
Washington, DC.

1. Section 123(a) of Public Law 91-611 states "The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate and maintain, subject to the provisions of subsection (c), contained spoil disposal facilities of sufficient capacity for a period not to exceed ten years, to meet the requirements of this section."

2. Some question has arisen concerning the intent of the "ten year period" limitation. Planning is proceeding on the assumption that each facility will contain a quantity of material based on the average ten year maintenance requirements at a particular project.

3. Request guidance as to whether this interpretation is correct.

ERNEST GRAVES,
Division Engineer.

DAEN-GCZ-C (11 Jun 73) 1st Ind.
Subject: Diked Disposal Program—Great Lakes; Section 123, Public Law 91-611, Dated 31 December 1970.
DA, Office of the Chief of Engineers, Washington, DC.
To: Division Engineer, North Central, Attn: NCDED-T.

1. This is in reply to your request for the views of this office on the meaning of the 10-year limitation provision in section 123 of the 1970 River and Harbor Act (P.L. 91-611).

2. Section 123 establishes a program for the control and regulation of the disposal of dredge spoil in the Great Lakes. It authorizes the Secretary of the Army, acting through the Chief of Engineers, to construct, operate, and maintain, subject to certain requirements of local cooperation, contained spoil disposal facilities of sufficient capacity for a period not to exceed 10 years.

LEGISLATIVE HISTORY

3. Legislation for the construction and utilization of contained spoil disposal facilities on the Great Lakes arose out of the Corps of Engineers 1969 study of Dredging and Water Quality Problems in the Great Lakes. That study recommended that the Federal Government provide diked containment disposal areas near the Great Lakes Harbors for a 10-year period of operation. These contained disposal areas would provide an interim solution to the water quality problems of the Great Lakes associated with the open water disposal of contaminanted dredge spoil. During this 10-year operation period, it is assumed that local interests will be constructing adequate waste treatment facilities which will, when in operation, obviate any further need for the containment of dredge spoil.

4. Legislation was transmitted to the Congress by the Secretary of the Army pursuant to the President's message, dated 15 April 1970, on the disposal of wastes in the Great Lakes and the oceans (H. Doc. 91-308). In the letter of transmittal accompanying the proposed legislation, the Secretary of the Army reinforced the policy that contained disposal areas are only interim measures to combat the water quality problems of the Great Lakes:

"No facilities will be constructed to meet more than ten years of estimated disposal requirements. This ten-year period is specified in recognition of the development within that period of facilities necessary to treat at their sources the industrial and municipal wastes which are presently deposited in channels and harbors in the Great Lakes."

5. The legislation also proposed to utilize these contained disposal areas for non-Federal disposal of spoil as well as spoil disposal resulting from Corps of Engineers maintenance activities at Federal navigation project sites:

"Under the proposal, dredged spoil from non-Federal project sources could be disposed of in the facilities authorized in this legislation, upon payment of fees to the United States and the cooperating local interests. The fees, designed to recover a fair share of the costs of installing and maintaining the facilities, would not be charged the cooperating interests should they deposit spoil from their own projects."

6. The 10-year operation period contemplated by this legislation for these disposal areas thus included both Federal and non-Federal disposal activities for the purpose of providing a viable alternative to the open water disposal of contaminated dredged spoil.

7. The Corps of Engineers, through BG Richard Groves, testified on the proposed legislation—introduced as H.R. 17099, 91st Congress—on October 13, 1970 before the House Public Works Committee. In his statement, General Groves outlined the costs of the program and indicated when such disposal areas would be ready for operation:

"The report of the Chief of Engineers, completed in September 1969, proposed that during a ten-year period, as a means of augmenting the intensive efforts otherwise being made to reduce the inflow of pollutants from their sources to the harbor areas, a diking program be carried out at the 41 harbors considered to be polluted, at an estimated cost of $70,000,000. The current estimated cost of this program as of June 30, 1970 is $80,000,000. It would take four construction seasons to complete the necessary dikes, under normal procedures. The estimated cost of an expedited program, which would provide the diked areas needed initially to confine polluted dredged material at all 41 polluted harbors within two construction seasons (or by April 1973) is $112 million."

8. General Groves also reinforced the policies of the other provisions of the bill which would authorize the Corps to permit its licensees or permittees to use the containment areas for their contaminated dredged spoil.

9. The proposed legislation was subsequently incorporated into the House version of the 1970 River and Harbor Act—H.R. 19877, 91st Congress. Section 111 of that bill, which ultimately became section 123 of the Act, stressed the temporary nature of the program in connection with the local responsibilities for the construction of local sewage treatment plants:

"[The House bill] varies from the Administration proposal mainly in the area of cost sharing, by providing for waiver of the required local cooperation where the Administrator of the Environmental Protection Agency finds that the local interests are participating in an approved plan for the construction, modification, expansion, or rehabilitation of waste treatment facilities and are making satisfactory progress to the Administrator. The Committee feels that this provision is appropriate in view of the fact that the section contemplates the construction of disposal facilities only for a ten-year period, at which time the sources of the polluted materials are expected to be eliminated and local interests who are expending money to eliminate the source of pollutants should not be penalized by requiring them to participate in the costs of interim measures authorized by this section."

House Report 91-1665 to accompany H.R. 19877, 91st Cong. (Dec. 3, 1970), at 29. These provisions were not changed as the bill was reported out of conference and enacted into law.

ANALYSIS

10. As the history of section 123 indicates, the Congress intended to establish a temporary Federal program for the construction of contained dredged spoil disposal areas in the Great Lakes pursuant to the recommendations in the 1969 Corps study. These contained areas are only interim solutions to the problem of proper disposal of contaminated lake bottom material, and were accordingly intended to have a limited operational life span—in this case 10 years—while local governments undertook to construct waste treatment facilities under the grant program established by the Federal Water Pollution Control Act, as amended (P.L. 92-500), to eliminate the pollution at the source. Therefore, the need for such disposal areas throughout the Great Lakes will depend upon the nature and degree of the contaminated lake bottom material and the successful ability of the local interests to

secure a Federal grant for waste treatment facilities and to begin construction of such facilities. In each instance, however, where a contained disposal area is planned along the Great Lakes, the operational life of such an area is limited to 10 years.

11. This office concurs with your proposal to base the planning for contained disposal areas on the assumption that each facility will contain a quantity of material based on the average 10-year maintenance requirements at a particular project. In addition, however, such planning must also accomodate any accumulated backlogs of dredged spoil associated with each particular navigation maintenance activity. Moreover, such planning must also consider the needs of non-Federal spoil disposal as well as the spoil disposal needs associated with Federal navigation maintenance activities for each area within the Great Lakes served by a contained dredged spoil facility constructed under the authority of this section. The goal to be achieved by this program is to prevent open water disposal of contaminated dredged spoil material until adequate waste treatment facilities can be constructed to take care of pollutants at their source.

For the Chief of Engineers:

E. MANNING SEITZER,
General Counsel.

MEDICAL EXPENSE DEDUCTION

Mr. BUMPERS. Mr. President, last Friday I attempted to reduce the 10-percent floor on the medical expense deduction, but was unable to do so due to the point of order raised against my amendment to strike the tax amnesty provision in the tax reform bill. What I had proposed was that a windfall on net operating loss carrybacks be eliminated, a proposal which generated $1.6 billion in revenue. Since I only needed to pick up $200 million to offset the revenue lost from deleting the tax amnesty provision, I had proposed that the remaining $1.4 billion be applied to retaining a floor on medical expense deductions as close as possible to the current floor of 5 percent of adjusted gross income.

I rise today to say that I feel strongly on the medical expense deduction issue and regret that I was unable to apply the surplus funds from the NOL carryback issue to retaining the current law on this deduction. Even with the dramatic reduction in tax rates in the tax reform bill, the doubling of the floor on the medical expense deduction from 5 to 10 percent will much more than offset the tax cut for many individuals with high medical expenses, particularly the elderly. I oppose the committee proposal on the medical expense deduction and that is why—of all the possible uses to which I could have applied the $1.4 billion surplus from the NOL carryback restriction—I chose to apply the surplus to retaining the current 5-percent floor on the medical expense deduction. I feel just as strongly about this issue as I do about the tax amnesty provision and regret that I was only able to address the amnesty issue with my amendment.

The medical expense deduction is vital to those unfortunate families which have medical expenses which substantially exceed their insurance coverage. Under the current tax law a family cannot deduct medical expenses until they exceed 5 percent of that family's adjusted gross income. With the committee bill this floor is raised to 10 percent, which reduces the value of the medical expense deduction by $2,000 for a family with $40,000 in adjusted gross income. Under the committee bill a family with $40,000 in adjusted gross income will only receive a tax cut of $129, only 6 percent as much as it would lose in its medical expense deduction.

Of course, this deduction is only valuable to taxpayers who itemize their deductions, but it is clear from the statistics that many low-income elderly taxpayers itemize their deductions precisely because they have high medical expenses. These elderly taxpayers would normally not find it advantageous to itemize their deductions but it is advantageous for them to do so precisely because they have incurred medical expenses which substantially exceed 5 percent of their adjusted gross income. Fully 17.5 percent of all those taxpayers aged 65 and over who earn less than $20,000 claim the medical expense deduction and 28.4 percent of all those taxpayers who earn between $20,000 and $40,000 claim this deduction. More significantly, however, 81 percent of those elderly taxpayers who both earn less than $20,000 and itemize their deductions claim the medical expense deduction while only 53 percent of those taxpayers who both earn between $20,000 and $40,000 and itemize their deductions claim this deduction. This shows that low-income taxpayers itemize their deductions because they can claim a large medical expense deduction and those middle-income taxpayers who itemize their deductions do so more for other reasons.

In absolute figures, 1,402,916 elderly taxpayers who earn less than $20,000 claim the medical expense deduction—out of 8,017,635 taxpayers in this income class—and 629,828 taxpayers who earn between $20,000 and $40,000 claim the deduction—out of 2,211,023 in this income class. Similarly, 57 percent of the medical expense dollars deducted are from households with under $20,000 in adjusted gross income, 25 percent from households with between $20,000 and $40,000 in adjusted gross income and only 18 percent from households with over $40,000 in adjusted gross income. In short, this deduction is important to many low- and middle-income elderly taxpayers than it is to taxpayers with more income.

We also have statistics on how much of their current deduction these elderly taxpayers would lose if the committee's 10-percent floor is adopted. Taxpayers who earn less than $20,000 would lose 17.3 percent of the value of their deduction and those with income between $20,000 and $40,000 would lose 42.4 percent of their deduction. On average elderly taxpayers would lose 28.5 percent of the value of their medical expense deductions.

I know that for many elderly individuals and for many other families the threat of catastrophic medical expenses is one of their greatest fears. The deduction for medical expenses provides partial relief to these families, even with the current 5-percent floor. Raising this floor to 10 percent lacks compassion. If a family has medical expenses that exceed 5 percent of its adjusted gross income, why should we deny them any deduction until their expenses exceed 10 percent of their adjusted gross income? The current 5-percent level is one that most taxpayers do not exceed. Indeed, until 1982, the floor was 3 percent. With this tax reform bill we will have more than tripled the floor for this deduction for medical expenses.

While I was unable to apply the surplus revenue to reducing the floor set in the committee bill, the Senate earlier had adopted an amendment of Senator METZENBAUM reinstating the capital gains tax on foreign investment in U.S. real property, an amendment which applied the revenue raised in part to reducing the floor on the medical expense deduction. (See section 141(c) of Senate amendment 2087, CONGRESSIONAL RECORD of June 17, 1986, at 14127.) I spoke in favor of the Metzenbaum amendment, emphasizing my support for the current 5-percent floor on the medical expense deduction. (See CONGRESSIONAL RECORD of June 17, 1986, at 14135.) I said then that the vote on the amendment of Senator METZENBAUM was the "last chance you are going to get to vote on the medical—expense—part of this amendment." Unfortunately, this prediction proved to be true when the medical expense provision in my own amendment was deleted on the point of order on Friday.

The House tax reform bill does not raise the current floor on medical expense deduction and I urge the conference committee to retain the current 5 percent floor. This would enhance the fairness of this tax reform bill.

TAX FAIRNESS FOR SMALL BUSINESSES

Mr. President, last August I held a series of hearings in Arkansas on the potential impact of the tax reform legislation and I said then that I would not support any tax reform bill which is not fair to small business. I am happy to say that this tax reform bill is fair to small business and as the ranking Democratic member of the Senate Small Business Committee I commend the Senate Finance Commit-

tee for taking the interests of small business into account in crafting this legislation.

Most of the Nation's small businesses are unincorporated and this bill would dramatically lower their tax rates. There are nearly 13 million unincorporated small businesses in this country and most of them would find themselves in the 15-percent tax bracket. There is no more important issue for these small businesses than low tax rates. They rely on retained earnings to expand their businesses and they will not be able to generate the capital necessary for expansion with high tax rates. Of course, tax rates also are reduced dramatically for the Nation's nearly 2 million incorporated small businesses and, contrary to earlier proposals, the graduated tax rate structure is retained.

In addition, the tax reform bill would permit small businesses to expense up to $10,000 in equipment purchases each year, double the current limit, and would give all businesses more favorable depreciation schedules for such investments above this limit. The loss of the investment tax credit will be felt by many small businesses, but the reduction in tax rates and these provisions on expensing and depreciation should more than offset the tax advantages afforded by the investment credit for most small businesses.

All self-employed small business men and women also would be permitted to deduct up to one-half of the cost of their health insurance for themselves and their spouse and dependents, a provision which partially offsets the advantages of fringe benefits provided by corporations.

The Senate Finance Committee bill can be improved. I regret that it does not include the simplified inventory accounting system proposed in the House tax reform and will work to see that this provision is adopted in the conference on the tax bill. I oppose its requirement that certain inventory costs be capitalized for retailing firms with gross income of more than $5 million, a provision which will create endless paperwork for many small businesses. Finally, I regret that even more tax relief was not afforded to incorporated small businesses in the tax rate structure adopted in the bill, an issue which I have raised in a Senate resolution. Specifically, the bill provides no reduction in tax rates for the smallest businesses and would recapture the benefits of the graduated tax rate structure at a much lower threshold, only $100,000 instead of $1 million under current law. This lower threshold will cut in half the benefits of the reduction in tax rates in the bill for small businesses with income between $100,000 and $1 million, precisely those companies which are on the verge of growing into much larger enterprises.

These issues do not, however, overshadow the fundamentally sound provisions in the tax reform bill for small business. Low and graduated tax rates are crucial and this bill delivers the lowest top tax rates we have had in 50 years. In a business climate with low tax rates, small businesses can prosper and grow into the large businesses which will restore American's competitiveness and generate economic growth for all to benefit from in our country.

TAX FAIRNESS FOR LOW-INCOME HOUSING

Mr. President, adequate and affordable housing is of utmost importance to the State of Arkansas and to our entire Nation. For a nation of such prosperity, we continue to have increasing numbers of homeless Americans and I believe it would be the height of irresponsibility to turn our backs on those who depend on the important low-income housing programs as their only means of obtaining adequate shelter. For their sake it is imperative to maintain adequate tax incentives to ensure the continued availability of decent housing to low-income tenants.

I support the amendment of Senator MITCHELL to maintain adequate tax incentives for low-income housing and am delighted that it has been adopted by the Senate.

For almost 20 years, the Congress has enacted a series of provisions in the Internal Revenue Code designed to encourage private investment in low-income housing. Congress has recognized that such housing both needs and deserves special benefits since the economics of low-income housing transactions require tax advantages. Tax benefits have become particularly important over the past several years as direct Federal assistance has diminished greatly.

The Finance Committee tax reform bill would make some important improvements in the Tax Code treatment of low-income housing. Tax benefits would be much more highly targeted to very low-income persons, rents in projects receiving benefits would be affordable, and sponsors would be given incentives to provide more than a minimum number of low-income units in assisted developments.

Nonetheless, I believe further progress can and should be made. I am concerned that the new tax credit for low-income housing will not be sufficient if such projects do not continue to qualify for other Federal interest subsidies, loan guarantees, rental assistance or grants, as the tax reform bill would provide.

I cannot overstate the importance of these programs to my State. All of the Federal housing programs which would be directly affected by the housing tax credit provision in this tax reform bill have been tremendously important to our citizens and our economy. Under section 515 of the Housing Act of 1949, the Farmers Home Administration makes direct loans available for developers of multifamily rental housing in rural areas for low-income families and elderly citizens. This valuable program has allowed the construction of 841 units in 1985 alone in Arkansas at an average cost of $30,537.31 per unit. The average income of tenants classified as "very low-income" occupants of these units is $6,542 per year. The "low-income" tenants have an average annual income of $12,984. You can certainly understand why the availability of decent housing is of critical importance to these citizens, almost all of whom are close to or below the poverty level. The construction of these 841 housing units in 1985 has had a very positive effect on our economy as well by allowing the creation of many new jobs and a strengthening of our tax base.

Other vital HUD-administered housing programs which would be affected by this provision, including section 8, section 236, section 221(d)3 BMIR, and others, have allowed the construction of almost 10,000 low-income units which house approximately 25,000 citizens in Arkansas.

I firmly believe we have a real obligation to those less fortunate Americans to act responsibly and within budgetary restraints to ensure that our communities will continue to have affordable housing. By permitting developers to utilize both the new tax credit and other non-tax benefits already available, I am confident that this issue will be addressed in the conference committee on this bill and that we will continue to give a high priority to both tax and non-tax low-income housing programs.

Mr. KASTEN. Mr. President, shortly I will vote for the adoption of this legislation to reshape our Tax Code. Like the Phoenix rising from the ashes, we have resurrected tax reform from the certain death of the special interest, and given birth to a bill that will serve America well.

Just a few short weeks ago it seemed certain that tax reform was dead. The special interest had beaten it. Amendments were being offered every day in the Finance Committee to preserve this or that special loophole.

The result was a bill that failed to be revenue neutral and created an even more bewildering maze of tax provisions.

That bill did not stick to the principles of simplicity and fairness. It did not encourage investment and saving. It did not leave more in the pockets of the working men and women of the Nation.

But that proposal was dropped. Instead, the Finance Committee unani-

mously reported out a bill that was true tax reform.

Like many of my colleagues, I strongly supported the bill reported out of the committee. Like many of my colleagues, I also believed that there was room for improvement in the reported bill.

For the past several days, the Senate has had the opportunity to make improvements in the tax bill. Some improvements have been made, and some reforms have been defeated.

But the time has come to take the final vote. I hope that we can adopt it by an overwhelming vote.

I also want to urge my colleagues who will go into a difficult conference with the House to stick to the mandate we gave them. That is what the American people want, and what will be good for the country.

By adopting this legislation, we are taking a major step to complete a revolution in our Tax Code. When I came to this body, the top personal tax rate was over 70 percent. If this bill is signed into law, as passed by the Senate, the top tax rate will be 27 percent for all individuals.

That is a revolution our country needs.

This legislation has endured the test by fire. It has been tempered and made stronger by our heat of recent days. I hope this Phoenix can now fly quickly to the President's desk for signature and be released to serve the American people.

UNIFORM CAPITALIZATION RULES

Mr. FORD. Mr. President, Senator McCONNELL and I had intended to offer an amendment to the tax bill dealing with a problem unique to Kentucky under the uniform capitalization rules in the Finance Committee bill. We have decided that this issue is better left to be worked out in conference, and so will not offer the amendment to this bill.

The bill provides that all indirect costs—including interest—incurred in the production of real or tangible personal property must be capitalized. While I support this concept generally, it has come to my attention that this provision could have a significant negative impact on utility rates in Kentucky.

The Kentucky Public Service Commission allows regulated public utilities under its jurisdiction to include in the rate base property under construction. This allows utilities to earn revenues currently on this property and to currently expense the production costs of that project. Kentucky is the only State which includes 100 percent of these production costs in the rate base. Over time, this procedure has resulted in significantly lower rates for Kentucky utility customers.

The Finance Committee bill would require this expense to be capitalized. This could result in a mismatch of expenses and related income for the utilities in my State. I am deeply concerned that the practical effect of this provision may lead to higher rates for utility customers in Kentucky. Our amendment would have avoided this result by permitting the deduction in those cases in which the Kentucky PSC has included property under construction in the rate base.

I have discussed this issue with the distinguished ranking minority member of the Finance Committee, Senator LONG, and he has agreed to raise it in conference. It is my understanding that the chairman, Senator PACKWOOD, has also indicated that he will explore this issue in conference. I hope this will help expedite the consideration of this bill and I thank my colleagues for their kind support and assistance in this regard.

Mr. McCONNELL. Mr. President, I want to join my colleague from Kentucky, Senator FORD, in expressing my concern about the effect the capitalization rules in the Finance Committee bill could have on utility rates in Kentucky.

H.R. 3838, as amended by the Senate Finance Committee, attempts to address accounting situations in which a mismatching of expenses and related income results in an unwarranted deferral of taxes. As the committee report points out, this mismatching may "create distortions in the allocation of economic resources and the manner in which certain economic activity is organized." (Senate Report 99-313, p. 140.)

While I agree, Mr. President, that this is an area that needs attention, I am concerned that the changes proposed in the bill now before us actually create a mismatching of funds for the utilities in my State. As my colleague, Senator FORD, has pointed out, the Kentucky Public Service Commission is the only commission in the United States that allows 100 percent of property under construction within its jurisdictions to be included in the rate base. In other words, this can result in revenue for Kentucky utilities. Most importantly, over the long run, this policy results in lower utility rates for many Kentucky consumers.

Mr. President, unfortunately, in an attempt to assure that indirect costs incurred in the production of real or tangible personal property are capitalized, a mismatching may occur for utilities such as those in my State.

Now Mr. President, while Senator FORD and I had hoped to be able to resolve this issue with a technical amendment, I am pleased to defer to the judgment of the chairman of the Finance Committee, Senator PACKWOOD, and the distinguished ranking minority member, Senator LONG, on how best to address this problem.

Mr. PACKWOOD. I thank the Senators from Kentucky for their assistance in expediting the consideration of this bill. I recognize that the possible effect of the new uniform capitalization rules on utility rates is an important issue to your State. It is my hope that this issue could be explored at conference.

Mr. LONG. I appreciate the Senators not offering their amendment to this bill. I understand they have some concerns about how the uniform capitalization rules will affect public utilities in Kentucky and ultimately the rates customers will pay. Kentucky is somewhat unique in this situation and I have agreed to raise this issue in conference.

Mr. FORD. I thank my colleagues for their assistance.

CABLE TELEVISION FRANCHISE TRANSITION RULES

Mr. FORD. Mr. President, I wanted to engage the distinguished chairman of the committee [Mr. PACKWOOD] in a colloquy to tie down a loose end regarding the transition treatment of cable television franchise construction and rebuilds across the country. I simply want to make sure that those agreements to build and rebuild cable systems under cable franchise are treated as transition property under the supply or service contract rule.

Section 202(d)(3) of the bill creates a transition rule for service and supply contracts which are binding as of January 1, 1986 (for purposes of the investment tax credit) for equipment placed in service before the end of 1988. I want to ask the distinguished manager of the bill a question regarding the application of this rule to cable television franchises. In substance, cable television franchise agreements are service contracts. But, in form, they may be embodied in whole or in part in municipal ordinances. Was it the intention of the Finance Committee to include cable television franchise agreements within the service and supply contract rule?

Mr. PACKWOOD. The Senator is correct. The committee intends that cable television franchises generally do qualify as "supply or service contracts" for purposes of section 202(d)(3) relating to transition rules. A cable television franchise generally represents an agreement between a cable television system operator and a franchising authority governing the provision of cable television services. The committee intends that such cable television franchise agreements be treated as service contracts for purposes of section 202(d)(3) (provided of course that such agreements meet the grandfather date of January 1, 1986), even though the franchise terms may be embodied in whole or in part in a municipal ordinance or similar enactment. No contrary inference should be drawn from the specific transition rules set forth in section 202(d)(12), al-

though property qualifying under section 202(d)(12) also would qualify under section 202(d)(3).

QUALIFIED REDEVELOPMENT BONDS

Mr. GLENN. I understand that there is a problem with the definition of "qualified redevelopment bonds" set forth in section 1501(c) on page 2319 of the tax bill. Under the bill, only States which permit the pledging of incremental tax receipts are eligible to use "qualified redevelopment bonds" to finance urban renewal projects. This distinction seems unfair since many States either prohibit the use of tax increment financing or severely restrict its use. My own State of Ohio will be particularly hurt by this omission in the bill—cities of Cleveland, Akron, and many others depend on the use of general obligation bonds to finance urban redevelopment. I am sure the chairman agrees that urban blight is an important problem, one which affects every State, and not just those which authorize tax increment financing.

Mr. PACKWOOD. When the committee focused on qualified redevelopment bonds, we looked at tax increment bonds. Those were the only types of redevelopment bonds which were brought to our attention. To the extent other types of bond financing are used for the same purposes, I assure you we will include them in conference as qualified redevelopment bonds, where appropriate.

IN FAVOR OF RETENTION OF SECTION 401(k) BENEFITS FOR STATE AND LOCAL GOVERNMENT EMPLOYEES

Mr. CHAFEE. Mr. President, I want to bring to the attention of my distinguished colleagues a provision in the current bill which I believe is unfair. The bill eliminates cash or deferred arrangements for State and local government employees. These arrangements, also known as 401(k) plans, allow employees to defer receipt of cash compensation and have this amount contributed to a qualified plan. Under a 401(k) plan an employee is not taxed on the contribution until it is actually distributed from the plan.

The current bill would eliminate 401(k) benefits for State and local government employees but retain them for the private sector and nonprofit organizations. The recently enacted Federal Employee Retirement System Act of 1986 provides Federal employees with benefits similar to those of 401(k). Therefore, if this bill is enacted, every employee in this country will be able to benefit from section 401(k) except for those employed by State and local governments. There is no logical explanation for the exclusion of State and local government employees from 401(k) benefits. It is unjust to discriminate against this one group.

If we decide that it is a desirable policy to provide tax favored savings to employees, then I believe all employees should be able to share in the benefit equally. It is inconsistent with the goal of fairness and tax reform to provide a tax subsidy to one group of employees and to deny it to another without justification. Moreover, denying public employees 401(k) benefits it makes it far more difficult for a State or local government to attract and retain quality employees.

We must not subsidize the private sector at the expense of public employers and their employees. State and local governments should be able to continue to offer 401(k) benefits to their employees. It is wrong to single them out for discrimination. I hope all my colleagues will join with me in urging the conference committee to reinstitute 401(k) benefits for public employees.

PRESERVING 401(k) PLANS FOR STATE AND LOCAL EMPLOYEES

Mr. MITCHELL. Mr. President, I rise to speak in favor of retaining 401(k) plans for State and local employees. A 401(k) retirement plan is a cash or deferred arrangement ["CODA"] under which an employee may elect to defer the receipt of cash compensation and have the deferred amount contributed to a qualified profit sharing or stock bonus plan. If the 401(k) plan meets certain qualification requirements, the employee is not currently taxed on his or her elective contributions. In many plans, employers also contribute to the 401(k) plan.

If this bill passes, State and local employees will be the only group of employees ineligible to participate in a thrift savings plan. It is illogical that we allow private sector employees to have 401(k) plans, Federal employees to have a plan very similar to 401(k) plans, but deny these plans to State and local employees. In recent years, 18 State and local governments have adopted 401(k) plans. They have proven to be extremely beneficial to both the employee and employer. Many public employees now enjoy incentives to save for their retirement in the same manner as Federal and private sector employees. The continued availability of 401(k) plans for State and local employees is essential to maintaining fairness in the Tax Code as it relates to deferred income retirement plans.

Some have argued that 401(k) plans are beneficial only to higher income taxpayers. The record does not bear this out. Since their enactment in the Revenue Act of 1978, lower and middle income employees, in particular, have found 401(k) plans to be an effective way to contribute to their retirement security. In fact, at an income level of $10,000 to $25,000, twice as many people participate in 401(k) plans than make use of IRA's. In jurisdictions where 401(k) plans are available to public employees, the response has been extremely favorable at all levels of employee compensation.

Some have argued that other tax-favored elective contribution plans, such as eligible State deferred compensation plans under Internal Revenue Code section 457, are available to the public sector and that section 401(k) arrangements are therefore "unnecessarily duplicative." Section 457 arrangements are inferior to section 401(k) arrangements as a vehicle for promoting retirement savings. Section 457 plans, unlike 401(k) plans, are not funded by a trust whose assets are dedicated to the benefit of employees who have deferred compensation under the plan. Rather, deferred amounts are subject to the general creditors of the employer and need not be funded at all. In addition, employee access to funds deferred under section 457 plans is more restricted. Loans are not permitted and distributions may not be made available to the employee except upon separation from service or in unusual circumstances.

Given the generally lower levels of pay to public employees there seems little risk that these employees will "double-up" payments to 457 and 401(k) plans. Any such concern can be remedied by offsetting contributions to other plans against the $7,000 limit for 401(k) plans under the bill.

In short, Mr. President, 401(k) plans are a popular means to save for retirement. In the private sector, 63 percent of eligible employees participate in 401(k) plans. I see no reason why the State and local employees should be denied the same opportunity. I understand that revenue constraints prevent us from acting on this issue at this time. My hope is that the Finance Committee will revisit this issue at an early date and extend 401(k) plan benefits to all taxpayers on an equal basis.

RETIREMENT CONTRIBUTIONS

Mr. HEINZ. Mr. President, many employers, large and small, currently maintain retirement arrangements which provide for after tax employee contributions that are matched by company contributions. These arrangements have been well-received by employees and are successful in covering a broad range of employees at all compensation levels. The success of these arrangements is explained in part by the company matching feature. However, employees in all compensation ranges are usually willing to participate, in part, because under present law they have access to their own contributions.

The Senate and House tax reform bills would restrict access to employee savings under retirement plans. Under the proposed bills, some or all of the amounts withdrawn from a qualified retirement plan may be treated as taxable and subject to an additional

income tax of up to 15 percent of the amount withdrawn if such withdrawal occurs before the earlier of age 59½, disability, or death. These changes are necessary to ensure adequate retirement income, but may have a chilling effect on employee savings.

Anecdotal evidence makes clear that limiting access to an employee's contribution can discourage participation. One company that testified in the Finance Committee RIPA hearings, which I chaired, noted that participation in its conventional thrift plan prior to 1973 was 75 percent; however, when the plan was amended in 1975 to preclude withdrawals, participation dropped to 55 percent. Another company testified that when it added a pre-tax contribution feature to its savings plan in 1984, after-tax contributions to the plan continued at twice the rate of pre-tax contributions, largely because of the difference in the withdrawal provisions.

Although I am not offering an amendment to the tax bill at this time, I hope that in reviewing the basis recovery rules and the additional tax on early withdrawals in the pension area, the conferees will recognize and appreciate the need to encourage the participation of younger and lower paid employees in qualified plans. To increase participation among these groups, I hope the conferees will allow for after tax contributions, with their earnings taxed currently, to be withdrawn from a qualified plan without adverse tax consequences.

Mr. STEVENS. Mr. President, I rise today to speak on the inequities of eliminating 401(k) plans for State and local government employees. Section 401(k) plans, created by the Revenue Act of 1978, allow participants to defer receipt of a portion of their salary in exchange for which an equal amount is contributed to a tax qualified plan. Amounts deferred and contributed to a section 401(k) plan and any earnings thereon, are not subject to tax until actually distributed to participants.

As chairman of the Civil Service, Post Office, and General Services Subcommittee of the Senate Governmental Affairs Committee, I am very familiar with the pension policies of this Nation. The recently enacted Federal Employee Retirement System Act of 1986 provides all Federal employees with a thrift plan modeled on 401(k) plans. We acted to extend this particular benefit to Federal employees because 401(k) plans have proven effective and popular in the private and nonprofit sectors and where they have been offered in recent years to State and local employees.

Under this bill, State and local government employees whose employer does not have a plan already in place, will be the only category of employees denied access to 401(k) plans. These savings plans are available for the public and nonprofit sectors and similar plans are available for Federal employees, but State and local government employees are unjustly discriminated against. I think eliminating 401(k) plans for State and local government employees contradicts the theme of fairness so evident throughout this bill.

Equally important, eliminating 401(k) plans for State and local government employees denies them an effective tool for savings. These plans do not benefit only the highly paid. In fact, they are used widely by lower income groups. One study indicates that over 70 percent of 401(k) participants earn under $30,000 per year. In addition, participation rates for workers earning between $10,000 and $25,000 more than double the IRA participation rates for those groups. It makes no sense to deny a plan with such widespread use among lower and middle income workers for State and local government employees, the very employees who could benefit from these plans.

Thus far, over 18 State and local governments have adopted 401(k) plans, and where implemented, they have proven highly successful. I am advised that a bill to allow 401(k) plans for State and local government employees is currently pending in the Alaska Legislature. It is my hope that the public servants in Alaska will also benefit from these effective and popular plans. Is it fair that workers in proprietary nonprofit or Veterans' Administration hospitals have a 401(k) plan, but a worker doing the same job in a public hospital cannot.

It is my hope that this important retirement savings tool will not be eliminated in this legislation. While I understand the realities of amending this bill on the floor, I hope this matter can be resolved in conference or in other legislation.

ESOP PROVISIONS

Mr. TRIBLE. Mr. President, this tax bill, and its ESOP provisions, are a tribute to Senator RUSSELL LONG, the man who fought singlehandedly for ESOP's in the early 1970's.

Senator LONG came to the Senate with the legacy of Huey Long, who wanted to make "every man a king." Senator LONG, I know you have often been quoted as saying that your father had revolutionary ideas, and that you were more in favor of evolutionary ideas.

Before you leave the Senate, I want you to know that the ESOP evolution is alive and well in my State of Virginia. There are 100 ESOP companies in Virginia, with over 10,000 employees. In fact, the former owner of a leading Virginia ESOP company, Comsonics of Harrisonburg, is president of the national trade group representing ESOP companies.

ESOP's embody the basic ideas of free enterprise. The Government cannot make "every man a king." But free enterprise does bring the greatest wealth to the largest number of people.

Senator LONG was the first to put these simple truths into action with his ESOP initiatives. He stated by himself, but his work has created a nationwide ESOP movement.

Let's pass this resolution and urge our House colleagues to accept the Senate's ESOP provisions, and then let's allow the ESOP evolution to continue, unabated.

Continued ESOP growth, not words, would be the best possible tribute to our good and esteemed friend, RUSSELL LONG.

TAX TREATMENT OF COMPUTER SOFTWARE ROYALTY INCOME

Mr. CRANSTON. Mr. Chairman, I would like to further clarify a point of some concern to many computer software firms in my State of California. I understand that section 1302 of H.R. 3838 as reported out by the Senate on May 29, 1986, provides specific treatment for certain royalties received by firms producing and marketing computer software. The provision insures that these firms have a bright line test for the tax treatment of computer software royalty income.

I believe the policy underlying this provision applies equally to all corporations engaged in the production and marketing of computer software. I am prepared to offer an amendment at this time to extend the same treatment to subchapter S corporations. However, I understand that there is a revenue loss associated with this proposed conforming change. Therefore, with the assurance from the chairman of the Committee on Finance that an effort will be made in conference to rectify this unintended difference in tax treatment for different business entities receiving identical sources of income, I will at this time request unanimous consent to withdraw my proposed amendment.

At this time I would also like to clarify a second related issue. I would like to confirm my understanding that under the passive loss rule of H.R. 3838 as reported by the Senate Finance Committee, this type of royalty income received through a passthrough entity is not portfolio income, and will not be considered derived from a passive activity if the taxpayer has materially participated in that activity.

Mr. PACKWOOD. The committee has no objection to the substance of the Senator's amendment and we will certainly make every effort to include this conforming change in the final bill agreed to by the House and Senate conferees.

Also, you are correct in your reading of the passive loss rule. Where a subchapter S corporation is actively engaged in the computer software business and receives this type of royalty income from users of its software products, that income—or loss—will be treated as income—or loss—from the active conduct of a trade or business rather than portfolio income, so long as the respective shareholders materially participate in the business activity.

Mr. CRANSTON. I thank the distinguished chairman for his assurance and commitment to attempt to obtain consistent treatment in this area and for clarifying the matter further.

GREEN BAY PACKAGING

Mr. KASTEN. I wonder if I might ask the chairman a question regarding a situation that exists with a Wisconsin company. This company is a substantial corporation which is in the process of converting from a subchapter C corporation to a subchapter S corporation. As the chairman knows, to qualify as a subchapter S corporation the corporation can have no more than 35 shareholders. This corporation currently has over 150 shareholders, but nearly 100 of those current shareholders are employees or former employees of the corporation.

As a matter of corporate policy, the corporation considers it a very high priority that employees be able to own stock, and stock is available to any employee who wants to purchase stock, as stock in the corporation becomes available. However, in order for the corporation to effect the change to subchapter S, the only option it has, under the current law, is to purchase outstanding stock from those current and past employees who own stock. The purchase of the stock from the employees will result in approximately $2 million in capital gains tax to the employees.

I know that the senior Senator from Louisiana has worked for many years on employee stock ownership plans, and that he has proposed in the past the ESOP's be made available to subchapter S corporations. However, as yet they are not. We are informed that to make ESOP's available to subchapter S corporations would be very expensive. The other option which has been explored is to create a means by which the employee stock could be put in a voting trust, with the voting trust treated as one shareholder for purposes of subchapter S. That also is an option not available under current law.

It is my opinion that there should be some mechanism by which a company in this situation can effect the change in corporate form without the necessity of imposing a significant capital gains tax on its employee stockholders, and allow them to continue to own their stock. However, at this time I am not in the position to offer an amendment which would accomplish that end. I wonder, however, if the chairman and the senior Senator from Louisiana could indicate to me whether they felt that if a reasonable solution could be found before the conference committee completes its work, that they will work to include such a solution in the bill reported from the conference committee.

Mr. PACKWOOD. Let me say to the Senator that I am very sympathetic with the problem which he has outlined, and I would very much like to find a solution. I strongly believe that stock ownership by employees is a very desirable result, and that the operation of the tax law should not work to prevent that stock ownership from happening. So let me assure the Senator that I will work toward a solution if one can be found within the scope of conference.

Mr. LONG. I welcome the comments of the Senator from Wisconsin, and indeed I have tried in the past to extend ESOP's to subchapter S corporations but have yet to succeed in getting that accomplished. However, let me tell the Senator that I too am sympathetic to the situation he describes, and if a proper solution can be found in the conference on this bill then it should be included.

REAL ESTATE TAX

Mr. BENTSEN. Mr. President, I would like to engage the distinguished chairman of the Finance Committee in a colloquy concerning a real estate tax issue. The committee report on the bill states that, "An activity as a dealer in real estate is also not generally treated as a rental activity." It is my understanding, therefore, that where a taxpayer materially participates in a nonrental real estate business, consisting of such activities as the sale, development, management, and brokerage of real estate, the taxpayer is not treated as being engaged in a passive activity and that, accordingly, the income, gain, or loss realized by the taxpayer on these activities is not passive income or loss.

Furthermore, it is my understanding that interest income generated from installment notes received from the sale of nonrental real estate that was held for sale by a dealer, who remains a dealer during the period of receipt of the interest, is not considered portfolio interest income.

Am I correct in my understanding of how these provisions should be interpreted?

Mr. PACKWOOD. The Senator from Texas is correct.

CERTAIN GRADED PREMIUM POLICIES

Mr. DOLE. A question has arisen regarding some language in the committee report to the Tax Equity and Fiscal Responsibility Act of 1982. In 1982, the Senate Finance Committee was concerned that the reserve revaluation of certain graded premium policies under section 818(c)(2) was abusive. These abuses involved some graded premium policies with premiums that are level only after the insured reaches older ages, such as age 80. However, in the report we also recognized that other "graded premium policies should be treated as whole life policies."

I understand that some have been concerned that this language might not apply to treat a graded premium policy providing permanent insurance without the exercise of any conversion privilege and which has no increase in premium after the insured reaches age 30 as "other than term" insurance. That certainly is not my understanding of the intent of the committee and for that reason I did not request that a clarification of the issue be included in the technical corrections title of this bill. Is your understanding that a clarification is unnecessary?

Mr. PACKWOOD. The majority leader is correct. It is my view as well that a graded premium policy providing permanent insurance without the exercise of any conversion privilege and which has no increase in premium after the insured reaches age 30 is "other than term" insurance. No technical correction is necessary.

RENTAL ACTIVITY

Mr. TRIBLE. The passive loss rule contained in section 1401 of the Senate amendment to H.R. 3838 defines the term "passive activity" to include any rental activity. The term "rental activity" is explained on page 741 and the following pages of the report of the Senate Finance Committee, Report 99-313, as excluding certain activities which include the provision of substantial services. It is the intention of the Senate in enacting this legislation to exclude from the definition of "rental activity" for purposes of section 1401 of this Senate amendment any facility which provides housekeeping, maid service, linen, maintenance, social and recreational activities, meals, and nursing consultation in addition to shelter for the elderly.

Mr. PACKWOOD. That is correct. It is the intention of the Senate in enacting section 1401, with respect to the passive loss rule, to exclude from the definition of "rental activity" the operation of a facility which provides housekeeping, maid service, linen, maintenance, social and recreational activities, meals, and nursing consultation in addition to shelter for the elderly. Thus, if an owner is regularly, continuously, and substantially involved in the operation of such a facility, then his ownership interest in the facility, will not be treated as a passive activity.

Mr. PRYOR. Mr. President, today the Senate will approve a comprehen-

sive tax reform bill. This bill is the result of almost 18 months of work by the President, the House of Representatives, and the Senate.

I will vote for this bill, Mr. President, and send this measure to conference with the House of Representatives. This legislation is the most comprehensive piece of tax legislation since the last overhaul of the Tax Code in 1954. I believe the American people deserve a streamlined tax system.

There are a few problems with this bill, which I will explain in a minute. They need to be corrected in conference in order to make this a much better bill. This can, and should, be done. I believe, however, that the tax reform process needs to move ahead.

Mr. President, the best feature of the pending bill is the rate structure. For the first time in many, many years we are seeing a significant lowering of tax rates for both individuals and corporations. This bill is an attempt to move away from a tax system loaded with exemptions, deductions, and credits to one with fewer tax preferences. If this occurs, we can also move away from a system of high tax rates, while maintaining a progressive Tax Code, since the tax base will be broader. The rates in the pending measure, 15 and 27 percent for individuals, and 33 percent for corporations, represent tax reduction for most people. In fact, Mr. President, 80 percent of all taxpayers will be in the 15-percent tax bracket, and over 6 million taxpayers at or below the poverty line will be taken off the income tax system. Additionally, for millions of Americans our income tax system after tax reform is enacted will mean it is simpler. This has always been a major objective of tax reform.

Mr. President, there are large increases in this bill for the personal exemption and the standard deduction. This will ease the tax burden on families. Finally, and very importantly, Mr. President, this bill allows self-employed individuals to deduct one-half of the cost of their health insurance premiums. This is an issue I've been interested in for several years, and in my opinion, this one change restores some much-needed equity to our tax system. It makes little sense for those who are covered by group health insurance to receive this coverage tax-free, but require self-employed individuals to pay for coverage for themselves and their families on an after-tax basis. I'm very pleased this provision is in the Senate bill.

Mr. President, under a tax system with lower tax rates, and fewer tax preferences, economic factors will once again become the primary factor influencing investment decisions. Certainly, as long as we have taxes in this country, they will have to be taken into account when any investment is made. The issue, however, is what should be the primary motivation for investment making. Under the present tax system, I'm afraid that frequently tax considerations play the major role.

Mr. President, as I stated earlier there are problems with the pending bill. I remain confident, however, that the Senate conferees are very much aware of them and will work to resolve them in conference with the House.

First, I believe we should restore the deductibility of contributions to individual retirement accounts. In the 1981 Tax Act, we allowed everybody to establish an IRA. This has been very successful, and millions of Americans are putting money aside each year for their retirement. This is in addition to the amounts they will be eligible to receive under an employer sponsored plan. The pending bill does retain the tax-free buildup of the account, which is the major tax benefit as the fund grows, and doesn't change the law for those not covered by employer-sponsored pension plans. I believe, however, we should retain present law in this area. That's why I voted for one of the amendments that would have kept the full deductibility of IRA contributions.

Second, I'm very concerned over the retroactive feature of the so-called passive loss rules. In the committee, I argued against any retroactive treatment on any item of the bill, including the repeal of the investment tax credit. Disallowing losses against the other income, after investment decisions were made based on the present tax structure, is wrong. In my opinion, this should be corrected in the conference. Men and women relied on the state of the tax law when they invested the money, and while it's one thing for Congress to change the tax system on a prospective basis, it's quite another thing to change it after money has already been spent.

Closely related to the previous concern, Mr. President, is one I also have in the area of low-income housing. While there is tax credit in the bill, it needs to be improved in order to provide an added incentive for investment in low-income housing. The Senator from Maine [Mr. MITCHELL] has worked very hard on this issue and his efforts have improved the credit, but more needs to be done. Without significant tax benefits, investments in low-income housing, particularly FmHA and HUD projects, simply would not be made.

The conference should also examine whether or not to reinstate a capital gains deduction. With a top rate of no more than 27 percent arguments can be made that you don't need a favorable rate for capital gains. If the rate moves above 27 percent, however, I believe the conference should seriously examine reinserting the deduction. Even with a 27-percent rate, I believe we should have the capital gains deduction for small farmers and timber owners. Because of this, I supported amendments to restore the capital gains deduction for these individuals.

Finally, Mr. President, I believe the tax reductions in the bill should be improved for middle-income Americans. The best way this can be done is by changing the breakpoints now in the bill. This is the level of income where you move into the higher bracket. Moving these breakpoints up will provide greater tax relief for middle-income taxpayers.

Mr. President, I believe these concerns will be dealt with in the conference.

The most basic question, Mr. President, is whether or not the pending bill is better overall than the existing Tax Code? While this bill might not be perfect, neither is the present Tax Code. Every Member of this body has made speech after speech for years about the present Tax Code and the inequities it contains. Here's an opportunity to vote for change. How can we justify a tax system, which in 1983 allowed 30,000 taxpayers in this country that made over $250,000 to pay no taxes, or 3,000 people with incomes in excess of $1 million to pay little or no taxes? Is that system fair? Is it equitable?

In short, Mr. President, this bill deserves a chance. It deserves to be approved by the Senate and sent to conference. As I've stated, it's not perfect. Neither is our present Tax Code. Our failure to adopt this tax reform bill will probably mean that any chance of overhauling our Tax Code will be doomed for years to come. Let's not forget that the last major overhaul occurred over 30 years ago. Here's an opportunity to vote for a change.

More changes will be made in conference that will address the concerns many Members have stated. And, in my opinion, the result will be a far better tax system than we have today.

DEDUCTIBILITY OF BANQUET MEAL EXPENSES

Mr. DOLE. Mr. President, I would like to ask the distinguished chairman of the Committee on Finance, Mr. PACKWOOD, to clarify rules in the committee amendment relating to the deductibility of business meals, and specifically, the deductibility of meals that are provided as an integral part of a banquet meeting.

During committee consideration of the tax reform bill, I supported what I think is good policy to limit the deduction for business meals to 80 percent of the otherwise allowable amount. However, the concerns existing under present law with respect to business meal deductions, which led me to support the 80-percent limitation, do not arise with respect to meals that are an integral part of a convention, seminar, annual meeting, or similar business program. For that reason, I proposed a

rule permitting full deductibility in 1987 and 1988 of qualified banquet meeting meals. The Finance Committee unanimously adopted that rule in recognition, I believe, of the unique nature of such business banquet or convention meals.

Mr. PACKWOOD. Because I agree with the distinguished majority leader concerning the unique nature of banquet meeting meals, I support the rule he proposed. I appreciated your bringing this matter to the committee's attention, and I applaud your developing a rule with minimal revenue impact.

Mr. DOLE. I thank the distinguished chairman for his comments, and would like to ask for clarification of three aspects of the rule relating to banquet meeting meals.

The first point relates to a requirement in the rule under which full deductibility—rather than 80-percent deductibility—applies only for meals that are an integral part of a business program with respect to which an expense for food or beverages is not separately stated. I understand that this requirement means that the full-deductibility rule does not apply if a change is made to persons consuming the meal for an amount for the meal separate from the charge for the program of which the meal is an integral part, or if program attendees who do not have the meal are refunded a separate amount for not having the meal.

Of course, the hotel, caterer, or other business providing the food or beverages may state to the program sponsor a separate amount that represents the food and beverage charges to the sponsor, which amount the sponsor then may factor into the total fee for the program that includes the meal. Am I correct that such a separate statement does not subject part of the program costs to the general 80-percent deductibility rule where the other requirements of the full-deductibility rule are satisfied?

Mr. PACKWOOD. The distinguished majority leader is correct. As long as the persons attending the meal are not charged a separate amount for the meal apart from the total cost of the program, the full-deductibility rule applies where the other requirements of the rule are satisfied—for example, that more than 50 percent of the participants at the business program are away from home. The fact that the business furnishing the food and beverages separately states the cost of such items to the program sponsor does not disqualify the meal from the full-deductibility rule in the committee amendment.

Mr. DOLE. My second point relates to a special rule in the committee amendment that applies to deductions for business meal expenses. The committee amendment conditions deductibility of food or beverage expenses on a showing that the furnishing of the food or beverages has a "clear business purpose" currently related to the active conduct of a taxpayer's trade or business. This clear business purpose requirement is not satisfied in the case of a meal at which the business discussion does not concern a specific business transaction or arrangement.

I understand that this clear business purpose requirement applies, for example, to a business meal between a taxpayer and a customer that takes place in a restaurant, hotel dining room, country club, or other facility. However, the requirement does not seem appropriate in the case of meals that are an integral part of a banquet program. In such a case, it is unlikely that the banquet participants would be able to discuss specific business transactions because of the lack of privacy.

Am I correct that the clear business purpose requirement would not apply, on top of the requirements generally applicable for deducting entertainment expenses, with respect to banquet meeting meals?

Mr. PACKWOOD. The intent of the committee has been correctly stated by the distinguished majority leader.

Mr. DOLE. My final question relates to applicability of the full-deductibility rule to food and beverages furnished by an employer to its employees at a facility used for employee training. These facilities are used for seminars and similar programs because they are the most cost-effective means of providing continuing education and training to large numbers of employees. Am I correct in understanding that meals at such facilities are eligible for full deductibility under the banquet meeting rule?

Mr. PACKWOOD. That is correct. Under the committee amendment, the 80-percent limitation does not apply prior to 1989 to a food or beverage expense that is an integral part of a qualified banquet meeting. The amendment defines this term to mean any convention, seminar, annual meeting, or similar business program—where meal expenses are not separately charged—if: First, more than 50 percent of the participants are away from home; second, at least 40 individuals attend; and third, the food or beverages are part of a program that includes a speaker. Thus, meals served at an employee training facility would be fully deductible if these requirements are met.

Mr. DOLE. I thank the distinguished chairman for his clarification of these matters.

Mr. MATTINGLY. Mr. President, I would like to ask the chairman BOB PACKWOOD of the Finance Committee for clarification concerning the personal holding company tax provisions of this bill.

The bill excepts certain active businesses from the personal holding company tax because that tax was never intended to apply to active businesses. My concern is that there are certain other active manufacturing businesses of taxpayers, not indicated specifically in the bill, that should be covered by the bill. The business operations of these taxpayers are being unduly restricted by the personal holding company tax—a punitive tax which was not meant to burden the operation and expansion of active manufacturing businesses.

Mr. PACKWOOD. I appreciate the Senator from Georgia raising this issue. I am aware of the problem of which he speaks, and I agree that the personal holding company tax was never intended to restrict the operations of active manufacturing businesses. The bill mentions certain active businesses in this regard, and I plan to work to persuade the conferees to clarify that other active businesses are similarly not subject to the personal holding company tax.

Mr. MATTINGLY. I thank the distinguished chairman, and look forward to seeing this matter resolved by the conference.

PERIPHERALS OF TELEPHONE CENTRAL OFFICE SWITCHING EQUIPMENT

Mr. GRASSLEY. Mr. President, I would like to congratulate the chairman on this tax reform bill. He has shown time and again his vast knowledge of the complicated issues involved with this historic and massive tax reform. I would like to ask the chairman what was intended by the committee on a few technical issues.

Was it the committee's intention to treat peripherals of telephone central office switching equipment the same as peripherals of computers?

Mr. PACKWOOD. Yes, the Finance Committee determined that the technology of computers and computer-based telephone central office switching equipment is similar, and the committee intended to include both in the 5-year class. We want to ensure that computer-based central office switching equipment and its related peripheral equipment, are included within the 5-year class. This would be consistent with the treatment of computer and related computer peripheral equipment owned by a taxpayer.

Mr. GRASSLEY. Does this 5-year treatment for COE and peripherals apply to telephone companies as well as other taxpayers?

Mr. PACKWOOD. Yes, it does. This equipment is treated the same whether it is owned by a telephone company or any other taxpayer.

Mr. GRASSLEY. Do the normalization rules provided in the repeal of the ITC ensure that credits will be recaptured?

Mr. PACKWOOD. The normalization rules provided in the repeal of the ITC provision on page 1530 are impor-

tant technical changes to the current law provision. Subparagraph (1) of the normalization rules have been clarified to ensure that credits will be "recaptured" rather than "disallowed." This change is consistent with the committee report and the committee's intent in that it will prevent the possibility that a recaptured credit be treated as a prior period adjustment for ratemaking purposes.

Mr. GRASSLEY. Mr. Chairman, under your leadership, the committee has eliminated a number of inconsistencies in the law. In order to clarify one such instance in which fairness has been mandated by the committee, let me ask you, for purposes of depreciation, did the committee distinguish between regulated and unregulated communications companies?

Mr. PACKWOOD. The committee intended to ensure that there would be no discrimination between regulated and unregulated companies.

Mr. GRASSLEY. How did the committee intend to treat property that does not have a specified ADR midpoint life?

Mr. PACKWOOD. The committee bill places all property that does not have a specified ADR midpoint life in the 5 year, 200 percent declining balance depreciation classification.

Mr. GRASSLEY. Does fiber optic cable fall within the 5-year class under the Senate bill?

Mr. PACKWOOD. I am not aware whether fiber optic cable has a specified midpoint under the present ADR system. If fiber optic cable has no specified ADR midpoint or has a midpoint of less than 16 years, it would fall into the 5-year depreciation class, regardless of whether it is owned by a regulated or unregulated company.

Mr. GRASSLEY. In view of your answer that you are unaware of whether fiber optic cable has a specified ADR midpoint life or what that midpoint life might be, and in view of the committee's intention to assure fairness in depreciation policy between regulated and unregulated companies, will you address these issues in conference?

Mr. PACKWOOD. I can assure you that the Senate conferees will address the issues of the proper depreciation treatment of fiber optic cable, depreciation treatment of the equipment utilized by bypassers and other issues related to the comparable treatment of communications equipment, whether owned by regulated or unregulated companies.

KENNECOTT

Mr. GARN. Mr. President, I rise, once again, to discuss an issue which I have discussed, at considerable length, on this floor before. This issue, Mr. President, concerns the domestic copper industry, which for all intents and purposes, is dying.

Let me share with my colleagues the grim statistics associated with the copper industry:

Approximately 50 percent of the domestic copper mines are closed, and it is doubtful that many will ever reopen;

The workforce in the copper mining, smelting and refining sector has dropped more than 50 percent to a present level of less than 20,000, down from 44,000 in 1979;

The U.S. share of free world copper mine output dropped to 16 percent in 1984 from 23.5 percent in 1979;

Domestic primary copper producers have lost over $3 billion between 1981 and the present; and

A strong U.S. dollar and overproduction from partially subsidized and government-owned Third World producers have kept copper prices close to depression era levels in real terms in spite of the current strong economic recovery.

These are grim statistics, Mr. President. They are statistics that have been constant for several years, and I believe it is about time we change them and change them for the better. I have succeeded in the past to limit loans by multilateral lending institutions including the World Bank to countries using these funds for copper production. I have also strongly encouraged the administration to take an active role in revitalizing the domestic copper industry through reform of current trade practices. These measures will help, but they alone will not resolve the problem.

In my own State, operations at the Bingham Open-Pit Mine, owned by Kennecott, once the Nation's largest copper producer, have been suspended for over 1 year due to high production costs and low copper prices due to overproduction in the Third World. Since 1981, Kennecott alone has lost over $700 million. As the second-largest employer in the State of Utah and a major taxpayer when it was at full operation, Kennecott has had to literally close its doors because of these unfortunate circumstances. The apparent lack of concern with reality by this administration and the Congress doesn't make sense to me or the over 7,000 former-Kennecott employees in Utah.

There is a way, Mr. President, to significantly begin assisting this troubled industry through the tax reform bill now before the Congress. I am prepared to offer an amendment, for myself and Senator HATCH, to this historic bill which will provide the relief this industry desperately needs.

Mr. HATCH. Will my colleague from Utah yield?

Mr. GARN. I yield to my colleague from Utah for his comments on this matter.

Mr. HATCH. Mr. President, I appreciate the comments from my fellow colleague from Utah. After 4 years of extensive study and expenditures of over $20 million for engineering evaluation, Kennecott announced last December its decision to invest $400 million to modernize the Bingham mine. I won't trouble my colleagues with the specifics of this modernization plan, except to note that Kennecott's president, G. Frank Joklik, has indicated that modernization of the mine, coupled with reduced production and labor costs, would enable its Utah division to be "one of the lowest cost copper operations in the Free World." As Mr. Joklik indicates, this modernization will allow Kennecott to effectively compete with foreign producers, and to ensure a stable supply of copper in the United States.

Mr. President, the domestic copper industry, like the steel industry which the Senate already voted to sustain in this bill, is a basic and strategic industry of the United States. Its survival, like steel, is critical to the national security of this country. I hope my colleagues will recognize this fact.

The economics of this modernization plan were based on current tax law. This is not in any way a Government handout or better treatment than present law. Kennecott's estimates are based on the current depreciation schedule and the investment tax credit, two items that are drastically reformed under the Finance Committee bill. Senator GARN and I have sought to retain current tax law treatment for this project. Without current law treatment, the economics of the project change and the plug may be pulled on this modernization project. If this were to occur, the domestic copper industry will continue to struggle in world copper markets. Jobs will be lost that would otherwise be maintained.

Mr. PACKWOOD. Will the Senator yield?

Mr. HATCH. I yield to the distinguished chairman of the Finance Committee.

Mr. PACKWOOD. Mr. President, I am very aware of the adverse plight of the domestic copper industry at a time when the U.S. economy is on the rebound and growing stronger. The Senators from Utah are absolutely right: The copper industry is suffering from overproduction and government-subsidization by foreign producers, high production costs, and outdated mining facilities.

The two Senators from Utah have contacted the committee about the Kennecott modernization plan and emphasized how vital the project is to revitalizing the domestic copper industry. The basic concepts of the Kennecott modernization plan are within the parameters of other projects in the committee bill, and I assure my two colleagues from Utah that I will do everything within my power to incorpo-

rate this plan in the final tax bill during the upcoming conference with the House.

Mr. GARN. Will the Senator yield?

Mr. PACKWOOD. I yield to the senior Senator from Utah.

Mr. GARN. Mr. President, I appreciate the comments of the distinguished manager of the bill and those of my fellow colleague from Utah. Senator HATCH and I are encouraged by his remarks and his willingness to provide relief for the domestic copper industry in this historic tax bill. We know that he will do all he can during conference, and I am sure he will succeed in incorporating the Kennecott modernization plan into the conference report. Relief is necessary and timely. We commend our friend from Oregon and the assurance of his intent on this issue. Based on these assurances, I ask that my amendment be withdrawn.

INSTALLMENT SALES

Mr. PRYOR. Mr. President, I've had a couple of discussions with the chairman of the Finance Committee with regard to the limit of 6 weeks on timeshares contained in the installment sales changes in the bill.

As the chairman knows, I offered a special accounting rule when timeshares and residential lots are sold on the installment basis. This special rule will provide that these people will pay interest on the deferred taxes, even if they borrow against the installment receivables.

I do have some concern, however, over the 6-week limit contained in the bill, and I would like to ask the chairman whether he would be willing to work to lengthen this period—possibly to 13 weeks—contained in the bill? I believe something in the range of 13 weeks would be far better, and reflect the normal usage in the industry.

Mr. PACKWOOD. The Senator from Arkansas has raised an issue I know is of concern to him. I will work with him on this issue as we debate this in conference, and I believe we can accommodate many of his concerns in this area.

FARM INDEBTEDNESS

Mr. BOREN. Mr. President, the Finance Committee included a provision in the tax bill that can ease the tax burden for farmers in certain cases when a portion of the farmer's debt is forgiven by a lending institution. Under that provision, qualified farm indebtedness that is discharged by the lender would not be included in the farmer's gross income so long as the farmer is willing to write down the basis of his taxable assets. Last week, we further improved that provision in an amendment offered on the floor by Senator KASSEBAUM and myself, by providing an earlier effective date and eliminating a debt-to-asset test for farmers to qualify.

I wholeheartedly supported those changes, as a way to enable the voluntary restructuring of farm debt, including the discharge of some of the debt owed, to make their debtload manageable for more farmers.

But we need to bear in mind that rural banks have only a limited capacity to absorb the losses when loans are renegotiated and partially discharged. This may be particularly true for smaller banks whose assets are heavily concentrated in agriculture, oil and gas, or other areas that are currently depressed.

Loan loss reserves are not an adequate answer to this problem in situations where major unanticipated losses can literally wipe out the earnings and deplete the capital of such banks. For instance in Oklahoma last year, 130—or 24 percent—of the State's 533 banks lost money. Of those 130 banks that lost money, 96, or 74 percent, were banks with less than $50 million of total assets. The problems are not fundamentally different nationwide. Last Thursday's Wall Street Journal published a major front-page story on the unique financial stresses being experienced by smaller banking institutions at this time.

I do not propose that we try to do anything further on this issue before bringing the tax bill to a final vote. However, I would hope that, in conference, some limited adjustments can be considered in the bill that are sensitive to the needs of those smaller banks.

I think that adjustments could be considered in at least two parts of the bill. One would be to extend the time period during which certain banks could carry forward net operating losses, perhaps from 5 to 8 years. If that was done, in more instances banks that are heavily involved in agriculture and oil and gas lending should be able to renegotiate loans to troubled borrowers, with the prospect of recovering their earnings position before the carryforward period expires. Such an extension of the net operating loss carryforward could track alongside the bank regulatory agencies' capital forbearance policies for banks that are heavily involved in agricultural and oil and gas lending.

The other area is cash accounting. We might take another look at allowing cash accounting to be used for tax purposes by smaller banking institutions, where cash accounting accurately reflects the income and expenses of those institutions. At a time when so many of the smaller banks are facing major problems with their loan investments due largely to deflationary forces in the sectors of the economy that they serve, perhaps we can avoid imposing accrual accounting on them if the cash method can continue to suffice.

Mr. President, I believe that adjustments in the tax bill along those two lines could be carefully tailored to come within the scope of the conference, and so that little budget cost would be entailed. I hope that they can be addressed in conference. We need to deal fairly and equitably with the local banks as we try to ease the burden of unmanageable debt on farmers and others to which those lenders are heavily committed.

CAPITAL GAINS

Mr. WEICKER. Mr. President, I rise to commend to my colleagues a most instructive and timely article appearing on the op-ed page of yesterday's Washington Post, dated June 23, 1986. The article is entitled "Fix Capital Gains," and was authored by Martin Feldstein, a professor of economics at Harvard University and the former Chairman of the President's Council on Economic Advisers, and his wife, Kathleen Feldstein. The authors examined the proposal in the Senate Finance Committee bill to eliminate the capital gains differential, which has been a mainstay of the Federal Tax Code virtually since its inception. They conclude, as I have, that if the provision was inserted in the bill to raise revenues, "It is bound to fail," and that it will have damaging effects on the flow of capital. As we approach the moment of truth on this long-debated tax reform bill, the Feldsteins' piece provides persuasive reading for our colleagues to ponder when they begin their deliberations at conference.

Mr. President, the Finance Committee bill is a remarkable blueprint for the Nation's economic future. Its mark will be felt for a generation or more, and it is significant to note that the last major overhaul of the code was in 1954. The bill that we will be voting on today replaces tax-avoidance schemes with economic initiatives as the driving force behind many of our business decisions. And that is all well and good. But we seem to be closing our eyes to the potentially disasterous effects of eliminating a capital gains differential, and we are surely ignoring important empirical evidence that the Feldsteins remind us of:

> Experience has repeatedly shown that increasing the tax rate on capital gains reduces realization, or the selling of assets, by so much that tax revenues actually decline.

Mr. President, I recently chaired a Small Business Committee hearing on the potential impact of eliminating any differential in the tax rate for personal income and that of capital gains. And I was impressed by the near unanimity of opinion that this provision will wreck havoc with the venture capital industry, and will cripple the ability of small and emerging businesses to raise capital. And I was determined to support an amendment to restore a differential to the bill, because I felt it would make a good bill even better. Unfortunately, the efforts of several of my colleagues to retain current law

grounded to a halt in the face of an estimate by the Joint Committee on Taxation that the elimination of the differential will raise over $19 billion. Well, Mr. President, I am skeptical of that figure, and I commend my colleagues to revisit the economic data which show that, as the Feldsteins conclude, the elimination of a differential actually costs the Treasury money.

The Feldsteins' article suggests under the optimal revision for the conference committee we should halve the current long-term capital gains exclusion from 60 to 30 percent, which combined with the sharply lower personal rates, will keep the tax on capital gains at roughly the same level as under current law. I agree with their conclusion, and ask that the Post article be printed in the RECORD.

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

[From the Washington Post, June 23, 1986]

FIX CAPITAL GAINS

(By Martin Feldstein and Kathleen Feldstein)

When the House-Senate conference committee meets to reconcile the two versions of the tax reform proposal, the taxation of capital gains will be among the most important issues to be settled. It should be an easy decision. The House and Senate versions differ significantly, and there is little doubt that the House plan is superior. It would generate more revenue, would be better for the economy and would be preferred by everyone who pays a tax on capital gains.

The existing tax system recognizes that gains received from the sale of stock or other investment assets differ from ordinary income. Under current law, individuals exclude from taxable income 60 percent of the increase in the value of the asset if they have held the asset for six months or longer. Since the maximum tax rate is now 50 percent, the maximum tax rate on capital gains after the 60 percent exclusion is now 20 percent.

The tax bill passed by the House would reduce the capital gains exclusion from 60 percent to 42 percent, but it would not alter the underlying principle of capital gains treatment. And since the top individual tax rate would be lowered to 38 percent, the maximum tax on capital gains would be 22 percent, essentially unchanged from the current 20 percent maximum.

The Senate plan is radically different. It would eliminate the capital gains exclusion completely and would tax capital gains like ordinary income. The maximum federal tax rate on capital gains would generally rise from the current 20 percent to 27 percent, almost a third higher than current law. For taxpayers in the income range from $75,000 to $185,000, the phase-out of the first bracket rate and of the personal exemption would push the capital gains tax rate to 32 percent.

If this radical proposal was made to raise revenue, it is bound to fail. Experience has repeatedly shown that increasing the tax rate on capital gains reduces realization, or the selling of assets, by so much that tax revenues actually decline. And symmetrically, when the tax rate on capital gains is reduced, individuals increase the total amount of their sales by so much that tax revenue actually increases. Equally important, the response is not a one-shot burst of additional revenue, but is sustained year after year.

In 1978 a major cut in capital gains tax rates reduced the maximum rate from more than 40 percent to 28 percent. The result was a sustained increase in the amount of taxable capital gains and, therefore, in tax revenue. The increase in realization was relatively greatest among those high-income taxpayers for whom the rate cut had been most significant. And when capital gains rates were cut again in 1981—lowering the maximum rate from 28 percent to 20 percent—there was a new sustained boost in capital gains tax revenue.

There is nothing surprising about the powerful incentive effect of the capital gains rate. Since most of the proceeds from the sale of stocks are reinvested in different stocks and other financial assets, the bite that the tax would take out of the available funds can be a significant deterrent to such switching of assets. Rather than reduce the amount that he has invested, the shareholder keeps his original investment, and the government receives no revenue. In any year, the actual value of capital gains realized is typically only a very small fraction of the capital gains that investors have accumulated during the year. Raising the capital gains tax rate would make that fraction even smaller.

The lesson is that the House-Senate conference committee can scale back the exclusion of capital gains from taxation without losing revenue, but should reject the Senate's plan for abolishing the exclusion. The top tax rate on ordinary income that is likely to emerge from the conference committee will be about 28 or 29 percent. If the current distinction between income and capital gains is maintained but the exclusion scaled back to 30 percent, the top tax rate on capital gains will remain at about 20 percent.

The disadvantage of the Senate's plan to eliminate the capital gains exclusion involves more than the loss of tax revenue. The Senate's higher capital gains tax rate would, by deterring asset sales, impede the flow of capital from existing investments to the stock of new companies and growing businesses, where the funds would make a greater contribution to growth and productivity.

In a world where taxable gains often reflect only inflation, the Senate plan is grossly unfair. An investor who put $10,000 in 1970 into the mix of stocks represented by the Dow Jones average would find his investment valued at $24,000 today. But because of inflation in consumer prices over these years, it would now take $28,000 to buy what $10,000 could buy in 1970. The Dow Jones investor would have lost $4,000 of purchasing power, but he would be liable for a tax on a $14,000 gain if he were to sell those stocks now.

The president's original plan would have allowed individuals to pay tax on only the inflation-adjusted rise in the value of their investments. We still like that idea. But if that isn't going to be done, it's especially important to keep the capital gains exclusion and to limit the maximum capital gains tax rate to 20 percent.

TRIBUTE TO SENATOR RUSSELL LONG

Mr. BENTSEN. Mr. President, since the first Congress convened almost 200 years ago in March 1789, there have been a total of 1,767 men and women who have served as Members of this body. Only three of them served longer than RUSSELL LONG, and I do not know of any who have served this Senate with greater distinction.

If you plan to make a long career in the Senate, it certainly helps to have been elected at an early age and that is exactly what RUSSELL LONG did. He was, in fact, elected at the age of 29 and had to wait until he had his 30th birthday to be sworn in. He has been here ever since providing the Senate and the Nation with the benefit of his wit and wisdom, particularly in matters of finance and taxation.

RUSSELL LONG has been a member of the Finance Committee since 1953 and served as its chairman from 1965 to 1981. We had four Presidents during these 14 years, but only one Finance chairman. Chief Executives would come and go, but RUSSELL LONG was always there, earning the respect of his fellow Senators, and leaving his mark on the tax system of this country.

Somehow, the accomplishments of RUSSELL LONG do not seem surprising, considering the heritage that he brought with him to the Senate. I asked the Senate historian to check for me, and I can say with certainty that he is the only Member of the Senate ever to have been preceded by both his father and his mother. And I have to believe that it was his father, particularly, who formed in RUSSELL LONG many of the principles that have guided him throughout the years.

I am referring specifically to Senator LONG's sponsorship—championing is not too strong a word—of employee stock ownership plans as a means of sharing the wealth of this country and giving a greater number of people a financial stake in the economic life of the corporation they work for. RUSSELL LONG has been quoted as saying that his father, the legendary Huey Long, was a revolutionary, while he is more of an "evolutionary." The ends to be attained by both father and son were the same—greater wealth for a greater number of people—but the approach was slightly different.

ESOP's give even the worker on the assembly line or the stock clerk in the warehouse a chance to become an owner of the business in which they work, and create wealth and stability and a sense of responsibility that is often lacking. It is testimony to the farsightedness of Senator LONG that he advocated these plans long before a lack of competitiveness had been identified as one of the problems of American business and industry. These plans are a fitting tribute to the great Senator from Louisiana, but they are only one among many such that we could name and discuss.

I have to end by saying that I have a difficult time imagining the U.S. Senate without the presence of the distinguished senior Senator from Louisiana. No one was more surprised than I when he announced last year that he would not run for reelection for a seventh consecutive term. This trend could be dangerous, I thought, though we could take the sting out of it by insisting that you had to serve 38 years to be able to take such a youthful retirement. That would certainly limit its application, for I do not know when, if ever, the U.S. Senate will be graced with the presence of another Member like RUSSELL LONG.

TAX REFORM FOR AMERICANS

Mr. LAUTENBERG. Mr. President, today we move one giant step closer to true, broad reform of our tax laws. I applaud my colleague from New Jersey [Mr. BRADLEY], and the chairman and ranking member of the Finance Committee. Their contribution has been critical.

Today, we offer Americans not a perfect law, but one better than today's law.

Today, the Senate stands up for fairness. It stands up for efficiency.

What is fair?

What's fair is that every income earner and every profitable corporation pay a fair share of tax. And they would, with the stiffest, most far-reaching minimum tax ever enacted.

What's fair is that as a person's income rises, so should the tax rate they pay. This shouldn't only be a rate on a tax table, but the rate one pays. Once we close the tax shelters and loopholes, the rate in the table and the rate one pays will be closer to one and the same.

What's fair is that two people—living in similar houses, earning similar salaries, supporting families of similar size—will pay about the same amount of tax. And they will, with this bill.

What's fair is that the working poor, and middle-income Americans get some tax relief. And they would, under this bill.

But, Mr. President, we strive today not just for fairness. We strive for efficiency. We strive for a system where investment decisions are made by looking not to the Tax Code, but to the marketplace. We strive for a system where inventors and innovators can get the backing they need, based not on the tax losses they may produce, but based on the products, inventions and innovations they create.

Mr. President, no bill is perfect. This bill is no exception. I supported amendments to make this bill better, by restoring the universal IRA; by providing greater tax relief to the middle class. The conference must still deal with these issues. It must also provide for a fair transition from the old system to the new. The reform will yield great benefits. But, we must prevent great hardship on those who made investments reasonably relying on the law as it was.

One last point, Mr. President. Over the years, the Tax Code has been a tool of social and economic policy. We do not reject that role. But we find that we've chased too many nonrevenue goals at once; and, we've achieved too few.

Today, we do not reject the Tax Code as a tool of social and economic policy. We rejuvenate it. By getting back to basic policy.

The code we pass today promotes initiative. It promotes home ownership. It promotes investment. It promotes equality, fairness and efficiency. Those, Mr. President, are basic goals. Those are goals we should seek.

This is an historic occasion. I urge adoption of the bill.

Mr. BENTSEN. Mr. President, I would like to engage the distinguished chairman of the Finance Committee in a colloquy regarding so-called 10-or-more employer funded welfare benefit plans. I am concerned about a provision in the technical corrections section of the tax bill relating to 10-or-more employer funded plans. The provision specifically states that these plans would be subject to taxation on the income from their surplus reserves.

The 10-or-more plans provide a necessary avenue for many smaller businesses to obtain medical and other benefit coverage for their employees through their trade association. The businesses that participate in these plans would otherwise be unable to obtain coverage at group rates for their employees. In order to facilitate coverage for these businesses, the present Tax Code excludes these plans from the limitation rules on employer deductions for plan contributions.

These plans are unique in several ways. First, the participating employers do not control the operation of the plan. Because the member employers can come and go, the plans have a built-in incentive to keep their reserves and premiums lower to remain competitive. Most of these plans prohibit reversions of surplus assets to the contributing employers. These plans, then, would not be candidates for abuse if the exemption from taxation of the surplus reserves is maintained.

In summation, I am concerned that, by subjecting these plans to taxation on the income from their excess reserves, we would raise the cost to businesses of maintaining important insurance coverage for their employees. Therefore, I request the chairman's assurance that this important issue will be revisited in conference.

Mr. PACKWOOD. I agree with the Senator of Texas that we should carefully consider the tax treatment of welfare benefit funds maintained by 10 or more employers. The law exempts employers from limits on deductions for contributions to such plans, but does not exempt the plans from taxation if total assets exceed these limits. This is a very important issue relating to the ability of employers to provide benefits to their employees, and it is an issue that should be revisited in conference.

U.S. BUSINESS VENTURES IN SPACE

Mr. GORTON. Mr. President, I would like to ask the chairman of the Finance Committee and manager of H.R. 3838, the tax reform legislation, a question clarifying provisions in the bill regarding tax consequences of U.S. business ventures conducted in space. As the distinguished Senator from Oregon is aware, about a year ago, I introduced with several cosponsors S. 1126, the Space Tax Investment Equity Act of 1985. The purpose of the bill was to "provide that certain activities performed in space, the use of certain property in space and certain articles produced in space shall be treated as activities performed, property used and articles produced within the United States for purposes of any tax laws of the United States."

Simply stated, S. 1126 would treat U.S. space-based business investments the same as U.S. land-based investments for tax purposes. Present tax laws include provisions based on geographical location of the investment. These laws were written before commercial uses of space were ever envisioned. Under this past scheme, U.S. ventures in space would be considered outside U.S. boundries and hence not eligible for investment tax credits, accelerated depreciation [ACRS], R&D tax credits, and income derived from these projects could be treated as foreign source income. S. 1126 would correct this. It is an equity issue, not special treatment.

As I read the tax reform bill pending on the Senate floor, I believe that the Finance Committee has agreed with the intent of S. 1126 and included language and technical changes that in fact would treat future U.S. investments in space the same as if on Earth. I would like to ask the Senator from Oregon whether that in fact is what the Finance Committee has done.

Mr. PACKWOOD. The Senator from Washington is correct. It is the intent of the tax reform legislation to provide equitable treatment for U.S. space ventures. The depreciation and income source provisions provide equitable treatment. As Senator GORTON knows under this tax reform legislation, investment tax credits are eliminated so they would not be available for either land- or space-based ventures.

I would like to thank the chairman of the Science, Technology and Space Subcommittee, Senator GORTON, for originally bringing this issue to the attention of the Finance Committee. The issue is important both because it is within the spirit of tax reform legislation and because it removes some disincentives which our emerging space industry was facing. If we are to maintain our technological and industrial leadership in growth sectors such as space, we must remove these unintended inequities.

Mr. GORTON. I wish to thank Chairman PACKWOOD for his clarification and his incorporation of the equitable space tax provisions in his bill. It has been a pleasure to work with him and his able staff on this matter.

SOLAR TAX CREDIT

Mrs. HAWKINS. Mr. President, Senator DECONCINI and I have submitted an amendment to the tax reform bill expressing the sense of the Senate to extend residential solar tax credits for 3 years at declining rates. This phaseout was included in the original Senate Finance Committee proposal and incorporated in the House-passed tax bill.

Mr. President, earlier I introduced my own bill, S. 1201, to extend the solar energy residential and business credits for 5 years at declining rates. This bill enjoyed bipartisan cosponsorship. Both the House and Senate tax bills retain many tax benefits for conventional energy industries. The cost of extending solar residential credits over 3 years amounts to less then $300 million, far less than any other energy tax credits.

Everyone is aware that the Senate Finance Committee had to make some tough choices particularly in the portion of the bill relating to personal deductions. However, it is my hope that when the House and Senate reconcile the language, the solar industry will be treated equitably. The majority of this body has indicated support for solar residential tax credits.

However, these credits expired on December 31, 1985. The ensuing lapse has resulted in over 25,000 lost jobs nationwide. Equally disconcerting is the threat of foreign competition replacing the U.S. lead in solar manufacturing in the world market. Sales in our domestic solar industry have already been slashed by 75 percent. Solar energy technology provides a vital component to our domestic energy independence. We cannot afford to allow it to be dismantled.

While we do not intend to bring this resolution to a vote, we want to point out that a significant percent of this body has expressed its strong support for a phaseout of solar residential tax credits by cosponsoring this resolution. I yield now to my colleague from Arizona.

Mr. DECONCINI. Mr. President, the solar industry was one of the first industries to embrace tax reform by proposing a phaseout of its tax credits. This was an important and responsible step and served as an example for other industries to follow.

Although the committee included a 3-year extension of the solar commercial credits which matches the House provisions, it did not include the House-passed language providing for residential credits. Residential solar market accounted for over 80 percent of sales. Since the Senate Finance Committee Chairman introduced the original solar residential and commercial credits in 1978 and reiterated his intention to extend them on the floor of the U.S. Senate prior to their expiration in December 1985, it is my hope that when the Senate enters into conference with the House on the tax bill, you will find an opportunity to correct this inequity in tax treatment.

Mr. PACKWOOD. As the distinguished Senators from Florida and Arizona recognized, I have always supported solar energy.

I will give all possible consideration in conference to the issues raised by my distinguished colleagues.

TAX INCREMENT FINANCING BONDS

Mr. WILSON. Mr. President, I want to take this opportunity to congratulate the chairman and the committee for moving responsible tax reform legislation. Their efforts and commitment have resulted in tax reform legislation which is infinitely better than that passed by our colleagues in the House.

Mr. President, I would like to call the attention of the Senate to tax increment financing bonds. These tax-exempt bonds are used in 37 States to stimulate redevelopment of blighted areas and urban decay. Tax increment bonds are treated as governmental bonds under current law because they are backed by local taxes and serve important governmental purposes.

Although the committee's bill does not treat tax increment bonds as governmental bonds, it does create a new category of bonds called qualified redevelopment bonds. Unlike the House bill, the committee bill defines these bonds in a way that will not be unduly disruptive of essential redevelopment activities.

At the technical level, the committee bill sets reasonable standards for designation of blighted areas eligible to benefit from tax increment financing. However, I would like to address a potential problem with regard to the redevelopment of small and rural communities. The assessed value criterion—redevelopment areas in a city not exceed 25 percent of the city's assessed value—appears to inadvertently discriminate against small and rural communities.

If the assessed value provision had been in effect in California in 1985, 43 percent of redevelopment projects in cities with populations below 10,000 and 48 percent of the projects in cities with populations between 10,000 and 20,000 would have been ineligible to issue redevelopment bonds. I do not believe that the intent of the committee bill is to single out and drastically reduce redevelopment activities in small and rural committees. It is my hope that the committee will address this potential problem in conference.

Mr. President, I believe that tax increment bonds should be outside of any volume cap because they are limited by the tax base of a city and serve a governmental purpose. However, I am encouraged by my conversations with the committee staff that the intent is to permit tax increment bonds to be issued predictably and in substantial volume.

I applaud the efforts of the chairman and the committee to define as "governmental" tax increment bonds which are used for infrastructure. I also appreciate the committee's understanding of the needs of cities by structuring the volume cap in a way that will allow ample use of tax-exempt bonds for redevelopment. These considerations are extremely important to cities throughout the country as tax increment bonds represent a critical program our Nation's cities can use to eliminate blight and foster redevelopment.

For these reasons, Mr. President, it is my hope that the distinguished chairman will preserve the integrity of the Senate provisions for tax increment bonds in conference. Should additional categories of tax-exempt bonds be placed under the volume cap, it is my hope that the conferees will make accommodations to assure that tax increment bonds will be viable and not "crowded out" by other bonds.

Mr. PACKWOOD. Mr. President, I am well aware of the Senator's concerns regarding tax increment bonds. In many communities in my State and throughout the country, tax increment bonds play a critical role in breathing new life into decayed areas of our cities.

I appreciate the Senator's concerns and will work with the conferees to uphold the utility of tax increment bonds in conference. I am mindful that changes in the cap would potentially crowd out redevelopment activities. I also want to assure the Senator that our aim is not to discriminate against small and rural cities.

Mr. WILSON. Mr. President, I thank the distinguished chairman and his staff for their continued interest in tax increment bonds. Their efforts to help the Nation's cities meet their overwhelming infrastructure and rede-

velopment needs are very much appreciated.

MILITARY IN-KIND BENEFITS

Mr. WARNER. Mr. President, I rise to request the conference on the Tax Reform Act of 1986 to examine and clarify the tax treatment of military benefits under the "fringe benefits" provisions of the Tax Reform Act of 1984.

For well over half a century, military benefits have been excluded from taxation by the principle, first recognized by the Court of Claims in *Jones v. United States*, 60 Ct. Cl. 552 (1925), that they are not compensation for services. Accordingly, it has become commonly accepted that these benefits are tax-exempt. Although legislative history of the 1984 act indicates no change was intended for military benefits, no specific exclusion was included in the act itself. This has caused a problem in interpretation of the intent of the Congress that requires correction.

Specifically, the Treasury Department's reading of the 1984 act is that unless particular military fringe benefits are explicitly exempt by statute or regulation from taxation, they are taxable. While certain benefits, such as housing, subsistence, moving allowances, and uniforms, fall in this category, there are many others that do not. These include space available travel, education provided to children of service members overseas, commissary and exchange discounts, morale and recreation activities, and services provided aboard ships, such as movies and laundry. These benefits have never been taxed and I believe there was no specified intent of the Congress to tax benefits such as these in the 1984 Act. The problem lies in equating military benefits with fringe benefits. Military benefits are not the same as fringe benefits and never have been. While fringe benefits are a contractual term of many employment contracts, military benefits are a matter of legislative prerogative.

To correct this, I seek clarification of the intent of the Congress contained in the legislative history of the 1984 act. I think it is important we specifically examine the treatment of military benefits as intended by the Congress following the 1984 act.

Mr. President, if this question is left unresolved, it could have serious and unintended consequences on our military personnel. I urge my colleagues to look into this matter.

Mr. PACKWOOD. I thank the Senator from Virginia for his comments and the important points he has raised concerning military in-kind benefits.

INSTALLMENT OBLIGATIONS

Mr. WARNER. I want to direct the attention of the chairman of the committee on Finance to the provisions in section 311 of H.R. 3838 dealing with installment obligations. My purpose is to seek the chairman's advice with respect to a serious problem which has only recently been brought to my attention.

I want to emphasize my support for the direction that these provisions take. There apparently have been abuses in this area and I commend you and the committee for addressing them. However, these reforms may very well adversely affect the instance now concerning me.

Near the campuses of Virginia Polytechnic Institute and State University in Blacksburg, VA, and James Madison University in Harrisonburg, VA, a private developer is completing the sales of condominiums wholly marketed to parents of students attending these two schools. Construction of these projects was begun in March 1985 and they will all be completed and sold by September 1986.

The developer is building these units without any financial assistance from either these schools or the taxpayers. He is doing this with financing he is offering to the parents of these students, who make only a 5-percent down payment, and doing so without any mortgage insurance or guarantees from private companies or the Government. The housing situation on these campuses is critically short and his involvement is helping the students and the college administrators.

This type of transaction involves a loan from a financial institution to the developer covering costs of construction and development only with no profit. This developer receives a deferred purchase money mortgage from the buyer and pledges that mortgage to secure a loan covering construction and development only. The down payment covers only the real estate commission and includes no profit for the developer. The developer-seller remains at risk throughout the term of the loan with no mortgage insurance protecting such a developer. I simply can find no abuse in this case. Indeed, I believe it is an outstanding example of the private sector accepting the risk while helping my State's colleges.

I am not proposing any amendments to clear this problem from the scope of the intended reforms. Rather, I would ask that the Senate conferees thoroughly examine this particular case.

I would like to suggest two ways to deal with this issue equitably. First, there is a provision of H.R. 3838 which excludes time-sharing arrangements and sales of residential lots where the developer is not avoiding income tax. This provision could be expanded to include within its scope college housing projects such as the ones I have described. Second, there is the specific protection of a transition rule which would cover this situation directly, since everything in this situation will be completed in 1986. There are equities in this situation, Mr. Chairman, and I simply want to alert you to my concern and hope that you and your fellow conferees will attend to it in conference.

Mr. PACKWOOD. Thank you. I understand your concern and will keep it in mind when we review this issue in conference.

Mr. NICKLES. Mr. President, I would like to address the chairman of the Senate Finance Committee to get an assurance of consideration of a matter during the conference on the Tax Reform Act.

It was my intention to offer an amendment to the bill which would provide for the matching of income and expense arising from a sale-leaseback transaction involving rural electric cooperatives. Realizing the importance of moving the bill forward, I am willing to forgo floor consideration of my amendment with the hope that the conferees will resolve the matter. Can the chairman give me assurances to that effect?

Mr. PACKWOOD. Let me say that the Senator from Oklahoma, along with Senators BOREN, BUMPERS, and PRYOR, have indicated their support for this technical amendment. Under title XVIII of the bill we have addressed technical corrections for tax-exempt leasing. I will give the matter every consideration when the conference takes place.

PROPORTIONATE DISALLOWANCE RULE

Mr. GRASSLEY. I wish to clarify with the chairman that the proportionate disallowance rule for reporting gains on the installment method of accounting does not apply to gains from the sale of property that is not required to be inventoried by a farmer under his normal method of accounting. Also, deferred payment sales by a farmer to a cooperative are not subject to the proportionate disallowance rule.

Mr. PACKWOOD. The Senator from Iowa is correct.

TRUE TAX REFORM

Mr. McCLURE. Mr. President, the Senate has been debating the merits of the tax reform bill for 2 weeks now. There have been numerous amendments offered but few adopted. The reason there has been little objection to this bill, I believe, is because it is true tax reform. For many years we have been operating under a Tax Code with high marginal tax rates with many loopholes and deductions to reduce the effective rate. This system is misleading because many individuals whose salaries are in the top bracket can easily avoid taxation if they plan in advance and invest in the right type of shelter. Others in lower tax brackets do not have the time or resources to do such planning and are left to pay the highest effective rate. This has created a sense of injustice in the American people who believe that ev-

eryone is getting away without paying their fair share of taxes.

The bill before us goes a long way to restore confidence and fairness in the tax laws of the United States. By repealing many of the loopholes and deductions and lowering marginal tax rates, it will be more difficult for individuals to avoid paying their fair share. In addition, it removes the incentive for individuals to work at sheltering their income to avoid any tax liability. Therefore, future investments will be based on sound economic judgment.

Mr. President, I strongly believe that allmost all Americans recognize the many benefits offered by our society and are willing to pay for these services. However, many Americans are concerned that they are paying their fair share while others avoid paying anything at all. That is why the tax reform measure before us is true tax reform. It establishes two tax rates for individuals of 15 percent and 27 percent. It sets the corporate rate at 33 percent. In order to reduce the rates to these levels, Congress had to repeal many of the current tax shelters and loopholes which are used to avoid tax liability. Mr. President, I believe this will create a sense of fairness among all taxpayers.

Mr. President, this bill represents one of the most fundamental reforms of the Federal income tax system since its introduction in 1913. This bill simplifies the code and will make it more efficient and fair. It increases the standard deduction and personal exemption. It will remove 6 million of the working poor from the tax rolls. It retains those deductions which are essential to home ownership, charitable giving, and balance between the Federal, State, and local governments.

There are areas of concern that have been debated. Concern has been expressed over the changes in the deductibility of IRA contributions for those who have a qualified pension plan. The issue of capital gains was raised and many questioned what effect it would have on farming and other critical industries. However, the driving force of lower rates persuaded this body from adopting changes that could alter the reduced rates.

Mr. President, I have long been a supporter of the individual retirement accounts and have introduced measures to increase the allowable contributions of nonworking spouses and first time homeowners. I believe that Americans must not rely only on Social Security and should save for their retirement. However, I believe the Senate Finance Committee has reached a balance in its treatment of IRA contributions. If deductibility could be extended to those covered by qualified pension plans without raising the rates, I would support changes in the conference committee to accomplish this.

Mr. President, the bill before us is a major step in the right direction. I believe it is true tax reform. I give a lot of credit to my colleague from Idaho who sits on the Senate Finance Committee for continually reminding his colleagues that shuffling the tax burden is not the answer. That real tax reform would be significant rate reductions, broadening of the tax base, and repeal of many loopholes and deductions.

Mr. President, I congratulate my colleagues on the Finance Committee for their work on this measure and would encourage them not to compromise the reduced rates when they meet to work out the differences with the House.

TAX REFORM

Mr. HEINZ. Mr. President, before we vote on this landmark legislation, I want to congratulate the chairman of the Finance Committee for what he has accomplished in this tax reform bill. Not since 1913, when the Congress passed our first income tax of the 20th century, has there been a bill of such sweep and significance. He has developed and created a bill that everyone thought was impossible. Let me also salute Senator LONG, without whose guidance and counsel this bill would not be possible. It is only fitting that this reform bill be accomplished during his last term in the Senate. He will be greatly missed in the future. It has been an honor to serve with him.

This is a significant bill for the future of our country. It is a commitment to prosperity and compassion, to equity and efficiency. The House tax reform bill, on the other hand, is largely tax revision—a modification of the current Tax Code. The Senate bill, however, is not just cosmetic changes, but contains major substantive changes. Whether this country wants the new direction in our tax system provided by the Senate bill, or is content with the tinkering done by the House, is an issue for the conferees.

Mr. President, our goal at the national level should be to create a broad climate of opportunity and to encourage sustained, real economic growth. That is part of the impetus of the Senate bill.

Also, the Tax Code needs reform. The tax burden is too high on working people and on the poorest taxpayers. Too many people are not paying their fair share because of special interest tax breaks. Most Americans look at the thousands of pages of the Tax Code and know that the vast majority of those provisions are written to help somebody else.

The American people are skeptical of tax reform. They are right to be skeptical. I've served in the House or Senate for seven Congresses and have been through numerous tax reform bills. Each bill promised fairness; however, the Tax Code only provided more special interest breaks. Each promised simplicity, and the Tax Code became even more complicated. Each promised tax cuts, and, with the exception of the 1981 tax bill, the American people actually received a tax increase because of the bracket creep.

The Senate tax reform bill does a lot. It raises in a big way the threshold at which people will begin paying taxes by increasing the personal exemption to $2,000 and raising the standard deduction. It proposes just two tax rates: 15 percent and 27 percent. A family of four filing jointly will earn their first $13,000 free of any income tax. Only above that level will they be subject to the 15-percent tax rate. Fully 80 percent of all American taxpayers will never have a single dollar they earn taxed at a rate above 15 percent. Some 6 million low-income workers will be taken off the tax rolls altogether.

Mr. President, we have millions in poverty and a growing number of millionaires. The gap between the two is widening, and that is offensive in a democracy. This bill seeks to reverse that trend. By taking 6 million working lower income people off the tax rolls, it lends a helping hand to those who seek to help themselves. This is totally consistent with a policy President Kennedy espoused during the 1960 Presidential campaign and which I believe is as relevant today. He said: "If a free society cannot help the many who are poor, it cannot hope to save the few who are rich."

Our bill not only helps the many who are poor, it ensures that all taxpayers, individuals and corporations, pay their fair share. The alternative minimum tax on corporations, although not perfect in my view, nonetheless ensures that all will pay an equitable share. Our bill would clean out the special interest group breaks and reject once and for all the notion of heaping the tax burden on the many to preserve the tax havens of the few.

Above all, our bill creates opportunity. It rewards people and businesses, not because they can line up the best lawyers and accountants to get around the tax laws, but because they do a good job. Likewise, the passive loss rules and other changes on the individual side will halt most tax avoidance mechanisms. Just lowering the tax rate to a maximum of 27 percent for individual and 33 percent for corporation will help end the search for tax avoidance schemes. It will no longer make economic sense for a taxpayer to buy into tax shelters. Now the investments that will make sense will be those which are economically sound.

By lowering tax rates for individuals, we will reward hard work and sound

investment decisions based not on tax consequences but on economic realities. This kind of incentive will produce millions of permanent new jobs for Americans, not millions in writeoffs and layoffs. The bill, while repealing investment tax credits, improves the current depreciation system for plants and equipment, thus ensuring that our country continues to develop and rebuild its manufacturing sector.

The combination of the lower rates, and retention of capital investment incentives is critical not only to our future economic growth but to the continuance of our standard of living. With one caveat, which I will discuss later, this legislation makes a real commitment to the basic industries of America, to the jobs which gave us the standard of living we have come to expect, and to the standard of living we want for our children.

As the distinguished minority leader pointed out last evening during the debate, we need more than service jobs in fast food chains if we are to remain a strong society. My own State, the symbol of America's industrial strength, has been devastated by a decline in basic industries—steel, glass, textile, mining—and my constituents are hurting, as a result.

While promising no quick fixes, this legislation can be the beginning of a trend toward revitalizing basic industries in Pennsylvania and other industrial States.

This legislation will help our industries become more competitive in world markets, thus providing more American—rather than foreign—jobs. Currently, the cost of capital for our businesses is twice that of Japan and one-third higher than that in Europe. This and other factors involved in our cost of production have greatly disadvantaged domestic manufacturing and encouraged our own companies to purchase foreign parts or manufacture their products in foreign countries. The results speak for themselves—foreign workers replacing domestic workers and a trade deficit which is a national disgrace.

Traditionally, old tax hands have told us that equity and efficiency in the tax law were mutually exclusive, that efficiency was the enemy of equity. That ideal was grounded in the notion that a simple Tax Code could not be fair, and that a simple tax law would be inefficient since it would not recognize the complexities of a diverse society.

The bill we have forged rebuffs that myth. It does so by lowering rates and ending deductions which have not provided efficiency but only more complexity. We do not seek special taxes on wealth; but we reject the idea that wealth should be a tool to avoid paying taxes.

Finally, this legislation will restore taxpayers' faith in the integrity of the Tax Code. We all know that voluntary compliance is down. Too many taxpayers feel that the Tax Code is not fair, that they have an excuse for cheating. I believe this legislation, with the elimination of many preferences and with the stiff minimum tax for individuals and corporations, will restore confidence in our Tax Code. Taxpayers with similar incomes will pay similar amounts of tax.

For years, we have all talked about taking these steps, but until now, the words were hollow. We knew the people wanted equity, yet somehow, we couldn't g]t there. The result was a cynical public which the polls showed didn't believe we would ever reduce tax rates and simplify the tax system. We've done that in this bill and I am convinced the public will change its attitude about the tax system.

While I support this bill and believe that the Finance Committee and the Senate have produced a bill that is true tax reform, I am not vain enough to believe that it cannot be improved upon. These issues have been discussed extensively over the last few weeks. However, I want to mention the areas that I believe that the conferees should correct.

The Individual Retirement Account [IRA] has been a tremendous incentive for individuals to save for their retirement. We have millions of people who do not have adequate pension coverage, and the conferees should try and extend the IRA deduction to these people.

The minimum tax in its current form, while ensuring that profitable corporations and individuals will pay their fair share of taxes, also has a heavy impact on capital-intensive industries. The depreciation preference needs to be modified at conference to ensure that capital-intensive industries are not adversely affected, as I discussed on the floor last night, and again with the chairperson have on the floor earlier this afternoon. Otherwise, as I said earlier in these remarks, the revitalization of industrial America will be sorely jeopardized and were hopelessly undercut.

This bill retains the historic rehabilitation tax credit; however, the passive loss rules will make the credit virtually ineffective. Again the conferees need to determine what impact this will have on the revitalization of our communities and the preservation of an important part of our national heritage, and make appropriate changes.

The passive loss rules contained in this package will bring a halt to many abusive tax shelters. While the bill provides a 4-year phaseout for these investments, I do not believe that it is adequate or fair enough. Investments were made in reliance on the current Tax Code. My fear is that the proposed changes will have a negative impact on real estate and, in particular, on low-income housing. I urge the conferees to find a more equitable and fair transitional rule.

The major remaining problem of this bill, and it is a big one, is the mismatching of deductions and lower rates. Unless we change the bill in conference, millions of taxpayers, who file their tax returns for 1987 are going to realize that they have been cheated. They will lose numerous deductions, yet the full rate reduction will not go into effect until 1988. This clearly needs to be corrected at conference.

These problems are now being turned over to the conferees. There are major differences between the House and Senate tax bills. I urge the conferees to correct these problems. To take the best from both bills, and to entirely fulfill promise of a better, fairer tax system.

A TAX BILL GOOD FOR THE NATION

Mr. ZORINSKY. Mr. President, we have come to the end of a long road. The tax reform bill before us has both good and bad features. I intend to vote for it because, on balance, I feel it is good for the Nation and good for the American taxpayer.

Our current tax system is complex and inequitable. It causes economic distortions and it impedes economic growth. This bill holds the promise, at least, of a tax system that is at once simpler and fairer than what we have now. Under it, many Americans would experience a tax decrease. They also would save time and money in preparing annual tax returns.

I am especially pleased the Senate adopted several floor amendments that specifically would benefit American agriculture. The continuation of income averaging for farmers would ease the problems caused by the natural and unavoidable ebb and flow of farm income. Likewise, allowing farmers to apply investment tax credits against taxes paid in previous years will cushion the loss of ITC's for this hard-pressed economic group.

There are some things, of course, that disappointed me in the consideration of this bill. I would have preferred, for example, some moderation of the changes affecting individual retirement accounts. Likewise, I remain very concerned about provisions that would be applied retroactively to business decisions. These changes threaten bankruptcy and foreclosure for real estate firms while they severely damage Government credibility. They set a terrible precedent and would inhibit risk taking and investment. I remain hopeful that something can be done to change these provisions in conference.

Just as I have my own misgivings, however, I do not know of anyone who

gets everything they wanted from this bill. As I see it, that is the bill's great strength. It asks everyone to sacrifice something—a deduction here, a credit there, a loophole somewhere else—for the benefit of the system as a whole. On balance, I feel the effect of this bill in lowering tax rates and eliminating special treatment for individual groups would be overwhelmingly beneficial.

I said at the outset I would look to this aspect in deciding whether to support the final product of Senate debate on tax reform. No one knows with certainty what all the ramifications of passage of this legislation will be. There are still lots of hidden aspects to the bill. But based on what is known, I am able to support this legislation. I urge my colleagues to do the same.

TAX REFORM

Mr. DODD. Mr. President, I will vote in favor of H.R. 3838, the Tax Reform Act of 1986. This is an historic piece of legislation and I wish to commend the distinguished chairman of the Senate Committee on Finance [Mr. PACKWOOD] and my good friend and colleague the ranking member of the committee [Mr. LONG] for their efforts in steering this matter through the Senate. I do not quite know what to say as we conclude floor action on the last tax bill which RUSSELL LONG will have had a hand in managing except that this Senator will be a little less certain as to where to look in the future for guidance and wisdon.

I also want to single out the efforts of the Senator from New Jersey [Mr. BRADLEY] in advancing the cause of true tax reform over a number of years.

And finally, Mr. President, as with any legislation, but especially as regards tax matters, the staffs of the Finance Committee and the Joint Committee on Taxation have exhibited the highest level of expertise and professionalism in connection with our deliberation here over the last several weeks.

Mr. President, when this bill was reported from the Finance Committee, I stated my intention to support it, even though I felt it should be improved in several respects once under consideration by the full Senate. I never supported or would support the notion that a good bill could not be improved by facilitating amendments and letting the entire membership of this body work its will.

Mr. President, there is much in this legislation to support its passage. This bill will make our tax laws more equitable and simpler. This will be accomplished primarily through the imposition of strong minimum taxes on individuals and corporations so that in the future, we can state with greater assurance than today, that all segments of our society our contributing their fair share. The bill before us provides great benefit to our lower income citizens in that some 6½ million taxpayers will be removed from the rolls altogether and 80 percent will have a tax rate of 15 percent. The base of income subject to taxation will be broadened through the elimination of many misguided or obsolete tax preferences. And most importantly, in the future, investment decisions are more likely to be based on real economic, rather than tax considerations.

During the course of Senate debate, many of my original concerns with this legislation have been addressed in a manner which I believe bodes well for favorable resolution by the conference committee. While the amendment which I offered with the distinguished Senator from New York [Mr. D'AMATO] to restore universal availability of individual retirement accounts was defeated by a narrow margin, I am hopeful that the final bill will retain this feature and will look closely and favorably at the tax credit option which we offered as a more equitable and less costly alternative. The partial restoration of deductibility of State and local sales taxes while still unsatisfactory, will, I believe make it easier to complete the task of maintaining full deductibility of all such levies. This is a matter of strong principle and I will not be satisified in the final bill with anything less than present law treatment. The new tax credit for lower income housing has been improved significantly by virtue of the amendment by the Senator from Maine [Mr. MITCHELL] which I cosponsored. It is important that in our rush to sweep away tax preferences, that we retain incentives for important societal goals such as lower income housing.

Mr. President, there remain aspects of this legislation which continue to trouble me. It is my hope that further study and attention will allow the conference committee to correct these deficiencies and that further independent study will allay certain concerns which remain. The bill before us applies too many of its provisions in a manner which penalizes taxpayers for prior decisions made in good faith under the tax laws and regulations which existed at the time. Retroactive changes in our laws run counter to our legal framework and should not be tolerated. This bill also makes assumptions that certain behavior previously encouraged through our tax laws will continue to be favored by virtue of lower marginal rates. This is something we are going to have to monitor very closely, especially in this era of high budget deficits and unavailability of direct appropriations to pick up the slack.

Finally, while this bill may simplify our tax returns, there is a real question as to what effect this will all have on our economy. The real benefits of tax reform must be to ensure growth in investment and productivity and a distribution of tax reductions which guarantees that working middle-class families will be able to secure a better standard of living for themselves and their children.

Mr. President, despite these reservations, my vote this afternoon is not a close call. I will vote affirmatively for this bill this afternoon because I feel it accomplishes the overriding purpose of restoring much needed public confidence in our tax system. If the American people can be convinced that everyone is contributing fairly, we will have made a most important stride forward in restoring the faith of our people in their Government and, of equal importance, in the ability of the Government to respond to the cries of its people for fairness under its laws.

LOW-INCOME HOUSING CREDIT

Mr. CRANSTON. Mr. President, I commend the Senate Finance Committee for its proposal on low-income housing tax credits which is an important and progressive change in the Tax Code's treatment of low-income housing investments. The low-income housing tax credit is highly targeted, on a unit-by-unit basis, to meet the needs of the neediest renters in the country. It is designed to attract private investment. When coupled with the amendment proposed by the distinguished Senator from Maine, along with myself and other Senators, will encourage new production and preservation of affordable homes for low- and very low-income people through public-private partnerships. It is the beginning of a new answer to a critical low-income housing need made more difficult by the wholesale withdrawal of the Federal Government from a direct role in providing subsidies for the development and preservation of low-income housing.

Despite its many attractive features, the credit is still not fully workable. I would urge that further changes needed to make this credit function as designed be made in the conference committee.

It is essential that suitable individual investors be encouraged to use the tax credit to invest in housing for low-income people. In most new housing programs undertaken in public-private partnerships, both for rehabilitation of abandoned buildings and new construction, there are no ongoing operating Federal subsidies. The committee proposal also restricts the amounts which can be charged to tenants in units for which credits are being claimed. Therefore, there is a substantial operating risk to the owner of the property. The nature of low-income housing is such that little or no cash flow is expected and appreciation is minimal due to the location of build-

ings in the most difficult neighborhoods and the income restrictions applied to tenants in credit eligible units.

Furthermore, most projects now being carried out by community based nonprofit organizations to provide affordable housing for low- and very low-income families are small in size and limited in total resources. The investor receives his or her only return for investing in such properties through the tax credit proposed in the committee amendment. Due to the risk involved, suitability requirements for the investors, and the costs of a public offering, use of the credits will necessarily be restricted to private placements to individuals. To make the credit useful and efficient, it will be necessary to attract suitable investors.

The committee amendment would severely curtail or prohibit the use of the credit by the very investor group we should be encouraging. Individuals with high income should be encouraged to put part of their assets back into socially responsible programs such as low-income housing. As currently written, potential investors can only use a minimal amount of the credit—up to $6,750—against their income tax liability each year. Moreover, this amount is phased down to zero for investors whose incomes exceed $150,000.

These restrictions preclude the very investor class necessary to make the credit work instead of encouraging it. These restrictions are not necessary to ensure that high income taxpayers pay their fair share of taxes, since the tough new alternative minimum tax would already do so. The restrictions limit the efficiency and use of the credit. This can be corrected in the conference committee, and I urge the chairman to work with the other conferees to make sure that the final credit adopted in this legislation is a truly workable incentive to produce and preserve low-income housing.

Once again, I congratulate the distinguished chairman for his initiative in proposing the low-income housing tax credit, and I congratulate the distinguished Senator from Maine on his sensible amendment to increase the credit's usefulness.

TAX BILL CONFERENCE

Mr. HARKIN. Mr. President, the tax bill is an improvement over our present law. But, it could use a lot of improvement. I hope that will happen in conference.

I believe that the bill should provide for greater tax relief for the average American and less benefit for the very wealthy. Under this bill, there could be 16 million people with incomes in the $10,000 to $40,000 that will see their taxes increased by about $360 per taxpayer. At the same time, those taxpayers making more than $200,000 a year who will see their taxes cut will win more than $50,000 under this bill. That must be remedied. I believe that there should be progressivity in the Tax Code. Those with highest incomes are better able to bear the tax burden. This bill does fall short in this regard.

I believe deductibility for IRA's should be allowed for every taxpayer. It is a great incentive to save. Our Nation needs the savings and individuals, upon retirement, will need the income. We should not narrow a program that really works.

I also believe that we could do more to promote long-term investment, expecially for smaller businesses. A well structured reduction in capital gains taxes would be a good thing.

There are many good things in the bill. It does reduce special tax shelters which distort the economy. These shelters have done great damage to real farmers. If anything, the bill should be strengthened in this area.

The bill generally reduces the distortion in our economy caused by the tax laws. It does a better job of getting corporations and the wealthy to pay some taxes. It should be passed. I will vote for it. But, I hope to see an improvement in conference.

TAX-AIDE BENEFITS OUR NATION, OLDER TAXPAYERS, AND ELDERLY VOLUNTEERS

Mr. DECONCINI. Mr. President, the Internal Revenue Service has repeatedly stressed that no taxpayer should pay more taxes than are legally due. Court decisions have also emphasized that taxpayers are entitled to claim all proper deductions, exemptions, and credits.

Yet, many older Americans needlessly overpay their taxes each year. Some are confused by the complexity of the tax forms. Others are unaware of available benefits for older Americans, such as the current additional exemption because of age, the $125,000 capital gains exclusion for persons 55 or older who sell their principal personal residences, and others.

The Tax Counseling for the Elderly [TCE] Program has helped older Americans to claim all legitimate deductions, exemptions, and credits. TCE has also been beneficial for the Internal Revenue Service by improving taxpayer compliance.

The American Association of Retired Persons' Tax-Aide Program is the largest of the TCE projects. Accuracy and competent service have been the hallmarks of the Tax-Aide Program. Tax-Aide not only performs many valuable services for our Nation and elderly taxpayers, but it is also a rewarding experience for the volunteers who give so generously of their knowledge and time.

The proposed revamping of the Internal Revenue Code once again underscores the importance of AARP's Tax-Aide Program and other TCE project.

The Tax-Aide Program received a Presidential citation for exceptional service at a While House ceremony on June 18. This is the highest honor for the Private Sector Initiatives Program. I wish to extend my heartfelt congratulations to the Tax-Aide Program and all its volunteers. It is a real tribute to the program and to all those who have made it so successful.

Mr. President, a recent article in the Yuma Daily Sun describes how the Tax-Aide Program is beneficial for both elderly taxpayers and the older volunteers. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Yuma (AZ) Daily Sun]

VISITOR ENJOYS COUNSELING OTHERS

(By Kathleen Hayes)

Helping others is a way of life for some people and, even if they are winter visitors, they often get involved in helping people here.

While Bernard Celek vacations in Yuma, he volunteers his time to aid other senior citizens with their tax returns.

In 1981, Celek, a former Whirpool Corp. employee, joined the American Association of Retired Persons. He was named assistant state director for north central Ohio, his home-state, and trained in tax aid counseling.

"I was organizing chapters and conducting training for offices of AARP. Tax aid was one of the programs I worked for in our town," Celek said.

He enjoyed his new work so much that he volunteered to help while on vacation in Yuma.

"I looked for it here. It was enjoyable, and I liked meeting people," Celek said.

For five winters, Celek has counseled people in Yuma who are more than 60 years old or have low-incomes. From February to April, he works as often as he is needed, usually one or two afternoons a week.

His work, however, starts before February. Each January, he takes a refresher course with the Internal Revenue Services.

"I need to update. There are always changes," Celek said.

"The majority of people I see are older winter visitors," Celek said. "Most are after their tax rebate."

Because so many of his clients are winter visitors, Celek has had to familiarize himself with various tax laws of different states. He does this by studying the previous year's forms.

"I've learned to do the tax forms for several states. That alone is wonderful," Celek said.

"In our mobile home park, permanent residents can get about 5 percent of their rent money back. We don't have that type of rebate in Ohio or any other state I've worked in. I don't know what they'll be getting until I catch up on what Arizona tax laws are like this year," he said.

Nationally the AARP helped prepare 1.5 million tax returns last year. Members made more than 25,000 visits to the homebound.

Locally, the Tax Counseling for the Elderly Program, a joint effort of the AARP and the IRS, helped more than 900 people last

year, Virgil Eisenmann, coordinator of the Yuma program, estimated.

In September of this year, Celek received tenure with the AARP. He is now a national trainer of volunteers. In January, he will go to Atlanta to teach other AARP members. One of the topics he will speak on is how to select and keep good volunteers, a subject he knows much about.

Volunteer work has been a way of life for Celek. He has been invovled with the Boy Scouts for more than 37 years, and achieved the Silver Beaver award, the highest council trustee award a scouter can earn. The Scouts also bestowed him with the St. George award, the highest district honor the group gives.

Celek plans to remain civically active.

"I've always volunteered," Celek said.

PRESERVING 401(k) PLANS FOR STATE AND LOCAL GOVERNMENT EMPLOYEES

Mr. CRANSTON. Mr. President, the bill that is before us has made great strides toward tax reform, but there still is one area in which certain taxpayers are subject to unjustified discrimination. As you know, the bill eliminates section 401(k) benefits for State and local government employees while preserving such benefits for employees of the private sector and nonprofit organizations. It is truly unfortunate that State and local government employees have been singled out to not receive the same benefits that are provided to all other employees.

The language of code section 401(k) requires a cash or deferred arrangement to consist of a profit sharing or stock bonus plan. It was initially thought that only corporations operating in the private sector could maintain such plans because nonprofit organizations and State and local governments do not have profits and, thus, could not operate profit-sharing plans.

In 1980, however, the Internal Revenue Service issued a general counsel memorandum which concluded essentially that nonprofit organizations and State and local governments could maintain profit-sharing plans even in the absence of what are traditionally considered profits. This ruling allowed nonprofit organizations and State and local governments to provide 401(k) benefits to their employees. Since the 1980 ruling, numerous nonprofit organizations and State and local governments have adopted 401(k) plans and have received official IRS approval of their plans.

Under the current bill, 401(k) benefits will be preserved for the private sector and for nonprofit organizations. However, the bill eliminates 401(k) benefits for State and local government employees. Recently, the new Federal retirement system was enacted, providing Federal employees 401(k)-type benefits. Therefore, if this bill becomes law, every segment of the work force will be able to enjoy 401(k) benefits except for State and local government employees. There is no policy reason for this distinction.

This discrimination is exacerbated because the bill eliminates a benefit which is currently being provided to many public employees. The bill grandfathers all plans that were adopted before May 6, 1986, thus public employers who did not adopt a plan by that date will be denied 401(k) benefits but those with existing plans may continue to offer these benefits. My State of California already has a 401(k) plan as so several of its counties and at least one of its cities. However, many more cities and counties in California want to provide these benefits but simply did not act fast enough in adopting their plans. The bill will prevent any new plans from being adopted, resulting in a situation where one county could offer 401(k) benefits but is neighboring county could not. Therefore, one local government is pitted against another when trying to attract and retain employees.

Moreover, by preventing public employers from providing 401(k) benefits, we are making it more difficult for them compete with the private sector for quality employees. The current bill, in effect, provides a tax subsidy to the private sector and nonprofit organizations that in many cases may increase the cost of State and local governments. Obviously, if State and local governments cannot provide their employees with the benefits of section 401(k), they may be forced to provide comparable benefits in some other form, and likely one that is not subsidized by the tax system. What can be more anomolous than a tax system that subsidizes private interests while penalizing public interests?

It has been incorrectly argued that other tax favored elective contribution plans, such as deferred annuities under section 403(b) and State deferred compensation plans under section 457, are available to the public sector and that section 401(k) arrangements are therefore unnecessarily duplicative. Section 403(b) annuities are of relatively little value to public sector employees as a whole because they are available only to teachers. Section 457 plans are inferior to section 401(k) arrangements as a vehicle for promoting retirement savings for several reasons. First, amounts deferred under section 457 remain subject to the claims of the general creditors of the employer, whereas section 401(k) contributions are held in trust solely for the benefit of participants. Second, section 401(k) plans are subject to discrimination tests, resulting in benefits being available to both higher and lower paid employees. Section 457 plans are generally only available to higher paid employees. Finally, section 401(k) plans allow loans and hardship withdrawals, whereas section 457 plans inhibit access to funds even in an emergency, thereby serving as a significant deterrant to participation.

As indicated, section 457 plans are generally only available to highly paid employees whose counterparts in the private sector have available to them nonqualified deferred compensation arrangements. Thus, permitting both section 401(k) arrangements and section 457 plans for public employees does not, as a practical matter, create any greater duplication than already exists in the private sector. Moreover, the appropriate way to deal with any perceived duplication is to offset the maximum contributions permitted under sections 403(b) and 457 by amounts contributed to section 401(k) plans.

I hope my fellow Senators will join with me in urging the conference committee to consider this most important issue and to adopt a provision which continues section 401(k) plans for public employees. For the American people to believe in the tax system it must be fair and it must not discriminate against groups of taxpayers for no policy reason. We must not single out one group of employees and discriminate against them. All employees must be allowed to share in the benefits of section 401(k).

Mr. DENTON. Mr. President, I rise to express my support for H.R. 3838, the Tax Reform Act of 1986. I want to commend the chairman of the Senate Finance Committee, Mr. PACKWOOD, the ranking minority member, Mr. LONG, and the other members of the committee for their work on this bill.

I must admit that I would have preferred that the Congress not consider a tax reform bill until the Congress had addressed the Federal budget deficit. As my colleagues know, the Congress has not taken final action on the budget resolution for fiscal year 1987. I joined a number of my colleagues in a letter to President Reagan urging that the Congress address the Federal budget deficit prior to acting on tax reform. Nevertheless, the Senate is ready to vote on the final passage of H.R. 3838.

The bill includes many positive changes in the Federal Tax Code. The Senate bill reduces the number of tax brackets from 15 to 2 brackets. The two brackets will be 15 percent and 27 percent. Over 80 percent of all taxpayers will be in the 15 percent bracket. I believe that this is a major improvement over the complex Tax Code that currently exists. However, because some deductions are eliminated on January 1, 1987, I believe that the lower rates should be effective on the same date rather than July 1, 1987.

The bill also provides for a standard deduction of $5,000 for a married couple filing jointly and $3,000 for singles. In addition, the personal exemption will be increased from $1,080 to $2,000. I have strongly supported increasing the standard deduction and

the personal exemption. These provisions are important for all families in this Nation.

The bill will also continue several important personal deductions that middle class Americans rely on to preserve and maintain a strong family life. The bill allows the continued deduction for first and second mortgages. This provision is important to all homeowners and those young people who hope to own a home in the near future.

The bill also continues to a great degree the deduction for State and local taxes. Unfortunately, the bill does not provide for a full deduction of State and local sales tax. Alabama depends heavily on State and local sales tax and the limited deduction of the sales tax will hurt Alabamians.

I believe that the private sector, corporations, business and individuals should use their wealth compassionately. They should help to meet the needs of the less fortunate, to relieve their suffering and to help restore their dignity. Charitable organizations have been meeting needs throughout the history of this country—the Red Cross, United Way, and small country churches have all helped. They meet these needs through generous gifts and tithes of common men and women. The Senate bill continues to allow these people to deduct charitable contributions if they itemize. However, nonitemizers are not allowed to deduct their charitable contributions. I wish we would continue this write-off. I think it helps to encourage giving.

The Senate tax plan continues to protect the retirement plans of charitable and religious organizations. These plans help teachers, preachers, and social workers to plan for their senior years. The House bill, however, places restrictions on these plans. The restrictions may force many organizations to drop their plans. I therefore urge the conferees to remember these people and the work they do. Let's reward them for their efforts and not penalize them by taking away their 403(b) plans.

While a portion of the tax burden is being shifted from individuals to business under this bill, there are some provisions in this bill that are beneficial to some businesses. One of the most important is the provision that allows taxpayers to expense up to $10,000 of the cost of tangible personal property used in a business. This will lower the tax bill of small businessmen and farmers, helping the businessman to grow—to create more jobs and goods—helping the farmer to get back on his feet.

This tax bill operates as a two-edged sword on tax shelters. It corrects the abuses of the past which allowed wealthy individuals to pay no tax at all in some cases. I think it may, however, go too far. People who have relied in good faith on the existing provisions of law that have encouraged people to invest in real estate and other legitimate investments should not be unfairly singled out.

The retroactive revocation of these incentives may force some honest taxpayers into bankruptcy. These people have signed notes obligating them to make annual payments for as many as 20 years with respect to projects that can show no profit without the benefit of tax credits and deductions. This action on our part may cause rent payments to rise to such a point that the benefits of the tax bill for many will be wiped out.

While I am discussing what I believe to be the disadvantages of the tax bill, let me mention capital gains. I am in favor of special tax treatment for capital assets held for long periods of time such as timber, which takes several decades to come to maturity, the old family farm, and the small businesses which have passed from generation to generation. But in times like these, some are having to sell the fruits of a lifetime all at once to pay off debts. To tax them at ordinary income rates is simply unfair.

I voted for several amendments to the bill to restore capital gains for farmers and private owners of timber land. I also strongly supported and voted for the provision to restore income averaging for farmers. Both of these items are needed to aid the family farm. I am pleased that the Senate restored income averaging and I hope that the conferees will restore some capital gains treatment in this area.

Historically we have allowed people to deduct their ordinary business expenses. Under this bill employees will not be allowed to deduct unreimbursed business expenses.

The mechanic cannot write off the cost of his tools, the carpenter his hammer, the teamster his steel-toed boots; the teacher cannot deduct dues to the Alabama Education Association or the costs of professional journals. These are all necessary expenses to the practice of each of these callings. I hope this deduction will be restored in conference.

The IRA is one of the most important tax innovations that we have. It provides America with capital, it makes the average citizen feel like he or she has control over his destiny, that he or she can provide a small measure of financial security for the retirement years. Citizens do not want to rely on the Government alone to take care of them in their later years. The IRA gives all of us hope. It helps us to take care of ourselves, not burdening someone else with our problems. To eliminate the deduction for the IRA is one of the worst things we can do to the middle class. I support restoring the deduction for IRA's.

I want to also briefly mention the resolution offered by the junior Senator from Georgia [Mr. MATTINGLY] that we not change the tax laws for 5 years after enactment. I voted for the resolution with reservations. Many Alabamians have told me that the annual changes in the tax laws cause them to spend an unreasonable amount of time keeping the tax books instead of running their businesses. I believe that stability in the tax laws is of primary importance to a sound, functioning economy. We must stop our constant tampering with the tax laws. As my colleagues know, however, no bill is perfect. The Congress has had to correct flaws in the last several tax bills enacted into law. I do not want the Congress to be in a straitjacket if corrective measures are needed.

There are many issues that will have to be resolved in conference. If the bill coming out of conference does not maintain the IRA, encourage investment, provide low rates, and fairness for all, I may have to vote against it.

SECTION 12

Mr. HEINZ. Mr. President, last Tuesday night and into Wednesday morning for about 2 hours we debated and eventually tabled by a vote of 65-29 an amendment by the distinguished Senator from Arkansas which would have repealed section 212 of the bill. Section 212 is the much publicized transition rule which I introduced permitt'..g certain steel companies to elect to carry back 50 percent of their earned but unused investment tax credits and allowing them to file a claim for a refund of taxes paid in prior years. What we voted on had been so widely reported and was so thoroughly debated that I didn't believe there was any question as to the essential elements of the provision—it was in total a $500-million refund of prior tax payments which was to be made to qualified steel companies relatively shortly after they filed the appropriate refund claim. The money would then have to be reinvested in steel facilities.

There may still be some lingering doubts as to what precisely was intended so I would like to ask the chairman of the Finance Committee, the distinguished Senator from Oregon, if his understanding of the essential elements is the same as mine.

It was my intention when I offered the provision that the credits which would be subject to the election would include all of the credits of a consolidated group which includes a major steel producer, and that the tax liability limitation on the credits would include all of the tax liability of the members of the group including the liability of predecessor corporations and

corporations acquired subsequent to the time credits were earned. The revenue estimates were based largely on published annual reports of major steel companies, and these reports included included all of the unused credits and the reported tax liabilities of the consolidated group. Is it the chairman's understanding that this was the basis for calculating the amount of credits subject to refund?

Mr. PACKWOOD. It was and remains my understanding.

Mr. HEINZ. I thank the chairman. It was further my intent that the refunds available to those companies which amounts to $500 million be made available to these companies in a timely fashion, not later than 1988. Therefore, a provision to insure that the companies do not have to await normal audit procedures was necessary. Was that also the chairman's understanding?

Mr. PACKWOOD. Yes. In fact, the thrust of the Senator's provision, as well as the 70 percent cash-out provision I included in my original package, was to get the money to these distressed companies as soon as possible because they need it now. Many need it for survival—especially steel.

If a delay were to occur, if the IRS were to hold up the release of these funds, it might get to the companies too late to be of use. Therefore, I believe we contemplated a provision to insure immediate release of the funds made available under this provision. I assume the Senator from Arkansas had the same understanding because he referred to a refund procedure several times during the floor debate.

Mr. HEINZ. I thank the chairman for his statements of clarification. Unfortunately, the draft language of this provision and the accompanying committee report do not in several respects, reflect the understanding and intent of this Senator and, based on his answers, the Senator from Oregon.

I also understand that the distinguished Senator from Louisiana, who supported the provision on the floor, will help achieve the objectives of my provision in the conference with the House. Is my understanding correct?

Mr. LONG. Yes. I supported the steel provision and believe it should be clarified to insure that it operates in an effective way.

Mr. PACKWOOD. If the Senator will yield, I will also work to ensure that the provision is amended in conference to achieve the results reflected in the comments made by the Senator from Pennsylvania and the Senator from Oregon earlier in this colloquy. As I said, this provision was intended to benefit the companies involved in a timely fashion. That is what I shall make every effort to achieve.

GENERAL CONCERN WITH TAX BILL

Mr. HATFIELD. Mr. President, I want to join the growing number of my colleagues in congratulating my friend, the distinguished Senator from my State of Oregon, Senator PACKWOOD, for developing a bill that embodies the most significant reform of our Tax Code in decades. I long have been a supporter of tax reform and have submitted versions of my Simpliform Tax Act in every Congress since 1972. I am gratified that the Finance Committee bill contains some of the reforms which I historically have advocated.

Although I have concerns with a number of provisions of the bill; namely, the retroactive effect of certain provisions, the elimination of the exclusion for individual capital gains and the elimination of the deduction for contributions to an IRA by a taxpayer participating in an employer-provided retirement plan, it is my hope that these items will be adequately addressed at conference. Consequently, I intend to suport this legislation.

Senator PACKWOOD's initiative and leadership in crafting a tax bill which embodies real reform and bringing it to the floor deserve high praise and commendation. His efforts are all the more remarkable because of the ill-advised constraint placed on him and the entire Finance Committee by the White House: that the tax reform bill must be revenue neutral.

As we complete our consideration of this bill and scrutinize its impact on individual and corporate taxpayers, we must not lose sight of the broader picture, of how this tax bill will affect our Nation's budgetary process and economy.

I have been openly critical of this administration for seeking to advance a set of budgetary priorities that ignore reality, and have been equally critical of this body for mindlessly accepting that agenda.

With the anticipated adoption of the Finance Committee bill by the full Senate, two legislative initiatives which I have opposed, Gramm-Rudman and a revenue neutral tax bill, will join together to wreak more havoc on the budget process, and on our economy, than either could manage independently. Let me explain why.

This tax bill is revenue neutral only after 5 years. That is, by 1991, any revenues lost during this 5-year period will be offset by expected revenue gains. But the magnitude of the revenue swings from year to year is staggering: a $7.4 billion increase in revenues this fiscal year, followed by a huge $22.8 billion windfall in fiscal year 1987.

In fiscal years 1988 and 1989, however, tax revenues would drop an average of $43.7 billion from the fiscal year 1987 revenue level. In other words, the Finance Committee estimates the bill will produce revenue losses of $20.8 billion in fiscal year 1988 and $21.0 billion in fiscal year 1989. Fiscal year 1990 would see an additional loss of $4.0 billion and, finally, the bill would pick up $11.0 billion in fiscal year 1991.

Mr. President, these wide revenue fluctuations will put us on a collision course with the Gramm-Rudman deficit reduction targets and I want to sound the alarm now.

In a little over 1 fiscal year, the deficit reduction legislation the Senate so cavalierly adopted will prescribe a deficit ceiling of $108.0 billion in fiscal year 1988, during which time the tax bill will lose $20.8 billion, and a deficit ceiling of $72.0 billion in fiscal year 1989, during which time the tax bill will lose $21.0 billion. In fact, the year in which this legislation finally becomes revenue neutral, 1991, is the same year that Gramm-Rudman requires the deficit be reduced to zero.

Mr. President, enactment of this tax bill—with all to commend it—will inject a greater level of instability and uncertainty into the budget process. Even under the most stable of circumstances, formulating a budget has become an almost impossible task. The current stalemate experienced by the conferees on the fiscal year 1987 budget proves the difficulty in adopting a budget that both meets the applicable deficit ceiling target and embodies a proper set of budgetary priorities.

Much of the responsibility for the deterioration of the budget process must be borne by this administration. They have used the mandates of Gramm-Rudman to legitimize a trillion-dollar budget proposal which seeks to reduce the deficit by focusing on discretionary spending, without any increase in revenues or cuts in defense spending or meaningful reform of entitlement programs. I am adamantly opposed to this agenda.

The wide swings in revenues under this tax bill during the first 5 years, as much as $43.6 billion in 1 year, will serve only to exacerbate this tension between differing, and polarized, budgetary philosophies, and to make an already difficult process that much more so.

As Gramm-Rudman blindly forces us down the stair steps of deficit reduction, this tax bill will now impair the ability of the Federal Government to pass safely on those steps. Mr. President, we can ill-afford to stumble into the whirling blade of the Gramm-Rudman sequester order. I fear passage of the bill will increase that likelihood.

Mrs. HAWKINS. Mr. President, today will stand as a historic moment in tax reform. While the Senate tax reform bill has a number of issues which have yet to be addressed in conference committee, the bill as a whole

is a step in the right direction toward tax simplicity and fairness. The bill makes sweeping changes by reducing the number of tax brackets which total about 14 today and reduces them down to 2 major tax brackets of 15 and 27 percent.

The Senate bill will ensure that all corporations will pay taxes. Multimillion dollar organizations will no longer be able to shelter their massive profits and avoid paying their fair share of tax.

I still believe that this bill hits the real estate industry especially hard, but I have been assured that a number of these provisions will be addressed in conference committee. The elimination of State sales deductions is also unfair, especially to the residents of Florida. The elimination of the IRA's was also a difficult defeat, yet we in the Senate were able to pass overwhelmingly a resolution that the IRA issue be favorably resolved in conference. But on the whole the bill before us will realistically reduce tax rates for a majority of Americans, it promotes tax simplicity and hopefully, once this bill emerges from conference it will have the support of the American public.

Mr. President, I am fully confident that Chairman PACKWOOD will defend to the utmost the promises made to us in the Senate once this bill reaches conference committee. While this is not a perfect tax bill I believe it is a postive step in the right direction.

TRANSITION ISSUES

Mr. CRANSTON. Mr. President, one of the basic and most difficult obstacles to tax reform is the question of how to accomplish the transition from current tax law to the reformed tax law.

True transition, not simply grandfathering of tax breaks for specially-favored constituents, is a matter of equity and it turns out to be costly as well.

And—the transitions provided in the Finance Committee's bill for real estate—that sector of the economy whose former benefits under current law are ended in the new bill without offsetting compensations, as in the case of capital intensive industries who lose the investment tax credit which is offset by lower corporate rates—come up short-handed.

If there is not a solution, then the marketplace adjustments which will take place under the bill's rule against passive losses will result in increased rents to tenants, abandonment of unprofitable buildings, and widespread disruption in the rental real estate market.

Retroactive changes in the tax rules for these investments are unfair and places unjustified burdens on taxpayers who made legitimate investments.

Many of my constituents have expressed concern about the retroactive effect of the bill's restrictions on investments in real estate. In particular, the disallowance of loss deductions from existing limited partnership investments has been the focus of their complaints.

These investments were made in reliance on the provisions of tax law then in effect. Congress passed very generous inducements in the 1981 Tax Act which encouraged these investors to put their money into real estate partnership.

Let me explain why the proposed changes are unfair.

In 1981 the tax laws were changed to require the use of 15-year depreciation schedules for real estate. Investors responded to that incentive and bought land, erected buildings, and provided housing and jobs. They created low-income apartments, small shopping centers, office buildings and factories.

In calculating the return on their investments, they counted on receiving the allowance of depreciation contained in the law at the time. The Senate Finance Committee bill will eliminate a substantial part of those depreciation benefits—wiping out deductions that were pivotal to the economic benefit of the investment.

In other businesses, active investors and owners can deduct their losses against all other sources of income. This is not so in the Senate bill. It is difficult for the committee to determine how to define an active real estate owner. Is the owner-manager of an apartment building considered an active owner? I think so. But under the bill the owner-manager of an apartment building could not deduct losses incurred against other income sources.

Can we get meaningful tax reform without breaking promises made by Congress earlier?

Of course we can. Simply apply the new rules to investments made after the new rules are enacted. Or provide a phaseout period which enables investors to recover their original investment and a modest return. In fact, meaningful tax reform is impossible in the absence of fair play. Unless potential investors have reason to trust the Government's tax reform promised, these promises will do little to promote productive investments. Retroactive tax reforms enacted simply to find extra revenues will destroy credibility of the law and undo that which we are attempting to accomplish through tax reform—restore confidence in our tax system.

The Senate and House conferees have an opportunity to solve these transition issues correctly and fairly. I urge them to do so and to recognize that broad-based transition must be paid for by all taxpayers as a reasonable and just cost of tax reform, just as giving up deductions pays for lower rates for everybody.

Mr. BIDEN. Mr. President, this tax reform bill, if passed, can shape the economic, social, and political fabric of America for the remainder of this century.

Millions of Americans today are disillusioned by the inequities of the Tax Code, which too often favors relatively few taxpayers. Many economic analysts also believe that the current tax law, with its shelters and loopholes, discourages sound investment and alters economic decisionmaking.

I agree with them, and that is why I am going to vote for final passage of this tax reform legislation. On balance, the bill is a good one. It will allay many of our concerns about today's tax laws, and will also provide a firm base on which the economy can prosper.

Americans want a Tax Code that broadens the base and lowers the rates, leaving more discretion in decisionmaking to the individual. They want a more equitable Tax Code that prevents tax avoidance schemes. They want assurances that every American is paying a fair share of the cost of government. They want to reduce government efforts to manage the economy through the Tax Code.

H.R. 3838 meets most tests of good tax reform.

It broadens the base on which the income tax is levied. It does that by eliminating many provisions in current law that skew investment decisions and provide tax shelter opportunities.

It removes 6 million low-income Americans from the tax roles.

It reduces the basic tax rates to encourage savings and investment.

It includes minimum tax provisions to assure that individuals and corporations can no longer avoid paying taxes.

The bill, of course, is not perfect. In particular, I am concerned that the rule structure may not be sufficiently progressive. That is why I supported the Mitchell amendment to reduce tax liabilities of middle- and low-income taxpayers. I hope that changes along these lines can be made in conference with the House of Representatives.

Yet, on the whole, the bill is a major tax reform accomplishment.

I have been a strong advocate of tax reform since I came to the Senate in 1973. Since that time, I have participated in many such efforts. Unfortunately, none of them achieved the high degree of reform in this bill.

Our tax system has now reached the point where many Americans have given up on it as a fair and effective means of financing government. More and more Americans, turned off by the unfairness of the law, have failed to report their full income. Unreported income has ballooned. As a result, we may be losing $100 billion in tax revenues today.

As it exists today, the income tax denies reasonable tax rates to low- and middle-income taxpayers, in order to preserve tax breaks and low tax liabilities for the few. In 1983, 29,800 individuals or couples, earning $250,000 or more, paid less than 5 percent of that amount in taxes. More than 3,000 of these have incomes of over $1 million.

Of equal concern is the fact that our tax system does not even result in equal tax liabilities for taxpayers with comparable income. Adding insult to injury is the fact that the tax law is deliberately written to achieve such a result. Some taxpayers can shelter income and reduce their taxes in perfectly legal ways, creating gross inequities in taxation.

The condition of our Tax Code also affects the ability of our economy to function efficiently. As it is written today, the Tax Code encourages individuals and businesses to be more concerned about tax advantage than market advantage. This has dulled the American competitive edge, at home and abroad. Hidden tax benefits received by some enterprises, but not others, have skewed economic decisionmaking. These tax benefits constitute an unrecognized industrial policy which has not worked very well.

That is not surprising when we have a Tax Code that encourages investments to be made largely on tax considerations, rather than on the economics of investing in enterprises that create jobs and make the economy grow.

These facts are important at a time when we have just had a $150 billion trade deficit. They are important when unemployment has been stuck at around 7 percent for well over a year. They are important at a time when there is much speculation about the validity of forecasts showing continued economic growth.

We are on the way to adoption of good tax reform legislation. The concepts in this bill can restore Americans' faith in the fairness of the tax system. It can free our economy from the burden of tax planning and avoidance. It is the kind of legislation I had hoped we could pass when I first came to the Senate. Over the years, I came to wonder whether tax reform was really possible. I now believe that it is within our grasp.

One final note, Mr. President. Many Senators have played significant roles in bringing this bill to the floor and in securing its passage by the Senate, especially the chairman of the Finance Committee, BOB PACKWOOD, and the ranking Democrat, RUSSELL LONG. I would like to offer my special congratulations to my friend and colleague, Senator BILL BRADLEY, on his tremendous role in bringing tax reform to the Senate. He, as much as any other person, is responsible for making the public and other policymakers aware of the need for tax reform, and in pushing it to legislative action. We and the country owe him a great debt.

Mr. EAGLETON. Mr. President, this Senate tax bill is a historic achievement. Against all odds and every prediction, we have produced a measure which is truly worthy of the name, tax reform. It reduces tax rates across the board; it eliminates from the tax rolls about 6 million of our poorest citizens; it closes off the loopholes by which wealthy individuals and corporations have avoided paying any taxes at all, and, in eliminating most tax shelters, it will encourage more productive investments.

It is a bill I am proud to support.

Mr. THURMOND. Mr. President, I rise today to support the Tax Reform Act of 1986. This legislation represents a sweeping effort to restructure the tax laws of this Nation. It is based upon the sound principle that Americans of equal income should pay equal taxes; thus creating a more equitable Tax Code for all Americans.

As recently as 1972, the local property tax was considered to be the most unfair tax by 45 percent of Americans. The Federal income tax ranked a distant second at 19 percent. However, by 1985, the Federal income tax was considered to be the most unfair tax imposed on Americans, far surpassing negative views on property taxes. I wish to commend President Reagan for recognizing this sentiment, and making tax reform his chief domestic policy initiative. I also wish to commend Chairman PACKWOOD and the rest of the Finance Committee members for their commitment to tax reform which benefits the American people, and not the special interest lobbyists.

In any legislation of this magnitude, there will be provisions with which I do not totally agree. However, I am convinced that this is good legislation when viewed in its entirety.

For individuals, this bill presents two income tax rates of 15 percent and 27 percent. This represents the lowest income tax rate in over half a century. Eighty percent of individuals will pay a rate of 15 percent or less, with an overall average tax cut for taxpayers of 6.2 percent. Approximately $100 billion of the tax burden will be shifted from individuals to the corporate sector. Furthermore, 6 million lower income taxpayers would be removed from the Federal income tax rolls. Thus, lower income workers would take home more money by being on the job, rather than on the public dole.

This legislation also impacts another area of particular concern to me—the international competitiveness of this Nation. The tax structure of our Nation is an important factor in this area. Our national tax burden is low by international standards. I am pleased that this legislation strives to maintain this tax status. The 33-percent top corporate income tax rate is the lowest of our five major trading partners. For Canada, France, Germany, Japan, and the United Kingdom, rates range from a low of 35 percent—for the United Kingdom—to a high of 50 percent—for Germany. The proposed depreciation allowances for equipment are more generous than all of our five major trading partners except Canada. By keeping rates low, U.S. firms are in a better position to compete internationally.

This legislation should also increase our domestic economic growth. The President's Council of Economic Advisers estimates that added incentives and efficiencies could increase America's growth rate by nearly 10 percent over the next decade. That could mean increased income of $600 to $900 per household each year. Employment could increase by more than 4 million over that period.

Mr. President, I would like to make one additional point. Since 1969, Congress has passed at least seven major income tax laws. There has hardly been a time when a major tax bill was not being considered in Congress. The constant rearrangement of the Tax Code concentrates more and more power in the hands of tax lobbyists, accountants, economists, and Members of Congress. The average American cannot afford the time to grasp the increasing complexities of the Tax Code. This has been unfortunate. Furthermore, it has a negative impact on business planning. Much of the impetus for this constant rearrangement has resulted from using the Tax Code to attain social goals. However, by reducing overall rates, tax incentives to achieve social goals will not be as effective. The incentive of use tax breaks relates directly to high rates. The lower the rate, the lower the value of a deduction. Therefore, with low tax rates, as provided in this bill, the decision to engage in a deductible activity will be based more on the merits and not on the tax consequences. Decreased use of the tax laws as instruments of social policy will result in a more simple Tax Code. To the extent the tax laws are written so that the average American can understand them, the decisionmaking process will be returned to the people, where it ultimately belongs.

Mr. President, in conclusion, we stand at the threshold of an historic opportunity to inject fairness into our tax system, and foster business decisions based on merit, not tax consequences. Accordingly, I support this measure and urge my colleagues to do likewise.

SEMASS

Mr. KENNEDY. Mr. President, SEMASS is a solid waste disposal facility in Rochester, MA. A construction contract was executed on July 20, 1985. At the present time, 32 communities and 2 private haulers have contracted to deliver solid waste under long-term contracts. SEMASS will be entering into future contracts with private haulers.

The following colloquy is needed in order to ensure that the current contacts with private haulers and future contracts with private businesses will not preclude the project from being grandfathered into the transition rule regarding solid waste disposal facilities.

Section 202(d)(9) of H.R. 3838 as reported by the Senate Finance Committee provides that the changes made by section 201 of the bill—concerning ACRS—will not apply to certain qualified solid waste disposal facilities. The Finance Committee report requires that, in order to be such a qualified facility, substantially all of the solid waste processed at the facility must be collected from the general public. Would you elaborate on the meaning of the phrase "collected from the general public?"

Mr. PACKWOOD. Waste collected from the general public includes all household and commercial solid waste of a type normally produced by residences, stores and other commercial buildings, schools, and offices, excluding waste which is not processable by normal waste facilities serving the public.

HAVERHILL POWER, INC.

Mr. KENNEDY. Mr. President, Haverhill Power, Inc. [HPI] was formed to develop a solid waste-to-energy plant in Haverhill, MA, on a site adjacent to an existing resource waste processing plant operated by Refuse Fuels Associates.

HPI has complied with the terms of the Senate Finance Committee transition rule, having signed a service contract with Refuse Fuels on December 31, 1985.

The shareholders who own 92 percent of the Refuse Fuels project also own 100 percent of the new project. A colloquy is needed to ensure that the December 31, 1985 agreement between HPI and Refuse Fuels is satisfactory for purposes of the transition rule since the two companies have common owners.

Does the agreement entered into between Haverhill Power, Inc. and Refuse Fuels Associates on December 31, 1985 comply with the transition rule regarding municipal waste-to-energy projects?

Mr. PACKWOOD. For the purpose of the binding contract and financial commitment criteria in the solid waste disposal transition rule for investment tax credit and accelerated depreciation in section 202(d)(9) of the bill, a service contract between related parties shall not fail to be considered a binding contract if it otherwise complies with the requirements of the transition rule and the intended service recipient was actively engaged in solid waste disposal and has long-term contracts for disposal of solid waste prior to December 31, 1985, in excess of the amounts committed under the subject service contract.

FERC LICENSE RULE

Mr. BAUCUS. Mr. President, I wish to ask the distinguished chairman of the Finance Committee a question about the so-called FERC license rule in the bill.

The bill would repeal the investment credit and modify ACRS depreciation allowances. However, section 202(d)(2) of the bill would grandfather from this change in law any project that the Federal Energy Regulatory Commission licensed or certified before March 2, 1986.

The Big Horn project in Montana was certified by FERC on May 16, 1983. There have been several changes in the project since 1983 and the developer had to return to FERC recently to have the original certificate for the project amended. The committee report indicates that returning to FERC to amend the original certificate will not cause loss of grandfather protection as long as the change in the certificate is insubstantial.

My question for the chairman is whether the change in this particular case is insubstantial. Briefly, the facts are as follows.

The original concept for the Big Horn project involved conversion of an abandoned sugar beet refinery in Hardin, MT, into a cogeneration facility that will generate electricity for sale to the Montana Power Co., and steam for manufacturing ethanol. The developer has worked diligently since 1983—when the project was first certified—to complete the transaction, but, as is typical when a small company tries to finance a power facility, unexpected obstacles have been thrown in its path.

Negotiations with the Montana Power Co. stalled in 1984. The negotiations were completed early this year after the Montana Public Service Commission was asked to intervene. In the meantime, the market for ethanol disappeared because of falling oil prices and a decision by the European Economic Community to collect a tariff on imports of a feed grain supplement that is a byproduct of ethanol production. The plan is now to install piping and steam extraction ports in the turbines for development of ethanol at a later date. Finally, when the company interviewed construction and engineering firms for the project, it was advised uniformly against using the old boilers in the abandoned refinery—which it had planned to do—because that equipment had been partly eaten away by rust and could not be counted on to generate the steam required by the facility for turning the turbines.

The basic plan to convert the abandoned refinery into a cogeneration facility has not changed. However, the following amendments will have to be made in the certificate that FERC issued for the project in 1983:

First, the original certificate said that construction would start by July 1983. The current plan is for construction to begin later this year.

Second, the developer plans to burn petroleum coke and a lower grade of coal than planned originally.

Third, the original certificate said that the project would use three existing boilers. As noted, the developer discovered that the existing boilers were unusable and will have to buy new ones.

Fourth, the original certificate said that the facility would generate 12 megawatts of electricity, while the current estimate is that it will generate 17.5 megawatts. This is due partly to the fact that more steam is available for making electricity since the developer has decided to set aside plans for using steam to produce ethanol.

The cost of the project has decreased because of the decision not to install the ethanol equipment.

Change is inevitable as a project moves from the drawing board to construction. The changes in the Big Horn project do not seem the kind that should cause loss of grandfather protection. Does the chairman agree?

Mr. PACKWOOD. The amendments to the FERC order that the Senator describes are not so extensive that they should cause loss of grandfather protection.

SOLID WASTE DISPOSAL FACILITIES

Mr. KENNEDY. Mr. President, I am interested in the application of the special rule governing depreciation of qualified solid waste disposal facilities found in section 202(d)(9) on page 1511 of the bill to a facility being developed in Holyoke, MA.

It is my understanding that the dates in the service contract by which certain conditions must be satisfied have been extended and may be further extended.

I have been informed that the original extension made no substantial modification to the contract. It also made no change in tipping fees. The Senate Finance Committee report states that adjustment in tipping fees or method or amount of compensation will not be considered a substantial modification.

Assuming that any further extensions of the contract may make changes in the tipping fees, but will

make no substantial modifications, and assuming that the original extension made no substantial modifications, am I correct in assuming that the extension and any further extensions will not cause the contract to fail to comply with section 202(d)(9).

Mr. PACKWOOD. The Senator is correct. Assuming that the circumstances described by the Senator are correct, the contract will continue to be treated as a contract described in section 202(d)(9).

INSTALLMENT SALES

Mr. PRYOR. Mr. President, I wish to discuss an issue with the chairman of the committee in the area of installment sales. As the chairman will recall, I offered an amendment in the committee, which was adopted, dealing with sales of residential lots and timeshares—including campgrounds.

This amendment begins on page 1567 of the committee reported amendment. The exception will be new section 453C(e)(4) of the Internal Revenue Code.

Section 453C(e)(4)(A)(i)(II) of the Tax Code—as added by the bill—provides that the elective method of reporting gain is unavailable if the taxpayer—or any related person—is to make any significant improvements on the lot. I understand that the committee report provides that this rule against selling improved lots doesn't include common infrastructure items such as roads, sewers, drainage, and similar items that render the lots in buildable condition. However, houses and other structures would clearly constitute "improvements."

I also understand that, if at the time the lot is sold, there is no contractual commitment to make an improvement—as defined under the committee report—then it is my understanding that the elective method of reporting the gain from the lot sale is available. Is my understanding of these provisions correct?

Mr. PACKWOOD. The Senator from Arkansas is correct.

Mr. PRYOR. Mr. President, I thank the chairman. I have one additional question.

If, at a date subsequent to the lot sale—and on the date of the lot sale no contractual commitment to make an improvement existed—the seller makes improvements—such as building a residence—and the buyer pays a fair market price for the improvement it is my understanding that the elective method under this bill could still apply to the original lot sale.

Mr. PACKWOOD. The Senator from Arkansas is correct.

Mr. PRYOR. Mr. President, I thank the chairman of the committee.

THE FACILITATION RULE PERTAINING TO THE ALLOCATION OF INTEREST EXPENSE

Mr. BAUCUS. Under section 914 of the bill pertaining to the allocation of interest expense, a so-called "look-down" rule is provided for qualified indebtedness, which is defined as debt that is not guaranteed or in any other way facilitated by a related corporation. Is my understanding correct that the reference to any other facilitation is intended to refer to arrangements where the related corporation lends its credit?

Mr. PACKWOOD. Yes, the Senator's understanding is correct.

UNIVERSITY RESEARCH FACILITIES

Mr. BAUCUS. Mr. President, I wish to clarify the Finance Committee report which clarifies that certain university research facilities may be eligible for tax-exempt bond financing where the facilities are used in university research sponsored by corporations or other nonexempt parties. The Finance Committee report is intended to state that a university facility may be used for corporate-sponsored research as long as any license or other use of resulting technology by the sponsoring party is permitted only on the same terms as the university would permit such use by any nonsponsoring unrelated party; that is, the sponsor must pay a competitive price for its use of the technology. It is my understanding that this Finance Committee provision is not intended to require that a university actually grant use of the technology to any other party. Rather, the intent is simply that any payment for use made by the sponsoring party must not be less than the payment which a nonsponsoring party would be required to pay were it granted a right to use the technology. I ask the chairman of the Finance Committee if my understanding of the provision is correct.

Mr. PACKWOOD. Yes, the Senator's understanding is correct. Universities are permitted to grant exclusive licenses or other use to any resulting technology to sponsoring parties under the Senate provision as long as the payment required for such use is set at a competitive price to that which a nonsponsoring party would be charged for comparable use.

Mr. BAUCUS. I thank the chairman for his assistance in clarifying this matter.

Mr. BRADLEY. Mr. President, I wish to clarify a statement in the Finance Committee report that sets out the circumstances under which certain cooperative university research facilities may be eligible for tax-exempt financing as applied to certain National Science Foundation sponsored research arrangements and similar such arrangements. These industry-university cooperative research arrangements involve multiple industry sponsors and provide the sponsors with a right of first refusal for royalty-free nonexclusive licenses for patients that may be incidentally obtained in connection with basic research conducted in bond-financed university facilities. Is it the Senator from Oregon's understanding that these arrangements will not be treated as a private trade or business use of the bond-financed research facilities.

Mr. PACKWOOD. Yes, the committee intends that National Science Foundation sponsored industry-university research arrangements and similar such arrangements be treated as satisfying the requirements set forth in the Finance Committee report for not treating such arrangements as private trade or business use when the university enters into a cooperative research agreement where:

First, multiple, unrelated industry sponsors agree to fund university performed basic research; second, the research to be performed and the manner in which it is to be performed is determined by the university; third, title to any patent or other product incidentally resulting from the basic research lies exclusively with the university; and fourth, sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any such research.

Mr. BRADLEY. I thank the chairman for his assistance in clarifying this matter.

INSTALLMENT SALES

Mr. DECONCINI. Mr. President, I am very concerned about the installment sales provisions of this bill. They are complicated, confusing and an administrative nightmare. As is usual in the Senate, a consensus on a solution is not easy to arrive at. One possible answer that the Senator from Oklahoma, Mr. BOREN, and I have been considering would be to treat all dealers in installment sales in the same manner. Such a proposal would include in current income, 35 to 40 percent of installment sales which would otherwise be deferred. Additionally, such a proposal would apply retroactively to January 1, 1986, and all existing installment sales arrangements would also take a hit. The idea seems to me to have merit. The Treasury Department informs me that they support this approach in concept. I will not ask the Senate to take this up so late, in this, the 11th hour. But I would encourage the chairman to give this new simple solution a close review in conference.

Mr. PACKWOOD. We will give every consideration to your suggestions in conference. We recognize your concerns, and I thank you for your comments.

TAX FAIRNESS FOR THE AMISH OLD ORDER AND OTHER RELIGIOUS GROUPS

Mr. SPECTER. Mr. President, as a result of an amendment proposed by the distinguished Senator from Washington [Mr. EVANS], individuals who claim deductions for dependents on their tax returns will be required to provide a TIN [taxpayer identification

number] for children ages 5 and older or otherwise be subject to a penalty.

It has come to my attention that this amendment might impose an unfair burden on the Amish Old Order and other religious sects. One of the underpinnings of the Bill of Rights is separation of church and state and tolerance of religious principles. Since 1930, our Nation's Tax Code has allowed those who adhere to tenets which preclude participation in public or private insurance plans to file for an exemption to the Social Security self-employment tax under section 1402 (g) of the code.

Mr. President, generally the identifying number used for tax purposes is a person's Social Security number. Since members of the Amish Old Order and other sects do not apply for Social Security numbers as a result of their religious beliefs, I wish to make it clear that this provision would not require such individuals who are opposed to applying for a Social Security number to do so for their children or other dependents by permitting the IRS to issue regulations providing an exception to this provision or continue to handle this issue on an administrative level.

Mr. PACKWOOD. Mr. President, I thank the Senator from Pennsylvania for raising this point. As the Senator states, the Tax Code has long exempted members of recognized religious sects from participation or registration in Social Security if this would violate their religious beliefs. This amendment woud not require such individuals to apply for a Social Security number for their dependents. Instead, it is my intent that the Internal Revenue Service will prescribe regulations which will provide an exception to this provision or otherwise remedy this problem on an administrative level.

THE POSSIBLE REVISION OF THE DEPRECIATION PREFERENCE UNDER THE ALTERNATIVE MINIMUM TAX

Mr. HEINZ. Mr. President, I am concerned about the required depreciation recalculation under the minimum tax provisions of the committee bill.

The issue here is not whether profitable corporations will pay tax. The committee bill has a strong backstop to assure that all companies that report income pay a reasonable amount of tax. The issue here is how much we may overtax our basic industries, how much damage we may do to economic growth and international competitiveness. This is a jobs issue, a people issue. It affects Americans who work in the steel mills and aluminum plants, on the farms and in the mines, in the chemical plants and the automobile plants, in the papermills and the shipyards, and for the railroads and the airlines. Capital-intensive companies to which depreciation is most important will have a dramatically less favorable depreciation system than noncapital intensive companies to which depreciation is less important. Clearly, some amelioration of this harsh effect is necessary if we are to avoid contributing to additional job losses in the manufacturing sector, where unemployment is already increasing at an alarming rate.

Under the committee bill, for the purposes of the minimum tax, taxpayers would be required to recalculate their depreciation using the straightline method over what is known as the ADR midpoint of the property. There are at least two major problems with this depreciation recalculation. First, the committee's definition of baseline depreciation—straightline over the ADR midpoint of an asset—stretches out depreciation over too long a period of time in proportion to the decline in productive output value of the machinery and equipment. Second, it causes a severe pyramiding, or bunching of tax, in the first 3 to 5 years after 1986 because taxpayers are not permitted properly to "net" their depreciation recalculation by assuming that in prior years they had also been using baseline depreciation.

This depreciation recalculation is so powerful that it will wrongfully drive many, if not most, capital-intensive companies into the minimum tax unless they are able to achieve and maintain very high levels of profits in proportion to their annual investments in machinery and equipment. Otherwise, the more a company spends on capital equipment, the greater the percentage of income the company will pay as a minimum tax. Companies that are thus thrown into the minimum tax will progressively be denied use of one of the keystones of the committee bill—200 percent declining balance ACRS depreciation. A mild recession would greatly accentuate this effect, unless companies engage in the self-defeating process of cutting back on their productive capital investments at the wrong time. Even in a strong economy, companies which are precluded from very high rates of return because of international competition or for other structural reasons will be affected.

In the final days before approval of the committee bill, the Finance Committee considered an amendment to change the calculation of the depreciation preference. The amendment was limited to redefining baseline depreciation: it retained use of the straightline method but substituted the asset's regular tax recovery period for the ADR midpoint. That amendment was defeated by a tie vote largely because it would have been financed by a slight increase in the corporate tax rate. But an amendment to improve the depreciation preference can be financed without any change in tax rates.

I believe that a majority of the committee believed then, and continues to believe, that the depreciation preference in the committee bill is too restrictive. Treasury officials, including Deputy Secretary Darman, have identified this as one critical aspect of the committee bill that needs to be fixed.

But before we leave to the conference committee something that, in principle, should be addressed here on the Senate floor, I would like some assurance that the depreciation preference, which is defined and computed almost identically in both the Senate and House bills, is an issue that can and will be addressed in conference. Could the chairman clarify that for us?

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. HEINZ. I yield to the distinguished chairman of the committee.

Mr. PACKWOOD. I have already indicated that the alternative minimum tax is something that we will take up in conference. Even though the computation of the depreciation preference is basically the same in both bills, the fact that the rates are different and that the Senate bill contains preference items for example, the book income preference, that are not in the House bill, automatically assures that the minimum tax will come up in conference. I can assure the Senator that there is no technical bar to the amendment of the depreciation preference in conference.

I would also like to emphasize that the sole purpose of the minimum tax is to ensure that all profitable corporations and wealthy individuals pay an equitable amount of tax. Its purpose is not to penalize capital-intensive corporations or to undermine the committee bill's depreciation system. Its purpose is not to penalize a corporation's items that arise in the ordinary course of carrying on its business. To the extent that it does so, perhaps inadvertently, it is my view that it should be changed. I am particularly concerned that the minimum tax not penalize companies merely because they have a high rate of capital investments to profits.

Mr. HEINZ. I thank the distinguished chairman for that clarification.

PLACED IN SERVICE DATES

Mr. HEINZ. Mr. President, I wish to clarify that the amendment offered by the Senator from Ohio to section 202 of the bill was not intended to modify the placed in service dates of January 1, 1992, in section 202(d)(24)(A) and April 1, 1992, in section 202(d)(24)(C).

Mr. PACKWOOD. The Senator from Pennsylvania is correct.

Mr. FORD. Mr. President, I intend to vote for the Tax Reform Act of 1986. This is a good bill. It is not a perfect bill, but it is a step in the right di-

rection to ensure that all taxpayers contribute their fair share to the financial base of this great Nation.

Kentucky taxpayers, and taxpayers across this country, are getting tired of paying taxes every April 15 while large corporations and wealthy individuals pay no taxes or even get refunds from the Treasury. This bill tells those taxpayers, there are no more free rides. It tells those taxpayers who have managed to escape paying taxes that if you benefit from the wealth of this Nation, you will contribute your fair share to its resources.

There are many good provisions in this bill. We remove close to 6 million low-income taxpayers from the tax rolls. That includes the 15 percent of families in Kentucky who are below the poverty level.

Eighty percent of all taxpayers will fall into the 15-percent tax bracket. Since 90 percent of all Kentucky taxpayers have incomes of $30,000 or less, a majority of taxpayers in our State will fall into this category. More than 316,000 Kentucky families will have their tax load lessened by 20 percent.

I believe the citizens of the Commonwealth of Kentucky, on the whole, will benefit from this bill. It will lower taxes for the majority of Americans, and does so without eliminating the interest deduction for home mortgages, or the deduction for State and local income taxes and real and personal property taxes.

Most importantly, the bill does not use excise taxes to pay for the lowering of rates. I was deeply concerned about earlier versions of the Finance Committee proposal which would have depended heavily upon various excise taxes to finance the rate reductions. This proposal would have hit Kentucky industries particularly hard and I am most pleased that it was dropped from the final version of the bill.

The Senate legislation is true reform and will increase the number of taxpayers who will not have to itemize to an estimated 80 percent. The bill increases the standard deduction for all taxpayers and also increases the personal exemption.

Kentucky industries are not unfairly disadvantaged by this bill. The Senate bill retains current law for the percentage depletion allowance, so important to our coal industry. The legislation also retains current law for the hobby loss rules for the horse industry. It protects the family farm and eliminates abusive agricultural tax shelters.

While this is a good bill, it is not a perfect bill. We have left many important issues to be settled by the conference committee.

It can stand some improvement, particularly as it relates to the deduction for the individual retirement accounts of 277,000 Kentuckians. I urge conferees to restore all or a portion of the IRA deduction for all taxpayers. I believe that the IRA continues to provide the best vehicle for retirement savings for middle-income families and the deduction should be available for all taxpayers. We created the IRA to provide an incentive for savings. That incentive was not intended to just improve the capital base of this Nation, but to encourage individual families to start taking an active role in providing for their retirement. We were trying to provide a little relief to the Social Security system by encouraging families to establish their own retirement system. And what have we found? We found we succeeded.

Tax reform is a laudable goal, and one I support. But tax reform does not just mean lowering individual rates and closing loopholes. Tax reform also means protecting and expanding those provisions which have been successful in promoting certain goals. I do not believe that the Senate is ready to say that all Americans have now provided for their retirement security and we not longer need to encourage such savings. Instead, I would argue that the IRA has worked. For whatever reason, it has encouraged individuals to set aside for tomorrow, and we should not tamper with this provision until all Americans have had an opportunity to provide for their retirement.

I am also concerned about the impact of this bill on the real estate industry. We moved in the right direction in limiting the use of tax shelters by the wealthy. Unfortunately, in the same fell swoop, we would unfairly penalized those taxpayers who are actively involved in the real estate business. The passive loss rules for the real estate industry must be revised so that legitimate business losses can be taken. I urge the conferees to this bill to consider this inequity.

I am also concerned that this bill has the effect of being retroactive with respect to current investments, particularly as it relates to the real estate industry. Individuals made business decisions based on the law at the time of the investment. This bill would subject losses and credits on those investments to the passive loss provisions of the bill. I am concerned that the conferees address this issue.

There is some question about the actual relief given to middle-income families under this bill. While it is unclear exactly how many middle-income families may benefit under this legislation, I believe that the conferees will address the problem of marginal rates and move closer to a package which will give genuine relief to this income group. The Senate is on record in support of giving middle-income groups the maximum possible tax relief.

While I am pleased that the Senate adopted an amendment which would allow a 60-percent deduction for State and local sales taxes, I also encourage the conferees to further address this issue.

Finally, I am also concerned about the impact this bill will have on deficit reduction. We have the assurance of the chairman and ranking minority member of the Senate Budget Committee that this issue can be worked out satisfactorily so to avoid negatively impacting deficit reduction efforts. I lend my support to their endeavors and urge the conferees to seriously address this issue.

On the whole, this is a good-faith effort to bring equity and simplicity to our tax system. I am convinced that the majority of Kentucky taxpayers will fare well under this bill. I sincerely hope that the concerns I have mentioned will be addressed by the conferees. Before supporting the conference bill, I will closely review it to ensure that these concerns have been addressed and that the final impact of tax reform on taxpayers and industries, both in Kentucky and across the entire Nation, will be a positive one.

Mr. CRANSTON. Mr. President, I am pleased to vote for the Finance Committee tax reform bill.

The committee bill is a good overall tax reform bill which meets the test of simplification for most taxpayers in the same income group, and the elimination of wasteful loopholes.

That 6 million low-income taxpayers will no longer pay taxes.

Many millions of middle-class families will enjoy lower taxes, especially working families with children.

The present bill assures that all taxpayers—except those who have large amounts of tax-exempt bond interest—will pay taxes on virtually all of their income. Very little tax-shelter is possible.

Popular deductions are retained for, mortgage interest; charitable contributions; State and local real property and income taxes, and a partial deduction for sales taxes; medical expenses above a 10-percent threshold; casualty losses.

For business, the bill lowers the corporate rate to 33 percent. It keeps the R&D tax credit at 25 percent; provides 3-year rapid depreciation for the semiconductor industry—a vital necessity for the hardpressed semiconductor companies.

It provides more generous depreciation treatment generally than the House-passed bill except for real estate.

It keeps favorable treatment of the loan-loss reserve for banks and regulated financial institutions.

For State and local government, the bill removes tax exempt interest from the minimum tax.

To pay for the low rates of 15 and 27 percent the bill eliminates tax favored

treatment for such popular and constructive features as:

IRA's, capital gains differential, miscellaneous deductions for tools, union dues, subscriptions, equipment for use on the job, and so forth.

It denies a deduction for personal interest expense, prevents apartment building owners and commercial building owners from deducting real estate losses against other income.

The bill also raises revenues through these actions.

A stiff alternative minimum tax on individuals and corporations which covers virtually all income except tax-exempt interest and certain other items.

Phasing in effective dates in 1987 so that deductions end on January 1, but low rates are delayed until July 1.

In January 1985 I began a series of community meetings in California which eventually took me to over 35 cities. A major topic I discussed in more than 50 meetings with Californians of all walks of life was tax reform.

In my opening statement at community forums on tax reform I raised the basic issues of tax reform.

I would like to quote from my remarks of July 25, 1985 on tax reform to a community forum held in California.

In my statement I said the following:

TAX REFORM STATEMENT FOR COMMUNITY FORUMS

Two top priority economic issues have confronted Congress since early in this session—and they will continue to occupy much of our attention over the coming weeks and months.

One is whether we should reform our complicated and inequitable tax structure—to make it simpler, to make it fairer, and to lower the rates.

The other is whether we can clamp down on federal spending in order to reduce the huge deficit that is undermining our economy.

We will discuss both in this forum.

I'm eager to learn your thoughts on these issues that affect all of us.

I want to add your thoughts and ideas to what I learned in a series of similar forms I've already conducted in California.

It has been a great educational experience for me.

Our first topic today is how to restore public confidence in our tax system.

So far, four tax reform proposals have been put forward.

They are fairly simple in broad concept—but the details are complicated.

Our current tax laws allow a huge number of often complex deductions against income to reduce a person's income tax.

Some taxpayers can and do take maximum advantage of these deductions; most taxpayers do not.

The average American taxpayer who works for a salary and has only small savings winds up benefiting little if at all from these potential deductions—at least insofar as his or her tax bill is concerned.

In fact, 62 percent of American taxpayers don't even itemize their deducations.

Of the 38 percent who do itemize, a two-thirds majority itemize only deductions for interest on their home mortgage or for payment of state and local income and property taxes.

On the other hand, wealthier taxpayers with large incomes from investments have much greater opportunities under our tax code to reduce their income taxes.

Thus the amount of the income tax that's paid—as a percentage of income—varies enormously from taxpayer to taxpayer.

Billions of dollars go each year into nonproductive tax shelters and other tax-avoidance schemes that contribute little or nothing to the strength and productivity of our national economy.

Billions more go into tax-evasion scams.

Last year the tax system collected $460 billion, but $370 billion was lost through loopholes, deductions and credits.

Another $250 billion of income is not being reported each year and so escapes all taxes whatsoever.

This causes a revenue loss of between $60 and $80 billion yearly. If we could collect that money it would make a big difference in the deficit.

The high rates, complexity and the unfairness of the present system encourage such cheating.

The complexity is also costly. Collectively, taxpayers will spend about $3 billion just to figure out what they owe the Treasury come next April 15.

Even worse, under the present tax system many individuals and business people devote an immense amount of time figuring out how to avoid paying taxes rather than how to be more productive.

Many of their investment decisions are made on the basis of what will reduce their taxes rather than what will increase productivity and jobs.

Advocates of tax reform are saying that if we eliminated most deductions and got them down to a minimum of five or six which everyone could agree on (like charitable deductions and interest on a home mortgage), we could reduce the tax rates without reducing federal revenues—and 70-75 percent of American taxpayers would end up paying less income tax than they do now.

If these figures are correct, it means that under our present tax laws, 3 out of 4 Americans pay more income taxes—and 1 out of 4 Americans pay less—than they would under a reformed tax system.

If that were all there were to the argument, adoption of some version of a modified flat tax would be inevitable.

But we don't use our tax system just for revenues.

We use it for other social or economic purposes.

We also use it to stimulate industries which need some sort of government help or indirect subsidy.

We use it to encourage private investments and savings which might otherwise not be made.

And we use it to help local and state governments by letting them sell tax exempt bonds.

Why do we do this?

Well, some business men and women argue that without tax laws which permit items like accelerated depreciation, investment tax credits, depletion allowances, or intangible expenses for drilling, some needed segments of our economy could not survive.

Investors argue that permitting lower tax rates on their return is mandatory if they are to risk their capital, especially in high-risk ventures.

State and local governments argue that they'll have to raise taxes or cut needed services and facilities if they can't issue tax exempt bonds.

The problem is that tax concessions can be used to create unproductive tax shelters, tax deferral plans, and so on which permit certain individual taxpayers to drastically reduce—or even totally eliminate—the need to pay taxes.

Tax reform means we must decide which few tax exclusions, exemptions and deductions we want to retain—and which we are prepared to give up.

And in making such choices, we must bear in mind that if we fail to give up enough of those exclusions, exemptions and deductions, we won't be able to achieve the lower tax rates most of us want.

For business people, tax reform may mean lower rates—but it probably will mean higher taxes.

Flat-tax advocates assert, however, that business men and women will benefit more by investing their money in ways that will increase the efficiency and productivity of their companies rather than in ways that merely lower their taxes.

The immediate effects will differ from industry to industry.

High tech companies seeking capital probably would benefit under some of the reforms being discussed.

But construction and home-building industries would lose if rehabilitation tax credits, rapid depreciation and liberal deductibility of interest expenses were taken away.

Who will be the winners and who will be the losers if we adopt a modified flat tax?

Will our economy be better or worse off over-all?

Essentially, the question I would like to discuss is two-fold:

1. Is the tax system the best way to subsidize—in an effort to stimulate—the American economy? We could after all, provide the same help through direct expenditures, subsidy payments, loan guarantees and other means which do not involve the tax system. But they would involve direct outlays from the treasury. And it's hardly likely that any new spending will be approved at a time when there's a major effort underway to cut spending. Even though—substituting a limited spending subsidy could be cheaper than a tax subsidy which can't be limited.

So are these alternatives good ideas?

More to the point, are they—right now at least—politically practical?

2. Do the benefits our economy and our society derive from the current tax system outweigh the fact that it places an unfair tax burden on the majority of Americans?

In the long run, is it worth it to 3 out of 4 American taxpayers to pay more taxes than they would under a modified flat tax plan, so that the economy can be stimulated by permitting wealthy investors to pay proportionately lower taxes?

And if we decide to adopt a tax reform proposal, what are the few deductions we should retain?

These are not easy questions.

The Finance Committee and in turn the Senate have answered the questions of what deductions to give up in exchange for low rates.

All in all the Committee and the Senate have done a good job.

The bill has some very, very good provisions and some that are not so good.

It is now up to the conference Committee to produce a final product that is better than the bill passed by either the House or the Senate.

We who want true and fair tax reform are hopeful they can do it.

Mr. QUAYLE. Mr. President, in a very short time we will cast an historic vote on a measure designed to reform our Tax Code. Rarely has such a radical departure from current law seen what is virtually unanimous support. Senators on both sides of the aisle are in chorus for their praise of this measure. A coalition ranging from retailers to consumer protection groups, from distillers to religious organizations, from manufacturing to agriculture, and public opinon groups across the political spectrum all favor the Finance Committee's bill.

The distinguished chairman of the Finance Committee, Senator PACKWOOD, deserves the lion's share of credit for crafting this proposal which drew together a strong, wide-reaching coalition just as many had pronounced tax reform dead. Last December, I said that, given the fundamental flaws of the House-passed tax bill, the Senate would have to undertake a massive salvage operation in 1986 if Congress was to produce the reform of the Federal income Tax Code that the American people demand and deserve. Skeptics doubted that it could be done, but the fact is, we fixed it in the Senate. The bill the Senate Finance Committee produced, which I expect will pass by an overwhelming margin this afternoon, is a vast improvement over the measure approved by the House of Representatives.

It is significant that during consideration of this bill on the Senate floor, no major amendments to alter the bill's basic structure were adopted. Many provisions when considered alone, such as IRA's, the deductibility of charitable contributions for nonitemizers, and others, may merit inclusion in a tax plan, but were voted down when offered as amendments to the Senate measure. I believe, however, that on balance, this bill is a fair package, and all its provisions must be viewed as a part of the larger package designed to lower the rates, to simplify the structure, and to make a more equitable tax system. Certain deductions and exclusions which may produce very legitimate results are no longer necessary given the overall effect of a low-rate, broad-based tax plan such as the Finance Committee measure.

The Senate bill represents true tax reform. Throughout the course of debate over tax reform during the past 4 years, politicians found it difficult to undo the grip of special interests and enact a fairer tax system. The House-passed tax bill is a product of this game of special interest politics and thus does little to eliminate the scores of loopholes, special exclusions, credits, exemptions, deductions, and forms that we now have.

Corporations, like individuals, should pay their fair share of taxes. Without a doubt the current Tax Code allows too many firms to escape their obligation, but the House bill, if enacted, would shift a punitive new tax burden onto corporations, and increase the cost of doing business. These costs would inevitably be paid through slowed economic growth and lost jobs. The Senate plan, however, provides for more efficient allocation of investment, capital formation, and a more sensible and better tailored alternative minimum tax than that proposed by the House, to prevent profitable corporations from avoiding taxation.

The Senate Finance Committee package proved to be just the ticket for Congress to put the brakes on more tax breaks for special interests. After one false start, the Finance Committee was able to turn the House's tax reform piece of coal into a diamond, through a near halving of the top personal tax rate, elimination of over 6 million low-income taxpayers from the tax rolls, and placing nearly 80 percent of all remaining taxpayers in the 15-percent rate bracket.

I am proud to note the several similarities between the bill we are about to vote on, and the tax reform proposal which I first introduced over 4 years ago. Both plans embrace what I perceive to be the essential principles of tax reform—simplicity, efficiency, low rates, and fairness—through a substantial reduction in the top marginal tax rate, an elimination of the bias against savings inherent in our current Tax Code, a substantial increase in the amount of income the American taxpayer may earn—and keep, and through retaining the deductions which are necessary to maintain the values and social institutions which we all treasure in this country. On the corporate side, both the Senate bill and my plan provide for a lower, broad-based tax rate and eliminate the provisions of the current corporate tax code that foster shortsighted investment strategies, favor one industry over another and permit large corporations to pay no taxes.

Mr. President, I further support this tax bill as it will benefit my home State of Indiana. An economically efficient, equitable Tax Code is essential to the continued survival of Indiana's agricultural and manufacturing industries. Indiana's 81,000 farmers will no longer have to compete with those who invest in agriculture only to enjoy tax benefits. Simply put, tax-loss farming leads to chronic overproduction which results in lower crop prices and net farm income. Correcting this flaw in our Tax Code will serve Indiana agriculture well. Furthermore, the Senate tax bill will allow farmers and other self-employed taxpayers to deduct 50 percent of the costs associated with health insurance. This new deduction addresses the inequity faced by farmers and small businesmen who must pay for health insurance with after-tax dollars under the current Tax Code, while employees of larger corporations receive such benefits tax free.

Indiana's large industrial sector also stands to gain from the passage of this bill. A recent study by the Center for Tax Policy Studies at Purdue University in West Lafayette, IN, indicates that the after-tax return on investment for selected industries ranging from high technology to smokestack is higher in every case than the return under either current law or the House bill. A Tax Code which fosters capital formation and that allows firms to make their decisions on marketplace factors rather than the bias of the tax system is essential to allow domestic industry to compete with foreign producers. This will be of great benefit to the steel industry which has suffered through the years from unfair foreign competition.

Mr. President, I urge the passage of this bill. The American people deserve and expect true and meaningful tax reform. I also urge my colleagues who may be appointed conferees to stand firm. The Senate bill is a vast improvement over the House-passed measure. For all the reasons I have mentioned, I firmly believe that in the upcoming House-Senate conference, negotiators should agree on a final tax overhaul package that closely resembles the Senate bill, which is tax reform truly worthy of the name. To do otherwise, in light of the mandate this measure has received from the American taxpayers would be irresponsible on the part of Congress.

EXEMPTION OF ISRAEL BONDS FROM IMPUTED INTEREST RULES

Mr. WILSON. Mr. President, I rise to commend the Finance Committee for including in its tax reform bill a provision that is designed to remedy an unintended impact of the imputed interest rules that we passed as part of the 1984 tax bill. The provision I am referring to is contained in section 1812(b)(5), and it is identical to S. 1619 which I introduced on September 10, 1985.

The reason that this change to the 1984 tax bill is needed is that under the imputed interest rules contained in that bill, Israel bonds have become so disadvantaged that, without a change, no one would be able to afford the tax consequences of buying them.

Mr. President, Israel bonds serve a vital role in the fight against Israel's staggering financial responsibilities. At present, Israel devotes approximately two-thirds of its budget to defense and debt service. Many of the bonds that

are issued do yield market rates, but as a means of lowering the costs of debt service, some bonds yield as low as 4 percent. This savings of more than 50 percent on what Israel would otherwise have to pay is of enormous importance.

Furthermore, it must be evident that the people who buy Israel bonds do so not as a matter of tax planning, but with entirely philanthropic motives. Indeed, according to the Wall Street Journal, Israel sold more than $102 million of its bonds in the United States in 1984, and an additional 44 million dollars' worth in the first 7 months of 1985.

For our tax laws to penalize such efforts—by taxing the holders of Israel bonds for income of more than twice what they actually receive—would not only be unfair, but truly counter to our national interests. It is quite apparent that we should do all that we can to encourage voluntary efforts to solve Israel's almost overwhelming financial problems.

I am pleased that the Finance Committee recognized the unfairness of applying the imputed interest rules to Israel bonds, and appreciate their incorporating my proposal, S. 1619, that rectifies this problem.

Mr. President, I thank the distinguished chairman of the Finance Committee, Senator PACKWOOD, for his help in moving this matter along.

SMALL IDB ISSUES

Mr. SPECTER. Mr. President, I congratulate Mr. PACKWOOD and the members of the Finance Committee for their success in bringing before this body a measure that will constitute a major step forward in creating a more equitable and comprehensive tax system. Our tax system, however, has been not merely a means for collecting revenues, but a tool to achieve the public purpose of encouraging economic growth and development, and in some respects the Tax Code has been successful in this venture.

One method of promoting economic development that has been quite successful is the use of Small Issue Industrial Development Bonds. The intent of Congress in establishing the tax incentives for use of IDB's was to encourage capital investment and stimulate economic development and this is precisely what has occurred.

Small issues have stabilized marginal neighborhoods, diversified the economic base and helped small and family-owned businesses to expand by providing lower costs of capital for businesses. This provides inducements to businesses to take risks and enter blighted areas. Small issues have been critical to my State's efforts to create and retain jobs especially when the State has been so hard hit by the loss of manufacturing jobs. For example, during the 1970's Philadelphia lost approximately one-half of their manufacturing jobs. Small issues are critical to our efforts to revive our economy and diversify our economic base.

In 1983 and 1984, Pennsylvania was the Nation's largest issuer of IDB's. Since 1967, when IDB's were first issued, the number of new jobs created in the State total well over 600,000, while the number of jobs retained exceeds $1.5 million. Between one-half and two-thirds of these IDB projects in the State have been for nonmanufacturing. If the sunset is not repealed, Pennsylvania probably will not be able to assist at least 50 percent of the industrial companies now encouraged to grow and to employ State residents.

Nonmanufacturing projects in Pennsylvania that would not have been accomplished without IDB financing range from transforming a vacant plant into a meat processing plant; expanding a cottage industry into a full-time small business, and creating a country market; to converting abandoned space into business centers.

In Philadelphia, between 1981 and 1984, the average annual use of IDB's was about $215 million which stimulated $1 billion in investments. Since 1981, almost 34,000 new jobs have been created through IDB assisted projects, and the same number of older jobs retained. The two taken together comprise close to 10 percent of the city's 1980 work force. Roughly two-thirds of Philadelphia IDB financing was for nonmanufacturing projects.

These IDB's are not a tax bonus for large wealthy companies who do not need tax-exempts. Although small issues are used on occasion to attract larger, more stable companies to blighted or risky areas, this not the rule since the $40 million limit imposed in DEFRA has kept most of them out of the market. Over two-thirds of the State's IDB projects were for less than $1 million.

Ninety-five percent of the State's IDB projects were with companies with fewer than 100 employees. In Philadelphia, two-thirds of IDB financing was for projects of $500,000 or less, and three-fourths was $1 million or less, helping small businesses who need longer term, lower interest financing in order to implement their capital expansion projects.

The condition of the Federal Treasury has also been aided by IDB's. The city of Philadelphia estimates that $30.3 million in Federal income taxes has been generated by the new jobs created.

As you can see, Mr. President, this program is working in Pennsylvania. But we need it beyond December 31, and we need to give our local officials some continuity. Therefore, I am deeply concerned with the Finance Committee's failure to repeal both sunsets—as the House did—or, at a minimum, extend the sunset contained in current law for nonmanufacturing use of IDB's, due to expire at the end of this year. The elimination of small issue IDB's for nonmanufacturing functions will result in the loss of many vital public purpose projects and must not be allowed to occur.

I would urge the Chairman and all my colleagues to adopt the House position on this issue and eliminate the sunsets on small issue IDB's.

Continuation of local development in Pennsylvania requires the continuation of tax incentives for small issues. The termination of this incentive, coupled with the imposition of a new lower volume cap of $100 per capita after 1986 and the depreciation penalty, would deal a very harsh blow to the economy of Pennsylvania. In Pennsylvania, we need between $100 and $120 per capita for small issues alone. Other regions of the country will continue to receive other tax benefits to help stimulate their local economies; we need the integrity of the small issue program maintained.

However, simply extending the sunsets would not be sufficient to ensure continued investment, considering the effects of a reduced volume cap as well as the depreciation penalty imposed on small issues. Under the Finance Committee proposal, equipment financed with small issue IDB's loses the cost savings that Congress intended to be offered for this type of financing, because depreciation penalties for this equipment would make it as expensive or even more expensive than conventionally financed projects.

Again, I urge that during the conference on the tax bill: First, the sunsets for small issues be repealed; second, the volume cap be raised to permit Pennsylvania to dedicate between $100 and $120 per capita to small issues without denying other types of tax-exempt financing that are critical to the Commonwealth adequate volume allocations; and third, the depreciation penalty be eliminated. Attention to these provisions will enable State and local governments to maintain the vital public purpose they serve and continue to provide incentives to businesses to grow and help renew struggling areas that might otherwise decline.

TAX TREATMENT OF COMMUNICATIONS SATELLITES

Mr. LEAHY. Mr. President, the chairman knows that as ranking member of the Appropriations Subcommittee that oversees NASA, I strongly support efforts to ensure the viability of the U.S. space program.

Mr. PACKWOOD. I share the Senator's commitment to a strong space program.

Mr. LEAHY. As a result of the space shuttle disaster and the subsequent explosions of the Delta, Atlas-Centaur, and Ariane rockets, it is now impossi-

ble for U.S. firms to launch commercial satellites. In addition, the shuttle is not expected to resume launches for at least 2 years, further preempting our ability to launch commercial communications satellites.

Mr. PACKWOOD. The committee was aware of this problem and attempted to address it in the committee's original legislation.

Mr. LEAHY. Specifically, due to the delay in launch dates, communications satellites will not be able to meet the placed in serve dates to qualify for Investment Tax Credits. It is simply physically impossible to launch these satellites in time to meet the deadline.

Mr. PACKWOOD. We attempted to address this problem, but are now aware that the remedial language we originally adopted in committee was dropped inadvertently. That language, however, has been included in our technical corrections package. Specifically, we have tried to assist the firms which would be most directly affected by the launch date problem, namely those involved in the international satellites communications.

Mr. LEAHY. I thank the chairman for clarifying this matter. And, I would urge him and the other Senate conferees to protect this provision, which is most important to the U.S. space program, during the Committee of Conference on the Tax Reform Act of 1986.

TRANSITION RULE FOR REGIONAL RAILROADS

Mr. GRASSLEY. I would like to ask a question of Senator PACKWOOD. It had been my intent to offer an amendment to the tax reform bill, H.R. 3838, to provide a transition rule for regional railroads which have acquired and presently operate segments of formerly bankrupt carriers. The amendment and justification are contained in my letter to the chairman of June 17.

The chairman has clearly expressed his intent that H.R. 3838 as reported by the Finance Committee should be kept as free of amendments as possible. It is my desire to cooperate with the chairman. However, it is my opinion that this amendment has great merit. I wish to assist the chairman in his efforts to secure passage of as clean a bill as possible. Therefore, I asked the chairman for his assurance that this amendment is already within the scope of the conference and will be considered by the conferees.

Mr. ABDNOR. Will the Senator from Iowa yield the floor?

Mr. GRASSLEY. Mr. President, I would be more than happy to yield the floor to the distinguished Senator from South Dakota.

Mr. ABDNOR. Mr. President, I rise to support the transition rule proposed by the distinguished gentleman from Iowa. This rule will allow redemption of unused investment tax credits by regional railroads which acquire and operate segments of the bankrupt agricultural carriers, the Rock Island and the Milwaukee.

I support redemption of investment tax credits and I am sorry that Chairman PACKWOOD's original across-the-board 70 percent redemption proposal was not retained in the bill before us today. This would have been a large help to farmers and basic industries. The Finance Committee chose to single out the steel industry because of its depressed State and subsequently the Senate voted a limited version of ITC redemption to farmers. It is appropriate to extend this kind of provision to other entities who are equally deserving. Fairness demands no less.

The Grassley transition rule is limited in scope. ITC redemption would only be available to those regional railroads which were the centerpiece of private sector restructuring of the Rock Island and Milwaukee. These railroads suffered depressed earnings at the very time they were acquiring and rehabilitating thousands of miles from liquidating and bankrupt carriers. In all cases their only option was to take on Federal debt as the private markets were not available. Had these carriers, such as the Soo/Milwaukee, the Chicago North Western, and the Missouri-Kansas-Texas not stepped forward to buy and rebuild failing railroads, thousands of shippers in a large area of middle America would have completely lost rail service.

I am pleased that Chairman PACKWOOD and ranking member LONG of the Finance Committee have agreed to take this transition rule to the conference. The public benefits are many. First, while the total redemption is estimated at $110 million, all $110 million will be immediately returned to the Treasury to retire Federal debt. This is an absolute requirement, and a return to the Treasury which reaches beyond anything I am aware of in a transition rule in this legislation. These ITC's will then not be available to the railroad to offset future profitable operations. Further, Federal debt, much of which will not berepaid for three decades with subsidized interest rates, will be cleaned from the books. This will contribute to Federal efforts to further privatize railroads by lessening their dependence on Federal agencies.

Mr. Chairman, I am confident that once you have had an opportunity to study this transition rule, you will vigorously support it in conference and allow the hard-pressed regional railroad to realize the incentives that Congress intended when the investment tax credit was first established.

Thank you Mr. President. I yield the floor.

Mr. PACKWOOD. The subject of carry forward investment tax credit is contained in H.R. 3838. The proposed amendment of the Senator from Iowa is therefore within the scope of the conference. I have reviewed the amendment and will be glad to work with the Senator on this during the Senate-House conference.

ACRS AND ITC

Mr. RIEGLE. Mr. President, I wish to enter into a colloquy with the distinguished floor manager of the bill regarding the transition rules contained in the committee's tax reform bill as those rules apply to accelerated cost recovery and the investment tax credit. I would like to clarify the situation of an auto assembly plant that is under construction in Flat Rock, MI.

Mr. PACKWOOD. I would be happy to join in this exchange with the Senator. He and I have previously discussed the circumstances of that assembly plant, including its financing.

Mr. RIEGLE. Section 202(b)(1)(C) of the bill now before the Senate contains transition rules that retain the benefits of the accelerated cost recovery system and the investment tax credit for equipped buildings if certain requirements are satisfied. Section 202(b)(3) of the bill provides further that property will be treated as satisfying the requirements of section 202(b) if: First such property is placed in service by a taxpayer who acquired the property from a person in whose hands the property would otherwise qualify for transition rule relief under section 202(b); second the property is leased back by the taxpayer to such person, and third, the leaseback occurs within 90 days after such property was originally placed in service provided that this inservice date is no later than the dates specified in section 202(b)(2).

The committee report states that the committee "intends that the special rule for sale-leasebacks apply to any property that qualifies for transitional relief under the bill. * * *" According to my understanding of this rule, if an automobile plant that is under construction qualifies for transition rule relief as an equipped building, a portion of this equipped building may be sold and leased back by the automobile manufacturer in accordance with the requirements of section 202(b)(3) without in any way vitiating the tax benefits associated with either the leased or retained portion of the equipped building. I would ask the chairman if my understanding is correct.

Mr. PACKWOOD. Yes; the Senator's understanding is correct.

Mr. RIEGLE. In addition, the committee report states generally that machinery and equipment will qualify for transition relief under the act if it is included in an equipped building that qualifies even if that machinery and equipment does not qualify individually under the capital cost recovery or investment tax credit transition rules contained in sections 202 and 211 of

the committee bill. Section 202(b)(2) of the act provides, for instance, that property with an ADR midpoint of less than 7 years must be placed in service prior to January 1, 1987 in order to receive current law treatment for ACRS and ITC. In addition, section 211(a) of the act, in proposed section 49(d)(2)(B) of the Internal Revenue Code, provides more restrictive in-service date rules for certain property with class lives less than 7 years than it does for property with class lives greater than 7 years.

It is my understanding that, if property with a class life of less than 7 years is incorporated into an equipped building, then such property would not independently need to satisfy the special transition rules. Instead, such property would qualify for transition relief as part of the equipped building—as long as the equipped building otherwise qualifies. Is my understanding correct?

Mr. PACKWOOD. The Senator's understanding is correct.

Mr. RIEGLE. Now, an automobile assembly plant is currently under construction in Flat Rock, MI, and it is being financed in part through a sale-leaseback transaction. Ground was broken in May 1985, and the plant is expected to be placed in service in the middle of 1987. As I understand it, based on the Finance Committee chairman's explanation, that plant in its entirety will qualify for tax benefits computed under transition rules for ACRS, and the entire equipped building would qualify for 85 percent of the ITC.

Mr. PACKWOOD. Yes; the Senator from Michigan is correct. The entire plant would be grandfathered under the bill as it is now before us, assumming that it met the requirements of section 202(6)(3)l and, under the transition rules, it would be accorded the tax benefits of current law depreciation and 85 percent of the investment tax credit.

Mr. RIEGLE. Mr. President, I thank the Finance Committee chairman for clarifying this matter.

Mr. WARNER. Mr. President, earlier this year we all witnessed the horrible tragedy of the explosion of the space shuttle *Challenger*.

As we have read over the past week, with the excellent report of the Rogers Commission, NASA will not be launching any shuttles for quite some time to come.

Combined with other setbacks in launch capability in this country and abroad, the chances of being able to place any satellites in orbit for the next few years are slim indeed.

How is this relevant to the tax reform legislation we are now considering?

The tax bill, as reported by the Senate Finance Committee, eliminates the investment tax credit as of January 1, 1986.

However, the bill contains a phase-in for equipment already contracted to be built and which will be placed in service by January 1, 1989.

Normally, that would not be a problem for the communications satellite industry, since once satellites are built they need, for technical reasons, to be put into orbit as quickly as possible.

However, with the explosion of the *Challenger* and the resulting delay in the American space program, as well as the destruction of the European rocket Ariane last month, these American companies will not be able to take advantage of the investment tax credit they originally planned on having.

A generic rule for the industry will seek to put back into the bill what was intended to be there in the first place.

My generic rule attempts to assist only those companies affected by the unexpected loss of launch capability and, therefore, grants a 2-year extension to those satellites previously scheduled to be launched, and hence be placed in service, before July 1, 1988.

I view this generic rule as being revenue-neutral because it merely attempts to assist satellites already scheduled to receive the investment tax credit prior to the drastic cutback in launch capability this year.

In addition, I have excluded any launch scheduled to occur after July 1, 1988, and not January 1, 1989, since many of the satellites in the latter half of 1988 could have slipped several months into 1989 through expected launch delays.

Mr. President, this generic rule seeks to rectify a situation that was totally unexpected and for which this industry, as well as the rest of the country, was totally unprepared.

This is an excellent example of one of the purposes for which the transition rules of the bill were designed.

These rules are meant to assist specific industries and companies in taking into account changes in the Tax Code that were unforeseen and unexpected.

The language that makes the most sense for the situations as follows:

GENERIC RULE

(To be added to page 1523)

Amendment to Section 202(d) of Senate Bill

(29) COMMUNICATIONS SATELLITES.—Solely for purposes of Section 202(b)(2), any communications satellite shall be treated as being property with a class life of 20 years, provided that it meets the requirements in section 202(b)(1), has a written agreement prior to May 1, 1986 which requires the initiation of payments and provides a launch date originally scheduled to occur on or before July 1, 1988.

Mr. PACKWOOD. I thank the Senator from Virginia and I will take note of his interest during the conference on the Tax Reform Act of 1986.

FOREIGN ISSUES

Mr. DODD. Mr. President, I have two questions concerning the foreign area.

I first would like to clarify for the record the treatment under the committee bill of controlled foreign corporations actively engaged in the commodities business. The committee bill excludes from foreign personal holding company income active business gains from the sale of commodities if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities. Am I correct in my understanding that the active business of a producer, processor, merchant, or handler of commodities includes not only its trading in physical commodities, but also financial transactions which constitute bona fide hedging transactions integrally related to its principal business of trading in physical commodities?

Mr. PACKWOOD. The Senator is correct.

Mr. DODD. My second question concerns the treatment of active dealers in foreign currency. The committee bill excludes from foreign personal holding company income any foreign currency gains that are "directly related to the business needs of the controlled foreign corporation." Transactions in foreign currency are a necessary part of the business of an active foreign currency dealer. Am I therefore correct in my understanding that the foreign currency gains derived by a controlled foreign corporation from its business as an active foreign currency dealer are excluded from foreign personal holding company income?

Mr. PACKWOOD. The Senator is correct. This clarification recognizes the similarity of gains of foreign currency dealers to gains of active dealers in securities and commodities. The bill excludes these gains from the definition of foreign personal holding income because such gains are not derived from passive or speculative investments.

DEFINITION OF RESEARCH COSTS QUALIFYING FOR THE R&D CREDIT

Mr. HATCH. Mr. President, I would like to address three questions to the distinguished chairman of the Committee on Finance, Mr. PACKWOOD, concerning the definition of qualified research expenditures for purposes of the incremental research tax credit, which is extended for 4 years under the committee amendment.

First, the committee report states that the amendment sets forth an express statutory definition of qualified research for purposes of the credit because "the committee believes that the definition has been applied too broadly in practice, and some taxpayers have claimed the credit for virtually any expenses relating to product de-

velopment." The committee report also notes that "according to early data on the credit, the Treasury has reported, many of these taxpayers do not engage in high technology activities."

I ask the chairman to confirm that the research credit is not limited to businesses in industries that are often referred to as "high technology" industries, such as the computer or semiconductor industries. Am I correct that companies in smokestack industries also are eligible to claim the credit if they increase their qualified research expenditures?

Mr. PACKWOOD. The Senator from Utah is correct. The statutory definition of credit-eligible research in the committee amendment focuses on the nature of the particular research activity, not on the industry classification of the business conducting the research. Thus, the committee amendment targets the credit to research undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in developing a new or improved business component for sale or use in the taxpayer's trade or business.

Mr. HATCH. My second question related to the availability of the research credit for expenses of improving an existing product, as compared with the costs of developing an entirely new product. Am I correct that the exclusion from credit-eligibility for activities with respect to a business component after the beginning of commercial production of the component does not preclude the costs of improvements in an existing product from eligibility for the credit?

Mr. PACKWOOD. The Senator from Utah correctly describes the operation of the committee amendment. Under the amendment, qualified research means research—meeting certain other requirements—that is undertaken for the purpose of discovering information: first, that is technological in nature; and second, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. Thus, for example, the expenses of an automobile manufacturer in developing, through a process of experimentation, a more efficient and reliable diesel fuel injector are eligible for the incremental research tax credit even though the research expenses are incurred during or after production by the manufacturer of automobile engines containing the existing—unimproved—diesel fuel injector.

As the Senator from Utah pointed out, the committee amendment provides that activities with respect to a business component after the beginning of commercial production of the component cannot qualify as qualified research. That is, no expenditures relating to a business component are eligible for the credit after the component has been developed to the point where it either meets the basic functional and economic requirements of the taxpayer for such component or is ready for commercial sale or use. Thus in the example I mentioned, the costs of any activities of the automobile manufacturer with respect to the improved diesel fuel injector after the beginning of commercial production of the improved diesel fuel injector would not be eligible for the research credit.

Mr. HATCH. My final question relates to the effective date for the modifications made in committee amendment to the definition of qualified research eligible for the incremental tax credit. Am I correct that the modified definition of qualified research in the committee amendment applies to taxable years beginning after 1985, and that no inference is intended for prior taxable years as to what activities qualified or did not qualify for the incremental research tax credit?

Mr. PACKWOOD. That is correct. The amendments made by section 1301 of the committee amendment are effective for taxable years beginning after December 31, 1985. No inference is intended by the committee as to the definition of qualified research for purposes of the credit for prior taxable years.

Mr. HATCH. I thank the distinguished chairman for his clarification of these three matters.

Mr. McCONNELL. Mr. President, many of my colleagues have spoke eloquently on the passage of the tax bill now before us and I will not spend a great deal of time adding to the words already spoken on the floor. I suppose, in the final analysis, when historians write the chapter which describes the great tax bill of 1986 many of the details which we have labored over for so many hours during the past few days will be relegated to a footnote.

What will be remembered about the bill which we approve today, however, is that the average taxpaying American now has a greater reason to believe that the U.S. Senate can and will put partisan interests aside to approve legislation that returns a substantial measure of fairness and equity to our Tax Code. None of us can hope that the statements made in this Chamber will do anything more than gather dust on the back shelves of America's libraries. But in the years ahead millions of Americans as they fill out tax form 1040 will feel the affect of what we have said and what we have done.

Mr. President, this, of course, is not a perfect bill. I join those other Senators who believe that additional work needs to be done with regard to individual retirement accounts and the real estate provisions of the tax bill. I have opposed amendments making changes in these areas, however, because I agree with the chairman of the Finance Committee, Senator PACKWOOD, that change and compromise on these issues is best initiated in conference.

Some have suggested, Mr. President, that the tax bill voted on today is historic. Perhaps this is true—it has been over 50 years since the top individual tax rate has been as low as 27 percent. Furthermore, 6 million of the working poor in the United States will be removed from the tax rolls by this legislation. And 80 percent of the American public will pay a top rate of no higher than 15 percent.

Yes, this is an historic tax bill, but our place in the history books should be the least of our concerns. What we do today is return equity and fairness to the tax laws of this country. And in the end we have no greater responsibility to our constituents than assuring fairness in the laws of this great Nation.

VETERANS' EXEMPTIONS FROM A TAX LEVY

Mr. MURKOWSKI. Mr. President, before the Senate votes on passage of H.R. 3838, it is important to note a concern I have regarding a matter which will affect our Nation's veterans.

I have generally agreed with Senator PACKWOOD that, although not perfect, the proposed Tax Reform Act goes a long way toward achieving needed tax reform. It is imperative not to begin to whittle away this package to address every Member's concerns. Senator PACKWOOD has done an absolutely meritorious job in guiding this package through the Senate. I commend him for his tireless and skilled efforts, as well as those of the ranking minority member, Senator LONG, and their very talented staffs.

Mr. President, we have been told repeatedly by Senator PACKWOOD throughout consideration of this measure, that additional changes can—and will—be made in conference with the House.

In response to Senator PACKWOOD's request, I now raise an issue which needs some flushing out, further explanation, and perhaps modification during the House/Senate conference process.

In both the House and Senate versions of H.R. 3838, new exemptions from a tax levy are proposed for certain veterans' benefits. Current law does not provide such exemptions. The Secretary of the Treasury is authorized to collect taxes by levy upon property and rights to property when an individual fails to pay taxes owned to the Government. No property or rights to property are exempt from such levy unless specifically exempted by section 6334(A) of the Internal Revenue Code. Section 554 of the bill

as reported by the Finance Committee would establish an exemption for certain VA benefits.

The report which accompanies this bill states:

[U]nder present law, various payments such as unemployment benefits, workmens' compensation, a minimum amount or ordinary wages, as well as certain pensions and annuities, are exempt from levy. * * * The committee believes that various military service-connected disability payments should be exempt from levy, just as other similar payments are exempt from levy.

I have concerns relating to the seemingly arbitrary selection of the benefits which are proposed to be exempted. The VA oversees a massive system of entitlement and benefit programs for our Nation's veterans, many of which would be exempted by the bill. The bill would exempt any amount payable to an individual as a service-connected disability benefit under title 38, United States Code. These programs would include: disability compensation, life insurance, specially-adapted housing, vocational rehabilitation, educational assistance for veterans, educational assistance for survivors and dependents of certain veterans, housing and small business loans for veterans, and automobiles and automobile adaptive equipment for disabled veterans.

However, without explanation, the bill would not exempt certain other important VA programs which also provide benefits due to service-connected disabilities of veterans. These would include: death compensation, dependency and indemnity compensation [DIC] for survivors of veterans who die on active duty or as a result of service-connected disabilities, burial benefits payable for the benefit of a veteran who dies as a result of a service-connected disability, and certain VA benefit payments on behalf of an incompetent veteran.

For example, how was it determined that education benefits for dependents and survivors of certain Vietnam-era veterans would be exempt, but DIC paid to survivors of those who died in Vietnam and otherwise on active duty or of their service-connected disabilities would not be? Why would business loans be exempt, but not payments made on behalf of incompetent veterans?

There may be some very logical reasons behind these choices of categories, but they are not clear to me. I request that in the interest of equity, the distinguished chairman and ranking member of the Finance Committee give careful consideration to the concerns I have raised. I would be happy to discuss the matter further with my colleagues prior to conference. My staff is available to work with the Finance Committee staff in order to ensure that our Nation's veterans and the survivors of those who died on active duty are treated fairly by the

changes proposed in the Tax Reform Act of 1986.

Mr. DOLE. Mr. President, I want to make a parliamentary inquiry at this time.

As I understand it, earlier there was a unanimous-consent agreement that at 3:15 there would be a series of speakers recognized: Senator BRADLEY, 10 minutes; Senator METZENBAUM, 5 minutes; Senator BYRD, 5 minutes; Senator DOLE, 5 minutes; Senator LONG, 10 minutes; Senator PACKWOOD, 10 minutes.

By that time it would be 4 p.m. There are still four amendments pending, all of which I understand will be opposed—amendments by Senator BYRD, Senator MCCONNELL, Senator MOYNIHAN, and Senator LAUTENBERG.

It is now 3 minutes to 3, and there are Members ready to speak on the bill.

A parliamentary inquiry: What happens at 3:15?

Mr. MOYNIHAN. Silence.

The PRESIDING OFFICER. The period from 3:15 to 4 o'clock is for debate only. No amendment can be offered during that period.

Mr. DOLE. And if the amendments are still not disposed of, we would be back on the amendments at 4 o'clock?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Without debate.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I do this to alert my colleagues of the pickle we can be in about 3:15.

I know that speakers are waiting to be heard on the bill itself. The time is growing nigh, and it seems to me that we should have comments the last thing before the vote. There will be six speakers, and five outstanding statements will be made. I hope that will be the way we wind up, and not have votes on amendments after we have had a closing speech by the distinguished chairman.

Mr. TRIBLE. Mr. President, the Senate today is poised to enact one of the most far-reaching and significant revisions of the Tax Code in this century. It will contribute to substantial economic growth, it will make the Tax Code more equitable and it will provide significant tax relief to taxpayers at every income level.

The legislation will fuel continued growth, first, because by lowering individual and corporate rates it contains powerful incentives, for inventment and risk-taking. The maximum tax rates of 27 percent for individuals and 33 percent for corporations will allow every working person to keep more of what they earn. These new rates mean, that for all Americans, the rewards of work go to the worker, not the Internal Revenue Service.

In addition, the combination of lower tax rates, liberalized depreciation for most assets and eliminating tax loopholes the bill will vastly improve the allocation of resources. Individual and corporate decisions will be made in the basis of return for work and investment, rather than on the basis of tax preferences.

The litmus test for economic decisions will be real return, not reduction of tax liability. The criteria of market place, economic efficiency, will govern choices and this can only have a positive impact on innovation and job creation.

These incentives are created by making the Tax Code fairer. This bill closes dozens of loopholes and imposes a stiff minimum tax on corporations and individuals. This bill will ensure that everyone pays their fair share.

This bill will dramatically reduce the ability of corporations and individuals to avoid taxes by exploiting loopholes in the law.

For most American taxpayers this bill means tax relief. Those for whom shelter means a roof over their head will benefit greatly from this legislation. Put simply, income taxes for typical taxpayers are reduced at every level of income. The bill takes approximately 6 million of the poorest taxpayers off the tax roles and the vast majority of Americans—more than 80 percent—will pay no more than 15 percent.

Yet while reducing the tax burden of working men and women this bill retains the most important deductions. Mortgage interest, property taxes, charitable contributions, medical expenses, and casualty losses remain deductible. Moreover, the legislation preserves the vital principle of tax indexation. The tax burden will not be increased and Government coffers will not be enriched by inflation.

Finally Mr. President this bill contributes to tax simplification. Under its provisions as many as 10 million taxpayers will no longer need to itemize. They will be able to use the short form. Millions of Americans can give up the part-time job of keeping records for the IRS.

The prospects for our Nation and our economy are exciting. Rather than being a vehicle for social or economic experimentation, our Tax Code will be a far simpler system designed to collect necessary revenues. The Government's influence over economic decisions will decline and that of individuals will rise.

This bill represents the overcollective judgment that a smaller role for Congress in allocating resources means a more vibrant and productive economy. The creative energies of Americans will be channeled toward producing goods and providing services and away from seeking favors in Washington.

This is not to suggest that the bill is perfect. In particular, the abolition of IRA's for all Americans who participate in a pension plan is a source of concern. IRA's have become a popular and convenient means of providing for retirement while at the same time encouraging material savings. They are worth preserving.

The other disturbing feature is the retroactive nature of some of the bill's provisions. Investment decisions have been made on the basis of current law and these should not be nullified by retroactive changes.

This legislation is a major step in the direction of fairness and efficiency. The chairman of the Finance Committee, Mr. PACKWOOD, and its ranking member Mr. LONG are to be congratulated, and I am pleased to support their effort.

(Mr. ARMSTRONG assumed the chair.)

Mr. GORTON. Mr. President, Mark Twain once counseled, in words that could certainly have been directed to his Congressman, "Always do right. This will gratify some people and astonish the rest."

Today, the Senate is about to do right. Indeed, the Senate is about to do something truly historic; something that justifies our standing as inheritors of the tradition of Clay, Webster, Calhoun, La Follette, and Taft—the examples whom we face in the reception room every day. The Senate is about to defy all those critics who have long said that it was impossible for this body to rise above the shrill demands of special interest groups. This bill—the most far-reaching reforms our Income Tax Code has seen in decades—truly represents the triumph of the general interest over the special interests.

□ 1500

When the Senate first turned to this issue, the setting did not seem auspicious for reform. This debate—which the President inaugurated with his State of the Union call for tax reform in 1984—had, unfortunately gone downhill from that initial point. The Treasury Department had, early on, submitted an ambitious and attractive tax reform package for the President's consideration. Although one could quarrel with this or that element of the so-called Treasury I proposal, there was no arguing that it represented real tax reform.

When the President submitted his own recommendations to Congress a few months later however, he had taken the first steps toward shaping it to gratify powerful political interests. And where the President took a few tentative steps, the House of Representatives rushed headlong, restoring tax break after tax break. Although the final House bill did trim some special breaks, and did contain some elements which would have improved current law, it could no longer plausibly be called tax reform. Instead, it was simply one more sorry chapter in that too-long running saga of tax revision after tax revision each of which added both complexities and preferences. It seemed that we were destined once again to do what we have done too often in recent years—shuffle tax benefits among interest groups, but shy away from real tax reform.

The Senate Finance Committee's early deliberations seemed to confirm that fear. Week after week the committee met in the crowded Dirksen hearing room. The corridor outside was jammed with lobbyists for uncountable special interests. Their collective din drowned out a much more important voice—the voice of the people crying out for real reform; for an end to the blatantly unfair loopholes through which wealthy individuals and major corporations have avoided paying their fair share of taxes, while forcing the wage earner, the working man and woman, to shoulder a disproportionate share of the burden.

Let me make clear that I do not believe that these lobbyists are either evil or nefarious. Newspaper cartoonists are especially fond of portraying special interest lobbyists as cigar-smoking fat cats, buying this or that favor for their client. The truth, as we in the Capitol know, but sometimes fail to communicate, is much different. Lobbyists include representatives of groups like the Boy Scouts and the AARP. The trouble with lobbies is not that the causes they represent are evil, but simply that they are special. In listening to the well-organized special interests, we lose sight of the fact that there are millions of Americans out there who want simply to be treated fairly, and who, individually, are much too complex to identify themselves simply as a subscriber to the association of this or the council of that.

As the Finance Committee met, it seemed that the special interests were in the ascendant. Time after time, the committee backed away from the vision of tax reform that the President had called upon in 1984, and restored special preference after special preference to the Tax Code. Certainly I, as did many of my colleagues, found it a most discouraging time, feeling that the Congress was about to throw away its best opportunity in a generation to achieve real tax reform.

And then the Senate Finance Committee accomplished the wholly unexpected. It did the right thing, gratifying some and astonishing the others. The committee reversed course completely, swept the bitter fruits of its early deliberations into the ash can, and produced the most sweeping tax reform measure since the advent of the income tax.

Let us review the important good points of the Senate bill:

First, it lowers rates. It is almost impossible to overstate the significance of these lower rates, because it is high rates that make each distortion in the Tax Code valuable to those who claim it. By lowering rates we not only reduce the tax burden on millions and millions of taxpayers, but we also ameliorate greatly the significance of the preferences that remain. Lower rates truly are the key to an efficient Tax Code, because they constitute an effective "back-door attack" on every single preference in the code.

Second, the committee bill takes 6 million lower income people off the tax rolls entirely. The inflation of the 1970's was especially insidious in imposing a Federal tax burden on millions of such people, most of whom work and contribute to our society, for whom no such burden ever was intended. The Senate bill takes these people off the tax rolls once and for all.

Third, the Senate committee bill broadens greatly the minimum income tax. I believe this to be especially important because it is perhaps the single largest step that this bill takes toward restoring confidence that our Tax Code is fundamentally fair, and that we will not allow wealthy individuals or profitable corporations to shirk their fair share of the tax burden. It is also an important provision for the same reason that lower rates are significant—it is another back-door attack on special preferences. No matter how many special credits or breaks wiggle their way into the code, if we can keep a stiff minimum tax in place, it can greatly negate the ability of these preferences to distort our economy in a harmful fashion.

Along these lines, the tax bill also repeals a number of tax shelters. Again, I think this is especially important, both from an economic and from a symbolic point of view.

When the chairman of the Finance Committee revealed his proposal, it was gratifying to all. When the Finance Committee adopted it, by a vote of 20 to 0, it was truly astonishing. By a remarkable confluence of events, what once seemed impossible now seemed inevitable.

To their great credit, an immense host of those special interests also saw the significance of the bill, and ended up endorsing it. Over 700 organizations, from the League of Women Voters to the American Electronics Association have endorsed this bill.

I still have some concerns with this bill, items that I want to see improved in conference. I have made no secret of that goal. This is not the time, however, to harp on those concerns. For now, I simply want to congratulate the chairman of the Finance Committee, Senator PACKWOOD, as well as Senator

LONG, who has been this body's leading expert on the Tax Code for so many years. In this bill, they did the right thing.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 2168

(Purpose: To delete the dealers exception from the hedging rules while retaining revenue neutrality)

Mr. MOYNIHAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself and Mr. DOLE, proposed an amendment numbered 2168.

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

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

The amendment reads as follows:

On page 1589, before line 9, insert:

SEC. 424. REPEAL OF DEALERS EXCEPTION.

Notwithstanding any other provision of this Act—

(1) section 423 of this Act is null and void, and

(2) section 1256(e) is amended by striking out paragraph (6) thereof.

On page 1665, line 13, strike "80 percent" and insert "78 percent".

Mr. MOYNIHAN. Mr. President, this is an amendment I submit for myself and the majority leader, the distinguished Senator from Kansas [Mr. DOLE].

It addresses the fact that, in changing the rules regarding the deduction of State sales taxes and local sales taxes in the bill, we perhaps inadvertently changed the transactions qualifying for the hedging exception, which were part of the mark-to-market agreement we reached in 1981 when passing comprehensive legislation dealing with commodity tax straddles.

Mr. DOLE. Mr. President, to raise revenue for the modification of the rules concerning the deductibility of State and local sales taxes, we limited the hedging exception to the "market-to-market" rules we enacted in 1981 to stop the commodity tax straddle loophole.

The hedging exception was enacted in 1981 to allow taxpayers who enter into risk-limiting transactions in the normal course of their business to continue this practice without having to realize gain or loss at the end of the year even though they had not otherwise realized gain or loss.

The reason for this exception was that we understood that taxpayers entered into these transactions in order to reduce the risk of fluctuations in the price of property used in their business, not as a tax shelter.

The amendment we adopted last week limits the use of hedging transactions to hedging in agricultural commodities. I am concerned that we did not adequately understand the content of the sales tax amendment or the impact of this change in the hedging rules.

Let me give an example of one situation which we did not discuss or take into account. A company which manufactures photographic film uses large amounts of silver. They would have a completely reasonable business purpose in using hedging transactions to assure reasonable amounts of this necessary commodity without wide swings in its cost. Unfortunately, they will now be denied use of the hedging exception.

This was just one example. The problem is we don't know all the other examples which also should cause concern.

It would seem better policy to substitute another more general revenue raiser than keep one which may have a very severe impact on a number of taxpayers.

I join the distinguished Senator from New York [Mr. MOYNIHAN] in an amendment to substitute another, more general business provision for the hedging limitation. However, due to time constraints, we have decided that the issue would be better addressed in conference. I am hopeful that we will be able to resolve this issue at that time so that we will not unknowingly disrupt the normal business practices of companies across America.

Mr. MOYNIHAN. Mr. President, the amendment I offer today responds to an inequity we may have created by a floor amendment to the tax reform bill adopted by this body late last week.

Purely as a revenue measure to fund a partial restoration of the sales tax deduction, we adopted an amendment eliminating the hedging exception to the mark-to-market system for dealers in commodities—at least some commodities. Therein lies part of the problem. The amendment's elimination of the hedging exception—a proposition which itself surely requires further study—applies to all commodities except agricultural and horticultural commodities—except, the amendment further states, trees which do not bear fruit or nuts. Perhaps there are reasons for this distinction, though I must say we have yet to review them.

The amendment that I offer today would reverse last week's provision, and pay for it with an adjustment to the deduction for dividends received by one corporation from another. The House bill does not contain a measure eliminating part of the hedging exception. Thus, should my amendment fail to carry, we will have the opportunity to examine more fully this issue in conference.

Mr. MOYNIHAN. Mr. President, in the circumstances of the time constraints, I ask that the amendment be withdrawn in order that the measure might be raised, as we hope it will be raised, during the conference.

The PRESIDING OFFICER. The Senator's amendment is withdrawn.

Several Senators addressed the Chair.

Mr. KENNEDY. Mr. President, we have about 6 minutes remaining. A number of Senators wish to speak. I know the Senator from Michigan and Senator D'AMATO wish to speak. I would be glad to divide the 6 minutes to 2 minutes apiece, so my colleagues may have some time.

The PRESIDING OFFICER. Does the Senator ask unanimous consent to do that?

Mr. KENNEDY. Well, I will just take 2 minutes.

Mr. LEVIN. Mr. President, will the distinguished Senator yield for a unanimous-consent request?

Mr. KENNEDY. Yes.

Mr. LEVIN. Mr. President, I would make that unanimous-consent request.

The PRESIDING OFFICER. Is the unanimous-consent request of the Senator from Michigan that the Senator from Michigan, the Senator from Massachusetts, and the Senator from New York each be recognized for 2 minutes?

Mr. LEVIN. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, might I have 30 seconds to offer an amendment that I think the managers will accept?

The PRESIDING OFFICER. The Chair is unable to hear the minority leader.

Mr. BYRD. I ask that I may—who has the floor now?

Mr. LEVIN. I have a unanimous-consent request which I would amend to include 30 seconds for the minority leader's amendment.

The PRESIDING OFFICER. I am sorry. The Chair did not hear the amendment to the request.

Mr. LEVIN. The request would provide for the 30 additional seconds requested by the Democratic leader for his amendment to be offered.

The PRESIDEING OFFICER. I thank the Senator.

The pending unanimous consent request is for the Senator from Massachusetts, the Senator from Michigan, and the Senator from New York to be recognized for 2 minutes each, and then that the minority leader be recognized for 30 seconds. Is there objection? Hearing none, it is so ordered.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I intend to vote for this tax reform bill, and I urge the Senate to send it to conference with an overwhelming bipartisan mandate befitting the best tax reform bill ever to come before the Senate.

None of us underestimates the difficulty that the conferees will face in reconciling the House and Senate versions. But today's vote by the Senate will bring the impossible dream of tax reform another giant step closer to reality.

In emerging unscathed from the gauntlet of Senate floor amendments, the idea of tax reform has acquired even more force than it had when the Senate bill took shape so dramatically in the final days of the Finance Committee deliberations.

The Senate and the House have each produced excellent bills worthy of enactment. Both bills have genuine strengths—but they also have weaknesses. The test for the conferees is whether they will succeed in writing a final bill that includes the best—not the worst—of the differing versions before them.

The conference is where the opponents of tax reform will make their last stand. The lesson of the House and Senate action so far is that this Congress, when tested, has the courage to say no to tax loopholes and special interests.

If the conferees are faithful to this standard, tax reform will not stumble in the homestretch—and the bill that goes to President Reagan will be the best tax reform bill ever, the finest achievement of this Congress and one of the great achievements of any Congress.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, while I applaud many of the elements of this bill and share many of its goals, I cannot help but think we are squandering a moment of opportunity here. We face deficits which we all believe are threatening our economic security but we are passing a tax bill which makes reasonable and responsible deficit reduction more difficult.

By using the loophole-closing revenue we are raising uneven tax cuts and instead of using it for deficit cuts, we face a desire to reform the Tax Code, to achieve equity and fairness, but we are passing a bill which creates special favors to a privileged few. We create loopholes that some homeowners can use to deduct interest on consumer loans but which other homeowners and renters cannot use. And we restrict desirable and socially useful deductions for medical expenses, charitable contributions, and retirement savings.

Yes, we do a good deal which is desirable. We taint it with exceptions. We tarnish it with exclusions, and we diminish it with the inequities we both create and perpetuate.

We face a middle class which is squeezed, and which has carried the greatest tax burden for years. What do we do? We tell them this bill will cut their tax rates but we fail to tell them that many of their tax bills will go up.

Perhaps one in three people making between $30,000 and $40,000 a year, and perhaps one in four people making between $20,000 and $30,000 a year face tax increases under this bill. All of us will pay more as we have to turn as early as next month to consider regressive excise taxes to fill the revenue gap which this bill ignores.

When it becomes clear we are increasing the burdens that many middle-income Americans are bearing, and when it becomes clear that the need for deficit reduction has been ignored and made more difficult, when it becomes clear that some new tax injustices have been created, when all of that becomes clear people are going to ask us why we did it.

I am hoping a better bill will come out of conferences, that the one before us despite a number of good features is on balance just not good enough.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I would like to inquire of the chairman of the Finance Committee concerning a matter of deep importance to the people of New York, and that is the matter of the Pennsylvania Station reconstruction project.

Mr. President, I have a letter of support for this project from Mr. Tese, Director, Economic Development, and in addition the project ultimately will be the largest taxpayer of the city of New York. The project will reconstruct Pennsylvania Station which is the busiest rail transportation hub in the Nation serving 120 million persons a year. No Federal, State, or local money is to be used to rehabilitate the station.

Mr. President, I do not intend to offer an amendment on it. But I would like to get the chairman's opinion of the project and the possible treatment of it as it relates to the various transition treatments.

Mr. PACKWOOD. I am familiar with the project. Having gone to New York University Law School years ago, I am familiar with the old Madison Square Garden. I think in fairness I can say the Senator from New Jersey [Senator BRADLEY], is opposed to the transition, unless I misspeak for him. But, in any event, I am familiar with the problem. We will have it in conference.

Mr. D'AMATO. Mr. President, I ask unanimous consent to submit Chairman Tese's letter of support, and an outline of the benefits of that project, and hope that the chairman of the Finance Committee would be able to bring this about in the conference as I think there are tremendous public benefits that inure to the public particularly in the area of transportation.

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

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
Albany, June 11, 1986.

Re New Madison Square Garden—Pennsylvania Station reconstruction project.

Hon. ALFONSE M. D'AMATO,
U.S. Senate,
Washington, DC.

DEAR SENATOR D'AMATO: As we discussed briefly the other day, I believe that the new proposed Madison Square Garden—Pennsylvania Station reconstruction project will provide substantial public benefits to the city and State of New York as well as the entire northeast region of the Nation. The project's benefits are not simply limited to New York or its metropolitan area. Indeed, because this public-private initiative involves two "national assets"—the reconstruction of Pennsylvania Station and the construction of a new Madison Square Garden—the project's benefits will touch and enrich the lives of residents throughout the Northeast region, Amtrak passengers from across the Nation and Canada who will daily arrive at the new Penn Station, as well as Garden visitors and Jacob Javits Convention Center attendees from throughout the Nation.

The scope of the project includes a new Madison Square Garden, the reconstruction of Pennsylvania Station as part of a major mixed-use commercial center, and the provision of a new transit link from Penn Station to the new Garden and the adjoining Javits Convention Center. For your convenience, I list below some of the project's most important benefits:

1. Economic Development. The Madison Square Garden Project will be one of the largest economic development projects to occur in the Northeast Region of the Nation. It is estimated that the aggregate private investment for this initiative will exceed $1 billion. The project will create an estimated 6,000 construction jobs (person years) during its 6 year construction period. It is projected that, upon completion, the new Garden will service over 5 million visitors, the commercial development will provide over 18,000 jobs, and the new Pennsylvania Station will serve yearly over 120 million visitors, commuters and residents.

2. Economic Impact on Convention Center. The presence of the new Madison Square Garden adjoining the Jacob Javits Convention Center will have significant positive economic impact on the Convention Center. The two facilities, together, will be able to operate more efficiently and provide enhanced attractions for the Convention attendees from throughout the Nation.

3. Tax Revenues to City and State. It is estimated that the new tax revenues to be generated by the project during its construction period and its first 10 years of operation will be in excess of $1 billion. These public revenues will be generated from the land where the present Garden now sits that is currently generating zero tax revenues.

4. Rebuilding of Pennsylvania Station—Private Funding in Lieu of Federal Moneys. As part of the project, the sponsors, utiliz-

ing private funds, have promised to reconstruct Pennsylvania Station so that it will, once again, be a gracious place of arrival for residents, commuters and visitors to New York City. Penn Station is used by over 120 million individuals a year—making it the busiest rail transportation hub in the Nation. This "privatization" initiative will serve as an important example of utilizing private funds to reconstruct a major public resource.

5. Mass Transit for West Side of Manhattan. The relocation of Madison Square Garden may well provide the critical population mass needed to enable a new and viable mass transit system to be established and funded connecting the West Side of midtown Manhattan to Pennsylvania Station, and, in so doing, open an entirely new area of the city for future, orderly development.

The multiplicity of public benefits derived from this undertaking are clear and substantial. Moreover, during the 5-year revenue calculation period (1986-1991), the application of the current real estate and sports arena tax exempt financing rules is estimated to produce a net revenue gain to the Federal Government. The structures will not be put into service until after 1991 and incremental tax revenues from the 6,000 construction jobs generated by the project are expected to exceed greatly any revenue loss from the tax exempt sports arena bond issue. It is for the above reasons that we believe it important for the project to proceed under the same tax rules regarding tax exempt financing and depreciation for sports arenas and real estate projects as had existed throughout the project's planning phase.

Very truly yours,

VINCENT TESE.

The PRESIDING OFFICER. Under the previous order, the minority leader is recognized for 30 seconds.

AMENDMENT NO. 2169

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 2169.

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

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

The amendment is as follows:

At the end of title XVII, insert;

SEC. — SPECIAL RELIEF FOR FLOOD DISASTER VICTIMS.

(a) IN GENERAL.—In the case of a disaster described in subsection (b)—

(1) section 165(h)(2) of the Internal Revenue Code of 1954 shall be applied with respect to any loss of an individual arising from such disaster by substituting "1 percent" for "10 percent", and

(2) at the election of the taxpayer, the amendments made by section 201 of this Act (i) shall not apply to any property placed in service during 1987 or 1988 or (ii) shall apply to any property placed in Service during 1985 or 1986, which is property to replace property lost, damaged, or destroyed in such disaster.

(b) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.

At the appropriate place insert the following:

(C)(1) Section 171 (relating to amortizable bond premium) is amended by redesignating subsection "(e)" as "(f)" and inserting after subsection (d) the following:

"(e) TREATMENT AS INTEREST.—"Except as otherwise provided by regulations, the deduction allowed under subsection (a)(1) shall be treated as interest for purposes of this title."

(a) EFFECTIVE DATE.—The amendment made by (A) shall apply to obligations acquired after date of enactment.

Mr. BYRD. Mr. President, I ask unanimous consent that I may modify the amendment, if necessary, to comport with the intent of the managers in their acceptance of the amendment.

Mr. PACKWOOD. Mr. President, there is no objection. We are familiar with the amendment. It is acceptable.

The PRESIDING OFFICER. Was the question of the minority leader that the amendment be modified?

Mr. BYRD. No. The request is that I have the right to modify if necessary so it will comport with the intent of the managers in their acceptance of the amendment.

Let me take 30 seconds of my own time.

The amendment I offer today is designed to provide help to those businesses that suffered losses as a result of the flood which occurred in November 1985.

In November of last year, 29 of West Virginia's 55 counties were hit by floods and declared disaster areas. Lives were lost, towns were devastated, and businesses were destroyed. West Virginians in one fell swoop lost their homes, their belongings, and their jobs. The economic base of many communities was decimated.

My amendment will permit businesses that suffered damage in the flood to elect between the current depreciation system in our Tax Code or the accelerated cost recovery system contained in the Senate Finance Committee bill. This will allow these businesses a fair choice in determining a depreciation system for costs incurrred by them in rebuilding after the flood.

The revenue raising aspect of this amendment deals with the tax treatment of the amortizable bond premium. An amortizable bond premium exists where a taxpayer buys a bond for more than its face value. That excess is allowed as a deduction over the remaining term of the bond—offsetting the interest income from the bond. This amendment clarifies the treatment of this bond premium—allowing its deduction as interest in the proper tax years. This part of my amendment was suggested by the staff of the joint staff committee as an appropriate offset as it corrects current law to provide for the uniform treatment of the interest income and its related premium offset.

The degree of emotional and financial stress experienced by the business community in times of disaster cannot be calculated. This amendment—while not a panacea—will provide some relief to those who are trying to rebuild and start again.

The PRESIDING OFFICER. The pending unanimous-consent request is the request of the minority leader that he be permitted to modify the amendment after its adoption.

Mr. BYRD. If necessary, and it may not be necessary.

The PRESIDING OFFICER. To be consistent with the intent of the managers on both sides.

Is there objection to the request? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may be permitted to revise and extend my remarks explaining my amendment No. 2169 to the tax bill.

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

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from West Virginia.

The amendment (No. 2169) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank the managers on both sides.

The PRESIDING OFFICER. The hour of 3:15 having arrived, in accordance with the previous order, the Senator from New Jersey [Mr. BRADLEY] is recognized for 10 minutes.

Mr. BRADLEY. Mr. President, first let me compliment Chairman PACKWOOD for his tenacity and leadership against all odds in making this bill happen. It is a remarkable legislative achievement. And I salute him.

Let me also compliment Senator LONG who knows more about the tax policy in the Senate than most of us will ever learn. And he has been a tough but helpful mentor on this bill as well as so many others.

Also, I express appreciation to Senator DOLE, Senator MOYNIHAN, and all members of the Finance Committee, and the 21st member of the commission, Senator METZENBAUM, for his vigilance.

Mr. President, when I go home to New Jersey people frequently ask me, when are the Democrats or Republi-

cans going to stop partisan bickering and do something together for America. Mr. President, that kind of bipartisan cooperation is about to produce the most sweeping tax reform legislation since 1913 when the present Income Tax Code and the first income tax in the 20th century was passed. It increases the standard deduction, doubles the exemption, lowers tax rates dramatically; four out of five taxpayers will pay no more than 15 percent in tax. It preserves most of the deductions used by middle-income people like mortgage interest, property taxes, it preserves the tax exempt status of fringe benefits, health benefits, and others.

It eliminates tax shelters by disallowing the passive losses. It imposes a strong minimum tax and raises about $100 billion more from the corporate sector. It eliminates countless other loopholes.

Mr. President, that is what the bill does. But the question is what does the bill mean in human terms? There are more people who paid income taxes in this country in 1984 than voted for the President of the United States of either party. The tax system touches 100 million Americans directly and countless more indirectly.

The standard deduction and exemption, what does that mean? It means tax relief for young people, poor people, and the elderly. In fact, it takes 6 million of them from the tax rolls. They pay no tax. It ends the perverse system that tells people to work and just as they begin to get a little bit, they have to pay tax. For these taxpayers the bill means work instead of welfare, dignity instead of despair. A family of four will have to earn $13,000 before they get their first dollar of taxable income. What do the lower rates mean?

Well, what they say to countless middle-income people across this country is if you take a new job, get a raise or promotion, benefit from a spouse working a second job or expect you will be making more money next year than you were this year, if you do any of those things, you will be able to keep more of the money you earn, to spend the way you want, and not the way the Tax Code dictates.

□ 1520

Mr. President, that will bolster people's sense of security, self-reliance, and of being in control of their own lives.

Tax shelters are eliminated. Minimum tax, important.

What does that mean? It means everybody is going to have to pay their fair share. It means no more billion dollar companies paying no more than middle-income taxpayers. It means no more will people in poverty pay more tax than some millionaires.

Finally, what does eliminating loopholes mean, Mr. President? It means the economy will be unfettered. Dollars will flow to those areas of the economy that have real value in the marketplace. No longer will people make investments to lose money for tax purposes.

It means our Nation will be free to accept the challenge of the next decade in ways that stimulate innovation, facilitate change and promote economic growth.

Mr. President, that is what the specifics of this legislation mean. Six million low-income people off the rolls; opportunity to keep more money for middle-income people; everybody paying their fair share, and an economy unfettered to grow.

But what does the whole of this bill mean? What does it do?

I would argue that it restores some trust in Government.

A few years ago a national poll was taken and people were asked, "Do you believe if you abide by the rules in America you will get ahead?"

Over 80 percent of the people said, "No." If they abide by the rules, they do not believe they will get ahead.

Mr. President, the set of rules they were referring to, I am sure, were the tax rules that were covered by a web of suspicion and inequity.

What we do today with this bill will help to change that feeling, help to remove the web of inequity and suspicion because after this bill, equal incomes will be taxed equally.

Mr. President, sometime in the last 4 years, actually it was 2 years ago, I was on the dais at a dinner in New Jersey and a business executive turned to me during the salad and said, "You know, I have a real problem with my son."

As any politician knows, that is the threshold question. Do you pursue it?

I was up for reelection, so I said, "Well, what is the problem?"

He said, "All my son can think about is how to avoid paying taxes. He is 26 years old. He has worked for a corporation for 3 or 4 years. But that is all he can think about. I keep telling him, "Do your job, learn your profession, move up, and pay your taxes."

Then he said, "Senator, I am worried if there is a whole generation of young Americans out there who believe they have no obligation whatsoever to support the legitimate functions of Government."

Mr. President, that must be why the underground economy in this country is the seventh largest economy in the world and why voluntary compliance is dropping.

Mr. President, it is a tragedy and this tax reform bill will begin to change that and will begin to restore trust in Government.

Finally, Mr. President, the issues of tax reform are as old as this Nation. If you read the Federalist Papers, the issues we have been debating on this floor in philosophical terms are right there in the Federalist Papers. It comes down to a question of whether you believe a legislator's role is to represent the narrow interest or the general interest.

What the Senate is saying today is that a legislator's role is to represent the general interest. Our country is a diverse one and each Member of the Senate represents sometimes widely different interests. But each Member was willing to come together, to sacrifice something of importance to one group or another in his or her State in order to do what was best for the country.

Today's vote will make me very proud to serve in the Senate. I have great confidence that Chairman ROSTENKOWSKI and the conferees he will appoint in the House will also recognize the importance and momentum of tax reform.

Although we still have one more hurdle to go over before we can claim total victory, I believe when the two Houses get together the American people will win again.

So, Mr. President, ultimately, tax reform is not just about money. It is about personal dignity and individual security. It is about being in control of our lives while having a Government that is sensitive to our needs. Most important, it is about hope, and it is that feeling of hope and optimism that we ratify today in passage of this bill.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized for 5 minutes.

Mr. METZENBAUM. Mr. President, I believe this is a good bill. It takes 6 million working poor off the rolls. It wipes out many of the loopholes that have allowed corporations to legally avoid $100 billion in taxes. It closes many loopholes for the wealthy. It lowers rates for the average taxpayer. It has a number of other excellent provisions.

But it is not perfect.

When the debate started, my goal was to point out that as good as the bill is, it still contains too many loopholes and carveouts for the rich and powerful. I think the Senate has been sensitized on this point. It has adopted some of the amendments that I proposed. We have been able to help the family farmers by adoption of those amendments. We have been able to help the chronically ill. We have modified a number of other provisions.

I am pleased that we adopted an amendment to require the conference report to identify the cost and beneficiary of any provision providing special treatment to a single taxpayer or group of taxpayers.

The fight to treat all taxpayers fairly does not end with passage of this bill. Truly, tax reform will be

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achieved only if the final product that comes out of the conference committee provides greater relief to the middle class and is not encumbered with a new array of loopholes that permit continued tax avoidance by the wealthy.

If the final bill does not do more to treat all taxpayers fairly, then all the low rates in the world will not convince people that the system works for them, not just for those with money and access.

I would like to take a moment to say something about the author of the legislation, about Senator PACKWOOD.

It has been a difficult 2 weeks for you, Mr. Chairman. You have been bombarded by Senators on both sides of the aisle. Many have commended you for the masterful job that you have done in putting this bill together, and I join in commending you as well. I join in that praise.

But I think that you deserve commendation for more than that. You have been helpful, you have been understanding, you have been cooperative. I do not mind saying that I have been on the floor many, many hours during the passage of this bill trying to make a good bill better. In each instance when I have come to you, I have not been rebuffed. You have made the information available. You have tried to be cooperative in every sense of the word.

I am frank to say that personally at times it may have been very frustrating to you, and I may have been a part of that frustration. But the wonderful part about this body in which we serve is that although the bill comes from the Finance Committee, when we come out here on the floor we are all equals among equals. There is no one Member who is more important than any other Member. It was Senator Mansfield who addressed himself to that subject some years ago.

You certainly have worked with each of us whether we were on the committee or not on the committee. It has been a real privilege for me to have had an opportunity to do just that.

Through it all, you have executed your role as manager with extraordinary grace and, yes, humor and wisdom as well. You have been unfailingly helpful to me and I thank you for that. I know that on more than one occasion you have had to take some heat from your colleagues on both sides of the aisle.

I want to say a word about Senator BRADLEY. He had the vision 3 years ago to see that the present system was flawed and he had an idea how to fix it.

□ 1530

This bill reflects his vision as well as his imprint.

Finally, before closing, I thank the Finance Committee staff and the Joint Taxation staff for their help and cooperation to someone who is not on the committee. They conduct themselves as professionals, with knowledge and skill. They have been helpful to those of us not on the committee as well as those on the committee. Theirs has been a very arduous and difficult task. I think all of us in this body owe them a great debt of gratitude.

The PRESIDING OFFICER. Under the previous agreement, the minority leader is recognized for 5 minutes.

Mr. BYRD. Mr. President, I thank and commend all Members of the Senate on both sides of the aisle on the excellent debate that has been conducted on this very far-reaching and important bill. I especially congratulate the chairman of the committee [Mr. PACKWOOD] and the ranking member of the committee [Mr. LONG] for having, with such great skill, brought this bill out of the committee by a solid vote of 20 to 0. I congratulate them also for the skill and the endurance, patience, and forbearance which they have shown on this floor during the debate.

I also commend Senator BRADLEY because it was 4 years ago that he and Mr. GEPHARDT, I believe, first laid out the parameters of tax reform. They have gone all over this country since then—Senator BRADLEY has—and expounded the legislation, the theory behind it, the principles that support it, and the reasons for it. I commend him.

I also thank the staff on both sides of the aisle. The committee staff have been most considerate of the interests and wishes of Members who have sought help on amendments during this debate.

I commend the distinguished majority leader for his perseverance, his tenacity, his sense of purpose, and his faith that, in the final analysis, this bill is going to become law.

Mr. President, I am going to vote for this legislation for a number of reasons. I state, briefly, only tnree:

First, I believe that although the amendment by Mr. MITCHELL, which I strongly supported, was not adopted by the Senate—an amendment which I think would have improved the bill's provisions to help middle-income taxpayers—we had our shot at it and we did not win. We tried. We lost. The same was true regarding IRA's. The bill may yet be improved in conference.

I think, Mr. President, we now have to consider this bill as it is. Others have made the case. The time, has come to vote. Is it better than the present Tax Code? I think it is far better. So, for that reason as one of my reasons, I shall vote to support this bill.

Second, I shall vote to support this bill because I think the Senate conferees ought to go to the conference with a solid show of support by Members of the Senate on both sides of the aisle. It is a bipartisan product. I hope that we will give our Senate conferees the kind of show of strength that will help them in conference with the House. Perhaps there will be some further improvements there.

In any event, I think the Senate bill is, overall, a better product than is the House bill. So I shall vote to send our Senate conferees to the conference armed in strength so that they will be in a better position to carry and uphold the positions of the Senate.

Finally, let me say that our action today, in full view of the country on a matter that is so important to the heart and the pocketbook and the family of every American, should go a long way, not only toward reversing the cynicism about the fairness of our tax system but also toward restoring some of the lost confidence in, and support for, our system of Government in general.

So I shall cast my vote, Mr. President, in the hope and in the belief that this bill will help to restore to the American people a strong confidence and belief in our form of Government because, unless they have that strong faith that is so vibrantly needed in a representative democracy, then, Mr. President, our Government will not have the vibrancy that it needs to face the problems of the future. I see in this bill a measure which will help to restore that confidence in our system of government.

I close by urging all Senators to support this bill. This is a victory not only for middle America today, but also for all Americans.

The PRESIDING OFFICER. Under the previous order, the majority leader is recognized for 5 minutes.

Mr. DOLE. Mr. President, first, let me indicate that after passage of this bill, we still have other business to do today. I assume there will be a rollcall vote asked for this tax reform bill. In the event there is, after that record vote, we will take up bank bribery, H.R. 3511, and also the Smithsonian Institute bill, which requires a rollcall, and possibly the diplomatic security bill. Somebody tells me that bill is giving death rattles. There are a lot of amendments lurking around that may try to find a home there. So that may or may not come up today. So we will be in session, I would say, for 2 or 3 hours following passage of the bill before us.

Mr. President, the Senate is about to complete 6 years of effort to reform the income tax laws of this Nation. The answers have not come easily, but the policy has been consistent over the years. We have attempted to make a

more honest effort to define what is income and, as a result, have been able to reduce tax rates substantially.

THE SENATE'S COMMITMENT TO TAX REFORM

The effort actually started in 1980, when candidate Ronald Reagan called for a major reduction in individual income tax rates and a restructuring and simplification of the depreciation rules applicable to business plant and equipment. That year, the Finance Committee, under the leadership of the distinguished Senator from Louisiana [Mr. LONG], reported out legislation that would have provided a tax rate cut for individuals and some real simplification of the depreciation rules for business. We had a good bill in 1980, but the election got in the way and we did not get it passed.

Unfortunately, the Senate did not have the opportunity to act on the Finance Committee bill in 1980 and, realistically, it is very unlikely the House would have addressed the legislation even if the Senate had acted.

However, after President Reagan assumed office in 1981, the effort to reform our tax laws began in earnest. In record time, the Finance Committee reported, the Senate acted, and Congress sent to the President the Economic Recovery Tax Act, the historic, 3-year individual tax cut he had requested along with substantial enhancement and simplication of the corporate tax provisions. The rate reduction substantially offset the hidden tax increases caused by several years of unprecedented inflation. In addition, the indexing provision included in the legislation for the first time assured that Congress would have to act affirmatively if it wanted to raise taxes in the future. Inflation could not be used to increase taxes without further congressional action.

Maybe we went too far in 1981, but in 1982 we started closing loopholes, not raising taxes but closing loopholes. Some never understood the difference. But we really closed loopholes, about 100 billion dollars' worth. I think it is fair to say that this effort, the Tax Equity and Fiscal Responsibility Act of 1982, is the most comprehensive tax reform legislation enacted to date. Part of the impetus for the legislation was to increase revenues, but the most important thing to remember is that this was done, not by raising tax rates or enacting new taxes, but by curbing abuses in the Tax Code, by reducing or eliminating tax breaks for limited numbers of taxpayers and by improving compliance so that we could preserve lower rates for everyone.

We followed "tefra" with the Deficit Reduction Act of 1984 using pretty much the same approach. Once again we scoured the Internal Revenue Code to make tax shelters more difficult to find and to help assure that taxpayers paid at least some tax on their income. If all we wanted to do was raise revenues, we could have found simpler ways to do it. It is obvious to me that the Senate continued to be committed to tax reform, and I am proud to have had the honor of chairing the Finance Committee during those exciting years.

THE PRESIDENT'S PROPOSAL

Although the Finance Committee showed its continuing interest in the concept of tax reform by holding a series of hearings on tax reform—what we then called "flat tax" and "modified flat tax" proposals—in September 1982, it is fair to say that continued reform of the tax laws would not have been possible without the leadership of President Reagan. In January 1984, the President announced that he wanted tax reform to continue as a principal domestic policy objective in his administration. He instructed the Treasury Department to prepare a report on how the tax laws should be changed by the end of the year. Treasury responded and the President used Treasury's suggestions as the basis for the proposals he sent to Congress just over a year ago.

The major concepts of the President's proposals were to reduce the number of tax rates for individuals to three with a maximum rate of 35 percent down from 50 percent. The maximum rate for corporations was reduced from 46 to 33 percent. At the same time, I was also struck by how many provisions of the President's plan continued reforms that originated in the finance committee over the last few years.

Let me give just a few examples. In 1982, we significantly broadened the scope of the alternative minimum tax for individuals and enacted a 15-percent reduction in preference items for corporations to minimize the chance that overuse of tax incentives will cause individuals or corporations to avoid income taxes altogether. We reduced the basis of equipment for half the value of the investment credit and modified the capital cost recovery system.

We also addressed the problem of overly generous cost recovery for assets financed with tax-exempt industrial development bonds and we imposed a "sunset" small issue bonds. We reduced the mismatching of income and deductions caused by the completed contract method of accounting. We substantially tightened the tax rules governing mergers and acquisitions and attempted to target the credit for corporations doing business in Puerto Rico more adequately.

Then again, in 1984, we expanded the corporate tax preference cutback from 15 to 20 percent and adopted a series of additional corporate tax reforms to help assure that taxes at the corporate level cannot be avoided. We further modified the capital cost recovery rules for real estate to reflect lower inflation. We enacted additional restrictions on private purpose tax-exempt bonds. We revised the tax accounting rules to conform more closely with the economic substance of transactions and began a review of the taxation of financial intermediaries by revising the life insurance company tax rules.

Many of these issues were again addressed in the President's proposal. Some have argued that, since we have reviewed these issues recently, we should not do so again. However, we cannot be blind to the fact that the President addressed these same issues because they still represented among the most significant deviations from a neutral tax system. There is much to be said for a tradeoff of reduced tax rates in return for a tax base that we can defend on some ground other than "it could be worse".

THE HOUSE BILL

The House bill in major respects followed the President's proposals. However, in some significant respects the House bill was deficient. The maximum rate for individuals was reduced only to 38 percent and the maximum rate for corporations was reduced only to 36 percent. The personal exemption, so important to reflect the cost of caring for dependents, was increased only for individuals who did not itemize deductions and the capital cost recovery provisions were reduced to a level that caused many to worry that captial intensive industries might be severely disadvantaged compared with foreign competition.

The President rightly was concerned about these portions of the House bill and asked the Senate to improve upon them. Many commentators scoffed at the possibility that the Senate could accommodate the requests of the President given the supposed power of the special interests who had descended upon Capitol Hill.

THE FINANCE COMMITTEE BILL

Mr. President, I am pleased to be able to say that the Finance Committee, under the able leadership of the distinguished Senator from Oregon [Mr. PACKWOOD], not only proved the pundits wrong, but was even able to accomplish greater individual rate reduction that the President asked for, and, perhaps equally important, accomplished this in a way that can honestly be called reform. Let me give a couple of examples.

First, the committee bill reforms the income tax rate structure by reducing the maximum tax rate for individuals from 50 to 27 percent. At first blush this would seem to mean wealthy individuals would have a disproportionately large tax cut, but the data from the staff of the Joint Tax Committee show that this is not so. The average tax cut for all individuals under the bill is 6.3 percent. The average tax cut

for individuals with incomes under $10,000 is 62.3 percent and the average cut for individuals with incomes between $10,000 and $20,000 is 18.1 percent. However, the average tax cut for individuals with incomes over $200,000 is 4.7 percent.

This distribution of the tax cut is made possible primarily by the limitation on the use of tax shelter losses, the elimination of the special tax treatment for long-term capital gains and limitation on the itemized deduction for interest paid. Also contributing to the distribution of the tax cut, is that 80 percent of all families will be taxed at the 15-percent rate.

What is so important about these changes? The simple answer is that these special tax benefits used primarily by the wealthy will no longer be available. Everybody will pay on their income under the same rules. As a result, we can reduce rates substantially without discarding the progressive rate system, which the great majority of Americans believe is fair.

A second example of why this bill is true reform is the treatment of corporate income. The proposed modifications of the corporate tax base will assure that all corporations, whether they are in a capital intensive industry or not, will have their income taxed on a more equal basis. This allows the reduction of the maximum corporate rate from 46 to 33 percent.

Much of the rate reduction on the corporate side is made possible by the repeal of the investment tax credit. There is much support for this change—the President proposed repeal and the House bill included repeal, as well.

However, there was a very real and justified concern in the private sector and in the Senate that the House had gone too far in reducing incentives for investment in income-producing equipment. The ITC had been repealed in the past and soon after reinstated. The Finance Committee did not want to make the mistake of going so far in the name of tax neutrality that we caused major economic trauma for capital intensive industry.

Therefore, we redesigned the depreciation rules to provide somewhat faster recovery of costs for the types of equipment for which the investment credit was most important. Thus, we have reform for the long term while minimizing short run economic disruption.

A WELL-DESIGNED PACKAGE

Mr. President, the Finance Committee bill is a very carefully designed package. However, we made at least one major policy improvement on the Senate floor—we substantially improved the provisions concerning the deductibility of State and local sales taxes. Under the Senate bill, there will be much less discrimination among the States on the basis of how they raise their revenues.

However, it is remarkable that so few major amendments have been adopted. It is a tribute to Chairman PACKWOOD, the distinguished ranking member [Mr. LONG], and the rest of the committee that the Senate has found the committee effort so acceptable as reported.

ISSUES FOR CONFERENCE

This does not mean that the bill is now perfect.

For example, I would like to see the individual rate cuts to be effective January 1, 1987, rather than in July of next year. I would also like to see fully deductible IRA's for more Americans, at least for those employees who do not have a 401(k) plan available and who are not vested in a pension plan. I would also like to see the recapture of the benefit of the 15-percent bracket to occur over a higher level of income or to find a way to avoid having to impose the recapture without having to increase rates.

Finally, I would very much like to see a more generous phasein of the so-called passive loss limitations. I understand that it is difficult to feel too sorry for people who have heavily invested in tax shelters, but they were acting under the law and many businesses are relying on continuing contributions from tax shelter investers over the next 4 or 5 years to provide the capital necessary to complete projects already begun.

I am hopeful that these areas can be worked out in conference. Of course, we also have a number of additional transition issues which will have to be worked out in conference. The Members have been very restrained in offering transitional amendments on the Senate floor. The distinguished managers have eloquently described the differences in the substantive provisions, effective dates, and transition rules between our bill and the House bill. The differences are great enough that the conferees should have sufficient flexibility to accommodate many of the concerns expressed by my colleagues.

However, we should not let these issues obscure the most important one. We have an opportunity to enact historic tax reform this year. Mr. President, I hope that the Senate will give this bill the resounding favorable vote it deserves.

Mr. President, I don't want to repeat what every other Member has said—we have had a number of outstanding statements throughout the course of this debate. We have had a very lucid explanation of specifics by the distinguished chairman, by the Senator from New Jersey [Mr. BRADLEY] and others. I believe there is enough credit to go around.

It is not a perfect bill; we do not want to oversell it. We could be back here next month, next year, or 2 years from now, maybe, making some changes.

There are still some loopholes. They are not all closed. Some were never touched.

But, this year we have this sort of master plan, the home run, the clean the bases, the Packwood plan. There are a number of Members of Congress on each side who deserve a great deal of credit. Obviously, Senator BRADLEY; Represenatative GEPHARDT; Representative JACK KEMP; Senator BOB KASTEN, Senator DENNIS DECONCINI had a real flat tax. We had a lot of hearings. Some Members on both sides in both Houses have talked about and yearned for tax reform for years. Now we are going to have an opportunity in 23 minutes to see it all unfold.

I guess the vote will be substantially in favor of tax reform. I am not certain of the exact number, but there are probably not more than two or three negative votes. That is testimony to the great work of the chairman [Mr. PACKWOOD] and the ranking member [Mr. LONG]—whom I commented on earlier this morning for his outstanding work over the years.

The Senators on this floor—yes, Senator METZENBAUM, whom I have nicknamed the commissioner, with his consent,—who is our sort of watchdog. Sometimes he does good work. [Laughter.]

And there are characters—I mean, a number of players—all over the place here. They have all had an input. I guess, as Senator BRADLEY said so well, this is the first hurdle, the first hurdle on the Senate side. The next step is the conference. Then the final stop will be the conference report. The real final stop will be when we are all at the White House, unless the President decides to come up here and sign the bill. He is welcome in the Senate. [Laughter.]

It would not be a bad spot for a little ceremony right out here. We would get it all fixed up.

In any event, there are obviously some things that some Members would like to see changed in the conference.

My statement outlines where we have been, where we are going, and where some of us think we might finally end up. I would like to see the individual rate cuts be effective January 1, 1987. It is pretty hard to explain why you start some things in January—that was the Bentsen amendment which was not brought to a vote—and have something else starting in July.

There is the so-called phantom rate which we have to deal with in conference, hopefully without raising the rates. I would like to see a more generous phaseout of passive losses—not that I am in bed with those who shelter their income, but it seems to me if you have made an honest investment,

we ought to be fairly sensitive to that, even though we are closing out tax shelters by the dozens from now on.

So it seems to me we have some work to do. But I believe overall, this is certainly a product that we can be proud of.

Somebody asked me earlier, "How do you feel about this?" I said, "Well, I am excited about it but there are other things coming along after."

I think the one person who must be exhilarated is Senator PACKWOOD. This bill was dead as a dodo bird 2 months ago. He brought it back to life. He made a bold move. He got the attention not only of the Finance Committee but of the American people. That is what makes things happen around here, when we get the attention of the American people. Reduce their rates, increase the personal exemption; then you are on the road to something real.

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

1981 ERTA

Measure: H.J. Res. 266 and H.R. 4242.
Dates considered: (1981) July 15-16-17-18-20-21-22-23-24-27-28-29-31.
Total days considered: 13.
Time consumed: 102 hr. 43 min.
Roll call votes: 50.
Amendments and motions considered: 119.
Disposition of amdts. and motions:
Agreed to: 81.
Rejected: 17.
Tabled: 8.
Withdrawn: 11.
Out of order:
Not Acted on: 2.
Temp. laid aside:
Pending:

1982

Measure: H.R. 4961 (TEFRA).
Dates considered: (1982): July 19-20-21-22.
Total days considered: 4.
Time consumed: 34 hr. 44 min.
Roll call votes: 29.
Amendments and motions considered: 69.
Disposition of amdts. and motions:
Agreed to: 49.
Rejected: 15.
Tabled:
Withdrawn: 3.
Out of order: 2.
Not Acted on:
Temp. laid aside:
Pending:

1984 DEFRA

Measure: H.R. 2163 (and H.R. 4170).
Date: Thursday, May 17, 1984.
Days considered: 20.
Time consumed (as of 6:41 p.m.) 111 hr. 13 min.
Roll call votes: 43.
Amendments and motions considered: 129.
(Disposition):
Agreed to: 86.
Rejected: 15.
Tabled: 14.
Withdrawn: 11.
Not disposed of: 1.
Not in order: 2.
Temp. laid aside:
Pending:
Tax 40-15.
App. 70-45.
Measure: H.R. 3838.
Dates considered: June 4-9-10-11-12-13-16-17-18-19-20-23-24.
Total days considered: 13.
Time consumed (as of 4:18 p.m. 106 hr.[1]
Roll call votes: 24.
Amendments and motions considered: 87.
Disposition of amdts. and motions:
Agreed to: 60.
Rejected: 3.
Tabled: 14.
Withdrawn: 8.
Out of order: 2.
Not Acted on:
Temp. laid aside:
Pending:

□ 1540

So I certainly thank all of our colleagues in the Senate on both sides, and the staff. Obviously, the staff is responsible for a lot of the good work; Secretary Baker, his staff, Dave Brockway, Randy Weiss and the rest of the joint committee staff, and all those who worked with us on a daily basis. And I want to thank Rich Belas, my chief counsel, who has helped me on this bill and who helped me with his tax expertise on the Finance Committee staff while I was chairman.

For the Record I would like to include floor action statistics in the 1981, 1982, 1984 legislation, as well as H.R. 3638.

Mr. DOLE. Finally, I would like to take a moment to discuss an issue which has just been brought to my attention.

Some concern has been expressed about the effective date of the limitation on corporate-owned life insurance which the Senate adopted last week to pay for the employee expense deduction for severely handicapped individuals. The concern is what we intended when we said that the provision was effective for contracts purchased after June 20, 1986.

As I understand the business, often insurance companies will offer competing bids to sell life insurance to a particular company on the life of an employee. The company then selects one bid and evidences this by sending the insurance company an application. The life insurance company treats this as an acceptance of its bid either unconditionally or in, some cases, conditioned further upon a determination that the person to be insured is an insurable risk.

There is some question as to whether, under the law in some States, the parties are legally bound to the contract at this point and if not, whether a contract has been purchased for purposes of this effective date.

It would seem to me that, when this type of process has gone to the point where the client company—or its employee—has, in fact, sent an application to indicate acceptance to the insurance company, after the company has selected from competing bids, the company has, in fact, purchased an insurance contract for purposes of this effective date and should not be affected by the rule we adopted last week. There may be additional circumstances not yet brought to our attention which also deserve to be grandfathered, but, in the meantime, I want to give as much assurance as I can so that business will not be disrupted.

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

Mr. LONG. Mr. President, it has been my privilege to serve on the Finance Committee for 34 years, and it has been my privilege to serve under some great chairmen—Walter George, Gene Millikin, BOB PACKWOOD. It was also my privilege to send to the members as they became members of the committee a résumé of the Senate Finance Committee, its background and history, and some of the names of members who served on that committee down through the years. Five of them have their portraits in the Senate reception room. A committee, headed by the late Senator John F. Kennedy, was appointed to recommend five outstanding Senators to have their portraits made, and it just so happens that all five of them were members of the Senate Finance Committee. Several members of our committee have gone on to be President of the United States.

Mr. President, if the chairman of the committee, Mr. PACKWOOD, continues serving the national interest the way he has, and providing the kind of leadership the way he did on this bill, he will eclipse all of us who have attempted to provide leadership on this committee, certainly including me, anyone under whom I have served, and anyone with whose record I am familiar as Members of this Senate at any time in history. I congratulate him on the tremendous achievement that this bill represents, and I hope for him that as long as he serves here—and I believe he will serve as long as he wants to serve—that he will continue to serve in just this tradition and have the same enormous success that he has achieved with this bill.

I also want to congratulate, on our side of the aisle, the Senator from New Jersey [Mr. BRADLEY], who first among us advocated the bill, its direction, and projected the philosophy that this bill expresses. He worked long and hard for it at a time when many of us thought that it just was not the way to go or that it did not make all that much sense.

I do feel that when one works so hard for something and is as dedicated to it, as he is, it deserves a try. I believe it certainly will get a try, and I wish him all success in advancing tax reform as he views it.

[1] Average of a little over 8 hrs. each day on the bill.

We may have to make some changes in the future. Only time will tell just how good this bill is. I believe, however, as I indicated earlier today, that this may very well be the best revenue bill that has been passed during the 38 years I have been privileged to serve in the Senate.

On our side of the aisle I want to congratulate and thank William J. Wilkins, minority chief counsel, for the tremendous contribution he has made in helping the minority and cooperating with the majority on this bill; Barbara Groves, our minority counsel; Mr. Randy Hardock, minority counsel; Mr. Jeff Gates, minority counsel, who specializes in work dealing with employee stock ownership; and I also want to thank Miss Karen Stall, my administrative assistant, for her contribution.

A measure as sweeping as this, which does as much good as this measure does, provides opportunity for a great number of people to share in the credit for its enactment, and I am proud to have participated in it. I thank all of those who have joined with me.

I hope the Senate will pass this measure by a very large majority. I also hope that those of us who serve on the conference will give our chairman the kind of support we gave him in the committee when we voted to report this bill by a margin of 20 to 0.

Finally, Mr. President, let me say it is a pleasure to have worked on this bill with the majority leader, Mr. DOLE. He has been a great chairman of the committee. Like me, his achievements are in prospect of being eclipsed by the new chairman, but he has provided fantastic leadership to this Senate during his service as minority leader, and I wish him continued success in the future.

Mr. DOLE. Majority.

Mr. LONG. I did not want to wish that on him. Majority leader. I certainly wish him all success in the future, in this and in any higher office.

Mr. DOLE. I thank the Senator very much.

Mr. LONG. And the same goes for his wife Elizabeth. If the people in this Nation should see fit to elect a Republican President and place a First Lady in the White House on the other side of the aisle, I do not think they could do much better—in fact, I doubt that they could do better—than our majority leader and his outstanding wife.

Mr. PRYOR. Mr. President, will the distinguished Senator from Louisiana yield? Does he have time remaining on his 10 minutes?

Mr. LONG. I yield to the Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the distinguished Senator for yielding.

Mr. President, I am the newest member of the Finance Committee and this has been, I must say, quite an experience for me. I compliment Senator LONG and Senator PACKWOOD. Both of these Senators have spent many, many hours on this bill.

I, too, thought like the majority leader a moment ago when he stated that this bill was dead a few months ago. I felt that way until May 5, around 5:15 a.m., when my telephone started ringing. I thought "Evidently someone has the wrong number." I said, "I'm not going to answer that phone." And after about the 40th ring, Mr. President, I finally stumbled down in the den and picked up the phone, and I said, "Hello." And it was Senator LONG. Senator LONG says, "Hey man, you weren't asleep, were you?" I said, "No, I was standing here waiting for you to call me." [Laughter.] He said, "Well, I just wanted to tell you, DAVID, Senator PACKWOOD has a bill that is a good bill, it is a fair bill, and we ought to work with him to get it passed."

I knew then that something was about to happen, and it did happen. I have never seen a greater bipartisan effort, Mr. President, than I have seen exemplified in the Senate Finance Committee. Today that bipartisanship working with Democrats and Republicans, liberals and conservatives, has made this moment possible. It is an exciting moment. I want to thank the staff and all of the members of the committee. And, once again my appreciation to Senator PACKWOOD and Senator LONG for their untiring efforts.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana has 2 minutes remaining.

Mr. BENTSEN. Will the Senator from Louisiana yield 1 minute to me?

Mr. LONG. I yield 1 minute to the Senator from Texas.

Mr. BENTSEN. Mr. President, there are few men who have served in the Senate for as long as my friend from Louisiana. I think in the annals of the Senate he is No. 3, and for 14 of those years the Finance Committee was chaired by the distinguished Senator from Louisiana. In many ways he exemplifies some of the things his legendary father did. He always spoke of his father as being a revolutionary and he was an evolutionary. But he is exemplified in the ESOP provisions, in what he has tried to do in providing greater opportunity for more people and in trying to raise the standard of living of all of our people. I would say, "Governor LONG," I do not know what it is that is in store for you, but whatever it is—Governor LONG, I mean Senator LONG—I wish you well. [Laughter.]

Mr. LONG. I yield to the Senator from Montana.

The PRESIDING OFFICER. The Senator has 1 minute remaining and yields to the Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Arkansas [Mr. PRYOR] explained, as the most junior member on the Democratic side of the committee, what an exhilarating experience the drafting of this bill has been. He just recounted the call to his house at 5:15 in the morn.ng, when the phone rang and he was waiting in the den for the call from the Senator from Louisiana.

I am not the most junior Democrat on the Committee. I am about midlevel in seniority, so at about 5:30 in the morning I also received a telephone call from the Senator from Louisiana giving me the very same message he gave to the Senator from Arkansas.

That was just one more example of Senator LONG's diligence. I can say that without exception in the years I have served with the Senator from Louisiana, I have not met a Senator whom I respect more and whom I will miss more after this year passes.

□ 1550

The Senator from Louisiana has shown us not only the complexity of tax policy decisions but also the lighter side of life. He does not take himself too seriously. Too many of us in this body do take ourselves too seriously. The Senator from Louisiana also has a vision. He sees the value of finding new ways to make America more competitive. He sees the future much more clearly than most of us.

I see that my time is expiring, so I'll wind up by saying, "RUSSELL, we will miss you very much."

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

Mr. PACKWOOD. Mr. President, I think it is obvious to everyone now that in 10 minutes we are going to have a vote, and that vote is going to be a victory for America and a moment of pride for the Senate—satisfaction for the Finance Committee, which worked hard on this for so long, but mostly a victory for America. For any victory, there are many parents. It is only defeat that is an orphan.

I do not know where to start to hand out medals to the heroes of this bill.

DANNY ROSTENKOWSKI: The chairman of the Ways and Means had tough sledding. He had to do it first. He had to produce something, and he produced a bill that some people liked and some people did not like. Nevertheless, it was a start. I do not necessarily envy the role of one who has to go first, plow the territory and make some tough decisions that we do not have to make.

President REAGAN: The bill would never have passed the House at all without the President's letter to the

House Members saying, in essence: "Folks, I don't like the bill very much. If it comes to me this way, I will veto it. But please send it on to the Senate to see what can be done."

RUSSELL LONG: To me, he will always be the ultimate "Mr. Chairman," a man who has every right to look over BOB DOLE's shoulder, to look over my shoulder, but in the end did not. When I became chairman, he took me aside for about 45 minutes, gave me some advice, and said, "BOB, from now on you're chairman." And he has stuck with me every moment of the way.

BILL BRADLEY: The Godfather.

[Laughter.]

BOB DOLE: In a tough vote he is always there. When the vote comes out 20 to 0, you think it is a piece of cake. But when we had the bill ready for markup, we had the first tough vote to restore a deduction—IRA's or sales tax or something similar. As you vote in the Finance Committee, you go to the right of the chairman, where BOB sits and votes first. On that first tough vote, he voted "no." He made a comment first: "No." The vote was 9 to 9. On a tie vote, the motion to restore this loophole failed. But for BOB DOLE, it would have passed.

HOWARD METZENBAUM: We all kid him a lot. But were it not for HOWARD on this floor saying "No" on occasion, things could be worse. (Laughter.) Indeed, he was most helpful to me on this floor as we would look over the list of potential amendments, 65 to 70 of them, and decide between us how to divide up the objections.

Nobody likes to be the hair shirt forever. It is difficult to object to the amendments of close friends who want some small provision for the folks back home that "never costs any money." Sometimes they do cost, however, and you just have to say "No."

Bill Diefenderfer: My chief of staff, who is sitting at my left, who, at the bleakest moment, said, "We can do it." That bleakest moment was on the first bill that I drafted at the request of the Members, after meeting with them for 70 hours, after 36 days of hearings. I tried to put into the bill something that would satisfy everybody and ended up satisfying nobody.

In vote after vote after vote, we put back in $5 billion, $10 billion, $15 billion of loopholes, until finally it got so absolutely outrageous that Members no longer had any reason to restrain themselves. What difference did it make if the bill is $300 or $400 billion off revenue neutrality?

At that stage, I exercised the prerogative of the chairman to pull the bill down. I went to lunch with Bill Diefenderfer. We looked at each other and said, "Why not? Let's give real reform a try."

On a Thursday, I started with a bill that had a 27-percent rate. Immediately, six Senators came up to me—Senators DANFORTH, CHAFEE, WALLOP, MOYNIHAN, BRADLEY, and MITCHELL—and said they wanted to be a part of the effort. They wanted to work on it. I thought to myself, if we have 7, counting me, out of 20, we have a shot at it.

From that day onward, on occasion joined by Senator BENTSEN, we would meet every morning at 8:30 in my office, and plan our strategy for the committee meeting at 10 o'clock.

We met Friday, then Monday, Tuesday, Wednesday, Thursday, and Friday of the next week. Then, on the weekend, on a wonderful, warm day, when we should have been golfing or gardening, the seven of us met all day with our staffs, and hammered out the final arrangements, which the following Tuesday led to a 20 to 0 vote.

I am not here going to recap what is in the bill. You all know what is there. All I can say is "Thanks" to every one of you, because this country is in your debt.

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

Mr. DOLE. Mr. President, I hope we might observe the regular order during this vote and vote from our desks, and I hope the Chair will enforce it.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute.

The committee substitute was agreed to.

Mr. PACKWOOD. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, "Shall it pass?" On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. EVANS). The majority leader has requested that on this vote all Senators vote from their seats.

The clerk will continue.

The assistant legislative clerk resumed the call of the roll.

Mr. MOYNIHAN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator's point is well taken. Will Senators please take their seats so the reading clerk may identify those wishing to vote?

The majority leader has requested that on this vote all Members vote from their seats.

The assistant legislative clerk resumed the call of the roll.

The PRESIDING OFFICER. Will Senators please take their seats so the clerk can identify the Senators? The majority leader has requested that all Senators vote from their seats on this vote.

Will the Senate please be in order so that Members will have an opportunity to vote? The majority leader has requested that on this vote all Members vote from their seats.

The assistant legislative clerk resumed and completed the call of the roll.

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

The result was announced—yeas 97, nays 3, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—97

Abdnor	Glenn	Metzenbaum
Andrews	Goldwater	Mitchell
Armstrong	Gore	Moynihan
Baucus	Gorton	Murkowski
Bentsen	Gramm	Nickles
Biden	Grassley	Nunn
Bingaman	Harkin	Packwood
Boren	Hart	Pell
Boschwitz	Hatch	Pressler
Bradley	Hatfield	Proxmire
Bumpers	Hawkins	Pryor
Burdick	Hecht	Quayle
Byrd	Heflin	Riegle
Chafee	Heinz	Rockefeller
Chiles	Helms	Roth
Cochran	Hollings	Rudman
Cohen	Humphrey	Sarbanes
Cranston	Inouye	Sasser
D'Amato	Johnston	Simpson
Danforth	Kassebaum	Specter
DeConcini	Kasten	Stafford
Denton	Kennedy	Stennis
Dixon	Kerry	Stevens
Dodd	Lautenberg	Symms
Dole	Laxalt	Thurmond
Domenici	Leahy	Trible
Durenberger	Long	Wallop
Eagleton	Lugar	Warner
East	Mathias	Weicker
Evans	Matsunaga	Wilson
Exon	Mattingly	Zorinsky
Ford	McClure	
Garn	McConnell	

NAYS—3

Levin	Melcher	Simon

So the bill, H.R. 3838, as amended, was passed.

□ 1610

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, before we get away from the tax bill we just passed, I would like to say thank you and recognize a few people.

Mr. STENNIS. Mr. President, may we have order so we can hear?

The PRESIDING OFFICER. The Senator from Mississippi is correct. Will the Senators please clear the aisle, retire to your seats, or go to the cloakrooms? Will members of the staffs please cease conversations as long as they are in the Chamber?

We will not proceed until the Senate is in order.

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, let me say a special thanks to Senator PACKWOOD who demonstrated in this bill not only leadership but I think he demonstrated real generosity, patience, and strength. It is easy for us to talk about being generous to each other. It is not so easy to be generous to each other.

Senator PACKWOOD, throughout this, was incredibly generous to me and for that I am deeply in his debt. I express appreciation.

I would also like to thank Senator LONG, whose wisdom and counsel was indispensible.

I think there are non-Senators, however, who also deserve a word of praise and commendation.

The joint committee staff, Dave Brockway, Randy Weiss, Ben Hartley, and the others, were professionals throughout this. In very difficult moments they maintained their professional integrity and kept us on the right substantive course.

I also want to thank Bill Wilkins and the entire minority staff of the Finance Committee; Bill Diefenderfer and the entire majority staff on the Finance Committee.

I would like to thank Olivia Fondieu of the Fair Tax Foundation for her creativity and tireless efforts on behalf of tax reform.

I would like to thank Joe Menrick of the Urban Institute who has played a central role in efforts for tax reform since 1981, who shared his ideas, his expertise and his time with unstinting generosity.

I would also like to thank two members of my own personal staff.

I would like to thank Marcia Aronoff, my chief of staff, who shaped much of what brought us to this vote, who has done so with enormous work effort and real personal modesty.

□ 1630

Finally, I thank Gina Despres, my legislative counsel, whose intelligence guided the development of this bill as well as the original Bradley-Gephardt, and who has lived with this project for 5 years and done so with intensity and commitment.

It is only because of all of them, as well as the Senators who voted, that today, we passed this historic piece of legislation.

Mr. METZENBAUM. Two members of my staff have spent so much of their time and given so much of themselves in connection with this tax bill that I would be remiss if I did not publicly acknowledge that any effort I made with regard to the tax bill is really to their credit.

David Starr has been working morning, noon, night, weekends, whenever. He has probably studied the tax bill as much as any Member of this body, including those who are active on the Tax Committee and the Finance Committee staff. I know of no individual who has devoted himself more assiduously, more energetically, more enthusiastically to finding what every amendment meant, what every provision in the bill meant, even though it required some very dull reading of a very heavy and lengthy piece of legislation.

Doug Lowenstein, who is my legislative counsel, has equally given of himself to see to it that we put all of the parts together, working to make it a coordinated whole, to see to it that what David discovered and worked out and determined was a problem in the tax bill became a joint effort on our part, on the part of my entire staff.

I am very grateful to the two of them. Without them, I could not have made any effort whatsoever in connection with this legislative effort.

Dave has been with me a long time. So has Doug. Dave has been involved with the tax aspects of legislation over a period of many years, and I do not think there is anybody, any single individual around this body who is staff, who can exceed him in his diligence or concern.

I am very grateful to the two of them.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, would it be in order for me to ask unanimous consent with regard to any statement that might be given by a Senator, that the record be held open until the close of business today so it may be incorporated with or preceding the passage of H.R. 3838?

The PRESIDING OFFICER. Does the Senator make that as a unanimous-consent request?

Mr. FORD. I make that as a unanimous-consent request, Mr. President.

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

Mr. HART. Mr. President, we have just passed a bill that achieves goals this Senator has shared and worked for throughout his political career. It comes as close as we are ever likely to come to starting fresh on our national financing philosophy. It has been overdue for most of our adult lives.

Twelve years ago, as I traveled my State asking Coloradans for their votes for the first time, I talked about tax reform. I said we needed to rely less on high rates and rely more on a broad tax base. My platform included the elimination of tax shelters and writeoffs. It included the equal treatment of equal incomes. It called for an end to preferential treatment for capital gains, with a corresponding cut in the top tax rate.

It called for an end to shelters for those who invest not to produce, but to harvest a bumper crop at tax time. And it included a minimum tax on corporations and wealthy individuals.

Tax reform was part of my platform when I sought reelection in 1980, and in the Presidential primaries of 1984. When the Bradley-Gephardt tax proposal was introduced in 1982, this Senator was pleased to be among its cosponsors.

But through these dozen years, the tax system did not improve. It got worse. Public confidence in the income tax declined. Once the tax that people found fairest, it became the tax people found least fair. The tax shelter phenomenon grew more swollen and malignant.

So it is a special opportunity for this Senator, as he completes his final session in Congress, to particiate in this historic vote. Because it is the best opportunity any of us has ever had—or will ever have—to fulfill a commitment to tax reform.

For the past 3 weeks, much of the floor debate has been devoted to the bill's details, to its effects on specific sectors of the economy, specific industries, and specific groups of taxpayers. And that is as it should be.

This Senator has criticisms of the bill as anyone else would have. No undertaking of such magnitude and difficulty is susceptible of perfection. No such plan could be enacted without transitional dislocations. But now that we have studied the trees at length, let us step back for a moment and admire the forest.

This is not only the most significant tax bill but the most effective tax reform in more than a generation. It blends reform philosophy and practical politics better than virtually anyone thought possible. The committee found a way to match substance with a quality the Pentagon calls survivability.

The bill has survived on a foundation built of highly disparate political interests. And the mortar in this construction is the simple philosophy of lower rates on a broader base.

This bill demonstrates that we have learned a lesson in the past 50 years. We have learned that a progressive tax structure on paper does not guarantee a progressive tax system in fact. The reality is that as tax rates rise, so does the pressure for exclusions, exemptions and deductions.

The rich wind up paying effective rates far below the nominal rates and, in many cases, below the rates paid by

middle-income Americans. The reason for this inequity is both simple and perverse. As the base that must support the rate structure shrinks, it forces high rates still higher—not just at the top, but all the way down the scale.

For two generations, this dynamic has overwhelmed our best intentions. Tax expenditures are now larger than any category of spending in the Federal budget. Worse yet, the drive for tax avoidance distorts the workings of our national economy.

Worst of all, it forces the low-and middle-income taxpayer to pay ever higher rates of tax while at the same time denying them most of the tax break benefits. The big rewards remain reserved for the rich. So whenever we reach for higher rates, we risk beginning a new game of "narrow-the-base." And the low-and middle-income taxpayer winds up with the double whammy.

At a critical stage of the debate on this bill, we confronted this dynamic once again.

A well-crafted amendment was offered to raise the top rate and give the rest of America a better tax cut. But when the sponsors raised that top rate, they found it necessary to restore the differential for capital gains. And by so doing, they sacrificed one of the prime achievements of the bill. They sacrificed the principle of equal treatment for equal income. They started us back down the old path.

In rejecting this amendment, the Senate did not vote to deny middle-income taxpayers a few hundred dollars in their tax cuts. Rather, it voted to preserve every taxpayer's right to low rates and a broad base.

But in a larger sense, this amendment was no different from any other offered in the weeks of floor debate. Because votes against these amendments have generally not represented judgments on the merits of each amendment. Rather, they have affirmed the bill's fundamental value and recognized its vulnerability.

The Senate's resolve has been carefully tested. We have seen amendments cast in the most tempting of forms.

The amendment on individual retirement accounts, for example, was cast as a vote for or against retirement savings. The Finance Committee proposal actually involved the timing of taxation on payments made to IRA's. It did not threaten the tax deferral on interest accumulating in these accounts, which is their greatest value.

Similarly, the committee's effort to preserve the great preponderance of value in the state-and-local tax deduction was cast as an assault on State prerogatives. Though the Finance Committee bill left the glass nearly full, it was portrayed as nearly empty.

Again and again, we were tempted to add a benefit or delete a discomfort. To resist was to pay a political price. And yet the countervailing consideration in every case was the delicate compromise that brought this bill out of committee and onto the Senate floor. And so the strategy of survival was to defend the package as a package. This Senator subscribed to this strategy wholeheartedly, Mr. President, and voted against every effort to alter the bill—regardless of each one's individual allure.

Moreover, this Senator opposed the resolutions that told conferees to work sweet miracles in conference—but neglected to provide a fiscal wand.

This Senator followed this strategy believing that this historic bill could still die the death of a thousand cuts. And had we let that happen, we would have lost the best opportunity for fundamental tax reform in this era.

We would have let the trend toward corporate tax relief continue, while payroll taxes continued to rise. We would have allowed the skillful few to continue to escape their fair share.

We would have sentenced more than 6 million working poor to the prison of work without opportunity. We would have locked in place the loopholes this legislation promises to eliminate. We would have preserved the myth of paper progressivity—the tax lawyers' pasture of plenty.

We would have settled for a future in which investments are misguided by taxes and the outstretched palm of the Government is the unseen hand of economics.

But the Senate has passed this test, Mr. President, and for that we should all be grateful. Our immediate thanks are owed to the distinguished chairman and ranking member of the Finance Committee.

Our enduring thanks are due as well to the Senator from New Jersey [Mr. BRADLEY] whose long campaign for true tax reform has proved that the holy grail need not always be a hopeless quest.

And our thanks are owed to all those Americans who have spoken out for a better Tax Code, Americans who refused the cynical advice that Congress would listen only to the well-placed few.

This is a fine day for all of us, Mr. President. It is a great pleasure and satisfaction to fulfill this commitment and to join in this vote for America's future.

I join in commending the distinguished chairman of the committee [Mr. PACKWOOD], the distinguished minority member [Mr. LONG] and most of all, our good colleague, the Senator from New Jersey [Mr. BRADLEY], who has worked on this issue for so long and so diligently and been so responsible for bringing this vote to us today.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I shall be very brief. I must say that in the 14 years I have been on the floor of the U.S. Senate, there have been few things that have surprised me greatly. One has been that Senator PACKWOOD, apparently out of his kit bag, overnight, pulled the bill that others had been working on in the form that Senator BRADLEY and others had been proposing for some time—out of, it seemed, thin air. I compliment him for that. He is a great legislator.

I also would like to compliment and, quite frankly, reserve the bulk of my praise for my colleague from New Jersey. I think all who have followed him and watched him play basketball now understand why he was as great a basketball player and a hall of famer and the basketball legend that he is. He plays politics just as he played basketball—diligently, relentlessly, tirelessly.

If you look at the pure stats, you say BRADLEY should not have been a hall of famer. If you look at it purely based upon size and speed and other qualifications, you say BRADLEY is a good athlete, but he is not a hall of famer. But every time BRADLEY walked out on the court, he was a hall of famer.

He walked into this Chamber and he did exactly what he did when he played basketball. He put that piece of tape down on the floor, stayed there after the gym was closed, with the janitor angry because he wanted to turn the lights out and go home, and he took an extra hundred shots from that spot. He took that extra hundred shots from that spot looking at the basket and he took the extra hundred shots looking at the piece of tape and not looking at the basket.

He came out here on the floor of the U.S. Senate and kept doing it until he got it right.

I say to my colleagues on both sides of the aisle, we have all benefited greatly from BILL BRADLEY's deciding to take those great intellectual skills of his, which are hall of fame material, and bring about this most significant piece of legislation that has occurred since we passed a constitutional amendment saying there could be a Federal income tax.

I compliment my colleague from the State of New Jersey and I hope he keeps playing politics.

Mr. President, this tax reform bill, if passed, can shape the economic, social and political fabric of America for the remainder of this century.

Millions of Americans today are disillusioned by the inequities of the Tax Code, which too often favors relatively few taxpayers. Many economic analysts also believes that the current tax law, with its shelters and loopholes,

discourages sound investment and alters economic decisionmaking.

I agree with them, and that is why I am going to vote for final passage of this tax reform legislation. On balance, the bill is a good one. It will allay many of our concerns about today's tax laws, and will also provide a firm base on which the economy can prosper.

Americans want a Tax Code that broadens the base and lowers the rates, leaving more discretion in decisonmaking to the individual. They want a more equitable Tax Code that prevents tax avoidance schemes. They want assurances that every American is paying a fair share of the cost of government. They want to reduce government efforts to manage the economy through the Tax Code.

H.R. 3838 meets most tests of good tax reform.

It broadens the base on which the income tax is levied. It does that by eliminating many provisions in current law that skew investment decisions and provide tax shelter opportunities.

It removes 6 million low-income Americans from the tax roles.

It reduces the basic tax rates to encourage savings and investment.

It includes minimum tax provisions to assure that individuals and corporations can no longer avoid paying taxes.

The bill, of course, is not perfect. In particular, I am concerned that the rate structure may not be sufficiently progressive. That is why I supported the Mitchell amendment to reduce tax liabilities of middle- and low-income taxpayers. I hope that changes along these lines can be made in conference with the House of Representatives.

Yet, on the whole, the bill is a major tax reform accomplishment.

I have been a strong advocate of tax reform since I came to the Senate in 1973. Since that time, I have participated in many such efforts. Unfortunately, none of them achieved the high degree of reform in this bill.

Our tax system has now reached the point where many Americans have given up on it as a fair and effective means of financing government. More and more Americans, turned off by the unfairness of the law, have failed to report their full income. Unreported income has ballooned. As a result, we may be losing $100 billion in tax revenues today.

As it exists today, the income tax denies reasonable tax rates to low- and middle-income taxpayers, in order to preserve tax breaks and low tax liabilities for the few. In 1983, 29,800 individuals or couples, earning $250,000 or more, paid less than 5 percent of that amount in taxes. More than 3,000 of these have incomes of over $1 million.

Of equal concern is the fact that our tax system does not even result in equal tax liabilities for taxpayers with comparable income. Adding insult to injury is the fact that the tax law is deliberately written to achieve such a result. Some taxpayers can shelter income and reduce their taxes in perfectly legal ways, creating gross inequities in taxation.

The condition of our Tax Code also affects the ability of our economy to function efficiently. As it is written today, the Tax Code encourages individuals and businesses to be more concerned about tax advantage than market advantage. This has dulled the American competitive edge, at home and abroad. Hidden tax benefits received by some enterprises, but not others, have skewed economic decision making. These tax benefits constitute an unrecognized industrial policy which has not worked very well.

That is not surprising when we have a Tax Code that encourages investments to be made largely on tax considerations, rather than on the economics of investing in enterprises that create jobs and make the economy grow.

These facts are important at a time when we have just had a $150 billion trade deficit. They are important when unemployment has been stuck at around 7 percent for well over 1 year. They are important at a time when there is much speculation about the validity of forecasts showing continued economic growth.

We are on the way to adoption of good tax reform legislation. The concepts in this bill can restore Americans' faith in the fairness of the tax system. It can free our economy from the burden of tax planning and avoidance. It is the kind of legislation I had hoped we could pass when I first came to the Senate. Over the years, I came to wonder whether tax reform was really possible. I now believe that it is within our grasp.

PRESIDENT'S SPEECH ON CONTRA AID

Mr. DOLE. Mr. President, this afternoon President Reagan spoke to the Nation, urging support for effective aid to the freedom fighters in Nicaragua, the so-called Contras.

As we all know, the President originally had asked to speak directly to the House, because he believes this issue is so important to our national security. Regrettably, it was impossible to make that arrangement. Nonetheless, I hope that the Members of the House, who will vote on Contra aid within the next 24 hours, and all of us here in the Senate, who will be back on this matter after recess, will ponder seriously the President's words.

The President laid it on the line. Nicaragua is going straight down the same path that Cuba did. It is being turned into a Soviet military base, the first one on the mainland of the Americas. It is becoming—it will become—a direct and serious threat to our national security. Maybe not today, maybe not next week or month. But someday.

Unless we do something about it.

We've been debating this issue for months, while the noose tightened on the democratic forces inside Nicaragua; while new Russian and Cuban arms and advisers arrived; and while the Sandinistas stepped up their attacks on Honduras and the other democratic nations of Central America. And I guess we'll keep on debating it some more.

But we're getting close to the bottom line. And that bottom line is the question the President posed to those who doubt the threat from Nicaragua is real, those who think the President is just crying "wolf:" "What are the consequences for our country," the President asked, "if you are wrong?"

I hope the Members of the House will think about that as they vote. I hope all of us here will, too.

Mr. President, I ask that the full text of the President's speech be included in the RECORD.

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

TEXT OF REMARKS BY THE PRESIDENT IN AN ADDRESS TO THE NATION

My fellow citizens. The matter that brings me before you today is a grave one and concerns my most solemn duty as President. It is the cause of freedom in Central America and the national security of the United States. Tomorrow the House of Representatives will debate and vote on this issue. I had hoped to speak directly and at this very hour to Members of the House of Representatives on this subject, but was unable to do so. Because I feel so strongly about what I have to say, I have asked for this time to share with you—and Members of the House—the message I would have otherwise given.

Nearly forty years ago a Democratic President, Harry Truman, went before the Congress to warn of another danger to democracy, a civil war in a faraway country in which many Americans could perceive no national security interest. Some of you can remember the world then: Europe lay devastated.

One by one, the nations of Eastern Europe had fallen into Stalin's grip. The democratic government of Czechoslovakia would soon be overthrown. Turkey was threatened, and in Greece, the home of democracy, communist guerrillas, backed by the Soviet Union, battled democratic forces to decide the Nation's fate.

Most Americans did not perceive this distant danger. So the opinion polls reflected little of the concern that brought Harry Truman to the well of the House that day. But go he did. And it is worth a moment to reflect on what he said.

In a hushed chamber, Mr. Truman said that we had come to a time in history when every nation would have to choose between two opposing ways of life. One way was based on the will of the majority—on free institutions and human rights.

"The second way of life," he said, "is based upon the will of a minority forcibly

imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections and the suppression of personal freedoms."

"I believe," President Truman said, "that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures."

When Harry Truman spoke, Congress was controlled by the Republican Party. But that Congress put America's interest first, and supported Truman's request for military aid to Greece and Turkey—just as 4 years ago Congress put America's interest first by supporting my request for military aid to defend democracy in El Salvador.

I speak today in that same spirit of bipartisanship. My fellow Americans—and Members of the House—I need your help.

I ask first for your help in remembering—remembering our history in Central America so we can learn from the mistakes of the past.

Too often in the past, the United States failed to identify with the aspirations of the people of Central America for freedom and a better life. Too often our government appeared indifferent when democratic values were at risk. So, we took the path of least resistance—and did nothing.

Today, however, with American support, the tide is turning in Central America. In El Salvador, Honduras, Costa Rica—and now in Guatemala—freely-elected governments offer their people the chance for a better future—a future the United States must support.

But there is one tragic, glaring exception to that democratic tide—the Communist Sandinista government in Nicaragua. It is tragic because the United States extended a generous hand of friendship to the new revolutionary government when it came to power in 1979.

Congress voted $75 million in economic aid. The United States helped re-negotiate Nicaragua's foreign debt. America offered teachers, doctors, and Peace Corps volunteers to help rebuild the country. But the Sandinistas had a different agenda.

From the very first day, a small clique of Communists worked steadily to consolidate power and squeeze out their democratic allies.

The democratic trade unionists—who had fought Somoza's National Guard in the streets—were now told by the Sandinistas that the right to strike was illegal and that their "revolutionary" duty was to produce more for the state.

The newspaper—La Prensa—whose courage and determination had inspired so much of the Nicaraguan revolution—found its pages censored and suppressed. Violeta Chamorro—widow of the assassinated editor—soon quit the revolutionary government to take up the struggle for democracy again—in the pages of her newspaper.

The leader of the Catholic Church in Nicaragua, Archbishop—now Cardinal—Obando y Bravo, who had negotiated the release of the Sandinista leaders from prison during the revolution, was now vilified as a traitor by the very men he helped to free.

Soviet arms and bloc personnel began arriving in Nicaragua. With Cuban, East German, and Bulgarian advisers at their side, the Sandinistas began to build the largest standing army in Central American history and to erect all the odious apparatus of the modern police state.

Under the Somoza dictatorship, a single facility held all political prisoners. Today there are eleven. Eleven prisons in place of one.

The Sandinistas claim to defend Nicaraguan independence. But you and I know the truth. The proud people of Nicaragua did not rise up against Somoza—and struggle, fight, and die—to have Cubans, Russians, Bulgarians, East Germans, and North Koreans running their prisons, organizing their army, censoring their newspapers, and suppressing their religious faith. One Nicaraguan nationalist, who fought in the revolution, says: "We are an occupied country today."

I could go on, but I know that even the Administration's harshest critics in Congress hold no brief for Sandinista repression. Indeed, the final verdict has already been written by Cardinal Obando himself in the Washington Post. Listen carefully to the Cardinal's words.

He says: The idea that the Sandinista regime "is a democratic government, legitimately constituted, which . . . seeks the welfare and peace of the people and enjoys the support of the overwhelming majority is not true."

To accept this as true, the Cardinal says, "is to ignore the mass exodus of the Miskito Indians . . . the departure of tens of thousands of Nicaraguan men and women of every age, profession, economic status and political persuasion . . . it is to ignore . . . the most terrible violation of freedom of the press and of speech in the history of our country . . . the expulsion of priests and the mass exodus of young people eligible for military service." As for the Catholic Church in Nicaragua, we have been "gagged and bound," the Cardinal says.

Many brave Nicaraguans have stayed in their country despite mounting repression—defying the security police, defying the Sandinista mobs that attack and deface their homes. Thousands—peasants, Indians, devout Christians, draftees from the Sandinista army—have concluded that they must take up arms again to fight for the freedom they thought they had won in 1979.

The young men and women of the democratic resistance fight inside Nicaragua today in grueling mountain and jungle warfare. They confront a Soviet-equipped army, trained and led by Cuban officers. They face murderous helicopter gunships without any means of defense. And still they volunteer. And still their numbers grow.

Who among us would tell these brave young men and women—your dream is dead; your democratic revolution is over; you will never live in the free Nicaragua you fought so hard to build?

The Sandinistas call these freedom fighters contras—for counter-revolutionaries. But the real counter-revolutionaries are the Sandinista commandantes, who betrayed the hopes of the Nicaraguan Revolution, and sold out their country to the Soviet Empire.

The commandantes even betrayed the memory of the Nicaraguan rebel leader Sandino, whose legacy they falsely claim. For the real Sandino—because he was a genuine nationalist—was opposed to communism. In fact, Sandino broke with the Salvadoran communist leader, Farbundo Marti, over this very issue.

The true Nicaraguan nationalists are the leaders of the United Nicaraguan Opposition: Arturo Cruz—jailed by Somoza, a former member of the Sandinista government; Adolfo Calero—who helped organize a strike of businessmen to bring Somoza down; and Alfonso Robelo—a social democrat, and once a leader of the revolutionary government.

These good men refused to make any accommodation with the Somoza dictatorship. Who among us can doubt their commitment to bring democracy to Nicaragua?

So, the Nicaraguan people have chosen to fight for their freedom. Now we Americans must also choose.

For you and I and every American has a stake in this struggle. Central America is vital to our own national security—and the Soviet Union knows it. The Soviets take the long view but their strategy is clear—to dominate the strategic sea lanes and vital chokepoints around the world.

Half of America's imports and exports, including oil, travels through the area today. In a crisis, over half of NATO's supplies would pass through this region. And Nicaragua, just 277 miles from the Panama Canal, offers the Soviet Union ports in both the Atlantic and Pacific Oceans.

The Soviet Union already uses Cuba as an air and submarine base in the Caribbean. It hopes to turn Nicaragua into the first Soviet base on the mainland of North America.

If you doubt it, ask yourself: Why have the last four Soviet leaders—with a mounting economic crisis at home—already invested over a billion dollars and dispatched thousands of Soviet bloc advisers into a tiny country in Central America?

I know that no one in Congress wants to see Nicaragua become a Soviet military base. My friends, I must tell you in all seriousness: Nicaragua is becoming a Soviet base every day that we debate and debate and debate—and do nothing.

In the 3 months since I last asked the House to aid the democratic resistance, four military cargo ships have arrived at Nicaraguan ports, this time directly from the Soviet Union. Recently we have learned that Russian pilots are flying a Soviet A.N.-thirty reconnaissance plane for the Sandinistas.

The Sandinistas claim this is just for making civilian maps. Our intelligence services believe this could be the first time Soviet personnel have taken a direct role in support of military operations on the mainland of North America.

Think again how Cuba became a Soviet air and naval base. You will see what Nicaragua will look like if we continue to do nothing. Cuba became a Soviet base gradually over many years. There was no single dramatic event—once the missile crisis passed—that captured the nation's attention. And so it will be with Nicaragua.

The Sandinistas will widen and deepen another port while we debate: is it for commercial vessels or Soviet submarines? The Sandinistas will complete another air strip while we argue: is it for 707's or Backfire Bombers? A Soviet training brigade will come to Nicaragua. Half will leave and half will stay. And we will debate: are they soldiers or engineers?

Eventually, we Americans will have to stop arguing among ourselves. We will have to confront the reality of a Soviet military beachhead inside our defense perimeters—about 500 miles from Mexico. A future President and Congress will then face nothing but bad choices, followed by worse choices.

My friends in the House, for over 200 years the security of the United States has depended on the safety of unthreatened borders, north and south. Do we want to be

the first elected leaders in U.S. history to put our borders at risk?

Some of you may say: this is fear-mongering. Such a danger to our security will never come to pass. Perhaps it won't. But in making your decision on my request for aid tomorrow, consider this: what are the consequences for our country if you are wrong?

I know some Members of Congress who share my concern about Nicaragua have honest questions about my request for aid to the democratic resistance. Let me try to address them. Do the freedom fighters have the support of the Nicaraguan people? I urge Members of the House to ask their colleague, the Chairman of the House Armed Services Committee, who recently visited a town in Nicaragua that was a Sandinista stronghold during the revolution. He heard peasants, trade unionists, farmers, workers, students, and shop keepers all call on the United States to aid the armed resistance.

Or listen to the report from Time Magazine of Central American scholar, Robert Leiken, who once had hopes for the Sandinista revolution. He says: "I have gone to a number of towns in Nicaragua where I have found that the youth are simply not there. I ask their parents where they've gone, and they say, they've gone off to join the contras." In Managua, Leiken reports, 250 Nicaraguans stood on a breadline for 3 hours. "Who is responsible?" he asked. "The Sandinistas are responsible," the people said. "The Sandinistas," Leiken concluded, "have not only lost support, I think they are detested by the population."

Can the democratic forces win? Consider: There are 20 times as many Nicaraguans fighting the Sandinista dictatorship today as there were Sandinista fighters a year before Somoza fell. This is the largest peasant army raised in Latin America in more than 50 years. And thousands more are waiting to volunteer, if American support comes through.

Some Members of Congress—and I know some of you—fear that military aid to the democratic resistance will be only the first step down the slippery slope toward another Vietnam. I know those fears are honest. But think where we heard them before.

Just a few years ago, some argued in Congress that U.S. military aid to El Salvador would lead inevitably to the involvement of U.S. combat troops. But the opposite turned out to be true.

Had the United States failed to provide aid then, we might well be facing the final Communist takeover of El Salvador, and mounting pressures to intervene. Instead—with our aid—the government of El Salvador is winning the war—and there is no prospect whatever of American military involvement.

El Salvador still faces serious problems that require our attention. But democracy there is stronger. And both the communist guerrillas and the right-wing death squads are weaker. And Congress shares credit for that accomplishment.

American aid and training is helping the Salvadoran army become a professional fighting force, more respectful of human rights. With our aid, we can help the Nicaraguan resistance accomplish the same goal.

I stress this point because I know many Members of Congress and many Americans are deeply troubled by allegations of abuses by elements of the armed resistance. I share your concerns. Even though some of those charges are Sandinista propaganda, I believe such abuses have occurred in the past. And they are intolerable.

As President, I repeat to you the commitments I made to Senator Sam Nunn. As a condition of our aid, I will insist on civilian control over all military forces; that no human rights abuses be tolerated; that any financial corruption be rooted out; that American aid go only to those committed to democratic principles. The United States will not permit this democratic revolution to be betrayed nor allow a return to the hated repression of the Somoza dictatorship.

The leadership of the United Nicaraguan opposition shares these commitments and I welcome the appointment of a bipartisan congressional commission to help us see that they are carried out.

Some ask: what are the goals of our policy toward Nicaragua? They are the goals the Nicaraguan people set for themselves in 1979: democracy, a free economy, and national self-determination.

Clearly the best way to achieve these goals is through a negotiated settlement. No humane person wants to see suffering and war.

The leaders of the internal opposition and the Catholic Church have asked for dialogue with the Sandinistas. The leaders of the armed resistance have called for a cease-fire and negotiations at any time, in any place. We urge the Sandinistas to heed the pleas of the Nicaraguan people—for a peaceful settlement.

The United States will support any negotiated settlement or Contadora Treaty that will bring real democracy to Nicaragua. What we will not support is a paper agreement that sells out the Nicaraguan people's right to be free.

That kind of agreement would be unworthy of us as a people. And it would be a false bargain. For internal freedom in Nicaragua and the security of Central America are indivisible. A free and democratic Nicaragua will pose no threat to its neighbors, or to the United States. A communist Nicaragua, allied with the Soviet Union, is a permanent threat to us all.

President Azcona of Honduras emphasized this point in a recent nationwide address. "As long as there is a totalitarian regime [in Central America] that has expansionist ambitions and is supported by an enormous military apparatus . . . the neighboring countries sharing common borders with the country that is the source of the problem, will be under constant threat." If you doubt his warning, consider this. The Sandinistas have already sent two groups of communist guerrillas into Honduras. Costa Rican revolutionaries are already fighting alongside Sandinista troops.

My friends in the Congress: With democracy still a fragile root in Central America—with Mexico undergoing an economic crisis—can we responsibly ignore the long-term danger to American interests posed by a communist Nicaragua, backed by the Soviet Union, and dedicated—in the words of its own leaders—to a "revolution without borders"?

My friends, the only way to bring true peace and security to Central America is to bring democracy to Nicaragua. And the only way to get the Sandinistas to negotiate seriously about democracy is to give them no other alternative. Seven years of broken pledges, betrayals, and lies have taught us that.

That is why the measure the House will consider tomorrow—offered I know in good faith—which prohibits military aid for at least another 3 months—and perhaps forever—would be a tragic mistake. It would not bring the Sandinistas to the bargaining table. Just the opposite.

The bill, unless amended, would give the Sandinistas and the Soviet Union what they seek most—time. Time to crush the democratic resistance. Time to consolidate power. And it would send a demoralizing message to the democratic resistance: that the United States is too divided and paralyzed to come to their aid in time.

Recently, I read the words of a leader of the internal democratic opposition. What he said made me feel ashamed.

This man has been jailed, his property confiscated, and his life threatened by the security police. Still he continues to fight. He said: "You Americans have the strength, the opportunity, but not the will. We want to struggle, but it is dangerous to have friends like you . . . to be left stranded on the landing beaches of the Bay of Pigs. Either help us or leave us alone."

My friends in the House of Representatives: I urge you to send a message tomorrow to this brave Nicaraguan—and thousands like him. Tell them it is not dangerous to have friends like us. Tell them: America stands with those who stand in defense of freedom.

When the Senate voted earlier this year for military aid, Republicans were joined by many Democratic leaders: Bill Bradley of New Jersey, Sam Nunn of Georgia, David Boren of Oklahoma, Howell Heflin of Alabama, Lloyd Bentsen of Texas, Bennett Johnston and Russell Long of Louisiana, Fritz Hollings of South Carolina, John Stennis of Mississippi, and Alan Dixon of Illinois. Tonight I ask the House for that kind of bipartisan support for the amendment to be offered tomorrow by Democrats Ike Skelton of Missouri and Richard Ray of Georgia, and Republicans Mickey Edwards of Oklahoma and Rod Chandler of Washington. This bipartisan amendment will provide the freedom fighters with what they need—now.

With that amendment, you also send another message to Central America. For democracy there faces many enemies: poverty, illiteracy, hunger, and despair. And the United States must also stand with the people of Central America against these enemies of democracy.

That is why—just as Harry Truman followed his request for military aid to Greece and Turkey with the Marshall Plan—I urge Congress to support $300 million in new economic aid to the Central American democracies.

The question before the House is not only about the freedom of Nicaragua and the security of the United States, but who we are as a people.

President Kennedy wrote on the day of his death that history had called this generation of Americans to be "watchmen on the walls of world freedom." A Republican President, Abraham Lincoln, said much the same thing on the way to his Inauguration in 1861.

Stopping in Philadelphia, Lincoln spoke in Independence Hall, where our Declaration of Independence was signed. He said far more had been achieved in that hall than just American independence from Britain. Something permanent . . . something unalterable . . . had happened. He called it: "hope to the world for all future time."

Hope to the world for all future time. In some way, every man, woman, and child in our world is tied to those events in Independence Hall, to the universal claim to dignity, to the belief that all human beings are

created equal, that all people have a right to be free.

We Americans have not forgotten our revolutionary heritage. But sometimes it takes others to remind us of what we ourselves believe.

Recently, I read the words of a Nicaraguan Bishop, Pablo Vega, who visited Washington a few weeks ago. Somoza called Pablo Vega the "communist bishop." Now the Sandinistas revile him as the "contra bishop." But Pablo Vega is really a humble man of God.

"I am saddened," the good Bishop said, "that so many North Americans have a vision of democracy that . . . has only to do with materialism . . ." The Sandinistas "speak of human rights as if they were talking of the rights of a child—the right to receive from the bountifulness of the state . . . but even the humblest campesino knows what it means to have the right to act." "We are defending," Pablo Vega said, "the right of man to be."

Well Reverend Father, we hear you. For we Americans believe with you that even the humblest campesino has the right to be free. My fellow citizens, Members of the House: let us not take the path of least resistance in Central America again. Let us keep faith with these brave people struggling for their freedom. Give them, give me, your support; and together, let us send this message to the world: that America is still a beacon of hope, still a light unto the nations. A light that casts its glow across the land and our continent and even back across the centuries—keeping faith with a dream of long ago.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader is recognized.

AGENDA

Mr. BYRD. Mr. President, I take the floor at this time, with the permission of the Chair, to inquire of the distinguished majority leader as to what the program is for the rest of the day, tomorrow, Thursday, and Friday if he can tell us at this point.

Mr. LEAHY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order to hear the majority leader.

Will staff members please retire or take their places in the rear of the Chamber? Will other Senators take their seats? Will those leaving the galleries please do so as quietly as possible?

The Democratic leader.

Mr. DOLE. Will the Senator yield?

Mr. BYRD. Mr. President, I yield. I ask that the Senate be in order.

The PRESIDING OFFICER. If the Senator will suspend, the Senate is not in order.

We cannot continue until the Senate is in order. Will those leaving the galleries please do so as quickly and quietly as possible?

The Democratic leader has the floor.

Mr. BYRD. Mr. President, I thank the Chair for trying to secure order.

It is important that the majority leader be heard because he will have an announcement that will be of importance to all Senators.

Mr. DOLE. Mr. President, will the distinguished minority leader yield?

Mr. BYRD. Yes. I yielded to the majority leader.

Mr. DOLE. Mr. President, let me also thank the Chair. I know it is a difficult time to obtain order.

Mr. President, we will take up H.R. 3511, the bank bribery bill to concur with an amendment. That will not take very long. It will take 2 minutes. Then we will take up Calendar No. 419, H.R. 1483, the Smithsonian bill.

I understand on that measure the distinguished Senator from Nebraska [Mr. EXON] would like a rollcall vote. That will be coming along momentarily. Prior to that vote, I hope I am in a position to advise whether or not we will take up diplomatic security this evening.

I am advised that we cannot take up the supplemental appropriations bill until tomorrow. That will be up tomorrow.

□ 1620

It may also be that before the night is over we will take up the nomination of Daniel Manion, to be a circuit judge. If we cannot reach some time agreement, I will file cloture on that nomination.

Mr. BYRD. Mr. President, I thank the distinguished majority leader. If I understand what he has said, there will be a rollcall vote yet to occur today.

Mr. DOLE. There will be at least one. There could be more than one. I would hope we would not be in session much after 6:30 or 7 o'clock in any event. I think with everyone's cooperation, we are still trying to figure out a way to complete our work by Thursday evening.

Mr. BYRD. I thank the distinguished majority leader.

What time would the distinguished majority leader contemplate the Senate would come in tomorrow and what rollcall votes and in what order and how late would tomorrow's session continue?

Mr. DOLE. I would have to make an announcement on that a little later.

Mr. LEAHY. Will the Senator yield?

Mr. BYRD. I yield.

Mr. LEAHY. Did the distinguished majority leader understand I am not asking for a rollcall on the Smithsonian bill, and what did the distinguished majority leader say about the diplomatic security bill?

Mr. DOLE. We will make a determination in the next 30 minutes whether we are going to take that up. I understand there may be a number of Members who have a lot of ideas on what to do with that bill. We want to take another look at it to make certain it is in good condition.

Mr. LEAHY. It might even be in a better condition by the time we get done with it.

Mr. BYRD. For the understanding of all Senators who did not hear clearly, and I will say that I have had difficulty in hearing even being this close to the majority leader, on what measure does the distinguished majority leader anticipate a rollcall vote yet today?

Mr. DOLE. On the Smithsonian bill.

Mr. BYRD. I am a little confused because I understood the distinguished majority leader to say just now, or to indicate, that the Senate might not take up that measure today.

Mr. DOLE. No. I was referring to the diplomatic security bill we may not take up. This one would be the Smithsonian Institution to plan and construct facilities for certain science activities at the Institution, and for other purposes.

Mr. BYRD. So that measure will be up and Senator EXON wanted the rollcall vote in relation thereto.

Mr. EXON. That is correct. Will the majority leader yield for a question?

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. DOLE. I yield for a question.

Mr. EXON. A statement first.

Yes, I have requested a rollcall vote on the Smithsonian Institution to plan and construct a project. There are people who have asked if we can have that vote as soon as possible. I believe we have agreed to 20 minutes, 10 minutes to a side, and then go to a vote. Would it upset the plans of the majority leader if we can take that up next and get it out of the way, since we know we are going to have a rollcall vote, and move that on through? First, can we do that?

Second, the majority leader indicated that we will have a vote tomorrow, supposedly, on the supplemental appropriations bill. Has the House of Representatives passed the supplemental appropriations bill yet, to the leader's knowledge?

Mr. DOLE. No. We hoped to take it up this evening but the House will not finish it until late this evening. It will not be here until tomorrow.

Mr. EXON. I thank the majority leader. That follows the plan that the majority leader gave me last week when I asked about taking it up as soon as possible. But as of now, if it passed the House sometime tonight, it will have priority consideration for tomorrow.

Mr. DOLE. That is correct.

I have no problem in taking up the Smithsonian Institution bill first.

Mr. BYRD. If I may, I think I am in a position to indicate to the majority leader that we on this side have cleared an agreement to put such before the Senate, that there be no amendments on the bill but there be 20 minutes on the bill to be equally divided. That is the Smithsonian bill.

UNANIMOUS CONSENT AGREEMENT—H.R. 1483

Mr. DOLE. Mr. President, I ask that we proceed to Calendar 419, the Smithsonian Institution bill; that no amendments be in order; that there be a period of 20 minutes of debate equally divided on that bill.

The PRESIDING OFFICER. Is there objection? There is a committee amendment.

Mr. DOLE. Except the one reported committee amendment.

The PRESIDING OFFICER. The Senate will be in order. Will those Senators conversing please take their seats?

A unanimous-consent request has been made. Is there objection?

Mr. METZENBAUM. What is the unanimous-consent request?

Mr. DOLE. To take up the Smithsonian Institution bill with 20 minutes to be equally divided with no amendments other than the committee amendment to be in order.

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

Mr. METZENBAUM. Did the leader say he was going to call up a bill related to bank bribery?

Mr. DOLE. We were going to, yes.

Mr. MATHIAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, H.R. 1483 is a construction authorization for the Smithsonian Institution. I ask that the bill be stated.

AUTHORIZATION TO PLAN AND CONSTRUCT FACILITIES FOR SCIENCE ACTIVITIES OF THE SMITHSONIAN INSTITUTION

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

The bill clerk read as follows:

A bill (H.R. 1483) to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Rules and Administration, with an amendment:

On page 2, line 6, strike "$11,200,000", and insert in lieu thereof "$11,100,000".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Board of Regents of the Smithsonian Institution is authorized to plan and construct facilities for the Smithsonian Astrophysical Observatory and the Smithsonian Tropical Research Institute.

SEC. 2. Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution:

(a) $4,500,000 for the Smithsonian Astrophysical Observatory; and

(b) $11,100,000 for the Smithsonian Tropical Research Institute.

SEC. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. MATHIAS. Mr. President, there is not a lot that needs to be said, not a lot that can be said in the 10 minutes. I am going to try to summarize very quickly the committee report.

Members who have been devoting their minds to taxes for the last couple of weeks may not have the committee report precisely in the forefront of their minds, but what we are dealing with are two important institutions. They are ongoing programs. They are in need of some construction and some additional facilities.

Mr. President, H.R. 1483 is a simple construction authorization for the Smithsonian Institution. There is not a lot that needs to be said about this bill except to point out that the construction is not for new programs, but for two important ongoing operations. If this bill were for new programs, I might think that we might dismiss it out of hand as an appropriate response to Public Law 99-177, otherwise known as Gramm-Rudman-Hollings. But it is not a new program authorization. It is to replace existing facilities that are unsuitable for the scientific research work conducted in them and that are unsafe and unsanitary for the people who work in them.

All of this is documented in the November 19, 1985, report from the Committee on Rules and Administration, report No. 99-189, but for the benefit of Senators who might not have read that report recently, I will summarize a few points.

One of the two facilities covered by this bill is the Fred Lawrence Whipple Observatory in Arizona. The Whipple Observatory is located on top of Mount Hopkins, 35 miles south of Tucson. At that location the Smithsonian operates several astronomical telescopes, including the multiple mirror telescope, the third largest telescope in the world and the first of its kind. The Whipple Observatory is a major astronomical research facility and is used by approximately 90 astronomers from all over the world for a wide variety of research projects each year. The construction authorized by this bill is not to build any additional telescopes or to start any new programs or to increase any existing programs. The construction is to replace the base camp, which is where all the administrative and logistical support for the observatory takes place. The base camp is the base of Mount Hopkins because there is not enough room at the summit where the telescopes are.

The current base camp is in an abandoned, 50-year-old school building. The school district that owns the building wants the Smithsonian to move out so they can sell it. The building is too small; its layout hinders people in their work; and it is in need of repairs and adequate heating, air conditioning, and sanitatation facilities. The worst problem is that it is separated from the mountain by a river which is dry much of the year but which floods during the rainy season and which usually washes out the bridge. For the summit to be cut off from the the base camp for several weeks at a time because of these washouts is not unusual. This not only adversely affects the work at the summit but it also places personnel who may be at the summit at such a time in a dangerous situation. In the case of injury or illness, providing medical care would be extremely difficult, if not impossible. The new base camp will be on the same side of the river as the summit.

I ask unanimous consent to have printed in the RECORD a report from an onsite visit to the Whipple Observatory.

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

OBSERVATIONS FROM SITE VISIT TO SMITHSONIAN SCIENCE FACILTY IN ARIZONA

BACKGROUND

The Fred Lawrence Whipple Observatory (FLWO) is a major astronomical facility that is used by approximately 90 scientists a year for a wide variety of research projects, especially for studies of the large-scale structure and evolution of the Universe, the physics of quasars and active galaxies, the structure and history of our own galaxy, and the formation and evolution of stars and stellar systems. The Observatory is located atop. Mt. Hopkins, Arizona, and is the site of the Multiple Mirror Telescope (MMT), built and operated by the Smithsonian Institution and the University of Arizona. The Smithsonian Astrophysical Observatory (SAO) also operates two smaller telescopes at Mt. Hopkins, for large scale surveys and for observations in support of the research using the MMT. In addition, there is a 10-meter diameter light collector which is the most sensitive in the world for ground-based searches for high-energy gamma rays from celestial sources.

The MMT together with its instrumentation and computers represents an investment in excess of $10 million, with a corresponding value of perhaps $2 million for the other telescopes. The support facilities, such as the dorms, maintenance, buildings, and access roads, cost approximately $5 million to construct. These figures are estimates of the real dollars spent in the actual construction years spanning more than a decade; the replacement costs in 1984 dollars would probably be two or three times higher. The annual budget for the operation of the FLWO and the MMT is ap-

proximately $1.5 million, with roughly two-thirds of this total being for the MMT.

Operations in support of the FLWO and MMT are administered from a base camp, presently located in Amado, Arizona. The administrative offices are located in an old abandoned school building, which is rented from the local school district. Maintenance of the FLWO fleet of 76 vehicles, mostly obtained from government surplus, is carried out in open sheds. Storage is mostly out in the open. Tour groups are assembled and visitors are accommodated in a room of the school building.

LEGISLATIVE REQUEST

As part of the Smithsonian's Science Facilities funding request, which will be reintroduced early in the 99th Congress, the Institution will seek major funds for the construction of a new base camp at a new location, to provide the services required to support the scientific operations and accommodation of visitors and tours as well as for access (roads) improvements.

P.L. 98-73, approved August 11, 1983, provides authority for the purchase of property on which to construct a permanent base camp. This base camp will serve as the administrative nexus and logistical support area for all activities conducted on the mountain. Funding for the purchase, $150,000, is included in the budget request of the Smithsonian for FY 1985. If this and construction authority is approved, the Smithsonian would seek an estimated $4.5 million in construction funds.

CURRENT BASE CAMP LOCATION

The FLWO base camp is now located in Amado, where for the past 13 years the Smithsonian has leased four acres of land; two acres owned by the Tubac School District and two acres owned by private citizens. On the property is an approximately half-century old, one story, adobe school house and a former teacher's residence, both of which have been converted to office use. Also on the property are various motor-pool facilities, including repair and maintenance bays, storage, trailers, and temporary sheds, linked by gravel-surface parking lots and driveways. What was originally planned as a temporary staging area has gradually grown into the administrative and technical headquarters for FLWO, as well as the "visitor's center" for the general public.

BASE CAMP FUNCTIONS

The current base camp houses a 15-person support staff with responsibility for:

1. Maintenance, grading, and snow plowing of the 18 mile long, single-lane access road to the summit of Mt. Hopkins, and the connecting roads and parking areas.

2. Maintenance of approximately 75 vehicles used for transportation of scientists, visitors, and supplies between the base camp and the mountain.

3. Maintenance and technical operation of three telescopes, their computerized control systems, and the astronomical instruments used on these telescopes.

4. Support services for the facilities on the mountain and at the base camp, including water collection and distribution; telephone communications and data network; electrical power distribution with emergency backup generators; heating and cooling of buildings with a total of 74,000 sq. ft. of area; and general maintenance of these buildings including cleaning services.

5. Responsibility for all administrative functions required for the above activities, such as purchasing, fiscal control, secretarial services, shipping and receiving, and personnal actions.

6. A small, informal "visitor's center" is maintained. A full-time Public Affairs Specialist is assigned to FLWO, and residents of nearby communities serve as volunteer staff members greeting visitors, answering telephone queries, and responding to mail requests for information. Regularly scheduled guided bus tours, originating from the base camp, are provided to the public nine months of the year.

The current lease that SAO holds for occupancy of the present base camp in Amado expires in June, 1987. Any extension to this lease would have to be approved by the Amado school board.

The Smithsonian hired a private contractor to develop a master plan for the selection of a new base camp site. Five locations were found that could meet FLWO's requirements: two are privately owned and "for sale"; two are owned by the State and are available for lease; and one is on National Forest Service property and although there would be no cost for the land, higher development costs would be incurred.

The Smithsonian expects the operating expenses for the new base camp to be about the same ($1.5 million/year) as at the present base camp. However, a detailed analysis of the expected operating expenses has not been carried out as yet. Although there will be more enclosed space in the new buildings, they expect that the total maintenance costs will be approximately the same because the buildings will be new. Costs for utilities are expected to be somewhat higher. If the access road from Amado to the base camp is paved, the cost for the maintenance of this section of the road will be reduced.

ON-SITE OBSERVATIONS

Despite may modifications and improvements over the years, the current base camp at Amado appears to lack adequate facilities to support FLWO efficiently, and some of the deficiencies constitute safety hazards. Moreover, the visual impression of the facility is extremely poor, reflecting badly on both the Smithsonian's national reputation and the quality of the scientific research being carried out on the mountain.

The architectural layout of the old schoolhouse makes it an awkward office building. For example, the lack of an obvious reception area means that business and casual visitors seldom know where to turn upon entering the building. As a result, public visitors frequently interrupt staff members at their desks, salesmen wander into staff meetings, and tour participants enter restricted areas of the motor pool.

The largest single space (which is about the size of our Committee's hearing room) in the building now serves as a "common room" of multiple purposes; a staff ready room, a visitor's center, a theater, a museum gift shop, a lunchroom, a classroom, and a conference room. This common room is also used as a staging area for the bus tours and as a display area for the astronomy exhibit and public visitors often end up in the middle of office traffic flow and meetings.

The restrooms, which serve the entire base camp complex, are inadequate for use by large groups, such as tour visitors or general staff meetings. Neither the restrooms nor the building itself are accessible to the handicapped.

High ceilings and poor insulation make the schoolhouse difficult and costly to heat and cool. In winter, staff often wear jackets all day to stay warm and it's overheated during the summer months. The inside lighting is inadequate despite recent improvements.

The roof leaks and the concrete roof caps over the adobe walls are cracking. Apparently, the school district does not want to invest in major improvements on this property.

Also, the lack of a fire alarm or sprinkler system is a serious deficiency. The water from the base camp well is potable but it is not safe to drink in the schoolhouse building due to leaks in the old underground plumbing, and bottled water is used.

At the present base camp the motor pool has two open-air service bays with remada-type roofs, and one small enclosed garage. Nothing larger than a passenger-cargo van can be serviced in that garage. Larger vehicles are thus serviced in the open bays, exposed to dirt and the extremes of weather. All vehicles are washed by hand on an open pad. Tires are stored in open sheds, secured with a lock and chain. Batteries are stored in the open. The motor pool office and most of the storage for spare parts are located in old trailers.

RECOMMENDATIONS

The increased public interest in astronomy nationwide, combined with interest in the pioneering MMT, has created a growing demand for access to Mt. Hopkins and a corresponding need for expanding facilities to serve the public. There are several reasons that could be argued in favor of meeting this need at FLWO.

The Smithsonian Institution has an explicit responsibility for the diffusion of knowledge. Since FLWO is one of the few major Smithsonian installations outside of Washington, and the only one in the Western United States, it is an obvious focal point for the general public and other groups who perceive it as representative of the Smithsonian and a public facility. Also, as the MMT has emerged as the principle astronomical instrument at Mt. Hopkins, the Smithsonian should maintain the visibility of its role in this collaboration with the University of Arizona. Furthermore, because Mt. Hopkins is located in the Coronado National Forest, the Smithsonian has a responsibility to respect the multiple-use policies of the U.S. Forest Service, which encourages public access to these lands.

The present base camp is unable to meet the increasing demands placed upon it by both the existing staff, visiting scientists, and the public.

A major reason to build a new base camp facility is that there are natural and legal limitations to the improvements that can be made at the present leased site. Federal statutes restrict the amount that can be invested in permanent improvements to leased property, to an amount not to exceed 25 percent of the first year's lease value, spread over the entire lifetime of the lease. Since the annual cost of the present lease is approximately $12,000, this could be a very restrictive limitation.

In light of the on-site observations previously addressed, the reality surrounding the current base camp facility is that it is too small, in need of major (and costly) renovation, and in some respects it is just unsafe.

Mr. MATHIAS. The other facility is the facility which is operated by the Smithsonian Institution as a tropical research institute in Panama.

The Smithsonian Tropical Research Institute in Panama is the principal

U.S. center for the study of tropical biology. Its buildings date from the 1920's and 1930's. Many are buildings that were built for the military and later turned over to the Smithsonian. Construction materials used at that time have proven very vulnerable to the ravages of high humidity and insect infestation in that area. Except for a new library, the buildings are inadequate, unsafe and unsanitary, and require extensive maintenance.

I ask unanimous consent to have printed in the RECORD at this point a report from an onsite visit to the Smithsonian Tropical Research Institute.

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

DECEMBER 15, 1984.

Memorandum to: The Honorable Frank Annunzio, Chairman, House Committee on House Administration, and Chairman, Joint Committee on the Library. David C. Sharman, Staff Director, House Committee on House Administration.

From: Hilary Lieber, Chief Clerk, Joint Committee on the Library.

Subject: Observations from site visit to the Smithsonian Institution's Tropical Research Institute in Panama.

BACKGROUND

The Smithsonian Tropical Research Institute (STRI) is a center for tropical studies carried out by the United States and the international scientific community. It also supports in-house research of a fundamental and outstanding quality and is custodian of the largest protected area of tropical forest under direct U.S. care.

Beginning in the 1960's and continuing at an ever increasing pace, insights derived from experience in the tropics have revolutionized the biological sciences. STRI has played a decisive role in that development as a result of staff research and the productivity of visiting scientists. In addition to direct advancement of science, STRI, through it's educational programs, has played a major role in producing another generation of scientists. Students from both developed and developing countries have benefited from STRI programs.

Continuing advances in tropical biology are essential to the economic and environmental health of both the developing and developed worlds. Population growth and more complex industrial and agricultural technologies challenge the capabilities of biological scientists to minimize the onslaught of human societies on our environment.

STRI's current and projected scientific and educational programs include the research of over two dozen professional staff. This core staff is essential to maintain long-term studies that can only be conducted by resident scientists. In addition, they are instrumental in attracting and selecting visiting scientists who contribute to the scholarly community and the depth of STRI's research activities.

STRI's educational and conservation programs derive from an obligation to train young scientists and undertake programs of relevance to local needs. Many projects underway demonstrate the STRI commitment to these obligations: agriculture and public health implications of recent invasions of Africanized bees; cooperation in the establishment and implementation of the Joint Commission on the Environment of the Panama Canal Commission; programs of training for third-world students in tropical biology; research and educational activities designed to examine alternatives to forest destruction; and participation in a Trinational Commission for the Study of Canal Alternatives. Many of these programs depend on a fusion of support from the Smithsonian Institution with support from private foundations.

STRI's headquarters are located on what is called the Tivoli site. There are three apparently separate research programs at STRI—(1) Naos, Pacific Ocean marine biology and environmental study, (2) Galeta, Atlantic Ocean marine biology and environmental study, and (3) Barro Colorado Island, a moist tropical forest island that has been a biological reserve since 1923.

LEGISLATIVE REQUEST

As part of the Smithsonian's Science Facilities funding request, which will be reintroduced early in the 99th Congress, the Institution will seek major funds for facilities development and construction at it's Tropical Research Institute. It is expected that the request will be about $11 million over four fiscal years (1986-1989).

STRI'S FACILITIES NEEDS/REQUESTS

A viable scientific establishment is essential to the maintenance of environmental integrity. The Smithsonian espouses, that for any institution, the foundations upon which scientific advancement depend are the quality of staff and the quality of the physical facilities to support that staff. While STRI has been able to improve its scientific staff in recent years (both numbers and quality), efforts to provide commensurate growth in physical facilities has been thwarted. The Smithsonian claims that physical facilities have expanded primarily as a result of inheritance of buildings from the Panama Canal Commission or the Department of Defense. Thus, STRI is largely housed in facilities designed for purposes other than carrying out scientific research.

The Smithsonian intends to focus on the solution of two problems in their plan to improve SIRI's facilities. First, the need for facilities to do science (laboratories, offices, and conference facilities) and, second, to provide the necessary support to insure efficient operation and use of scientists' time and energy.

There are four areas within current and projected SIRI programs that the Smithsonian will seek federal funds to design and construct new facilities:

1. Tivoli Site—design and construction of a new complex which will consolidate SIRI's mainland research facilities at one site in an integrated complex with the existing administrative headquarters and a modern library facility: construction of outdoor research facilities such as an aviary, insectary, and small animal enclosures adjacent to the new laboratory: replace the present Ancon Laboratory: provide for facilities to support modern research such as adequate darkrooms, chemistry labs, hazardous material storage and disposal, and controlled environment chambers: as well as make a significant political statement of U.S. interest in pursuing research on the Isthmus for an indefinite term.

The Smithsonian envisions the construction of a central conference facility at the Tivoli Site capable of accommodating up to 150 persons, including staff from all of SIRI's research facilities as well as visiting scientists and other interested groups.

Funds will also be requested for a workshop and maintenance building at Tivoli to replace the existing shop facility.

2. Galeta Point—proposed is construction of a new laboratory to replace an existing building, acquired from the Navy in 1965 as surplus. Also, funds will be requested to construct a dormitory facility capable of housing up to 15 persons on a self catering basis and providing adequate sewage treatment and disposal.

3. Barro Colorado Island (BCI)—funds will be sought for construction of a new two-story facility which will provide for a kitchen, dining room, and multi-purpose room to replace the wooden frame buildings more than 30 years old. A second story would allow space for lectures, symposia, and conferences which are significant parts of the intellectual life at BCI.

Additional funding will be requested for new construction of a central field laboratory at BCI. This facility would be a fire-proof building which will include individual offices and laboratory rooms, computer and analytical lab space, provisions for work with caged animals, and environmental chambers for studies under controlled conditions.

Current estimates for a request of federal funds, for SIRI are as follows:

Project	Cost estimate (millions)	Fiscal year appropriation
Tivoli Lab/Conference	$7.00	FY '87
Tivoli Maintenance Facility	.80	FY '89
Galeta Lab/Dorm	3.50	FY '88
BCI Central Lab	2.90	FY '88
BCI Kitchen/Dining/Conference Room	.67	FY '86
Total	[1] 14.87	

[1] The Smithsonian expects to receive a $4 million grant from the Tupper Foundation for the new Tivoli complex. Thus, subtracting this grant from the total, it is anticipated that the Smithsonian will seek approximately $11 million for their Tropical Research Institute in Panama.

ON-SITE OBSERVATIONS

1. Tivoli Site—the existing Ancon Laboratory, built in 1907 as a hospital laboratory, is in poor state of repair, lacks modern improvements and may be uneconomical to remodel to meet STRI's needs. The plumbing and wiring appears obsolete and inadequate. Also, its hillside location precludes construction of the extensive outdoor animal cage and plant-growing facilities required by the scientists. Further, parking facilities appear inadequate to meet the growing demands placed upon the Institute.

Currently, all seminars, workshops, and conferences are conducted in the Ancon building where the seating capacity is extremely limited (can accommodate a maximum of 50).

The maintenance building and machine workshop is housed in a surplus Navy building constructed in 1914. Working conditions appeared to be substandard and, to a certain extent, may fail to meet reasonable safety standards for lighting, noise, and dust control.

2. Galeta Point—current research operations at Galeta are housed in a small building constructed as a temporary structure by the U.S. Navy during WW II. The building is quite small and appears inappropriate for its present use. The sanitary facilities, at this facility, are inadequate and lacking a sufficient or ecologically-sound sewage disposal system. The building is of wood construction and poorly insulated. Frequent lightening and wind storms cause power

outages which often disrupt research and computer work. The building is termite infested and in need of a new generator. Also, there exists only one small room for storage.

The isolation of the Galeta laboratory indicates a need for a dormitory facility capable of housing up to 15 persons with adequate sewage treatment and disposal. The present dorm, built as temporary housing, is an old trailer that can sleep four. It is literally falling apart and invested with insects and termites.

3. Barro Colorado Island (BCI)—this facility serves as the support and administrative base for the principal area of tropical lowland humid forests under custodianship of the U.S. It's physical plant contains many apparently out-dated wooden buildings which are flammable and subject to deterioration by fungi and termites.

At present, meals are served for as many as 45 people three times a day. Should current trends continue, it may be necessary to feed as many as 80 people a day. The existing kitchen is more than thirty years old, the dining room structure more than fifty, and neither seemed to be designed to meet modern sanitary standards.

Since BCI is essentially a field research center laboratory needs are not as great or as sophisticated as those at STRI's marine stations or as planned at the Tivoli site. However, with a scientist population of up to 35 (resident staff and visiting scientists including graduate students), only about 18 space assignments are possible and many of these appear marginal. Some scientists, in residence 24 hours per day for months on end, do not have desks to work on.

Many of the existing plant-growing and animal houses, on BCI, are in open spaces that allow pests and other creatures to enter affecting the research being conducted. Ambient environmental conditions are difficult to maintain in such areas. Also, growing houses for plants should have potential for irrigation which are limited in the space currently used.

RECOMMENDATIONS

Based on first-hand observance of some of the valuable research being conducted and the inefficient, dilapidated, and unsafe conditions under which many of these scientists must work (and live) it is difficult not to recommend in favor of the Smithsonian's authorization request at STRI.

Furthermore, in most, if not all, instances the cost effectiveness of repairing or renovating existing buildings, as opposed to constructing new and improved facilities, would appear uneconomical.

Mr. MATHIAS. The total cost for both projects is $15.6 million. Of that total, $4.5 million is for the base camp at the Whipple Observatory, and $11.1 million is for the Tropical Research Institute.

Mr. President, the condition of the facilities at Mount Hopkins and at the Tropical Research Institute are a hazard to the people who work there and an embarrassment to the Smithsonian Institution and to the U.S. Government. They should be replaced with adequate structures. I urge Senators to vote for this bill.

Mr. President, we have one committee amendment which is really only to correct a clerical error.

I reserve the remainder of my time.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Who yields time?

Mr. EXON. Mr. President, I yield myself such time as I may need within the 10 minutes allotted to this side on this measure.

The PRESIDING OFFICER. Without objection, the Senator from Nebraska is recognized.

Mr. EXON. Mr. President, I have insisted that the Senate at least briefly consider the pending legislation to authorize $15.6 million for the Smithsonian Institution. I will also insist on a rollcall vote on this measure, rather than allowing it to pass by unanimous consent in a routine fashion.

I have no particular bone to pick with the Smithsonian Institution or with the Rules Committee which reported this legislation to the Senate floor without dissent. Indeed, my Nebraska constituents and I have enjoyed taking advantage of Smithsonian facilities many times.

I have voted time and time again on this floor for the necessary funds to continue what they are already doing. They are indeed a national treasure. I support the Smithsonian endeavors in general and in principle.

This legislation would authorize $11.1 million for the Smithsonian Tropical Research Institute in Panama and $4.5 million for the Fred Lawrence Whipple Observatory in Arizona in fiscal year 1987. I believe that important work goes on at both of these facilities. I do not necessarily object to the Arizona project but do, under today's circumstances, object to the nonpriority Panama construction.

However, Mr. President, these are not normal times. Important work is also being performed on America's farms and ranches, in our cities and all over this country. Yet, under the Gramm-Rudman law which we are just beginning to understand and deal with, Government functions are being cut indiscriminately. While I did not endorse Gramm-Rudman, largely because of the devastating impact it will have on American agriculture, it is the law now. The deficit must be reduced. I certainly agree with that.

How can the majority, who bought the Gramm-Rudman proposal, buy this new and additional authorization for what I consider nontop-priority items?

□ 1640

How can the deficit be reduced, how can we make progress in reducing Federal spending if we pile on additional new obligations in future years which are not absolutely essential, obligations in future years which are not necessary under the basic dictates, as I understand them, of Gramm-Rudman?

I cannot vote for this authorization while American farmers, ranchers, and main street businessmen and most of rural America are having their basic social fabric torn apart by a deep depression—not a recession, Mr. President, a depression. I do not understand why we continue to cut these kinds of programs while we are adding expenditures in the nature of the bill we are now considering.

I only can say that unless we get spending under control and make some sacrifices, which I think we can make on this particular bill, we are going to see continued suffering and I suspect that the depression which is very deep out there in the heartland of America right now will continue to spread into our cities clear across this land.

In my view, this measure does not conform to the priorities we must enforce; that we work diligently to reduce the deficit. Given all that is happening around us, this legislation is not high enough priority in the opinion of this Senator. I believe each Senator ought to make a similar decision in his or her own mind and cast their votes accordingly.

With that, Mr. President, I reserve the remainder of my time.

To expedite matters, I am ready to go to a rollcall vote and at this time I ask for a rollcall vote on the measure that we are currently considering.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, how much time do I have?

The PRESIDING OFFICER. Eight minutes and twenty-four seconds.

Mr. MATHIAS. I yield 2 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I rise in support of H.R. 1483 which embodies a proposal by the board of regents of the Smithsonian Institution, on which I serve, to take care of several high priority needs in the area of upgrading and improving its science facilities. Certainly other needs remain, such as that of the National Air and Space Museum which I hope we can deal with later in this session.

H.R. 1483 authorizes construction of a new base camp near Amado, AZ, for the Smithsonian Astrophysical Observatory. Because of light pollution in the east, its main observing activities are done in the clearer skies of Arizona atop Mount Hopkins which you can see from the airport in Tucson.

The Fred Lawrence Whipple Observatory, which the Smithsonian operates, and the state-of-the-art multiple mirror telescope observatory that it built and operates jointly with the University of Arizona are on the

mountain. Their logistical base is a dusty, ramshackle set of buildings about 20 miles away as the crow flies, but about 50 actually because the Santa Cruz River keeps flooding out its crossings.

The observatories on the top of Mount Hopkins meet the high standards of professionalism and effectiveness that we have come to expect of the Smithsonian. Construction of a new base camp a little closer to the mountain would bring that facility up to the same standards, provide better service to the scientists, and help visitors understand more about astronomy and its promise for the future.

Smithsonian astronomers have recently published findings that already are viewed as the most important in astronomy in this decade; namely, that the universe has a frothy structure, with galaxies congregated on the surfaces of bubbles surrounding large empty voids in space. This discovery is the key to understanding how our universe has evolved. The facilities on Mount Hopkins are being used to extend research on the bubble structure, and SAO scientist are world leaders in this work.

Also authorized in H.R. 1483 are laboratories and other support structures for the Smithsonian's Tropical Research Institute in Panama. The Smithsonian has been working there as long as there has been a canal there, and the institute is the primary place for U.S. scientists to study tropical biology.

It is estimated that there are 2.5 million species of plants and animals in the tropics that are unknown to science. Given the many benefits—including food, fiber, oils, rubber, and pharmaceuticals such an antiinflammatory drugs and treatment for several kinds of cancers—that have come from species that we do know, it is important to learn all that we can about the tropics. Basic identification of species and analysis of them and the processes that effect them is at the heart of the work of the Smithsonian Tropical Research Institute.

Unfortunately, its central laboratory is in what used to be the morgue of the Gorgas Memorial Hospital, and it is simply unsuitable for contemporary research. One of the projects authorized by H.R. 1483, is a new central laboratory, for which the Institution is seeking $3.5 million in its fiscal year 1987 budget request. The total cost will be $7.5 million, but aware of the constraints on the Federal budget, the Smithsonian has sought and received its largest single gift for science construction, $4 million from the Earl S. Tupper Foundation for which we all are grateful.

Mr. President, the total of the funds authorized by H.R. 1483 is $15.6 million, of which only $3.5 million is now before the appropriations committee. The other funding will be sought in future fiscal years; of course, I hope that the base camp will be next. These are very small sums of money in the context of our overall budget, but they will support work in basic science that holds the prospect of long-term benefit for large numbers of people.

In summary, Mr. President, there are some things that my friend from Nebraska does not understand. The astrophysical observatory, being built in the southern part of my State, is being built not with public funds but with private funds. But we do need money to prepare a road to get to the site, which is almost 9,000 feet above sea level. We have to cross the Santa Cruz River, which is one of those unusual rivers we have out in Arizona that normally has no water in it but when it has water in it, it is a pretty big, roaring spring and difficult to get across.

The camp down in Panama is the only facility we have to study tropical birds, insects, and animals. I have been down there myself. I had a feeling about it like my friend from Nebraska has until I visited it, and I think it is a great asset for our country and for the Smithsonian Institute.

We sometimes ignore just what the Smithsonian means to Washington. We have more visitors to the Air and Space Museum every year than any museum in the world. In fact, it is not going to be long until we have to have reservations to go through that facility.

Although not in this legislation, we will probably have to deal with Virginia, if the National Airport-Dulles Airport move is successful, for space there to move from Silver Hill the facilities at which we make all of our used aircraft, even from World War I—one of the most interesting facilities which the Smithsonian has which is sorely in need of additional space, and we are going to try to finance that out of the private sector.

So, Mr. President, I can certainly understand the feeling of my friend from Nebraska. I know he is very determined that we not spend money we do not need to spend, and I am right with him on that. But this is a facility that I think requires our help.

Mr. EXON. Mr. President, I yield what remaining time I have to myself.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes remaining.

Mr. EXON. I agree completely with my friend from Arizona. As I said in my remarks, I do not necessarily object to the project in Arizona. I wish it were a separate project so I could vote for it. If the leaders of the measure would care to divide the issue, I would vote for the Arizona portion of the project and against the further investment in Panama.

I remind my colleagues that, under a treaty arrangement which was passed by this body, the United States of America in the foreseeable future is going to give up its rights in Panama.

My research into this activity indicates that in this particular case this proposal will remain somewhat similar to the arrangement that we have in other countries, with U.S. ownership of our mission there and the diplomatic housing and the Embassy itself. But still I think it remains that in the very near future the money we are spending in Panama will be an island in and of itself, and, while I agree that important work is going on down there, it is my interpretation the work is not of sufficient priority that we should get ourselves further in a hole with new spending.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the pending legislation, H.R. 1483, authorizes construction of a small but significant facility which, although located in Arizona, has its administrative and operational center in Cambridge, MA. The measure also provides authority for construction of a tropical biology research and education center in Panama to focus more intensively on the crucial international problem of deforestation in the tropics.

The first of these projects is designed to support the field activities of the long and unusually fruitful relationship between the Smithsonian Institution's Astrophysical Observatory [SAO] and the Harvard College Observatory which began in 1955 when SAO moved its headquarters to Cambridge. It became an active partner with Harvard in an expanded and innovative program of research that would tap the potential of Earth satellites and space age technology. The two observatories shared staff and resources to pioneer studies of solar and stellar phenomena, the design of orbiting observatories, the tracking of satellites, and the application of computers to problems of astrophysics. In addition, the presence of SAO at Cambridge bolstered both the teaching and research opportunities available to Harvard's students.

The informal arrangement between the two organizations was formalized and strengthened in 1973 with the creation of the joint Harvard-Smithsonian Center for Astrophysics under a single director. Today, the CFA's combined staff of 140 scientists makes it one of the world's largest organizations devoted to astronomy. Its investi-

gations touch almost every major topic in modern astronomy: atomic and molecular physics, high-energy physics, optical infrared astronomy, planetary sciences, radio and geoastronomy, solar and stellar physics, and theoretical physics. In many of these fields, the Center of Astrophysics is the recognized world leader. The possibilities for pursuing joint projects, for sharing expertise, and for encouraging interdisciplinary cross-fertilization is unique in American physical science.

In describing the Harvard/Smithsonian center the 1976 edition of *U.S. Observatories: A Directory and Travel Guide* said that the:

> Two names belong together . . . they have meant flexibility, enterprise, international connections, an appreciation for the public interest in astronomy, a certain amount of crankiness, an indulgence toward amateurs, initiative in undertaking projects of doubtful outcome, appreciation of the personal history of scientists and the peculiar histories of scientific institutions, sophisticated naivete, hospitality toward women scientists, and a genius for organization. In reading book-length histories of both institutions and in studying their current undertakings, one becomes aware that they display simultaneously the virtues of youth and old age, without the vices of either.

The Smithsonian Astrophysical Observatory is the oldest of the Institution's research undertakings, and is rooted in the "programme" adopted for the Institution by its first Secretary, the physicist Joseph Henry, and continued by successors. It was formally established in 1890 under Samuel P. Langley, the third Secretary.

However, an observatory had been perceived long before that as a possible application for the funds derived from the Smithson bequest. John Quincy Adams, having returned to the House of Representatives in the late 1830's after serving as the Nation's sixth President, shepherded the legislation that created the Smithsonian through the Congress. Aware of the accomplishments of the Greenwich Observatory, Adams thought that such a "lighthouse of the skies" would best fulfill Mr. Smithson's testamentary mandate for "the increase and diffusion of knowledge among men.

Thus, the small base camp, authorized by H.R. 1483 for construction in the Arizona desert, has a long and elegant history that originated in 18th century British science and in the minds of the men who created this Nation.

The other facilities authorized—for the Tropical Research Institute in Panama—are creatures of the 20th century with a history that begins in the miracle and the marvel of the canal itself. When Gatun Lake was created for the canal, Barro Colorado Island was created as well. Declared a reserve by the Canal Zone governor in 1923, the island was administered by a board of directors that included the Smithsonian until 1940 when it became an independent agency of the U.S. Government. In 1946 it was transferred to the Institution, and in 1966, by action of the Smithsonian's Board of Regents, Barro Colorado became the nucleus of the Smithsonian Tropical Research Institute [STRI] the primary Western Hemisphere center for research on the tropics. In addition to the terrestrial and freshwater laboratories at Barro Colorado, STRI has marine laboratories on both the Atlantic and Pacific coasts of the isthmus; H.R. 1483 would authorize the construction of a new central laboratory adjacent to its administrative headquarters in Panama City.

Funding of $3.5 million has been requested by the Smithsonian for fiscal year 1987 to construct and equip the new laboratory, but this represents less than half of the total cost. The remaining $4 million has been made available by the family of Earl Tupper, many members of which reside in Massachusetts. Their generosity, which embodies the largest single gift for science research facility construction at the Smithsonian, is a significant standard for public/private partnership; they do all of us honor by their spirit and by their leadership.

In conclusion, Mr. President I must address the issue that is on many minds, the concern for the political climate in Panama. Obviously, we are all deeply concerned about recent reports; no one of us can know where they may lead. That concern, however, should not be used as a reason to vote against this measure or to otherwise short circuit the construction of a modest but necessary laboratory whose sole purpose is the acquisition of knowledge and understanding about fundamental biological processes in the tropics.

Rather, we should find hope and confidence in the history of the Smithsonian Institution in Panama across more than six decades operating with a variety of people, parties, and institutions. The international language of science and the knowledge that reaches beyond geography and ethnicity to benefit all of mankind are surely more stable and enduring than merely temporal politics and personalities.

Mr. President, in conclusion, I rise to support this legislation. The Smithsonian Institution's Astrophysical Observatory has long had a very important relationship with Harvard University and Harvard College Observatory working jointly. It is our belief that they provided extremely important research and breakthroughs in the area of solar and stellar phenomena as well as in the design of orbiting observatories, tracking of satellites, the application of computers, and the problems of astrophysics.

□ 1650

We believe it has also enhanced teaching as well as learning opportunities in a significant manner.

In addition, for those who are concerned about the issue of Panama, it is our conviction that the biological research and education for which funds are provided under this bill would permit us to much more extensively and importantly focus on the international problem of deforestation in the tropics, which will benefit greatly not only those countries there but us, as well.

I think this legislation is a very important continuation of an important process on scientific research which cannot, under Gramm-Rudman or any other excuse, be cut back.

So I strongly urge my colleagues to support this measure.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 1 minute to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I support this measure. This research center has carried out extraordinary work in the canal for what is now, I believe, some six decades, in a combination of biological concern with individuals, with the flora and fauna of the area.

The Senator from Massachusetts mentioned deforestation. There are few ornaments of our overseas research activities as important as those the Smithsonian has carried out. It is in its third generation of scholars, and it should continue.

Mr. MATHIAS. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator has 2 minutes and 30 seconds remaining.

Mr. MATHIAS. Mr. President, it might be more to the point of the objection of the Senator from Nebraska if this were a new program. In fact, it is an ongoing program of great importance. This is an ongoing program of research into tropical diseases, and the conditions under which the work is being carried on today are unsafe, unsanitary, and unsatisfactory. We are trying to put this on a businesslike basis.

The Senator from Nebraska will be comforted by the fact that $4 million will be contributed by the Tupper Foundation to supplement this $11 million. So there is, as in the case of Arizona, a substantial contribution from the private sector.

If you really want to economize in the field of health, you keep people out of the hospital. You do not put them in the hospital and try to run the hospital cheaper. You keep them out of the hospital. That is what we are trying to do in the Tropical Dis-

ease Research Center. We are trying to reduce the overall cost of health care by providing the kind of research which will keep the people out of the hospital, keep them healthy, keep them working, keep them on the job. That is the real economy in health care, and that is the object of this facility.

Mr. President, I hope that the Senate will support this legislation for these very important scientific facilities.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I am prepared to go to a vote on this, and at the conclusion of these remarks, I will be glad to yield back the remainder of my time, if any remains.

The basic theme here is that I think I understand the need for this work. It comes down simply to a matter of priority.

If this were an appropriation bill rather than an authorization bill, meaning that if this is passed and if it goes to the Appropriations Committee and that appropriation bill comes back to us, then, if and when we get a budget bill passed, there would have to be an offset, as I understand it, from some other program to remain within the guidelines of Gramm-Rudman.

So, as necessary as this might be, I firmly believe that the dictates of Gramm-Rudman make these kinds of things untenable. I cannot understand how, in good conscience, most of the Members who voted for Gramm-Rudman could support this measure, which, under any normal circumstances is an add on.

Mr. President, as soon as the other side yields back their time, I would appreciate the Chair considering my time being yielded back, and we can go to a rollcall vote, so far as I am concerned.

● Mr. DECONCINI. Mr. President, I rise in support of H.R. 1483, a bill to authorize the construction of scientific research facilities for the Smithsonian Institution. One of the two facilities authorized by this bill is the Fred Lawrence Whipple Observatory southwest of Tucson, AZ. The University of Arizona and the Smithsonian have joined together in this endeavor, and it is impressive.

Among the instruments on Mount Hopkins is the multimirror telescope [MMT]. To call the MMT pioneering would not even begin to describe the new vision that the MMT has offered us of our universe. The scientists at the Whipple Observatory deserve our commendation.

This bill provides for no new programs, but rather allows for the construction of a new base camp at the base of Mount Hopkins. For those of us who have visited the site, the need is unquestionable.

I urge my colleagues to support this bill. The work of the Smithsonian, and especially that done at the Whipple Observatory, is important and expands our understanding of ourselves and the worlds around us.●

Mr. MATHIAS. Mr. President, unless the Senator from Kentucky wishes to speak, I yield back the remainder of the time on this side.

The PRESIDING OFFICER. Time has been yielded back on both sides.

The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 87, nays 13, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—87

Abdnor	Garn	McConnell
Andrews	Glenn	Melcher
Armstrong	Goldwater	Metzenbaum
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Gramm	Murkowski
Bingaman	Harkin	Nunn
Boren	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Pressler
Bumpers	Hecht	Pryor
Burdick	Heinz	Quayle
Chafee	Hollings	Riegle
Chiles	Humphrey	Rockefeller
Cochran	Inouye	Roth
Cohen	Johnston	Rudman
Cranston	Kassebaum	Sarbanes
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dodd	Laxalt	Stennis
Dole	Leahy	Stevens
Domenici	Levin	Symms
Durenberger	Long	Thurmond
Eagleton	Lugar	Trible
East	Mathias	Warner
Evans	Matsunaga	Weicker
Ford	McClure	Wilson

NAYS—13

Byrd	Heflin	Sasser
Dixon	Helms	Wallop
Exon	Mattingly	Zorinsky
Grassley	Nickles	
Hawkins	Proxmire	

So the bill (H.R. 1483), as amended, was passed.

□ 1720

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BRIBERY AND RELATED OFFENSES

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3511.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate numbered 1 and 2 to the bill (H.R. 3511) entitled "An Act to amend title 18, United States Code, with respect to certain bribery and related offenses.".

Resolved, That the House agree to the amendment of the Senate numbered 3 to the aforesaid bill with the following amendment:

In lieu of the matter inserted by said amendment, insert:

"(d) The Department of Justice, after consulting with each Federal agency that regulates a financial institution, shall issue a uniform set of guidelines that describe conduct that the Department of Justice will prosecute under this section, and shall make such guidelines available to the public.".

Mr. DOLE. Mr. President, I move the Senate concur in the House amendments with a further amendment, which Senator METZENBAUM will send to the desk.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 2171

(Purpose: To amend provisions concerning guidelines for Bank Bribery Amendments Act of 1985)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk on behalf of myself, Mr. THURMOND, and Mr. DECONCINI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mr. THURMOND, and Mr. DECONCINI proposes an amendment numbered 2171.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

"(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.".

Mr. METZENBAUM. Mr. President, this amendment revises the language concerning guidelines for violations of this act which was added by the House of Representatives. I have every expectation that the language added by our amendment will resolve this issue and that it is acceptable to the House.

This amendment provides that guidelines be issued to assist the banking industry in complying with the prohibition on bank bribery. Bank bribery is a serious offense. Congress has chosen to provide stiff penalties for bank bribery because of the concern that people who unfairly influence bank officials will get preferred treatment. They may receive preferential interest rates, breaks on deferred payment schedules, easier collateral requirements, the list goes on and on. This kind of conduct not only is unfair to other banking customers, it undermines the financial stability and integrity of the banking system.

The bill makes certain revisions in the definition of bank bribery as passed by Congress in 1984. I support the basic purpose of the bill. However, during discussions with members of the industry and others it became clear to me that it would be useful for guidance to be given to the thousands of persons who must comply with this section. Many questions have been raised as to what conduct would violate this section. For example, concerns have been raised as to whether a small gratuity, a meal, or something else of limited value given by a bank customer to a bank official would violate this section. The members of the banking industry deserve to know what is expected of them. Those who deal with banks deserve to know what kind of conduct crosses the line from acceptable business behavior to criminal bank bribery. The purpose of the amendment is to insure that the lines are as clear as possible.

This amendment provides that the guidelines are to be issued by the banking regulatory agencies. These agencies are in a position to provide guidance as to what conduct would raise serious questions under this section. The banking agencies, after consultation with the industry and others, should use their expertise to develop guidelines for use by persons within the banking industry and persons outside the industry who deal with financial institutions.

In any criminal case under this section, the Government would have to prove all the elements of the offense, including the required showing of intent. The guidelines contemplated by this amendment do not modify these requirements. Instead, they will help the banking industry identify situations where a corrupt motive or intent to influence or reward may be inferred. A number of factors, such as the value of something transferred, the covert nature of the transfer, the relationship between the transferor and the transferee, the relationship of the transfer to a particular transaction, and any effect of the transfer on terms of a transaction are all factors that may be appropriately included in the guidelines.

The language of the bill that originally passed the Senate included an express statement regarding the admissibility of evidence regarding compliance with the guidelines. The language of this amendment contains no express statement regarding admissibility because the relevance of the guidelines may differ in particular situations. However, the absence of an express statement regarding admissibility should not be taken to mean that the guidelines themselves as well as compliance with the guidelines, with or without knowledge of them, are not relevant facts to be considered in particular cases. Rather, the standard rules of evidence will apply to the use of these facts as evidence in any criminal proceeding.

Mr. President, I am confident that this amendment will promote a fairer and more equitable banking system. It will give the banking industry some guidance as to the rules it must live by.

Mr. THURMOND. Mr. President, I am pleased to have joined Senator METZENBAUM in drafting and now in offering this amendment.

The issue of promulgation of guidelines to accompany the Bank Bribery Amendments Act of 1985; whether such guidelines are needed; who might promulgate them; and what, if any, impact they should have, has been a subject of concern to Members of Congress, the administration, financial institutions and others. A letter from the Department of Justice dated May 15, 1986, expresses some of the concerns involved with any such guidelines. I ask unanimous consent that the letter be inserted into the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
Washington, DC, May 15, 1986.

Re: Bank Bribery, H.R. 3511

Hon. HOWARD M. METZENBAUM,
U.S. Senate,
Washington, DC

DEAR SENATOR METZENBAUM: This letter is in response to a request from a member of your staff regarding amendments to the bank bribery statute, 18 U.S.C. 215. Your inquiry concerns an amendment which requires the Department of Justice to issue guidelines describing the kinds of activity the Department will prosecute under the statute.

Current law, passed as part of the Comprehensive Crime Control Act of 1984, makes it a felony for anyone "in connection with bank business" to offer or give to a bank official (or for the bank official to solicit or receive) "anything of value" other than what is given or offered to the bank itself. On October 29, 1985, the House of Representatives passed H.R. 3511 which would amend current law by requiring that the thing of value must be either "corruptly" offered or received with the intent to "influence or reward" a bank employee or officer in his "official action."

On February 4, 1986, the Senate passed H.R. 3511 with three amendments. The first two amendments, which the Department of Justice endorsed, addressed a technical flaw in H.R. 3511. The third amendment, however, provides an entirely new feature to a criminal statute and reads as follows:

The Justice Department shall consult with the Federal regulatory agencies with responsibility for regulating financial institutions as defined in this Act in order to establish a unified set of guidelines for identifying conduct which is prohibited by this section. The Department and such regulatory agencies shall make such guidelines available to the public. Compliance or noncompliance with the standards contained in such Act shall be relevant but not dispositive in determining whether a violation of this section has occurred.

On April 22, 1986, the House adopted the Senate version of H.R. 3511 except that, in place of the Senate's third amendment, the House substituted the following:

The Department of Justice, after consulting with each Federal agency that regulates a financial institution, shall issue a uniform set of guidelines that describe conduct that the Department of Justice will prosecute under this section and shall make such guidelines available to the public.

Your staff has now asked the Department of Justice which of the two amendments the Department prefers. The Department objects strongly to both versions. Guidelines, if appropriate, should be promulgated by the bank supervisory agencies, not by the Department of Justice. Additionally, we oppose guidelines which would preclude or mandate prosecution. At a meeting earlier this year with Senate staff, Department of Justice representatives indicated that the Department would have no objection to guidelines, provided that such guidelines addressed standards of conduct only and were promulgated by the bank supervisory agencies.

While the Department of Justice has furnished general guidance to United States Attorneys through the United States Attorneys' Manual regarding various applications of the statute, it would be exeedingly difficult and unwise to issue specific and binding guidelines to cover corrupt banking transactions just as it would be unwise to issue comparable guidelines to clarify the term "fraud" as used in bank fraud and mail fraud statutes. Indeed, it would set an alarming precedent if the Department of Justice were required to issue specific and binding guidelines for white collar crime, an area as old as falsehood and as versatile as human ingenuity. For example, the Department cannot place simple dollar limits on bribes or gratuities and then apply these limits "uniformly" as required by both versions of the amendment. Reasonable business practices differ significantly between small credit unions and large commercial banks. Moreover, as a matter of policy, the Department cannot publicly ignore a small but otherwise corrupt transaction any more than it can place dollar limits on bank teller embezzlements prosecutable under 18 U.S.C. 656.

The Department believes it appropriate to discuss through the United States Attorneys' Manual a statute's legislative history, to delineate elements of the offense, and over time to furnish examples of violations which underlie evolving case law. If a bank needs more guidance, it must consult with private counsel just as any other business must do.

If the conferees, on the other hand, are convinced that the banking industry needs more guidance than what is stated in the statute and the United States Attorneys' Manual, that guidance should come from the supervisory agencies. As pointed out in the testimony of Ms. Victoria Toensing, Deputy Assistant Attorney General, to Chairman Conyers' Subcommittee on Criminal Justice on July 11, 1985, the bank regulatory agencies may issue regulations authorizing financial institutions to regulate receipt of nominal gratuities by a code of ethics. Such regulations may help clarify situations in which, in the agency's view, officers and employees of financial institutions could, without running counter to the purpose of the statute, receive gratuities of nominal value or be modestly entertained by bank customers to facilitate the discussion of bank business. If such regulations are promulgated, the Department of Justice will take into account the supervisory agency's expertise and judgment in defining those activities or practices which the agency believes do not undermine an employee's or officer's fiduciary duty to the financial institution.

Moreover, the Senate version provides that "[c]ompliance or noncompliance with the standards . . . shall be relevant but not dispositive in determining whether a violation . . . has occurred." If the Department of Justice, as opposed to the regulatory agencies, promulgates guidelines, due process requires that these guidelines be "dispositive" of any position the Department later takes in any criminal case. On the other hand, a bank regulatory guideline can be "relevant" to without being "dispositive" of the Department's position in a subsequent criminal case. Accordingly, it is only regulatory guidance that properly conforms to the Senate version of the amendment.

In summary, the Department does not object to guidelines written by the bank regulatory agencies and which address standards of conduct only. But the Department vigorously opposes the guidelines as passed by the Senate and the House.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. THURMOND. We have engaged in extended discussions within the Senate Judiciary Committee and between the Members of the Senate and House Judiciary Committees. The amendment being offered represents the results of those discussions. The parties to these discussions feel it is appropriate, perhaps even essential, to leave the issues surrounding the potential need for guidelines and their content to those with expertise in this area: The Federal agencies with responsibility for regulating financial institutions. It is for that reason, that we have drafted this amendment in broad terms. The intricacies of such guidelines must be left to the agencies. Likewise, the question of what, if any, relevance these guidelines might bear in cases interpreting the act is to be left to the courts in the normal course of events. I am pleased that we are able to finalize this point in a manner acceptable to all of the participants.

Mr. DECONCINI. Mr. President, I am pleased to join with Chairman THURMOND and Senator METZENBAUM in perfecting the bank bribery amendments. As Senate sponsor of S. 1214, the original amendments to the Bank Bribery Act, I am grateful to my colleagues in the Senate and House for the patience and interest they have shown in this important legislation. Today, I join with Senators THURMOND and METZENBAUM in adding an amendment to H.R. 3511 which should facilitate the early enactment of this clarifying legislation.

The amendment that we are offering today clarifies the scope and use of guidelines to be issued by the financial institution regulatory agencies. It also clarifies the circumstances under which the guidelines are to be developed and promulgated. The amendment was drafted after much discussion and negotiation between and among Senate and House staff. I am hopeful that this final amendment will satisfy all concerned and that the bill will pass the House again very quickly. I urge my colleagues in the Senate to approve this much-needed bill today.

The amendment that I and my colleagues introduce today is intended to provide assistance to officers and employees of financial institutions as well as to their customers. The appropriate agencies should jointly develop general guidelines to assist parties to financial transactions. These general guidelines will be made available to the officers and customers of financial institutions as well as to the public at large.

Another issue which has taken up a great deal of time in our negotiations has been the question of the relevance of the guidelines in prosecutions brought under the act. Earlier versions of this amendment had suggested that the guidelines were intended to be used by the parties to prosecutions to prove or disprove the allegations. These versions of the amendment assumed that the guidelines would be statutorily relevant in the prosecutions. Today's amendment is intended to provide that the appropriate rules of evidence will govern the relevance and probity of the guidelines. It is appropriate that Congress not attempt to decide prospectively the relevance of the guidelines. Such a determination is best left for the factfinder to make in each case based on the Federal rules of evidence.

Mr. President, I wish to thank Chairman THURMOND and his counsel Diana Waterman; Senator METZENBAUM and his counsel, Eddie Correia; Chairman CONYERS and his counsel, Tom Hutchinson; Representative GEKAS and his counsel, Ray Smietanka; and my counsel, Ed Baxter for their cooperation and hard work on this legislation. For such a minor, although important, matter it proved to be surprisingly difficult to work out an acceptable agreement. It is only through the diligence of those listed above that we have been able to provide clarification to financial institutions and to their customers as to when the bank bribery amendments will and should apply.

Mr. President, in passing the Bank Bribery Act in 1984, the Congress overreached. We passed a criminal statute without including an intent element, thereby exposing financial institutions and their customers to prosecutions for inadvertent and unintentional acts. By today's actions we remedy that defect and in doing so restore credibility to our Federal Criminal Code as well as protect innocent citizens from prosecution.

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

The motion was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote which the motion was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

H.R. 4868 HELD AT DESK

Mr. BYRD. Mr. President, there is a message from the House at the desk on H.R. 4868. I ask that the bill be read the first time.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4868) to prohibit loans to, other investments in, and certain other activities with respect to South Africa, and for other purposes.

Mr. BYRD. Mr. President, under rule XIV, I now request that the bill be read the second time.

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The bill will be held at the desk until the next legislative day.

H.R. 4952 PLACED ON CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 4952, a bill to amend the United States Code with respect to interception of certain communications and other forms of surveillance, it be placed on the calendar.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I would like to inquire of the minority leader if he is in a position to confirm the following nominations on the Executive Calendar: Calendar No. 899, D. Lowell Jensen; Calendar No. 900, Leon B. Kellner; Calendar No. 901, Jerome G. Arnold; Calendar No. 902, Andrew J. Maloney; Calendar No. 903, Paul R. Nolan; Calendar No. 904, Donald W. Wyatt; and Calendar No. 905, under the Coast Guard.

Mr. BYRD. Mr. President, the nominees identified by the distinguished majority leader have been cleared for action by all Members on this side and we are ready to proceed.

Mr. DOLE. I thank the distinguished minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now go into executive session in order to consider the nominations just identified; that they be considered and confirmed en bloc.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

D. Lowell Jensen, of Virginia, to be U.S. District Judge for the northern district of California.

DEPARTMENT OF JUSTICE

Leon B. Kellner, of Florida, to be U.S. Attorney for the southern district of Florida.

Jerome G. Arnold, of Minnesota, to be U.S. Attorney for the district of Minnesota.

Andrew J. Maloney, of New York, to be U.S. Attorney for the eastern district of New York.

Paul R. Nolan, of Washington, to be U.S. Marshal for the eastern district of Washington.

Donald W. Wyatt, of Rhode Island, to be U.S. marshal for the district of Rhode Island.

IN THE COAST GUARD

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral:

Alan D. Breed.
John W. Kime.
Robert L. Johanson.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. Mr. President, I move to lay that motion to reconsider on the table.

The motion to reconsider was laid on the table.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

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

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now resume legislative session.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1750

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

UNANIMOUS-CONSENT REQUEST—MANION NOMINATION

Mr. DOLE. Mr. President, it had been my hope that we could work out some time limit agreement on the nomination of Daniel Manion. I am going to propound a unanimous-consent request. I assume it will be objected to because we are not able to get together on it but first let me make that reguest.

As in executive session, I ask unanimous consent that at 10 a.m. on Wednesday, June 25, the Senate go into executive session to consider the nomination of Daniel Manion to be a U.S. circuit judge and be considered under the following time agreement: 8 hours on the nomination to be equally divided between the chairman of the Judiciary Committee and the ranking minority member or their designees; that following the conclusion or yielding back the time the Senate proceed to vote on the nomination of Daniel Manion, and that no motions to commit or recommit be in order.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, there will be no objection on this side to proceeding to the nomination. The distinguished majority leader could proceed on motion in any event. But there is no desire on this side to put that motion to a roll-call vote if the distinguished majority leader wishes to proceed by motion. This side is content to proceed by voice vote.

As to the time agreement, Mr. President, I am constrained to object because there are a number of Senators who want to speak and I am not sure that the time limit contained in the rquest would be sufficient. Perhaps at a later date we would be happy to discuss that again with the majority leader. So I do object to the request.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. Mr. President, I thank the distinguished minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I then ask unanimous consent the Senate go into executive session in order to consider the nomination of Daniel Manion, to be a U.S. circuit judge.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

THE JUDICIARY

NOMINATION OF DANIEL A. MANION, OF INDIANA, TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

The legislative clerk read the nomination of Daniel A. Manion, of Indiana, to be U.S. circuit judge for the seventh circuit.

Mr. DOLE. Mr. President, I understand the distinguished chairman of the Judiciary Committee will be here momentarily to make a statement, and I believe also the distinguished Senator from Delaware [Mr. BIDEN] would like to be heard. I am not certain we would be able to conclude this this evening.

Mr. BIDEN. It is possible but not likely.

Mr. DOLE. In any event, if it appears there may be extended debate, we are prepared to file a cloture motion so the vote would occur on Thursday.

Mr. THURMOND. Mr. President, I rise today to voice my strong support for Daniel A. Manion of Indiana to be a U.S. circuit judge for the Seventh Circuit Court of Appeals.

The committee received the President's nomination of Daniel A. Manion for the position of U.S. circuit judge on February 21, 1986. As you know, Mr. President, the Judiciary Committee has filed a detailed report on this nomination. However, I would like to review the reasons why Mr. Manion should be confirmed.

Mr. Manion graduated from the University of Notre Dame in 1964 with an A.B. degree in political science. In his senior year he received the John J. Cavanaugh Award which is given annually to the senior army cadet ROTC officer demonstrating excellence in leadership and academic attainment. He is a Vietnam veteran having served for 2 years in the U.S. Army in 1965 and 1966. He is the first Vietnam veteran to be nominated to the court of appeals.

Mr. Manion worked full-time as director of the industrial development division of the Indiana Department of Commerce while attending law school. Following graduation from Indiana University Law School in 1973, he worked as a law clerk and as a deputy attorney general for the State of Indiana. As a member of the criminal ap-

pellate section, he drafted approximately 20 briefs on a wide variety of issues relating to criminal appeals. He was assigned to argue cases before the Indiana Court of Appeals and the Indiana Supreme Court, despite the fact that oral argument in criminal appeals is rare in Indiana. In the highway condemnation section, Mr. Manion worked on property condemnation cases for the State. He tried approximately six such cases and settled a number of others.

In 1974 Mr. Manion returned to South Bend and joined a small law firm. His current practice is about 75 percent litigation. He has experience in many areas of the law, which include: banking, insurance, civil rights, and tax law. He has handled personal injury cases representing plaintiffs and defendants. He has personally tried about 35 cases before a jury. Mr. Manion has participated to date in varying degrees in approximately 20 cases in Federal court and has served as lead counsel in a number of cases although they were settled prior to trial. Currently, he is lead counsel in three cases, two of which involve securities and the Racketeer Influenced and Corrupt Organizations Act, and a diversity case. Mr. Manion has also served as a cocounsel on several large complex cases including matters involving patent infringement and breach of contract.

In 1978 Mr. Manion was elected to the Indiana State Senate. After only 2 years in the State Senate, he was designated as chairman of the committee on energy and environmental affairs, a notable elevation for a junior senator. He also served on the judiciary for 4 years and for 2 years was the chairman of the civil law subcommittee. Additionally, in 1982 he was the ranking member of the committee on education, labor, commerce, and insurance and financial institutions.

Mr. Manion's legal background is diversified, including civil and criminal law, State and Federal practice, and trial and appellate experience. He possesses an excellent background of broad litigation experience, as well as experience in the executive branch of the State government, and experience as a State legislator who has served on committees dealing with a broad spectrum of issues which continually come before the court of appeals.

As chairman of the Judiciary Committee I have received numerous letters endorsing Mr. Manion. Notable among these letters is one from Father Theodore M. Hesburgh, president of the University of Notre Dame and former chairman of the U.S. Commission on Civil Rights. Father Hesburgh said of Mr. Manion: "His life has been one of service and commitment to justice." The Honorable Richard M. Given, chief justice of Indiana, supports the nomination. Eugene I. Goldman of the law firm of Steptoe & Johnson and a member of the Washington Council of Lawyers speaks highly of Mr. Manion on the basis of shared responsibilities in an ongoing case. David T. Ready, a former U.S. attorney appointed by President Carter, vouches for Mr. Manion's abilities. These are but a few of the many strong endorsements received from individuals who personally know and have worked with him.

Mr. President, on June 20, I received a letter from President Reagan reaffirming his strong support for Daniel Manion.

I would like to quote a small portion of his letter and I ask unanimous consent that the letter be printed in its entirety at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. THURMOND. This is what the President wrote:

> Dan Manion's "political views" are close to my political views. In particular, Dan Manion's belief that Federal judges should interpret the law, and not impose from the bench their social or philosophical notions upon society, is my belief. That is the real reason this nomination is encountering such hostility.
>
> So, let me state my position directly. I intend to fight for the nomination of Dan Manion; and I do not accept that there should be a hidden restrictive convenant in the confirmation process that reads: no conservative need apply.
>
> What appears to be taking shape is an attempt by some Senators to use their "advise and consent" power to overturn the mandate of the American people—as expressed in 1980 and 1984.
>
> This is not an issue of Republican versus Democrat. It is an issue of whether or not a President of the United States has the right to choose Federal judges who share his judicial philosophy, so long as they are qualified by reason of character and competence. Presidents of both parties have asserted that prerogative; and I will not surrender it.

Mr. President, I think that President Reagan has focused on the heart of the matter—political ideology.

Mr. President, Mr. Manion is an able lawyer of high integrity who will provide balance to the seventh circuit.

Mr. President, I shall make further remarks during this debate and I shall answer the points that have been made against Mr. Manion. I believe I can answer them satisfactorily to the Senators who may listen to that debate.

It is my conviction that Mr. Manion is well-qualified for the seventh circuit and it is my sincere belief that he should be confirmed.

EXHIBIT 1

THE WHITE HOUSE,
Washington, DC, June 20, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR STROM: During the campaigns of 1980 and 1984, I made clear to the American people the kind of men and women I would select to fill vacancies on the Federal bench, including the United States Supreme Court.

I promised they would be men and women of demonstrable character and capacity, of practical experience and proven ability in the law. I would nominate, I said, judges and justices who shared my deeply held conviction that the function of America's courts, including the highest court, is not to make laws for the American people, but to interpret the law. Judges in a democratic society should not use their appointed offices to impose their social or political views upon society—in our system of government this is the province of elected officials. This was a view stated again and again in those campaigns.

I believe I have kept faith with that commitment. And these thoughts were very much in mind when I selected Justice Rehnquist to succeed the retiring Chief Justice, and Judge Antonin Scalia to fill the vacancy thus created. Two nominees who better exemplify the qualities I pledged to seek in judicial appointments would be difficult to find.

Which brings me to the point of this letter. I am writing with a sense of profound concern about what is happening with the confirmation of Daniel A. Manion, whom I recently nominated to the United States Court of Appeals for the Seventh Circuit.

Dan Manion is a capable attorney, with a high reputation for integrity and substantial litigation experience. Colleagues he has faced in court and former Democratic opponents in the Indiana Senate have come forward to attest to his character and competence. Reviewing his record, the American Bar Association declared him fully "qualified" for the appellate judgeship to which he has been nominated.

Nevertheless, in recent weeks, Mr. Manion has become the target of a campaign that has sought to disparage his capabilities and his character, in order to defeat his nomination. Thus, I am writing to make known to you and your Senate colleagues my strongly held views about Dan Manion, and about his qualifications for service on the appellate bench.

First, the rating given to Dan Manion by the ABA, i.e., "qualified"—though disparaged by his critics—is the identical rating given almost half the Federal judges nominated by Presidents Nixon, Ford, and Carter. It is the same rating given two of my previous nominees to the Seventh Circuit, Judges Easterbrook and Posner, both of whom were distinguished professors of law at the time of their nomination. At what point was it that an ABA rating of "qualified" became an impediment to nomination to the Federal bench?

Second, Mr. Manion's legal experience is dismissed because it was gained largely at the State rather than the Federal level. But my own experience, before coming to Washington, was at the State level. It has been, and remains, my belief that our Federal circuit courts should reflect the diversity of the regions they serve. The Seventh Circuit contains Chicago, but it also contains smaller cities and towns, rural areas and farming

communities, like Dixon, Illinois. Dan Manion, a country lawyer, would represent that diversity, just as the other judges whom I nominated to the Seventh Circuit bring experience from the academic world and the urban law community.

Moreover, when we recall that Mr. Lincoln himself and the late Senator Sam Ervin were proud to be known as "country lawyers," we ought to be hesitant before considering this kind of law practice a mark of ineligibility for service on the Federal bench. Nor should Mr. Manion's years of political experience in the State Senate and legal experience in Indiana's District Attorney's office be counted as of no consequence. Among the names any President should consider for the Federal courts, including the Supreme Court, when vacancies occur, are those of the most distinguished and experienced lawyers in the Congress of the United States.

Third, it is alleged that Mr. Manion, while serving as Chairman of the Judiciary Committee in the Indiana Senate, "defied . . . the Constitution," when he proposed a bill authorizing the posting of the Ten Commandments in Indiana's public schools.

But this distortion is rooted either in ignorance or malice. Where the Supreme Court had disallowed the *mandatory* posting of the Ten Commandments in the Kentucky public schools, Dan Manion sponsored a bill permitting the *voluntary* posting in Indiana's schools, and added a provision that should the Supreme Court rule voluntary posting unconstitutional, the postings would immediately be removed. His bill passed the Indiana Senate with strong Democratic support.

Dan Manion is also opposed by some because his father, Clarence Manion, former dean of the Notre Dame Law School, was a member of the John Birch Society. Yet, surely, in 1986, the time has passed when guilt by association is acceptable practice, when an act of political discrimination can be committed against a Federal nominee because his late father held deeply controversial views.

Addressing Mr. Manion during his appearance before the Judiciary Committee, one Senator revealed, I believe, the true and undeclared motivation behind the campaign to defeat my nominee. "I think you are a decent and honorable man," the Senator said to Dan Manion, "but I cannot vote for you because of your political views."

Strom, here we come to the heart of the matter.

Dan Manion's "political views" are close to my political views. In particular, Dan Manion's belief that Federal judges should interpret the law, and not impose from the bench their social or philosophical notions upon society, is my belief. That is the real reason this nomination is encountering such hostility.

So, let me state my position directly. I intend to fight for the nomination of Dan Manion; and I do not accept that there should be a hidden restrictive covenant in the confirmation process that reads: No conservative need apply.

What appears to be taking shape is an attempt by some Senators to use their "advise and consent" power to overturn the mandate of the American people—as expressed in 1980 and 1984.

This is not an issue of Republican versus Democrat. It is an issue of whether or not a President of the United States has the right to choose Federal judges who share his judicial philosophy, so long as they are qualified by reason of character and competence. Presidents of both parties have asserted that prerogative; and I will not surrender it.

In his letter of endorsement, Father Theodore Hesburgh, who has known him since Notre Dame days, said of Dan Manion that his life has been one of "service and commitment to justice," that he would bring to the bench "dedication, integrity and a keen knowledge of the law." This represents my view exactly; and there is one final personal reason I want this nominee confirmed. Dan Manion would be the first of the Vietnam veterans to reach the Federal Appellate Court; and I want the record to show I made that appointment.

Please let me know how I can be of help.

Sincerely,

RONALD REAGAN.

Mr. LONG. Mr. President, if the Senator would be so kind, I would appreciate it if he would leave his statement here for a few minutes. I want to make a statement, but I want to read his statement in full because I came in during the middle. I would like to see what the Senator said and I want to read all of it before I leave the Chamber.

Mr. THURMOND. I thank the Senator.

Mr. LONG subsequently said: I thank the Senator, Mr. President. I enjoyed reading the Senator's statement. I think he made a very fine statement for the nomination of Mr. Manion to be appointed to the U.S. court of appeals.

The PRESIDING OFFICER. Does the Senator from South Carolina seek further recognition?

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

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

Mr. BIDEN. Mr. President, the Senate has just taken up the nomination of Daniel Manion to the United States Circuit Court of Appeals, Seventh Circuit. His nomination places the constitutional role of the U.S. Senate in rendering its "advice and consent" in very clear perspective. Our decision whether to consent to Mr. Manion's nomination, I believe, must be viewed in light of three primary concerns.

The first of these concerns is that the Senate review of a judicial nomination is a constitutional duty of paramount importance. The Federal judiciary is an independent and coequal branch of Government. The public ultimately must rely upon the U.S. Senate to ensure that nominees have the professional and personal qualifications to be a Federal judge.

The second point, Mr. President, I should like to make this evening is that the court of appeals is a court of last resort for the overwhelming majority of litigants. Consequently, the circuit court of appeals is too vital to our structure of constitutional Government to be burdened by the appointment of persons whose qualifications are subject to serious doubt.

Finally, if Mr. Manion, who is now 44 years old—and far be it for me to criticize him for his young age, having arrived in the U.S. Senate at the age of 29 and being only 43 myself—is confirmed, his tenure on the bench will outlast the vast majority of us in this body, if not all of us, and the fact is that he will be a sitting judge well into the next century and will be asked to consider issues that he cannot, nor can I, even imagine now, issues dealing with technology, privacy, medical advances, civil rights and civil liberties. Consequently, given the importance of the post and the life tenure that is attached to the post, the burden ought to be borne by Mr. Manion to demonstrate the intellect, achievement, and excellence in the law that is the prerequisite for this position.

We have been in the bad habit around here lately of assuming that the burden is on the U.S. Senate to prove that a nominee is not qualified to be a Federal judge at any level, when, in fact, the constitutional burden is clearly upon those proposing the nominee and the nominee himself to demonstrate that he or she has the qualifications to sit.

Let us keep in mind, once we in fact put a Federal judge on the bench, that is for all practical purposes the absolute last time the citizens of this country, the President of the United States of America, and the U.S. Congress will have an opportunity ever to reconsider whether or not that decision was correct. It is not like a President who stands for election every 4 years. It is not like a U.S. Senator who stands for election every 6 years, or a Member of the House of Representatives who stands for election every 2 years. This is for life. No one will again have the opportunity to consider whether or not the judgment made in the first instance was a correct one.

That is why the Constitution implicitly places the burden upon the person seeking the post to demonstrate that they should have it. Quite frankly, just like the burden is upon U.S. Senators to go to our constituency and say, "We think we should be U.S. Senators, and we are prepared to make our case why we should be there," our constituencies know the burden is on us to demonstrate to them that in fact we are worthy of sitting in the Senate. It is no different for a Federal judicial nominee. The burden is on the nominee to prove that, in fact, they are qualified.

Quite frankly, as pointed out by Profs. Phillip Kurland and Laurence Tribe of the University of Chicago and Harvard University, respectfully, two widely respected constitutional experts of varying and different philosophical perspectives, both in a recent letter signed jointly by them, a letter to the Judiciary Committee and also a op-ed piece to the American press noted, and I quote:

A nominee's entire record of professional achievement, public service, academic credentials, appellate briefs, or other legal briefs, scholarly or other publications, should be reviewed carefully to screen out

I emphasize "to screen out"—

the merely competent and certainly the simply mediocre.

Mr. President, the Senate Judiciary Committee after an extensive study of Mr. Manion's record voted to disapprove—I emphasize "voted to disapprove"—Mr. Manion's nomination to the circuit court of appeals.

His nomination failed because he failed to demonstate the high degree of achievement that must be demanded of persons chosen to serve on the Nation's second highest court.

Let me note parenthetically that the circuit court of appeals, to which this man is going to be elevated, if he, in fact, is confirmed by the Senate, is a court which has a phenomenal record of distinction. It has a former Supreme Court Justice, two former Solicitors General, and four former Federal district court judges. These are men and women of high competence, qualification, and caliber. They are not mediocre. They are clearly qualified, as they should be, to sit upon one of the most important courts in the United States of America—for that matter, in the entire world.

Mr. President, Mr. Manion, seeking membership on that court in that circuit, failed to demonstrate the high degree of achievement that must be demanded of a person chosen to serve on the Nation's second highest court. Mr. Manion has little, if any, experience in dealing with Federal constitutional or public law issues.

□ 1740

In fact, he has never argued a case before the seventh circuit, the circuit within which he practices, or any other Federal appeals court, for that matter. He has never been, as we attorneys say, the "first chair" in any Federal trial that we are aware of. If there have been any, they have been very few.

We examined Mr. Manion's legal briefs. Our concern is not with, as advertised by some who support Mr. Manion, "typographical errors." Mr. Manion's legal briefs are average at best and demonstrate a pervasive lack of craftsmanship, excellence, and most importantly, an ability to communicate with clarity and logic.

Mr. President, some, and most specifically, the President of the United States, have recently charged that "partisan politics" motivates me and my colleagues to oppose Mr. Manion's nomination. They further charge "our real objection to Mr. Manion is that he doesn't conform to the liberal ideology of some Senators."

Mr. President, casting this debate in ideological or partisan terms, quite frankly, misses the point of the objections raised. Although there are circumstances under which ideology is a legitimate basis of consideration for acceptance or rejection of a judge, we do not even have to get to that issue with regard to this nominee, and the accusation of politics misses the point of the objections raised and ignores the record of the past 5 years. Let me set the record straight, if I may.

Since my distinguished colleague from Massachusetts chose to take over another committee and left me the dubious distinction of ranking member on the Judiciary Committee, we have had the opportunity to consider a number of judges appointed by the President—President Reagan.

To be specific, we have confirmed 59—59 nominees to the courts of appeals and 211 appointments to the Federal district court. That is exactly 270 Federal judges that I have, as a member of the Judiciary Committee and as a Member of the Senate since this President has been President, voted on one way or another.

Let us talk about how partisan we have been and how this is cast in cold, ideological terms. Only 4 nominations during this entire period—4 out of 270 nominees—on only 4 did we even ask for a rollcall vote on the floor of the U.S. Senate. Where is the partisan slant to our objection? Four times out of 270 are all that those of us who are concerned—as we all are, I am sure—with the caliber and makeup of the Federal bench, only four times did we, who are accused of being partisan, even ask for a rollcall vote.

While most of these 270 nominees, I think it is fair to say, share a clearly conservative judicial philosophy, closely in tune with that held by President Reagan, they have been approved by the U.S. Senate, Democrats and Republicans alike, by virtue of their personal and their professional qualifications.

I disagree, quite frankly, with the judicial philosophy of this President. Were I asked to advise the next President of the United States, I would not be telling him or her that he or she should send up nominees like the ones that have come before us in the last 5 years. But notwithstanding the fact, we Democrats, who are accused of being partisan, voted to bring these judges up and to confirm them.

I disagree with the philosophy of Frank Easterbrook and Richard Posner, but I voted to confirm both of these men to the seventh circuit—the same circuit, by the way, we are talking about putting Mr. Manion on. But I voted to confirm both of them.

I hold different views from Judge Bork and Judge Scalia, who was recently nominated to be on the Supreme Court. I would not, had I the option, pick either of those gentlemen to be on the Supreme Court or on the courts on which they serve. But I voted to confirm each of them to the District of Columbia Circuit Court.

Two months ago, I voted to confirm J. Daniel Mahoney, the former chairman of the New York State Conservative Party, to the second circuit. I did so because he and many other acknowledged conservatives—many other acknowledged conservative appointees of this President—have possessed the earmarks of excellence, intellectual capability, high achievement, and demonstrated excellence in the law and the requisite judicial temperament.

I might suggest to my colleagues that we, in fact, in addition to this, have gone out and passed without serious debate through the Judiciary Committee and on to the floor of the Senate a man to serve on the Federal court who was the chief attorney for the right to life community. Those who suggest that somehow, we are against Mr. Manion because of his right to life positions—the most outspoken legal scholar in support of the right to life position is a man I voted for and we voted for here, to pass.

This is not about right to life, it is not about conservative or liberal, it is not about Democrat or Republican. It is about intellectual and professional competence to serve as a member of the third coequal branch of the Government.

In fact, I have not agreed with the ideology of probably most of President Reagan's 270 judicial appointments, but I voted to confirm all but 3 of them and shall continue to do so provided they have the requisite professional and personal qualifications.

The suggestion that our opposition to Mr. Manion's nomination is based on partisan politics or ideological differences is itself a smokescreen calculated to hide Mr. Manion's patent lack of qualifications for the high position of public trust to which he has been nominated.

Mr. KENNEDY. Would the distinguished Senator be good enough to yield?

Mr. BIDEN. I have just 1 more minute, Mr. President; then I shall be delighted to yield to the Senator.

It is an affront for those who have worked so hard for excellence on the court to suggest that this is merely partisan. It is an effort to deter the Senate from exercising its constitu-

tional responsibility by insisting that nominees possess adequate intellect, achievement and an understanding of the role of the Constitution. But, we shall not be deterred from this important duty.

Mr. President, Mr. Manion's personal character is not at stake here. He is an honorable man. What is at stake is the excellence of the Federal judiciary and the constitutional role of the Senate in rendering advice and consent.' Our oath as Senators is to ensure quality and to protect the judiciary as an independent and coequal branch of Government.

As a distinguished colleague recently reminded members of the Judiciary Committee, our duty to the justice system is greater than our duty to any individual. And when in fact it is a question as to whether or not the Constitution is to be served or an individual right is to be served as it relates to appointment to the bench, we must err on the side of protecting the Constitution.

I thank my colleagues and I yield to my colleague from Massachusetts.

□ 1750

Mr. KENNEDY. Mr. President, will my colleague be good enough to yield for a few questions?

Mr. BIDEN. I yield to the distinguished Senator from Massachusetts.

Mr. KENNEDY. First of all, I want to commend my friend, the Senator from Delaware, the ranking minority member of the Judiciary Committee, for summarizing in a very cogent way the principal areas of concern of those who have expressed reservations about this nomination in the Senate Judiciary Committee. I think he has also provided an excellent outline of the history of the Senate Judiciary Committee's actions during the past several years in the consideration of nominations. I think it is very worthwhile at the opening of the debate on Mr. Manion to place the nomination in its historical context. The Senate must determine whether this nominee should be entrusted with the great honor and significant responsibility of serving as a Federal judge on the seventh circuit court of appeals.

I believe we will have an opportunity to debate these issues at some length during tomorrow and prior to the time we will be required, under what we can anticipate as a cloture motion, to vote on this measure.

I inquire of the Senator from Delaware whether he agrees with me that the burden for this nominee ought to be placed on those who are supporting the nominee for this extremely important position. We have heard, both in the Judiciary Committee on a number of occasions and in talking with our colleagues on other occasions, a basic truism, and that is that just because people are born and become lawyers does not necessarily mean they deserve to be appointed to a court—the second most important court of this land, the circuit court.

I hope that during the opening statements of those who support the nominee, they will be able to make the compelling and overriding case in favor of this nominee and will be able to address those points which have been eloquently stated by the distinguished Senator from Delaware this evening and which have been outlined in a thoughtful and judicious way in the committee report by those of us who do not support the nomination. I believe very deeply that those who support this nominee have to carry the burden.

I am interested in whether the Senator from Delaware agrees.

Mr. BIDEN. I say to my colleague, quite frankly, that I think this debate is about to illuminate not so much what Mr. Manion is or is not but what each of us Senators thinks about the court.

I think that those who make the argument for Mr. Manion will tell us more about the view they have of the role of the circuit court of appeals and what is required on that court than they will ever tell us about Mr. Manion.

So I think this will be an illuminating and very positive public debate for the American public to begin to focus on the role of the court.

If I were to suggest that someone be elevated to the court who everyone in this Chamber would assume was not qualified, the judgment would be made of me, at a minimum, that I had a relatively low regard for that body.

What is at stake here is a debate on the significance and importance of the court and what standards each of us has for membership on the court, separate and apart from Mr. Manion.

As the Senator from Massachusetts clearly stated, the burden is on those who propose to put an individual on that court.

Mr. KENNEDY. I thank the Senator.

I look forward to participating in the debate on Mr. Manion. I think it is imperative, as the Senate focuses on this particular nominee, that those who are recommending to the Senate that we act favorably on Mr. Manion must bear the burden of demonstrating his suitability to be a Federal appellate judge. I do not believe that Mr. Manion meets the criteria which the American people expect for the second highest court in the land, and I will speak at greater length on this nomination when debate resumes tomorrow.

Mr. QUAYLE. Mr. President, I want to speak very briefly this evening on the Manion nomination that is presently before the Senate.

I think it is important that we point out what the Senate's role and responsibility is in confirming or rejecting the nominees that have been submitted by the President.

It is my firm understanding, and I believe I would have strong bipartisan support on this, that the traditional role of the Senate in judging nominees submitted by the President is to view their competence and to view their character when deciding whether to vote yea or nay on the nomination.

I believe that these are the criteria that Senators ought to focus on as we look at this debate over Dan Manion.

I believe the debate is on competence. I believe the debate is on character.

But I hasten to add, Mr. President, that the reason that we are now in a filibuster of Mr. Manion is not because of the character or the competence; it really comes down to the strictly ideological concerns that many Senators have.

There has been a great disclaimer by many saying, "No, this is not ideology." But I think it is important for the Senate to understand the history of this nomination and to put it into its proper perspective.

When the Manion nomination was first sent to the Senate, many of the critics said "Well, it looks like we really have one here. Dan Manion, of South Bend, IN, a small town lawyer, son of Dean Clarence Manion, one of the founders of the John Birch Society. Boy, we really have ourselves a case here."

They did not know Clarence Manion. I knew him. He is a tremendously respected individual. Many people disagreed with his views, but he was a respected individual.

Now his son has come along and has been placed in nomination. All of a sudden the first time the nomination comes up there is a tremendous amount of intensity on the character, the ideology. Can we find something that this person has done wrong? What are we going to hang our hat on? How are we going to bring this conservative Republican down?

Well, what happened after weeks and weeks of discussion and debate, calls to my State of Indiana, calls around the country, as it quickly became known that there was no question about Mr. Manion's character; there was no question that this individual was elected to the State senate of Indiana from a Democratic district. His political philosophy could not be too extreme to get elected to the State senate from that particular State senate district.

Upon further inquiry, they also found out that Mr. Manion had impeccable character references, almost impeccable credentials as a person of honesty, a person of decency, a person

of fairness, a person who would have judicial capacity in rendering decisions that he would be called upon to make in being judge of this Federal court of appeals.

Therefore, their initial focus is on the character issue, which I think the Senate ought to look at. But the reason that the character issue came up was because of ideology, and they could not find anything. They could not find anything to hang their hat on to bring down the Manion nomination, which they did not like from the very beginning.

So ideology was still the driving force, but they found out very quickly that the character of this person was beyond challenge. Even the ranking member of the Judiciary Committee said quite eloquently, "Mr. Manion, you are an honorable and decent person, but I just disagree with your political views." That is about what the Senator said. It was a very direct and straightforward statement.

Therefore, since the character issue was not to be debated but ideology still the driving force, they switched to the issue of competence. They switched to the issue of whether this person was qualified to be the judge of the Seventh Circuit Court of Appeals.

Let me just say, Mr. President, very briefly, that those who know Dan Manion, including myself and the distinguished senior Senator from the State of Indiana, support him very strongly. The people who know him, Mr. President, like Father Hesburgh, of Notre Dame University, strongly recommend Mr. Manion for this important position. The people who know Dan Manion, whether they are Republicans or Democrats, liberals or conservatives, who have practiced with him, who know him as an individual, support him very strongly.

The Bar Association of St. Joseph County, where he practices law, strongly supports him. Republican and Democrat lawyers from all over the State and the country have written letters in support. The Democratic county chairman of St. Joseph County supports Dan Manion. The Democratic circuit court judge of St. Joseph County, where Dan Manion does much of his practice, supports him. The former Democratic district attorney from the Northern District of Indiana, appointed by President Carter, supports Dan Manion.

The people who know him on both sides of the political aisle support Dan Manion.

I think it is most unfortunate that we have gotten ourselves into this situation of where we are going to have a very polarized, partisan debate, because as the votes are counted almost all, with a few exceptions on this side, will vote for Mr. Manion, and many on that side will be in opposition.

I think it is unfortunate that we have come to that situation. I do not think it is the fault of the people who are the critics now. This started a long time ago. It started before this nomination, to politicize nominations, to politicize the confirmation process.

But I believe that at some time we are going to have to shake hands and have an understanding about what the process is all about, the process of advising and consenting on Presidential nominations.

I do believe that it comes down time and time again to be one of competence and one of character. It is not just this time that we are politicizing this particular situation. It has been done before. But I say to all in good faith that sometime we have to stop it. We have to stop it for the good of the institution.

What we have right now is a filibuster. It is not that the majority of the Senators have to support Mr. Manion. We have to now get 60 votes before we can even consider the Manion nomination.

Finally, Mr. President, let me just focus very briefly on this competence issue and the qualifications.

Once they figured that character was not going to get them very far, and that was a nonstarter to begin with, the whole issue focused upon qualifications. One of the things that they decided to say was he was not qualified because of some briefs that had been analyzed that had typographical errors. Typographical errors should therefore somehow deny one's confirmation, and is indicative of whether they are qualified or not qualified.

It was interesting to note that even the "Dear Colleague" letter which talked about these typographical errors had a lot of typographical errors.

We all make clerical mistakes. That is hardly an issue that is going to doom a candidate.

Another reason is the briefs of Mr. Manion that were analyzed. Of the four briefs that his opponents focused on, three of the four he won in court.

Mr. Manion graduated in the top third of his class at Indiana Law School in Indianapolis. The ABA has given him a qualified endorsement. The ABA has given Mr. Manion the qualified endorsement, the same endorsement that it gave Judge Posner and Judge Esterbrook who presently serve on the seventh circuit court of appeals, the same endorsement on qualifications, Mr. President, the same exact endorsement that those two judges had who were confirmed by this Senate.

Furthermore, if we are going to look at the issue of qualifications for judicial nominees I think the record ought to note that under the previous administration there were three that were sent up here that had from the ABA an unqualified recommendation, yet they were confirmed by the Senate.

All of a sudden we now have this huge focus upon qualifications. I think competence is, in fact, an issue. If the person is not competent, then that is something that the Senate ought to examine.

Finally, Mr. President, the idea that Mr. Manion has not practiced in Federal court is simply not the case. He has been the lead counsel in at least five cases in Federal court and presently in his law firm he is the counsel in five others that are before Federal courts.

Therefore, Mr. President, very briefly this evening, we will rest our case on the Manion nomination. But this Senate ought to look at this, and I think the record will show that it is ideology that is unfortunately driving the opposition to this nomination. I am hopeful after we have a vote on cloture and we eventually reach the 60 votes, there will be a bipartisan vote on the Manion nomination.

□ 1830

Then, once we get beyond this, I do hope that, at some time, Senators begin to think of what we are doing to ourselves and how we are politicizing this process.

I am not saying that those who are bringing this forward today are responsible for it because we all are. When I say "we all," I mean the entire Senate. It has been going on for a number of years. I do not think it is healthy. I really do not think it is healthy.

I never shy away from a good debate, discussion of the issues, and looking at what we ought to look at as Senators. Unfortunately, this has, in my opinion, become politicized. It is out of character for the Senate.

I hope once we get beyond this nomination, which has gained a lot of national notoriety—a lot of money has been poured into the opposition to Dan Manion. There have been full-page newspaper ads, there have been television commercials, there have been radio commercials. There has been a lot of money invested in defeating this nomination.

In due course, Mr. President, I am convinced that the Senate will confirm him and we will be confirming a good, decent citizen, who, in my opinion, will be a good judge and has the capability of becoming a great judge.

Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, I shall not take further time now to debate the merits of this nomination. I would like to say this: I hope cloture will be obtained for two reasons: the first is, I think the Senate really ought to have the right to vote on this nomination. The President has made the

nomination and the Senate now has the responsibility to vote on and act on the nomination.

The next thing is even though a Senator might be opposed to this nomination, I think we ought to vote for cloture to bring this matter to an end. There is no need for it to go on for days and days. Every Republican and every Democrat ought to vote for cloture to bring this matter to an end and wind it up and save time. I think that the nominee is entitled to a vote by the Senate on this nomination.

Mr. President, I am not going to make a further statement with regard to the nomination at this time.

CLOTURE MOTION

Mr. THURMOND. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant 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 nomination of Daniel A. Manion, of Indiana, to be U.S. circuit judge for the seventh circuit.

Senators Bob Dole, Pete Wilson, Strom Thurmond, Barry Goldwater, Jake Garn, Al Simpson, Chuck Grassley, Steve Symms, Mitch McConnell, John P. East, Jeremiah A. Denton, Paul Laxalt, Chic Hecht, Richard G. Lugar, Orrin Hatch, Malcolm Wallop, Thad Cochran, Phil Gramm, Ted Stevens, Dan Quayle, and Don Nickles.

A U.S. SENATE SALUTE TO PETE ROSE

Mr. SPECTER. Mr. President, in the arena of human endeavor, there are those determined few who are willing to expend every effort and to make any sacrifice to achieve success. We call these individuals winners.

Such a one is baseball's Pete Rose.

Winners possess talent, but they recognize that talent is never enough. They know that unless talent is combined with perspiration and total dedication, it will never carry them to the pinnacle of success.

God gave Pete Rose talent. There is no denying that. But Pete Rose took this gift and made the very most of it through dint of hard work and, in the sports' vernacular, hustle.

Hustle has many synonyms—enthusiasm, ardor, zeal, passion, fervor. But it all boils down to the same thing: a willingness to work harder, longer and with greater intensity than the competition, to do whatever it takes to get the job done, to win. This is what separates Pete Rose, whose sobriquet is "Charlie Hustle," from the hundreds of other ballplayers in the major leagues.

Today Pete Rose stands atop baseball's pinnacle, recognized as one of the greatest players, if not the greatest, of his time. He possesses baseball's most cherished record, most hits in a lifetime. When Pete Rose broke Ty Cobb's record in 1985, he had climbed the game's highest mountain and become its foremost player.

It is altogther fitting that the U.S. Senate should take formal and official note of Pete Rose's accomplishments in the great game of baseball, which has most fittingly been described as "America's pastime."

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following enrolled bills and joint resolutions:

On June 19, 1986:

S. 124 an act to amend the Safe Drinking Water Act.

S. 1027 an act for the relief of Kenneth David Franklin.

S.J. Res. 220, joint resolution to provide for the designation of September 19, 1986, as "National P.O.W/M.I.A. Recognition Day."

S.J. Res. 310, joint resolution to proclaim June 15, 1986, through June 21, 1986, as "National Agricultural Export Week."

S.J. Res. 347, joint resolution to designate the week beginning June 22, 1986, as "National Homelessness Awareness Week."

On June 23, 1986:

S.J. Res. 321, joint resolution to designate October 1986 as "National Down Syndrome Month."

DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 156

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Energy and Natural Resources, and the Committee on Finance:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report four new deferrals of budget authority totaling $46,424,273.

The details of these deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *June 24, 1986.*

ANNUAL REPORT OF THE NATIONAL SCIENCE FOUNDATION—MESSAGE FROM THE PRESIDENT—PM 157

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I am pleased to send you the annual report of the National Science Foundation for fiscal year 1985. This report describes research supported by the Foundation in the mathematical, physical, biological, social, behavioral, and information sciences; engineering; and education in those fields.

Achievements such as those described in this report are the basis for much of our Nation's strength—its economic growth, military security, and the overall well-being of our people.

We face challenges in science, engineering, and technology, but I am confident about our ability to meet those challenges. The National Science Foundation has been, and will remain, a key part of the national effort to expand our research achievements and productivity and to remain competitive in world markets through innovation and new discoveries.

I commend the Foundation's work to you.

RONALD REAGAN.

THE WHITE HOUSE, *June 24, 1986.*

MESSAGES FROM THE HOUSE

At 3:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House insists upon its amendment to the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers, disagreed to by the Senate; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. MARKEY, Mr. SWIFT, Mr. BRYANT, Mr. SHELBY, Mr. WYDEN, Mr. BROYHILL, Mr. MOORHEAD, Mr. OXLEY, and Mr. NIELSON of Utah as managers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the joint resolution (H.J. Res. 652) to provide for the temporary extension of certain programs relating to housing and community development.

The message further announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1965. An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

The message also announced that the House has passed the following joint resolutions, without amendment:

S.J. Res. 188. Joint resolution to designate July 6, 1986, "National Air Traffic Control Day";

S.J. Res. 290. Joint resolution to designate July 4, 1986, as "National Immigrants Day";

S.J. Res. 346. Joint resolution to designate June 21, 1986, as "National Save American Industry and Jobs Day";

S.J. Res. 350. Joint resolution to designate 1987 as the "National Year of the Americas"; and

S.J. Res. 365. Joint resolution welcoming the Afghan Alliance.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 4868. An act to prohibit loans and other investments in, and certain other activities with respect to, South Africa, and for other purposes;

H.R. 4952. An act to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes; and

H.J. Res. 429. Joint resolution to designate July 2, 1986, as "National Literacy Day".

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 350. A concurrent resolution providing that the President shall continue to adhere to the numerical sublimits of the SALT agreements as long as the Soviet Union does likewise.

ENROLLED JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled joint resolutions:

S.J. Res. 188. Joint resolution to designate July 6, 1986, "National Air Traffic Control Day";

S.J. Res. 290. Joint resolution to designate July 4, 1986, as "National Immigrants Day";

S.J. Res. 346. Joint resolution to designate June 21, 1986, as "National Save American Industry and Jobs Day";

S.J. Res. 350. Joint resolution to designate 1987 as the "National Year of the Americas"; and

H.J. Res. 297. Joint resolution to designate the week beginning July 27, 1986, as "National Nuclear Medicine Week".

The enrolled joint resolutions were subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED JOINT RESOLUTION SIGNED

At 4:12 p.m., a message from the House of Representatives, delivered by Mr. Berry, one if its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 652. Joint resolution to provide for the temporary extension of certain programs relating to housing and community development, and for other purposes.

The enrolled joint resolution was subsequently signed by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 350. A concurrent resolution providing that the President shall continue to adhere to the numerical sublimits of the SALT agreements as long as the Soviet Union does likewise, to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill and joint resolution was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4952. An act to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes;

H.R. Res. 429. Joint resolution to designate July 2, 1986, as "National Literacy Day".

MEASURE READ THE FIRST TIME

The following bill read the first time:

H.R. 4868. An act to prohibit loans and other investments in, and certain other activities with respect to, South Africa, and for other purposes;

ENROLLED JOINT RESOLUTIONS SIGNED

The Secretary of the Senate reported that on today, June 24, 1986, she had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 188. Joint resolution to designate July 6, 1986, "National Air Traffic Control Day";

S.J. Res. 290. Joint resolution to designate July 4, 1986, as "National Immigrants Day";

S.J. Res. 346. Joint resolution to designate June 21, 1986, as "National Save American Industry and Jobs Day"; and

S.J. Res. 350. Joint resolution to designate 1987 as the "National Year of the Americas";

REPORTS OF COMMITTEE

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on the Budget, without amendment, and without recommendation:

S. Res. 425. A resolution to waive section 303(a) of the Congressional Budget Act, with respect to the consideration of S. 2216, designating September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as "Constitution Day".

By Mr. HATCH, from the Committee on Labor and Human Resources, without amendment:

S. 2444. A bill to reauthorize the Head Start Act, the Low-Income Home Energy Assistance Act of 1981, the Community Services Block Grant Act, the dependent care State grant program, and for other purposes (Rept. No. 99-327).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance:

Robert B. Helms, of Maryland, to be an Assistant Secretary of Health and Human Services;

Ronald F. Docksai, of Virginia, to be an Assistant Secretary of Health and Human Services;

Michael R. Darby, of Texas, to be an Assistant Secretary of the Treasury; and

Lawrence B. Gibbs, of Texas, to be Commissioner of Internal Revenue.

(The above nominations were reported from the Committee on Finance with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ABDNOR:

S. 2589. A bill to create a secondary market for sound mortgages secured by farm real estate and guaranteed by the Farmers Home Administration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GLENN (for himself, Mr. KENNEDY, and Mr. SASSER):

S. 2590. A bill to amend the Appendix to the Tariff Schedules of the United States to extend the suspension of duty on bicycle parts; to the Committee on Finance.

By Mr. GLENN:

S. 2591. A bill to amend the Tariff Schedules of the United States to correct the classification of certain pigments; to the Committee on Finance.

By Mr. GARN:

S. 2592. A bill to strengthen Federal deposit insurance programs, to enhance competition in the financial services sector, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUMPERS (for himself, Mr. BIDEN, Mr. SARBANES, Mr. HECHT, Mr. KERRY, Mr. METZENBAUM, Mr. SIMON, Mr. KENNEDY, and Mr. BAUCUS):

S. 2593. A bill to establish the National Nuclear Safety Study Commission; to the Committee on Environment and Public Works.

By Mr. GORE (for himself and Mr. GORTON):

S. 2594. A bill to require the Office of Science and Technology Policy to report to the Congress on fiber optic networks and other options to improve communications among supercomputer centers and users in the United States; to the Committee on Commerce, Science, and Transportation.

By Mrs. HAWKINS (for herself, Mr. THURMOND, Mr. KENNEDY, Mr. HATCH, and Mr. DODD):

S. 2595. A bill to amend the Public Health Service Act to revise the authorities of, and redesignate, the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for Mr. THURMOND):

S. Con. Res. 152. A concurrent resolution authorizing changes in the enrollment of S. 2414; considered and agreed to.

STATEMENTS OF INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GLENN (for himself, Mr. KENNEDY, and Mr. SASSER):

S. 2590. A bill to amend the Appendix to the Tariff Schedule of the United States to extend the suspension of duty on bicycle parts; to the Committee on Finance.

SUSPENSION OF DUTY ON BICYCLE PARTS

● Mr. GLENN. Mr. President, today I am offering legislation which will provide relief for the U.S. bicycle industry. The regular customs duties on certain bicycle parts not manufactured in the United States have been suspended since 1971. This suspension of duties is critical to the competitive health of U.S. bicycle manufacturers who are being subjected to increasingly intense competition from imported bicycles.

The current 3-year period of duty suspension expires on June 30, 1986. The House has passed legislation to renew this duty suspension with some slight modifications until December 31, 1990. The bill I am introducing today is identical to the provision passed by the House last month.

Congress has renewed duty suspension legislation four times: in 1974, 1977, 1980, and 1983. During the five sessions that it considered such legislation, Congress recognized that absent passage of a duty suspension bill, the tariff schedules of the United States contained an unfair bias against domestic manufacturers of bicycles. Most imported bicycles were, and continue to be, dutiable at a lower rate than most bicycle parts. Imported bicycles face a duty rate of 5.5 percent or 11 percent, depending on the type of model; imported bicycle parts face a duty rate of 7.1 percent to 10.8 percent. This anomaly, if uncorrected by duty suspension legislation, enables foreign bicycle manufacturers to assembly bicycles abroad with foreign bicycle parts and import the complete product, including the component parts, into the United States, subject to the lower rate imposed on bicycles. In contrast, the domestic manufacturers of bicycles must first import certain components necessary to complete the manufacture of a bicycle at the higher duty rate imposed on bicycle parts. Without duty suspension, the tariff schedules in effect impose a penalty on the manufacture of bicycles in the United States, where the cost of doing business is already significantly higher. Even the high productivity and the efficiency of the U.S. bicycle industry cannot offset the extremely low wage rates available to bicycle manufacturers in the principal exporting nation, Taiwan, Huffy Corp. which is located in Ohio and employs 2,000 people, manufactures bicycles in a modern and efficient plant. Nonetheless, the expiration of duty suspension will penalize the workers at Huffy Corp. and other bicycle plants in the United States without cause.

When Congress first enacted duty suspension legislation in 1970, the Senate Committee on Finance highlighted the need to suspend duties on bicycle parts, and I quote:

> This bill is intended to improve the competitive ability of domestic producers of bicycles by temporarily suspending the duties on imports of certain bicycle parts and accessories, thereby reducing their costs . . . . The temporary suspension of duty on the bicycle parts and accessories provided for in the bill would be beneficial to domestic manufacturers of bicycles, particularly in competing with imported bicycles.

The reasons presented in past sessions of the Congress for suspending the duty on bicycle parts are valid today. Indeed, the need for continued suspension of the duties on parts in order to maintain the competitive position of the domestic bicycle manufacturers has never been more urgent. The domestic bicycle industry remains under severe pressure from the flood of imported bicycles. It is clear that foreign producers have targeted the United States as their principal export market. In fact, imports have claimed an increasing share of the U.S. market in recent years, ranging from 16.9 percent in 1979 to almost 50 percent in 1985. First quarter figures for 1986 indicate that the trend continues.

Duty suspension on bicycle parts reflects the continuation of congressional concern that U.S. manufacturers—when necessary—be able to obtain, free of duty, foreign-made components that are domestically unavailable. I urge my colleagues to continue their support for the U.S. bicycle industry, and vote for this legislation, which will enable the U.S. bicycle industry to continue to compete in the world market.●

By Mr. GLENN:

S. 2591. A bill to amend the Tariff Schedules of the United States to correct the classification of certain pigments; to the Committee on Finance.

TARIFF CLASSIFICATION OF CERTAIN PIGMENTS

● Mr. GLENN. Mr. President, today I am introducing legislation to change the duty classification of two commercial pigments, pigments red 214 and pigment yellow 155.

Under current duty classification, these pigments are classified in a category for imported products that complete with domestic products. However, pigment red 214 and pigment yellow 155 are not, and have never been, made in the United States and should not be in this category.

American manufacturers with good business sense determined that a need existed for these pigments in our marketplace, but this need did not justify the investment of funds to manufacture these pigments in the United States. American manufacturers worked with foreign manufacturers to distribute these pigments in the United States. The pigments, currently classified at a higher duty rate with competitive pigments, must complete with other imported pigments classified at a lower noncompetitive rate. The erroneous duty classification puts these American companies at a competitive disadvantage and this disadvantage increases in future years.

This legislation will simply correct this error and change the duty classification for pigments red 214 and yellow 155 to the noncompetitive category. This change reduces the duty from 15 percent to 9.8 percent. I urge my colleagues to support this legislation.●

By Mr. GARN:

S. 2592. A bill to strengthen Federal deposit insurance programs, to enhance competition in the financial services sector, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

DEPOSIT INSURANCE REFORM AND COMPETITION ENHANCEMENT ACT

● Mr. GARN. Mr. President, today I am introducing legislation to strengthen the Federal deposit insurance funds and reinforce public confidence in our Nation's depository institutions. These objectives would be accomplished through a number of steps, including a plan to recapitalize the Federal Savings and Loan Insurance Corporation [FSLIC]. Steps also would be taken to increase the marketability of troubled depository institutions, but it is important to note that the legislation would not liberalize current law regarding the types of entities that can purchase troubled banks and thrifts.

The legislation I am introducing also would enhance competition in the provision of financial services by updating the regulatory framework for financial

institutions and increasing their ability to adapt to changes in financial markets. Again, a number of steps would be needed to achieve these objectives, including the creation of depository institution securities affiliates [DISA's] to underwrite revenue bonds, mortgage-backed securities, commercial paper, and mutual funds.

At the same time, the nonbank bank loophole would be closed. Previous legislative proposals have included a grandfather date for nonbank banks in 1983 or 1984. Arguments also have been advanced for not grandfathering any nonbank banks. The bill I am introducing does not propose a specific grandfather date. However, it does propose that any grandfathered owners of nonbank banks would be required either to convert their nonbank banks to thrift charters or to acquire a troubled thrift for each nonbank bank grandfathered. Clearly this would aid the resolution of problem-thrift cases, and the more liberal the grandfather, the more help would be given to the FSLIC.

Consumers of financial services will be the ultimate beneficiaries of a strengthened financial system, of enhanced competition in the financial services marketplace and of specific consumer protections included in the bill.

This legislation I am introducing also incorporates proposals from numerous sources, including the administration, my colleagues in the Senate, the financial institution regulatory agencies, and various industry groups.

TITLE I

Title I of this bill would strengthen the Federal deposit insurance funds and reinforce confidence by extending titles I and II of the Garn-St Germain Act. The amended provisions would strengthen the funds and build confidence by reducing the cost to the Federal insurance funds of handling failing depository institutions.

Whereas current law permits the interstate sale of a failed bank with more than $500 million in assets, the amended title I would lower this threshold to $250 million. Moreover, this threshold limitation would be applied to a series of banks in a bank holding company instead of to individual bank components, and the entire series of banks could be sold across State lines, not just those components with assets above the threshold. Finally, the FDIC would be authorized to sell a bank or bank holding company in danger of closing across State lines without waiting until the institution actually fails.

TITLE II

Title II of the bill includes 12 provisions that would significantly strengthen the deposit insurance system. Among the more important provisions would be authority for the FDIC to vary the level of assessments on insured banks according to the riskiness of each bank's activities. This is designed to provide a significant financial incentive for banks to avoid excessive risk taking, thereby bolstering the stability of the deposit insurance fund.

Title II would also provide the FDIC with the authority to establish so-called bridge banks. These new entities would enable the FDIC to keep a failed bank open until a purchase-and-assumption or similar transaction could be accomplished. This would enable the FDIC to resolve bank failures less expensively or in a manner that would better promote the interests of the community, the depositors, or the public.

Another provision of title II would establish a uniform depositor preference system for paying the claims of all federally insured banks that fail, whether State or federally chartered. This would provide greater priority to depositor claims than does current law and provide greater certainty to depositors and creditors regarding the value of their claims. It would also eliminate the current disparity of treatment between creditors of national banks and of State banks, and between creditors of banks chartered in different States. Finally, it would facilitate the FDIC's ability to use the less costly method of purchase-and-assumption transactions to resolve bank failures.

Other provisions of title II would strengthen the FDIC's enforcement powers against bank directors and others; expedite the process for removing insurance protection from certain banks; and authorize the relevant bank regulator to issue temporary orders limiting the activities of banks or bank personnel.

TITLE III

Title III would strengthen the FSLIC fund and reinforce confidence with a recapitalization program using contributions both from the regional Federal home loan banks and from the savings and loan industry. FSLIC's present financial reserves of about $6 billion would be supplemented with up to $25-$30 billion over the next 5 to 6 years, with approximately $15 billion available in the first 3 years. These supplemental case resolution funds would enable the FSLIC to proceed with a more timely resolution of problem-institution cases. Moreover, the program should make possible a gradual phasedown over 5 years of the special assessment now being paid by FSLIC-insured institutions.

TITLE IV

Title IV would update our regulatory structure to recognize the growing competition between commercial banks and savings and loan associations. Restrictions on interaffiliate transactions within a savings and loan holding company would be equalized with the restrictions applied to affiliates of a bank holding company. Not only would this recognize competitive realities, but it would help attract capital to the thrift industry as well and thereby contribute to the strengthening of the FSLIC fund.

Title IV also would increase the attractiveness of S&L charters and expand the number of potential buyers for failing institutions:

First, by making clear that certain joint sales and marketing arrangements and cross-advertising between a thrift subsidiary of a bank holding company, on the one hand, and the parent holding company and its other bank or nonbank subsidiary on the other, are not prohibited under the public benefits test prescribed by the Bank Holding Company Act.

Second, by providing that a bank holding company that acquires a failing thrift can, in a service corporation of the thrift, exercise service corporation powers allowed by Federal thrift service corporation law.

Third, by making clear that an S&L-issued credit card may be used to make purchases at an affiliate of the S&L.

Fourth, by prohibiting States from imposing restrictions on S&L affiliations that are more stringent than those imposed by Federal law.

Fifth, by allowing securities subsidiaries of S&L holding companies to engage in a limited amount of trading and secondary market transactions in shares of nonsubsidiary S&L's and S&L holding companies.

Sixth, by increasing the amount of debt—as a percentage of consolidated net worth—that certain well-capitalized nondiversified S&L holding companies may issue without requesting specific written approval of the FSLIC.

Seventh, by creating a presumption that management arrangements otherwise prohibited by the Depository Institution Management Interlocks Act would be permissible with respect to companies that become S&L holding companies by acquiring failing thrifts.

TITLE V

Title V would enhance and strengthen the authorities of the Federal Savings and Loan Insurance Corporation in response to FSLIC's concern, over the past few years, that existing supervisory and enforcement tools need to be updated. This title also would authorize the FSLIC to assess risk-based premiums on its member institutions, raise the service corporation investment authority of Federal savings and loan associations to 5 percent of assets as such institutions increase their own net worth as required by the FHLBB, and repeals the rebidding requirements originally enacted as part of the emergency acquisition authorities of the Garn-St Germain Act.

TITLE VI

Title VI would create new product and service flexibility for both bank holding companies and thrift holding companies while at the same time applying new regulation safeguards to both existing activities and new activities. For example, the Financial Institutions Competitive Enhancement Act of 1986 would establish depository institution securities affiliates for both bank holding companies and thrift holding companies, yet it would make the Securities and Exchange Commission the appropriate Federal regulator of these subsidiaries.

Title VI also would permit the Federal Reserve Board to grant additional nonbank activities to bank holding companies if such activities were of a financial nature and permit banks to either adjust to technological innovations or new competitive products. The title would make clear, however, that only a limited range of insurance activities are closely related to banking and that such restrictions apply to the subsidiaries of bank holding companies. The nonbank activities of State chartered banks which have not been approved by the Federal Reserve would be limited geographically by the boundaries of the State's authority. In addition, the activities of a savings and loan would be limited to those authorized for multiple savings and loan holding companies unless its insured institution subsidiary meets the qualified thrift lender test.

The title also would define a bank for purposes of the bank holding company as an institution with FDIC Insurance. Thus it closes the so-called nonbank bank loophole. It provides, however, for certain grandfather rights which can only be preserved by acquiring a failing savings and loan or converting to an FSLIC insured institution within 3 years. The bill does not yet establish a grandfather date, but rather seeks to have such determination made during the legislative process.

TITLE VII

Title VII makes technical changes to the bankers' bank statutory provisions, including a clarification that bankers' banks may invest in export trading companies and provide services to bank holding companies.

TITLE VIII

Title VIII of the bill would set forth a group of amendments affecting credit unions. Many of these are designed to increase the flexibility and enforcement authority of the National Credit Union Administration [NCUA] in order to prevent losses to the National Credit Union Share insurance fund. For example, one amendment would make permanent the conservatorship and emergency merger authorities of the Garn-St Germain Act, which during the last 3½ years have helped NCUA avoid more than $20 million in potential losses to the insurance fund. Another would strengthen the insurance fund by providing two new grounds for imposing conservatorship: for willful violations of final cease and desist orders, and for concealment or refusal to submit documents or records to the NCUA. Other enforcement provisions would reduce the period for State regulators to respond to a conservatorship proposed by NCUA, enabling quicker and more decisive action to prevent losses to the insurance fund; expressly define NCUA's conservatorship authority; extend NCUA's prohibition authority to employees and agents of federally-insured credit unions; and clarify the alternative authority of Federal credit unions to expel members.

Title VIII would also allow credit unions to make second mortgage and home improvement loans for longer than 15 years; clarify existing authority to offer individual retirement accounts and Keogh accounts; provide greater flexibility to the NCUA to obtain office space and equipment; and provide greater flexibility to accept the deposit of public funds.

TITLE IX

Title IX would create a new title X to the Consumer Credit Protection Act that would apply to both long term leases and to short term leases or rental agreements containing an option to purchase. This new title would amend current law applicable to longer term leases by simplifying and reducing the number of disclosures now required by law. Because of the growing concern that more and more consumers are entering into shorter lease terms with purchase options without adequate cost disclosures, title X also would require disclosure of cost and other information in lease-purchase agreements. The changes in this title are intended to ensure that consumers of long term leases and lease-purchase agreements would be provided with basic, important cost information concerning these transactions.

TITLE X

Title X would require all depository institutions to disclose their check hold policies to consumers and would instruct the Federal Reserve Board to issue regulations designed to speed up the now cumbersome and timeconsuming process of returning a bounced check. The Federal Reserve Board has already experimented with methods to accelerate the process of returning checks, and passage of this title would authorize the Board to use one, or a combination of several, approaches to speed up the return process. A faster return system, and the ability to identify checks that pose a "serious risk of loss" to a financial institution, would remove the justification for placing excessively long holds on all deposited checks.

TITLE XI

Title XI would benefit consumers by requiring that all mailed credit card solicitations disclose the annual percentage rate, annual fees and other charges, and the existence of any grace period that will apply to the card. This title also would require third party credit cards to use an "average daily balance" method, or a method more favorable to the borrower than average daily balance, as a balance calculating method. These provisions would lower credit card costs to consumers by requiring disclosures that would enable consumers to more effectively price shop, and by prohibiting usage of the most expensive balance calculation methods for some credit cards.

TITLE XII

Title XII contains miscellaneous provisions. The first of these provisions would exempt the funds of the depository institution regulators from Gramm-Rudman-Hollings sequestration and the Office of Management and Budget apportionment. The exemptions are critical to provide these regulators with the flexibility and staff necessary for effective examination and supervision. Moreover, because these financial regulators are completely financed by the entities they regulate, any savings from the Gramm-Rudman-Hollings budget cuts could not be used to finance other government activities. The second miscellaneous provision would allow organizations operated primarily for political purposes to own negotiable order of withdrawal [NOW] accounts. The third provision would permit members and staff of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to accept reimbursement for travel and other expenses incurred in attending meetings pertaining to Board activities from Federal and non-Federal sponsors, including industry groups. Finally, the last provision would prohibit the Student Loan Marketing Association [Sallie Mae] from owning or controlling an insured bank, mutual savings bank, savings bank or savings and loan association.

I ask unanimous consent that the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the bill and section-by-section analysis was ordered to be printed in the RECORD, as follows:

S. 2592

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Deposit Insurance Reform and Competitive Enhancement Act".

TITLE I—EMERGENCY ACQUISITIONS

Sec. 101. Short title.

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Sec. 102. Extension of Garn-St Germain Act.
Sec. 103. Assisted extraordinary acquisitions.
Sec. 104. Unassisted extraordinary acquisitions.

TITLE II—FEDERAL DEPOSIT INSURANCE

Sec. 201. Short title.
Sec. 202. Risk-related assessments.
Sec. 203. Assessment of collateralized deposits.
Sec. 204. Procedure for removal of insurance.
Sec. 205. Enforcement procedures.
Sec. 206. Power to define terms.
Sec. 207. Examinations.
Sec. 208. Priorities in claims.
Sec. 209. Subrogation.
Sec. 210. Bridge banks.
Sec. 211. Branching.
Sec. 212. Technical and conforming amendments.

TITLE III—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION

Sec. 301. Short title.
Sec. 302. Financing corporation.
Sec. 303. Conforming amendment.
Sec. 304. Investment in Federal Savings and Loan Insurance Corporation.
Sec. 305. Dividends.
Sec. 306. Exemption from retirement requirement.
Sec. 307. Federal Home Loan Bank membership.

TITLE IV—THRIFT INSTITUTIONS INVESTMENTS

Sec. 401. Short title.
Sec. 402. Equality of thrift and bank holding company affiliate transactions.
Sec. 403. Conformity of affiliation restrictions.
Sec. 404. Limited contributions in savings and loan stock.
Sec. 405. Relating debt limits to capital.
Sec. 406. Waiver option for interlocking directorates in emergency acquisitions.
Sec. 407. Thrift-subsidiary arrangements.
Sec. 408. Thrift acquisitions.

TITLE V—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Sec. 501. Short title.
Sec. 502. Cease-and-desist proceedings.
Sec. 503. Temporary cease-and-desist orders.
Sec. 504. Suspension, removal, or prohibition of institution-related parties.
Sec. 505. Penalties.
Sec. 506. Definitions.
Sec. 507. Powers of the Federal Savings and Loan Insurance Corporation.
Sec. 508. Risk assessment premiums.
Sec. 509. Service corporations.
Sec. 510. Repeal of rebidding requirement.

TITLE VI—FINANCIAL INSTITUTIONS COMPETITIVE ENHANCEMENT

Sec. 601. Amendments to the Banking Act of 1933.
Sec. 602. Amendments to the Securities Act of 1933.
Sec. 603. Amendments to the Securities Exchange Act of 1934.
Sec. 604. Amendments to the Bank Holding Company Act of 1956.
Sec. 605. Amendments to the Federal Reserve Act.
Sec. 606. Securities affiliations of nonmember insured banks.
Sec. 607. Amendments to the National Housing Act.
Sec. 608. Amendment to the Home Owners' Loan Act of 1933.
Sec. 609. Amendments to the Federal Home Loan Bank Act.
Sec. 610. Leasing authority of national banks.
Sec. 611. Mutual holding company amendment.
Sec. 612. Mortgage securities corporations.

TITLE VII—BANKERS BANKS

Sec. 701. Amendment to section 5136 of the Revised Statutes.
Sec. 702. Amendment to section 5169 of the Revised Statutes.
Sec. 703. Amendments to the Depository Institution Management Interlocks Act.
Sec. 704. Amendments to the Bank Holding Company Act of 1956.

TITLE VIII—CREDIT UNION AMENDMENTS

Sec. 801. Permanent merger and conservatorship authority.
Sec. 802. Reduction in State comment waiting period.
Sec. 803. Imposition of conservatorship.
Sec. 804. Authority as conservator.
Sec. 805. Technical and clarifying amendments; removal and prohibition authority.
Sec. 806. Faithful performance.
Sec. 807. Membership officers.
Sec. 808. Nonparticipation.
Sec. 809. Second mortgage and home improvement loans.
Sec. 810. Property acquisition flexibility.
Sec. 811. Clarification of IRA authority.
Sec. 812. Technical amendment.
Sec. 813. Public funds.
Sec. 814. Ownership interest.

TITLE IX—CONSUMER LEASES

Sec. 901. Short title.
Sec. 902. Amendment to the Consumer Credit Protection Act.
Sec. 903. Conforming amendments.

TITLE X—FAIR DEPOSIT AVAILABILITY

Sec. 1001. Short title.
Sec. 1002. Definitions.
Sec. 1003. Disclosure of fund availability policies.
Sec. 1004. Interest on deposits.
Sec. 1005. Improved clearing procedures.
Sec. 1006. Availability of certain funds.
Sec. 1007. Administrative enforcement.
Sec. 1008. Civil liability.
Sec. 1009. Effect on check acceptance policies and other laws.
Sec. 1010. Improving payment mechanisms.
Sec. 1011. Effective date.

TITLE XI—CREDIT CARDS

Sec. 1101. Short title.
Sec. 1102. Credit card solicitations and balance computation.

TITLE XII—MISCELLANEOUS

Sec. 1201. Treatment of funds of depository institution regulators.
Sec. 1202. NOW account amendment.
Sec. 1203. Reimbursement for travel.
Sec. 1204. Student Loan Marketing Association.

TITLE I—EMERGENCY ACQUISITIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1986".

EXTENSION OF GARN-ST GERMAIN ACT

SEC. 102. (a) The Garn-St Germain Depository Institutions Act of 1982 (Public Law 97-320) is amended as follows:

(1) In section 141(a), by striking out "July 15, 1986" and inserting in lieu thereof "Upon the expiration of 6 years after the date of enactment of this Act".

(2) In section 206(a), by striking out "July 15, 1986" and inserting in lieu thereof "upon the expiration of 6 years after the date of enactment of this Act".

(b) Effective April 15, 1991—

(1) section 4(c)(8)(D) of the Bank Holding Company Act of 1956 is repealed; and

(2) the amendments made by sections 103 and 104 of this title are repealed.

(c) The repeal or termination by this section of any provision of law shall have no effect on any action taken or authorized while such provision was in effect.

ASSISTED EXTRAORDINARY ACQUISITIONS

SEC. 103. Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1)(A) Whenever the appropriate Federal banking agency is informed that an out-of-State bank or holding company is considering acquiring, directly or indirectly, an insured bank with total assets of $250,000,000 or more that is in danger of closing, such agency shall (i) notify the Corporation of such, (ii) consult with the Corporation before taking any action with respect to any such acquisition, and (iii) provide the Corporation with notice of any final action taken.

"(B) Except as provided in paragraph (9), the provisions of this subsection shall be used exclusively in connection with any acquisition by or merger with an out-of-State bank or holding company with respect to which the Corporation provides assistance under its powers in subsection (c) and shall not be applicable if the Corporation does not provide such assistance. Nothing contained in this subsection shall be construed to limit the Corporation's powers under subsection (c) to assist a transaction.";

(2) by striking out "$500,000,000" in paragraph (2)(A) and inserting in lieu thereof "$250,000,000";

(3) by amending paragraph (3) to read as follows:

"(3)(A)(i) Whenever the appropriate Federal or State chartering authority has certified in writing that an insured bank with total assets of $250,000,000 or more (as determined from its most recent report of condition) is in danger of closing, the insured bank may merge with or its assets may be purchased by and its liabilities assumed by another depository institution, including an insured depository institution located in the State where the insured bank is chartered but established by an out-of-State bank or holding company, or its shares may be acquired by an out-of-State bank or holding company.

"(ii) Whenever the appropriate Federal or State chartering authority has certified in writing that one or more insured bank subsidiaries of a holding company are in danger of closing and such bank or banks hold aggregate assets equal to $250,000,000 or more (as determined from their most recent reports of condition) and such bank or banks represent 33 per centum or more of the total assets of all insured bank subsidiaries (as determined from their most recent reports of condition) of such holding company, an out-of-State bank or holding company may (I) purchase the shares of or otherwise acquire the holding company that controls such bank or banks and all of such holding company's subsidiary banks, or (II)

purchase the shares or otherwise acquire any such bank or banks in danger of closing or establish one or more newly chartered banks located in the State where such banks in danger of closing are chartered for the purpose of merging with or purchasing the assets and assuming the liabilities of such banks, if the aggregate total assets of such banks that are acquired equal $250,000,000 or more. Any out-of-State bank or holding company which, pursuant to clause (II), purchases shares of, or establishes a newly chartered bank for the purpose of merging with or acquiring the assets and assuming the liabilities of, such bank or banks in danger of closing may purchase the shares of or otherwise acquire any bank which is affiliated with such bank or banks.

"(iii) The Corporation may assist a merger or acquisition permitted under this subparagraph (A) only where the board of directors or trustees of the insured bank has requested in writing that the Corporation assist a merger or a purchase.

"(B) Whenever the Corporation provides assistance, directly or indirectly, under the authority of subsection (c), to an insured bank and such bank was eligible at the time such assistance was given to be acquired by an out-of-State bank or holding company pursuant to subparagraph (A), the bank shall remain eligible to be acquired, to the same extent that it was eligible when assistance was granted, by an out-of-State bank or holding company so long as the Corporation's assistance remains outstanding. If, at the time such assistance was granted to an insured bank or to affiliated insured banks, such bank's or banks' parent holding company or other affiliated banks were eligible also to be acquired by an out-of-State bank or holding company, pursuant to subparagraph (A)(ii), they shall remain eligible for such acquisition, to the same extent as they were when the assistance was granted, so long as such assistance remains outstanding.

"(C) Where otherwise lawfully required, a transaction under this paragraph (3) must be approved by the primary Federal or State supervisor of all parties thereto.

"(D)(i) Before assisting a merger or acquisition permitted under subparagraph (A) or taking final action under subparagraph (B), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered.

"(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph.

"(iii) If the State bank supervisor objects during such period, the Corporation may use the authority of this paragraph only by a unanimous vote of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.";

(4) by redesignating subparagraphs (i) through (iii) of paragraph (4) as subparagraphs (A) through (C), respectively;

(5) by amending redesignated paragraph (4)(A) to read as follows:

"(4)(A) Nothing in section 3(d) of the Bank Holding Company Act of 1956, section 408(e)(3) of the National Housing Act, any provision of State law, or the constitution of any State, shall bar approval, consummation, or retention of an acquisition authorized under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.";

(6) by adding at the end of paragraph (4) the following:

"(D) An out-of-State bank holding company that acquires, directly or indirectly, a bank under paragraph (2) or (3) shall thereafter be entitled to acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in any State in which the acquired bank is located to the same extent as a bank holding company that is principally located (as such term is defined in section 3(d) of the Bank Holding Company Act of 1956) in such State.

"(E) A holding company which, directly, or indirectly, acquires control of one or more banks or a holding company under paragraph (2) or (3) shall not, by reason of such acquisition or expansion, be required as the result of the law of any State to divest any other bank or banks or be prevented from acquiring, directly or indirectly, any other banks or holding company.";

(7) by striking out "to permit" in paragraph (5);

(8) by striking out "closed" the second time it appears and "bank" the sixth time it appears in paragraph (6)(A);

(9) by redesignating subparagraphs (C) and (D) in paragraph (6) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following:

"(C) In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled institutions before proceeding with the sequence set forth in the preceding subparagraph.";

(10) by redesignating subparagraphs (B) and (C) of paragraph (8) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (A) the following:

"(B) a bank is 'in danger of closing' if—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without Federal assistance;

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without Federal assistance; or

"(iii) other grounds exist or are likely to exist under applicable State law for closing the bank;

"(C) banks are 'affiliated' if each is a subsidiary (as defined in section 2(d) of the Bank Holding Company Act of 1956) of the same holding company;"; and

(11) by adding at the end thereof the following:

"(9) Nothing in this subsection shall prevent the Corporation, in its sole discretion, from assisting, directly or indirectly, the acquisition of an open or closed insured bank by an out-of-State bank or holding company where such an acquisition is otherwise authorized under applicable State law.

"(10) In any transaction authorized under this subsection, no assistance by the Corporation shall be provided to a subsidiary of a holding company that is not an insured bank.".

UNASSISTED EXTRAORDINARY ACQUISITIONS

SEC. 104. Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end thereof the following:

"(2) Notwithstanding the provisions of paragraph (1) of this subsection or any provision of State law or the constitution of any State—

"(A) a bank holding company may acquire and retain the shares or assets of—

"(i) a bank located in another State if such bank has total assets of $250,000,000 or more and is in danger of closing; or

"(ii) two or more affiliated banks in danger of closing that together hold assets that total $250,000,000 or more and that represent 33 per centum of the total assets of all affiliated banks;

"(B) a bank holding company that acquires a bank or banks in danger of closing under subparagraph (A) may acquire a bank holding company that controls such bank or banks or may acquire the assets or shares of any bank affiliated with such bank or banks, if in either case the total assets of such bank or banks in danger of closing represent at least 33 per centum of the total assets of all affiliated banks;

"(C) a bank holding company that acquires the assets or shares of a bank in danger of closing under subparagraph (A) or (B) may acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in any State in which a bank acquired pursuant to this paragraph is located to the same extent as a bank holding company that is principally located (as defined in paragraph (1) hereof) in such State; and

"(D) a bank holding company that acquires and retains control of one or more banks pursuant to this paragraph shall not, by reason of such acquisition or retention, be required to divest any other bank or banks or be prevented from acquiring any other banks.

"(3) A bank holding company may not acquire the shares or assets of a bank or bank holding company under paragraph (2)(A) or (B) unless the acquisition has been approved by the board of directors of such bank or of a bank holding company that controls such bank.

"(4)(A) A bank is in danger of closing if the appropriate Federal or State chartering authority certifies in writing that—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without Federal assistance;

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without Federal assistance; or

"(iii) other grounds exist or are likely to exist under applicable State law for closing the bank.

"(B) A bank is affiliated with another bank if each is a subsidiary of the same bank holding company.

"(C) The assets of a bank shall be determined on the basis of its most recent report of condition.

"(5)(A) No bank in danger of closing or bank holding company that controls such bank shall enter into any discussions relating to the acquisition of such bank under paragraph (2) unless—

"(i) the State bank supervisor for each State in which such bank or its affiliated banks is located has been notified of such proposed discussions; and

"(ii) such bank or bank holding company has attempted to arrange an acquisition that does not require assistance under section 13(c) of the Federal Deposit Insurance Act or use of the interstate provisions of paragraph (2).

"(B) An application submitted under paragraph (2)(A) or (B) must describe efforts made by such bank or bank holding company to satisfy this requirement and the rea-

sons for the rejection of any proposals submitted.

"(C) Before approving an application pursuant to paragraph (2) involving a bank in danger of closing or its affiliated banks, the Board shall consult the State bank supervisor of the State or States in which the bank or banks are located.

"(D) The State bank supervisor or supervisors shall be given a reasonable opportunity, and in no event less than 48 hours, to object to approval of the application.

"(E) Except as provided in subparagraph (F), the Board shall not approve the application if, during the notice period provided in subparagraph (D), such State bank supervisor certifies to the Board that—

"(i) a person or persons have, prior to the notice period in subparagraph (D), offered or attempted to offer to acquire each of the banks in danger of closing in a transaction that does not require assistance under section 13(c) of the Federal Deposit Insurance Act or use of the interstate provisions of paragraph (2); and

"(ii) such person or persons, in the judgment of such State bank supervisor, are likely to be able to secure all regulatory approvals necessary to consummate such acquisition promptly, and to comply with all applicable financial and managerial and other regulatory requirements, including recapitalizing all such banks in danger of closing without impairing the financial resources of the acquiring person or persons.

"(F) The Board may approve the application if the Board determines that the person or persons certified by the State bank supervisor under subparagraph (E) do not have the financial resources necessary to obtain regulatory approval to acquire such bank, including the resources to recapitalize all such banks in danger of closing without impairing the financial resources of the acquiring person or persons, or that such person or persons do not meet other applicable regulatory requirements.

"(6) If the Board has received a certification from the appropriate Federal or State chartering authority pursuant to paragraph (2) or section 13(f) of the Federal Deposit Insurance Act that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of subsection (b) of this section with respect to any application received to acquire such bank or its affiliated banks and may reduce the postapproval waiting period of section 11 of this Act to 5 days or, if the Board finds that immediate action is necessary to prevent the probable failure of any such banks, eliminate such period.".

TITLE II—FEDERAL DEPOSIT INSURANCE

SHORT TITLE

SEC. 201. This title may be cited as the "Federal Deposit Insurance Improvements Act of 1986".

RISK-RELATED ASSESSMENTS

SEC. 202. Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking out paragraph (1) of subsection (b) and inserting in lieu thereof the following:

"(1)(A) The annual assessment rate shall be one-twelfth of 1 per centum, except that—

"(i) the Corporation may, by regulation, set the annual assessment rate for each insured bank on the basis of the risks that the bank may present to the Permanent Insurance Fund; and

"(ii) no annual assessment rate set by the Corporation shall be less than one-twelfth of 1 per centum or greater than one-sixth of 1 per centum.

"(B) Except as provided in subsection (c)(2) of this section, the semiannual assessment due from any insured bank for any semiannual period shall be equal to one-half the annual assessment rate multiplied by such bank's average assessment base for the immediately preceding semiannual period.".

ASSESSMENT OF COLLATERALIZED DEPOSITS

SEC. 203. Section 7(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(5)) is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(3) by adding at the end a new subparagraph (C) as follows:

"(C) such secured loans and other secured extensions of credit as the Corporation may by regulation specify.".

PROCEDURE FOR REMOVAL OF INSURANCE

SEC. 204. Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by striking out the second, third, and fourth sentences of subsection (a) and inserting in lieu thereof the following: "Whenever the Board of Directors finds that an insured bank or its directors of trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation, or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation, the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the Federal Home Loan Bank Board in the case of an insured Federal savings bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, notice of the Corporation's intention to initiate proceedings pursuant to this subsection. The Board of Directors, if it shall determine to proceed further, shall give to the bank not less than 30 days written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors finds that any unsafe or unsound practice or condition or violation specified in such statement has been established, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention.".

ENFORCEMENT PROCEDURES

SEC. 205. Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) by adding the following sentence at the end of paragraph (1) of subsection (b): "Such order may censure or place limitations on the activities or functions of the bank or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank, or may suspend or bar for a period not exceed twenty-four months any such person from participating, without the prior written approval of the appropriate Federal banking agency, in the conduct of the affairs of the bank or of any other insured bank.";

(2) by inserting the following sentence after the first sentence of paragraph (1) of subsection (c): "Such order may place limitations on the activities or functions of the bank or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank, or may bar any such person from participating, without the prior written approval of the appropriate Federal banking agency, in the conduct of the affairs of the bank or of any other insured bank pending completion of such proceedings.";

(3) by inserting before the period ending paragraph (1) of subsection (e) the following: "and to prohibit his further participation in any manner in the conduct of the affairs of any insured bank without the prior written approval of the appropriate Federal banking agency";

(4) by striking out "remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank" and inserting in lieu thereof "remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of any insured bank without the prior written approval of the appropriate Federal banking agency" in paragraph (2) of subsection (e) thereof;

(5) by striking out "if an order of removal or prohibition is issued" and inserting in lieu thereof "if an order of removal and/or prohibition from participation in the affairs of any insured bank is issued" in the second sentence of paragraph (4) of subsection (e);

(6) by striking out "or" the second time it appears in the first sentence of paragraph (5) of subsection (e) and inserting in lieu thereof "and/or";

(7) by striking out "an insured bank" in the first sentence of paragraph (5) of subsection (e) and inserting in lieu thereof "any insured bank";

(8) by striking out "or" and inserting in lieu thereof "and/or" the last place it appears in the third sentence of paragraph (5) of subsection (e) thereof;

(9) by striking out "or" and inserting in lieu thereof "and/or" the last place it appears in the fourth sentence of paragraph (5) of subsection (e) thereof;

(10) by redesignating paragraph (6) of subsection (e) as paragraph (7); and

(11) by inserting after paragraph (5) the following:

"(6) The appropriate Federal banking agency shall have jurisdiction and authority to proceed under this subsection against any person who is acting as an officer or director of an insured bank, or who is participating in the affairs of an insured bank, on the date the agency initiates a proceeding pursuant to this subsection regarding the person or bank, and shall also have jurisdiction and authority to proceed under this subsection against any person who has acted as an officer or director of the insured bank, or who has participated in the affairs of the insured bank, within one year prior to the data on which the agency has instituted proceedings against such person or bank pursuant to this subsection.".

POWER TO DEFINE TERMS

SEC. 206. Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) is amended by adding at the end thereof the following:

"Eleventh. To define any terms used in this Act which are not specifically defined by this Act and to interpret the definitions of any terms that are so specifically defined, in a manner consistent with the purposes of this Act.".

EXAMINATIONS

SEC. 207. Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by adding at the end thereof the following: "The Corporation may issue such further regulations and orders, including definitions, as may be necessary to administer and carry out the purposes and intent of this section.".

PRIORITIES IN CLAIMS

SEC. 208. Section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) is amended—

(1) by striking out "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)", respectively;

(2) by inserting "(1)" after "(f)"; and

(3) by adding at the end thereof the following:

"(2) Notwithstanding any other provision of State or Federal law, or of the constitution of any State, whenever an insured bank or insured branch of a foreign bank shall have been closed on account of inability to meet the demands of its depositors, unsecured claims against the estate of the closed bank or branch proved to the satisfaction of the receiver or adjudicated in a court of competent jurisdiction shall be paid in the following order:

"PRIORITY 1.—Administrative expenses of the receivership, including without limitation such advances as the receiver deems necessary to preserve, protect, or enhance any receivership asset; administrative expenses of the bank or branch incurred within 30 days immediately preceding the date the bank or branch closed that, in the sole discretion of the receiver, are deemed reasonable; and claims of the United States Government.

"PRIORITY 2.—Claims for deposits and claims of the Corporation as subrogee to depositors.

"PRIORITY 3.—All other claims that have accrued and become unconditionally fixed on or before the date the bank or branch is closed and that are due and owing on the date the bank or branch is closed, except claims identified in Priority 5 or Priority 6 or Priority 7.

"PRIORITY 4.—All other claims except claims identified in Priority 5 or Priority 6 or Priority 7. Any claim based on an agreement for accelerated, stipulated, or liquidated damages which claim accrues upon the closing of the bank or branch shall be deemed to be a claim within this Priority 4 unless the agreement pertains to subordinated debt issued to the Corporation, or to other subordinated debt, or to stock.

"PRIORITY 5.—Claims for subordinated debt issued to the Corporation. If such a claim is perfected, claims for subordinated debt issued and outstanding on the effective date of the Federal Deposit Insurance Improvements Act of 1986 shall also qualify for this Priority 5. Any claim based on an agreement for accelerated, stipulated or liquidated damages which claim accrues upon the closing of the bank or branch shall, if the agreement pertains to subordinated debt issued to the Corporation, be deemed to be a claim within this Priority 5.

"PRIORITY 6.—All other claims for subordinated debt. Any claim based on an agreement for accelerated, stipulated or liquidated damages which claim accrues upon the closing of the bank or branch shall, if the agreement pertains to subordinated debt other than subordinated debt issued to the Corporation, be deemed to be a claim within this Priority 6.

"PRIORITY 7.—Claims by shareholders based on stock ownership. Any claim based on an agreement for accelerated, stipulated or liquidated damages which claim accrues upon the closing of the bank or branch shall, if the agreement pertains to stock, be deemed to be a claim within this Priority 7.

"(3)(A) The receiver may, at any time, and from time to time, without prior court approval, make distributions of the assets of the estate of the bank or branch to the claimants within each priority category described in paragraph (2) on a pro rata basis after having made provision to pay in full all claims of any higher priority, except that—

"(i) if a foreign government has established procedures for claims against the estate of a closed bank or branch, the receiver may make distributions to claimants as provided in paragraph (2) without having made provision to pay in full claims of a higher priority that are subject to the procedure established by the foreign government; and

"(ii) payment of claims falling within Priority 5, Priority 6, and Priority 7 shall be made in accordance with the contractual provisions establishing an order of priority for claims within each such priority category.

"(B) Claims specified in paragraph (2) shall accrue interest after the date the bank or branch closed. The interest shall accrue at a rate equal to the average equivalent coupon-issue yield on the United States Treasury Department 52-week Bills sold at the last auction held by the United States Treasury Department immediately prior to the date the bank or branch closed. The interest shall have the same priority as the claim on which it is based, but no such interest shall be paid prior to payment in full of the principal of all claims within the same priority category, other than claims for which a foreign government has established procedures.".

SUBROGATION

SEC. 209. Section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)) is amended to read as follows:

"(g)(1) Upon the payment to any depositor as provided in subsection (f) of this section, the Corporation, shall be subrogated to all rights of the depositor against the closed bank to the extent of such payment. Such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such closed bank and recoveries on account on stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain his claim for any uninsured portion of his deposit. The Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon his stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

"(2) Except as provided in this Act, the rights of depositors and other creditors of any State bank shall be determined in accordance with the applicable provisions of State law.".

BRIDGE BANKS

SEC. 210. (a) Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i)(1) The term 'new bank' means a new national banking association, other than a bridge bank, organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in subsection (h) of section 11.

"(2) The term 'bridge bank' means a new national banking association organized by the Corporation pursuant to subsection (i) of section 11.".

(b) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by redesignating subsection (i), (j), (k), and (l) as paragraph (2), (3), (4), and (5), respectively, of subsection (h).

(c) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end thereof the following:

"(i)(1) As soon as possible after the closing of one or more insured banks, if the Corporation finds—

"(A) that the amount which the Corporation determines to be reasonably necessary to organize and operate a bridge bank will not exceed the amount which the Corporation determines to be reasonably necessary to liquidate the estate of the insured bank, including paying the insured accounts of such insured bank;

"(B) that the continued operation of such insured bank is essential to provide adequate banking services in its community; or

"(C) that the continued operation of such insured bank is in the interest of the depositors of the closed bank or the public,

the Corporation may organize a bridge bank to assume the deposits of the closed bank, and to assume such other liabilities of the closed bank as the Corporation in its discretion may deem advisable, and to purchase such assets of the closed bank as the Corporation in its discretion may deem advisable, and to perform temporarily the functions hereinafter provided for. Upon the organization of a bridge bank, the receiver of the closed insured bank or banks shall, subject to approval of a court of competent jurisdiction, transfer assets and liabilities of the closed insured bank or banks to the bridge bank.

"(2) The articles of association and the organization certificate of the bridge bank shall be executed by representatives designated by the Corporation. The bridge bank shall be a national bank and shall be insured from the time of its organization. No capital stock need be paid in by the Corporation. The bridge bank shall have a five-member board of directors who shall be selected by the Board of Directors.

"(3) The bridge bank shall have all corporate powers of a national bank, except that—

"(A) the Corporation shall have sole authority to appoint and remove the directors of the bridge bank, to fix their compensation, and to waive any requirements pertaining to their qualifications as provided in sec-

tions 5145 through 5149 of the Revised Statutes (12 U.S.C. 71 through 75) and section 31 of the Act of June 16, 1933 (12 U.S.C. 71a);

"(B) the Corporation shall have authority to indemnify the directors of the bridge bank on such terms as the Corporation deems proper;

"(C) any requirements for capital in the bridge bank as provided in section 5138 of the Revised Statutes (12 U.S.C. 51) or any other provision of law are waived;

"(D) the Comptroller of the Currency shall have authority to determine the maximum limit of indebtedness of any person to the bridge bank without regard for the amount of the bank's capital or surplus;

"(E) the Board of directors of the bridge bank shall elect a chairman who shall also serve in the position of Chief Executive Officer;

"(F) the bridge bank shall be a national member bank, but shall not be required to purchase stock of any Federal Reserve bank;

"(G) the board of directors of the bridge bank shall have authority to waive any requirement for a fidelity bond; and

"(H) upon the merger of a bridge bank with another bank that is not a bridge bank, or upon the sale of all or substantially all of the stock of a bridge bank (other than a sale to the Corporation or to another bridge bank), or upon the assumption of all or substantially all of the deposits of a bridge bank by another bank that is not a bridge bank, the surviving bank shall cease to have the status of a bridge bank.

"(4) Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate. The bridge bank shall not be deemed to be an agency or establishment or instrumentality of the United States Government, nor shall the directors or officers or employees or agents of the bridge bank be deemed to be employees or agents of the United States Government, for any purpose whatever.

"(5)(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the bridge bank to be issued and offered for sale on such terms and conditions as the Corporation deems advisable in an amount sufficient, in the sole discretion of the Corporation, to make possible the conduct of the business of the bridge bank on a sound basis. If the bridge bank has assumed the insured deposits of a closed bank with total assets of $250,000,000 or more (as determined from the closed bank's most recent report of condition), the bridge bank shall be eligible to be acquired by or to merge with an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company, or to be acquired by an out-of-State bank or holding company, in accordance with the procedures established by subsection (f) of section 12.

"(B) Unless the capital stock of the bridge bank is sold or its assets are taken over and its deposits assumed by another insured bank within two years from the date of its organization, the Corporation shall wind upon the affairs of such bank by voluntary dissolution or by the appointment of a receiver, except that if the Board of Directors finds, after consultation with the Comptroller of the Currency as the appropriate Federal banking agency for the bridge bank, that an extension of time for winding up the affairs of the bank is in the public interest, the Corporation may extend such time for a period not exceeding one year.

"(6) In order to facilitate the sale or merger of the bridge bank with another insured depository institution the Corporation is authorized, in its sole discretion, and upon such terms and conditions as the Board of Directors may prescribe—

"(A) to make loans or contributions to, or deposits in, or purchase assets or securities of, such bridge bank or the company which will acquire control of such bank;

"(B) to guarantee the bridge bank or the company which will acquire control of the bridge bank against loss by reason of such sale or merger; or

"(C) to take any combination of the actions referred to in subparagraphs (A) and (B).

"(7) Nothing in this subsection shall be construed to limit the powers of the Corporation under section 13 to assist a transaction under this subsection.".

BRANCHING

SEC. 211. Section 18 of the Federal Insurance Act (12 U.S.C. 1828) is amended by striking out paragraph (1) of subsection (d) and inserting in lieu thereof the following:

"(1) Whenever a State nonmember bank (except a District bank) establishes and operates any new domestic branch, or moves its main office or any domestic branch, the bank shall file a notice thereof with the Corporation within 30 days of the date on which the bank establishes and begins to operate the office or branch at the new location. The notice shall be in such form as the Corporation may prescribe.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 212. (a) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by striking out "ther" and inserting in lieu thereof "term" in paragraph (2) of subsection (m).

(b) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by striking out paragraphs (3) and (4) and the last sentence of subsection (q) and inserting in lieu thereof the following:

"(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank) or of a foreign bank having an insured branch; and

"(4) the Federal Home Loan Bank Board in the case of an insured Federal savings bank.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. For the purposes of subsections (b) through (n) of section 8 of this Act, the term 'insured bank' shall be deemed to include any uninsured branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.".

(c) Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking out the first colon and all that follows in the last sentence of subsection (g) and inserting in lieu thereof a period.

(d) Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking out "monoplize" and inserting in lieu thereof "monopolize" in subparagraph (A) of paragraph (7) of subsection (J).

(e) Section 8 of the Federal Deposit Insurance Act (12 U.S.C.1818) is amended—

(1) by striking out "injuction" and inserting in lieu thereof "injunction" in paragraph (2) of subsection (c);

(2) by striking out "office" the first time it appears in paragraph (1) of subsection (e) and inserting in lieu thereof "officer";

(3) by redesignating subparagraphs (i), (ii), (iii), (iv), (v), (vi), and (vii) of paragraph (2) of subsection (i) as subparagraphs (A), (B), (C), (D), (E), (F), and (G), respectively, and by striking out "subparagraph (iv)" and inserting in lieu thereof "subparagraph (D)" in redesignated subparagraph (C) of paragraph (2) of subsection (i);

(4) by capitalizing the word "board" and the word "directors" wherever they appear in the second sentence of subsection (o);

(5) by inserting "and" after the semicolon at the end of subsection (q); and

(6) by striking out "therof" and inserting in lieu thereof "thereof" in paragraph (2) of subsection (r).

(f) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by striking out the first three sentences of paragraph (1) of subsection (a) and inserting in lieu thereof the following: "The assets of the Permanent Insurance Fund shall be held by the Corporation for the uses and purposes of the Corporation. The Corporation shall insure the deposits of all insured banks as provided in this Act. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be $100,000.";

(2) by redesignating the first subsection (b) as subparagraph (B) of paragraph (2) of subsection; and

(3) by inserting a comma after "subsection (g) of this section" in redesignated paragraph (1) of subsection (f).

(g) Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended—

(1) by striking out the third sentence of subsection (d); and

(2) by striking out subsection (g).

(h) Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by striking out the penultimate sentence of subsection (a).

(i) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) by striking out paragraph (10) of subsection (c);

(2) by striking out the sixth, seventh, eighth, and ninth sentences of paragraph (1) of subsection (g);

(3) by striking out "member bank shall" and inserting in lieu thereof "member bank, shall" in paragraph (1) of subsection (j); and

(4) by striking out "member bank" and inserting in lieu thereof "nonmember insured bank" in subparagraph (B) of paragraph (3) of subsection (j).

TITLE III—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION

SHORT TITLE

SEC. 301. This Act may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1986".

FINANCING CORPORATION

SEC. 302. The Federal Home Loan Bank Act is amended by inserting after section 20 the following:

"FINANCING CORPORATION

"SEC. 21. (a)(1) Notwithstanding any other provision of law—

"(A) the Board shall charter the Financing Corporation, which shall be under the direction of the Financing Corporation Directorate (hereinafter referred to as the 'Di-

rectorate'), and operated by it subject to such rules, regulations, orders, and directions as the Board may prescribe, and the Board shall have the power to define terms as shall be necessary to carry out the provisions of this section;

"(B) each Federal Home Loan Bank shall invest its funds at such times and in such amounts as prescribed by the Board under this subsection in nonvoting capital stock of the Financing Corporation, which stock shall have par value and shall be transferable only among the Federal Home Loan Banks in such manner as the Board prescribes;

"(C) the Directorate shall consist of three members, one of whom shall be the Director of the Office of Finance of the Federal Home Loan Banks or his successor, and two of whom shall be selected by the Chairman of the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks or their successors. Each of the two Federal Home Loan Bank president members of the Directorate shall serve for a term of one year. No president of a Federal Home Loan Bank may be selected to serve an additional term on the Directorate until such time as each of the other Federal Home Loan Bank presidents has served at least as many terms as such president. The Chairman of the Federal Home Loan Bank Board shall select the chairman of the Directorate from among its three members.

"(2) The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed $3,000,000,000, except that the cumulative amount of funds so invested by each Federal Home Loan Bank shall not exceed the sum of the reserves that have been and are required to be carried by such Bank pursuant to the first two sentences of section 16(a) of this Act, plus the undivided profits of such Bank. For purposes of this Act 'undivided profits' shall include retained earnings other than (A) that portion required to be carried pursuant to the first two sentences of section 16 of this Act, and (B) the following dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves as of December 31, 1985:

"Federal Home Loan Bank of Boston	3.2 million
Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

"(3) The board shall require that the amount of funds to be invested in nonvoting capital stock of the Financing Corporation be prorated to each Federal Home Loan Bank or its successor according to the following:

"(A) For each Federal Home Loan Bank or its successor, the portion of the first $1,000,000,000 of payments for such stock shall be based on the following percentages:

	Percent
"Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(B) For each Federal Home Loan Bank or its successor, the portion of payments for such stock purchased by all such Banks in excess of $1,000,000,000 shall be a fraction (expressed as a percentage) of which the numerator is the total of all assets held by insured institutions, as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a)), which are members of such Bank, and the denominator is the aggregate total of all assets held by all insured institutions which are members of all Federal Home Loan Banks, calculated as of December 31 of the immediately preceding year.

"(4) In the event that the cumulative amount of funds required to be invested by any Federal Home Loan Bank pursuant to subparagraph (3)(B) of this subsection for purchase of stock in the Financing Corporation exceeds the sum of all the reserves that have been and are required to be carried by such Bank pursuant to the first two sentences of section 16(a) of this Act, plus its undivided profits, such excess amount shall not be invested by any such Bank at that time but shall be prorated for investment among the remaining Federal Home Loan Banks based upon their holdings of stock in the Financing Corporation at that time, except that the cumulative amount of funds required to be invested by any of the remaining Banks shall not exceed the sum of the reserves that have been and are required to be carried by any such Bank pursuant to the first two sentences of section 16(a) of this Act plus its undivided profits, and any excess amount shall be prorated for investment among the remaining Federal Home Loan Banks to the extent such investment would not be limited pursuant to this paragraph. Each Federal Home Loan Bank, which pursuant to the provisos of this paragraph, has not made the full investment of funds in the Financing Corporation as required under subparagraph (3)(B) of this subsection shall purchase annually from the remaining Federal Home Loan Banks on a pro rata basis at the issuance price stock in the Financing Corporation, and shall continue to make such purchases until the cumulative amount invested by such Bank shall be equal to the amount required to have been invested by such Bank pursuant to said subparagraph (3)(B). Until any such Bank shall have purchased a cumulative amount of stock as prescribed in the preceding sentence, no dividends shall be paid by such Bank in excess of one-half of its net earnings, and such funds as are necessary to make such stock purchases shall be placed in a reserve required by the board and not available for dividends.

"(b) The Financing Corporation shall have the following powers, subject to rules, regulations, orders, and directions prescribed by the Board:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any securities issued by the Federal Savings and Loan Insurance Corporation.

"(3) To borrow and give security therefor and pay interest thereon, to issue debentures, bonds, or other obligations the maturity of which shall not exceed 30 years and the net proceeds of which shall be invested in the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act or shall be used to refund obligations the net proceeds of which were so invested, upon such terms and conditions as the board may approve.

"(4) To adopt, alter and use a corporate seal.

"(5) To have succession until dissolved as provided herein.

"(6) To make contracts; to sue and be sued, complain, and defend, in any court of competent jurisdiction, State or Federal.

"(7) To exercise such incidental powers not inconsistent with the provisions of this Act as are necessary or appropriate to carry out the provisions of this section and are customary and usual in corporations generally.

"(c) The Financing Corporation shall have no paid employees, and the Directorate may, with the approval of the board, authorize the officers, employees, or agents of the Federal Home Loan Banks or the board to act on behalf of the Financing Corporation in such manner as necessary to enable the Financing Corporation to fulfill its functions.

"(d)(1) Obligations of the Financing Corporation issued with the approval of the board under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal Reserve banks are authorized to act as depositaries, custodians, or fiscal agents for the Financing Corporation in the general performance of its powers under this Act.

"(2) All persons having the power to invest in, sell, underwrite, purchase for their own account, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have power to do so in obligations of the Financing Corporation.

"(3) Obligations of the Financing Corporation and interest thereon shall not be obligations of nor guaranteed by the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation, and shall so plainly state, but shall be treated as Federal Home Loan Bank obligations for purposes of section 13 of this Act. The Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23 of this Act, and shall be treated as an 'agency' for purposes of subsection (b) of section 3124 of title 31, United States Code.

"(4) All instruments issued under this section shall, to the same extent as securities

which are direct obligations of or are guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

"(5) No net new borrowings shall be made by the Financing Corporation after December 31, 1996.

"(6) Notwithstanding the provisions of section 9105(a)(1)(B) of title 31, United States Code, audits by the General Accounting Office of the financial transactions of the Financing Corporation shall not be limited to periods during which Government capital has been invested therein. The provisions of sections 9107(c)(2) and 9108(d)(1) of title 31, United States Code, shall not apply to the Financing Corporation.

"(e) Assets of the Financing Corporation not invested in the Federal Savings and Loan Insurance Corporation pursuant to subsection (d) of this section shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the board, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455) and in such securities as fiduciary and trust funds may be invested in under the laws of any State.

"(f) Obligations issued by the Financing Corporation and outstanding shall be issued at such times and in such amounts as are determined by the board but shall not at any time exceed the greater of—

"(1) five times the amount of the then outstanding nonvoting capital stock of the Financing Corporation; or

"(2) the face amount, as determined by the board, of obligations invested in by the Financing Corporation pursuant to subsection (e) of this section

as determined by the board.

"(g)(1) The Financing Corporation shall be dissolved forthwith upon retirement of all stock purchased by it in the Federal Savings and Loan Insurance Corporation, which shall be no later than December 31, 2026.

"(2) Effective as of the date of the dissolution of the Financing Corporation, any powers thereof deemed necessary by the board to be preserved will be transferred to the board on behalf of the Federal Home Loan Banks.".

CONFORMING AMENDMENT

SEC. 303. Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following:

"(K) The Financing Corporation.".

INVESTMENT IN FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 304. Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b)(1) Notwithstanding any other provisions of law, the Corporation is authorized to issue (A) nonredeemable capital certificates; and (B) redeemable nonvoting capital stock, the investment in which shall be in an amount equal to the aggregate investment by the Federal Home Loan Banks in capital stock of the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act. Such capital certificates and stock issued by the Corporation shall be invested in by the Financing Corporation, shall be included as part of the primary reserve of the Corporation, and shall pay dividends equal to the Financing Corporation's interest payments on its obligations and issuance and reasonable direct administrative costs, on or before the dates on which such amounts are due and payable, minus any net interest payments to the Financing Corporation on short term investments of the proceeds of its obligations prior to the purchase of capital certificates and capital stock in the Corporation, as determined by the Federal Home Loan Bank Board.

"(2) Upon maturity of all obligations issued by the Financing Corporation, the Corporation is authorized to and shall promptly pay off and retire its capital stock, paying for this retirement solely with its accumulated contributions to its equity return account.

"(3) The Corporation is authorized to establish and maintain until payoff to the Financing Corporation, the equity return account, which shall include annual contributions made by the Corporation, according to the following formulae, at the end of each year beginning in 1997 and ending in the year during which the last of the obligations of the Financing Corporation matures. Such annual contributions shall be made as follows:

"(A) In any year when the reserves of the Corporation are less than .50 per centum of the aggregate amount of all accounts of all of its insured members (as of December 31 of the preceding year), there shall be no contribution.

"(B) In any year when the reserves of the Corporation are equal to .50 per centum of the aggregate amount of all accounts of all of its insured members or greater (as of December 31 of the previous year), the contribution shall be the amount invested by the Financing Corporation in Corporation capital stock, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached .50 per centum to the year in which the last maturing obligation of the Financing Corporation matures (which year of maturity shall not be after 2026).

"(C) In any year when the reserves of the Corporation are equal to 1 per centum of the aggregate amount of all accounts of all of its insured members or greater but do not equal or exceed 1.25 per centum of all accounts of all of its insured members (as of December 31 of the preceding year), there may be an additional contribution, as determined by the Federal Home Loan Bank Board, of up to but no greater than 6 per centum per annum compounded on the amount invested by the Financing Corporation in Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which year of maturity shall not be after 2026), divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1 per centum to the year in which the last maturing obligation of the Financing Corporation matures.

"(D) In any year when the reserves of the Corporation are equal to 1.25 per centum of the aggregate amount of all accounts of all of its insured members or greater but do not equal or exceed 1.75 per centum of all accounts of all its insured members (as of December 31 of the preceding year), there may be an additional contribution as determined by the Federal Home Loan Bank Board of up to but no greater than 8 per centum per annum compounded on the amount invested by the Financing Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which maturity shall not be after 2026), less the amounts contributed under subparagraph (C) of this paragraph, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1.25 per centum to the year in which the last maturing obligation of the Financing Corporation matures.

"(E) In any year when the reserves of the Corporation are 1.75 per centum of the aggregate amount of all accounts of all of its insured members or greater (as of December 31 of the preceding year), there may be an additional contribution as determined by the Federal Home Loan Bank Board of up to but no greater than 10 per centum per annum compounded on the amount invested by the Financing Corporation capital stock, from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (which maturity shall not be after 2026), less amounts contributed under subparagraphs (C) and (D) of this paragraph, divided by the number of years from the first year after 1996 that such reserves to accounts ratio reached 1.75 per centum to the year in which the last maturing obligation of the Financing Corporation matures.

The contribution amounts made to the equity return account, which shall not be included as reserves of the Corporation, are the sole amounts to be included in that account, and any earnings accruing from the investment of funds held in such account shall be added to the reserves of the Corporation.

"(4) For purposes of this paragraph, the 'Financing Corporation' is the corporation chartered under section 21 of the Federal Home Loan Bank Act.

"(5) Notwithstanding any other provision of law, as long as shares of the capital stock of the Corporation are outstanding, the following provisions of section 404 of the National Housing Act shall not apply:

"(A) Paragraph (2) of subsection (b).

"(B) Subparagraph (B) of paragraph (1) of subsection (d).

"(C) Subsection (g).".

DIVIDENDS

SEC. 305. Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding the following new subsection (c) at the end thereof:

"(c) Notwithstanding subsection (a) of this section, if (1) a Federal Home Loan Bank incurs a charge-off or expense related to such Bank's investment in the stock of the Financing Corporation chartered under section 21 of the Federal Home Loan Bank Act, and (2) the Board determines there is an extraordinary need for such Bank's member institutions to receive dividends, then the Board may authorize such Bank to declare and pay dividends out of undivided profits or the reserves required to be carried by such Bank pursuant to the first two sentences of subsection (a) of this section, but only after such Bank has reduced all other reserves it has established to zero. Notwithstanding such authorization by the Board to a Federal Home Loan Bank to declare and pay dividends out of undivided profits or reserves, the requirements and limitations on such Federal Home Loan Bank's investments in the Financing Corporation pursu-

ant to section 21(a) of this Act shall remain the same as if the Bank did not pay any such dividends.".

EXEMPTION FROM RETIREMENT REQUIREMENT

SEC. 306. Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended by adding at the end thereof the following: "Notwithstanding the foregoing, the first three sentences of this subsection shall not apply to stock issued by the Corporation to the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act.".

FEDERAL HOME LOAN BANK MEMBERSHIP

SEC. 307. The first sentence of section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) by striking out "and" before "(3)"; and

(2) by inserting before the period at the end thereof the following: "; and (4) is an 'insured institution' as defined by section 401 of the National Housing Act, except that an insurance company is not required to be an insured institution for purposes of this section".

TITLE IV—THRIFT INSTITUTIONS INVESTMENTS

SHORT TITLE

SEC. 401. This title may be cited as the "Thrift Institutions Investment Act of 1986".

EQUALITY OF THRIFT AND BANK HOLDING COMPANY AFFILIATE TRANSACTIONS

SEC. 402. Section 408(d) of the National Housing Act (12 U.S.C. 1730a(d)) is amended to read as follows:

"(d)(1) The provisions of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371d) relating to transactions between member banks and their affiliates, shall apply to each insured institution in the same manner and to the same extent as if such insured institution were a member bank. For the purpose of this section—

"(A) the Corporation may prescribe rules or regulations for purposes of defining and clarifying the applicability of such section 23A and 23B to insured institutions; and

"(B) the term 'Board' in such sections 23A and 23B means the Corporation.

"(2) Any extension of credit by an insured institution to the holder of a credit card issued by an insured institution to finance the purchase of any good or service from an affiliate of such insured institution shall not be deemed to be a covered transaction with an affiliate for purposes of paragraph (1) of this subsection or section 23A or 23B of the Federal Reserve Act if (A) the proceeds of such extension of credit are applied solely to satisfy, in whole or in part, charges incurred through the use of such credit card, and (B) such credit card can be used by the holder to finance purchases of goods or services from other persons that are not affiliates of the insured institution.".

CONFORMITY OF AFFILIATION RESTRICTIONS

SEC. 403. Section 402 of the National Housing Act (12 U.S.C. 1725) is amended by adding at the end thereof the following:

"(k) A State, District, territory, or possession may not, directly or indirectly—

"(1) prohibit or restrict any affiliation with an insured institution that is not prohibited or restricted under Federal law; or

"(2) impose requirements, restrictions, or conditions on any company affiliated with an insured institution, or on the agents, officers, or employees of such company, that are not imposed on a company engaged in the same line of business but not affiliated with an insured institution, or on the agents, officers, or employees of such company.".

LIMITED TRANSACTIONS IN SAVINGS AND LOAN STOCK

SEC. 404. Clause (iii) of section 408(e)(1)(A) of the National Housing Act (12 U.S.C. 1730a(e)(1)(A)) is amended by inserting after the semicolon therein the following: "except that, the foregoing shall not prohibit an investment banking firm or a broker-dealer in securities that is a lawful subsidiary of a savings and loan holding company, from engaging in trading, secondary market transactions, or other securities activities incidental thereto, with respect to not more than five per centum of the voting shares of any insured institution or savings and loan holding company, that is not a subsidiary of such a savings and loan holding company;".

RELATING DEBT LIMITS TO CAPITAL

SEC. 405. Subparagraph (B) of section 408(g)(2) of the National Housing Act (12 U.S.C. 1730a(g)(2)) is amended by adding at the end thereof the following: "The 15 per centum of the consolidated net worth limitation in this subparagraph shall be 30 per centum, or such greater amount as shall be approved in writing by the Corporation, with respect to any savings and loan holding company or any subsidiary thereof if, at the close of two of the three preceding fiscal quarters and at the close of each fiscal quarter during which such 30 per centum or higher limitation is effective, each of the insured institution subsidiaries of the holding company has been in compliance with the reserve requirements of section 403(b) of this Act (12 U.S.C. 1726(b)).".

WAIVER OPTION FOR INTERLOCKING DIRECTORATES IN EMERGENCY ACQUISITIONS

SEC. 406. Section 205 of the Depository Institutions Management Interlocks Act (12 U.S.C. 3204) is amended by adding at the end thereof the following:

"(7) A company that becomes a depository holding company by acquiring an insured institution pursuant to section 408(m) of the National Housing Act (12 U.S.C. 1730a(m)) or section 5(p) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(p)); except that the Federal Home Loan Bank Board may determine within 60 days after notice of any service by a management official, which would otherwise be prohibited by section 3 of this Act, that the exception in this subsection would not be in the public interest. Such notice shall be given by the depository holding company (A) at such time as a company becomes a depository holding company with respect to any management official otherwise subject at that time to the prohibitions of section 2, who may remain in such position until a reasonable time, as determined by the Federal Home Loan Bank Board, after a determination by such Board that the exception in this subsection does not apply, or (B) 60 days prior to the date on which any management official would begin service that would otherwise violate sections 3202 or 3203 of this title. The exception in this paragraph is not in the public interest if, in the opinion of the Federal Home Loan Bank Board, the service of the management official would result in a monopoly or substantial lessening of competition, and the services provided by the management official could not be structured or limited so as to preclude such anticompetitive results.".

THRIFT-SUBSIDIARY ARRANGEMENTS

SEC. 407. Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by adding the following:

"(E) Nothing in this section shall be interpreted to restrict the following arrangements between thrift subsidiaries of a bank holding company and such thrift's affiliates: (i) participating in joint sales or marketing arrangements; (ii) cross-advertising, providing referral services, or making available information on any product or service provided, directly or indirectly, by the bank holding company; or (iii) obtaining access to and using for marketing purposes, the customer lists of any subsidiary of the bank holding company.".

THRIFT ACQUISITIONS

SEC. 408. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended by adding at the end thereof the following:

"(16) investments, through the ownership of an insured institution that is acquired under section 408(m) of the National Housing Act after the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act, in one or more service corporations engaged in activities under section 5(c)(4)(B) of the Home Owners' Loan Act of 1933, notwithstanding any other provision of law;".

TITLE V—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SHORT TITLE

SEC. 501. This title may be cited as the "Savings Institutions Supervisory Amendments of 1986".

CEASE-AND-DESIST PROCEEDINGS

SEC. 502. (a) Subsections (e), (f), (g), and (h) of section 407 of the National Housing Act (12 U.S.C. 1730) are each amended by striking out "director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution" and "director or officer" each place they appear and inserting in lieu thereof "institution-related party".

(b) Paragraphs (2), (3), (4), and (5) of section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) are each amended by striking out "director, officer, employee, agent, or other person participating in the conduct of the affairs of such association" and "director or officer" each place they appear and inserting in lieu thereof "association-related party".

(c) Section 407(e)(1) of the National Housing Act (12 U.S.C. 1730(e)(1)) is amended by adding at the end thereof the following: "As used in this subsection and subsection (e), the term 'affirmative action' includes restitution, rescission, the disposal of loans or assets, guarantees against loss, and/or such other actions as the Corporation deems to be appropriate in the circumstances.".

(d) Section 5(d)(2)(A) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(2)(A)) is amended by adding at the end thereof the following: "As used in this paragraph and paragraph (3), the term 'affirmative action' includes restitution, rescission, the disposal of loans or assets, guarantees against loss, and/or such other actions as the Board deems to be appropriate in the circumstances.".

(e) Section 407(e)(3) of the National Housing Act (12 U.S.C. 1730(e)(3)) and section 5(d)(2)(C) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(2)(C)) both are amended by striking out "affiliate service corporation" and inserting in lieu thereof "service corporation or any subsidiary of a

service corporation, whether wholly or partly owned,".

TEMPORARY CEASE-AND-DESIST ORDERS

SEC. 503. (a) Section 407(f) of the National Housing Act (12 U.S.C. 1730(f)) is amended—

(1) by amending paragraphs (1) and (2) to read as follows:

"(1) Whenever the Corporation determines that a violation or threatened violation or unsafe or unsound practice or practices or threatened unsafe or unsound practice or practices specified in a notice of charges served upon an insured institution or institution-related party under paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the insured institution concerned or to seriously weaken the condition of the concerned institution or otherwise seriously prejudice the interests of its account holders or stockholders prior to completion of proceedings conducted under paragraph (1) of subsection (e) of this section, the Corporation may issue a temporary order requiring the insured institution or institution-related party to cease and desist from any such violation or practice and take such affirmative action as the Corporation deems appropriate to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the concerned insured institution or institution-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (4) of this subsection, shall remain effective and enforceable pending completion of the administrative proceedings initiated under such notice or until such time as the Corporation shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the insured institution or institution-related party, until the effective date of any such order.

"(2)(A) Whenever the Corporation determines that violation or threatened violation or unsafe or unsound practice or practices or threatened unsafe or unsound practice or practices specified in a notice of charges served upon an insured institution or institution-related party under paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause dissipation of assets or earnings of the insured institution concerned or to weaken the condition of the insured institution concerned or otherwise seriously prejudice the interests of its account holders or stockholders prior to completion of proceedings conducted under paragraph (1) of subsection (e) of this section, the Corporation may issue a temporary order requiring the insured institution or institution-related party to cease and desist from any such violation or practice and take such affirmative action as the Corporation deems appropriate to prevent such dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the concerned insured institution or institution-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (4) of this subsection, shall remain effective and enforceable (i) pending completion of the administrative proceedings initiated under such notice and until such time as the Corporation shall dismiss the charges specified in such notice, or (ii) if a cease-and-desist order is issued against the insured institution or institution-related party, until the effective date of any such order, or (iii) until the expiration of 90 days from the date of service of the temporary cease-and-desist order, whichever occurs first.

"(B) At the end of said 90 days, the Corporation may reissue the temporary cease-and-desist order with respect to the violation or threatened violation or unsafe or unsound practices specified in the notice of charges if it determines that the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the insured institution concerned or likely to seriously weaken the condition of the insured institution concerned or otherwise seriously prejudice the interests of its account holders or stockholders prior to completion of proceedings conducted under paragraph (1) of subsection (e) of this section. Such order shall become effective on service upon the concerned insured institution or institution-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (4) of this subsection, shall remain effective and enforceable pending completion of the administrative proceeding initiated pursuant to such notice and until such time as the Corporation shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the insured institution or institution-related party, until the effective date of any such order.

"(3) Whenever a notice of charges specifies that an insured institution's books and records are so incomplete or inaccurate that the Corporation is unable with reasonable effort to determine the financial condition of that institution, the Corporation may issue a temporary order requiring cessation of any institution activities the Corporation deems appropriate until completion of proceedings conducted under paragraph (1) of subsection (e) of this section. Such order shall become effective upon service, and unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (4) of this subsection, remain effective and enforceable impending completion of the administrative proceeding initiated under such notice or until the Corporation determines by examination or otherwise that the institution's books and records are accurate and capable of reflecting the financial condition of the institution."; and

(2) by redesignating paragraph (3) as paragraph (4).

(b) Section 5(d)(3) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(3)) is amended—

(1) by amending subparagraphs (A) and (B) to read as follows:

"(A) Whenever the Board determines that a violation or threatened violation or unsafe or unsound practice or practices or threatened unsafe or unsound practice or practices specified in a notice of charges served upon an association or any association-related party under paragraph (2)(A) of this subsection or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the association concerned or to seriously weaken the condition of the association or otherwise seriously prejudice the interests of its account holders or stockholders prior to completion of proceedings conducted under paragraph (2)(A) of this subsection, the Board may issue a temporary order requiring the association or association-related party to cease and desist from any such violation or practice and take such affirmative action as the Board deems appropriate to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the association or association-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (D) of this paragraph, remain effective and enforceable pending completion of the administrative proceedings initiated under such notice and until such time as the Board shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the association or association-related party, until the effective date of any such order.

"(B)(i) Whenever the Board determines that a violation or threatened violation or unsafe or unsound practice or practices or threatened unsafe or unsound practice or practices specified in a notice of charges served upon an association or any association-related party under paragraph (2)(A) of this subsection, or the continuation thereof, is likely to cause dissipation of assets or earnings of the association concerned or to weaken the condition of the association or otherwise seriously prejudice the interests of its account holders or stockholders prior to completion of proceedings conducted under paragraph (2)(A) of this subsection, the Board may issue a temporary order requiring the association or association related party to cease and desist from any such violation or practice and take such affirmative action as the Board deems appropriate to prevent such dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the association or association-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (D) of this paragraph, remain effective and enforceable (I) pending completion of the administrative proceedings initiated under such notice and until such time as the Board shall dismiss the charges specified in such notice, (II) if a cease-and-desist order is issued against the association or association-related party, until the effective date of any such order, or (III) until the expiration of 90 days from the date of service of the temporary cease-and-desist order, whichever occurs first.

"(ii) At the end of said 90 days, the Board may reissue the temporary cease-and-desist order with respect to the violation or threatened violation or unsafe or unsound practices specified in the notice of charges if it determines that the continuation thereof is likely to cause insolvency or substantial dissipation of assets or earnings of the association concerned or likely to seriously weaken the condition of the association concerned or otherwise seriously prejudice the interests of its account holders or stockholders prior to the completion of proceedings conducted pursuant to paragraph (2)(A) of this subsection. Such order shall become effective on service upon the concerned association or association-related party, and unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (D) of this paragraph, shall remain effective and enforceable pending completion of the administrative proceeding initiated pursuant to such notice or until such time as the Board shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the association or association-related party, until the effective date of any such order.

"(C) Whenever a notice of charges specifies that an association's books and records are so incomplete or inaccurate that the

Board is unable with reasonable effort to determine the financial condition of that association, the Board may issue a temporary order requiring cessation of any association activities the Board deems appropriate until completion of proceedings conducted under paragraph (2)(A) of this subsection. Such order shall become effective upon service and unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (D) of this paragraph, remain effective and enforceable pending completion of the administrative proceeding initiated under such notice or until the Board determines by examination or otherwise that the association's books and records are accurate and capable of reflecting the financial condition of the association."; and

(2) by redesignating subparagraph (C) as subparagraph (D).

SUSPENSION, REMOVAL, OR PROHIBITION OF INSTITUTION-RELATED PARTIES

SEC. 504. (a) Paragraphs (1) and (2) of section 407(g) of the National Housing Act (12 U.S.C. 1730(g)) are amended to read as follows:

"(1) Whenever the Corporation determines that—

"(A) any institution-related party, directly or indirectly, has violated any law, rule, regulation, or cease-and-desist order which has become final, or engaged or participated in any unsafe or unsound practice in connection with an insured institution, or committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty;

"(B) an insured institution has suffered or will probably suffer financial loss or other damage, including damage which may threaten to impair public confidence in the institution, or the interests of its insured account holders or stockholders have been or could be prejudiced by reason of such violation or practice or breach, or the institution-related party has received financial gain by reason of such violation or practice or breach; and

"(C) such violation or practice or breach involves personal dishonesty on the part of such institution-related party or demonstrates willful or continuing disregard for the safety or soundness of the insured institution,

the Corporation may serve upon such institution-related party a written notice of its intention to remove such party from his office or his position and/or to prohibit his further participation in any manner in the conduct of the affairs of such insured institution. For institution-related parties not holding an official office or no longer participating in the affairs of such insured institution at the time of service of the notice, the notice shall state the Corporation's intention to prohibit such person's further participation in any manner in the conduct of the affairs of the insured institution.

"(2) Whenever the Corporation determines that any institution-related party has evidenced personal dishonesty or a willful or continuing disregard for the safety or soundness of another insured institution or other business enterprise by conduct or practice with respect thereto that evidences such party's unfitness to continue as an institution-related party, the Corporation may serve upon such institution-related party a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the affairs of his institution.".

(b) Subparagraphs (A) and (B) of section 5(d)(4) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(4)) are amended to read as follows:

"(A) Whenever the Board determines that—

"(i) any association-related party, directly or indirectly, has violated any law, rule, regulation, or cease-and-desist order which has become final, or engaged or participated in any unsafe or unsound practice in connection with an association, or committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty;

"(ii) an association has suffered or will probably suffer financial loss or other damage, including damage which may threaten to impair public confidence in the association, or the interests of its insured account holders or stockholders have been or could be prejudiced by reason of such violation or practice or breach, or the association-related party has received financial gain by reason of such violation or practice or breach; and

"(iii) such violation, practice, or breach involves personal dishonesty on the part of such association-related party or demonstrates willful or continuing disregard for the safety and soundness of the association,

the Board may serve upon such association-related party a written notice of intention to remove such party from his office or his position and/or to prohibit his further participation in any manner in the conduct of the affairs of such association. For association-related parties not holding an official office or no longer participating in the affairs of such association at the time of service of the notice, the notice shall state the Board's intention to prohibit such person's further participation in any manner in the conduct of the affairs of the association.

"(B) Whenever the Board determines that any association-related party has evidenced personal dishonesty or a willful or continuing disregard for the safety and soundness of another association or other business enterprise by conduct or practice with respect thereto that evidences such party's unfitness to continue as an association-related party, the Board may serve upon such association-related party written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the affairs of his association.".

PENALTIES

SEC. 505. (a) Paragraphs (1) and (2) of section 407(p) of the National Housing Act (12 U.S.C. 1730(p)) are amended to read as follows:

"(1) Any person against whom there is outstanding and effective any notice or order (which is an order that has become final) served upon such person under subsection (g) or (h) of this section or under section (d) (4) or (5) of the Home Owners' Loan Act of 1933, or under section 8 of the Federal Deposit Insurance Act, and who—

"(A) participates in any manner in the conduct of the affairs of the institution from which he has been suspended, removed and/or prohibited, or directly or indirectly, solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution, or

"(B) without the prior written approval of the Corporation, votes for a director, or serves or acts as a director, officer, employee, or agent or otherwise becomes an institution-related party or participates in any manner in the affairs of any insured institution or without the prior written approval of the appropriate Federal regulatory authority, engages in said conduct with respect to any other depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or any other agency of the Federal Government,

shall be guilty of a misdemeanor, and upon conviction, be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(2) Except with the prior written consent of the Corporation, no person shall serve as an institution-related party who has been convicted of a criminal offense involving dishonesty or breach of trust. For each knowing violation of this prohibition, the institution involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover by suit or otherwise for its own use.".

(b) Paragraphs (A) and (B) of section 5(d)(12) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(12)) are amended to read as follows:

"(A) Any person against whom there is outstanding and effective any notice or order (which has become final) served upon such person under paragraphs (4) or (5) of this subsection or under section 407 of the National Housing Act or under section 8 of the Federal Deposit Insurance Act and who—

"(i) participates in any manner in the conduct of the affairs of the association from which he has been suspended, removed and/or prohibited, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such association, or

"(ii) without the prior written approval of the Board votes for a director, or serves or acts as a director, officer, employee, or agent or otherwise becomes an association-related party or participates in any manner in the affairs of any insured institution or without the prior written approval of the appropriate Federal regulatory authority, engages in such conduct with respect to any other depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or any other agency of the Federal Government,

shall be guilty of a misdemeanor, and upon conviction, be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(B) Except with prior written consent of the Board, no person shall serve as an association-related party who has been convicted of a criminal offense involving dishonesty or breach of trust. For each knowing violation of this prohibition, the institution involved shall be subject to penalty of not more than $100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.".

DEFINITIONS

SEC. 506. (a) Section 407(r) of the National Housing Act (12 U.S.C. 1730(r)) is amended—

(1) by adding at the end of paragraph (1) thereof the following:

"(E) The term 'institution-related party' means any director, officer, controlling person, employee, agent, or other person participating in the conduct of the affairs of an insured institution, or of any service corporation or any subsidiary of a service corporation of an insured institution, whether wholly or partly owned, or of any savings

and loan holding company or any subsidiary of a savings and loan holding company as those terms are defined in section 1730a of this title, and any person who, with respect to a particular insured institution has filed or is required to file a change in control notice with the Corporation under subsection (q) of this section, and real estate appraisers whose opinions of value are offered to, requested by, or relied upon by insured institutions. The status of any person as an 'institution-related party' shall not be affected by the resignation, termination of employment, or other separation of such person from an insured institution for a period of two years after such person's resignation, termination of employment, or other separation from an insured institution."; and

(2) by adding at the end thereof the following:

"(5) As used in subsections (e), (f), (g), (h), (p), and (s) of this section, the term 'insured institution' means any institution the deposits of which are insured by the Corporation, any institution that retains deposits insured by the Corporation notwithstanding termination of its status as an insured institution, and a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(b) Section 5(d)(13) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(13)) is amended—

(1) by adding at the end of subparagraph (A) thereof the following:

"(5) The term 'association-related party' means any director, officer, controlling person, employee, agent or other person participating in the conduct of the affairs of an association, or of any service corporation or any subsidiary of a service corporation of an association, or of any savings and loan holding company as those terms are defined in section 407 of the National Housing Act, and any person who, with respect to a particular association, has filed or who is required to file a change in control notice with the Federal Savings and Loan Insurance Corporation under subsection (q) of section 408 of such Act, and real estate appraisers whose opinions of value are offered to, requested by, or relied upon by associations. The status of any person as an 'associated-related party' shall not be affected by redesignation, termination of employment, or other separation of such person from an association for a period of two years after such person's resignation, termination of employment, or other separation from an insured institution."; and

(2) by adding at the end thereof the following:

"(C) As used in paragraphs (2), (3), (4), (12), and (15) of this subsection, the term 'association' includes any former association that retains deposits insured by the Federal Savings and Loan Insurance Corporation notwithstanding termination of its status as an institution insured by such Corporation, any Federal savings bank whose deposits are insured by the Federal Deposit Insurance Corporation, and any former Federal savings bank that retains deposits insured by the Federal Deposit Insurance Corporation notwithstanding termination of its status as an insured bank.".

POWERS OF THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 507. Section 402(c) of the National Housing Act (12 U.S.C. 1725(c)) is amended by adding at the end thereof the following:

"(6) To issue such rules, regulations, and orders as it deems necessary or appropriate to define any terms used in any section of this Act and administer and carry out its purposes, including without limitation regulation of risk-taking and prevention of unsafe or unsound practices by insured institutions; and to require compliance therewith and prevent evasions thereof.".

RISK ASSESSMENT PREMIUMS

SEC. 508. Section 404 of the National Housing Act (12 U.S.C. 1727) is amended—

(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as (e), (f), (g), (h), (i), and (j), respectively; and

(2) by inserting after subsection (c) the following:

"(d) Notwithstanding any other provision of this section, the Corporation may, by regulation, set the annual assessment rate for each insured institution on the basis of the risks that the institution may present to the insurance fund, except that no annual assessment rate set by the Corporation shall be less than one-twelfth of 1 per centum or greater than one-sixth of 1 per centum.".

SERVICE CORPORATIONS

SEC. 509. Section 5(c)(4)(B) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)(4)(B)) is amended by striking out all that follows "except that" and inserting in lieu thereof the following: "the limitation contained herein shall be 5 per centum of the assets of an association which meets the regulatory capital requirements established by the Corporation pursuant to section 403(b) of the National Housing Act. The Board shall by regulations provide for a phase-in of the increase provided by the exception to the preceding sentence for associations coming into compliance with the regulatory capital requirements established by the Corporation".

REPEAL OF REBIDDING REQUIREMENT

SEC. 510. Section 408(m) of the National Housing Act (12 U.S.C. 1730a(m)) is amended—

(1) by striking out paragraph (3)(A); and

(2) by redesignating subparagraphs (B), (C), (D), and (E), as subparagraph (A), (B), (C), and (D) respectively.

TITLE VI—FINANCIAL INSTITUTIONS COMPETITIVE ENHANCEMENT

AMENDMENTS TO THE BANKING ACT OF 1933

SEC. 601. (a) Section 20 of the Banking Act of 1933 (12 U.S.C. 377) is amended by inserting the following new paragraph after the first paragraph of such section:

"Notwithstanding any other provision of this section, a member bank may be affiliated in any manner described in section 2(b) of this Act with a depository institution securities affiliate, as defined in section 2(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)).".

(b) Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is amended by inserting the following at the end of the first paragraph of such section: "Notwithstanding any other provision of this section, an officer, director, or employee of any member bank may serve at the same time as an officer, director, or employee of any of its depository institution securities affiliates. The term 'depository institution securities affiliate' shall have the meaning ascribed to it in section 2(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)). For purposes of this section, the term 'depository institution securities affiliate' also means any securities broker or dealer, within the meaning of paragraph (4) or (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), that (1) enters into a contractual arrangement with a member bank pursuant to which such broker or dealer makes its securities services available on the premises of such member bank, and (2) limits its activities to those in which a depository institution securities affiliate may lawfully engage pursuant to section 4(c)(15) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(15)).

AMENDMENTS TO THE SECURITIES ACT OF 1933

SEC. 602. Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end thereof the following:

"(7) transactions involving offers or sales of equity securities, in connection with the acquisition of a bank by a company under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or in connection with the acquisition of an insured institution by a company under section 408 of the National Housing Act (12 U.S.C. 1730a), if such acquisition occurs solely as part of a reorganization in which a person or group of persons exchange their shares of a bank or insured institution for shares of a newly formed bank holding company or savings and loan holding company and receive, after such reorganization, substantially the same proportional share interests in the holding company as they held in the bank or insured institution, except for changes in shareholder interests resulting from the exercise of dissenting shareholder rights under State or Federal law.".

AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 603. (a) Subparagraphs (i), (ii), and (iii) of paragraph (34)(A) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) are each amended by inserting immediately before the semicolons at the end thereof the following: "other than a depository institution securities affiliate as defined in section 2(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)) or as defined in section 408(a)(1)(K) of the National Housing Act (12 U.S.C. 1730a(a)(1)(K))".

(b) Section 15B(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)(1)) is amended by striking out "subsidiaries" in subparagraphs (B) and (C) and inserting in lieu thereof "affiliates".

AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956

SEC. 604. (a) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by amending subsection (c) to read as follows:

"(c)(1) Except as provided in paragraph (2), 'bank' means (A) an 'insured bank' as defined in section 3(h) of the Federal Deposit Insurance Act; or (B) any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, that accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties and is engaged in the business of making commercial loans.

"(2) The term 'bank' does not include (A) a foreign bank having an insured or uninsured branch in the United States; (B) an insured institution; (C) an organization operating under section 25 or section 25(a) of the Federal Reserve Act; (D) an organiza-

tion that does not do business in the United States except as an incident to its activities outside the United States; (E) any institution that functions solely as a trust company, such as the type described in subsection (a) of the first section of the Act of September 28, 1962 (12 U.S.C. 92a(a)), all or substantially all of the deposits of which are received solely in a fiduciary capacity, and which is owned by one or more banks (as defined by this paragraph) or bank holding companies; (F) a trust company owned by a securities exchange registered under section 6 of the Securities Exchange Act of 1934; (G) any credit union described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; (H) an industrial loan company chartered by the State of Hawaii which was required to obtain insurance under the Federal Deposit Insurance Act by the laws of the State of Hawaii as a requisite to accepting thrift accounts from the public, except that any such industrial loan company that accepts deposits after the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act that are withdrawable by check or similar means for payment to third parties shall be a 'bank' for the purposes of this Act; or (I) any institution which is acquired by a bank holding company pursuant to approval granted by the Board under section 4 of this Act prior to the enactment of the Deposit Insurance Reform and Competitive Enhancement Act and which engages solely in credit card operations and that does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or make commercial loans.";

(2) by striking out subsection (a)(5)(E) and inserting in lieu thereof the following:

"(E) No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions or savings bank and which restricts itself to the acceptance of deposits from thrift institutions of savings banks, deposits arising out of the corporate business of its owners, and deposits of public moneys.";

(3) by inserting "or section 4(c)(15)" after "section 4(c)(8)" in subsection (h)(2); and

(4) by striking out subsection (i) and inserting in lieu thereof the following:

"(i) The term 'thrift institution' means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, (3) a Federal savings bank, and (4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.

"(j) The term 'depository institution securities affiliate' means any corporation that (1) is engaged in the United States in one or more of the activities authorized pursuant to section 4(c)(15)(iii) of this Act, and (2) is a broker or dealer within the meaning of paragraph (4) or (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), or an investment adviser within the meaning of section 202(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(11)).

"(k) The term 'commercial loans' does not include (1) loans to natural persons primarily for personal, family, or household purposes, whether directly, indirectly or through the use of leases; (2) loans to charitable persons; (3) loans to finance the acquisition, improvement, development, and construction of residential or commercial properties; (4) loans to natural persons through use of credit cards or similar means of access; (5) the purchase of or investment in retail installment loans and accounts receivable; or (6) investments such as commercial paper, certificates of deposit, bankers acceptances and similar money market instruments, the extension of broker call loans, the sale of Federal funds, the deposit of interest-bearing funds, mortgage-backed securities, obligations of the United States and local and State governments, or agencies and instrumentalities thereof, and such other similar types of investments as may be permitted by the institution's primary regulator. An institution shall not be deemed to be 'engaged in the business of making commercial loans' if the aggregate principal amount of its outstanding commercial loans does not exceed 10 percent of the institution's total assets in three out of every four quarters and two out of every three years.

"(l) For purposes of this Act—

"(1) the term 'depository institution holding company' means a bank holding company;

"(2) the term 'depository institution' means bank; and

"(3) the terms 'savings and loan holding company' and 'insured institution' have the meanings ascribed to them in section 408(a)(1) of the National Housing Act.".

(b) Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) by inserting before the period at the end of the second sentence of subsection (a) the following: "; or (C) with 30 days prior notification to the Board, the acquisition by a company of control of a bank in a reorganization in which a person or group of persons exchange their shares of the bank for shares of a newly formed bank holding company and receive, after such reorganization, substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholder interests resulting from the exercise of dissenting shareholder rights under State or Federal law if, immediately following such acquisition, the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company and the holding company does not engage in any activities other than those of banking or managing and controlling banks. In promulgating regulations pursuant to this subsection, the Board shall not require more capital for the subsidiary bank immediately following the reorganization that is required for a similarly sized bank that is not a subsidiary of a bank holding company"; and

(2) by adding at the end of subsection (d) the following:

"(7) Any company that controls a company which was established or acquired on or after the ____ day of ____, 19____, which became a bank as a result of the enactment of the Deposit Insurance Reform and Competitive Enhancement Act, and the establishment or acquisition of which would have been prohibited by this subsection had the definition of a bank in such Act been in effect at the time of establishment or acquisition shall divest such bank within 180 days after the effective date of such Act.".

(c) Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended—

(1) by striking out subparagraph (B) and inserting in lieu thereof the following: "(B) those permitted under paragraphs (8), (15), and (16) of subsection (c) of this section subject to all the conditions and requirements specified in each respective paragraph or in any order or regulation issued by the Board under such paragraphs"; and

(2) by adding at the end thereof the following: "The two-year period referred to in this paragraph shall not apply to a company that becomes a bank holding company as a result of the enactment of the Deposit Insurance Reform and Competitive Enhancement Act and that acquired an institution between the ____ day of ____, 19____, and the effective date of such Act which became a bank by virtue of the amendment to section 2(c) of this Act contained in the Deposit Insurance Reform and Competitive Enhancement Act. A company that controlled an institution on the ____ day of ____, 19____, which became a bank by virtue of the amendment to section 2(c) of this Act contained in the Deposit Insurance Reform and Competitive Enhancement Act may continue to own and control such institution and engage in any activity that it would have been permitted to engage in on the ____ day of ____, 19__, under this Act, if not later than 3 years after the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act, (i) the controlling company acquires one insured institution under the provisions of section 408(m) of the National Housing Act for each company controlled by it that became a bank, or (ii) converts each such company to an insured institution, and continues to operate the acquired or converted institution as an insured institution. For the purpose of the preceding sentence (I) the term 'insured institution' has the same meaning as in section 408 of the National Housing Act, and (II) the Board after written notification from the Federal Home Loan Bank Board of a failure to comply with such sentence may issue orders requiring divestiture in cases of noncompliance.".

(d) Paragraph (8) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)), excluding subparagraph (E) as added by section 407, is amended to read as follows:

"(8)(A) in accordance with the limitations and requirements contained in subparagraphs (B) and (C) of this paragraph or shares of any company the activities of which consist of activities that the Board has determined (by order or regulation) to be (i) closely related to banking or managing or controlling banks; (ii) of a financial nature and designed to enable bank holding companies to adjust to technological innovations in the provision of banking or banking-related services; or (iii) of a financial nature and substantially identical to products or services offered by nonbanking concerns which are competitive with products or services provided by banks.

"(B)(i) No bank holding company shall engage in any activity authorized under this paragraph either de novo or by an acquisition in whole or in part of a going concern, unless the Board has been given 60 days prior written notice of such proposal and, within such period, the Board has not issued an order (I) disapproving the proposal, or (II) suspending the time period in accordance with clause (iii) below.

"(ii) An acquisition may be made prior to the expiration of the disapproval period if the Board issues a written notice of its intent not to disapprove the action. The Board may provide for no notice under this paragraph or notice for a shorter period of time with respect to particular activities. No notice under this paragraph is required in

the event a bank holding company establishes de novo an office to engage in any activity previously authorized for such a bank holding company under this paragraph or changes the location of an office engaged in such activity.

"(iii) The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice. The Board may only require such information as may be relevant to the nature and scope of the proposed activity and to the Board's evaluation of the criteria provided for in clause (iv). In the event the Board requires additional relevant information beyond that provided in the notice submitted pursuant to this paragraph, the Board may by order suspend the time period provided in clause (i) until it has received such additional relevant information, and the activity that is the subject of the notice may be commenced within 30 days of the date of such receipt unless the Board issues a disapproval order as provided in clause (i). Such a suspension order is reviewable under section 9 of this Act.

"(iv) In determining whether to disapprove a notice under this paragraph, the Board shall consider whether the performance of the activity described in such notice by a bank holding company or subsidiary thereof can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. The Board shall also consider the managerial resources of the companies involved; and the adequacy of their financial resources, including their capital, giving consideration to the financial resources and capital of others engaged in similar activities. In orders and regulations under this paragraph, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of the going concern.

"(v) The Board shall by order set forth the reasons for any disapproval or determination not to disapprove a notice under this paragraph.

"(vi) The Board shall, within 180 days of enactment of the Deposit Insurance Reform and Competitive Enhancement Act and from time to time thereafter, promulgate regulations under this paragraph designating particular activities that are closely related to banking. A bank holding company may petition the Board to determine by regulation that a particular activity is closely related to banking. The Board may by regulation prescribe limitations on the conduct of any activity or activities authorized under paragraphs (8) and (15) of this subsection consistent with the criteria in clause (iv) hereof and with safe and sound financial practices. In administering this paragraph, the Board shall promote competition between bank holding companies and all other companies engaged in activities closely related to banking.

"(vii) The regulation required under clause (vi) of this paragraph shall include any activity determined by the Board by regulation prior to the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Board shall not authorize any activity, other than an activity authorized by the preceding sentence, expressly prohibited or limited by any other provision of this paragraph.

"(C) For purposes of this paragraph, it is not closely related to banking or managing or controlling banks for a bank holding company or any subsidiary or affiliate thereof to provide insurance as a principal, agent, or broker except (i) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (ii) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (iii) any insurance agency activity in a place that (I) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (II) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (iv) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (I) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (II) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (v) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (I) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (II) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (vi) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in clause (i), (ii), or (iii); or (vii) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971.

"(D) In the event an application is filed under this paragraph in connection with an application by a bank holding company to acquire control of a bank in danger of closing or its affiliated banks pursuant to section 3(d)(2) of this Act or section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing.".

(e) Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) by striking out the penultimate sentence thereof;

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (14) the following:

"(15) shares of any depository institution securities affiliate engaged in activities in accordance with the limitations contained in this paragraph:

"(i) No depository institution holding company that establishes or acquires any depository institution securities affiliate pursuant to this paragraph shall, after one year from the date on which any such depository institution securities affiliate first engages in any of the activities authorized under subparagraph (iii) of this paragraph, permit any depository institution controlled by such depository institution holding company to engage, directly or through a subsidiary, in the United States in any of the activities authorized under such subparagraph (iii) of this paragraph or any of the following activities, which are authorized pursuant to paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24): dealing in and underwriting obligations of the United States, general obligations of any State of the United States or any political subdivision thereof and other obligations listed in paragraph Seventh of such section 5136 and purchasing and selling securities as agent. For purposes of this paragraph, the

Board may, by regulation or order, determine other securities or securities-related activities in which depository institutions may not engage. No rule, regulation or order of the Board, however, shall prohibit a depository institution from engaging in those securities or securities-related activities that are necessary or incidental to the financing of such depository institution or the investment of its funds. In the event that a depository institution holding company terminates all of the activities specified in subparagraph (iii) of this paragraph of its depository institution securities affiliate, any depository institution subsidiary of such holding company may conduct, directly or through a subsidiary, any securities or securities-related activities that it is authorized by law to conduct.

"(ii) Any depository institution securities affiliate may conduct any securities or securities-related activity that a national banking association is not prohibited from conducting.

"(iii) In addition to the activities referred to in subparagraphs (i) and (ii) of this paragraph, such depository institution securities affiliate may—

"(I) deal in and underwrite all obligations issued or guaranteed by or on behalf of a State or any political subdivision thereof or any agency or instrumentality of either of the foregoing, except industrial development bonds as defined in section 103(b)(2) of the Internal Revenue Code of 1954, as amended: *Provided, however,* That depository institution securities affiliates may deal in and underwrite such industrial development bonds, the interest on which is exempt from Federal income tax under section 103(a) of the Internal Revenue Code of 1954, if (i) a State, territory, possession of the United States, or any political subdivision of the foregoing, or the District of Columbia pledges its full faith and credit for the payment of all principal and interest on such bonds or (ii) the issuer, or the State or local governmental unit on behalf of which the industrial development bonds were issued, is considered the sole owner, for Federal income tax purposes, of the facility with respect to which financing is to be provided from the proceeds of such industrial development bonds;

"(II) organize, sponsor, operate, and control an investment company, as such term is defined in section 3 of the Investment Company Act of 1940; underwrite, deal in, sell, and distribute, as principal or agent or both, the securities of such an investment company; and render investment advice to an investment company other than a closed-end investment company;

"(III) deal in and underwrite promissory notes secured by real estate mortgages or credit obligations secured by real or personal property manufactured housing and participation interests in such notes and credit obligations or mortgage related payment bonds secured by such notes or participation interests. For purposes of this subparagraph, a mortgage related payment bond means an obligation (which may be with or without recourse to the issuer thereof) which, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the above requirements or participation interests therein which are pledged as security for such obligation and which are rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization; and

"(IV) underwrite, deal in, sell, and distribute, as principal or agent or both, commercial paper issued by any entity.

"(iv) A bank holding company seeking to acquire shares of a depository institution securities affiliate or engage directly in securities or securities-related activities pursuant to this paragraph shall comply with the notice and other requirements of paragraph (8)(B) of this subsection.".

(f) Section 2 of the Bank Service Corporation Act (12 U.S.C. 1862) is amended—

(1) by inserting "(a)" after "Sec. 2."; and

(2) by adding at the end thereof the following:

"(b) An insured bank with total assets not to exceed $250,000,000 or, in the case of a bank subsidiary of a bank holding company, a bank holding company with total assets not to exceed $250,000,000 is authorized, notwithstanding any other provision of law, to invest, to the same extent that an insured institution, as defined in section 408 of the National Housing Act, is authorized to make such an investment, in a service corporation which engages in the activities permitted for service corporations under section 5(c)(4)(B) of the Home Owners' Loan Act of 1933.".

(g) Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) is amended to read as follows:

"(c)(1) The Board from time to time may require reports under oath, in such scope and detail as it may determine, of a bank holding company and each subsidiary thereof to keep the Board informed as to whether such companies are complying with the provisions of this Act and regulations and orders issued thereunder.

"(2) Except where the Board determines that a lesser reporting requirement is appropriate, the Board shall accept in fulfillment of the reporting requirements established by this subsection for nonbank subsidiaries separate reports consisting of (A) for companies subject to the reporting requirements of section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q), the same information required to be submitted to the Securities and Exchange Commission under such section (and the rules and regulations thereunder) at the same time such information is so submitted; and (B) for all other companies, the same information as would be required to be submitted under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) (and the rules and regulations thereunder) by companies subject to the reporting requirements of such Act, that are engaged in the same or similar lines of business, not more frequently than quarterly. In particular circumstances, the Board may require additional information in order to fulfill its responsibilities under this Act.

"(3) The Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which may be assessed against, and paid by, such holding company. The Board shall, however, insofar as possible, minimize the scope and frequency of examinations of nonbank subsidiaries of a bank holding company by utilizing, where feasible, reports of applicable regulatory agencies or other bodies public or private, and by directing, to the extent feasible, the focus of such examinations to the activities or financial condition of such nonbank subsidiaries that may have a materially adverse effect on the safety and soundness or financial condition of a subsidiary bank of the bank holding company.".

(h) Section 7 of the Bank Holding Company Act of 1956 is amended by inserting before the period at the end thereof the following: ", except that (1) no State may prohibit the affiliation of a national banking association with a company engaged only in one or more of the activities described in paragraphs (8), (15), and (16) of section 4(c) of this Act, and (2) a State chartered bank subsidiary of a bank holding company may not engage in activities or make investments outside the State where it is chartered unless those activities are permitted under section 4(c) of this Act".

(i) Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. 1848) is amended to read as follows:

"JUDICIAL REVIEW

"SEC. 9. (a) Except as provided in subsection (b) of this section, any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit where such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within 30 days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code.

"(b) A Board order under section 4(c)(8) or section 4(c)(15) of this Act shall be subject to judicial review solely with respect to the Board's finding on whether the proposed activity is permissible for a bank holding company under those sections and with respect to any Board finding regarding unfair competition.

"(c) Upon the filing of a petition for judicial review, the court shall have jurisdiction to modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper, except that in any petition for review of a Board order not to disapprove a notice under section 4(c)(8) or section 4(c)(15) of this Act, the court shall not be authorized to stay the effectiveness of the Board's order, or to prevent consummation of the proposal, pending judicial review.

"(d) The court may assess against any person that petitions for judicial review under this section of a Board order under section 4(c)(8) or section 4(c)(15) of this Act reasonable attorney's fees or other costs of litigation incurred in connection with such petition for judicial review by any other party to the action, if the court finds such petition for judicial review to be nonmeritorious.

"(e) The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive, except that the Board's findings (by order or regulation) under section 4(c)(8) or section 4(c)(15) of this Act regarding the permissibility of an activity or regarding unfair competition shall not be overturned unless demonstrated to be plainly in error and at variance with the facts.".

(j) Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following:

"(f) Notwithstanding any other provision of this Act, a savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, which is chartered under State law as a savings bank on or before October 15, 1982, and which is or becomes a subsidiary of a bank holding company may engage, directly

or through an affiliate, in any activity which it is permitted to conduct as a State-chartered savings bank, pursuant to express, incidental, or implied powers under State statute or regulation or under judicial interpretation of State law. The activities conducted pursuant to the preceding sentence shall be terminated within two years unless extended by the Board, by order or regulation, or if the savings bank merges or consolidates with or acquires the assets and assumes the liabilities of any insured bank, other than another savings bank or an insured bank with total assets of less than 30 percent of the savings bank's total assets.".

(k) Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by inserting before the period at the end thereof the following: "or to any depository institution the deposits, accounts, or obligations of which are insured or guaranteed under State law".

AMENDMENTS TO THE FEDERAL RESERVE ACT

SEC. 605. (a) The Federal Reserve Act is amended by inserting after section 23A the following:

"SEC. 23B. RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES.—(a) A member bank and its subsidiaries may engage in any of the following transactions, only on terms and under circumstances, including credit standards, that are substantially the same as, or at least as favorable to such bank or its subsidiary as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies or, in the absence of comparable transactions, those terms and circumstances that in good faith would be offered to, or would apply to nonaffiliated companies—

"(1) any covered transaction, as defined in section 23A, with an affiliate;

"(2) the sale of securities or other assets, including assets subject to an agreement to repurchase, to an affiliate;

"(3) the payment of money or the furnishing of services to an affiliate, under contract, a lease, or otherwise;

"(4) any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or any other person; or

"(5) any transaction or series of transactions with a third party (A) if an affiliate has a financial interest in the third party, or (B) if an affiliate is a participant in such transaction or series of transactions.

For the purposes of this subsection, any transaction by a member bank with any person shall be deemed to be a transaction with an affiliate of such bank to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

"(b) A member bank and the affiliates of such bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates. A member bank and its affiliates may use similar names, except that a member and its depository institution securities affiliate may not use similar names.

"(c) A member bank and any subsidiary of such bank—

"(1) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchases are permitted under the instrument creating the fiduciary relationship, by court order, or by law of the jurisdiction under which the trust is administered; and

"(2) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an affiliate of such bank; except that this prohibition shall not apply where the purchase of such securities has been approved, prior to the time at which such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.

For the purpose of this paragraph, the term 'security' means a 'security' as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)); and the term 'principal underwriter' means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

"(d) For the purpose of this section—

"(1) the term 'affiliate' means an 'affiliate' as defined in section 23A of this Act (12 U.S.C. 371c) excluding a bank; and

"(2) the terms 'bank', 'subsidiary', 'person', and 'security' (other than security as used in subsection (c)) have the same meaning given to them in section 23A of this Act (12 U.S.C. 371c).

"(e) The Board may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to (1) further define terms used in this section; (2) exempt transactions or relationships from the requirements of this section; or (3) exclude from the definition of 'affiliate' in this section any subsidiary of a bank holding company, if the Board finds such exemptions or exclusions to be in the public interest and consistent with purposes of this section.".

(b) Section 23A(b)(7) of the Federal Reserve Act (12 U.S.C. 371c(b)(7)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by inserting "or" at the end of subparagraph (E); and

(3) by adding at the end thereof the following:

"(F) a debit in favor of an affiliate against an account in excess of finally collected funds credited to such account, unless—

"(i) such debit is the result of computer or other systemic error or inadvertence, mistake, or unanticipated delivery of book-entry government securities, beyond the control of the affiliate and the depository institution;

"(ii) the bank is a depository institution, as defined in section 19(b) and an affiliate of a company defined as a bank holding company within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

"(iii) the depository institution, other than a bank, is a depository institution, as defined in section 19(b), and a subsidiary of a company defined as a savings and loan holding company within the meaning of section 408(a)(1)(D) of the National Housing Act (12 U.S.C. 1730(a)(1)(D)), other than a company engaged in activities not permissible for a multiple savings and loan holding company under section 408(c) of the National Housing Act (12 U.S.C. 1730a(c));".

(c) Section 18(j)) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is hereby amended—

(1) by inserting "and section 23B" after "section 23A" at each place it appears in paragraph (1); and

(2) by inserting ", 23B," after "23A" in paragraph (3)(A).

SECURITIES AFFILIATIONS OF NONMEMBER INSURED BANKS

SEC. 606. Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3)(A) The provisions of section 20 of the Banking Act of 1933 (12 U.S.C. 377), relating to affiliations between member banks and organizations engaged principally in certain securities activities, and the provisions of section 32 of the Banking Act of 1933 (12 U.S.C. 78), relating to certain officer, director or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities, shall be applicable to every insured nonmember bank in the same manner and to the same extent as if such insured nonmember bank were a member bank.

"(B) This paragraph does not prohibit the continuation of such an affiliation or relationship which commenced prior to the ___ day of _____, 19__, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before the ___ day of _____, 19__.

"(C) An affiliation or officer, director or employee relationship that becomes unlawful as a result of the enactment of this paragraph may continue for a period of two years after the date of enactment of this paragraph.

"(D) The provisions of this paragraph shall not apply to any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, solely because it has an insured branch in the United States, except that the provisions of section 32 of the Banking Act of 1933 shall apply to an insured branch as if it were an insured bank.

"(E) This paragraph shall not prohibit (i) the continuation of any affiliation or relationship with a nonmember bank that is controlled by a company that is not a bank holding company under the Bank Holding Company Act of 1956 but that controlled an institution on the ___ day of _____, 19__, that became a bank by virtue of the amendment to section 2(c) of the Bank Holding Company Act of 1956 but that controlled an institution on the ——— day of ———, 19——, that became a bank by virtue of the amendment to section 2(c) of the Bank Holding Company Act of 1956 contained in the Deposit Insurance Reform and Competitive Enhancement Act, or (ii) the establishment of such an officer, director, or employee relationship in connection with any such affiliation."; and

(2) by inserting after the words in the first sentence of paragraph (4)(A), as so redesignated under paragraph (1) of this section, "or any lawful regulation issued pursuant thereto," the following words: "or any provision of section 20 of the Banking Act of 1933, as amended,".

AMENDMENTS TO THE NATIONAL HOUSING ACT

SEC. 607. (a) Section 408(a)(1) of the National Housing Act (12 U.S.C. 1730a(a)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(K) 'depository institution securities affiliate' means any corporation that (i) is engaged in the United States in one or more of the activities set forth in section 4(c)(15)(iii) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(15)(iii)), and (ii) is a broker or dealer within the meaning of paragraph (4) or (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), or an investment adviser within the meaning of section 202(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(11)). For purposes of this title, a corporation engaged in any such activities shall be deemed to be a depository institution securities affiliate only so long as it is owned or controlled by a savings and loan holding company.".

(b) Section 408(c) of the National Housing Act (12 U.S.C. 1730a(c)) is amended to read as follows:

"(c)(1) Except as otherwise provided in this subsection, no savings and loan holding company (except a unitary savings and loan holding company that acquires an insured institution pursuant to subsection (m) of this section) or subsidiary thereof which is not an insured institution shall—

"(A) for or on behalf of such subsidiary insured institution, engage in any activity or render any service for the purposes or with the effect of evading law or regulation applicable to such insured institution; or

"(B) commence or continue, after two years from the date as of which it becomes a savings and loan holding company, any business activity other than those specified in paragraph (2) of this subsection, except that such two-year period shall not apply to any company that acquires an insured institution between the _____ day of _____, 19____, and the effective date of the Deposit Insurance Reform and Competitive Enhancement Act. Any company that controlled an insured institution prior to the _____ day of _____, 19____, may engage in any activity in which it was lawfully engaged, directly or through a subsidiary, on the _____ day of _____, 19____. The authority conferred by the preceding sentence shall terminate at such time, after the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act, as (i) a covered savings and loan holding company acquires control of a bank, (ii) the subsidiary insured institution of a covered savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1954, or (iii) a covered savings and loan holding company engages in any activity of a financial nature not authorized pursuant to paragraph (2) for savings and loan holding companies (except for the acquisition of a bank), in which it was not engaged on the _____ day of _____, 19____. Any such activity may be terminated by the Corporation, after opportunity for hearing, if it determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interests, unsound practices, or in the public interest.

"(2) The prohibitions of subparagraph (1)(B) of this subsection shall not apply to the following business activities—

"(A) furnishing or performing management services for a subsidiary insured institution;

"(B) conducting an insurance agency or escrow business;

"(C) holding or managing or liquidating assets owned or acquired from a subsidiary insured institution;

"(D) holding or managing properties used or occupied by a subsidiary insured institution;

"(E) acting as trustee under deed of trust;

"(F) acquiring shares of any bank or engaging in one or more of the following activities subject to the limitations, conditions, and requirements specified in paragraph (3) of this subsection: (i) activities determined by the Board of Governors of the Federal Reserve System (by regulation) to be closely related to banking or managing or controlling banks under section 4(c)(8) of the Bank Holding Company Act of 1956, except that the Corporation may (by regulation) prohibit or limit any such activity for savings and loan holding companies; (ii) activities which multiple savings and loan holding companies are authorized (by regulation) to engage in directly; and (iii) engaging in the activities of a depository institution securities affiliate in accordance with the terms under which such activity may be conducted pursuant to the provisions of paragraph (15) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)), except that notwithstanding any other provision of this subparagraph, an acquisition involving the direct or indirect control of a bank by a savings and loan holding company (except an acquisition resulting from a transaction authorized under section 13(f) of the Federal Deposit Insurance Act) shall be subject to the restrictions of section 3(d) of the Bank Holding Company Act of 1956, as if any insured institution subsidiary of the savings and loan holding company were a bank and as if the savings and loan holding company were a bank holding company; and

"(G) acquiring shares of any company which is an export trading company, as that term is defined in paragraph (14) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)), and subject to all the requirements, conditions, and limitations of such paragraph (14) as if the acquiring or establishing savings and loan holding company were a bank holding company within the meaning of that paragraph, except that any notice required to be given pursuant to that paragraph shall be given to the Corporation, which shall have the same authority with respect to such notice procedure for savings and loan holding companies as the Board of Governors of the Federal Reserve System has pursuant to such paragraph (14).

"(3)(A) No savings and loan holding company shall engage, either de novo or by an acquisition, in whole or in part, of a going concern, in any activity authorized under paragraph (2)(F) of this subsection unless the Corporation has been given 60 days' prior written notice of such proposal and, within such period, the Corporation has not issued an order disapproving the proposal or extending for up to an additional 30 days the period within which such a disapproval may be issued.

"(B) An acquisition may be made prior to the expiration of the disapproval period if the Corporation issues a written notice of its intent not to disapprove the action. The Corporation may provide for no notice under this paragraph or notice for a shorter period of time with respect to particular activities. No notice under this paragraph is required in the event a savings and loan holding company establishes de novo an office to engage in any activity previously authorized for such savings and loan holding company under this paragraph or changes the location of an office engaged in such activity.

"(C) The notice submitted to the Corporation shall contain such information as the Corporation shall prescribe by regulation for the notice or by specific request in connection with a particular notice. The Corporation may only require such information as may be relevant to the nature and scope of the proposed activity and to the Corporation's evaluation of the criteria provided for in subparagraph (D) hereof. In the event the Corporation requires additional relevant information beyond that provided in the notice submitted pursuant to this paragraph, the Corporation may by order suspend the time period provided in subparagraph (A) of this paragraph until it has received such additional relevant information, and the activity that is the subject of the notice may be commenced within 30 days of the date of such receipt unless the Corporation issues a disapproval order as provided in such subparagraph (A). Such suspension order is reviewable under subsection (k) of this section.

"(D) In determining whether to disapprove a notice under this paragraph, the Corporation shall consider whether the performance of the activity described in such notice by a savings and loan holding company or subsidiary thereof can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound financial practices. The Corporation shall also consider the managerial resources of the companies involved; and the adequacy of their financial resources, including their capital, giving consideration to the financial resources and capital of others engaged in similar activities. In orders and regulations under this paragraph, the Corporation may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part of the going concern.

"(E) The Corporation shall by order set forth the reasons for any disapproval or determination not to disapprove a notice under this paragraph.

"(F) The Corporation may by regulation prescribe limitations on the conduct of any activity or activities authorized under paragraph (2)(F) of this subsection other than limitations on activities conducted pursuant to clause (iii) thereof, consistent with the criteria in subparagraph (D) hereof and with safe and sound financial practices.

"(4)(A) Notwithstanding any other provision of this subsection, any savings and loan holding company (including any subsidiary thereof which is not an insured institution) the sole insured institution subsidiary of which is a qualified thrift lender shall not be subject to the limitations and prohibitions of this subsection. Nothing in this paragraph shall exempt a bank holding company or its subsidiaries or affiliates from the provisions of the Bank Holding Company Act.

"(B) Except as provided in subparagraph (C) of this paragraph, a qualified thrift lender is an institution that, as determined

by the Corporation, has an aggregate of not less than 60 per centum of its assets (including investments made by any subsidiary of such an institution) invested in—

"(i) cash,

"(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof,

"(iii) liquid assets of the type required to be maintained pursuant to regulations issued by the Federal Home Loan Bank Board under section 5A of the Federal Home Loan Bank Act,

"(iv) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

"(v) loans secured by a deposit or share of a member,

"(vi) loans, equity positions, or securities related to domestic residential real property, manufactured housing, or real property used primarily for church purposes, including loans to facilitate the construction, improvement or equipping of domestic residential real property, manufactured housing, multifamily dwellings, property used primarily for church purposes, and shelter-providing facilities as set forth in subdivision (viii) hereof,

"(vii) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949 or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966 and loans made for the improvement of any such real property,

"(viii) loans secured by an interest in educational, health, or welfare institutions or facilities, including shelter-providing facilities for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

"(ix) loans made for the payment of expenses of college or university education or vocational training,

"(x) property acquired through the liquidation of defaulted loans described in clauses (vi), (vii) or (viii), and

"(xi) property used by an institution in the conduct of its business, and

does not thereafter fail to maintain such percentage of investment on an average basis in three out of every four quarters in two out of every three years. Investments in loans or extensions of credit to natural persons primarily for personal, family, or household purposes, whether directly, indirectly, or through the use of leases, and the dollar amount of the residential mortgage loans originated and sold within 90 days of origination shall be included for the purpose of determining compliance with this subparagraph, except that the total amount of assets which may be included pursuant to this sentence may not exceed 10 per centum of the institution's assets.

"(C) For the 10-year period following the date of enactment of the Deposit Insurance Reform and Competitive Enhancement Act, a qualified thrift lender shall also include any insured institution which was chartered prior to October 15, 1982, as a savings bank under State law if the Corporation determines that the institution does not decrease the percentage of its assets invested in investments described in clause (ii) below the percentage it held on such effective date, and increases such percentage of its assets by an amount at least equal to the following percentages of the difference between 60 per centum and the percentage of its assets so invested on the date of enactment of this paragraph within the following time periods from the date of enactment of this paragraph:

"(i) within 2½ years, 25 percent;

"(ii) within 5 years, 50 percent; and

"(iii) within 7½ years, 75 percent.

"(D) The Corporation may grant such temporary and limited exceptions from the 60 percent of assets requirement set forth in subparagraph (B) as the Corporation deems necessary when the Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates or economic conditions reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements.

"(E) Any insured institution that fails to maintain its status as a qualified thrift lender, as determined by the Corporation, may not thereafter be a qualified thrift lender for a period of 5 years. For good cause shown, the Corporation may allow any company that controls such an institution, up to three years to comply with the investment and activities restrictions contained in this subsection.

"(F) Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not an insured institution), which owns a single insured institution shall not be subject to the limitations and prohibitions of this subsection with respect to the activities of such holding company conducted exclusively in a foreign country.

"(G) The Corporation may issue such rules or regulations, and conduct such examinations, as it determines to be necessary to carry out the provisions of this paragraph, and may enforce them with respect to any qualified thrift lender. With respect to a stock savings bank insured by the Federal Deposit Insurance Corporation, the Corporation shall rely to the maximum extent possible on examinations conducted by that agency.".

(c) Section 408(e) of the National Housing Act (12 U.S.C. 1730a(e)) is amended by striking out clause (ii) of subparagraph (1)(B) and inserting in lieu thereof the following:

"(ii) acquired in connection with a reorganization in which a person or group of persons exchange their shares of an insured institution for shares of a newly formed holding company and receive, after such reorganization, substantially the same proportional share interest in the holding company as they held in the insured institution, except for changes in shareholder interests resulting from the exercise of dissenting shareholder rights under State or Federal law.".

(d) Section 408(k) of the National Housing Act (12 U.S.C. 1730a(k)) is amended to read as follows:

"(k) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2) of this section, any party aggrieved by an order of the Corporation under this section may obtain a review of such order in the United States Court of Appeals within any circuit where such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within 30 days after the entry of the Corporation's order, a petition praying that the order of the Corporation be set aside. A copy of such petition shall be forthwith transmitted to the Corporation by the clerk of the court, and thereupon the Corporation shall file in the court the record made before the Corporation, as provided in section 2112 of title 28, United States Code.

"(2) An order under subsection (c)(2) shall be subject to judicial review solely with respect to the Corporation's finding on whether the proposed activity is permissible for a savings and loan holding company and with respect to any Corporation finding regarding unfair competition.

"(3) Upon the filing of a petition for judicial review, the court shall have jurisdiction to modify the order of the Corporation and to require the Corporation to take such action with regard to the matter under review as the court deems proper, except that in any petition for review of an order not to disapprove a notice under subsection (c)(2), the court shall not be authorized to stay the effectiveness of the Corporation's order, or to prevent consummation of the proposal, pending judicial review.

"(4) The court may assess against any person that petitions for judicial review under this section of a Corporation order under subsection (c)(2), reasonable attorney's fees or other costs of litigation incurred in connection with such petition for judicial review by any other party to the action, if the court finds such petition for judicial review to be nonmeritorious.

"(5) The findings of the Corporation as to the facts, if supported by substantial evidence, shall be conclusive, except that the Corporation's findings (by order or regulation) regarding the permissibility of an activity under subsection (c)(2) or regarding unfair competition shall not be overturned unless demonstrated to be plainly in error and at variance with the facts.".

(e) Section 408(a)(1)(A) of the National Housing Act is amended by adding at the end thereof the following: "Notwithstanding any other provision of law, a savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, upon application shall be deemed to be an 'insured institution' for purposes of this section and section 408(o)(1), if the Corporation determines that it is in compliance with section 408(c)(4)(B). Any institution so notifying the Corporation that fails to maintain its status as a qualified thrift lender, as determined by the Corporation, may not thereafter be a qualified thrift lender for a period of five years.".

AMENDMENT TO THE HOME OWNERS' LOAN ACT OF 1933

SEC. 608. Section 5(b)(1) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(b)(1)) is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) An association may raise capital in the form of such deposits, shares, or other accounts (all of which are referred to in this section as accounts) as are authorized by its charter or by regulations of the Board, and may issue such passbooks, certificates, or other evidence of accounts as are so authorized."; and

(2) by striking out the first sentence of subparagraph (B).

AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT

SEC. 609. (a) Section 5A(b)(1)(D) of the Federal Home Loan Bank Act (12 U.S.C.

1425a(b)(1)(D)) is amended by striking out "solely to any of the obligations or other investments enumerated in subparagraphs (A) through (C)" and inserting in lieu thereof "solely to any of the obligations or other investments enumerated in subparagraphs (A) through (C), (F), and (G)".

(b) Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following:

"(e) Except as the Board may prescribe, no member shall be eligible for advances unless such member meets the qualified thrift lender asset test contained in section 408(c)(4)(B) of the National Housing Act.".

LEASING AUTHORITY OF NATIONAL BANKS

SEC. 610. Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof the following:

"Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale, but such investment may not exceed 10 per centum of the assets of the association.".

MUTUAL HOLDING COMPANY AMENDMENT

SEC. 611. (a) Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by adding at the end thereof the following:

"(p)(1) Notwithstanding any other provision of law, an insured institution operating in mutual form may reorganize so as to become a holding company by—

"(A)(i) chartering an interim savings institution, the stock of which is to be wholly owned by the mutual institution; and

"(ii) transferring substantially all of its assets and liabilities, including all its insured liabilities, to the interim savings institution. Persons having ownership rights in the mutual institution pursuant to section 5(b)(1)(B) of the Home Owners' Loan Act of 1933 or State law shall have the same ownership rights with respect to the holding company; or

"(B)(i) incorporating a mutual savings institution holding company;

"(ii) chartering an interim savings institution, the stock of which is wholly owned by the corporation referred to in clause (i); and

"(iii) merging the existing mutual institution with the interim savings institution whereby substantially all of the assets and liabilities and all of the insured liabilities of the mutual institution are exchanged for the stock of the interim institution.

"(2) A reorganization plan authorized under this paragraph must be approved by a majority of the board of directors of the mutual savings institution. In the case of an institution in which holders of accounts and obligors exercise voting rights, the plan of reorganization shall also be submitted for approval by a majority of such individuals at a meeting to be held at the call of the directors in accordance with the procedures prescribed by the institution's charter and bylaws.

"(3)(A) An insured institution seeking to establish a holding company pursuant to this subsection shall provide the Federal Home Loan Bank Board with 60 days prior written notice. The notice shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(B) Unless the Board within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may issue, the insured institution providing such notice may proceed with the transaction.

"(C) The Board may disapprove any proposed holding company formation only if—

"(i) such disapproval is necessary to prevent unsafe or unsound practices;

"(ii) the financial or management resources of the insured institution involved warrant disapproval; or

"(iii) the insured institution fails to furnish the information required under subparagraph (A).

"(D) In connection with the transaction described in paragraph (1), an insured institution may, subject to the approval of the Board, retain capital assets at the holding company level to the extent that such capital exceeds adequate reserves as prescribed pursuant to section 403(b) or the comparable provisions of State or Federal law.

"(4) A corporation organized as a holding company under this subsection may only—

"(A) invest in the stock of an insured institution;

"(B) acquire a mutual institution through merger into an insured institution subsidiary or an interim savings institution subsidiary;

"(C) merge with or acquire another holding company one of whose subsidiaries is an insured institution, except that the resulting holding company may only invest in assets and engage in activities authorized under this paragraph;

"(D) invest in a corporation the capital stock of which is available for purchase by an insured institution by Federal law or by the law of such State where the subsidiary insured institution or institutions have their home office; and

"(E) engage in the activities described in subsection (c)(2).

Not later than two years following a merger or acquisition subject to subparagraph (C) of the preceding sentence, a holding company established pursuant to this subsection shall dispose of any assets or cease any activities the exercise of which is prohibited by such subparagraph.

"(5) Unless the context otherwise requires, a holding company established pursuant to this subsection shall be subject to the other requirements of this section regarding regulation of holding companies.".

(b) Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following:

"(g) Notwithstanding any other provision of law, a savings bank operating in mutual form may reorganize so as to form a holding company pursuant to the procedures specified in paragraphs (1) through (3) of section 408(p) of the National Housing Act. A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as a stock savings bank holding company.".

MORTGAGE SECURITIES CORPORATIONS

SEC. 612. Section 5(c)(4) of the Homeowners' Loan Act of 1933 (12 U.S.C. 1464(c)(4)) is amended by adding at the end thereof the following:

"(E) MORTGAGE SECURITIES CORPORATIONS.—Investments in the capital, stock, obligations, or other securities of a trust or corporation, the entire capital stock of which is available for purchase only by Federal associations and which engages solely in the business of issuing or servicing mortgage related securities as described in section 4(c)(15)(iii)(III) of the Bank Holding Company Act of 1956.".

TITLE VII—BANKERS BANKS

AMENDMENT TO SECTION 5136 OF THE REVISED STATUTES

SEC. 701. The paragraph numbered "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by striking out "*Provided further,* That" and all that follows through the end thereof and inserting in lieu thereof the following: "*Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank or a holding company which owns or controls such a bank if (1) the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions, and (2) such bank or company and all subsidiaries thereof are engaged exclusively in providing services for depository institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each. In no event shall the total amount of stock held by the association in any bank or holding company described in the immediately preceding proviso exceed at any time 10 per centum of the association's capital stock and paid-in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company.".

AMENDMENT TO SECTION 5169 OF THE REVISED STATUTES

SEC. 702. Section 5169(b)(1) of the Revised Statutes (12 U.S.C. 27(b)(1)) is amended to read as follows:

"(b)(1) The Comptroller of the Currency may also issue a certificate of authority to commence the business of banking pursuant to this section to a national banking association if (A) such association or its parent holding company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions, and (B) the association, its parent holding company, and all subsidiaries thereof are organized to engage exclusively in providing services for depository institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each.".

AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

SEC. 703. (a) Section 202(3) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(3)) is amended—

(1) by striking out "; or" after paragraph (C) and inserting in lieu thereof a period; and

(2) by striking out paragraphs (D) and (E).

(b) Section 205(6) of the Depository Institution Management Interlocks Act (12 U.S.C. 3204(6)) is amended to read as follows:

"(6) A Federal Home Loan Bank or any bank or the parent holding company thereof organized specifically to serve depository institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each.".

AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956

SEC. 704. (a) Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by inserting at the end of paragraph (1) the following: "The term 'bank' also includes a State chartered bank or a national banking association if (i) such bank or its parent holding company is owned exclusively (except to the extent di-

rectors' qualifying shares are required by law) by depository institutions, and (ii) such bank, its parent holding company, and all subsidiaries thereof are organized to engage exclusively in providing services for depository institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each.".

(b) Section 4(c)(14)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(14)(F)) is amended—

(1) by striking the period after clause (i) and inserting in lieu thereof a semicolon;

(2) by inserting "and" after clause (ii);

(3) by striking out clause (iii) and inserting in lieu thereof the following:

"(iii) notwithstanding any other provision of law, the term 'bank holding company' shall include a bank if (1) such bank or its parent holding company is owned primarily by depository institutions, and (2) such bank, its parent holding company, and all subsidiaries thereof are organized to engage exclusively (except as provided in this paragraph) in providing services for depository institutions, their parent holding companies, subsidiaries thereof, and the officers, directors, and employees of each. No depository institution, owning stock in a bank or a holding company described in this clause which invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such depository institution's capital and surplus."; and (4) by striking out clause (iv).

TITLE VIII—CREDIT UNION AMENDMENTS

PERMANENT MERGER AND CONSERVATORSHIP AUTHORITY

SEC. 801. Section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1464 note) is amended—

(1) by inserting "and" at the end of paragraph (6);

(2) by striking out "; and" at the end of paragraph (7) and inserting in lieu thereof a period; and

(3) by striking out paragraph (8).

REDUCTION IN STATE COMMENT WAITING PERIOD

SEC. 802. Section 206(h)(2)(B) of the Federal Credit Union Act (12 U.S.C. 1786(h)(2)(B)) is amended by striking out "ninety" and inserting in lieu thereof "30".

IMPOSITION OF CONSERVATORSHIP

SEC. 803. Section 206(h)(1) of the Federal Credit Union Act (12 U.S.C. 1786(h)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following:

"(C) there is a willful violation of a cease-and-desist order which has become final; or

"(D) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board.".

AUTHORITY AS CONSERVATOR

SEC. 804. Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following:

"(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.".

TECHNICAL AND CLARIFYING AMENDMENTS; REMOVAL AND PROHIBITION AUTHORITY

SEC. 805. Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended—

(1) in paragraph (1), by striking out "director, officer, or committee member" each time it appears and inserting in lieu thereof "director, officer, committee member, or employee";

(2) in paragraph (2), by striking out "director, officer, or committee member" the first two times it appears and inserting in lieu thereof "director, officer, committee member, or employee";

(3) in paragraph (2), by striking out "any other person" the first time it appears and inserting in lieu thereof "any agent or other person"; and

(4) in paragraph (2), by inserting "employee, agent," before "or other person" the last time it appears.

FAITHFUL PERFORMANCE

SEC. 806. (a) Section 112 of the Federal Credit Union Act (12 U.S.C. 1761a) is amended by striking out the third sentence and inserting in lieu thereof the following: "The board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 113(2) of this Act.".

(b) Section 113 of the Federal Credit Union Act (12 U.S.C. 17861b) is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the Board;".

MEMBERSHIP OFFICERS

SEC. 807. Section 113(1) of the Federal Credit Union Act (12 U.S.C. 1761b(1)) is amended by striking out "of the board of directors" and inserting in lieu thereof "of the credit union".

NONPARTICIPATION

SEC. 808. Section 118 of the Federal Credit Union Act (12 U.S.C. 1764) is amended—

(1) by striking out "Subject to" in subsection (a) and inserting in lieu thereof "Except as provided in"; and

(2) by inserting "and enforce" after "adopt" in subsection (b).

SECOND MORTGAGE AND HOME IMPROVEMENT LOANS

SEC. 809. Section 107(5)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(ii)) is amended by striking out "fifteen years" and all that follows and inserting in lieu thereof "15 years or any longer term which the Board may allow;".

PROPERTY ACQUISITION FLEXIBILITY

SEC. 810. Section 120(i)(2) of the Federal Credit Union Act (12 U.S.C. 1766(i)(2)) is amended—

(1) by inserting after "reimbursement," the following: "acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States,"; and

(2) by inserting after "this Act" the following: ", in accordance with the rules and regulations or policies established by the Board not inconsistent with this Act".

CLARIFICATION OF IRA AUTHORITY

SEC. 811. Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) by redesignating paragraph (16) as paragraph (17); and

(2) by inserting after paragraph (15) the following:

"(16) to serve as a trustee or custodian of any trust or custodial arrangement created or organized in the United States or its territories or possessions forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) or 401(k) of the Internal Revenue Code of 1954 or similar provision pursuant to the laws of a United States territory or possession, or to serve as a trustee or custodian of an individual retirement account within the meaning of section 408(a) of such Code or similar provision pursuant to the laws of a United States territory or possession, subject to the rules and regulations of the Board; and".

TECHNICAL AMENDMENT

SEC. 812. Section 107(7)(E) of the Federal Credit Union Act (12 U.S.C. 1757(7)(E)) is amended by striking out "section 101 of the Government Corporation Control Act" and inserting in lieu thereof "section 9101(3) of title 31, United States Code,".

PUBLIC FUNDS

SEC. 813. Section 121 of the Federal Credit Union Act (12 U.S.C. 1767) is amended—

(1) by inserting "(a)" after "SEC. 121."; and

(2) by adding at the end thereof the following:

"(b) Any Federal credit union, upon the deposit with it of any funds by the Federal Government, an Indian tribe, or any State or local government or political subdivision thereof as otherwise authorized by this Act, is authorized to pledge any of its assets securing the payment of the funds so deposited.".

OWNERSHIP INTEREST

SEC. 814. Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) is amended by inserting ", representing equity," after "payments".

TITLE IX—CONSUMER LEASES

SHORT TITLE

SEC. 901. This title may be cited as the "Consumer Lease and Lease-Purchase Agreement Act".

AMENDMENT TO THE CONSUMER CREDIT PROTECTION ACT

SEC. 902. The Consumer Credit Protection Act is amended by adding at the end thereof the following new title:

"TITLE X—CONSUMER LEASE AND LEASE-PURCHASE ACT

"Chap.	Sec.
"1. General Provisions	101
"2. Consumer Leases and Lease-Purchase Agreements	111
"3. Enforcement and Liability	121
"4. Miscellaneous	131

"CHAPTER 1—GENERAL PROVISIONS

"Sec.
"101. Short title.
"102. Findings and declaration of purpose.
"103. Definitions and rules of construction.
"104. Exempted transactions.
"105. Regulations.

"CHAPTER 2—CONSUMERLEASES AND LEASE-PURCHASE AGREEMENTS

"Sec.
"111. General requirements of disclosure.
"112. Consumer lease disclosures.

"113. Consumer's liability at early termination or at the end of the lease term.
"114. Lease-purchase disclosures.
"115. Renegotiations and extensions.
"116. Consumer lease advertising.
"117. Lease-purchase advertising.

"CHAPTER 3—ENFORCEMENT AND LIABILITY

"Sec.
"121. Administrative enforcement.
"122. Civil liability.
"123. Defenses.
"124. Liability of assignees.
"125. Criminal liability.

"CHAPTER 4—MISCELLANEOUS

"Sec.
"131. Relation to State laws.
"132. Effect on governmental agencies.
"133. Reports by Board and Attorney General.
"134. Effective date.

"TITLE X—CONSUMER LEASE AND LEASE-PURCHASE ACT

"CHAPTER 1—GENERAL PROVISIONS

"§ 101. Short title

"This title may be cited as the 'Consumer Lease and Lease-Purchase Act'.

"§ 102. Findings and declaration of purpose

"(a) The Congress finds that the leasing of consumer goods continues to be a popular alternative to installment credit purchases. It is the purpose of this title to assure a more meaningful disclosure of the terms of leases of personal property for personal, family or household purposes, permitting the consumer to compare more readily the various lease terms available; to limit the potential balloon payment in consumer leases to a reasonable amount; and to assure accurate disclosures of lease terms in advertising.

"(b) The Congress also finds that a significant number of consumers have begun to acquire ownership of personal property through lease-purchase agreements. These lease-purchase agreements have been offered without adequate cost disclosures. It is the purpose of this statute to assure meaningful disclosure of the terms of lease-purchase agreements; to make the consumer aware of the total cost of the agreement; to inform the consumer when ownership will transfer; and to assure accurate disclosures of lease-purchase terms in advertising.

"§ 103. Definitions and rules of construction

"(a) The following definitions apply to this title:

"(1) 'Advertisement' means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer lease or a lease-purchase agreement.

"(2) 'Agricultural purposes' includes the production, harvest, exhibition, marketing, transportation, processing, and manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmlands, real property with a farm residence, and personal property and services used primarily in farming.

"(3) 'Board' refers to the Board of Governors of the Federal Reserve System.

"(4) 'Consumer' means a natural person who leases personal property under a consumer lease or rents personal property under a lease-purchase agreement.

"(5) 'Consumer lease' means a contract in the form of a lease or bailment for the use of personal property, and the purchase of services incidental thereto, by a natural person primarily for personal, family, or household purposes, for a period exceeding four months, in which the total lease cost is not more than $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The term does not include any 'credit sale' as defined in title I.

"(6) 'Consummation' means the time a consumer becomes contractually obligated on a consumer lease or lease-purchase agreement.

"(7) 'Lessor' means a person who regularly provides the use of property through consumer leases or lease-purchase agreements and to whom the obligation is initially payable on the face of the lease or lease-purchase agreement.

"(8) 'Personal property' means any property that is not real property under the laws of the State where it is located when it is made available for a consumer lease or a lease-purchase agreement.

"(9) 'Lease-purchase agreement' means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property. The term does not include any 'credit sale' as defined in title I.

"(10) 'Residual value' means the wholesale or retail fair market value of the leased property at early termination or the end of the lease term in a consumer lease.

"(11) 'State' refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

"(b) Unless the context indicates otherwise, the term 'lease' means consumer lease, and the term 'agreement' means lease-purchase agreement.

"(c) Any reference to any provisions of this title includes reference to the regulations of the Board under this title.

"§ 104. Exempted transactions

"This title does not apply to the following:

"(1) Consumer leases and lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with government agencies or instrumentalities or with organizations.

"(2) A lease of a safe deposit box.

"(3) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no liability for the value of the property at scheduled expiration except for abnormal wear and tear and that the consumer has no option to purchase the leased property.

"§ 105. Regulations

"(a) The Board shall write regulations to carry out the purposes of this title, to prevent its circumvention, and to facilitate compliance with its requirements. The regulations may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

"(b) The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the models shall be deemed to be in compliance with the disclosure requirements.

"(c) Any regulation of the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required shall have an effective date of October 1 that follows the date of promulgation by at least six months. The Board may at its discretion lengthen that period of time to permit lessors to adjust their forms to accommodate new requirements. The Board may also shorten that period of time if it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices. In any case, lessors may comply with any newly promulgated disclosure requirement prior to its effective date.

"CHAPTER 2—CONSUMER LEASES AND LEASE-PURCHASE AGREEMENTS

"§ 111. General requirements of disclosure

"(a) The lessor shall disclose to the consumer the information required by this title. In a transaction involving more than one consumer, a lessor need disclose to only one of the consumers who are primarily obligated. In a transaction involving more than one lessor, only one lessor need make the disclosures.

"(b) The disclosures shall be made at or before consummation of the consumer lease or lease-purchase agreement.

"(c) The disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required under sections 112 and 114 shall be segregated from all other terms, data, or information provided.

"(d) Information required to be disclosed may be given in the form of estimates and identified as such when the lessor does not know the exact information.

"(e) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy is not a violation of this title.

"§ 112. Consumer lease disclosures

"For each consumer lease, the lessor shall disclose the following items, as applicable:

"(1) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(2) The number, amounts, and timing of scheduled payments.

"(3) The total of scheduled payments.

"(4) The total of amounts payable at the expiration of the lease (not including any difference between the anticipated residual value and the actual residual value).

"(5) The total lease cost, which is the sum of items (1), (3), and (4).

"(6) The amount of any required security deposit.

"(7) When the consumer buys required insurance from or through the lessor, the total cost. When the consumer does not buy required insurance from or through the lessor, a statement that the consumer must buy insurance and that the cost is not included in the numerical disclosures.

"(8) When any official fees and taxes are paid to or through the lessor, the total cost. When any official fees or taxes are not paid to or through the lessor, a statement that the consumer must pay official fees or taxes and that the amounts are not included in the numerical disclosures.

"(9) Any dollar charge or percentage amount that may be imposed for a late pay-

ment, other than a deferral or extension charge.

"(10) A statement that the consumer may be liable for additional amounts if the lease is terminated early.

"(11) When the consumer's liability is based on the residual value of the property, a statement that the consumer may have the property appraised at the consumer's expense by an independent third party agreed to by the consumer and lessor, and that the parties will be bound by the appraisal.

"(12) When the consumer's liability at the end of the lease term is based on the anticipated residual value of the property:

"(A) The anticipated residual value of the property, marked as wholesale or retail;

"(B) A brief statement of the consumer's potential liability at the end of the lease term;

"(C) The product of three times the average payment allocable to a month; and

"(D) A statement that the consumer's liability will generally be limited to item (12)(C) unless the excess is a result of excessive use or unreasonable wear and use, or the lessor brings a successful court action proving that the estimate of the anticipated residual value was reasonable.

"(13) A statement that the consumer may have other costs and that the consumer should refer to the appropriate lease document for information about nonpayment and default, wear and use standards, and maintenance responsibility.

"§ 113. Consumer's liability at early termination or at the end of the lease term

"(a) When the consumer's liability at the end of the lease term is based on the anticipated residual value of the leased property, the anticipated residual value shall be a reasonable estimate of the actual residual value of the property at the end of the lease term. There shall be a rebuttable presumption that the anticipated residual value is unreasonable to the extent that it exceeds the actual residual value at the end of the lease term by more than three times the average payment allocable to a month. The lessor shall not collect any amount in excess of three times the average payment allocable to a month unless the lessor brings a successful action in court providing that the estimate was reasonable. If the lessor fails to rebut the presumption, the lessor must pay the costs of the action and the consumer's reasonable attorney's fees.

"(b) The presumption in subsection (a) shall not apply to the extent that the excess of the anticipated residual value over the actual residual value is due to damage to the property beyond reasonable wear and use or to excessive use. The lessor may set reasonable standards for wear and use in the lease.

"(c) Subsection (a) does not preclude the right of a willing consumer and lessor to make a mutually agreeable final adjustment with respect to the excess of three times the average payment allocable to a month, provided the agreement is made after the end of the lease term.

"(d) In the lease the lessor may specify penalties or other charges for delinquency, default, or early termination, if the amounts are reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

"(e) When the consumer's liability is based on the residual value of the leased property, the consumer may obtain at the consumer's expense a professional appraisal of the property by an independent third party agreed to by both parties. This appraisal shall be binding on the parties.

"§ 114. Lease-purchase disclosures

"For each lease-purchase agreement, the lessor shall disclose the following items, as applicable:

"(1) The number, amounts and timing of all payments necessary to acquire ownership of the property.

"(2) The total of payments necessary to acquire ownership of the property.

"(3) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership.

"(4) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges.

"(5) A statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed.

"(6) A statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this title.

"§ 115. Renegotiations and extensions

"(a) A renegotiation occurs when an existing consumer lease or lease-purchase agreement is satisfied and replaced by a new lease or agreement undertaken by the same lessor and consumer. A renegotiation is a new lease or agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

"(1) The addition or return of property in a multiple-item lease or agreement or the substitution of the leased property, if in either case the average payment allocable to a payment period is not changed by more than 25 per centum.

"(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

"(3) A reduction in charges in the lease or agreement.

"(4) A lease or agreement involving a court proceeding.

"(5) Any other event described in regulations prescribed by the Board.

"(b) No disclosures are required for any extension of a consumer lease or a lease-purchase agreement. However, a lessor that extends or permits a consumer to extend a consumer lease for more than one month beyond the end of the lease term shall (for purposes of section 113) recalculate the anticipated residual value of the leased property to reflect the depreciation resulting from the extended term.

"§ 116. Consumer lease advertising

"(a) If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following items, as applicable:

"(1) That the transaction advertised is a lease.

"(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(3) That a security deposit is required.

"(4) The number, amounts, and timing of scheduled payments.

"(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

"(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

"§ 117. Lease-purchase advertising

"(a) If an advertisement for a lease-purchase agreement refers to or states the amount of any payment or the right to acquire ownership, the advertisement must also clearly and conspicuously state the following items, as applicable:

"(1) That the transaction advertised is a lease-purchase agreement.

"(2) The total of payments necessary to acquire ownership.

"(3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

"(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

"(c) Subsection (a) does not apply to an advertisement which does not refer to or state the amount of any payment, and which is published in the yellow pages of a telephone directory or in any similar directory of businesses.

"CHAPTER 3—ENFORCEMENT AND LIABILITY

"§ 121. Administrative enforcement

"(a) Compliance with the requirements imposed by this title shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and Federal savings banks), by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

"(3) the Federal Credit Union Act, by the National Credit Union Administration with respect to any Federal credit union; and

"(4) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

"(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to, a violation of a requirement imposed by this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each agency may exercise any other authority conferred on it by law in enforcing any requirement imposed under this title.

"(c) Except to the extent that enforcement of the requirements imposed by this title is specifically committed to some other agency under subsection (a), the Federal

Trade Commission shall enforce the requirements. For the purpose of exercising its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed by this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed by this title, whether or not that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

"(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed by this title.

"§ 122. Civil liability

"(a) Except as otherwise provided in this title, a lessor who fails to comply with a requirement of sections 111, 112, 113, 114, or 115 with respect to a consumer is liable to the consumer in an amount equal to the sum of—

"(1) actual damages sustained by the consumer as a result of the violation;

"(2) in the case of an individual action relating to a consumer lease, 25 per centum of the total of scheduled payments under the lease, but not less than $100 nor greater than $1,000;

"(3) in the case of an individual action relating to a lease-purchase agreement, 25 per centum of the total of payments necessary to acquire ownership, but not less than $100 nor greater than $1,000;

"(4) In the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of $500,000 or 1 per centum of the net worth of the lessor. In determining the amount of the award in any class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional; and

"(5) the costs of the action and reasonable attorney's fees as determined by the court.

"(b) In the case of an advertisement, any lessor who fails to comply with the requirements of sections 116 and 117 with regard to any person is liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

"(c) When there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.

"(d) When there are multiple consumers in a consumer lease or a lease-purchase agreement, there shall be only one recovery of damages under subsection (a) for a violation of this title.

"(e) Multiple violations in connection with a single consumer lease or lease-purchase agreement entitle the consumer to a single recovery under this section.

"(f) An action under this section may be brought in any United States district court or in any other court of competent jurisdiction within one year of the date of the occurrence of the violation, except that in the case of a violation under section 113 an action may be brought within one year of the end of the lease term. This subsection does not bar a consumer from asserting a violation of this title in an action to collect the debt brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or setoff, except as otherwise provided by State law.

"(g) A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action brought by the lessor to collect amounts owed by the consumer.

"§ 123. Defenses

"(a) A lessor is not liable under sections 121, 122, or 125 for a violation of the requirements of sections 111, 112, and 114 if within 60 days after discovering the error, and before an action under section 122 is filed or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed. This provision applies whether the discovery of the error was made through a final written examination report or the lessor's own procedures.

"(b) A lessor is not liable under section 122 for a violation of this title if the lessor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error even though the lessor maintained procedures reasonably adapted to avoid such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors. An error of legal judgment with respect to the requirements of this title is not a bona fide error.

"(c) A lessor is not liable under this title for any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or approval promulgated by the Board or by an official duly authorized by the Board. This rule applies even if, after the act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

"§ 124. Liability of assignees

"(a) For purposes of sections 122 and 123, the term 'lessor' as used in those sections shall include an assignee of the lessor. However, a civil action for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the disclosure statement. A violation apparent on the face of the disclosure statement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned. An assignee has no liability where the assignment is involuntary.

"(b) In an action by or against an assignee, the consumer's written acknowledgement of receipt shall be conclusive proof that the disclosures were made, provided the assignee had no knowledge that disclosures had not been made when the assignee acquired the obligation.

"§ 125. Criminal liability

"A fine of $5,000 or a prison term of not more than one year, or both, may be imposed on anyone who willfully and knowingly fails to comply with any requirement imposed under this title.

"CHAPTER 4—MISCELLANEOUS

"§ 131. Relation to State laws

"(a) This title does not annul, alter, or affect the laws of any State regarding the disclosure of consumer leases or lease-purchase agreements, nor does this title exempt any person subject to the provisions of this title from complying with the laws of any State with respect to consumer leases or lease-purchase agreements, except to the extent those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The laws of a State are inconsistent if a person is unable to comply with them without violating a provision of this title. The Board is authorized to determine whether such inconsistencies exist.

"(b) The Board shall by regulation exempt from the requirements of this title any class of lease transactions and lease-purchase agreements within any State if it determines that the State law contains requirements substantially similar to those imposed by this title or gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

"(c) Except as specified in sections 122 and 123, this title does not affect the validity or enforceability of any contract or obligation under State or Federal law.

"(d) Determinations under this section may be requested by any State.

"§ 132. Effect on governmental agencies

"No civil or criminal penalty provided by this title for violations may be imposed on the United States or any of its departments or agencies, any State or political subdivision, or any agency of any State or political subdivision.

"§ 133. Reports by Board and Attorney General

"Each year the Board and the Attorney General shall report to the Congress concerning the administration of their functions under this title, including any recommendations necessary or appropriate. In addition, the Board's report shall include its assessment of the extent to which compliance with the requirements imposed by this title is being achieved.

"§ 134. Effective date

"(a) This title shall take effect on the October 1 that is at least two years after the date of its enactment.

"(b) All regulations, forms, and clauses required to be prescribed shall be promulgated one year prior to such effective date.

"(c) Notwithstanding subsections (a) and (b), any lessor may comply with the requirements of this title, in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective date.".

CONFORMING AMENDMENTS

SEC. 903. (a) Section 102 of the Truth in Lending Act is amended by striking out "(a)" before "The Congress" and by striking out subsection (b).

(b) Section 105(b) of such Act is amended by striking out "or lessee", by striking out "or lessors", and by striking out "or lessor" each place it appears.

(c) Section 105(d) of such Act is amended by striking out ", or chapter 5", by striking out "or lessors" each place it appears, and by striking out "or lessor".

(d) Section 121(a) of such Act is amended by striking out "a consumer lease or", and by striking out "or lessor".

(e) Section 121(b) of such Act is amended by striking out "or one lessor as defined in section 181(3)," and by striking out "or lessor" each place it appears.

(f) Section 122(b) of such Act is amended by striking out "or lessor" and by striking out "chapters 4 and 5" and inserting in lieu thereof "chapter 4".

(g) Section 130(a) of such Act is amended by striking out "or 5", by striking out "(i)", by striking out "or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease,", and by striking out "or 5".

(h) Section 130(b) of such Act is amended by striking out "or chapter 5".

(i) Section 130(d) of such Act is amended by striking out "or consumer lease".

(j) Section 130(g) of such Act is amended by striking out "or 5" and by striking out "consumer lease,".

(k) Chapter 5 of title I of the Consumer Credit Protection Act is repealed.

(l) The amendments made by this section take effect on the effective date of title X of the Consumer Credit Protection Act.

TITLE X—FAIR DEPOSIT AVAILABILITY

SHORT TITLE

SEC. 1001. This title may be cited as the "Fair Deposit Availability Act of 1986".

DEFINITIONS

SEC. 1002. As used in this title—

(1) the term "depository institution" means—

(A) any insured bank or domestic branch as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act, other than a foreign bank having an insured or uninsured branch;

(B) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(C) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(D) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(E) any member as defined in section 2 of the Federal Home Loan Bank Act; and

(F) any insured institution as defined in section 401 of the National Housing Act or any institution which is eligible to make application to become an insured institution under section 403 of such Act;

(2) the term "deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposit accounts, negotiable order of withdrawal accounts, share draft accounts, savings deposits, and share accounts. Such term does not include time deposits;

(3) the term "Board" means the Board of Governors of the Federal Reserve System; and

(4) the term "check or similar instrument" means a check, negotiable order of withdrawal, share draft, money order, or similar instrument, but does not include noncash items.

DISCLOSURE OF FUND AVAILABILITY POLICIES

SEC. 1003. (a) Before opening a deposit account, a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account. In the case of a deposit account which was opened prior to the effective date of this section, the depository institution shall include such disclosure with the first regularly scheduled mailing pertaining to the account which occurs after such effective date (but not later than 90 days after such effective date) unless the depository institution has provided a disclosure which meets the requirements of this section prior to such effective date.

(b) Each depository institution shall—

(1) post at each location where its employees receive deposits, a clear and conspicuous notice setting forth its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument; and

(2) mail at least annually a brief reminder with respect to an account that deposits by check or similar instrument may not be available for immediate withdrawal.

(c) Each owner of an automatic or electronic terminal shall provide at each terminal location where deposits may be made a brief reminder that deposits by check or similar instrument may not be available for immediate withdrawal.

(d) Any change to a depository institution's general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account, other than a change which expedites the availability of such funds, may take effect only after the depository institution has provided notice of such changes to the customer.

(e) Each depository institution shall provide disclosure, consistent with the disclosures required under subsection (a), by telephone of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into a customer's account upon the telephone request of any person.

(f) The Board shall prescribe regulations to carry out this section. These regulations may contain such definitions, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as the Board determines are necessary to effectuate the purposes of this section, to prevent circumvention or evasion of this section, or to facilitate compliance with this section. The regulations of the Board shall require all disclosures, statements, and notices provided to be clear and conspicuous and in language that can be readily understood.

(g) A depository institution that does not begin to compute interest or dividends on funds deposited by check or similar instrument to an interest bearing deposit account or a time deposit on or before the date on which that depository institution receives provisional credit for the deposit (or if provisional credit is given on a nonbusiness day, the next business day) shall provide a written disclosure, within the time periods required under subsection (a), with respect to when the institution begins to compute interest on such funds.

(h) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language. Nothing in this Act requires the use of any such model form or clause prescribed by the Board under this section. A depository institution shall be deemed to be in compliance with the provisions of this section if it (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this Act, or (B) rearranging the format.

(i) Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

INTEREST ON DEPOSITS

SEC. 1004. For the purpose of computing the amount of interest or dividends payable with respect to an interest bearing deposit account or a time deposit, a depository institution may not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument (or if provisional credit is given on a nonbusiness day, on the next business day) unless the computation of interest begins at a later date for all deposits, including cash deposits, made to the account or deposit. Nothing in this section requires the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid.

IMPROVED CLEARING PROCEDURES

SEC. 1005. (a) Not later than 18 months after the date of enactment of this Act, the Board shall publish for comment a regulation for the purpose of improving the check clearing system used by depository institutions by expediting the process for returning checks or other means in order to achieve the goal of—

(1) making deposits of funds by check or similar instrument drawn on local depository institutions available for withdrawal upon the expiration of one business day after deposit, and

(2) making deposits of funds by check or similar instrument drawn on other depository institutions available for withdrawal upon the expiration of three business days after deposit.

This subsection does not apply to any check or similar instrument which poses a serious risk of loss to a depository institution.

(b) In prescribing the regulation under subsection (a), the Board shall consider—

(1) adopting a uniform endorsement standard;

(2) providing for direct notification of returning checks and similar instruments to the depository institution of first deposit;

(3) providing for direct return of checks and similar instruments to the depository institution of first deposit;

(4) providing for return of all checks and similar instruments through the Federal Reserve System's clearinghouse;

(5) extending limits for returns;

(6) establishing schedules for the availability of funds deposited by checks and similar instruments;

(7) prescribing the availability of funds deposited by checks and similar instruments based on the nature of the account to which the deposit was made or the nature of the account holder;

(8) the use of electronic means of collecting and returning checks;

(9) providing for check truncation;

(10) the establishment of an automated return system;

(11) charging a depository institution based upon notification that a check or similar instrument will be presented for payment;

(12) creating incentives for depository institutions to return unpaid items promptly to the depository institution of first deposit; and

(13) keeping the costs of any improvements to be implemented to a minimum.

(c) The regulation prescribed under subsection (a) shall become effective not later than 36 months after the date of enactment of this section. Each depository institution shall comply with the provisions of such regulation.

(d) The Board shall establish an Expedited Funds Availability Council (hereinafter referred to as the "Council") to advise and consult with the Board in the exercise of its functions under this section. The Council shall consist of—

(1) the Comptroller of the Currency or his delegate;

(2) the Chairman of the Federal Deposit Insurance Corporation or his delegate;

(3) the Chairman of the Federal Home Loan Bank Board or his delegate;

(4) the Chairman of the National Credit Union Administration Board or his delegate;

(5) two members of the Consumer Advisory Council designated by the Board;

(6) one representative from the users of payment systems services; and

(7) one representative from the providers of payment systems services in competition with the services offered by the Federal Reserve System.

The Council shall meet from time to time at the call of the Board.

AVAILABILITY OF CERTAIN FUNDS

SEC. 1006. The Secretary of the Treasury shall by regulation require that funds deposited by a check drawn on the Treasury of the United States, which is first endorsed for deposit by a customer who has an established relationship, as defined by the Board, with the depository institution shall be available for withdrawal by that customer not later than the date when the depository institution is given provisional credit for that check or, if provisional credit is given on a nonbusiness day, on the next business day.

ADMINISTRATIVE ENFORCEMENT

SEC. 1007. (a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and Federal savings banks), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union or insured credit union.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the appropriate State regulatory authority shall enforce such requirements.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other authority designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

CIVIL LIABILITY

SEC. 1008. (a) Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under section 1003 (other than subsection (e)), 1004, or 1006 with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $50 nor greater than $500; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the depository institution; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.

(b) A depository institution may not be held liable in any action brought under this section for a violation of section 1003, 1004, or 1006 if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this Act is not a bona fide error.

(c) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(d) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECT ON CHECK ACCEPTANCE POLICIES AND OTHER LAWS

SEC. 1009. (a) Nothing in this title—

(1) prevents a depository institution, in accordance with the policy of such depository institution, from making funds available for withdrawal in a shorter period of time than is provided in this title or in regulations adopted by the Board; or

(2) affects a depository institution's right—

(A) to accept or reject a check for deposit; or

(B) if a check is accepted for deposit and the depository institution has made provisional settlement with the depositor, pursuant to law to—

(i) revoke the provisional settlement given by the depository institution;

(ii) charge back the depositor's account; or

(iii) claim a refund of such provisional credit.

(b) Except as provided in subsection (a), the provisions of this title or the regulations of the Board prescribed under this Act shall supersede the provisions of any State law which the Board determines to be inconsistent with the provisions of this title or such regulation, but only to the extent of the inconsistency.

IMPROVING PAYMENT MECHANISMS

SEC. 1010. Not later than one year after the implementation of any regulations under section 1005 of this title, the Board shall prepare a study and submit its findings to the Congress on the effect of improvements and changes in the payments system, including—

(1) the effect of the changes made by section 805 of this title, and the advisability and feasibility of further changes;

(2) an assessment of improvements that can be made in the check collection system, including improved procedures for the return of unpaid items, reduction of costs, reduction in the number of returned checks, greater speed and efficiency in the check collection and return system, utilization of more efficient technology, and parity of treatment of depository institutions; and

(3) an assessment of the use of electronics in payments and of the need for improvements in the way the payments system pro-

vides services so as to insure efficient and affordable services, including the possible development of additional electronic services.

EFFECTIVE DATE

SEC. 1011. Except as provided in section 1005, this title takes effect upon the expiration of 12 months following its enactment.

TITLE XI—CREDIT CARDS

SHORT TITLE

SEC. 1101. This Act may be referred to as the "Fair Credit Card Act of 1986".

CREDIT CARD SOLICITATIONS AND BALANCE COMPUTATION

SEC. 1102. Section 127 of the Truth in Lending Act is amended by adding at the end thereof the following:

"(c) The Board shall issue regulations that require credit card solicitations or advertisements mailed to the consumer to disclose clearly and conspicuously—

"(1) the annual percentage rate applicable to extensions of credit obtained by use of the credit card;

"(2) the conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, or, if no such time period is provided, the creditor shall disclose such fact; and

"(3) the annual fees and other charges, if any, applicable to the issuance or use of the credit card.

"(d)(1) The Board shall issue regulations that require charge card solicitations or advertisements mailed to the consumer to disclose clearly and conspicuously—

"(A) the annual fees and other charges, if any, applicable to the issuance or use of the charge card; and

"(B) that charges incurred by use of the card are due and payable upon receipt of a periodic statement of charges.

"(2) For the purpose of this subsection—

"(A) the term 'charge card' means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge; and

"(B) an issuer of charge cards shall make the disclosures required by this subsection in lieu of those required by subsection (c) where open end credit obtained in connection with the charge card is not automatically accessed through use of the card.

"(e)(1) For any open end credit plan involving a credit card under which credit may be extended by a party other than the provider of goods or services, the balance upon which finance charges may be imposed shall be computed using an average daily balance method or any alternative method which results in lower finance charges than the average daily balance method.

"(2) The Board shall by regulation prescribe criteria under which a balance calculation method may be deemed to be an average daily balance method or an alternative method which results in a lower finance charge for the purpose of paragraph (1). Such regulations shall—

"(A) permit issuers of credit cards to adopt grace periods during which credit is extended without incurring a finance charge, but shall not require the adoption of such a grace period; and

"(B) permit issuers of credit cards with cash advance features to adopt different grace periods for cash advances than for credit advances, if any such different period is clearly disclosed.".

TITLE XII—MISCELLANEOUS

TREATMENT OF FUNDS OF DEPOSITORY INSTITUTION REGULATORS

SEC. 1201. (a) Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by adding at the end thereof the following:

"(9) Notwithstanding any other provision of law, the expenditure of amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or to sequestration or reduction of obligation limitations for the purpose of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) The second paragraph of section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by inserting after the fifth sentence the following: "The expenditure of such funds, inclusive of all administrative expenses, shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or sequestration or reduction of obligation limitations for the purpose of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(c) Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by adding at the end thereof the following:

"(j) Notwithstanding any other provision of law, the expenditure of amounts received by the Corporation pursuant to any assessment under this Act, deposits required under this section, and any other monies received or held by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or to sequestration or reduction of obligation limitations for the purpose of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(d) The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 19 (12 U.S.C. 1439) the following:

"EXPENDITURE AUTHORITY

"SEC. 19A. Notwithstanding any other provision of law, the expenditure of amounts received pursuant to any assessment under this Act and any other monies received or held by the Board shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or to sequestration or reduction of obligation limitations for the purpose of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(e) Title I of the Federal Credit Union Act is amended by adding at the end thereof the following:

"EXPENDITURE AUTHORITY

"SEC. 131. (a) Notwithstanding any other provision of law, the expenditure of funds received by the Board pursuant to any method provided by this title, and interest, dividend, or other income thereon, shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or to sequestration or reduction of obligation limitations for the purpose of the Balanced Budget and Emergency Deficit Control Act of 1985.".

NOW ACCOUNT AMENDMENT

SEC. 1202. Section 2(a)(2) of Public Law 93-100 (12 U.S.C. 1832 (a)(2)) is amended by inserting "political," after "educational,".

REIMBURSEMENT FOR TRAVEL

SEC. 1203. Section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437) is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, in accordance with Board regulations to prevent conflicts of interest, the Board may accept payment and reimbursement, in cash or in kind, from Federal or non-Federal agencies, organizations (including industry trade groups), and individuals for travel, subsistence, and other necessary expenses incurred by Board members and employees in attending meetings and conferences concerning the functions or activities of the Board. Any payment or reimbursement accepted shall be deposited in the Treasury of the United States, and from time to time may be withdrawn therefrom to defray such expenses. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Board may limit such amounts. For purpose of this subsection, 'Board' includes the Federal Savings and Loan Insurance Corporation. Payments or reimbursements received by such Corporation shall be deposited pursuant to chapter 91 of title 31, United States Code.".

STUDENT LOAN MARKETING ASSOCIATION

SEC. 1204. (a) Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following:

"(f) It shall be unlawful for the Student Loan Marketing Association created under section 439 of the Higher Education Act of 1965, or any subsidiary thereof or any affiliated entity owned or controlled thereby, to acquire, own or control either directly or indirectly the shares or assets of any 'insured bank', 'mutual savings bank', or 'savings bank' as those terms are defined in section 3 of the Federal Deposit Insurance Act or any bank that is eligible to make application to become an insured bank under section 5 of that Act. Any assets or shares of any such bank that are owned or controlled by the Student Loan Marketing Association on the date of enactment of this subsection shall be divested not later than 180 days after that date.".

(b) Section 408(e) of the National Housing Act (12 U.S.C. 1730a(e)) is amended by adding at the end thereof the following:

"(5) It shall be unlawful for the Student Loan Marketing Association created under section 439 of the Higher Education Act of 1965, or any subsidiary thereof or any affiliated entity owned or controlled thereby, to acquire, own or control either directly or indirectly the shares or assets of any 'insured institution' as that term is defined in section 401 of the National Housing Act, any institution that is eligible to make application to become an insured institution under section 403 of that Act, or any institution that is a Federal Home Loan Bank 'member' as that term is defined in section 2 of the Federal Home Loan Bank Act. Any assets or shares of any such institution that are owned or controlled by the Student Loan Marketing Association on the date of enactment of this subsection shall be divested not later than 180 days after that date.".

TITLE I—EMERGENCY ACQUISITIONS

SECTION-BY-SECTION ANALYSIS

Section 101: Short title

Section 101 defines the Act as the "Financial Institutions Emergency Acquisition Amendments of 1986".

Section 102: Extension of Garn-St Germain Act

Section 102 extends for six years the sunset of the emergency provisions of Title I of the Garn-St Germain Act (Title VIII of the bill ends the sunset altogether for the conservatorship and emergency merger authorities for the National Credit Union Administration). In addition, this section sunsets on April 15, 1991 the provision added by section 103 and 104 of this title.

Section 103: Assisted extraordinary acquisition

Subsection 13(f) of the Federal Deposit Insurance Act, which was enacted as part of Title I of the Garn-St Germain Act, currently permits Interstate acquisitions for banks with assets of $500 million or more—but only under limited conditions. Stock institutions, including all eligible commercial banks, may be acquired prior to closing—but only if its board of trustees and chartering authority specify in writing that it is in danger of closing and request the FDIC to assist an acquisition or merger. If a bank is acquired by an out-of-State bank holding company the bank may branch throughout the State to the same extent as an in-State national bank. Absent specific State authorizing legislation, however, bank holding companies may not be acquired by out-of-State holding companies and an out-of State holding company that acquires a bank under subsection 13(f) may not expand in the State other than by branching of the newly acquired bank. This means in unit banking States, the out-of-State bank holding company's entry is limited to the existing office site of the bank it acquires.

The amendments to subsection 13(f) will change existing legislation in four crucial areas. First, the amendments will permit qualified stock institutions, as well as mutual savings banks, to be acquired by out-of-State holding companies before they fail. Second, they lower the threshold measurement for eligibility for both closed and filing banks from $500,000,000 to $250,000,000. Third, the amendments permit a holding company to be sold, in whole or in part, to an out-of-State holding company if the in-State holding company has a bank subsidiary or subsidaries with aggregate banking assets of $250,000,000 or more in danger of closing and such bank or banks represent 33% or more of the holding company's banking assets. Finally, they allow an acquiring out-of-State bank holding company limited expansion rights in the State of acquisition through the bank holding company structure.

Paragraph (1). New subparagraph (A) provides for notice and consultation between the appropriate Federal banking agency (if not the FDIC) and the FDIC when such banking agency is informed that an out-of-State bank or holding company is considering acquiring an insured bank with total assets of $250 million or more that is in danger of closing. This is intended to provide the FDIC with early notice of any possible transactions involving large banks in danger of closing, even if it appears that FDIC assistance will not be required, in the event that FDIC assistance becomes necessary and the FDIC must utilize the procedures of subsection 13(f).

Subparagraph (B) provides that if the FDIC grants assistance pursuant to its powers under subsection 13(c) of the Federal Deposit Insurance Act, the procedures contained in subsection 13(f) shall be followed in any eligible merger or acquisition transaction involving an out-of-State bank or holding company. The FDIC, however, may, in its sole discretion, choose to follow applicable State law rather than the procedures of subsection 13(f) (see paragraph 9). These procedures, including notice to and an opportunity for objection by the state bank supervisor and re-bidding procedures under certain circumstances, are contained in the current law. If the FDIC does not provide assistance under subsection 13(c), subsection 13(f) is not applicable and any eligible transaction will be subject only to the normal approval requirements under State or Federal law.

Paragraph (2). This paragraph is amended to reduce the $500 million asset minimum for interstate acquisitions of closed banks to $250 million. This change is in response to the significant increase in the number of bank failures and the FDIC's increased difficulty in finding in-State purchasers for banks, especially banks whose assets are $250 million or more. It thereby reduces the demand upon the FDIC's resources and affords banks with assets of $250 million or more equal treatment with larger banks.

The remainder of paragraph 2 is unchanged. It provides, among other things, that in any interstate transaction involving a closed bank meeting the size requirement: (i) all other applicable approvals must be obtained; (ii) there shall be notice to and an opportunity for objection by the State bank supervisor (whether the closed bank has a State or Federal charter); and (iii) if the State bank supervisor objects, the FDIC's Board of Directors may exercise its authority only by unanimous vote.

Paragraph (3). Subparagraph (A)(i) extends the emergency interstate acquisition provisions to banks with assets of $250 million or more that, although not closed, have been determined by their Federal or State chartering authority to be in danger of closing. The subsection parallels subparagraph (2)(A), by allowing out-of-State banks and holding companies to establish a new bank to acquire the bank in danger of closing. It also allows an acquisition to be done directly.

The current law contains a comparable provision for mutual savings banks, but not for other FDIC-insured banks. Experience has demonstrated that by the time a bank has actually been closed, the value of its franchise may have been dissipated if not eliminated. In addition, the process of decline into insolvency can create an adverse effect in the financial community. By permitting an interstate acquisition of a commercial bank in danger of closing, but before it is actually closed, the potential for finding a private solution with a lesser commitment of FDIC funds is substantially improved. Such a process also would help maintain the stability of and confidence in the banking system as a whole.

Subparagraph 3(A)(ii) extends the emergency interstate acquisition provisions to holding companies that have a subsidiary bank or banks with aggregate assets of $250 million or more in danger of closing and such bank or banks represent 33% or more of the total assets of the holding company's banking subsidiaries. If the Federal or State chartering authority has determined that such a bank or banks are in danger of closing, an out-of-State bank or holding company may (a) purchase the stock of or otherwise acquire the holding company that controls such bank(s) as well as all of such holding company's other subsidiary banks or (b) acquire the bank or banks in danger of closing. Before the FDIC can assist a merger or acquisition, the board of directors of the bank in danger of closing must request in writing that FDIC assist a merger or purchase.

An out-of-State bank or holding company that purchases from another holding company a bank or banks in danger of failing with aggregate assets of $250 million or more under clause (b) would be permitted to acquire other bank subsidiaries of the holding company. Under this subparagraph, more than one out-of-State holding company may acquire portions of a single holding company, provided that each of the out-of-State holding companies purchases a bank or set of banks, each of which is in danger of closing, that has total assets of $250 million or more, and provided that all subsidiary banks that are in danger of closing account for at least 33% of the assets of all bank subsidiaries of the holding company.

There is no comparable provision in the present law. This provision is, however, essential if the Garn-St Germain extraordinary acquisition provisions are to be effective in States which permit multi-bank holding companies, but do not permit statewide banking. A number of States presently have such a banking structure.

The current Garn-St Germain provisions do not work effectively in such States, particularly where it is the lead bank in the holding company system that is in danger of closing. Potential bidders are deterred because they are limited to a single location and the most troubled part of the banking organization. Even if a bidder can be found for the lead bank, the continued viability of the other banks in the holding company system may be threatened by the loss of the lead bank. This is particularly the case where there are substantial financial relationships between the lead bank and the other banks in the holding company system. Thus, the adoption of this provision could substnatially reduce the financial demands on the FDIC, as well as the adverse effects on the communities served.

Subparagraph (B) provides that if a bank or holding company is eligible to be acquired by an out-of-State bank or holding company under subparagraph (A), but the FDIC provides financial assistance to prevent the closing, so long as FDIC assistance remains outstanding the bank, its holding company, and its bank affiliates can be sold to an out-of-State bank or holding company to the same extent it could have been when assistance was given. This subparagraph applies only when assistance was granted after April 15, 1986.

Subparagraphs (C) and (D) are essentially unchanged from current law.

Paragraph (4). Subparagraph (A) has been changed to confirm that a multiple savings and loan holding company can acquire an FDIC-insured Federal savings bank across state lines. Subparagraph (B) and (C) are unchanged.

New subparagraph (D) provides that an out-of-State holding company that acquires a bank or holding company under subsection 13(f) may, at any time, acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in each state in which a bank acquired under subsection 13(f) is located to the same extent that a holding company located in each of those states may expand. This amendment complements the flexibility provided under subparagraph 3(A) and is supported by the same policy considerations. It is particularly essential in unit banking States where bid-

ders for troubled institutions are deterred by the lack of further expansion possibilities.

Subparagraph (E) provides that an out-of-State bank or holding company that acquires and retains control, directly or indirectly, of a bank under this subsection shall not be required under State law, as a result of such acquisition, to divest any other bank or be prevented from acquiring any other bank in a different State. This paragraph does not prevent the requirement of divestiture to comply with competitive, antitrust and similar standards imposed under Federal law.

This provision, which is not contained in the current law, is in response to State law developments after passage of Garn-St Germain, and is necessary to enable a number of banks to make acquisitions under Garn-St Germain. The regional interstate banking bills of several States require that all of a bank holding company's subsidiary banks be located within a defined region. Accordingly, an out-of-State holding company which has acquired a bank in such a State would be required to divest that bank if it made an acquisition under Garn-St Germain outside the region. This provision would pre-empt such State laws only with respect to Garn-St Germain acquisitions.

Paragraphs (5), (6), and (7). These paragraphs contain provisions relating to the solicitation of offers by the FDIC, resolicitation of bids under certain circumstances, and applicable antitrust standards. They are essentially unchanged from current law.

Paragraph (8). New subparagraph (B) prescribes when a bank is "in danger of closing" and new subparagraph (C) defines when banks are affiliated for purposes of holding company acquisition under subparagraph (3).

Paragraph (9). This paragraph permits the FDIC, in its sole discretion, to assist an interstate transaction under the authority of state law rather than under this subsection. This provision affords the FDIC additional flexibility where a state has enacted its own interstate acquisition authority, but does not in any way limit the FDIC's authority under subsection 13(f).

Paragraph (10). This paragraph confirms that FDIC assistance in a transaction authorized under subsection 13(f) shall not be provided to any subsidiary of a holding company which is not an insured bank. This paragraph, however, is not intended to prevent an intermediate holding company from being a conduit for FDIC assistance ultimately intended for an insured bank.

Section 104: Unassisted extraordinary acquisitions

The Douglas Amendment to the Bank Holding Company Act provides that a bank holding company may not acquire a bank in another State unless that State has specifically authorized the acquisition by statute. This section would amend the Douglas Amendment to permit bank holding companies, under certain circumstances, to acquire banks located in another state where the banks are in danger of closing. This provision would only permit acquisitions of troubled banks that do not involve financial assistance from the FDIC. Acquisitions of troubled banks that involve financial assistance from the FDIC are governed by the preceding sections of this bill. Permitting the Federal Reserve Board to approve acquisitions of banks in danger of closing where the proposed acquisition does not require financial assistance from the FDIC will permit resolution of problems involving banks in serious and identifiable financial difficulties before those problems reach the stage when they require federal financial assistance, thus reducing potential demand on the FDIC's resources.

Subparagraph (2)(A). This subparagraph would amend the Douglas Amendment to allow a bank holding company to acquire a bank in another State when the bank is in danger of closing and has total assets of at least $250 million. This paragraph would also permit an out-of-State bank holding company to acquire a group of smaller banks that are subsidiaries of the same bank holding company if (1) each of the banks is in danger of closing, (2) the combined assets of the group of banks to be acquired is at least $250 million, and (3) the banks in danger of closing are owned by a bank holding company and represent at least 33 percent of the total assets of all bank subsidiaries of that holding company.

Subparagraph (2)(B). This subparagraph provides that a bank holding company that acquires a failing bank under this section may, as part of the transaction in which it acquires the failing bank, also acquire the parent holding company of the failing bank as well as any of the holding company's other subsidiary banks, wherever located, provided that the banks in danger of closing represent at least 33 percent of the total assets of all of the parent holding company's subsidiary banks. In this regard, the legislation would allow more than one out-of-State bank holding company to acquire portions of a single bank holding company, including healthy bank subsidiaries of the holding company, provided that each of the out-of-State bank holding companies purchases a bank or set of banks, each of which is in danger of closing, that has total assets of $250 million or more and provided that all subsidiary banks that are in danger of closing together account for at least 33 percent of the assets of all bank subsidiaries of the bank holding company. An out-of-State bank holding company may not acquire a healthy bank or a bank holding company under this provision unless the out-of-State bank holding company simultaneously acquires an affiliated bank or group of banks in danger of closing.

Subparagraph (2)(C). This subparagraph provides that an out-of-State bank holding company that acquires a failing bank under this legislation may, at any time, acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in each state in which a bank acquired under this section is located to the same extent that a bank holding company located in each of those states may expand. This places the out-of-State bank holding company on an equal footing with in-State bank holding companies in the three largest metropolitan areas in that state.

Subparagraph (2)(D). This subparagraph provides that an out-of-State bank holding-company that acquires a failing bank under this legislation could not be required under State law to divest other banks that it owns, as may be required under certain of the regional interstate banking compacts in existence today. This subparagraph does not prevent any divestiture that may be required to comply with competitive, antitrust, and similar standards imposed under federal law.

Paragraph (3). This paragraph provides that out-of-State bank holding companies may make an acquisition under this provision only if the acquisition is approved by the board of directors of each bank to be acquired or by the board of directors of the parent bank holding company of such banks.

Subparagraph (4)(A). This subparagraph provides that, before the Federal Reserve Board may approve an acquisition under this section, the Comptroller of the Currency in the case of national banks and the State bank supervisor in the case of State banks must certify to the Board that the bank to be acquired is in danger of closing. The bill defines a bank in danger of closing in the same manner as defined above in connection with acquisitions that involve federal financial assistance.

Subparagraph (4)(B). This subparagraph defines affiliated banks as banks that are subsidiaries of the same bank holding company, as those terms are defined in the Bank Holding Company Act.

Subparagraph (5)(A). This subparagraph requires that, before a bank in danger of closing or the parent bank holding company of such a bank enters into any discussions with an out-of-State bank holding company relating to the possible interstate acquisition of the bank without federal assistance under the provisions of this bill, the bank or its parent bank holding company must notify the State bank supervisor in each State in which the bank or any of its affiliated banks are located. This provision would permit the State bank supervisor an opportunity to ascertain whether an acceptable in-State or in-region solution exists for the troubled bank that does not require FDIC assistance. The bank in danger of closing or parent bank holding company must also attempt to arrange for an acquisition of the bank in danger of closing by an in-State or in-region bank holding company, an individual, or any other party that does not require use of the provisions of this section in a transaction that does not require federal assistance. Subparagraph (5)(A)(ii) provides that any application submitted by an out-of-State bank holding company to acquire a bank or bank holding company under this provision must describe efforts by the bank in danger of closing or its parent bank holding company to arrange an in-State or in-region acquisition and the reasons for rejection of any proposals submitted.

Subparagraphs (5) (B) and (C). These subparagraphs require, in addition, that the Federal Reserve Board consult with the State supervisor of the State or States in which each of the banks to be acquired under this section is located, and provides the appropriate State supervisors at least 48 hours to comment on the acquisition. As noted, the State supervisor will have been notified under the preceding subparagraph before the bank or holding company opened discussions with an out-of-State or out-of-region banking holding company.

Subparagraph (5)(D). This subparagraph prohibits the Federal Reserve Board from approving an interstate acquisition under this paragraph over the objection of the appropriate State supervisor, if the State supervisor certifies that a person or group of persons (1) stands ready to acquire each of the banks in danger of closing without use of the interstate acquisition provisions of this bill and without federal assistance; (2) offered, or attempted to offer, to purchase the banks in danger of closing prior to the time that the out-of-State bank holding company submitted its application under this provision to the Board; and (3) has the financial and managerial resources necessary to receive all required regulatory ap-

provals promptly and to recapitalize all of the banks in danger of closing without impairing the financial resources of the acquiring parties and without federal assistance. This provision permits the relevant state supervisor to exercise a preference for individuals or for bank holding companies located within the state in which the bank in danger of closing is located or in a State from which an interstate acquisition is permitted under state law enacted pursuant to the Douglas Amendment (for example, a bank holding company located in a state that has entered into a regional compact or other interstate arrangement with the State in which the failing bank is located).

Subparagraph (5)(E). This subparagraph permits the Federal Reserve Board to approve an acquisition by an out-of-State bank holding company in the event that a person or group of persons certified by the State supervisor does not receive all necessary regulatory approvals, or the Federal Reserve Board determines that the person or group of persons does not have the financial or managerial resources necessary to recapitalize the failing banks and, thereafter, to continue to meet all applicable regulatory requirements. Under this provision, the in-State or in-region offer certified by the supervisor does not have to match or exceed the offer by an out-of-State bank holding company. The only limitation on the in-State or in-region offer is that it must result in acquisition of all of the banks in danger of closing without any financial assistance from the Federal Deposit Insurance Corporation.

Paragraph (6). This paragraph authorizes the Federal Reserve Board to waive the requirements of notice to the appropriate chartering authority and opportunity for hearing ordinarily applicable to the acquisition by a bank holding company of a bank under section 3 of the Bank Holding Company Act for any acquisition authorized under this section or under the emergency provisions of section 13(f) of the Federal Deposit Insurance Act. This would enable the Board to waive the notice and hearing requirements of the Act in the event an out-of-State bank holding company was acquiring not only the failing bank but also the parent holding company and its other subsidiary banks. As described above, this section provides that the chartering authority be given notice of a proposed acquisition under this section and provides a mechanism for the State supervisor to object to the proposed acquisition.

This paragraph also authorizes the Board to shorten the post-approval waiting period required under section 11 of the Bank Holding Company Act for an acquisition approved under this paragraph, and to waive this period entirely to permit immediate acquisition of any or all of the banks to be acquired where the Board finds that immediate action is necessary to prevent probable failure of any of the banks acquired under this section.

TITLE II—FEDERAL DEPOSIT INSURANCE

SECTION-BY-SECTION ANALYSIS

Section 201: Short title

Section 201 provides that this title may be called the "Federal Deposit Insurance Improvements Act of 1986".

Section 202: Risk-related assessments

Section 202 of the Improvements Act allows the FDIC to vary the assessment rate that each bank must pay for FDIC insurance according to the risks that the bank presents to the FDIC's insurance fund. The assessment rate for any particular bank shall not exceed one-sixth of one per centum nor fall below one-twelfth of one per centum.

Any technique for measuring risks must be flexible enough to respond to changes in the banking environment. Accordingly, the Improvements Act specifies that the FDIC must act by regulation, but does not prescribe particular types of risks the FDIC must consider.

Section 203: Assessment of collateralized deposits

Section 203 of the Improvements Act enables the FDIC by regulation to include secured borrowings in the assessment base of insured banks. The purpose of this amendment is that, in light of the preference that the Improvements Act gives to deposits, creditors may seek to place themselves ahead of depositors by obtaining collateral from a bank as security for the funds provided by the creditor. Collateralized borrowings could remove substantial assets of a bank from the pool of assets available for the payment of general creditors. In effect, these collaterized borrowings would be the equivalent of insured deposits, but would never have been assessed.

Section 204: Procedure for removal of insurance

Under current law, before the FDIC brings an action for removal of insurance from a bank, the FDIC must give the chartering authority and the insured bank up to 120 days to correct violations of law or end unsafe or unsound practices. The Improvements Act eliminates this waiting period. The change will expedite the process for the removal of insurance and will reduce the period required for reaching a final determination in such cases by approximately six months.

Section 205: Enforcement procedures

Section 205 of the Improvements Act enables the appropriate Federal banking agency for a bank to issue cease-and-desist orders specifically directed at the activities of any director, officer, employee, or agent of an insured bank; or at the activities of any other person participating in the conduct of the affairs of such bank. The agency may censure or place limitations on the activities or functions of any such person, or suspend or bar him or her from participating in the affairs of that bank, or of any other insured bank, for up to twenty-four months. This change provides a less onerous means of temporarily removing people whose activities do not rise to the level contemplated for total removal pursuant to Section 8(e) of the FDI Act. See 12 U.S.C. § 1818(b)(1).

Section 205 of the Improvements Act authorizes the banking agencies to issue temporary orders that place limitations on the activities or functions of a bank, its directors, officers, employees, or agents, and on the activities or functions of any other person participating in the conduct of the affairs of the bank, or that suspend or bar any such person from participating in the affairs of that bank, or of any other insured bank, pending the completion of the proceedings. See 12 U.S.C. § 1818(c)(1).

Section 205 of the Improvements Act clarifies the banking agencies' existing authority by amending Section 8(e) of the FDI Act to provide that, when a Federal banking agency has removed a person from office at one insured bank, the agency may prohibit that person from participating in the affairs of any insured bank without the agency's prior written approval. See 12 U.S.V. § 1818(e)(1), (2) & (4). The Improvements Act further clarifies existing authority in confirming that agencies have jurisdiction and authority to proceed under Section 8(e) of the FDI Act against bank officials who have left office within one year prior to the date on which the agency has instituted the proceedings against them or the bank. See 12 U.S.C. § 1818(e)(6).

Section 206: Power to define terms

Section 206 of the Improvements Act makes it clear that the FDIC has the power to define any terms used in the FDI Act that are not specifically defined by the FDI Act, and to interpret definitions that are provided in the FDI Act.

Section 207: Examinations

Section 207 of the Improvements Act makes it clear that the FDIC has authority to interpret the definition of the term "affiliate" as that term is used in section 10 of the FDI Act. Section 10 or the FDI Act empowers the FDIC to make regular examinations of the banks it regulates and their affiliates, and to make special examinations of other insured banks and their affiliates. The Improvements Act enables the FDIC to define "affiliate" broadly enough to prevent evasions of the purpose and intent of Section 10 of the FDI Act.

Section 208: Priorities in claims

Section 208 of the Improvements Act establishes, as a matter of Federal law, a uniform set of priorities for paying claims against failed banks estates. Currently national banks are liquidated in accordance with Federal law, while State banks are liquidated in accordance with State law. Federal law treats all claimants alike. Accordingly, bank customers in the same State may be treated differently depending on whether their bank is a State-chartered bank or a national bank. The Improvements Act eliminates this disparity. It follows the lead of the fourteen States that have modernized their laws to give priority to depositors.

In establishing Federal priorities for claims, the Improvements Act also provides a nationwide standard for paying claims against the estates of failed banks. This result is beneficial in at least two ways. First, it provides greater certainly to depositors and other creditors regarding the character of their claims. Second, it facilitates the use of purchase-and-assumption transactions for banks wherever they are located.

The priorities are as follows:

Priority 1. This category includes three kinds of claim: administrative expenses of the receivership; reasonable administrative expenses of the bank or branch incurred within thirty days of the closing; and all claims of the United States Government.

The receivership's administrative expenses include any and all advances that the receiver may make to preserve, protect, or enhance any receivership asset, and all costs that the receiver may incur in operating the receivership.

The administrative expenses of the bank include expenses such as employees' wages, services provided by accountants, attorneys, appraisers, or examiners, and other operating expenses normally incurred in the course of the business and operations of banking. A priority for such claims assures that a bank can operate normally until closing. Accordingly, all claims of this kind fall within Priority 1, but only if they are reasonable in amount and in kind, as deter-

mined by the receiver in its sole discretion. If the receiver does not recognize a claim as qualifying for Priority 1, the claim is in whatever lower category is appropriate, according to the nature of the claim.

In affording claims of the United State Government a priority over all other claims (except those also included in Priority 1), the Improvements Act retains the policy expressed in 31 U.S.C. 3713. That statute generally gives claims of the United States Government a priority over all other claims. The priority only applies to claims against State banks, however, because the National Bank Act provides for ratable distribution of claims against the estate of a failed national bank. 12 U.S.C. § 194; *See Jennings* v. *United States Fidelity Guaranty Co.*, 294 U.S. 216 (1935). The Improvements Act extends this policy to national banks as well. It thereby establishes a uniform treatment of claims filed by the United States Government, without regard for whether the claims are filed against State banks or national banks.

The question whether a claim of a particular agency is entitled to priority is to be decided in the same manner under the Improvements Act as under 10 U.S.C. § 3713. In this connection, it should be noted that 10 U.S.C. § 3713 does not confer priority on claims of the Corporation against a failed bank, and the Improvements Act retains this treatment of such claims. The Corporation's claims only fall within Priority 1 if they are claims for "administrative expenses of the receivership."

Priority 2. This category includes all claims for deposits, and all claims of the Corporation as subrogee to depositors. The term "deposit" does not include foreign deposits or deposits held by international banking facilities. Claims based on such obligations have a lower priority (generally Priority 3).

Priority 3. This category includes all other claims that have accrued and become unconditionally fixed by the time of closing and that are then due and owing. Ordinarily, claims of this kind are shown as liabilities on the books of the bank at the time of closing. But Priority 3 excludes such claims when they are related to subordinated debt or stock.

The Improvements Act provides that the receiver shall pay all claims in Priority 3 before paying those of lower priorities. Accordingly, the receiver has much greater flexibility in dealing with the estate of a failed bank. In addition, the receiver can more accurately compare the costs of liquidating the failed bank's assets, of arranging a purchase-and-assumption transaction with a solvent bank, and of organizing a bridge bank to carry on the failed bank's business for a temporary period.

Priority 4. This category includes all other claims except claims related to subordinated debt or stock. The vast majority of claims in Priority 4 are contingent claims—*e.g.*, lawsuits that have not yet reached final judgment, standby letters of credit, and other such claims.

Priority 4 also includes claims for accelerated stipulated or liquidated damages that accrue upon the closing of the bank or branch, except such claims that pertain to subordinated debt or stock. Accordingly, the Improvements Act prevents a claimant from elevating a claim to Priority 3 merely by having an agreement providing for such damages.

Priority 5. This category includes claims for subordinated debt that the bank has issued to the Corporation, and any other subordinated debt that is issued and outstanding on the effective date of the Federal Deposit Insurance Improvements Act of 1986. If Corporation does not hold subordinated debt of the bank at the time the bank closes, all subordinated debt falls within Priority 6. Claims based on agreements for accelerated, stipulated or liquidated damages that pertain to agreements to subordinated debt identified in Priority 5 likewise fall within Priority 5.

Priority 6. This category includes all other claims for subordinated debt. Claims based on agreements for accelerated, stipulated or liquidated damages that pertain to subordinated debt identified in Priority 6 likewise fall within Priority 6.

Priority 7. This category includes claims by shareholders based on stock ownership, together with claims for accelerated, stipulated or liquidated damages based on such stock ownership.

The Improvements Act permits a receiver to make distributions of the assets of the estate of the bank or branch to the claimants within any priority category on a *pro rate* basis at any time, so long as the receiver has made provision for paying all claims of any higher priority in full. The receiver is not obligated to delay distributions to domestic claimants as a result of impediments, whether procedural or substantive, in obtaining payment of claims that are subject to procedures established by foreign governments, however.

The Improvements Act provides for the accrual of interest on claims after the closing of a bank, and prescribes the rate at which interest shall accrue on such claims. The rate is determined at the start of the receivership, and remains the same throughout the receivership's life.

Section 209: Subrogation

Section 209 of the Improvements Act provides that, as a matter of Federal law, the Corporation shall be subrogated to all rights of a depositor when the Corporation makes payment of insurance to him or her for the insured portion of his or her deposit. The Corporation is only subrogated to the extent of such payment; the depositor retains his or her claim against the failed bank's estate for any amounts exceeding the insurance payment.

The subrogation includes the right to receive the same dividends from the proceeds of the assets of such closed bank as would have been payable to the depositor on a claim for the insured deposit.

Currently, the FDIC may make insurance payments only if State law recognizes the FDIC's rights as subrogee. Where State law does not explicitly provide for such subrogation, the FDIC must assure itself of such subrogation by another means—typically, by requiring the depositor to transfer such rights to the FDIC as a condition of receiving insurance. Techniques like these are needlessly costly, however. The Improvements Act eliminates the need for them.

Section 210: Bridge banks

Section 210 of the Improvements Act creates a new vehicle, called a "bridge bank," for dealing with bank failures. This vehicle enables the FDIC to "bridge" the gap between the failed bank and a satisfactory purchase-and-assumption or other transaction that cannot be accomplished at the time of failure.

A "bridge bank" is a new national bank established by the FDIC to take over the assets and liabilities of a failed bank and to carry on its business for a limited period of time. The FDIC may only establish a bridge bank if it finds that:

The cost of organizing and operating a bridge bank will not exceed the cost of liquidating the failed bank, including paying its insured accounts; or

The continued operation of the failed bank is essential to provide adequate banking services in its community; or

The continued operation of the failed bank is in the best interest of the depositors of the closed bank or the public.

The FDIC must dispose of the stock of a bridge bank within two years. The FDIC may, after consulting with the Comptroller of the Currency, extend this deadline for a maximum of one year.

Bridge banks have all the powers of other national banks. Bridge banks do not always have capital, however. Accordingly, the Improvements Act frees them from various statutory limits based on bank capital, and instead empowers the Comptroller of the Currency to specify appropriate limits.

When a bridge bank has taken over a failed bank, and the failed bank could have been acquired by a bank owned by an out-of-state holding company under Section 13(f) of the FDI Act, 12 U.S.C. § 1823(f), the bridge bank may likewise be acquired by a bank owned by an out-of-state holding company, or directly by an out-of-state bank or holding company.

Section 211: Branching

The FDI Act now provides that, if a bank wishes to establish a new domestic branch, or to move an existing domestic branches (including its main office), the FDIC must approve the action in advance. The Improvements Act relaxes this restriction. It provides that an insured nonmember bank need only notify the FDIC within thirty days of the date on which the bank establishes and begins to operate a domestic branch (including its main office) at a new location. The rules regarding foreign branches remain unchanged. See 12 U.S.C. § 1828(d)(1).

Section 212: Technical and conforming amendments

Section 212 of the Improvements Act strikes out various obsolete provisions, and corrects typographical errors in the present text of the FDI Act. These changes are nonsubstantive in nature.

TITLE III—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION RECAPITALIZATION

SECTION-BY-SECTION ANALYSIS

Section 301

Section 301 provides that this title may be called "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1986."

Section 302

Section 302 amends the Federal Home Loan Bank Act to add a new section 21 that would require the Federal Home Loan Banks ("FHLBanks" or "Banks") to invest in the newly created "Financing Corporation", which, in turn, would be required to invest in the Federal Savings and Loan Insurance Corporation ("FSLIC"). Under paragraph (1) of subsection (a) of new section 21 of the Federal Home Loan Bank Act, the Federal Home Loan Bank Board ("board") would be required to charter the Financing Corporation, which would be under the direction of the Financing Corporation Directorate ("Directorate"), and operated by the Directorate subject to the

board's rules, regulations, orders, and directions. Subsequent provisions of this Act describe the Financing Corporation, which would be owned by the FHLBanks and would be used as a means of financing an equity transfer to FSLIC. Paragraph (1) also would require each FHLBank to purchase non-voting capital stock in the Financing Corporation at such time and in such amounts as prescribed by the board. The stock would have par value and would be transferable only among the Banks, in the manner prescribed by the board. The Banks' investment would be lawful, notwithstanding limitations found elsewhere in the Federal Home Loan Bank Act.

The Directorate would consist of three members, one of whom would be the Director of the Office of Finance of the FHLBanks or his successor, and two of whom would be selected by the Chairman of the Federal Home Loan Bank Board from among the presidents of the FHLBanks. Each of the two FHLBank presidents would serve for a term of one year. No president of a FHLBank could be selected to serve an additional term on the Directorate unless each of the FHLBank presidents had already served at least as many terms as the president being selected to serve the additional term. The legislation provides that the Chairman of the Federal Home Loan Bank Board will select a chairman of the Directorate from among its three members.

Paragraph (2) of subsection (a) of new section 21 would limit the aggregate amount of the Banks' investment in the Financing Corporation to $3 billion, and the cumulative investment by each Bank to the aggregate of its legal reserves plus "undivided profits." For purposes of the Banks' investment in the Financing Corporation, the language referring to legal reserves and "undivided profits" is intended to include all retained earnings of the FHLBanks except for those amounts held in the "dividend stabilization reserve" as of December 31, 1985. The "dividend stabilization reserve" is excluded from investment in the Financing Corporation because it includes funds, above the legal reserves, that had been determined not to be dividended in the year earned, so as to create a possible supplement to future years' dividends. This special dividend reserve, would, however, have to be used completely before a FHLBank, subject to board approval, could ever draw on its legal reserves under the circumstances outlined under section 305 of this Act. To ensure that only the amount held in the "dividend stabilization reserve" as of December 31, 1985, is excluded from the amounts that may be invested in the Financing Corporation, the legislation specifically lists the amounts held by each FHLBank in its "dividend stabilization reserve" as of December 31, 1985. For purposes of this Act, "undivided profits" includes retained earnings other than legal reserves and amounts held in the "dividend stabilization reserve" as of December 31, 1985. "Legal reserves" refers to the amount each FHLBank has and is required to carry to a reserve account pursuant to the first two sentences of Section 16(a) of the Federal Home Loan Bank Act.

Under paragraph (3) of subsection (a) of new section 21, each FHLBank would be required to purchase a specified percentage of the first $1 billion of stock in the Financing Corporation. The percentage of the first $1 billion that each Bank is required to invest in non-voting capital stock of the Financing Corporation is derived from a formula taking into account each Bank's individual share of total FHLBank System retained earnings (minus their "dividend stabilization reserves") and the share of FSLIC-insured deposits held by each Bank's member institutions. By taking into account the shares of FSLIC-insured deposits held by Banks' member institutions, the formula accommodates Banks' member institutions that are insured by the Federal Deposit Insurance Corporation.

Allocation of the remaining stock purchases is based on the percentage of total assets of FSLIC-insured members represented at each Bank; however, the amount of stock that any FHLBank would be required to purchase is limited to the total of its legal reserves plus undivided profits, which are described above. The aggregate amount of Financing Corporation stock that must be purchased by all of the FHLBanks is not reduced because of the above limitation, which may affect particular Banks. Therefore, paragraph (4) of this subsection provides for a reallocation of stock purchases among Banks that have not reached their limits.

Paragraph (4) of subsection (a) of new section 21 provides that if a Bank could not purchase the full amount of stock in the Financing Corporation because that amount exceeded its legal reserves plus undivided profits, the amount that that Bank could not purchase would be prorated for investment among the remaining FHLBanks based on their stock holdings in the Financing Corporation, as long as the cumulative amount of funds required to be invested in by the remaining Banks did not exceed their legal reserves and undivided profits. Any such FHLBank that did not purchase the full amount of Financing Corporation stock as required under the formula in the preceding paragraph would be obligated to purchase at some future time from those Banks to which such stock was reallocated, the stock that would have originally been allocated to it. Until the restricted Bank had fulfilled this repurchase obligation, it would be prohibited from paying dividends in excess of one-half of its net earnings. Such funds not paid out in dividends would be placed in a reserve required by the board and would not be available for dividends.

Under subsection (b) of new section 21, the Financing Corporation, subject to rules, regulations, orders, and directions prescribed by the board, would be provided with corporate powers necessary and appropriate for its operation as a specialized entity. Such corporate powers would include the power to issue obligations in the form of non-voting capital stock to the FHLBanks; to invest in any securities issued by FSLIC; to borrow from the capital markets by issuing debt, the maturity of which (including any refinancings) could not exceed thirty years, and the net proceeds of which would be required to be invested in FSLIC, or used to refund obligations whose net proceeds were so invested, under terms and conditions approved by the board; and other powers which are customary and usual for corporations generally. Under the terms of this subsection, the Financing Corporation would have no paid employees and the Directorate could, with the approval of the board, authorize the officers, employees, or agents of the FHLBanks or board to act on behalf of the Financing Corporation to perform the Financing Corporation's functions.

Under paragraph (1) of subsection (b) of new section 21, obligations of the Financing Corporation (which would be issued only with the approval of the board), like FHLBank obligations, would be lawful investments, and could be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which would be under the authority or control of the United States or any officer or officers thereof. This subsection would also authorize the Federal Reserve banks to act as depositaries, custodians, and/or fiscal agents for the Financing Corporation in the general performance of its powers under this Act.

Pursuant to paragraph (2) of subsection (b) of new section 21, obligations of the Financing Corporation would be treated in the same manner as FHLBank obligations for purposes of investment, sale, underwriting, purchase, use as collateral, and dealing by financial institutions such as banks, thrifts, and credit unions.

Under paragraph (3) of subsection (b) of new section 21, the Financing Corporation would bear exclusive liability for its obligations and interest thereon. The Financing Corporation's obligations and interest thereon would no be obligations of or guaranteed by the FHLBanks, the United States, or FSLIC. Obligations of the Financing Corporation would have the same tax status as obligations of the FHLBanks and the Financing Corporation would have the same tax status as the FHLBanks. The Secretary of Treasury would be authorized to prepare the necessary forms of stock, debentures, and bonds, as approved by the board, pursuant to Section 23 of the Federal Home Loan Bank Act, for obligations of the Financing Corporation, as the Secretary of Treasury is also so authorized for obligations of the FHLBanks.

Under paragraph (4) of subsection (b) of new section 21, all instruments issued by the Financing Corporation would be exempt securities under the provisions of the Federal securities law administered by the Securities and Exchange Commission. This exemption is the same as that enjoyed by obligations of the FHLBanks.

Under paragraph (5) of subsection (b) of new section 21, the Financing Corporation would be prohibited from making any net new borrowings after December 31, 1996, although the Financing Corporation would be permitted to refinance previously issued debt after December 31, 1996. Refinancings of previously issued debt could not mature later than December 31, 2026.

Paragraph (6) of subsection (b) of new section 21 would accord the Financing Corporation the same coverage under the Government Corporations Control Act as the FHLBanks are accorded under that Act pursuant to Section 11(j) of the Federal Home Loan Bank Act (12 U.S.C. 1431(j)). Thus, audits of the Financing Corporation by the General Accounting Office could be conducted although the Financing Corporation would have no Government capital invested in it. In addition, the Secretary of the Treasury, a Federal Reserve Bank, or a bank designated as a depositary or fiscal agent of the United States Government would have the authority to keep the Financing Corporation's accounts (although the Secretary of Treasury could waive this provision regarding accounts and there is separate authority for Federal Reserve banks to act as depositaries, custodians, and/or fiscal agents for the Financing Corporation pursuant to new paragraph 21(b)(2)). Before the Financing Corporation could issue obligations and offer them to the public, the Secertary of the Treasury would prescribe the various conditions to which the obligations would be subject (in-

cluding the form, denomination, maturity, and interest rate), the way and time the obligations would be issued, and the price for which the obligations would be sold. This procedure is currently in place for the issuers who are subject to Section 9108(a) of title 31, United States Code (part of the Government Corporations Control Act) and in practice the Treasury generally approves terms and conditions on obligations as proposed by these issuers. Finally, before the Financing Corporation could buy or sell a direct obligation of the United States Government, or an obligation on which the principal, interest, or both, is guaranteed, of more than $100,000, the Secretary of Treasury would have to approve the purchase or sale, although the Secretary could waive this requirement. All of these authorities also pertain to the FHLBanks' issuance of debt.

Under new subsection 21(c) the Financing Corporation would invest those assets that it does not invest in FSLIC, in the same set of obligations and under the same conditions as FHLBanks are permitted to invest their reserves under the current Section 16 of the Federal Home Loan Bank Act. These investments include: (1) investments in zero-coupon securities, which investments would be used to defease at maturity the principal of debt issued by the Financing Corporation; and (2) short-term investments of the net proceeds of debt issued by the Financing Corporation prior to the purchase of FSLIC capital stock and certificates.

Under new subsection 21(d), obligations issued by the Financing Corporation and outstanding would be issued at such times and in such amounts as the board determines, but would not be permitted to exceed the greater of (1) five times the Financing Corporation's paid-in capital, as determined by the board, or (2) the face amount (which for zero-coupon securities would be the principal amount due at maturity) of obligations invested in by the Financing Corporation pursuant to subsection 21(c). The second restriction would permit the Financing Corporation to exceed a five-to-one leverage only if it could purchase securities whose amount due at maturity would at least equal the principal amount due on all the Financing Corporation's debt, thereby ensuring that the debt principal would be repaid.

New subsection 21(e) would require both retirement of all Financing Corporation obligations and liquidation of the Financing Corporation no later than December 31, 2026. This date relates to the date in new subsection 21(b) which provides both that the Financing Corporation cannot issue obligations whose maturities exceed thirty years, and that the Financing Corporation can make no net new borrowings after December 31, 1996. The board, on behalf of the FHLBanks, would be the successor to the powers of the Financing Corporation deemed necessary by the board to be preserved.

Section 303

Section 303 would establish the status of the Financing Corporation as a "mixed ownership" government corporation, which is the same status accorded to FHLBanks, under the Government Corporations Control Act. Although there would be no government capital invested in the Financing Corporation, this category of "mixed ownership" has been accorded to the Financing Corporation to provide it with parallel legal status to that of the FHLBanks.

Section 304

Section 304 would empower FSLIC to issue equity in the forms of redeemable nonvoting capital stock and non-redeemable capital certificates. The non-voting capital stock would be issued in an amount equal to the aggregate investment by the FHLBanks in the Financing Corporation. The Financing Corporation would be the sole purchaser of both the capital certificates and the capital stock issued by FSLIC, and proceeds paid to FSLIC from that purchase would be included as part of the primary reserve of FSLIC. The capital certificates and stock would pay dividends equal to the Financing Corporation's interest payments on its obligations and issuance and reasonable direct administrative costs, on or before the dates on which such amounts would be due and payable, minus any net interest payments to the Financing Corporation on short term investments of the proceeds of its obligations prior to the purchase of capital certificates and capital stock in FSLIC, as determined by the board. Thus, dividends paid by FSLIC will cease at such time that all Financing Corporation obligations mature since the Financing Corporation will be dissolved at that time.

This section also would authorize FSLIC to pay off and retire its capital stock upon maturity of all the obligations issued by the Financing Corporation. Since FSLIC's capital certificates would be non-redeemable, FSLIC would extinguish them with no payoff at the time FSLIC retired the capital stock. FSLIC would be authorized to make such payoff on the retired capital stock solely with its contributions accumulated in its "equity return account," an account created under this Act that could include annual contributions made by FSLIC according to statutorily prescribed formulae. Any such contributions would be made at the end of each year beginning in 1997 and ending in the year during which the last obligation of the Financing Corporation matures. Contribution amounts made to the equity return account would not be included as FSLIC reserves. Such contribution amounts would be the only monies included in the equity return account. Any interest earned on the funds in the equity return account would be for the account of FSLIC and would not be included as part of the equity return account, but would be added to the reserves of FSLIC. While the contributions to the equity return account would be made annually as prescribed above, no payoff and retirement of FSLIC stock would be authorized to be made until the maturity of all Financing Corporation obligations.

The formulae for the annual contributions are described below. No annual contributions can be required to be made if the FSLIC reserves are less than .50 percent of all accounts of all insured members (as of December 31 of the preceding year). In any year in which FSLIC's reserves are equal to .50 percent of all accounts of all insured members or greater (as of December 31 of the previous year), the contribution would be the amount invested by the Financing Corporation in FSLIC capital stock, divided by the number of years from the first year after 1996 that the reserves to accounts ratio reached .50 percent to the year in which the last maturing obligation of the Financing Corporation matures (which could be no later than 2026).

The legislation also provides for additional contributions as determined by the board, under certain circumstances. In any year in which the FSLIC's reserves are equal to 1.0 percent of all accounts of all insured members or greater up to and including 1.25 percent of all such accounts (as of December 31 of the preceding year), the additional contribution as determined by the board could be a maximum of 6 percent per year compounded on the amount invested by the Financing Corporation in FSLIC capital stock computed from the year the investment was made to the year in which the last maturing obligation of the Financing Corporation matures (not later than 2026), divided by the number of years from the first year after 1996 that the reserves to accounts ratio reached 1.0 percent to the year in which the last maturing obligation of the Financing Corporation matures. The legislation sets forth two other formulae for possible additional contributions if the reserves to accounts ratio of FSLIC were to increase, raising the percentage compounded and subtracting from these in the numerator of the fraction, the amounts already paid out in additional contributions. All these additional contributions, which would be above the repayment of the amount invested by the Financing Corporation in FSLIC capital stock, would be the subject to the discretion of the board.

This legislation is structured carefully to create, in a fair and appropriate manner, budgetary collections from the equity investments in FSLIC that would offset budgetary outlays resulting from FSLIC's case resolution costs. The equity investments in FSLIC should be counted as offsetting collections for three primary reasons. First, FSLIC would never repay, under any circumstances, the bulk of the funds invested in it by the Financing Corporation (the non-redeemable capital certificates). Second, any possible repayment of the capital investment in FSLIC stock at time of retirement would be dependent on FSLIC's financial performance. Indeed, the FHLBank's capital contribution to the Financing Corporation may never be paid back, as would be clearly reflected in the FHLBank's independently audited financial statements. Finally, FSLIC would have no responsibility to pay off the principal of the Financing Corporation's debt; the Financing Corporation's debt would be solely its own responsibility.

Section 304 also makes clear that the term "Financing Corporation" refers to the corporation chartered pursuant to section 302 of this legislation, new section 21 of the Federal Home Loan Bank Act.

Finally, section 304 makes clear that certain statutorily prescribed actions regarding the FSLIC's primary and secondary reserves could not be triggered as long as shares of the capital stock of the FSLIC are outstanding.

Section 305

Section 305 would amend Section 16 of the Federal Home Loan Bank Act to allow the board, under certain circumstances, to authorize a FHLBank to declare and pay dividends out of its undivided profits or legal reserves, but only after such Bank has reduced all other reserves (e.g., the "dividend stabilization reserve") to zero. Such an extraordinary dividend may be permitted where (1) a FHLBank incurs a charge-off related to its investment in the Financing Corporation and (2) the board determines there is an extraordinary need for payment of such dividends. Any such use of undivided profits or legal reserves would not affect the requirements for FHLBanks' investments in Financing Corporation stock.

Section 306

Section 306 is meant to clarify that the sentences referring to the retirement of capital stock in subsection 402(h) of the National Housing Act do not cover either FSLIC stock or FSLIC certificates issued pursuant to this Act.

TITLE IV—THRIFT INSTITUTIONS INVESTMENT ACT OF 1986

SECTION-BY-SECTION ANALYSIS

Section 401: Short title

Section 401 provides that the title of this Act is the "Thrift Institutions Investment Act of 1986".

Section 402: Equality of thrift and bank holding company affiliate transactions

Section 402 amends subsection (d) of section 408 of the National Housing Act to equalize the restrictions on inter-affiliate transactions within a savings and loan holding company ("S&L holding company") and a bank holding company ("BHC"). The new subsection (d)(1) would limit interaffiliate transactions within an S&L holding company to those transactions banks are permitted under section 23A and the new section 23B of the Federal Reserve Act.

The purposes of this amendment are: (1) to promote parity of regulation of bank holding companies and S&L holding companies; and (2) to maintain stringent safety and soundness rules for S&L holding companies. By equalizing S&L holding company treatment with that of BHCs, it would increase incentives to purchase troubled savings and loans, help savings and loans attract more capital, and promote competitive offerings by S&L holding companies comparable to those available through BHCs.

Section 408(d) of the National Housing Act, 12 U.S.C., section 1730a(d), imposes restrictions on transactions between an S&L and its affiliates that are markedly more onerous than apply to transactions between banks and their affiliates under section 23A of the Federal Reserve Act, 12 U.S.C., section 371c. Section 408 totally prohibits a number of transactions between S&Ls and their affiliates, and those that are not prohibited are authorized only with advance approval by the Federal Savings and Loan Insurance Corporation ("FSLIC")—a requirement that imposes impractical inconvenience, inefficiency and delay.

Section 23A, on the other hand, relies on strict restrictions on affiliate transactions to prevent abuses. Section 23A limits a bank's transactions (i.e., extensions of credit and transactions having the effect of funding the affiliate) with any single affiliate to 10 percent of the bank's capital and surplus, and with all affiliates to 20 percent. Furthermore, all such transactions must be fully secured. Section 23A has been applied to bank holding companies successfully for many years.

The new section 23B would require arms' length dealing between a bank or thrift and its affiliates with respect to various types of transactions, including transactions covered by section 23A, the sale of assets or furnishing of services, transactions in which the affiliate acts as agent, and third-party transactions in which the affiliate has an interest. Section 23B also would prohibit the bank or thrift from agreeing to be responsible for its affiliates' debts or so advertising, and from using a name similar to that of its securities affiliate. In addition, it would restrict certain securities transactions between a bank or thrift and its securities affiliate in order to prevent conflict of interest abuses.

The new subsection (d)(2) would clarify that sections 23A and 23B do not apply to credit card transactions by any person with an affiliate of an S&L to purchase goods or services from such affiliate of an S&L that extends credit on an S&L-issued credit card, as long as the proceeds are used solely to satisfy charges incurred with the credit card and the card can be used to finance purchases at unaffiliated firms. The purpose of subsection (d)(2) is to avoid a possible interpretation of section 23A prohibiting firms from accepting credit card purchases where the credit was extended by an affiliated S&L. Section 23A has not been so interpreted in the past. The requirement that the card can be used at unaffiliated firms is intended to prevent the S&L from unfairly benefiting its affiliates with subsidized credit.

Section 403: Conformity of affiliation restrictions

Section 403 would prohibit States from imposing restrictions on affiliations of S&Ls to a greater extent than they are restricted by Federal law. It also would prohibit States from imposing licensing or other requirements on S&L affiliates or their employees, officers or agents that are more restrictive than those applicable to similar firms that are not affiliated with an S&L.

These laws pose a major barrier to purchasers of troubled S&Ls. Many of these prospective purchasers would be barred because they own one or more "disfavored" businesses even though Federal law would permit the combination. As a result they limit FSLIC's options for attracting purchasers of ailing savings and loans.

Section 404: Limited transactions in savings and loan stock

Section 404 would allow securities subsidiaries of S&L holding companies to trade and engage in secondary market transactions in shares of any nonsubsidiary S&L or S&L holding company in an amount not exceeding five percent of the S&L's or S&L holding company's outstanding voting securities. This limited exception is intended to allow diversified S&L holding companies to maintain limited trading positions in S&L stocks.

Section 408(e)(i)(A)(iii) of the National Housing Act, 12 U.S.C., section 1730a(e)(i)(A)(iii), currently prohibits both unitary and multiple S&L holding companies directly or indirectly from acquiring any voting shares of a nonsubsidiary (i.e., not controlled) FSLIC-insured S&L or S&L holding company. It also prohibits multiple S&L holding companies from acquiring more than five percent of a company not a subsidiary which is engaged in activities impermissible for multiple S&L holding companies. The FHLBB interprets these provisions as prohibiting S&L holding companies from underwriting, trading or marking markets in any S&L securities.

Amending this section to permit limited trading in S&L shares would attract new purchasers of ailing S&Ls and channel capital into the S&L industry. Diversified financial firms with substantial capital often have securities affiliates. The proposed amendment accommodates their securities activities in a safe way by allowing them only to trade in S&L stock so they can continue to serve their customers.

Section 405: Relating debt limits to capital

Section 405 would increase the amount of debt (as a percentage of consolidated net worth) that certain well-capitalized nondiversified S&L holding companies may issue without requesting specific written approval of FSLIC. Currently a nondiversified S&L holding company cannot issue debt exceeding 15 percent of its consolidated net worth without specific FSLIC approval. This section would increase the threshold from 15 percent to 30 percent (or greater with the written approval of FSLIC) for S&L holding companies that meet certain capital standards.

To be eligible for this exception, each of the holding company's insured institutions must have been in compliance with minimum capital standards for two of the preceding three fiscal quarters and be in compliance with such standards for all fiscal quarters that its debt exceeds 15 percent of consolidated net worth.

Section 408(g) of the National Housing Act, 12 U.S.C., Section 1730a(g), currently restricts the issuance of debt securities by "nondiversified" S&L holding companies—those whose S&L and "related activities" constitute 50 percent or more of either their consolidated net worth or their consolidated net earnings. As the "related activities" (i.e., activities permissible for multiple S&L holding companies) expand, more parent companies find themselves to be "nondiversified" under this definition. A "nondiversified" S&L holding company may not incur debt in excess of 15 percent of consolidated net worth without advance approval by FSLIC. (The term "debt" is very broadly defined and may even include checking accounts.) The process of receiving the prior approval of FSLIC to incur or roll over debt is time consuming and can impede a diversified S&L holding company from effectively utilizing the capital markets. There is no comparable restriction on BHCs.

These restrictions discourage acquisitions of problem thrifts and infusions of capital into the thrift industry. S&L holding companies need to be able to adjust their financial structure quickly in order to be able to take advantage of business and financial opportunities as they arise. Flexibility is especially important to acquirers of problem S&Ls because they will need to change past business practices in order to return these S&Ls to profitability and competitiveness.

Section 405 is intended to eliminate the prior approval requirement for a substantial number of debt transactions that do not involve a potential for undue risk—both because leverage of 30 percent or less does not present undue risk to properly capitalized institutions and because the existence of minimum regulatory capital ensures that there is an adequate cushion to protect depositors, owners, and FSLIC.

Section 406: Waiver options for interlocking directorates in emergency acquisitions

Section 406 creates a presumption that management arrangements otherwise prohibited by the Depository Institution Management Interlocks Act as permissible with respect to companies that become S&L holding companies by acquiring failing thrifts. However, the FHLBB may rebut that presumption with a determination, within 60 days after notice of an arrangement that otherwise would be prohibited, that (1) it would be an interlock that would result in a monopoly or substantial lessening of competition, and (2) the services provided by the management official could not be structured or limited so as to preclude such anticompetitive results.

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The Depository Institutions Management Interlocks Act, 12 U.S.C., sections 3201-3208, currently prohibits a management official of a depository institution from serving as a management official of another nonaffiliated depository institution or depository institution holding company if an office of an affiliate is located in the same standard metropolitan statistical area. The Act also prohibits managerial officials of a depository institution or depository holding company with assets exceeding $1 billion from serving as a management official of any nonaffiliate having total assets exceeding $500 million. There are a number of statutory exceptions, and the FHLBB is authorized to adopt rules and regulations allowing interlocks which otherwise would be proscribed by the Act.

Any effort to attract more capital to the S&L industry to lower FSLIC's costs and strengthen the industry in the future depends in part on the interest of large, diversified corporations. Many of these firms have bankers on their boards, who could not continue in that capacity under current law unless the FHLBB grants a waiver. This amendment simply signals a willingness to presume that these executives may remain as directors, unless the FHLBB decides that their presence is harmful to competition. In that event, the FHLBB could still prohibit the director's service.

Section 407: Thrift subsidiary arrangements

Section 407 makes clear that certain joint sales and marketing arrangements and cross-advertising between a thrift subsidiary of a bank holding company on one hand, and the parent holding company and its other bank or nonbank subsidiaries on the other, are not prohibited under the public benefits balancing test (i.e., the "proper incident" test) prescribed by the Bank Holding Company Act ("BHC Act"). While this provision authorizes specified operations under the BHC Act public benefits test, it is not meant to override any other provision of law. For example, all operations would remain subject to antitrust laws, tie-in restrictions, charter limitations, interstate prohibitions, and other applicable provisions of law.

Section 408: Thrift acquisitions

Section 408 amends section 4(c) of the BHC Act by adding a new section 4(c)(16). Under this new section, a BHC which acquires a failing institution under 408(m) of the National Housing Act would be permitted to invest, notwithstanding any other provision of law, in such service corporations permitted to insured institutions under section 5(c)(4)(B) of the Home Owners' Loan Act of 1933.

TITLE V—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SECTION-BY-SECTION ANALYSIS

Section 501: Short title

Section 501 states that this title may be cited as the "Savings Institutions Supervisory Amendments of 1986."

Section 502: Cease and desist proceedings

Section 502(a) amends all references in the FSLIC's cease-and-desist and removal authority that presently relate to "officers, director, employees and agents," to replace them with the new phrase, "institution-related party." This new term is defined in Section 506.

Section 502(b) makes the parallel amendments to those in section 502(a) regarding the Bank Board's authority in the Home Owners' Loan Act and substitutes the new term, "association-related party."

Section 502(c) and (d) clarifies the meaning of the phrase "affirmative action to correct the conditions resulting from" a violation or unsafe or unsound practice as used in Section 407(e) of the National Housing Act and Section 5(d)(2) of the Home Owners' Loan Act, to include restitution, rescission, the required disposal of loans or assets, required guarantees against losses, and such other actions as the agency may deem appropriate.

Section 502(e) clarifies that the agency's cease-and-desist authority reaches all service corporations, including second-tier and partly owned service corporations of federal associations and insured institutions.

Section 503: Temporary cease-and desist orders

Section 503(a) restates the Corporation's existing authority to issue temporary cease-and-desist orders in cases of statutory or regulatory violations or unsafe or unsound practices. In the alternative, the second paragraph also permits the Corporation to utilize a different standard. Under this alternative, the existing requirement that the Corporation determine that a violation or unsound practice is likely to cause insolvency, substantial dissipation of assets or earnings or a serious weakening of the condition of an institution has been changed to remove the modifiers "substantial" and "serious" in such emergency cases where temporary orders are required. Such orders may remain in effect for only 90 days, however, after which the Corporation must proceed under existing standards to renew the temporary order. The third paragraph contains new authority to issue a temporary order to halt an institution's business activities whenever the Corporation is unable to determine the financial condition of such institution because of the disarray or lack of books and records. In all three types of cases, the institution or institution-related party served with a temporary order has ten days to challenge the temporary order in U.S. district court.

Section 503(b) makes the same amendments to the Board's authority to issue temporary cease-and-desist orders against federal associations and association-related parties as does section 503(a) for insured institutions.

Section 504: Suspension, removal, or prohibition of institution-related parties

Section 504. Under Section 407(g) of the National Housing Act FSLIC is authorized to begin a preceding to remove or suspend a director or an officer of an insured institution only when it is of the opinion that all three of the following conditions exist: (1) the director or officer has willfully violated a law, rule, or regulation or final cease and desist order, or engaged or participated in an unsafe or unsound practice in connection with the institution or committed a breach of fiduciary duty to the institution, (2) the institution has suffered or probably will suffer substantial financial loss or other damage or the interests of its insured members could be seriously prejudiced by such violation or breach of duty or the director or officer received financial gain by reason of the violation or breach of duty, and (3) the violation or breach of duty involves personal dishonesty on the part of the director or officer or demonstrates willful or continuing disregard for the safety or soundness of the institution.

The amendment clarifies the second requirement of actual or probable harm to the institution by stating that the damage to the institution includes damage which may threaten to impair public confidence in the institution. This change permits removal of officers whose actions may not necessarily result in actual or probable financial harm, but whose actions would clearly injure the reputation of the institution and hence affect the community's confidence in it. For example, officers involved in money laundering schemes, or those who lie and/or falsify records but whose actions may not yet have resulted in probable financial harm to the institution, are now removable because their actions would clearly threaten to impair public confidence in the institution. Under the new definition of institution-related party, more individuals are now subject to the Corporation's authority under this subsection. Finally, the requirement to show "substantial" and "serious" harm and prejudice has been amended to remove these modifiers.

Current law also contains the grounds necessary to initiate removal or prohibition action against persons at one institution for their misconduct while serving at another institution or business enterprise, has been simplified and the grounds made uniform with those set forth in subsection (g)(1). Clarifying language also has been added to recognize the fact that current officers and directors are "removed and prohibited," while persons not holding an office—either because they participate in the institution's affairs in some other manner or because they have left their former positions—are only "prohibited." This language, along with the new definition of institution-related party clarifies the Corporation's jurisdiction over officers and directors who resign, for a period of two years after such resignation.

Section 504(b) makes the same amendments to the Home Owner's Loan Act.

Section 505: Penalties

Section 505(a) expands the penalty provisions of Section 407(p) of the National Housing Act to clarify that individuals who have been removed from office and/or prohibited from further participation in any federally insured savings and loan association or bank may not participate in any manner in the conduct of the affairs of any other financial institution insured by either the FSLIC or the FDIC, without the prior written approval of the appropriate federal supervisory authority. Previously, individuals removed or prohibited from their positions at a FSLIC-insured institution were free to move to FDIC-insured banks, and individuals removed by one of the federal banking agencies could move to a FSLIC-insured institution without restriction or prior approval by the primary regulator.

Section 505(b) makes the same changes described in the previous paragraph, to the penalty provisions contained in Section 5(d)(12) of the Home Owner's Loan Act.

Section 506: Definitions

Section 506(a) amends and clarifies definitions for the phrases, "institution-related party," and "insured-institution" as they are used in Section 407 of the National Housing Act.

Section 506(b) amends and clarifies definitions for the phrases, "association-related party" and "association" as they are used in Section 5(d) of the Home Owners' Loan Act.

Section 507: Powers of the Federal Savings and Loan Insurance Corporation

Section 507 clarifies the Corporation's general rulemaking authority with respect

to implementation of the National Housing Act, including the authority to define terms used in that Act and to regulate risk-taking activities by insured institutions. This authority applies to the savings and loan holding company and the mutual to stock conversion provisions of the National Housing Act.

Section 508: Risk assessment premiums

Section 508 allows the FSLIC to vary the assessment rate that each insured institution must pay for FDIC insurance according to the risks that the insured institution presents to the FDIC insurance fund. The assessment rate for any particular insured institution shall not exceed one-sixth of one per centum nor fall below one-twelfth of one per centum.

Any technique for measuring must be flexible enough to respond to changes in the banking environment. Accordingly, the amendment specifies that the FSLIC must act by regulation, but does not prescribe particular types of risks the FSLIC must consider.

Section 509: Service corporations

Section 509 increases the service corporation investment authority of federal associations by increasing the authorized level of investment therein from three to five percent of assets for federal associations which meet the regulatory capital requirements as determined by the Bank Board. The Board shall issue regulations providing for a phase-in of the increase for associations which are coming into compliance with regulatory capital requirements. This section also deletes the current provision requiring that associations devote to community development purposes half of the investment under this authority which exceeds one percent for community development purposes.

Section 510: Repeal of rebidding requirements

Section 510 amends the emergency acquisition authority provided in section 123 of the Garn-St Germain Depository Institutions Act of 1982 by removing the rebidding provisions.

TITLE VI—FINANCIAL INSTITUTIONS COMPETITIVE ENHANCEMENT

Section 601: Amendments to the Banking Act of 1933

Subsection 601(a)—amends Section 20 of the Banking Act of 1933 (12 U.S.C. 377) to allow a member bank to be affiliated with a depository institution securities affiliate (defined in Subsection 604(a) of the bill). Although this provision permits such affiliation, it does not permit the member bank to own shares of such an affiliate, or otherwise to engage in securities activities. Thus, the activities authorized for a depository institution securities affiliate must be conducted either by the bank's parent holding company or by a separate subsidiary of the holding company.

Subsection 601(b)—amends Section 32 of the Banking Act of 1933 (12 U.S.C. 78) to permit an officer, director, or employee of its depository institution securities affiliate to remain as an officer, director or employee of an affiliated bank. Existing restrictions continue to apply to prevent such an interlocking relationship with a nonaffiliated depository institution securities affiliate or any other firm engaged in securities activities.

Section 602: Amendments to the Securities Act of 1933

Subsection 602—amends the Securities Act of 1933 to exempt from the registration requirements of that Act the issuance of a holding company's shares in connection with a reorganization in which a holding company becomes the parent of a bank or thrift institution and proportionate ownership of the thrift remains the same (except for changes resulting in exercise of dissenting shareholder rights).

Section 603: Amendments to the Securities Act of 1933

Subsection 603(a)—amends the definition of "appropriate regulatory agency" in the Securities Exchange Act of 1934 so that the Securities and Exchange Commission is the appropriate regulatory agency for enforcing a depository institution securities affiliate's compliance with the statutory and regulatory requirements governing transactions in securities.

Subsection 603(b)—amends Section 15B of the Securities Exchange Act, which establishes the composition of the Municipal Securities Rulemaking Board to provide depository institution securities affiliates with representation on the MSRB equivalent to that of other municipal securities dealers and bankers engaged in the municipal securities business.

Section 604: Amendments to the Bank Holding Company Act of 1956

Section 604 defines (a) "Bank," (b) "Thrift Institution," (c) "Depository Institution Securities Affiliate," (d) "Commercial loans," (e) "Depository Institution Holding Co.," "Depository Institution," "Savings and Loan Holding Co."

a. "Bank" is defined to mean: (1) an insured bank as that term is defined in Section 3(h) of the Federal Deposit Insurance Act or (2) any institution which is organized under the laws of the U.S. (including any state or territory), that both accepts deposits that are withdrawable by check or similar means for third party payment and is engaged in the business of making commercial loans. Certain institutions are specifically exempt from such definition such as thrift institutions, trust companies affiliated with banks or bank holding companies owned by registered securities exchanges, credit unions, Edge Act Corporations, and foreign banks with insured branches.

b. "thrift institutions" is defined as a domestic Building and Loan, a Savings and Loan, a Cooperative Bank organized in Mutual form, a Federal Savings Bank, and a state chartered Savings Bank whose parent is registered as a holding company under section 408 of the National Housing Act.

c. "Depository institution securities affiliate" means any corporation that (1) engages in the United States in one or more of the activities authorized pursuant to section 4(c)(15)(iii) of the Bank Holding Company Act, and (2) is either a broker or dealer within the meaning of the Securities Exchange Act or an investment adviser within the meaning of the Investment Advisers Act of 1940.

d. "Commercial loans" is defined not to include personal loans, real estate loans, credit card loans, and investments in commercial paper, certificates of deposit, retail installment loans, accounts receivables, mortgage-backed or government securities and similar money market instruments. An institution is not deemed to be engaged in the business of making commercial loans if it has no more than 10 percent of its assets in commercial loans.

e. For purposes of the Bank Holding Co. Act, "Depository Institution Holding Co." is defined as a bank holding company, "Depository Institution" as a bank, and "Savings and Loan Company" as it is defined in Section 408(a)(1) of the National Housing Act.

Subsection 604(b)(1) simplifies Bank Holding Company Formations for banks which are reorganizing as a holding company by establishing a 30 day prior notification requirement rather than the current prior approval process. This subsection only applies if the proportionate ownership remains the same except for changes resulting from the exercise of dissenting shareholder rights.

Subsection 604(b)(2) requires divestiture within 180 days of any banks that were established or acquired after the grandfather date which would have been prohibited by the Douglas Amendment.

Subsection 604(c)(1) amends paragraph 4(a)(2) of the Bank Holding Company Act by specifying that a Bank Holding Company may engage directly in activities permitted by 4(c)(8), which is revised in Subsection 604(d) of this bill, 4(c)(15) which is contained in Subsection 604(e) of this bill and 4(c)(16 which is added by Section 4089 of this bill.

Subsection 604(c)(2) sets forth certain grandfather rights for companies which controlled an institution on or before the grandfather date and who within 3 years, either acquire a failing insured institution under the provisions of 408(m) of the National Housing Act or convert such grandfather institution to a FSLIC insured Institution. The grandfather date has yet to be determined.

Subsection 604(d) replaces the current paragraph 8 of Subsection 4(c) of the Bank Holding Company Act with a new paragraph 8 which establishes both limitations and requirements for banks engaging in activities which are either closely related to banking; or a financial nature and designed to enable bank holding companies to adjust to technological innovations in provision of banking or banking related services; or of a financial nature and substantially identical to those products and services by nonbank competitiors but competitive with banks' products.

Generally a bank holding company must submit a notice to the Federal Reserve Board in advance of engaging in any activities and the Federal Reserve has 60 days to disapprove. If the Federal Reserve determines that additional relevant information is necessary it may suspend the time period until 30 days after the information is received.

The Board is still required to weigh public benefits versus adverse effects but must also consider the managerial and financial resources of the companies involved.

In Section 604(d)(v) the Board is directed to issue orders setting forth the reasons for any disapproval or determination not to disapprove. Section 604(i) establishes the standards of such judicial review.

The Federal Reserve is required to promulgate regulations listing activities deemed to be closely related to banking within 180 days. The bill specifies that activities permitted as of the date of enactment of the bill are to be included in such a list.

Subsection 604(e)—establishes a bank holding company's right to organize a depository institution securities affiliate (DISA). Within one year after commencing the new securities activities in a DISA, the

securities activities performed by a subsidiary bank which are not incidental to the financing of such bank or investment of its funds must be transferred to the DISA. The Federal Reserve Board is authorized to prescribe rules and regulations concerning activities which must be transferred to the DISA. In the event that a bank holding company terminates the new activities permitted to a DISA, its subsidiary banks or other subsidiaries may conduct any securities activity which a bank is permitted by law to conduct.

Under subparagraph (ii) a DISA may conduct any securities activities which a national bank is not prohibited from conducting and in subparagraph (iii) is given the authority: (I) to deal in and underwrite all obligations issued or guaranteed by or on behalf of a state of any political subdivision (except industrial development bonds whose interest is exempt from federal tax are permissable only if the political entity pledges its full faith and credit or is considered the sole owner of the facility to be financed by federal tax law); (II) to organize, sponsor and operate an investment company as defined in section 3 of the Investment Company Act of 1940; (III) to deal in and underwrite mortgage backed securities and (IV) to underwrite and sell commercial paper.

Subsection 604(f)—amends the Bank Service Corporation Act to grant banks under 250 million in total assets in vestment parity with savings and loan service corporations.

Subsection 604(g)—amends section 5(c) of the Bank Holding Company Act to minimize the regulatory overlap between the Federal Reserve Board and the SEC with regard to bank holding companies engaged in the securities business. For example, such companies may satisfy the Board's reporting requirements with respect to nonbank subsidiaries by submitting to the Board the same information submitted to the Securities and Exchange Commission under Section 17 of the Securities and Exchange Act.

Subsection 604(h)—amends Section 7 of the Bank Holding Company Act to provide that no state may prohibit affiliations between a national banking association and a company engaged in activities permitted by this bill. The section also limits the activities of state chartered bank subsidiaries to the state of its charter unless permitted by Section 4(c) of the Bank Holding Company Act.

Subsection 604(i)—amends section 9 of the Bank Holding Company Act to provide for standards of judicial review. Reserve Board orders under section 4(c)(8) and the securities affiliate section are subject to judicial review solely on questions related to the Board's findings regarding the issue of unfair competition and that the proposed activity is permissible for a bank holding company under section 4(c)(8) or section 4(c)(15) of the Bank Holding Company Act.

Subsection 604(j)—preserves the authorities of traditional state chartered savings banks as long as the savings bank continues to operate as a separate subsidiary.

Subsection 604(k) amends Section 3(e) of the Bank Holding Company Act to permit a bank holding company to control a bank the deposits of which are insured or guaranteed under state law.

Section 605: Amendments to the Federal Reserve Act

Section 605(a) amends the Federal Reserve Act (12 U.S.C. 371(c)) by adding new Section 23B, restricting transactions between a member bank and its affiliates. Although section 23B applies to transactions between a member bank and all of its affiliates, the Federal Reserve Board is authorized to exempt affiliates from the provisions of Section 23B. As with section 23A, new section 23B is applicable to Federally insured nonmember banks through section 18(j) of the Federal Deposit Insurance Act.

New Section 23B provides that a member bank and its subsidiaries may engage in certain transactions with any affiliate only if the terms and conditions of the transaction, including credit standards, are substantially the same as, or at least as favorable to the bank as, those prevailing at the time for comparable transactions with nonaffiliated companies. If there are no comparable transactions, the terms and conditions of the transaction must be the same as those that, in good faith, would be offered to or would apply to nonaffiliated companies.

It should be noted that although this section generally permits a member bank and its affiliates to use similar names, it prohibits a member bank and its depository institutions securities affiliate from using similar names.

Section 605(b) would apply the credit limitations of the Federal Reserve Act's Section 23A to certain daylight overdrafts extended to affiliates by banks that are subsidiaries of holding companies but not regulated under the Bank Holding Company Act or by thrifts that are subsidiaries of holding companies but not regulated as multiple S&L holding companies.

Section 606: Securities affiliations of nonmember insured banks

Section 606 amends 18(j) of the Federal Deposit Insurance Act to appy sections 20 and 32 of the Banking Act of 1933 (12 U.S.C. 377 and 12 U.S.C. 78) to all FDIC insured banks. Divestiture within two years is mandated for institutions which are not grandfathered. Such grandfather date is yet to be determined.

Section 607: Amendments to the National Housing Act

Subsection 607(a) amends section 408(a)(1) of the National Housing Act (12 U.S.C. 1730(a)(1)) to define a depository institution securities affiliate as any corporation engaged in one or more of the activities described in section 4(c)(15) of the Bank Holding Company Act of 1956 and is a broker or dealer within the meaning of paragraph (4) or (5) of section 3(a) of the Securities Exchange Act, or an investment adviser within the meaning of section 202(11) of the Investment Advisers Act of 1940 (15 U.S.C. 8062(11)).

Subsection 607(b) amends section 408(c) to the National Housing Act to restrict the activities of savings and loans holding companies other than unitary holding companies whose insured institution meets the qualified thrift lender test established in section 408(c)(4)B or the National Housing Act or acquires an insured institution pursuant to 408(m) of the National Housing Act. Activities conducted as of the grandfather date may be continued under certain conditions. The specific grandfather date has not yet been determined.

The prescribed authorities for holding companies subject to the limitations are essentially those activities currently permissable to mutliple savings and loan holding companies as well as the ownership of a bank (which would be made subject to the Douglas Amendment) or activities approved for Bank Holding Companies by the Federal Reserve Board subject to any limitation imposed by the Federal Home Loan Bank Board. Prior to engaging in any bank approved activities a holding company must provide 60 days prior notice to the Corporation during which time it may disapprove. The notice period can be lengthened depending on the need for additional information or shortened depending on rules and procedures established by the Corporation for specific activities. In determining whether to disapprove, the Corporation is required to consider both a comparison of public benefits versus possible adverse effects as well as managerial and financial resources of the companies involved.

Any Unitary Savings and Loan Holding Company whose insured institution meets a qualified thrift lender test is exempt from the activities restrictions of this subsection. In order for an insured institution to be a qualified thrift lender, it must have at least 60 per cent of its assets invested in such items as loans, equity positions or securities related to domestic residential property and liquid assets as specified by the Federal Home Loan Bank Board. Residential mortgage loans originated and sold within 90 days of origination, as well as certain consumer loans, can be used in calculating compliance with the qualified thrift lender test up to an aggregate of 10 percent of the institution's assets. As to state chartered Savings Banks chartered prior to October 15, 1982, the qualified thrift lender test is phased in over a ten year period.

The corporation is given the authority to grant temporary exceptions to the qualified thrift lender test when economic conditions reduce mortgage demand to such a degree that insufficient opportunity exists for an insured institution to meet such investment requirements.

Subsection 607(d)—simplifies Savings and Loan Holding Company Formations by exempting from prior approval requirements any reorganization in which a person or group of persons owning a FSLIC-insured thrift transfers shares to a newly formed holding company and receives substantially the same proportional share interest in the holding company (except for changes due to the exercise of dissenting shareholder appraisal rights).

Under current law, the acquisition of a FSLIC-insured thrift institution is exempt from the FSLIC prior approval requirement if the institution is "acquired in connection with a reorganization in which a person or group of persons, having had control of an insured institution for more than three years, vests control of that institution in a newly formed holding company subject to the control of the same person or group of persons." This language is subject to several interpretations and is complicated because of the ambiguity surrounding the issue of when "control" is present. Therefore, the bill clarifies the meaning of a "reorganization" that is not subject to the prior approval requirement and provides a more objective criterion for determining whether a reorganization qualifies for the exemption. The requirement that the control group have had such control for three years prior to the holding company formation is deleted, since any change in control involving individuals owning a FSLIC-insured thrift is subject to the Change in Savings and Loan Control Act of 1978 (12 U.S.C. 1703(1)(6)).

Subsection 607(e)—Judicial Review—Federal Home Loan Bank Board orders under section 408(c)(2) of the National Housing Act are subject to judicial review solely on questions related to Board's findings regarding the issue of unfair competition and that

the proposed activity is permissible for a savings and loan holding company.

Subsection 607(f)—amends section 408(a)(1)(A) of the National Housing Act to provide that upon application to the Corporation, an FDIC insured savings bank which meets the qualified thrift lender test shall be deemed to be an insured institution.

Section 608: Amendment to the Home Owner's Loan Act of 1933

Section 608—amends the Home Owners Loan Act to authorize Federal savings and loan associations are authorized to offer demand deposits (checking accounts) to all their customers. Presently, they may only offer such accounts to businesses with whom they have a credit relationship. The existing prohibition against the payment of interest on such accounts would be retained.

Section 609: Amendments to the Federal Home Loan Bank Act

Section 609 amends section 5(A)(b)(1)(D) of the Federal Home Loan Bank to require members of the Federal Home Loan Bank system to meet the qualified thrift lender test under section 607(b) in order to obtain advances from a Federal Home Loan Bank. The Bank Board would be authorized to waive such requirement in appropriate circumstances.

Section 610: Leasing authority of national banks

Section 610 amends the National Bank Act (12 U.S.C. 24) to provide that national banks may lease tangible personal property in amounts up to 10 percent of the assets of the bank.

Section 611: Mutual holding company amendment

Section 611 amends section 408 of the National Housing Act to permit all FSLIC and FDIC insured mutual thrifts an opportunity to offer new products and services through a holding company yet retain their mutual character. The product and service authorities of such a holding company include those of a bank holding company and a multiple savings and loan holding company.

Section 612: Mortgage securities corporations

Section 612 amends section 5(c)(4) of the Home Owners' Loan Act to permit federal thrifts themselves to establish or invest in separate subsidiaries of such thrifts solely to issue and service mortgage-backed securities. Through this direct investment authority, a thrift would be better able to issue its own securities and finance its operations.

TITLE VII—BANKERS' BANKS

This title is included to clarify the statutory provisions regarding bankers' banks. The statute authorizing export trading companies and the statute authorizing bankers' banks were both passed into law at approximately the same time, in October 1982, but authority for bankers' banks to invest in export trading companies was not included in the statute creating bankers' banks. In order to correct this oversight, this title grants explicit authority for bankers' banks to invest in export trading companies. It also clarifies that bankers' banks be able to offer service to other bank holding companies and their subsidiaries and affiliates, and makes other minor technical amendments.

TITLE VII—CREDIT UNION AMENDMENTS

Section 801: Permanent merger and conservatorship authority

This section eliminates the sunset provisions from the National Credit Union Administration's (NCUA's) conservatorship and emergency merger authorities. During its three and a half year "trial period," conservatorship has proven to be an effective supervisory tool for NCUA. Through the prudent exercise of its conservatorship authority, more than $20 million in potential losses to the National Credit Union Share Insurance Fund (NCUSIF) have been avoided. This section removes the sunset provision, rendering the conservatorship authority permanent.

Section 802: Reduction in State comment waiting period

This section reduces from ninety days to thirty days the period NCUA must allow state regulators to respond to NCUA's proposed imposition of conservatorship in the case of a state-chartered NCUA insured credit union. Events today often compel quicker and more decisive action by regulators such as NCUA than the ninety day consultation period allows.

Section 803: Imposition of conservatorship

This section provides NCUA with two additional grounds for imposing conservatorship: when there is a willful violation of a cease and desist order which has become final; and when there is a concealment of or refusal to submit documents and/or other records of the credit union to an NCUA examiner or other lawful agent of the NCUA Board.

Section 804: Authority as conservator

This section expressly states that NCUA has all the powers of the credit union members, directors, officers, and committees when exercising its conservatorship authority.

Section 805: Technical and clarifying amendments; removal and prohibition authority

This section clarifies that NCUA's prohibition authority extends to both employees and agents of federally insured credit unions, and conforms, NCUA's jurisdiction in prohibition actions with its jurisdiction in cease-and-desist actions.

Section 806: Faithful performance

This section would eliminate the requirement found in present law that Federal credit unions obtain 'faithful performance" coverage for financial officers. Basic fidelity coverages (e.g., fraud, dishonesty, embezzlement) would continue to be required for all officials and employees.

Section 807: Membership officers

This section provides that membership officers may be selected from the credit union's membership, rather than having only members of the board of directors eligible to be membership officers.

Section 808: Nonparticipation

This section is a technical amendment to clarify that paragraphs (a) and (b) of section 118 of the Federal Credit Union Act are alternative methods of expelling a member of a credit union. There had been confusion as to whether (a) and (b) were alternatives or linked. A credit union may either adopt its own policy for expulsion, as set forth in paragraph (b), or it may simply expel a member under the terms of paragraph (a) if the credit union has not adopted its own policy under paragraph (b).

Section 809: Second mortgage and home improvement loans

This section authorizes NCUA to allow credit unions to make second mortgage and home improvement loans for periods exceeding 15 years.

Section 810: Property acquisition flexibility

This section is designed to provide the NCUA Board with needed flexibility to obtain office space and equipment in such a manner as to respond more precisely to the nature and location of the agency's needs at substantial cost savings.

Section 811: Clarification of IRA authority

This section clarifies the authority of Federal credit unions to offer IRA and Keogh accounts, subject to rules and regulations promulgateed by NCUA. This section also authorizes Federal credit unions to serve as trustees or custodians for a defferred compensation plan. Finally, it authorizes Federal credit unions based in territories or possessions of the United States to serve as trustees or custodians for similar type retirement accounts established under the laws of those jurisdictions. This amendment is specifically designed to permit Federal credit unions located in Puerto Rico to offer IRA and Keogh type services authorized under Puerto Rico law similar to those offered by their counterparts in the United States under ERISA.

Section 812: Technical amendment

This section is merely a technical change made ncessary due to the recodification of Title 31 of the United States Code.

Section 813: Public funds

This section would allow Federal credit unions to more readily accept public funds by authorizing such credit unions to pledge securities to secure public unit type funds.

Section 814: Ownership interest

This section clarifies that funds in shares, share certificates, and share draft accounts constitute a member's ownership interest in the credit union.

TITLE IX—CONSUMER LEASES AND LEASE-PURCHASE AGREEMENTS

SECTION-BY-SECTION ANALYSIS

Section 901 is entitled the "Consumer Lease and Lease-Purchase Agreement Act".

Section 902 amends the Consumer Credit Protection Act to create a new Title X as follows:

Section 101 entitles Title X of the Consumer Credit Protection Act the "Consumer Lease and Lease-Purchase Agreement Act."

Section 102 sets forth the Findings and Declaration of Purpose of the Act.

Section 102(a) states that the purposes of the *consumer leasing* provisions are to assure more meaningful disclosure of the terms of leases for personal property leases; to provide the consumer with a basis for better comparison shopping; to limit balloon payments; and to assure accurate advertisement of lease terms.

Section 102(b) states that the purposes of the *lease-purchase* provisions are to provide meaningful disclosure of the terms of lease—purchase agreements; to assure that consumers know the total cost of an item covered by a lease-purchase agreement; to tell the consumer when the item can be owned; and to assure accurate advertisement of lease-purchase agreement terms.

Section 103 sets forth the Definitions and Rules of Construction.

Section 103(a)(1) defines "advertisement" as a commercial message in any medium which promotes a lease or lease-purchase agreement.

Section 103(a)(2) defines "agricultural purposes" to include the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures agricultural products, including but not limited to the acquisition of farmlands, real property with a farm residence, and personal property and services used primarily in farming.

Section 103(a)(3) defines "Board" as the Board of Governors of the Federal Reserve System.

Section 103(a)(4) defines "consumer" as a natural person who leases personal property under a consumer lease or rents personal property under a lease-purchase agreement.

Section 103(a)(5) defines "consumer lease" as a contract in the form of a lease or bailment for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months, in which the total lease cost is not more than $25,000, whether or not the consumer has the option to purchase or otherwise become the owner of the property at the expiration of the lease. The term does not include any "credit sale" as defined in Title I.

Section 103(a)(6) defines "consummation" as the time a consumer becomes contractually obligated on a consumer lease or lease-purchase agreement.

Section 103(a)(7) defines "lessor" as a person who regularly provides the use of property through consumer leases or lease-purchase agreements and to whom the obligation is initially payable on the face of the lease or lease-purchase agreement.

Section 103(a)(8) defines "personal property" as any property that is not real property under the laws of the state where it is located when it is made available for a consumer lease or lease-purchase agreement.

Section 103(a)(9) defines "lease-purchase agreement" as an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property. Ownership might occur, for example, after a specified number of payments have been made, or upon exercise of a purchase option. The definition, for purposes of Federal law, does not include any "credit sale" as defined in Title I.

Section 103(a)(10) defines "residual value" as the wholesale or retail fair market value of the leased property at early termination or the end of the lease term in a consumer lease.

Section 103(a)(11) defines "state" as any state, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

Section 103(b) states that unless the context indicates otherwise, lease means consumer lease and agreement means lease-purchase agreement.

Section 103(c) provides that references to any provision of this title include references to the regulations of the Board under this title.

Section 104 sets forth transactions which are exempt from this title.

Section 104(1) exempts consumer leases and lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with government agencies or instrumentalities or with organizations, from this title.

Section 104(2) exempts leases of a safe deposit box.

Section 104(3) exempts leases or bailments of personal property incidental to a lease of real property where the consumer has no liability for the property at the scheduled expiration of the lease (except for normal wear and tear) and the consumer can not purchase the leased property.

Section 105 covers Regulations of this title.

Section 105(a) requires the Board to write regulations to carry out the purposes to this title. The regulations may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transactions.

Section 105(b) requires the Board to publish model disclosure forms and clauses. In designing model forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the models shall be deemed to be in compliance with the disclosure requirements.

Section 105(c) states that any regulation of the Board, or any amendment or interpretation of those regulations, that requires a disclosure different from the disclosures previously required under federal law shall have an effective date of the October 1 that follows the date of promulgation by at least six months. The Board may, at its discretion, lengthen or shorten that period of time. In any case, lessors may comply with any newly promulgated disclosure requirement prior to its effective date.

Section 111 sets forth the general disclosure requirements.

Section 111(a) requires a lessor to disclosure to the consumer the information required by this title. If a transaction involves more than one consumer, disclosures may be given to the consumer who is primarily obligated. If a transaction involves more than one lessor, only one lessor need make the disclosures.

Section 111(b) requires that the disclosures be made at or before consummation of the consumer lease or lease-purchase agreement.

Section 111(c) states that the disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required under sections 112 and 114 shall be segregated in a "federal box" from all other terms, data, or information provided.

Section 111(d) states that information required to be disclosed may be given in the form of estimates and identified as estimates when the lessor does not know the exact information.

Section 111(e) requires that if a disclosure becomes inaccurate after the delivery of the required disclosures, the resulting inaccuracy does not violate this title.

Section 112 requires that the following information must be disclosed for consumer leases:

(1) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

(2) The number, amounts, and timing of scheduled payments.

(3) The total of scheduled payments.

(4) The total of amounts payable at the expiration of the lease (not including any difference between the aniticipated residual value and the actual residual value).

(5) The total lease cost, which is the sum of items (1), (3), and (4).

(6) The amount of any required security deposit.

(7) When the consumer buys required insurance from or through the lessor, the total cost. When the consumer does not buy required insurance from or through the lessor, a statement that the consumer must buy insurance and that the cost is not included in the numerical disclosures.

(8) When any official fees and taxes are paid to or through the lessor, the total cost. When any official fees or taxes are not paid to or through the lessor, a statement that the consumer must pay official fees or taxes and that the amounts are not included in the numerical disclosures.

(9) Any dollar charge or percentage amount that may be imposed for a late payment, other than a deferral or extension charge.

(10) A statement that the consumer may be liable for additional amounts if the lease is terminated early.

(11) When the consumer's liability is based on the residual value of the property, a statement that the consumer may have the property appraised at the consumer's expense by an independent third party agreed to by the consumer and lessor, and that the parties will be bound by the appraisal.

(12) When the consumer's liability at the end of the lease term is based on the anticipated residual value of the property:

(A) The anticipated residual value of the property, marked as wholesale or retail;

(B) A brief statement of the consumer's potential liability at the end of the lease term;

(C) The product of three times the average payment allocable to a month; and

(D) A statement that the consumer's liability will generally be limited to item (12)(c) unless the excess is a result of excessive use or unreasonable wear and use, or the lessor brings a successful court action proving that the estimate of the anticipated residual value was reasonable.

(13) A statement that the consumer may have other costs and that the consumer should refer to the appropriate lease document for information about non-payment and default, wear and use standards, and maintenance responsibility.

Section 113 limits the consumer's liability at early termination or at the end of the lease term.

Section 113(a) requires that when the consumer's liability at the end of the lease term is based on the anticipated residual value of the leased property, the anticipated residual value shall be a reasonable estimate of the actual residual value of the property at the end of the lease term. This subsection creates a rebuttable presumption that the anticipated residual value is unreasonable to the extent that it exceeds the actual residual value at the end of the lease term by more than three times the average monthly payment. The lessor shall not collect any amount exceeding three times the average monthly payment unless the lessor a successful action in court proving that the estimate was reasonable. If the lessor fails to rebut the presumption, the lessor must pay the cost of the action and the consumer's reasonable attorney's fees.

Section 113(b) requires that the rebuttable presumption created in subsection (a) shall not apply to the extent that the excess of the anticipated residual value over the actual residual value is due to damage to the

property beyond reasonable wear and use or to excessive use. The lessor may set reasonable standards for wear and use in the lease.

Section 113(c) states that a willing consumer and lessor may make a mutually agreeable final adjustment with respect to the excess of three times the average payment allocable to a month, provided the agreement is made after the end of the lease term.

Section 113(d) permits the lessor to specify penalties or other charges for delinquency, default, or early termination, if the amounts are reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Section 113(e) gives the consumer the right to obtain at the consumer's expense a professional appraisal of the property by an independent third party agreed to by both parties when the consumer's liability is based on the residual value of the leased property.

Section 114 requires that the following information must be disclosed in lease-purchase agreements:

(1) The number, amounts and timing of all payments necessary to acquire ownership of the property.

(2) The total of payments necessary to acquire ownership of the property.

(3) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership.

(4) A statement that the total of payments does not include other charges, such as late payment, default, pick-up, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges.

(5) A statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed.

(6) A statement that the property is new or used. Lessors may describe as "used" property which is in fact new.

Section 115 covers renegotiations and extensions.

Section 115(a) defines a renegotiation as an existing consumer lease or lease-purchase agreement which is satisfied and replaced by a new lease or agreement undertaken by the same lessor and consumer. A renegotiation is a new lease or agreement requiring new disclosures. However, the following events shall not be treated as renegotiations:

(1) The addition or return of property in a multiple-item lease agreement, provided the average payment allocable to a payment period is not changed by more than 25 percent.

(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment.

(3) A reduction in charges in the lease or agreement.

(4) A lease or agreement involving a court proceeding.

(5) Any other event described in Board regulations.

Section 115(b) states that no disclosures are required for any extension of a consumer lease or a lease-purchase agreement. However, a lessor that extends or permits a consumer to extend a consumer lease for more than one month beyond the end of the lease term shall recalculate and anticipated residual value of the leased property to reflect the depreciation resulting from the extended term.

Section 116(a) covers consumer lease advertising and requires that—where an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following items:

(1) That the transaction advertised is a lease.

(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

(3) That a security deposit is required.

(4) The number, amounts and timing of scheduled payments.

(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

Section 116(b) states that any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

Section 117(a) covers lease-purchase advertising and requires that when an advertisement for a lease-purchase agreement refers to or states the amount of any payment or the right to acquire ownership, the advertisement must also clearly and conspicuously state the following items:

(1) That the transaction advertised is a lease-purchase agreement.

(2) The total of payments necessary to acquire ownership.

(3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

Section 117(b) states that any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

Section 117(c) states that a "yellow pages" advertisement in a telephone directory which does not refer to payment amounts need not make the disclosures required by subsection (a).

Section 121 identifies which agencies will enforce this Act.

Section 121(a) states that this Act will be enforced by the Comptroller of the Currency for national banks; by the Board for member banks of the Federal Reserve System; and by the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation.

Section 121(a)(2) states that the Federal Home Loan Bank Board will enforce the Act for institutions subject to section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act.

Section 121(a)(3) states that the National Credit Union Administration will enforce the Act with respect to any Federal credit union.

Section 121(a)(4) states that the Farm Credit Administration will enforce the Act with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

Section 121(b) states that for the purpose of the exercise by any agency referred to in subsection (a) of its power under any Act referred to, a violation of a requirement imposed by this title shall be deemed to be a violation of a requirement imposed under that Act. Each agency may also exercise any other authority conferred on it by law in enforcing any requirement imposed under this title.

Section 121(c) authorizes that Federal Trade Commission to enforce this Act, unless enforcement of the requirements imposed by this title is specifically committed to some other agency under subsection (a). For the purpose of exercising its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed by this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed by this title, whether or not that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

Section 121(d) states that notwithstanding the authority of the Board to issue regulations under this title, any other agency designated in this section may make rules respecting its own procedures in enforcing compliance with requirements imposed by this title.

Section 122 covers civil liability.

Section 122(a) states the civil liability of a lessor who fails to comply with a requirement contained in the sections outlining general requirements of disclosure, consumer lease and lease-purchase disclosures, liability limitations at early termination or the end of the lease term, and lease renegotiations and extensions. These penalties are:

(1) actual damages sustained by the consumer as a result of the violation;

(2) in the case of an individual consumer lease action, 25 percent of the total of scheduled payments under the lease, but not less than $100 nor greater than $1000;

(3) in the case of an individual lease-purchase action, 25 percent of the total of payments necessary to acquire ownership, but not less than $100 nor greater than $1000;

(4) in the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member, but not more than the lessor of $500,000 or 1 percent of the net worth of the lessor; and

(5) the costs of the action and reasonable attorney's fees as determined by the court.

Section 122(b) states that any lessor who fails to comply with the advertising requirements of this Act is liable for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

Section 122(c) provides that when there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.

Section 122(d) provides that when there are multiple consumers in a consumer lease or rental-purchase agreement, there shall be only one recovery of damages under subsection (a) for a violation of this title.

Section 122(e) provides that multiple violations occurring in connection with a single consumer lease or rental-purchase agreement entitle the consumer to a single recovery under this section.

Section 122(f) states that action under this section may be brought in any United States district court or in any other court of competent jurisdiction within one year of the date of the occurrence of the violation,

except that in the case of a violation of the early termination or end of lease term requirements of this Act, an action may be brought within one year of the end of the lease term. Consumers are not prevented from asserting a violation of this title in an action to collect the debt brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off, except as otherwise provided by state law.

Section 122(g) prevents consumers from taking any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action brought by the lessor to collect amounts owed by the consumer.

Section 123 sets forth the defenses available under this Act.

Section 123(a) limits a lessor's liability under sections 121, 122, or 125 for a violation of the requirements of sections 111, 112 and 114 if within 60 days after discovering the error, and before an action under section 122 if filed or written notice of the error is received from the consumer, the lessor notifies the consumer of the error and makes whatever adjustments in the account are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed. This provision applies whether the discovery of the error was made through a final written examination report or the lessor's own procedures.

Section 123(b) limits the lessor's liability under section 121 for a violation of this title if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error even though the lessor maintained procedures reasonably adapted to avoid such error.

Section 123(c) states that a lessor is not liable under this title for any act done or omitted in good faith in conformity with any rule, regulation interpretation, or approval promulgated by the Board or by any official duly authorized by the Board. This rule applies even if, after the act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any other reason.

Section 124 identifies the liability of assignees.

Section 124(a) states that for purposes of sections 122 and 123, the term "lessor" as used in those sections shall include an assignee of the lessor. However, a civil action for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the disclosure statement. An assisgnee has no liability where the assignment is involuntary.

Section 124(b) provides that in an action by or against an assignee, the consumer's written acknowledgement of receipt shall be conclusive proof that the disclosures were made, provided the assignee had no knowledge that disclosures had not been made when the assignee acquired the obligation.

Section 125 sets forth the criminal liability for anyone who willfully and knowingly fails to comply with any requirement imposed under this title, which is $5,000 or a prison term of not more than one year, or both.

Section 131 covers this Act's relation to state laws.

Section 131(a) provides that this title does not affect the laws of any state regarding the disclosure of consumer leases or lease-purchase agreements, and does not exempt any person subject to the provisions of this title from complying with the laws of any state with respect to consumer leases or lease-purchase agreements, unless those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The laws of a state are inconsistent if a person is unable to comply with them without violating a provision of this title. The Board is authorized to determine whether such inconsistencies exist.

Section 131(b) requires the Board, by regulation, to exempt any class of lease transactions and lease-purchase agreements within any state if it determines that the state law contains requirements substantially similar to those imposed by this title or gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

Section 131(c) states that this title does not affect the validity or enforceability of any contract or obligation under state or Federal law, except as provided in sections 122 and 123.

Section 131(d) provides that determinations under this section may be requested by any state.

Section 132 states the effect of this Act on governmental agencies and provides that no civil or criminal penalty contained in this title may be imposed on the United States or any of its departments or agencies, any state or political subdivision, or any agency or any state or political subdivision.

Section 133 requires reports by the Board and Attorney General to the Congress concerning the administration of their functions under this title. The Board's report shall include its assessment of the extent to which compliance with the requirements imposed by this title is being achieved.

Section 134 contains the effective dates.

Section 134(a) requires that this title shall take effect on the October 1 that is at least two years after the date of its enactment.

Section 134(b) states that all regulations, forms and clauses required to be prescribed shall be promulgated one year prior to such effective date.

Section 134(c) permits lessors to comply with the requirements of this title, in accordance with the regulations, forms and clauses prescribed by the Board, prior to such effective date.

Section 903 sets forth technical amendments to the Truth-in-Lending Act which are required because the leasing provisions have been placed in a separate title.

TITLE X—FAIR DEPOSIT AVAILABILITY

SECTION-BY-SECTION ANALYSIS

Section 1001 entitles this Act the "Fair Deposit Availability Act of 1984."

Section 1002 contains definitions.

Section 1002(1) defines the depository institutions which are covered by the Act to include (a) an insured bank; (b) a mutual savings bank; (c) a savings bank; (d) an insured credit union; (e) a savings and loan association as defined in the Federal Home Loan Bank Act; and (f) any insured institution as defined in the National Housing Act. It also includes institutions that are eligible to make application to become a federally insured institution.

Section 1002(2) defines the term "deposit account" as an account in a depository institution where the account holder is allowed to make withdrawals by various types of instruments or telephone transfer for the purpose of making transfers to third parties. The definition excludes time deposits and savings accounts that are not used for transactions purposes.

Section 1002(3) defines the term "Board" as the Board of Governors of the Federal Reserve System.

Section 1002(4) defines the term "check or similar instrument" as a check, negotiable order of withdrawal, share draft, money order or similar instruments. The definition excludes noncash items.

Section 1003 contains requirements for disclosure of availability policies.

Section 1003(a) requires depository institutions to provide written disclosures to customers opening an account of its general policy with respect to when a customer may withdraw deposited funds. For existing accounts, a depository institution must disclose its policy to account holders in the first regularly scheduled mailing after the effective date of this Act, unless such information has already been so disclosed.

Section 1003(b) requires depository institutions to post a clear and conspicuous notice disclosing its general policy with respect to when a customer may withdraw deposited funds, and to mail an annual reminder to account holders that some deposits may be subject to a check hold.

Section 1003(c) requires the owner of an automatic teller machine to provide a "brief reminder" at each terminal where deposits are accepted that holds may be placed on deposits by check or similar instrument.

Section 1003(d) requires depository institutions to notify their account holders of changes in their delayed availability policies. Such notification is not required if the change expedites the availability of funds.

Section 1003(e) requires depository institutions to disclose their general policy to consumers requesting this information by telephone.

Section 1003(f) authorizes the Board to issue regulations designed to implement their disclosure requirements.

Section 1003(g) requires depository institutions to notify account holders in writing of when interest is computed on funds deposited in an interest bearing account or time deposit, unless the computation begins on or before the institution receives provisional credit for the deposit.

Section 1003(h) authorizes the Board to publish model disclosure forms and clauses for common transactions to facilitate compliance with these disclosure requirements. Use of the models is not required. However, a depository institution will be considered to be in compliance with the disclosure requirements if it either uses a model published by the Board, or uses the model but changes it by deleting information not required by this title or rearranging the format.

Section 1003(i) requires the Board to provide an opportunity for notice and comment before adopting model forms and clauses.

Section 1004 requires depository institutions to pay interest on interest bearing deposit accounts no later than the time the institution receives provisional credit on the deposit. If that date falls on a nonbusiness day, availability must be provided on the next business day. This requirement does not apply where the computation of interest begins at a later date for all deposits.

Section 1005 contains provisions designed to provide customers with access to their funds in a more timely fashion.

Section 1005(a) instructs the Federal Reserve Board to publish for comment not later than 18 months after the date of enactment, a regulation designed to improve the check clearing system by expediting the process for returning checks or by other means to achieve the goal of (1) providing one-day availability for funds from deposits made by checks drawn on local depository institutions; and (2) providing three-day availability for funds from deposits made by checks drawn on other institutions. This section does not apply to those checks which pose a serious risk of loss to a depository institution.

Section 1005(b) lists thirteen considerations for the Board in promulgating its regulations. These thirteen factors are:

(1) adopting a uniform endorsement standard;

(2) providing for direct notification of returning checks and similar instruments to the depository institution of first deposit:

(3) providing for direct return of checks and similar instruments to the depository institution of first deposit;

(4) providing for return of all checks and similar instruments through the Federal Reserve System's clearing house;

(5) extending limits for returns;

(6) establishing schedules for the availability of funds deposited by checks and similar instruments;

(7) prescribing the availability of funds deposited by checks and similar instruments based on the nature of the account to which the deposit was made;

(8) the use of electronic means of collecting and returning checks;

(9) providing for check truncation;

(10) the establishment of an automated return system;

(11) charging a depository institution based upon notification that a check or similar instrument will be presented for payment;

(12) creating incentives for depository institutions to return unpaid items promptly to the depository institution of first deposit; and

(13) keeping the costs of any improvements to be implemented to a minimum.

This list is not exhaustive and the Board is empowered to consider and implement any other approach or combination of approaches, that would help meet the statutory goals.

Section 1005(c) requires that the Board's regulations shall become effective three years after the date of enactment.

Section 1005(d) requires the Board to establish an Expedited Funds Availability Council to assist it in its exercise of the functions required by this Act. The members of the Council include representatives of the four other financial regulatory agencies, two representatives of the Consumer Advisory Council, one representative from users of payment systems services, and one from the providers of payment systems services in competition with the Federal Reserve System.

Section 1006 requires the Secretary of the Treasury, by regulation, to require that funds deposited by a check drawn on the Treasury of the United States, which is first endorsed for deposit by a customer with an established relationship with a depository institution, be available for withdrawal by the date the institution received provisional credit for that check. If that date falls on a nonbusiness day, availability must be provided on the next business day.

Section 1007 deals with administrative enforcement.

Section 1007(a) identifies the federal financial regulatory agencies which are responsible for the administrative enforcement of these requirements. For national banks, the Comptroller of the Currency shall enforce these requirements. For State member banks of the Federal Reserve System, the Federal Reserve Board shall enforce these requirements. For other banks insured by the Federal Deposit Insurance Corporation, that agency shall enforce these requirements for savings and loan institutions, and the National Credit Union Administration is responsible for enforcement for federally-chartered or insured credit unions.

Section 1007(b) provides that a violation of a requirement imposed by this Act shall be considered to be a violation of the statutory provisions authorizing enforcement by the above federal financial regulatory agencies with respect to the institutions they regulate. These agencies, of course, may also exercise any other authorities conferred by law in addition to the authorities specified in this Act.

Section 1007(c) authorizes state regulatory agencies to enforce the requirements of this Act for institutions not covered in subsection (a).

Section 1007(d) clarifies the authority of agencies other than the Federal Reserve Board to make rules respecting their own procedures to enforce compliance with the requirements of this title.

Section 1008 contains provisions concerning civil liability.

Section 1008(a) exempts violations of the telephone disclosure requirements from civil liability. For violations of the disclosure, payment of interest on deposits, and availability of Treasury checks requirements of this title, the civil liability shall be (1) actual damages; (2) statutory damages of not less than $50 nor greater than $500 for an individual action, or in the case of a class action, an amount the court will allow, with no minimum recovery applicable for each member of the class, not to exceed the lesser of $500,000 or 1 percent of the net worth of the depository institution; and (3) court costs and reasonable attorney's fees in the case of a successful action. When awarding damages in class action, the court shall consider several factors, including the amount of actual damages awarded, the frequency and persistence of failures, the resources of the depository institution, the number of persons adversely affected, and the extent to which the violations were intentional

Section 1008(b) states that depository institutions will not be liable under this section if the violation resulted from a bona fide error which occurred in spite of procedures established and maintained to avoid any such error. Examples of bona fide errors include clerical, calculation, computer malfunction, and programming and printing errors. Errors in legal judgment are not bona fide errors for purposes of this section.

Section 1008(c) states that actions brought under this section may be initiated in any United States district court, or other court of competent jurisdiction, within one year from the date of the violation.

Section 1008(d) states that liability imposed under this section will not apply to acts done or omitted in good faith in conformity with any rule, regulation or interpretation by the Board, or to acts which conform with any interpretation of approval by an official of the Federal Reserve System who is authorized by the Board to issue such interpretations of approvals; even though after the act of omission the rule, regulation, interpretation or approval is amended, rescinded or determined by judicial or other authorities to be invalid.

Section 1009(a) makes it clear that nothing in the title prevents a depository institution from making funds available for withdrawal at an earlier time than required by this title or by regulations of the Board. Nothing in this title affects a depository institution's existing right (a) to accept or reject a check for deposit; or (b) if a check is accepted for deposit and provisional settlement has been made, revoke the provisional credit, charge back the depositor's account, or claim a refund for such provisional credit.

Section 1009(b) provides this title's preemption standard and states that the regulations prescribed by the Board shall supersede state law where the Board determines the state law to be inconsistent with the provisions of this title or its regulations. For example, a few states prohibit the direct return of checks to the institution of first deposit. Should the Board, by regulation, require direct return of checks, those state laws would be superseded.

Section 1010 requires the Board to study and submit to the Congress, one year after implementing its regulations, its findings concerning the effect of changes made by the regulations, and assessment of improvements that could be made in the check collection system, and an assessment of the use of electronics in payments.

TITLE XI—CREDIT CARDS

Section 1101 states that this Act shall be called the "Fair Credit Card Act of 1986."

Section 1102 amends Section 127 of the Truth-in-Lending Act to add three new subsections requiring disclosures for credit card solicitations, and the use of certain balance calculation methods for third party bank cards, as follows:

Subsection (c) requires that credit card solicitations or advertisements mailed to the consumer disclose the annual percentage rate, the existence or nonexistence of a "grace" period, and the annual fee or other charges applicable to the card.

Subsection (d) requires that charge card solicitations or advertisements mailed to the consumer disclose the annual fees or other charges applicable to the card, and that charges incurred are payable upon receipt of the monthly payment.

Subsection (e) requires the Federal Reserve Board to issue a regulation requiring use of the average daily balance method, or a method resulting in a lower finance charge than average daily balance, for third party credit cards.

TITLE XII—MISCELLANEOUS

Section 1201: Treatment of funds of depository institution regulators

This section expressly exempts the funds of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration from sequestration or reduction of obligation limitations under the Balance Budget and Emergency Deficit Control Act of 1985. Each of these agencies is complete-

ly financed by the institutions they regulate, any savings from budget cuts could not be used to fund any other government activities. In addition, the section would clarify and extend existing law to establish a uniform exemption for the funds of each of these agencies from the apportionment authority of the Office of Management and Budget. This will confirm the flexibility and independence these self-financing agencies need to respond quickly to failing and failed depository institutions, and to supervise all depository institutions effectively.

Section 1202: NOW account amendment

This section would clarify that organizations operated primarily for political purposes and not for profit are eligible to own negotiable order of withdrawal (NOW) accounts. Under this language, political committees which are organized to support candidates for local, state and/or federal office would now have the option to use interest-bearing NOW accounts at financial institutions. The coverage would also include political party committees and the separate segregated funds commonly known as political action committees of corporations, labor organizations, trade associations, membership organizations, cooperatives and similar organizations.

Section 1203: Reimbursement for travel

This section parallels a similar provision applicable to the Securities and Exchange Commission. It permits Board members and staff of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to accept payment from federal and non-federal sponsors for reimbursement for travel, subsistence, and other expenses incurred in attending meetings and conferences pertaining to the activities of the Board. This authority is subject to Board rules governing conflicts of interest.

Section 1204: Loan marketing association

This section amends the Bank Holding Company Act and the National Housing Act to prohibit the Student Loan Marketing Association (Sallie Mae) from owning or controlling an insured bank, mutual savings bank, savings bank or savings and loan association.●

By Mr. BUMPERS (for himself, Mr. BIDEN, Mr. SARBANES, Mr. HECHT, Mr. KERRY, Mr. METZENBAUM, Mr. SIMON, Mr. KENNEDY, and Mr. BAUCUS):

S. 2593. A bill to establish the National Nuclear Safety Study Commission; to the Committee on Environment and Public Works.

NATIONAL NUCLEAR SAFETY STUDY COMMISSION

● Mr. BUMPERS. Mr. President, I am introducing legislation today to establish an independent 12-member commission of distinguished experts to study the Chernobyl nuclear accident and a broad range of nuclear safety issues. This bill is identical to S. 2571 which I introduced on June 19. I had been informed by the Senate parliamentarian several days prior to its introduction that my bill would be referred to the Committee on Environment and Public Works. However, the bill was erroneously referred to the Committee on Government Affairs. Therefore, I am reintroducing the legislation in order to achieve the proper referral.●

By Mr. GORE (for himself and Mr. GORTON):

S. 2594. A bill to require the Office of Science and Technology Policy to report to the Congress on fiber optic networks and other options to improve communications among supercomputer centers and users in the United States; to the Committee on Commerce, Science, and Transportation.

SUPERCOMPUTER NETWORK STUDY ACT

Mr. GORE. Mr. President, it gives me great pleasure to introduce legislation today in behalf of myself and the Senator from Washington, Senator GORTON, that will expand the potential of fiber optic networks to link the Nation's supercomputers into one system.

The pace and complexity of modern scientific research has dramatically increased the Nation's communications needs. Today, scientists depend on computers the way they once relied on the slide rule.

To meet the needs of science and engineering, the Government established supercomputer facilities at a number of universities and Federal research facilities. Several networks have been designed to link these supercomputers with each other and with individual scientists. Data can be transmitted via satellite transmission and high speed phone lines. The National Science Foundation plans to link its five supercomputer centers in a nationwide system called NSF-net that will transmit data equal to 1.5 million bits per second.

The Nation can be proud of NSF-net—but we need to do more. In order to cope with the explosion of supercomputer activity in this country, we must look to new ways to advance the state-of-the-art in telecommunications—new ways to increase the speed and quality of the data transmission. Without these improvements, the supercomputer networks face data bottlenecks like those we face every day on our crowded highways.

The private sector is already aware of the need to evaluate and adopt new technologies. One promising technology is the development of fiber optic systems for voice and data transmission. Eventually we will see a system of fiber optic highways being installed nationwide. By 1988, U.S. Telecom hopes to complete a 23,000-mile network costing $2 billion or more. By 1990, AT&T will also install a 21,000-mile highway of fiber optic cables stretching across the Nation. In fact, this bill is being introduced today on the 30th anniversary of the Interstate Highway Network.

These fiber optic networks will eventually transmit data at 1.7 billion bits per second—a thousand times faster than NSF-net and nearly 2 million times faster than existing supercomputer networks such as ARPA-net, managed by the Defense Communications Agency. In addition, optical fibers tolerate radiation well and are not affected by lightning, static discharge, or large motors.

Mr. President, today I am introducing the Supercomputer Network Study Act of 1986, to require the Office of Science and Technology Policy to study ways to upgrade our telecommunications networks for supercomputers and promote the use of fiber optics.

This study is designed to answer critical questions on the needs of supercomputer telecommunications systems. For example, what are the future requirements for our supercomputers in terms of the quantity and quality of data transmission, data security, and softwear compatibility? What equipment must be developed to take advantage of the high transmission rates offered by fiber optics networks?

The emphasis is on supercomputers, but networks linking smaller computers will also benefit from this study by looking at ways to improve electronic mail and the transfer of business and private records via computer. Today, we can bank by computer, shop by computer, and send letters by computer. Only a few companies and individuals use these services, but the number is growing and existing capabilities are limited.

Already, a number of States are planning statewide networks. New York hopes to someday lay fiber optic cable along the New York Thruway to establish a fiber optic backbone for its telecommunications system. We must look at these future networks now to insure their compatibility.

America's highways transport people and materials across the country. Federal freeways connect with State highways which connect in turn with country roads and city streets. To transport data and ideas, we will need a telecommunications highway connecting users coast to coast, State to State, city to city. The study required in this legislation will identify the problems and opportunities the Nation will face in establishing that highway.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2594

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Supercomputer Network Study Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) the Federal Government has established supercomputer facilities at United States universities and within Federal research facilities in order to make supercom-

puter services widely available to the academic and research communities;

(2) these supercomputer services play a central role in the advancement of scientific and engineering knowledge in the United States, and will become even more important to research in the years to come;

(3) new research projects and new efforts to improve communications among government, universities, and industry in order to promote the Nation's future competitiveness will require greater transmissions of data among institutions;

(4) universities around the Nation are connected to these academic and Federal supercomputer facilities through a network of telecommunications links that soon may be unable to handle the rapidly increasing demand from researchers;

(5) given the explosive growth in supercomputer activities in the United States, the proliferation of data handling protocols, and the potential inability of current networking arrangements to handle this growing amount of communications, the Federal Government must ensure the development of a supercomputer networking policy to meet the Nation's current and future needs;

(6) as compared with traditional telecommunications technologies, new systems such as fiber optic technologies appear to offer remarkable advantages, including much higher data transmission capacities, lower operating expense, greater reliability, and greater security;

(7) a fiber optic networking system for academic and Federal supercomputers might greatly benefit both the research community and the development of new United States communications technologies;

(8) a high speed network is likely to provide most institutions of higher learning with more equal access to the currently limited number of United States supercomputer centers; and

(9) the Congress and the academic community would benefit from a study of options for the future networking of such supercomputers in the United States.

STUDY BY THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SEC. 3. (a) The Office of Science and Technology Policy (hereinafter referred to as the "Office") shall undertake a study of critical problems and current and future options regarding communications networks for supercomputers at universities and Federal research facilities in the United States. The study shall include an analysis of—

(1) the networking needs of the Nation's academic and Federal research supercomputer programs over the period which is fifteen years after the date of enactment of this Act, including requirements in terms of volume of data, reliability of transmission, software compatibility, graphics capability, and transmission security;

(2) the benefits and opportunities that an improved computer network would offer for electronic mail, file transfer, and remote access and communications for universities and Federal research facilities in the United States; and

(3) the networking options available for linking academic and other Federally supported supercomputers, with a particular emphasis on the advantages and disadvantages, if any, of fiber optic systems.

(b) The Office shall, within one year after the date of enactment of this Act, report to the Congress on the findings from the study undertaken in accordance with subsection (a) of this section.

ADMINISTRATIVE PROVISIONS

SEC. 4. (a) The Office may, in order to carry out the provisions of this Act, hold such hearings and consult with such representatives in academic institutions, the business community, Federal, State, and local governments, and other organizations, associations, and individuals as the Director of the Office considers advisable.

(b) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, shall furnish to the Office, upon request made by the Director of the Office, any information or assistance the Director considers necessary to carry out the study undertaken in accordance with this Act.

By Mrs. HAWKINS (for herself, Mr. THURMOND, Mr. KENNEDY, Mr. HATCH, and Mr. DODD):

S. 2595. A bill to amend the Public Health Service Act to revise the authorities of, and redesignate, the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS OF 1986

● Mrs. HAWKINS. Mr. President, I rise today to introduce legislation reauthorizing the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism. I am joined in my sponsorship of this legislation by Senators HATCH, THURMOND, KENNEDY, and DODD.

Mr. President, this legislation will supersede S. 2443 for it includes technical compromises reflecting the concerns of the Senate Labor and Human Resources Committee with respect to the alcohol labeling provision. Briefly stated, the alcohol labeling provision which was adopted in committee would be revised to require that all alcoholic beverages display one of four warning labels on a rotating basis. It would also request that the National Institute on Alcohol and Alcoholism, through the Surgeon General, recommend changes in labeling requirements on an annual basis.

Except for the alcohol labeling revision, the content of this language is consistent with that contained in S. 2443 as was unanimously supported by all my colleagues on the Senate Committee on Labor and Human Resources and was favorably reported by the committee on May 20, 1986.

I ask that the entire contents of the bill be printed in the RECORD following my remarks.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alcohol, Drug Abuse, and Mental Health Amendments of 1986".

REVISION AND REDESIGNATION OF ADAMHA

SEC. 2. (a) Section 501 of the Public Health Service Act (42 U.S.C. 290aa) is amended to read as follows:

"NATIONAL INSTITUTES ON ALCOHOL, DRUGS, AND MENTAL HEALTH

"SEC. 501. (a) The National Institutes on Alcohol, Drugs, and Mental Health (hereafter referred to in this title as the 'National Institutes') is an agency of the Service.

"(b)(1) The following national research institutes are agencies of the National Institutes:

"(A) The National Institute on Alcohol Abuse and Alcoholism.

"(B) The National Institute on Drug Abuse.

"(C) The National Institute of Mental Health.

"(2) For purposes of this title, the term 'national research institute' means a national research institute listed in paragraph (1). A reference to the National Institutes includes the national research institutes.

"(c)(1) The National Institutes shall be headed by an Administrator (hereafter in this title referred to as the 'Administrator') who shall be appointed by the President by and with the advice and consent of the Senate.

"(2) The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the National Institutes.

"(d) The Secretary, acting through the Administrator—

"(1) shall supervise the functions of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse in order to assure that the programs carried out through each such Institute receive appropriate and equitable support and that there is cooperation among the national research institutes in the implementation of such programs; and

"(2) shall assure that research at or supported by the National Institutes and each of the national research institutes is subject to review in accordance with section 507 and is in compliance with section 509.

"(e)(1) There shall be in the National Institutes an Associate Administrator for Prevention to whom the Administrator shall delegate the function of promoting the prevention research programs of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse and coordinating such programs between the national research institutes and between the national research Institutes and other public and private entities.

"(2) By January 1, 1988, and every 3 years thereafter, the Administrator, acting through the Associate Administrator for Prevention, shall submit to the Congress a report describing the prevention activities (including preventive medicine and health promotion) undertaken by the National Institutes, the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

"(f) The Administrator shall establish a process for the prompt and appropriate response to information provided the Administrator respecting (1) scientific fraud in connection with projects for which funds have been made available under this Act,

and (2) incidences of violations of the rights of human subjects of research for which funds have been made available under this Act. The process shall include procedures for the receiving of reports of such information from recipients of funds under this Act and taking appropriate action with respect to such fraud and violations.

"(g) The Secretary, acting through the Administrator, shall make grants to schools of the health professions and schools of social work to support the training of students in such schools in the identification and treatment of alcohol and drug abuse. Grants under this subsection shall be made from funds available under this title and section 303.

"(h) To educate the public with respect to the health hazards of alcoholism, alcohol abuse, and drug abuse, the Administrator shall take such actions as may be necessary to ensure the widespread dissemination of current publications of the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse relating to the most recent research findings with respect to such health hazards.

"(i)(1) The Administrator may obtain (in accordance with section 3109 of title 5, United States Code, but without regard to the limitation in such section on the period of service) the services of not more than 20 experts or consultants who have scientific or professional qualifications. Such experts and consultants shall be obtained for the National Institutes and for each of the national research institutes.

"(2)(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5, United States Code.

"(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

"(j) In carrying out this Act, the Administrator may accept voluntary and uncompensated services for the National Institutes and for each of the national research institutes.

"(k)(1) The Alcohol, Drug Abuse, and Mental Health Advisory Board (hereafter in this subsection referred to as the 'Board') shall—

"(A) periodically assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health services and the extent to which those needs are being met by State, local, and private programs and programs receiving funds under this title and part B of title XIX; and

"(B) provide advice to the Secretary and the Administrator respecting activities carried out under this title and part B of title XIX.

"(2)(A) The Board shall consist of 15 members appointed by the Secretary and such ex officio members from the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health as the Secretary may designate. Of the members appointed to the Board, at least 6 members shall represent State and private, nonprofit providers of prevention and treatment services for alcoholism, alcohol abuse, drug abuse, and mental illness, at least 6 members shall be individuals with expertise in public education and prevention services for alcoholism, alcohol abuse, drug abuse, and mental illness, and at least 3 members shall be appointed from members of the general public who are knowledgeable about alcoholism, alcohol abuse, drug abuse, and mental illness.

"(B) The term of office of a member appointed to the Board is 4 years, except that of the members first appointed to the Board—

"(i) 5 shall serve for terms of 1 year;

"(ii) 5 shall serve for terms of 2 years; and

"(iii) 5 shall serve for terms of 3 years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the successor of the member has taken office.

"(3)(A) Except as provided in subparagraph (B), members of the Board shall (i) be paid not more than the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board, and (ii) while away from their homes or regular places of business and while serving in the business of the Board, be entitled to receive transportation expenses as prescribed by section 5703 of title 5, United States Code.

"(B) Members of the Board who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Board.

"(4) The Board may appoint such staff personnel as the Board considers appropriate.

"(5) The Secretary shall designate the chairman of the Board.

"(6) The Board shall meet at least 3 times each calendar year.

"(7) The Board shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on its activities during the prior year and shall include in such report such recommendations for legislation and administrative action as it deems appropriate.".

(b)(1) The title heading for title V of the Public Health Service Act is amended to read as follows:

"TITLE V—NATIONAL INSTITUTES ON ALCOHOL, DRUGS, AND MENTAL HEALTH"

(2) The heading for part A of such title is amended to read as follows:

"PART A—ORGANIZATION".

(3) Section 506(d) of such Act (42 U.S.C. 290aa-5(d)) is amended by striking out "of the administration" in the first sentence.

(c)(1) The Alcohol, Drug Abuse, and Mental Health Administration is redesignated as the National Institutes on Alcohol, Drugs, and Mental Health, and the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration or any other official of such Administration is redesignated the Administrator or official, as appropriate, of the National Institutes on Alcohol, Drugs, and Mental Health.

(2) Any reference to the Alcohol, Drug Abuse, and Mental Health Administration, the Administrator of Alcohol, Drug Abuse, and Mental Health Administration, or any other official of the Alcohol, Drug Abuse, and Mental Health Administration in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be deemed to refer and apply to the National Institutes on Alcohol, Drugs, and Mental Health or the Administrator or official, as appropriate, of the National Institutes on Alcohol, Drugs, and Mental Health, respectively.

ADVISORY COUNCILS

SEC. 3. (a) Part A of title V of the Public Health Service Act is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the Institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and

with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 of the Public Health Service Act (42 U.S.C. 218) is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

PUBLIC HEALTH EMERGENCIES

SEC. 4. Part A of title V of the Public Health Service Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

RESEARCH AUTHORIZATION

SEC. 5. (a) Section 513 of the Public Health Service Act (42 U.S.C. 290bb-2) is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal years 1988, 1989, 1990, and 1991.".

(b) Section 517 of the Public Health Service Act (42 U.S.C. 290cc-2) is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $83,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal years 1988, 1989, 1990, and 1991.".

CHILD ABUSE REPORTING

SEC. 6. (a) Section 523(e) of the Public Health Service Act (42 U.S.C. 290dd-3(e)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" before "The"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State authorities.".

(b) Section 527(e) of such Act (42 U.S.C. 290ee-3(e)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" before "The"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State authorities.".

SUICIDE

SEC. 7. Section 501 of the Public Health Service Act (42 U.S.C. 290aa) (as amended by section 2 of this Act) is further amended—

(1) by redesignating subsection (k) as subsection (l); and

(2) by inserting after subsection (j) the following new subsection:

"(k)(1) The Secretary shall—

"(A) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(B) make such information generally available to the public and health professionals.

"(2) By January 1, 1988, and every 3 years thereafter, the Secretary shall report to the Congress on the activities undertaken under paragraph (1) during the period reported on and shall include in each such report an assessment of the effectiveness of such activities.".

ANIMALS IN RESEARCH

SEC. 8. Part A of title V of the Public Health Service Act (as amended by section 4 of this Act), is further amended by adding at the end thereof the following new section:

"ANIMALS IN RESEARCH

"SEC. 509. (a) The Secretary, acting through the Administrator, shall establish guidelines for the following:

"(1) The proper care of animals to be used in research conducted by and through agencies of the National Institutes.

"(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

"(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

"(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

"(3) The organization and operation of animal care committees in accordance with subsection (b).

"(b)(1) Guidelines of the Secretary under subsection (a)(3) shall require animal care committees at each entity which conducts research with funds provided under this title to assure compliance with the guidelines established under subsection (a).

"(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than 3 members, and shall include at least 1 individual who has no association with such entity and at least 1 doctor of veterinary medicine.

"(3) Each animal care committee of a research entity shall—

"(A) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semiannually to evaluate compliance with applicable guidelines established under subsection (a) for appropriate animal care and treatment;

"(B) keep appropriate records of reviews conducted under subparagraph (A); and

"(C) for each review conducted under subparagraph (A), file with the Administrator at least annually (i) a certification that the review has been conducted, and (ii) reports of any violations of guidelines established under subsection (a) or assurances required under paragraph (1) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under subparagraph (C) shall include any minority views filed by members of the committee.

"(c) The Administrator shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the Administrator or any agency of the National Institutes to include in its application or contract proposal, submitted after the expiration of the 12-month period beginning on the date of enactment of this section—

"(1) assurances satisfactory to the Administrator that—

"(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) and has an animal care committee which meets the requirements of subsection (b); and

"(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

"(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

"(d) If the Administrator determines that—

"(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this title do not meet applicable guidelines established under subsection (a);

"(2) the entity has been notified by the Administrator of such determination and has been given a reasonable opportunity to take corrective action; and

"(3) no action has been taken by the entity to correct such conditions;

the Administrator shall suspend or revoke such grant or contract under such conditions as the Administrator determines appropriate.

"(e) No guideline or regulation promulgated under subsection (a) or (c) may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.".

PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS

SEC. 9. (a) Section 503 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary, acting through the Institute and in consultation with the Director of the Office on Smoking and Health, shall prepare for distribution announcements for television to educate the public, particularly women, concerning the dangers resulting from cigarette smoking by women. In the preparation of such announcements, the Secretary shall, to the extent feasible, use appropriate private organizations and business concerns.

"(2) Of the amount appropriated under section 517 for each of the fiscal years 1987, 1988, and 1989, $250,000 shall be available to carry out paragraph (1) for such fiscal year.".

(b) Section 517 of such Act (as amended by section 5(b) of this Act) is further amended by inserting "section 503(e) and" before "this subpart".

ALCOHOLIC CONTENT DISCLOSURE

SEC. 10. (a)(1) Section 5(e)(2) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)(2)) is amended by striking out beginning with "except that" the first place it appears through "State law and".

(2) Section 5(f)(2) of such Act (27 U.S.C. 205(f)(2)) is amended by striking out "malt beverages and" and inserting in lieu thereof "malt beverages are permitted, but are not required, and such statements with respect to".

(3) Section 17(a) of such Act (27 U.S.C. 211(a)) is amended by adding at the end thereof the following new paragraph:

"(9) The term 'alcoholic content' means, with respect to malt beverages, the percentage by volume of the beverage which is comprised of alcohol.".

(4)(A) On and after the date of enactment of this Act, the regulations contained in sections 7.22(b)(3), 7.26, 7.29(g), and 7.54(c) of title 27, Code of Federal Regulations, shall cease to be in effect.

(B) Within one year after the date of enactment of this Act, the Secretary of the Treasury shall revise the regulations promulgated under the Federal Alcohol Administration Act to carry out the amendments made by this subsection.

(b)(1) The amendments made by this subsection shall take effect one year after the date of enactment of this Act.

(2) Section 5(e) of the Federal Alcohol Administration Act (as amended by subsection (a)(1) of this section) is further amended—

(A) by inserting "and except that subsection (g) of this section shall apply in lieu of this clause to statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages" before the end parenthesis in clause (2); and

(B) by inserting after subsection (f) the following:

"(g) ALCOHOLIC CONTENT OF MALT BEVERAGES: To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate commerce, or receive therein, or to remove from customs custody for consumption, any malt beverages in bottles, unless the label on the bottle of any such beverage bears an accurate statement of the alcoholic content of such beverage.".

ALCOHOL WARNING LABELS

SEC. 11. (a) Title V of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART D—PUBLIC AWARENESS CONCERNING THE HEALTH EFFECTS OF ALCOHOLIC BEVERAGE CONSUMPTION

"PUBLIC AWARENESS

"SEC. 531. (a) It shall be unlawful for any person to manufacture, import, distribute, sell, ship, package or deliver for sale, distribution, or shipment, or otherwise introduce in commerce, in the United States, any alcoholic beverage during a calendar year unless the container of such beverage has a label bearing one of the following statements:

"(1) 'WARNING: THE SURGEON GENERAL HAS DETERMINED THAT THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, DURING PREGNANCY CAN CAUSE BIRTH DEFECTS.

"(2) 'WARNING: DRINKING THIS PRODUCT, WHICH CONTAINS ALCOHOL, CAN IMPAIR YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY.

"(3) 'WARNING: THIS PRODUCT CONTAINS ALCOHOL AND IS PARTICULARLY HAZARDOUS IN COMBINATION WITH SOME DRUGS.

"(4) 'WARNING: THE CONSUMPTION OF THIS PRODUCT, WHICH CONTAINS ALCOHOL, CAN INCREASE THE RISK OF DEVELOPING HYPERTENSION, LIVER DISEASE, AND CANCER.'.

"(5) The statement, if any, prescribed by the Surgeon General under subsection (b)(2) for such calendar year.

"(b)(1)(A) The Director of the National Institute on Alcohol Abuse and Alcoholism shall provide for the conduct of research concerning the chronic and acute effects on health resulting from the consumption of alcoholic beverages. By September 1 of each year, the Director shall, based on the results of the research conducted under the preceding sentence, make recommendations to the Surgeon General for two statements concerning the health effects of the consumption of alcoholic beverages which the Director proposes be prescribed by the Surgeon General for purposes of subsection (a)(5) for the calendar year beginning on January 1 of the succeeding year.

"(B) One of the statements submitted by the Director of the National Institute on Al-

cohol Abuse and Alcoholism under subparagraph (A) for the first calendar year beginning after the effective date of this section shall be a statement with respect to the dangers (including death) resulting from the rapid consumption of excessive amounts of alcoholic beverages.

"(2) By October 1 of each year, the Surgeon General may select one of the statements recommended during such year by the Director of the National Institute on Alcohol Abuse and Alcoholism pursuant to paragraph (1). If the Surgeon General selects one such statement, the Surgeon General shall prescribe regulations requiring that, for purposes of subsection (a)(5), such statement shall, for the calendar year beginning on January 1 of the succeeding year, be one of the statements required under subsection (a) to be specified on a label on the container of an alcoholic beverage.

"(c) The label required by subsection (a) shall be located in a conspicuous and prominent place on the container of an alcoholic beverage. The statement required by such subsection shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such container.

"(d) Each statement required by subsection (a) shall—

"(1) be randomly displayed by a manufacturer, packager, or importer of an alcoholic beverage in each calendar year in as equal a number of times as is possible on each brand of the beverage; and

"(2) be randomly distributed in all parts of the United States in which such brand is marketed.

"(e) No statement relating to the consumption of alcoholic beverages and health, other than the statements required by subsection (a), shall be required on any container of an alcoholic beverage.

"(f) Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

"(g) The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this section upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

"(h) Alcoholic beverages manufactured, imported, distributed, sold, shipped, packaged, or delivered (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this section, but such exemptions shall not apply to alcoholic beverages manufactured, imported, distributed, sold, shipped, or packaged or delivered for sale, distribution, or shipment to members or units of the Armed Forces of the United States located outside of the United States.

"(i) Nothing in this section shall be construed to relieve any person from any liability under Federal or State law to any other person.

"(j) For purposes of this section—

"(1) the term 'alcoholic beverage' includes distilled spirits, wine, and malt beverages;

"(2) the term 'commerce' has the same meaning as in section 3(2) of the Federal Cigarette Labeling and Advertising Act;

"(3) the term 'container' means any container, irrespective of the material from which made, for use for the sale of any alcoholic beverage;

"(4) the term 'distilled spirits' means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use;

"(5) the term 'malt beverage' means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption;

"(6) the term 'person' has the same meaning as in section 3(5) of such Act;

"(7) the terms 'sale' and 'distribution' include sampling or any other distribution not for sale;

"(8) the term 'United States' has the same meaning as in section 3(3) of such Act; and

"(9) the term 'wine' has the same meaning as in section 17(a)(6) of the Federal Alcohol Administration Act.".

(b) The amendment made by this section shall take effect 6 months after the date of enactment of this Act.

TECHNICAL AMENDMENT

SEC. 12. Section 504(e)(2)(A) of the Public Health Service Act (42 U.S.C. 290aa-3(e)(2)(A)) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon.●

ADDITIONAL COSPONSORS

S. 477

At the request of Mr. ANDREWS, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 477, a bill to enhance rail competition and to ensure reasonable rail rates where there is an absence of effective competition.

S. 1060

At the request of Mr. D'AMATO, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 1060, a bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity (resulting from changes made in 1977 in the benefit computation formula) between those levels and the benefit levels of persons who became eligible for benefits before 1979.

S. 2057

At the request of Mr. HATCH, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2057, a bill to establish the President's Council on Health Promotion and Disease Prevention.

S. 2064

At the request of Mr. WARNER, the names of the Senator from Alabama [Mr. DENTON], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 2064, a bill to require the President to make an annual report on the national strategy of the U.S. Government to certain committees of Congress and to require joint committee meetings to be held on such report.

S. 2115

At the request of Mr. THURMOND, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 2115, a bill to recognize the organization known as the 82d Airborne Division Association, Inc.

S. 2186

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2186, a bill to exempt any amounts available to provide certain benefits to veterans with service-connected disabilities from any requirement for sequestration of funds under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

S. 2187

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 2187, a bill to amend title 38, United States Code, to exempt from sequestration certain benefits for veterans and dependents and survivors of certain veterans which are paid based on the service-connected disability or death of veterans.

S. 2220

At the request of Mr. CRANSTON, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 2220, a bill to provide for a mutual, verifiable moratorium on the testing of nuclear warheads, and for other purposes.

S. 2224

At the request of Mr. HUMPHREY, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 2224, a bill to limit the uses of funds under the Legal Services Corporation Act to provide legal assistance with respect to any proceeding or litigation which relates to abortion.

S. 2382

At the request of Mr. HUMPHREY, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 2382, a bill to amend the Internal Revenue Code of 1954 to deny status as a tax-exempt organization, and as a charitable contribution recipient, for organizations which directly or indirectly perform, finance, or provide facilities for abortions, except to prevent the death of the mother.

S. 2447

At the request of Mrs. KASSEBAUM, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2447, a bill to provide for improved disclosure of certain rail transportation contracts.

S. 2455

At the request of Mr. MITCHELL, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2455, a bill entitled the National Organ and Tissue Donor Act.

S. 2494

At the request of Mr. BRADLEY, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 2494, a bill to amend title XVIII of the Social Security Act to modify the limitations on payment for home health services under the Medicare Program to conform regulations; to assure that all legitimate costs are taken into account in calculating such limitations; to provide affected parties an opportunity to comment on revisions in Medicare policies; and to require discharge planning procedures.

S. 2495

At the request of Mr. KENNEDY, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 2495, a bill to amend the Food Stamp Act of 1977, the Child Nutrition Act of 1966, and the National School Lunch Act to improve the availability of benefits under such acts, to provide for a program for nutrition monitoring and research, and for other purposes.

S. 2537

At the request of Mr. CRANSTON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2537, a bill to protect and preserve the Federal interest and the historic and natural features of the National Capital.

SENATE JOINT RESOLUTION 354

At the request of Mr. CHILES, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Joint Resolution 354, a joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week."

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day."

SENATE RESOLUTION 275

At the request of Mr. HUMPHREY, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of Senate Resolution 275, a resolution to express the opposition of the United States to the "one-child" family planning policies of the Government of the People's Republic of China and to encourage the People's Republic of China to abandon such policies.

SENATE RESOLUTION 414

At the request of Mr. MURKOWSKI, the names of the Senator from Connecticut [Mr. DODD], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Resolution 414, a resolution expressing the sense of the Senate regarding the resumption of technical meetings with the Government of the Socialist Republic of Vietnam on the issues of the repatriation of remains of American servicemen, joint excavations of crash sites, and investigation of so-called live sighting reports.

SENATE RESOLUTION 424

At the request of Mrs. HAWKINS, the names of the Senator from Alaska [Mr. MURKOWSKI], and the Senator from New Hampshire [Mr. HUMPHREY] were added as cosponsors of Senate Resolution 424, a resolution commending Col. Ricardo Montero Duque for the extraordinary sacrifices he has made to further the cause of freedom in Cuba, and for other purposes.

AMENDMENT NO. 2133

At the request of Mr. MATTINGLY, the names of the Senator from Vermont [Mr. LEAHY], the Senator from California [Mr. WILSON], the Senator from Indiana [Mr. QUAYLE], the Senator from Oklahoma [Mr. NICKLES], the Senator from Nebraska [Mr. ZORINSKY], the Senator from Nevada [Mr. LAXALT], the Senator from Rhode Island [Mr. PELL], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Alaska [Mr. STEVENS], the Senator from Texas [Mr. GRAMM], and the Senator from Idaho [Mr. SYMMS], were added as cosponsors of amendment No. 2133 proposed to H.R. 3838, a bill to reform the internal revenue laws of the United States.

SENATE CONCURRENT RESOLUTION 152—CHANGES IN THE ENROLLMENT OF S. 2414

Mr. DOLE (for Mr. THURMOND) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 152

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, in the enrollment of the bill (S. 2414), to amend title 18 of the United States Code, shall make the following change:

At the end of the bill add the following:

This Act and the amendments made by this Act intended to amend the Firearms Owners' Protection Act, shall become effective on the date on which the section they are intended to amend in such Firearms Owners' Protection Act becomes effective and shall apply to the amendments to title 18, United States Code, made by such Act.

AMENDMENTS SUBMITTED

TAX REFORM ACT OF 1986

ARMSTRONG AMENDMENT NO. 2161

Mr. ARMSTRONG proposed an amendment to the bill (H.R. 3838) to reform the internal revenue laws of the United States; as follows:

On page 2316, between lines 17 and 18, insert the following new subtitle:

SUBTITLE E—REGULATED INVESTMENT COMPANIES

SEC. 1451. AMENDMENTS TO THE REGULATED INVESTMENT COMPANY QUALIFICATION RULES.

(a) IN GENERAL.—Paragraph (2) of subsection 851(b) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof: "(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options or futures contracts) derived with respect to its business of investing in such stock, securities, or currencies;".

(b) FOREIGN CURRENCY GAINS.—Subsection 851(b) is amended—

(1) by striking out the period at the end of the next to last sentence therein and inserting in lieu thereof a semicolon;

(2) by striking out the phrase "For purposes of paragraphs (2) and (3)," at the beginning of the final sentence therein; and

(3) by striking out the period at the end of such final sentence and inserting in lieu thereof: "; and the Secretary may by regulation exclude from qualifying income foreign currency gains that are not ancillary to the company's principal business of investing in stock or securities (or options and futures thereon)".

SEC. 1452. TREATMENT OF SERIES FUNDS AS SEPARATE CORPORATIONS.

(a) IN GENERAL.—Section 851 is amended by adding at the end thereof the following new subsection.

"(q) SPECIAL RULE FOR SERIES FUNDS.—

"(1) In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

"(2) For purposes of paragraph (1) the term 'fund' means a segregated portfolio of assets, the beneficial interest in which is owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other classes or series in respect of such portfolio of assets."

(b) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company that has more than one fund on the date on which this section becomes effective, and has before such effective date been treated for Federal income tax purposes as a single corporation—

(1) the amendment made by this section, and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

(2) the tax attributes of such regulated investment company shall be appropriately allocated among its funds.

SEC. 1453. EXTENSION OF PERIOD FOR MAILING NOTICES TO SHAREHOLDERS.

The following provisions are each amended by striking out "45 days" each place it appears and inserting in lieu thereof "60 days":

(1) Paragraph (3) of subsection 852(b).

(2) Subparagraph (A) of paragraph 852(b)(5).

(3) Subsection (c) of section 853.

(4) Paragraph (2) of subsection 854(b).

(5) Subsection (c) of section 855.

SEC. 1454. PROTECTION OF MUTUAL FUNDS RECEIVING THIRD-PARTY SUMMONSES.

Paragraph (3) of subsection 7609(a) is amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding the following new subparagraph:

"(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof."

SEC. 1455. EFFECTIVE DATES.

(a) The amendments made by sections 1451, 1452, and 1453 shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act.

(b) The amendments made by section 1454 shall apply to summonses served after the date of the enactment of this Act.

DURENBERGER AMENDMENT NO. 2162

Mr. DURENBERGER proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the end of subtitle P of title XVI, insert the following new section:

SEC. —. TREATMENT OF CERTAIN ENTITIES AS TRUSTS FOR TAX PURPOSES.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1954, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

(b) ENTITY.—An entity is described in this subsection if—

(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota.

(2) such entity receives royalties from iron ore leases, and

(3) income interests in such entity are publicly traded on a national stock exchange.

(c) ELECTION.—

(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

(A) shall be made by the board of trustees of the entity, and

(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

(2) AGREEMENT.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not—

(A) sell any trust property,

(B) purchase any additional trust properties, or

(C) receive any income other than—

(i) income from long-term mineral leases, or

(ii) interest or other income attributable to ordinary and necessary reserves of the entity.

(3) PERIOD FOR WHICH ELECTION IS IN EFFECT.—An election under this subsection shall be in effect during the period—

(A) beginning on the first day of the first taxable year following the taxable year in which the election is made, and

(B) ending as of the close of the taxable year preceding the taxable year in which the entity ceases to be described in subsection (b) or violates any term of the agreement under paragraph (2).

(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

(d) SPECIAL RULES FOR TAXATION OF TRUST.—

(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 applies, and

(B) any person holding an interest in the property held by such entity as of such time shall be treated as a qualified electing shareholder for purposes of section 333 of such Code.

(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), then the tax imposed on such entity for the taxable year in which such cessation or violation occurs shall be increased by the sum of—

(A) the amount of taxes which would have been imposed on such entity during any taxable year with respect to which an election under subsection (c) was in effect if such election had not been in effect, plus

(B) interest determined for the period—

(i) beginning on the due date for any such taxable year, and

(ii) ending on the due date for the taxable year in which such cessation or violation occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

(e) The election described in Subsection (c) shall be effective for taxable years beginning after the date of enactment of this legislation. The election shall terminate five years from the date of enactment of this legislation unless the Trust petitions a court of competent jurisdiction and the court acts to remove from the trust instrument any powers deemed by the court to be inconsistent with the operation of the entity as a trust for tax purposes as described in the Internal Revenue Ruling dated November 1, 1983.

At the end of title VI, insert:

SEC. 637. MODIFICATION OF DEFINITION OF RELATED PARTY.

(a) PARTNERSHIPS.—Paragraph (2) of section 707(b) (relating to gains treated as ordinary income) is amended by striking out "80 percent" each place it appears and insert in lieu thereof "50 percent".

(b) SALE OF DEPRECIATED PROPERTY BETWEEN CERTAIN RELATED TAXPAYERS.—

(1) IN GENERAL.—Paragraph (1) of section 1239(b) (defining related persons) is amended by striking out "80-percent owned entities" and inserting in lieu thereof "controlled entities".

(2) CONTROLLED ENTITY DEFINED.—

(A) IN GENERAL.—Section 1239(c)(1) (defining 80-percent owned entity) is amended—

(i) by striking out "80 percent or more in value" in subparagraph (A) and inserting in lieu thereof "more than 50 percent of the value",

(ii) by striking out "80 percent or more" in subparagraph (B) and inserting in lieu thereof "more than 50 percent", and

(iii) by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting ", and", and by adding at the end thereof the following new subparagraph:

"(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b)."

(B) CONFORMING AMENDMENT.—Section 1239(c)(1) is amended by striking out "80-percent owned entity" in the heading thereof and in paragraph (1) and inserting in lieu thereof "controlled entity".

(3) CONSTRUCTIVE OWNERSHIP.—Section 1239(c) is amended by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) CONSTRUCTIVE OWNERSHIP.—For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof)."

(4) CONFORMING AMENDMENT.—Section 453(g) is amended by striking out "80-Percent Owned" in the heading thereof and inserting in lieu thereof "Controlled".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to sales after June 20, 1986, in taxable years ending after such date.

(2) TRANSITION RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales after June 20, 1986, which are made pursuant to a binding contract in effect on June 20, 1986, and at all times thereafter.

CHILES AMENDMENT NO. 2163

Mr. CHILES proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the appropriate place in the amendment, insert the following new section:

SEC. . SENSE OF THE SENATE ON REVENUE FLUCTUATIONS.

(a) FINDINGS.—The Senate finds that—

(1) the Committee on Finance amendment to H.R. 3838 (an Act to reform the internal revenue laws of the United States) produces revenues that—

(A) exceed current-law revenues (the Congressional Budget Office (CBO) revenue baseline) by—

(i) $7,000,000,000 in fiscal year 1986,

(ii) $23,000,000,000 in fiscal year 1987, and

(iii) $11,000,000 in fiscal year 1991, and

(B) fall below current-law revenues by—

(i) $21,000,000,000 in fiscal year 1988,

(ii) $21,000,000,000 in fiscal year 1989, and

(iii) $400,000,000 in fiscal year 1990;

(2) the Committee amendment satisfies revenue neutrality over a six-year period, but the revenue shortfalls in fiscal years 1988 and 1989 will make the attainment of the Gramm-Rudman deficit goals more difficult;

(3) numerous options for restraining yearly revenue fluctuations without affecting the fundamental fabric of the Committee amendment are available to the committee of conference on H.R. 3838, in the form of altering effective dates, phasing-in certain provisions, and resolving the major differences in the provisions for broadening the tax base contained in H.R. 3838 and the Committee Amendment;

(4) in some instances, leveling the revenue fluctuations could result in a further reduction in tax burdens on individuals and corporations in 1987; and

(5) altering the provisions of the Committee amendment to achieve a more stable revenue outlook would eliminate the need to resort to artificial accounting conventions, such as the use of a trust fund that would deviate from the actual cash flows to and from the Treasury.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the committee of conference on H.R. 3838 should report Federal tax reform legislation that produces a revenue path with minimal revenue fluctuations.

MOYNIHAN AMENDMENT NO. 2164

Mr. MOYNIHAN proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the end of title XVII, insert:

SEC. . EXTENSION OF FICA AND FUTA COMMON PAYMASTER RULES.

(a) FICA.—Section 3121(s) (relating to concurrent employment by 2 or more employers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, a partnership shall be treated as if it were a corporation."

(b) FUTA.—Section 3306(p) (relating to concurrent employment by 2 or more employers) is amended by adding at the end thereof the following new sentence: "For purposes of the precedng sentence, a partnership shall be treated as if it were a corporation."

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid or incurred after December 31, 1986.

KENNEDY (AND KERRY) AMENDMENT NO. 2165

Mr. KENNEDY (for himself and Mr. KERRY) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 2265, after line 25, insert the following:

(3) TRANSITION RULE.—

(a) IN GENERAL.—with respect to a project described in subparagraph (B)—

(i) the amendments made by this section (other than subsections (f)(3), (f)(4), and (g)(5)(A) of section 43 of the Internal Revenue Code of 1954) shall apply,

(ii) the amendments made by section 201 shall not apply, and

(iii) the amendments made by section 302 shall not apply.

(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

(ii) a zoning commission map amendment was granted on July 17, 1985, and

(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a project described in subparagraph (B), for each residential rental unit occupied by individuals whose income is 30 percent or less of area median gross income (as determined under section 43(g)(2) of such Code), 1 additional unit with respect to which a credit under section 43 of such Code is not otherwise claimed shall be eligible for a credit determined under subsection (a)(2)(A)(i) of section 43 of such Code, if such unit is within a project which also meets the following criteria:

(i) Rents charged for units in such project are restricted by State regulations.

(ii) The annual cash flow of such project is restricted by State law.

(iii) The project is located on land owned by or ground leased from a public housing authority.

(iv) Construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990.

(v) For a 20-year period, 20 percent or more of the residential rental units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

The total credits allowed under this subparagraph shall not exceed 25 percent of the total basis of such project.

(D) SECTION 43.—For purposes of this paragraph any reference to section 43 of the Internal Revenue Code of 1954 is a reference to such section as added by this section.

At the appropriate place in title V, insert the following new section:

SEC. . TAX-EXEMPT ORGANIZATIONS WITH UNRELATED BUSINESS INCOME SUBJECT TO CORPORATE ESTIMATED TAX PAYMENT RULES.

(a) IN GENERAL.—Section 6154 (relating to installment payments of estimated income tax by corporations) is amended by inserting at the end thereof the following new subsection:

"(h) CERTAIN TAX-EXEMPT ORGANIZATIONS.—This section and section 6655 shall apply to any organization subject to the tax imposed by section 511, and for purposes of this section and section 6655, such tax shall be treated as a tax imposed by section 11."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

PACKWOOD (AND LONG) AMENDMENT NO. 2166

Mr. PACKWOD (for himself and Mr. LONG) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1381, line 14, strike "deductions" and insert "deduction".

On page 1386, lines 18 and 19, strike "section 151" and insert "this section".

On page 1387, strike lines 10 through 18 and insert the following:

"(4) PHASE-OUT OF EXEMPTION AMOUNT.—The dollar amounts contained in paragraph (1) shall be reduced by an amount equal to 5 percent of the excess of—

"(A) adjusted gross income, over

"(B) the lowest amount of adjusted gross income for the taxable year which results in the maximum rate adjustment under section 1(g).

On page 1393, line 17, strike the single quotation mark after "section 1(e)" and insert double quotation marks.

On page 1405, line 6, insert "to the employer (after application of section 274(j))" after "deduction".

On page 1411, line 9, strike "allowed" and insert "allowable".

On page 1411, line 11, insert "adjusted" before "gross".

On page 1412, line 8, strike "and".

On page 1412, line 10, strike out the period and the end quotation marks and insert a comma.

On page 1412, between lines 10 and 11, insert:

"(10) section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

"(11) section 171 (relating to deduction for amortizable bond premium), and

"(12) section 216 (relating to deductions in connection with cooperative housing corporations).

"(c) DISALLOWANCE OF INDIRECT DEDUCTION THROUGH PASS-THRU ENTITY.—The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual."

On page 1414, line 14, strike "section" and insert "subtitle".

On page 1414, line 19, strike "section 62" and insert "section 62(a)".

On page 1414, line 20, insert ", as redesignated by paragraph (1)," before "is".

On page 1416, beginning with line 5, strike out all through page 1418, line 12, and insert:

Subtitle E—MISCELLANEOUS PROVISIONS

SEC. 141. REPEAL OF INCOME AVERAGING FOR TAXPAYERS OTHER THAN FARMERS.

(a) IN GENERAL.—Subsection (a) of section 1303 (defining eligible individual) is amended by inserting "and who is a qualified farmer" after "United States".

(b) QUALIFIED FARMER.—Section 1303 (defining eligible individuals) is amended by adding at the end thereof the following new subsection:

"(e) QUALIFIED FARMER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified farmer' means a person—

"(A) who is actively engaged in the trade or business of farming (within the meaning of section 2032A(e)(4) and (5)), including the trade or business of aquaculture on a farm, and

"(B) 50 percent or more of the average annual gross income of whom for the 3 preceding taxable years is attributable to such trade or business.

"(2) ACTIVELY ENGAGED.—A taxpayer shall be treated as actively engaged in the trade or business of farming only if the taxpayer is involved in the operation of such trade or business on a regular, continuous, and substantial basis."

(c) CONFORMING AMENDMENTS.—

(1) The heading of part I of subchapter Q of chapter 1 is amended by inserting "FOR FARMERS" after "AVERAGING".

(2) The table of parts for subchapter Q of chapter 1 is amended by inserting "for farmers" after "averaging" in the item relating to part I.

SEC. 142. LIMITATIONS ON DEDUCTIONS FOR TRAVEL, MEALS, AND ENTERTAINMENT.

On page 1423, line 12, strike "(3)" and insert "(7)".

On page 1423, lines 16 and 17, strike "Paragraphs (1) and (2)" and insert "Paragraphs (1), (2), (4), and (5)".

On page 1436, strike lines 8 through 13, and insert:

"(E) NONRESIDENTIAL REAL PROPERTY.—The term 'nonresidential real property' means section 1250 class property (other than 10-year property) which is not residential rental property.

On page 1437, strike lines 7 through 10, and insert:

"(B) 5-YEAR PROPERTY.—The term '5-year property' includes—

"(i) any computer-based telephone central office switching equipment,

"(ii) any over-the-road tractor unit, or

"(iii) any property described in paragraph (3)(A)(viii), (3)(A)(ix), (4), or (15) of section 48(l).

On page 1439, between lines 18 and 19, insert:

Subparagraph (B) shall not apply to any property if the amount allowable under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than the amount allowable under this section (as in effect on or after such date).

On page 1441, strike "(i) IN GENERAL.—" and run the matter on lines 1 through 5 up to subparagraph (A).

On page 1441, line 6, strike "(ii)" and insert "(B)".

On page 1441, lines 8 and 9, strike "which is tax-exempt use property, clause (i) shall not apply and".

On page 1441, line 12, strike "(B)" and insert "(C)".

On page 1441, line 14, insert "which is not property described in any other subparagraph of paragraph (1)" after "property".

On page 1441, line 15, strike "paragraph (2)" and insert "applying paragraph (2) solely for purposes of this section".

On page 1442, line 5, strike "(C)" and insert "(D)".

On page 1442, line 6, strike "over-road" and insert "over-the-road".

On page 1442, line 25, strike "if".

On page 1443, line 1, strike "part or all of" and insert "to the extent".

On page 1443, line 9, strike "was acquired" and insert "is placed in service".

On page 1461, line 13, insert "For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter." after "entity."

On page 1463, line 25, insert "and in applying subsection (g)" after "property".

On page 1464, line 3, insert a closing parenthesis after "truck".

On page 1471, line 22, strike "(f)(3)" and insert "(f)(2)".

On page 1482, line 19, insert "167," before "169".

On page 1483, line 16, strike "section 280F(b)" and insert "section 280F(a)".

On page 1483, strike lines 18 through 22.

On page 1483, line 23, strike "(ii)" and insert "(i)".

On page 1484, line 1, strike "(iii)" and insert "(ii)".

On page 1486, between lines 3 and 4, insert:

(J) Paragraph (2) of section 280F(b) is amended by striking out "the straight line method over the earnings and profits life for such property" and inserting in lieu thereof "section 168(g) (relating to alternative depreciation system)".

(K) Subsections (a) and (b) of section 280F are amended by striking out "recovery deduction" each place it appears and inserting in lieu thereof "depreciation deduction".

On page 1486, strike lines 4 through 6, and insert:

(5) SECTION 291.—

(A) Subparagraph (A) of section 291(a)(1) is amended by striking out "or section 1245 recovery property".

(B) Subparagraph (B) of section 291(b)(2) is amended to read as follows:

"(B) MINERAL EXPLORATION AND DEVELOPMENT COSTS.—In the case of any amount not allowable as a deduction under section 616(a) or 617 for any taxable year by reason of paragraph (1), the taxpayer shall be treated as having placed in service on the first day of such taxable year 5-year property (within the meaning of section 168(e)) with an adjusted basis equal to such amount."

(C) Section 291(b) is amended by striking out paragraph (3) and by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(D) Section 291(b)(3) (as redesignated by subparagraph (C)) is amended by striking out subparagraph (C) thereof.

(E) Paragraph (1) of section 291(c) is amended to read as follows:

"(1) ACCELERATED COST RECOVERY DEDUCTION.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(5)."

On page 1488, line 19, insert "during a taxable year" after the quotation marks.

On page 1489, line 22, strike "depreciation" and insert "amortization".

On page 1490, line 23, insert "or in section 1412(d)" after "this section".

On page 1491, beginning with line 21, strike out all through page 1492, line 2, and insert:

(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE A CERTAIN DATE.—Paragraph (1) and subsection (d) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years or is residential rental or nonresidential real property and is placed in service before the applicable date determined under the following table:

On page 1492, line 6, insert "(as added by this Act)" after "1954".

On page 1492, line 7, strike "and".

On page 1492, line 9, insert ", and property with no class life is treated for purposes of this paragraph as being property with a class life of 12 years" after "20 years".

On page 1493, line 15, strike "section" and insert "Act".

On page 1497, line 3, insert "described in subparagraph (C) or (D)," before "which".

On page 1504, strike lines 3 through 6 and insert:

"(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

On page 1504, strike lines 18 through 24 and insert:

"(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

On page 1506, line 15, insert "not more than" after "involves".

On page 1506, line 18, strike "supply contract for" and insert "sales contract for approximately".

On page 1506, lines 20 and 21, strike ", and natural gas for the plant is supplied from Canada".

On page 1509, line 6, strike "$390,000,000" and insert "$390,000".

On page 1509, line 8, strike "$170,000,000" and insert "$170,000".

On page 1509, line 17, insert "up to" before "300".

On page 1509, line 19, strike "$95,000,000" and insert "$95,000".

On page 1509, line 21, insert "up to" before "850".

On page 1509, between lines 21 and 22, insert:

(O) A project is described in this subparagraph if—

(i) the project involves the production and transportation of oil or gas from a well located north of the Arctic Circle, and

(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

On page 1509, line 22, strike "(7)" and insert "(6)".

On page 1510, line 8, strike "(8)" and insert "(7)".

On page 1511, line 3, strike "(9)" and insert "(8)".

On page 1511, line 20, strike "(10)" and insert "(9)".

On page 1512, line 1, strike "(11)" and insert "(10)".

On page 1512, line 10, strike "(12)" and insert "(11)".

On page 1512, line 22, strike "(13)" and insert "(12)".

On page 1512, line 24, strike "either".

On page 1513, line 5, strike "or".

On page 1513, line 10, strike the period and insert ", or".

On page 1513, line 11, strike "(14)" and insert "(13)".

On page 1513, between lines 10 and 11, insert:

(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

On page 1513, line 13, strike "airliner" and insert "aircraft".

On page 1514, line 18, strike "(15)" and insert "(14)".

On page 1515, line 1, strike "(16)" and insert "(15)".

On page 1515, line 3, strike "a project" and insert "projects".

On page 1515, line 4, insert "or other forms of thermal energy" after "steam".

On page 1515, line 6, strike "$250,000" and insert "$100,000".

On page 1515, lines 6 and 11, strike "expended" and insert "paid or incurred".

On page 1515, line 7, strike "December 31, 1985" and insert "March 1, 1986"

On page 1515, line 8, strike "construction commenced in December 1985" and insert "a memorandum of understanding was executed on September 13, 1985".

On page 1515, line 10, strike "1988" and insert "1989".

On page 1515, lines 12 and 13, strike "project" and insert "projects".

On page 1515, line 13, strike "involves" and insert "involve".

On page 1515, line 15, strike "an application" and insert "applications".

On page 1515, line 16, strike "was" and insert "were".

On page 1516, line 20, strike "either of".

On page 1516, line 21, insert "(and required transmission facilities)" after "powerplants".

On page 1516, line 24, strike "nuclear power stations" and insert "coal-fired plants".

On page 1517, line 1, strike "31" and insert "one of three".

On page 1518, line 16, strike "two-unit" and insert "2-unit".

On page 1519, line 17, strike "approximately $50,000,000 worth of".

On page 1520, line 20, strike "amendment" and insert "amendments".

On page 1522, line 13, insert "(including 525,000 square feet of office space)" after "facility".

On page 1522, line 17, strike "by" and insert "on".

On page 1522, line 21, strike "$35,000,000" and insert "$32,000,000".

On page 1522, beginning with line 24, strike all through page 1523, line 4.

On page 1523, line 5, strike "(E)" and insert "(D)".

On page 1523, line 6, strike "608,000" and insert "490,000".

On page 1523, lines 6 and 7, strike "154 West 57th Street" and insert "57th Street and 7th Avenue".

On page 1523, line 8, strike "$112,000,000" and insert "$100,000,000".

On page 1523, strike lines 10 and 11 and insert "filed in May 1986."

On page 1526, line 3, strike "subparagraph (A)" and insert "paragraph (1)".

On page 1526, line 4, strike "subparagraph (A)" and insert "paragraph (1)".

On page 1526, line 10, strike "paragraph" and insert "subsection".

On page 1527, lines 4 and 5, strike "any credit allowable under section 38 for any" and insert "any current year business credit allowable under section 38 which reduces tax liability for a current".

On page 1527, line 19, strike ", but for this subsection,".

On page 1528, line 21, strike "do not apply, except that" and insert "would not apply if".

On page 1528, between lines 21 and 22, insert:

"(A) section 202(a) of such Act were applied by substituting '1985' for '1986',

On page 1528, line 22, strike "(A)" and insert "(B)".

On page 1528, line 22, strike "shall be" and insert "were".

On page 1528, line 24, strike "and".

On page 1529, line 1, strike "(B)" and insert "(C)".

On page 1529, line 10, strike the period and insert ", and".

On page 1529, between lines 10 and 11, insert:

"(D) section 202(b)(3) were applied by substituting '1986' for '1987'.

On page 1530, line 7, strike "disallowed" and insert "recaptured".

On page 1531, line 10, strike "203(b)(1)" and insert "202(b)(1)".

On page 1535, lines 5 and 10, strike "section 804" and insert "section 806(b)".

On page 1544, line 5, insert "does not" after "taxable year".

On page 1544, lines 11, 16, 20, and 24, strike "Subsection (a)" and insert "This section".

On page 1544, lines 21 and 22, strike "263(c) or 616(a)" and insert "263(c), 616(a), or 617(a)".

On page 1545, strike lines 3 and 4, and insert:

"(d) PROPERTY PRODUCED IN FARMING BUSINESS.—This section shall not apply to any plant or

On page 1545, line 6, insert "section" before "2032A(e)(4)".

On page 1548, line 24, strike "269A(e)(4)(B)" and insert "263A(e)(4)(B)".

On page 1549, between lines 8 and 9, insert:

(4) Section 267(e)(5)(D) is amended—

(A) by striking out "low-income housing (as defined in paragraph (5) of section 179(e))" and inserting "property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)", and

(B) by striking out "low-income housing (as so defined)" and inserting "such property".

On page 1551, line 5, insert "or" before "by".

On page 1551, line 20, insert "or to property described in the matter following subparagraph (B) of section 207(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982" after "202(d)(5)(A)".

On page 1553, line 11, insert "(other than subparagraph (D) thereof)" after "section 542(c)(6)".

On page 1554, line 6, strike "or".

On page 1554, strike lines 7 and 8, and insert:

"(ii) which is a loan which is not an eligible loan (within the meaning of section 585(b)(4)), or

"(iii) of any affiliate or of any shareholder of the taxpayer who at any time during the taxable year held directly or indirectly 10 percent or more (by value) of the outstanding stock of such taxpayer.

On page 1556, line 15, insert "in the case of a taxpayer maintaining a reserve under section 166(f)," before "be".

On page 1560, line 18, insert "which is required to include the items from more than 1 taxable year of the partnership or S corporation in any 1 taxable year," after "corporation".

On page 1563, line 17, strike "(5)" and insert "(5))".

On page 1567, strike lines 21 through 25, and insert in lieu thereof:

"(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks, or a right to use specified campgrounds for recreational purposes, or

On page 1568, strike lines 8 through 17, and insert in lieu thereof: "subparagraph (A) applies to any installment obligation, interest shall be paid on the portion of any tax for any taxable year (determined without regard to any deduction allowable for such interest) which is attributable to the receipt of payments on such obligation in such year (other than payments received in the taxable year of the sale). Such interest shall be computed for the period from the date of the sale to the date on which the payment is received using the Federal short-term rate under section 1274 (compounded semiannually) in effect at the time of the sale and adjusted annually to the Federal short-term rate in effect on each anniversary of the sale.

On page 1568, line 18, strike "(D)" and insert "(C)".

On page 1568, line 19, insert "payable" before "under" and insert "with respect to a payment" after "paragraph".

On page 1568, lines 20 and 21, strike "described in subparagraph (C)(ii)," and insert "in which the payment is received".

On page 1573, strike lines 17 through 21, and insert "regulations.

The Secretary may disallow the use of the installment method in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties or other intermediaries."

On page 1574, strike lines 4 and 5 and insert the following:

"For disallowance of use of installment method for certain obligations, see section 453(j)."

On page 1576, line 10, strike "methods of account" and insert "method of accounting".

On page 1577, line 1, insert beginning quotation marks before "(1)".

On page 1579, line 16, insert "in the heading thereof and" before "in".

On page 1579, line 18, strike "and" the second place it appears.

On page 1579, line 20, strike the period and insert ", and".

On page 1579, between lines 20 and 21, insert:

(D) by striking out "under paragraph (4) of this subsection or" in paragraph (9) thereof.

On page 1585, line 24, insert "under section 1 of the Internal Revenue Code of 1954" after "tax".

On page 1586, line 5, strike "amendments" and insert "amendment".

On page 1589, strike out lines 6 through 10, and insert:

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to positions established on or after January 1, 1987.

SEC. 423. EXCEPTION OF CERTAIN DEALERS FROM THE HEDGING TRANSACTION EXCEPTION.

(a) IN GENERAL.—Section 1256(e) (relating to mark to market not to apply to hedging transactions) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR DEALERS.—Paragraph (1) shall not apply to any transaction entered into by a dealer, other than a dealer in agricultural or horticultural commodities (except trees which bear fruit or nuts)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to positions established after December 31, 1986.

TITLE V—COMPLIANCE AND TAX ADMINISTRATION

On page 1627, beginning with line 24, strike all through page 1628, line 22, and insert the following:

(1) Paragraph (3) of section 3406(b) (defining reportable payment, etc. with respect to backup withholding) is amended—

(A) by striking out "or" at the end of subparagraph (C),

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and

(C) by adding at the end thereof the following new subparagraph:

"(E) section 6050N (relating to payments of royalties)."

On page 1670, line 3, insert "IN GEN.—" before "Section".

On page 1670, strike lines 4 through 7, and insert the following:

, as amended by section 142(a), is amended by redesignating subsection (l) as subsection (m) and inserting after subsection (k) the following new subsection:

"(l) STOCK REDEMPTION EXPENSES.—

On page 1679, between lines 3 and 4, insert:

"(6) CHANGES TAKEN INTO ACCOUNT.—In determining whether changes in ownership result in a more than 50-percent owner shift or a more than 50-percent equity structure change, there shall be taken into account only owner shifts and equity structure changes.

On page 1679, line 4, strike "(6)" and insert "(7)".

On page 1696, line 13, strike "30(g)(2) or".

On page 1698, line 11, strike "ownership" and insert "owner shift after December 31, 1986".

On page 1698, line 24, strike "1987" and insert "1986".

On page 1701, line 9, insert "asset" after "applicable".

On page 1725, lines 1 and 2, strike "amendments made by this section" and insert "amendment made by subsection (a)(2)".

On page 1736, line 23, strike out "has" and insert in lieu thereof "have".

On page 1738, strike out lines 6 through 14 and insert in lieu thereof the following:

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act),

a stated capacity to produce not more than 42,000,000 gallons of such product per year.

On page 1744, between lines 2 and 3, insert the following new subsection:

(c) CONFORMING AMENDMENT.—Subparagraph (F)(ii) of section 2106(a)(2) is amended by striking out "section 2055(f)" and inserting in lieu thereof "section 2055(g)".

On page 1744, line 3, strike "(c)" and insert "(d)".

On page 1750, line 3, insert "by" before "a".

On page 1750, line 17, insert "in the United States" after "manufactured".

On page 1755, line 16, strike "section 861(a)(2)" and insert "section 861(a)(2)(A)".

On page 1757, line 3, strike "respect" and insert "respect to".

On page 1757, line 17, strike "(b)" and insert "(c)".

On page 1758, line 16, insert "only" after "apply".

On page 1763, line 9, insert "the" before "Ivory".

On page 1763, line 19, insert "the" before "Philippines".

On page 1784, line 22, strike "1503(b)" and insert "1504(b)".

On page 1790, line 21, strike "section 861(a)(1)(F)" and insert "section 861(a)(1)(D), as redesignated by subparagraph (A),".

On page 1792, in the matter between lines 13 and 14, strike "886" and insert "887".

On page 1792, line 14, strike "886" and insert "887".

On page 1795, in the matter between lines 12 and 13, strike "provision" and insert "provisions".

On page 1796, line 6, insert end quotation marks after the period.

On page 1796, between lines 6 and 7, insert:

(2) Section 872(b) is amended by adding at the end thereof the following new paragraphs:

On page 1796, line 7, strike "(3)" and insert "(5)".

On page 1796, line 12, strike "(4)" and insert "(6)".

On page 1796, line 16, strike "(2)" and insert "(3)".

On page 1796, line 24, strike "in" and insert "of".

On page 1797, line 6, insert end quotation marks after the period.

On page 1797, between lines 6 and 7, insert:

(4) Section 883(a) is amended by adding at the end thereof the following new paragraph:

On page 1797, line 7, strike "(3)" and insert "(4)".

On page 1797, line 8, strike "(3) and (4)" and insert "(5) and (6)".

On page 1797, line 10, strike "(3)" and insert "(5)".

On page 1799, line 10, insert "(2)(B)" after "section 863(c)".

On page 1803, line 8, strike "All" and insert: "If an election under subparagraph (A) is made by any member of an affiliated group, all".

On page 1803, line 9, strike "the" and insert "such".

On page 1803, line 19, insert "expanded" after "same".

On page 1803, line 22, after the period insert: "If a borrowing is not treated as qualified indebtedness solely because it is guaranteed (or otherwise facilitated) by another corporation, then—

"(i) such borrowing shall be treated as the borrowing of such other corporation if such other corporation is at a higher level in the chain of includible corporations than the borrowing corporation, or

"(ii) if such other corporation is in a different chain of includible corporations, such borrowing shall be treated as the borrowing of the first common parent of the borrowing corporation and the guaranteeing corporation."

On page 1812, line 16, strike "$1,000,000" and insert "$100,000,000".

On page 1812, line 20, insert "yen" before "notes".

On page 1821, lines 5 and 6, strike "Except as provided in paragraph (2), the" and insert "The".

On page 1823, line 8, insert "which was established on December 7, 1979, under the laws of a foreign jurisdiction" after "trust".

On page 1823, lines 12 and 13, strike ", by reason of the amendments made by this section,".

On page 1828, line 24, insert "In the case of a distribution, the deferral period shall be that portion of such holding period preceding such distribution." after "taxpayer.".

On page 1830, line 3, strike "held for more than 6 months".

On page 1830, lines 7 and 8, strike "held for more than 6 months".

On page 1834, lines 6 and 9, strike the hyphen after "2".

On page 1835, line 15, strike "subsection (e)" and insert "subsection (g)".

On page 1836, line 8, strike "for purposes of this section".

On page 1838, line 8, strike "March 16" and insert "March 1".

On page 1838, line 21, insert "and" before "by".

On page 1841, line 11, strike "agrees" and insert "and the recipient of the investment funds agree".

On page 1841, line 13, strike "its" and insert "their".

On page 1845, line 25, strike "or" and insert "and".

On page 1853, line 4, insert "or is a recipient of United States source interest or dividends (as defined in sections 861(a)(1)(D) and 861(a)(2)(B), respectively)," after the comma.

On page 1853, strike lines 8 through 10, and insert "foreign country.".

On page 1855, line 21, insert ", as amended by section 501(d)(1)(A)," before "is".

On page 1855, line 22, strike "(g)" and insert "(f)".

On page 1855, line 23, insert "(g)," before "(h)".

On page 1855, line 24, insert "(f)," before "(g)".

On page 1857, line 7, strike "on such" and insert "on the".

On page 1863, line 1, strike "several".

On page 1878, line 9, strike "noncompliances" and insert "noncompliance".

On page 1884, line 8, strike "(d)" and insert "(c)".

On page 1884, line 10, insert ", as amended by section 924," before "is".

On page 1897, line 23, insert "and" after "income".

On page 1899, line 15, strike "either" and insert "any".

On page 1904, line 11, strike "(b)" and insert "(c)".

On page 1904, line 11, strike "amendment" and insert "amendments".

On page 1912, line 17, strike "DOMESTIC" and insert "FOREIGN".

On page 1914, lines 3 and 6, strike "gross income" and insert "earnings and profits".

On page 1914, line 4, strike "is" and insert "are either".

On page 1914, line 5, strike "bears" and insert "or are attributable to dividends received from an applicable controlled corporation, bear" after "United States".

On page 1915, line 18, strike "(9)" and insert "(10)".

On page 1915, line 18, strike "(10)" and insert "(11)".

On page 1915, line 19, strike "(8)" and insert "(9)".

On page 1915, line 20, strike "(9)" and insert "(10)".

On page 1926, strike line 19 and insert "(c) EFFECTIVE DATE.—".

On page 1926, line 20, strike "(c) EFFECTIVE DATE.—" and insert "(1) IN GENERAL.—".

On page 1932, line 13, insert "unpaid losses on life insurance contracts plus all" after "all".

On page 1932, line 16, insert "unpaid losses on life insurance contracts plus all" after "deduct".

On page 1945, lines 20 and 21, strike "section 807(c)(2)" and insert "sections 807(c)(2) and 805(a)(1)".

On page 1945, lines 21 through 23, strike "as of the beginning of the 1st taxable year beginning after December 31, 1986" and insert "at the end of the preceding taxable year".

On page 1946, line 10, strike "1986" and insert "1986,".

On page 1947, line 20, strike "account)" and insert "account),".

On page 1956, line 13, strike "preferences" and insert "preference".

On page 1958, line 1, insert "taxable" after "minimum".

On page 1958, line 4, insert "or (2)" after "paragraph (1)(A)".

On page 1971, line 7, insert "minimum" before "taxable".

On page 1972, line 16, strike "member" and insert "other corporation".

On page 1975, line 8, insert "minimum" before "taxable".

On page 1975, line 9, insert "minimum" before "taxable".

On page 1981, line 7, strike "section 469(h)" and insert "section 469(i)".

On page 1992, line 11, insert ", as amended by section 631(a)," before "is".

On page 1994, strike lines 8 through 13, and insert:

"(1) the sum of—

"(A) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, plus

"(B) the tax imposed by section 55, over".

On page 1996, line 23, strike "1016(a)(25)" and insert "1016(a)(24) (as redesignated by section 634(b)(2))".

On page 2009, line 23, insert ", as amended by section 144," before "is".

On page 2010, line 1, strike "(6)" and insert "(7)".

On page 2011, lines 8 and 9, strike "subsection (a)(8)" and insert "subsections (a)(8) and (h)(1)(B)".

On page 2013, line 17, strike "section 402(h)(1)(B)" and insert "subsection (h)(1)(B)".

On page 2013, lines 20 and 21, strike "$7,000 amount" and insert "limitation".

On page 2014, line 6, strike "and deferred" and insert "or deferred".

On page 2014, lines 6 and 7, strike "all participants" and insert "each participant".

On page 2014, line 7, strike "at least $2,500 of elective deferrals" and insert "the lesser of $2,500 of elective deferrals or the amount of elective deferrals actually contributed".

On page 2014, line 18, strike "$7,000" and insert "the limitation under paragraph (1)".

On page 2014, beginning with line 23, strike all through page 2015, line 2, and insert: allocated—

"(i) during the 3-taxable year period beginning with the taxable year in which the securities are so allocated, or

"(ii) if earlier, until the date on which—

"(I) the employee separates from service, or

"(II) the securities are sold in connection with the sale of the employer (or a member of the same controlled group).

On page 2021, line 24, insert "and without regard to the amendment made by section 1206(b)(1)(A)(ii) of the Tax Reform Act of 1986" before the period.

On page 2025, line 6, strike ", or" and insert a period.

On page 2026, between lines 4 and 5, insert the following:

(3) APPLICATION OF VESTING RULES TO QUALIFIED COST-OF-LIVING ARRANGEMENTS.—Section 411(a)(3) (relating to certain permitted forfeitures, suspensions, etc.) is amended by adding at the end thereof the following new subparagraph:

"(G) SPECIAL RULE RELATING TO QUALIFIED COST-OF-LIVING ARRANGEMENTS.—A right to an accrued benefit derived from employer contributions under a plan which contains a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)(B)) shall not be treated as forfeitable solely because the plan provides that a participant shall not be entitled to receive that portion of the cost-of-living adjustment derived from employer contributions if the participant either—

"(i) fails to contribute the amount required to be paid by the participant under the plan for the cost-of-living adjustment; or

"(ii) receives a distribution of the present value of the participant's accrued benefit derived from employer contributions in the form of a lump sum."

(4) APPLICATION OF BENEFIT ACCRUAL REQUIREMENTS TO QUALIFIED COST-OF-LIVING ARRANGEMENTS.—Section 411(d) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULE CONCERNING QUALIFIED COST-OF-LIVING ARRANGEMENTS.—A plan which contains a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)(B)) shall not be treated as failing to satisfy the requirements of subsection (b) merely because the plan provides that a participant shall not be entitled to receive that portion of the cost-of-living adjustment derived from employer contributions if the participant either—

"(A) fails to contribute the amount required by the participant under the plan for the cost-of-living adjustment; or

"(B) receives a distribution of the present value of the participant's accrued benefit derived from employer contributions in the form of a lump sum."

On page 2030, line 19, strike "(e)" and insert "(f)".

On page 2031, between lines 22 and 23, insert the following:

(4) EFFECTIVE DATE FOR SUBSECTION (d).—Except as provided in paragraph (2), the amendment made by subsection (d) shall apply to years beginning after December 31, 1988, with respect to benefits accrued after such date.

On page 2031, line 23, strike "(4)" and insert "(5)".

On page 2032, line 4, strike "(5)" and insert "(6)".

On page 2034, line 2, strike the colon and insert a period.

On page 2047, line 1, insert ", as amended by subsection (e)," before "is".

On page 2047, line 3, strike "(8)" and insert "(9)".

On page 2055, line 7, strike out the end quotation marks.

On page 2055, between lines 7 and 8, insert:

"(5) SPECIAL RULE FOR PLAN MAINTAINED BY RAILROADS.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, the benefit percentages of such employees shall be computed by taking into account the employees' benefits under the plan, the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974."

On page 2085, between lines 20 and 21, insert:

"(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in its trade or business if the employee continues employment with the corporation acquiring such assets,

On page 2085, line 21, strike out "(III)" and insert "(IV)".

On page 2086, line 3, strike out "(IV)" and insert "(V)".

On page 2086, line 6, strike "(V)" and insert "(VI)".

On page 2086, line 10, strike "subparagraph (C)(ii)" and insert "paragraph (3)(C)(ii)".

On page 2094, after line 21, insert:

(7) WITHDRAWALS UPON SALE OF ASSETS.—Section 401(k)(2)(B)(i)(III) of the Internal Revenue Code of 1954 (as added by subsection (a)(1)) shall apply to distributions after December 31, 1984.

On page 2096, line 13, strike the comma.

On page 2097, line 16, strike "participant" and insert "employee".

On page 2103, line 3, insert "a" after "(3)" and strike "pensions" and insert "pension".

On page 2103, line 4, strike "satisfy" and insert "satisfies".

On page 2108, strike lines 21 through 23, and insert:

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1986.

(2) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982.

On page 2115, between lines 23 and 24, insert:

(2) The second sentence of section 403(b)(1) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended to read as follows: "The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities)."

On page 2115, line 24, strike out "(2)" and insert "(3)".

On page 2118, line 17, strike "1986" and insert "1986,".

On page 2122, line 2, insert "which" before "do".

On page 2122, line 23, strike "retirement".

On page 2123, strike line 6, and insert a period on line 5 after "years".

On page 2124, line 15, strike "employee" and insert "taxpayer".

On page 2125, between lines 11 and 12, insert:

(c) TRANSFERS FROM QUALIFIED PLAN TO INDIVIDUAL RETIREMENT PLANS OR OTHER QUALIFIED PLANS.—

(1) EMPLOYER MUST PROVIDE EMPLOYEE WITH TRANSFER OPTION.—Section 402 is amended by adding at the end thereof the following new subsection:

"(g) TRANSFER FROM PLANS.—

"(1) GENERAL RULE.—In the case of an individual who separates from service, the employer of such individual shall provide such individual with an option to elect to have the present value of the individual's nonforfeitable accrued benefit transferred to an eligible retirement plan (as defined in paragraph (5)(E)(iv)).

"(2) OPTION NOT AVAILABLE WHERE EMPLOYEE'S BENEFIT NOT DISTRIBUTABLE.—Paragraph (1) shall not apply to the extent that the employee's benefits may not be distributed under the terms of the plan.

"(3) EMPLOYEE MUST PROVIDE INFORMATION TO EMPLOYER.—Paragraph (1) shall not apply unless an employee provides any information necessary to enable the employer to make the transfer elected by the employee under such paragraph."

(2) NOTICE OF PENALTY.—Section 402(f)(1) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking out "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) the tax under section 72(s) if the recipient fails to make a qualifying rollover distribution."

On page 2125, line 12, strike "(c)" and insert "(d)".

On page 2126, line 3, strike "(d)" and insert "(e)".

On page 2126, between lines 20 and 21, insert:

(3) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982.

On page 2132, line 11, strike "401(a)." and insert "401(a), other than a plan maintained by an employer if such employer has, at all times, been exempt from tax under section 501(a)."

On page 2133, strike lines 4 through 6, and insert "requirements of section 409,".

On page 2133, line 7, insert "within 90 days after such transfer (or such longer period as the Secretary may prescribe)," before "such amount".

On page 2133, line 9, strike "and".

On page 2133, between lines 9 and 10, insert:

"(C) that portion of such amount as is not allocated under the plan to accounts of participants in the plan year in which such transfer occurs is—

"(i) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

"(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

"(I) the value of the employer securities attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

"(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount, and

On page 2133, line 10, strike "(C)" and insert "(D)".

On page 2133, strike lines 15 and 16 and insert:

such amount shall not be includible in the gross income of the employer if, under the plan,

On page 2136, line 3, insert ", as amended by section 1223," before "is".

On page 2137, line 23, strike "403(a)" and insert "403(a), under a program described in section 403(b),".

On page 2138, line 6, insert ", as amended by section 1212(b)," before "is".

On page 2138, line 7, strike "(25)" and insert "(26)".

On page 2138, line 9, strike "(26)" and insert "(27)".

On page 2141, line 21, insert ", and shall not later than such date begin issuing opinion letters with respect to master and prototype plans for such arrangements" before the period.

On page 2147, line 10, insert "the requirements of paragraph (3) and" after "meets".

On page 2147, line 11, insert "if the plan meets" after "(A)".

On page 2147, line 13, insert "if the plan meets" after "(B)".

On page 2158, between lines 2 and 3, insert:

"(6) SPECIAL RULES FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—

"(A) IN GENERAL.—If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this section shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

"(i) such requirements were met immediately before such change, and

"(ii) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group).

"(B) TRANSITION PERIOD.—For purposes of subparagraph (A), the term 'transition period' means the period—

"(i) beginning on the date of the change in members of a group, and

"(ii) ending on the last day of the first plan year beginning after the date of such change.

On page 2163, line 5, strike "group-life" and insert "group-term life".

On page 2164, line 21, strike "This subsection" and insert "Subparagraph (B)".

On page 2166, beginning with line 24, strike all through page 2167, line 2, and insert:

(3) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3)) maintaining an insured accident and health plan, the amendments made by this section shall apply to years beginning after December 31, 1988.

On page 2174, strike lines 23 through 25, and insert:

Subparagraph (B) of section 41(a)(2) (defining applicable percentage) is amended—

(1) by striking out "1986, or 1987" and inserting in lieu thereof "or 1986", and

(2) by striking out "1988" and inserting in lieu thereof "1987".

On page 2176, line 7, strike "issued by a domestic corporation".

On page 2181, line 14, strike "of" and insert "if".

On page 2181, lines 15 and 16, strike ", and before such date".

On page 2181, between lines 16 and 17, insert:

(B) Section 133(b)(1)(A) of the Internal Revenue Code of 1954, as added by subsection (b)(2), shall apply to loan refinancings after the date of the enactment of this Act.

On page 2181, line 17, strike "(B) The amendments made by" and insert "(C) Section 133(b)(1)(B) of the Internal Revenue Code of 1954, as amended by".

On page 2184, line 10, strike "(n)" and insert "(o)".

On page 2185, line 23, insert "December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after" before "the".

On page 2186, line 7, strike "(n)" and insert "(o)".

On page 2194, line 24, insert "in cash" after "paid".

On page 2203, between lines 22 and 23, insert:

(iv) Subparagraph (D) of section 28(b)(1) is amended by striking out "1985" and inserting in lieu thereof "1989".

On page 2209, strike lines 20 through 24.

On page 2210, line 1, strike "(4)" and insert "(3)".

On page 2211, line 18, strike "(5)" and insert "(4)".

On page 2213, lines 3 and 18, strike "(2), (3), and (4)" and insert "(2) and (3)".

On page 2213, line 8, strike "(6)" and insert "(5)".

On page 2215, line 2, insert "which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was" before "incorporated".

On page 2215, line 6, strike "on" and insert "with respect to".

On page 2215, line 8, strike "or".

On page 2215, line 9, strike the period and insert ", or".

On page 2215, between lines 9 and 10, insert:

"(C) any financing for a customer secured by securities or money market instruments."

On page 2215, lines 12 and 13, strike "the 5 largest shareholders of which are doctors of medicine" and insert "more than 50 percent of the stock of which is owned by medical doctors".

On page 2245, line 1, strike "Pontalba" and insert "Pontabla".

On page 2246, strike lines 22 through 24.

On page 2247, strike lines 1 and 2, and insert:

"(N) the rehabilitation of the Federal Building and Post Office, 120 Hanover Street, Manchester, New Hampshire, and

"(O) the rehabilitation of the Charleston Waterfront project in South Carolina."

On page 2248, line 1, strike "and (L)" and insert "(L), and (O)".

On page 2253, line 3, insert "only" before "if".

On page 2253, line 11, insert "(other than by the taxpayer or a related person to such taxpayer, as defined in section 461(i)(6))" after "service".

On page 2253, line 11, insert "such project" immediately after "if".

On page 2253, line 12, strike "such project".

On page 2253, line 13, insert "such" after "than".

On page 2253, lines 14 and 15, strike "to such taxpayer, as defined in section 461(i)(6)".

On page 2259, line 6, strike the comma.

On page 2261, line 15, strike "low-income housing" and insert "residential rental".

On page 2264, line 15, strike the end quotation marks.

On page 2264, line 22, strike "(3)" and insert "(2)".

On page 2264, line 24, strike "(4)" and insert "(3)".

On page 2265, line 3, strike "(5)" and insert "(4)".

On page 2277, line 1, strike "(b)" and insert "(c)".

On page 2277, line 5, strike "163(d)" and insert "163".

On page 2277, line 9, strike "section 163(d)" and insert "subsections (d) and (h) of section 163".

On page 2277, line 11, strike "(c)" and insert "(d)".

On page 2277, line 14, strike "(d)" and insert "(e)".

On page 2292, line 8, strike "section 857(b)(6)" and insert "section 857(b)(6)(B)".

On page 2311, line 8, insert ", as amended by section 983(a)," before "is".

On page 2311, line 10, strike "(8)" and insert "(9)".

On page 2314, strike lines 12 through 15 and insert:

Section 7701 (relating to definitions), as amended by sections 201(d) and 558(b), is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) TREATMENT OF OWNERS' DEBT POOLS.—

On page 2317, line 1, strike "subsection (a)" and insert "subparagraph (A)".

On page 2320, strike lines 7 through 9 and insert:

"(i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area, if such property meets the standards under local law for property acquired through the exercise of the power of eminent domain,

On page 2323, line 21, strike "(E)" and insert "(F)".

On page 2328, line 1, insert beginning quotation marks before "(ii)".

On page 2331, line 10, strike "title XIII of this Act" and insert "sections 501(d)(1)(A) and 952(c)(2)(B)".

On page 2331, line 11, strike "(j)" and insert "(i)".

On page 2331, line 12, strike "(k)" and insert "(j)".

On page 2331, line 12, strike "(i)" and insert "(h)".

On page 2331, line 14, strike "(j)" and insert "(i)".

On page 2331, line 19, strike "neglect" and insert "disregard".

On page 2333, line 23, strike "subparagraph (B)(i)" and insert "subparagraph (B)(ii)".

On page 2336, lines 23 and 24, strike "to which section 108 applied" and insert ", to the extent section 108 applied,".

On page 2339, line 16, insert a closing parenthetical after "(b)(3)".

On page 2341, line 12, insert ", as in effect on the date of the enactment of the Tax Reform Act of 1986," before "which".

On page 2341, line 24, strike "(a) IN GENERAL.—".

On page 2344, line 22, strike the beginning quotation marks before "(1)".

On page 2345, line 21, strike "the obligation" and insert "obligations".

On page 2346, line 7, insert "the interest on which is" before "exempt".

On page 2347, line 1, insert "of such proceeds" after "5 percent".

On page 2351, line 7, strike "subparagraphs" and insert subparagraph".

On page 2352, beginning with line 20, strike all matter through page 2353, line 3, and insert the following:

"(D) the initial temporary period under subsection (e)(4)(A) ends with respect to the refunding obligation not later than 30 days after the date of issue of such obligation,

"(E) all temporary periods under subsection (e)(4)(A) end with respect to the refunded obligation on the date of issue of the refunding obligation, and

On page 2353, line 4, strike "(E)" and insert "(F)".

On page 2353, line 4, strike "sets" and insert "issues".

On page 2358, line 10, insert "mortgage" after "veterans' ".

On page 2358, line 18, strike "underwriters' commissions" and insert "any direct or indirect fees for underwriters".

On page 2360, line 1, strike out "The" and insert "For purposes of this subsection, the".

On page 2360, lines 4 and 5, strike "the facility" and insert "all the property".

On page 2360, line 17, insert "(including a management contract or similar type of operating agreement)" after "lease".

On page 2360, line 24, insert "for all facilities described in clause (i), other than solid waste disposal facilities described in subparagraph (C)," after "(II)".

On page 2360, line 25, strike "useful" and insert "reasonably expected economic".

On page 2361, line 1, insert "(as determined under subsection (b)(14))" after "facility".

On page 2361, line 16, strike "clause (i) of paragraph (10)(C) is amended".

On page 2361, line 19, strike ", and" and insert "in clause (i) of paragraph (10)(C),".

On page 2361, line 21, strike the period and insert ", and".

On page 2361, between lines 21 and 22, insert:

(5) by striking out "subparagraph (E), (G), or (H)" in paragraph (13)(B) and insert in lieu thereof "subparagraph (C), (D), or (F)".

On page 2363, line 12, strike "626" and insert "626(b)".

On page 2364, strike lines 13 through 15, and insert:

(b) TREATMENT OF LIMITED EQUITY COOPERATIVES.—Section 103A(l) (relating to

On page 2364, line 19, strike "CORPORATIONS".

On page 2372, at the end of line 2, insert "and".

On page 2372, line 11, insert "otherwise described in such subsections" after "obligation".

On page 2373, line 12, insert before the period the following: "and section 103(n)(13)(B) of such Code shall apply to such obligation".

On page 2373, strike lines 16 through 20 and insert:

shall not exceed $750,000,000, not more than $350,000,000 of which may be issued before January 1, 1992.

On page 2375, line 3, strike "and".

On page 2375, between lines 3 and 4, insert:

(B) by inserting "or multiple of acres" after "(or lesser amount)" in subparagraph (B) thereof, and

On page 2375, line 4, strike "(B)" and insert "(C)".

On page 2378, strike lines 4 through 9 and insert the following:

(f) EXPANSION OF EXCEPTION FOR RIVER PLACE PROJECT.—Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980, as added by the Tax Reform Act of 1984, is amended—

(1) by striking out "December 31, 1984," in subsection (p) and inserting in lieu thereof "December 31, 1984 (other than obligations described in subsection (r)(1)),", and

(2) by striking out "$55,000,000," in subsection (r)(1)(B) and inserting in lieu thereof "$110,000,000, of which $55,000,000 must be redeemed no later than November 1, 1987,"

On page 2378, line 24, strike "(22)" and insert "(21), as redesignated by section 634(b)(2),".

On page 2378, line 24, strike "(23)" and insert "(22)".

On page 2379, line 1, strike "(27)", "(22)", and "(26)" and insert "(26)", "(21)", and "(25)", respectively.

On page 2380, line 6, strike "section 626(b) of".

On page 2380, line 14, strike "if".

On page 2380, line 18, strike "1986" and insert "1986,".

On page 2380, line 18, strike "on or".

On page 2381, line 19, strike "and".

On page 2381, line 20, insert "and section 103A(l)(11) (relating to treatment of limited equity cooperative housing)," before "as".

On page 2382, line 2, strike "or amendments".

On page 2382, line 9, strike "in subparagraph (D) thereof" and insert "therein".

On page 2382, strike lines 14 through 20 and insert:

(3) The volume limitation requirement of section 103(n) of such Code (without regard to the amendments to the definition of governmental ownership contained in paragraph (7)(C)(ii) thereof in the case of obligations with respect to facilities described in section 103(b)(4)(B) of such Code).

On page 2383, between lines 4 and 5, insert the following:

(8) The requirements of section 103A(c)(3)(C) of such Code.

On page 2383, line 5, insert "of paragraphs (2) through (8)" after "purposes".

On page 2384, line 5, strike "(B)" and insert "(C)".

On page 2385, line 5, strike "(f)(1)(A)" and insert "(f)(1)".

On page 2385, line 15, strike "(E)" and insert "(F)".

On page 2385, line 24, strike "sections 1706 and 1711(c)" and insert "sections 1506 and 1512(c)".

On page 2390, beginning with "and" on line 24, strike all through "Act" on page 2391, line 1.

On page 2391, line 3, insert "as an obligation" before "described".

On page 2391, line 5, insert an end parenthesis after "section".

On page 2392, line 13, strike the period and insert ", and superseded by a resolution adopted by such governing body on May 27, 1986."

On page 2406, line 13, strike "1984" and insert "1974".

On page 2406, line 18, insert after the period the following: For purposes of this subparagraph, a pollution control facility includes a sewage or solid waste disposal facility (within the meaning of section 103(b)(4)(E)).

On page 2414, beginning with "Arrowhead" in line 13, strike through the period in line 16, and insert "Arrowhead Springs, within the county of San Bernardino, California, and a portion of the site of which currently is owned by the Campus Crusade for Christ."

On page 2417, line 23, strike "13" and insert "14".

On page 2418, line 3, strike "4" and insert "5".

On page 2418, line 14, strike "1869(c)(5)" and insert "1869(c)(3)".

On page 2418, line 19, strike "103" and insert "103(b)".

On page 2419, line 5, strike "1869(c)(5)" and insert "1869(c)(3)".

On page 2420, line 2, insert "(relating to bonds for a convention center and resource recovery project)" after "1984".

On page 2420, lines 4 and 5, strike "(relating to bonds for a convention center and resource recovery project)".

On page 2420, line 8, strike "paragraphs (1)," and insert "section 631(d)(5), paragraphs".

On page 2420, line 9, strike "section 632(a)" and insert "section 632(a),".

On page 2420, between lines 13 and 14, insert the following new paragraph:

(5) The amendments made by this title shall not apply to any obligation issued to finance property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

On page 2430, line 12, strike "1986" and insert "1986,".

On page 2432, line 1, insert ", or for which the period during which a claim for credit or refund may be timely filed has expired, whichever is later" after "expired".

On page 2462, line 20, insert "For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter." after "entity."

On page 2502, strike lines 19 and 20, and insert: adjusted basis thereof—

"(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

"(2) subsection (a)(3) shall be applied by substituting 'fair market value' for 'adjusted basis'.

On page 2503, line 9, strike "(C)" and insert "(D)".

On page 2528, lines 12 and 13, strike "If the taxpayer elects the application of this section" and insert "For purposes of section 461(h)".

On page 2528, line 19, insert "designated settlement" before "fund".

On page 2528, line 20, strike "a" and insert "the".

On page 2529, lines 1 and 9, insert "designated settlement" before "fund".

On page 2529, strike lines 2 and 3, and insert:

accounting, and actuarial expenses)—

"(A) which are incurred in connection with the operation of the fund, and

"(B) which would be deductible under this chapter for purposes of determining the taxable income of the corporation,

no other deduction shall be allowed to the fund.

On page 2529, strike lines 4 through 6 and insert:

"(3) TRANSFERS TO THE FUND.—In the

On page 2529, line 8, strike "(i)" and insert "(A)".

On page 2529, line 10, strike "(ii)" and insert "(B)".

On page 2529, line 14, strike "(iii)" and insert "(C)".

On page 2529, strike lines 17 through 19 and insert:

"(4) TAX IN LIEU OF OTHER TAXATION.—The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

"(5) COORDINATION WITH SUBTITLE F.—For purposes of subtitle F—

"(A) a designated settlement fund shall be treated as a corporation, and

"(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

On page 2529, line 24, strike "excludible" and insert "excluded".

On page 2530, line 4, insert "designated settlement" before "fund".

On page 2530, lines 18 and 19, strike "not related or subordinate parties to" and insert "independent".

On page 2530, line 24, strike "and".

On page 2531, line 3, strike the period and insert ", and".

On page 2531, between lines 3 and 4, insert:

"(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

On page 2531, strike lines 4 and 5.

On page 2531, line 6, strike "(4)" and insert "(3)".

On page 2531, line 15, insert "in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e))" before "to".

On page 2531, lines 16 and 17, strike "deemed to constitute" and insert "treated as constituting".

On page 2532, line 7, insert "subparagraphs (A), (C), (D), and (F) of" before "section".

On page 2532, line 12, insert "(or any successor thereof)" after "corporation".

On page 2532, line 14, insert "(and the fund shall not be liable for such tax)" after "fund".

On page 2532, lines 19 and 21, strike "sale or distribution" and insert "transaction".

On page 2534, line 1, insert "TRANSITION RULE.—" after "(c)".

On page 2579, line 10, strike "Certain".

On page 2579, line 20, strike "1985" and insert "1984".

On page 2607, line 20, strike "Paragraph (1)" and insert "Paragraphs (1) and (2)(B)".

On page 2614, line 1, strike "(F)" and insert "(E)".

On page 2615, lines 12 and 13, strike "by an organization described in section 170(b)(1)(A)(i) to an employee of such organization." and insert "under a church plan defined in section 414(e)."

On page 2621, line 18, insert "or decrease" before "under".

On page 2623, between lines 14 and 15, insert:

SEC. 1833. AMENDMENT RELATED TO SECTION 305 OF THE ACT.

Section 6214(c) is amended by striking out "section 4962(b)" and inserting in lieu thereof "section 4963(b)".

On page 2623, line 15, strike "1833" and insert "1834".

On page 2640, strike lines 14 through 16, and insert:

"(II) the only amounts to which the employer or employees are entitled (directly or indirectly) at the time the premiums are paid as experience rated re-".

On page 2641, line 25, strike "of paragraph (3)".

On page 2664, line 11, strike "section 415(1)" and insert "section 416(l)".

On page 2671, strike lines 18 through 20, and insert:

(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

On page 2672, line 2, insert "June 30, 1974," after "June 30, 1972,".

On page 2672, lines 4 and 5, strike "tuition reductions" and insert "tuition reduction plans".

On page 2672, line 7, strike "not" the second place it appears.

On page 2672, line 11, insert ", other than plans described in paragraph (1)," after "if".

On page 2673, line 12, insert "(other than stock described in section 1504(a)(4))" after "corporation".

On page 2673, strike lines 17 and 18.

On page 2673, line 22, insert "or cooperative" after "plan".

On page 2677, line 18, strike "CONFORMING AMENDMENT.—".

On page 2677, line 21, strike "EFFECTIVE DATE.—".

On page 2678, line 24, strike "section 409(l)(4)" and insert "section 1563(a)(1)".

On page 2682, line 2, insert "preliminary" before "commitment".

On page 2682, line 3, strike "April 12, 1985," and insert "April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985,".

On page 2685, line 12, strike "EFFECTIVE DATE.—".

On page 2686, line 12, insert "or beneficiary" after "participant".

On page 2688, strike lines 1 through 11 and insert:

"(iv) SPECIAL RULES FOR OBLIGATIONS TO WHICH SECTION 133 APPLIES.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph.".

On page 2689, lines 4 and 5, strike "or which meets the requirements of section 409".

On page 2689, lines 21 and 22, strike "adding at the end thereof" and insert "redesignating paragraph (3) as paragraph (4) and by adding after paragraph (2)".

On page 2690, lines 9 and 10, strike "which are so similar, except that" and insert "providing for".

On page 2690, line 11, strike "is permitted".

On page 2696, line 24, insert ", section 409(o)," before "and".

On page 2697, between lines 2 and 3, insert:

(C) Section 409(h)(2) is amended by striking out "in cash" and inserting in lieu thereof "in cash, except that such plan may distribute employer securities subject to a requirement that such securities be resold to the employer."

On page 2708, line 7, strike "103(1)" and insert "103(l)".

On page 2720, line 4, insert "the original use of which commences with the taxpayer and" after "(ii)".

On page 2762, line 23, strike "2523(f)" and insert "2523(f)(4)".

On page 2763, line 20, strike "recovered" and insert "removed".

On page 2773, line 7, strike "(A)" and insert "(A))".

On page 2775, line 23, strike "nongovermental" and insert "nongovernmental".

On page 2798, line 10, strike "OADSI" and insert "OASDI".

On page 2798, line 14, strike "to" and insert "to the".

On page 2801, line 7, strike "(b)" and insert "(c)".

On page 2840, line 23, strike "401(k)" and insert "404(k)".

WILSON AMENDMENT NO. 2167

Mr. PACKWOOD (for Mr. WILSON) proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the appropriate place in the amendment, add the following new section:

"SEC. IRREVOCABLE ESTATE ELECTIONS.

"(a) Section 2056(b)(5) is amended by adding the following at the end of such paragraph:

'Should the Commissioner determine that property does not qualify under this paragraph as claimed by an executor, with a reasonable basis therefore and in good faith, on a return filed under section 2001, upon receipt of written notice of such a determination by the Commissioner, the executor shall have 90 days to make an irrevocable election under section 2056(b)(7)(v) as to any such property which qualifies under such section.'.

"(b) The provisions of this section shall not apply to the estate of any decedent if the statute of limitations with respect to the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 has expired before the date of enactment of this Act.".

MOYNIHAN (AND DOLE) AMENDMENT NO. 2168

Mr. MOYNIHAN (for himself and Mr. DOLE) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1589, before line 9, insert:

SEC. 424. REPEAL OF DEALERS EXCEPTION.

Notwithstanding any other provision of this Act—

(1) section 423 of this Act is null and void, and

(2) section 1256(e) is amended by striking out paragraph (6) thereof.

On page 1665, line 13, strike "80 percent" and insert "78 percent".

BYRD AMENDMENT NO. 2169

Mr. BYRD proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the end of title XVII, insert:

SEC. . SPECIAL RELIEF FOR FLOOD DISASTER VICTIMS.

(a) IN GENERAL.—In the case of a disaster described in subsection (b)—

(1) section 165(h)(2) of the Internal Revenue Code of 1954 shall be applied with respect to any loss of an individual arising from such disaster by substituting "1 percent" for "10 percent", and

(2) at the election of the taxpayer, the amendments made by section 201 of this Act (i) shall not apply to any property placed in service during 1987 or 1988 or (ii) shall apply to any property placed in service during 1985 or 1986, which is property to replace property lost, damaged, or destroyed in such disaster.

(b) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.

At the appropriate place insert the following:

(C)(1) Section 171 (relating to amortizable bond premium) is amended by redesignating subsection "(e)" as "(f)" and inserting after subsection (d) the following:

"(e) Treatment as interest.

"Except as otherwise provided by regulations, the deduction allowed under subsection (a)(1) shall be treated as interest for purposes of this title."

(2) EFFECTIVE DATE.—The amendment made by (A) shall apply to obligations acquired after date of enactment.

DECONCINI AMENDMENT NO. 2170

(Ordered to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 1561, line 8, strike "section" and insert "sections".

On page 1566, strike lines 4 through 13.

On page 1566, line 14, strike "(iii)" and insert "(A) which arises from the disposition after February 28, 1986, of".

On page 1567, beginning with line 13, strike all through page 1568, line 25.

On page 1569, line 1, strike "(5)" and insert "(4)".

On page 1569, line 7, strike "(6)" and insert "(5)".

On page 1569, line 13, strike the end quotation marks.

On page 1569, between lines 13 and 14, insert:

"SEC. 453D. INSTALLMENT OBLIGATIONS OF DEALERS OR UNDER REVOLVING CREDIT PLANS.

"(a) IN GENERAL.—For purposes of sections 453 and 453A, in the case of an installment obligation in connection with a disposition of property to which this section applies, 30 percent of the gross profit (realized or to be realized when payment is completed) shall be includible in gross income in the taxable year in which such property is disposed of.

"(b) DISPOSITIONS TO WHICH SECTION APPLIES.—This section shall apply to any disposition under the installment method of—

"(1) personal property by a person who regularly sells or otherwise disposes of personal property on the installment plan (including under a revolving credit plan), and

"(2) real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

"(c) TREATMENT OF ACTUAL PAYMENTS.—In applying sections 453 and 453A to any installment obligation described in subsection (a), the gross profit ratio with respect to any payments received in connection with such obligation shall be computed without regard to the portion of the gross profit to which subsection (a) applies.

"(d) EXCEPTION FOR SALES OF TIMESHARES AND RESIDENTIAL LOTS.—

"(1) IN GENERAL.—If a taxpayer elects the application of this subsection, this section shall not apply to any installment obligation which—

"(A) arises from a sale in the ordinary course of the taxpayer's trade or business to an individual of—

"(i) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks, or a right to use specified campgrounds for recreational purposes, or

"(ii) any residential lot but only if the taxpayer (for any related person) is not to make any improvements with respect to such lot, and

"(B) which is not guaranteed by any person other than an individual.

"(2) INTEREST ON DEFERRED TAX.—If paragraph (1) applies to any installment obligation, interest shall be paid on the portion of any tax for any taxable year (determined without regard to any deduction allowable for such interest) which is attributable to the receipt of payments on such obligation in such year (other than payments received in the taxable year of the sale). Such interest shall be computed for the period from the date of the sale to the date on which the payment is received using the Federal short-term rate under section 1274 (compounded semiannually) in effect at the time of the sale and adjusted annually to the Federal short-term rate in effect on each anniversary of the sale.

"(3) TIME FOR PAYMENT.—Any interest under this paragraph shall be treated as an addition to tax for the taxable year described in paragraph (2), except that the amount of such interest shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year."

On page 1569, line 17, strike "item" and insert "items".

On page 1569, in the matter between lines 17 and 18, strike the end quotation marks and insert at the end:

"SEC. 453D. Installment obligations of dealers or under revolving credit plans."

On page 1572, after line 23, insert:

(4) SPECIAL RULE FOR SECTION 453D.—

(A) IN GENERAL.—Section 453D of the Internal Revenue Code of 1954 (as added by this section) shall apply to—

(i) taxable years beginning after December 31, 1985, with respect to dispositions after December 31, 1985, and

(ii) taxable years beginning after December 31, 1989, with respect to dispositions before January 1, 1986, to the extent of the gross profit not included in gross income in taxable years of the taxpayer beginning before January 1, 1990.

(B) RATABLE INCLUSION.—Any amount required to be included in gross income under section 453D of such Code (as so added) for the taxpayer's first taxable year beginning in 1986 shall be taken into account ratably over a period not to exceed 5 years.

On page 1573, strike line 6 through 11, and insert:

"(j) SECTION NOT TO APPLY.—This section shall not apply to any installment obligation arising out of a sale of—

On page 1573, line 12, strike "(A)" and insert "(1)".

On page 1573, line 14, strike "(B)" and insert "(2)".

On page 1573, beginning with line 22, strike out all through page 1574, line 24, and insert:

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to dispositions after December 31, 1986.

On page 1960, strike lines 3 through 10.

On page 1960, line 11, strike "(6)" and insert "(5)".

On page 1999, strike lines 9 through 14.

On page 1999, line 15, strike "(4)" and insert "(3)".

BANK BRIBERY ACT AMENDMENT

METZENBAUM (AND OTHERS) AMENDMENT NO. 2171

Mr. METZENBAUM (for himself, Mr. THURMOND, and Mr. DECONCINI) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 3511) to amend title 18, United States Code, with respect to certain bribery and related offenses; as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

"(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.".

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee's markup on an original resolution to urge the President to submit to the Senate a nominee for the position of Administrator of the Small Business Administration has been rescheduled from Tuesday, June 24, 1986 to Wednesday, June 25, 1986. The markup will commence at 9:30 a.m. and will be held in room 428A of the Russell Senate Office Building. For further information, please call Bob Dotchin, staff director of the committee at 224-5175.

SUBCOMMITTEE ON NATURAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. WARNER. Mr. President, I would like to announce for the information of the Senate and the public, the postponement of the public hearing previously scheduled before the Natural Resources Development and Production Subcommittee of the Senate Energy and Natural Resources Committee on Thursday, June 26, 1986. This hearing will be rescheduled on Tuesday, August 5, 1986 at 10 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC. Testimony is invited regarding the prospects for exporting American coal.

For further information regarding this hearing, you may wish to contact Ms. Ellen Rowan on the subcommittee staff at (202) 224-5205. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Natural Resources Development and Production Subcommittee, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC 20510.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, Reserved Water and Resource Conservation, of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, June 24, to conduct a hearing on S. 2522, to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs; and H.R. 4378, to provide standards for placement of commemorative works on lands administered by the National Park Service in the District of Columbia, and for other purposes.

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

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Governmental Efficiency and the District of Columbia, of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, June 24, to hold a hearing on the Chesapeake Bay cleanup program.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Tuesday, June 24 until noon to conduct an executive session on pending legislative business.

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

ADDITIONAL STATEMENTS

KELSEY ORESTIS: CHAMPION OF RIGHTS FOR THE MENTALLY ILL

● Mr. COHEN. Mr. President, a recent State-by-State evaluation of our Nation's mental health system has concluded that, with a few exceptions, the care provided by States to our Nation's seriously mentally ill is at best, mediocre, and sorely in need of improvement. The evaluation, which was done by the Public Citizen Health Research Group, concluded that the problem is not so much lack of money, as a lack of commitment and a lack of caring.

The State of Maine scored very well in the "Public Citizen" survey, ranking fourth in the Nation in terms of the quality of care available for the mentally ill. If it is true that commitment and caring are the keys to such success, Kelly Orestis of Lewiston, ME, should certainly serve as an inspiration to the rest of the Nation.

An active member of several mental health organizations and founder of the region IV Mental Health Services Coalition, Kelly Orestis has proven an extremely effective advocate for the mentally ill. She has fought, and won, battles for increased State funding for community-based programs in the Lewiston-Auburn and tri-county areas. She also continues to work to put an end to discrimination against the mentally ill, and to improve public awareness about mental illness and its effects on patients and their families. In recognition of her efforts, she was recognized earlier this year as one of three recipients of the Commissioner's Award from the Maine Department of Mental Health and Retardation.

Mr. President, I would like to take this opportunity to commend the attention of my colleagues to an article from the Lewiston Daily Sun which further describes the accomplishments of this remarkable woman.

The article follows:

[From the Lewiston (ME) Daily Sun, June 11, 1986]

KELSEY ORESTIS: CHAMPION OF RIGHTS FOR THE MENTALLY ILL

(By Joe O'Connor)

If anyone doubts that mentally ill people are the victims of discrimination, says Kelsey Orestis, they should consider the terms used to describe them.

"These are terms that are used for criminals rather than ill people," she says. For example, we speak of mental "institutions" rather than hospitals, that are occupied by "inmates" rather than patients; who are committed," rather than hospitalized.

"For centuries, I think since the beginning of mankind, those people who were different were shoved into a closet and had the door closed behind them," Mrs. Orestis says.

Changing that situation has been Mrs. Orestis's goal for the past several years. As a member of several mental-health organizations, and the founder of the Region IV Mental Health Services Coalition, she has fought for increased funding for additional community-based programs in this area, as well as for greater public awareness about mental illness and its effects on patients and their families.

In the short time that she has been involved in advocating for mental health programs in the Lewiston-Auburn and Tri-County Areas, Mrs. Orestis has scored some remarkable victories, including winning major funding for community services from the Legislature.

Those efforts were recognized this month, when she was one of three recipients of the Commissioner's Award from the Department of Mental Health and Retardation.

In presenting her with the award, Commissioner Kevin Concannon said Mrs. Orestis "has been a strong advocate for her community and its needs and has shown what we all are taught: that one person, for sure, can make a difference."

The wife of attorney and former Lewiston mayor John C. Orestis and the mother of three children, ages 13, 17, and 20, and an accomplished photographer and pilot, Mrs. Orestis was involved in several community organizations before 1984, when she was appointed to the Governor's Advisory Committee on Mental Health.

It was at a meeting of that committee in late 1984 that a member from Waterville mentioned that the newly-formed crisis intervention program there was doing very well.

"Right away, I said, 'What program is that?' " Mrs. Orestis recalls.

What the Waterville woman was referring to was a three-part community program approved that year for Augusta-Waterville, Portland, and York County. The programs included social clubs, long- and short-term housing, and a crisis outreach program that sends mental health workers to visit people who are having a crisis, rather than waiting until the crisis is so severe that hospitalization is required.

When Mrs. Orestis heard about that program, her immediate reaction was: "Why can't we have something like that here?"

In early 1985, she held a meeting at her home, which resulted in the formation of the Region IV Mental Health Services Coalition.

The coalition is composed of representatives of the Governor's Advisory Council for Mental Health, St. Mary's Hospital, Tri-County Mental Health Services, Androscoggin Home Health Services, Relatives and Friends Together for Support, and the Lewiston Housing Authority.

Contending that the need for such services is equally great in Region IV (which basically consists of Franklin, Oxford, and Androscoggin counties) as in those other areas, the coalition approached the Legislature with a request for about $275,000 to establish similar programs.

The bill "came within two votes in the Appropriations Committee," Ms. Orestis said, but failed to win a majority. However, Bureau of Mental Health Director Michael DeSisto, who had supported the coalition's request, managed to locate funds elsewhere in his budget to fund the social club and residential program.

In February, the coalition opened the social club at 100 Pine St., Lewiston, where short-term housing for as many as four people can also be provided. With the same BMH grant, the coalition also rented a supervised long-term apartment for one person, also in Lewiston.

This year, the coalition won legislative approval of $200,000 for a crisis intervention team will provide around-the-clock, on-the-scene services to mentally-ill people who are experiencing increased symptoms that, without treatment, could result in their being hospitalized.

Throughout the struggle to improve community services in Lewiston-Auburn and the surrounding area, Mrs. Orestis has been active in other mental-health organizations. She is a board member of the Advocates for the Developmentally Disabled and represented the Maine State Alliance for the Mentally Ill at a legislative seminar in Washington, D.C., in March, during which she met with the state's four-member congressional delegation.

This summer, Mrs. Orestis is running for a seat on the national board of the Alliance for the Mentally Ill.

Mrs. Orestis has high praise for the professionals in the Bureau of Mental Health and in community organizations such as Tri-County Mental Health Services.

"They are very dedicated people, I'd say that 95 percent of them work beyond what they're supposed to do, and put in extra hours, because they want to do a good job," she said. "What is available is very, very good; there just isn't enough of it."

Following the success in getting improved community services, Mrs. Orestis said the Region IV Coalition is now turning its sights on education.

That type of situation is typical, she says. Quoting a mother whose son is mentally ill, she says, "When someone in a family has a broken leg, flowers come, cards come, casseroles come. When you have mental illness in the family, nothing comes. People are embarrassed by it—they don't know how to talk about it, to the family or to the mentally-ill person."

The worst part about this, she says, is that the thing most needed by the mentally ill and their immediate families is support from other family members and friends—"and when you need it the most, you get it the least."

"You really become isolated, and this has to change," she says.●

MAINE'S MAN IN WASHINGTON—DON LARRABEE

● Mr. COHEN. Mr. President, I would like to share an article with my colleagues about a goodwill ambassador for my State and good friend of mine, Don Larrabee.

As many of my colleagues know, Don was a reporter covering Maine for nearly 30 years. During that time, he developed a richly deserved reputation for fairness and thorough reporting exceeded by few.

Since he left daily journalism in 1978, Don has served as the representative for two Maine Governors in Washington. Don has approached this important post with the same diligence, professionalism, and good humor which characterized his years in journalism.

Recently, the magazine Maine Today published a profile of Don Larrabee, and I ask that the article be entered in the RECORD.

The article follows:

[From Maine Today, June 1986]

MAINE'S MAN IN WASHINGTON

(By Betty Mills)

A few years ago, a small businessman from Scarborough wanted to get a Navy contract. He didn't know where to start, so he called Don Larrabee, who heads the state of Maine office in Washington, D.C.

It so happened that the secretary of the Navy was an old friend of Larrabee. The 40-year veteran of Washington journalism and politics fired off a letter, and the Maine businessman received some Navy work.

Larrabee, 62, is the eyes and ears of the state of Maine in Washington. His principal job is to monitor the federal government and send frequent reports to the governor and various state agencies.

But he also is an advocate for Maine business interests when they need help and is an enthusiastic booster of the state.

"The big companies—Bath Iron Works and Pratt Whitney—don't need to come to me. They have their own lobbyists. But the individual businessman who comes to me and needs advice or guidance . . . I try to steer him around," Larrabee says.

Larrabee cites the case of the head of the Penobscot Marine Museum in Searsport who was angling for federal funds from the National Endowment for the Humanities.

"I advised him to see Rep. Olympia Snowe, his representative." The congresswoman made inquiries with the Endowment on behalf of the Maine museum.

Larrabee is a native of Portland who served 29 years as a Washington correspondent for daily newspapers, radio and television stations in Maine. In 1978, he sold the Griffin-Larrabee News Bureau, and signed a contract with then Governor James B. Longley to represent the state's interest in Washington.

The contract has been renewed through the administration of Gov. Joseph E. Brennan and has been funded by the legislature annually. The budget for the office is now $80,000, which covers the salaries of Larrabee and his wife, Mary Beth, who assists him, and all expenses.

"I am an arm of the governor. This office is here to serve the state government. But when anyone calls from private business and has questions, I am happy to help. I get quite a few people who pop in on me or write," Larrabee said.

He also serves as a salesman and a goodwill ambassador for Maine, a part of the job that is easy.

"It is an environment that appeals to a lot of people. You don't have to sell Maine too hard," Larrabee said.

His office receives a steady stream of calls from people who want information on the best camping area or lake site for their vacation.

"It is a billion dollar business in Maine—tourism," Larrabee said. "It means a lot to the economy of our state. Mary Beth and I give sympathetic attention to everyone who calls. We send out maps and brochures."

Larrabee is active with the Maine State Society, a group of former state residents who live in Washington. He has organized several Maine lobster dinners at the National Press Club. At the affairs, Larrabee usually cajoles a Maine politician to perform tricks with a crustacean to amuse the crowd.

This spring Larrabee is arranging the annual presentation of the first salmon caught in Maine to the White House. One year, President Reagan accepted the fish, while Vice President Bush did the honors another year.

Larrabee easily made the transition from the independent, business-oriented Longley to the Democratic regime of Brennan by adopting a non-partisan approach to the job.

"I don't play politics. Neither Brennan or Longley has ever asked me to do anything that would embarrass me. It's better if I am not here trying to grind an axe for Brennan," he said.

Larrabee is less of a lobbyist than many state representatives and as a result, he has a good working relationship with the four-member delegation.

"Some state representatives get more active in lobbying and duplicate the work of the delegation," he said. "I don't bother the delegation unless I have to. I would have a hard time operating if I was seen as a political animal. This is a more pleasant way to work and I get a lot more done."

Sen. William S. Cohen, R-Maine, a longtime friend, said, "Don Larrabee handles the vital and difficult role of representing the interests of the governor of Maine in Washington, D.C., with good humor and professionalism. His efforts in behalf of Maine people and Maine projects reflect his love of Maine and what it stands for.

"Those of us fighting for Maine in Congress welcome Don's able and steady counsel and assistance." Cohen added. "He brings to his job an abundance of intelligence, candor and good will, along with a deep love for our state."

The newest member of the delegation, Rep. John R. McKernan, R-Maine, is equally laudatory.

"Don is an able representative of the state who has the advantage of having a long association with both the state of Maine and the workings of Congress," McKernan said. "The contacts he has made in Washington over the years have reaped important benefits for the state. His counsel has been invaluable to both me and my staff in dealing with a myriad of legislative issues over the past three and one-half years."

McKernan, a gubernatorial candidate, may have a role in Larrabee's future if he succeeds Brennan in the Blaine House.

Larrabee's current contract expires in June 1987, six months after the new governor takes over.

"If the newly elected governor came and asked me to do it, "I'm sure I would consider it," said Larrabee.

Larrabee also expressed a desire to teach.

With his vast list of contacts and his wealth of experience, Larrabee is not worried about finding something to do. His future certainly includes a continuing interest in Maine.●

RICARDO BOFILL PAGES: CONFINEMENT WITHOUT WALLS

● Mr. CRANSTON. Mr. President, I'd like to talk about Ricardo Bofill Pages, whose well-being has concerned me for some time. When I first learned of Mr. Bofill's plight, he was in prison in Cuba.

Ricardo Bofill Pages has been sentenced three times over the last 19 years for ideological deviationism. He

is a professor of philosophy and former vice rector of the University of Havana.

Mr. Bofill was sentenced to 12 years in 1967 for his alleged involvement in a dissident group. He was released in 1972 and jailed again in 1980 because of his efforts to emigrate. Released after serving 2 years, he was denied work, ostracized and placed under greater surveillance because of his expressed intention of leaving the country.

This situation led Mr. Bofill to seek refuge in the French Embassy in 1983. The Cuban police surrounded the embassy. Mr. Bofill left after Cuban Vice-President Carlos Rafael Rodriguez assured the French Ambassador that he would not be harassed and would be allowed to leave Cuba without delay. Mr. Bofill was not permitted to leave Cuba. Five months later, he was arrested for having spoken to two French journalists in Havana.

This last time, he served 2 years in Combinado del Este prison. He reportedly spent 63 days in solitary confinement and staged a hunger strike after prison authorities confiscated two letters in which he described the plight of other prisoners.

Cuban prisons are harsh. Former prisoners have told stories of beatings and solitary confinement in dark, windowless rooms. The prisons are filthy, food and plumbing are inadequate.

Ricardo Bofill is out of prison now. He would like very much to leave Cuba and join his wife and son who are living in the United States. According to his wife, Maria Elena Bofill, two countries have expressed a willingness to grant him visas. As a U.S. citizen, Mrs. Bofill is seeking an immigrant visa for her husband. And as the spouse of a U.S. citizen, Mr. Bofill is entitled to pursue an immigrant visa. But, according to his wife, Mr. Bofill does not dare approach an embassy. He is said to be under close serveillance and has been forbidden to approach any foreign embassy in Havana.

Ricardo Bofill is in his early forties and he suffers from cardiovascular difficulties. The stress of his situation can only aggravate this condition.

In essence, Ricardo Bofill Pages remains a prisoner. True, he is no longer behind bars. But he cannot work. If he expresses himself he runs the risk of being thrown into prison again. And, he cannot leave his country—a country which has rejected and ostracized him and which has refused to allow him to rejoin his family.

I urge the Cuban Government to allow Mr. Bofill to leave Cuba in order that he may rejoin his family and pursue a productive life.●

NAUM AND INNA MEIMAN: SUFFERING IN MOSCOW

● Mr. SIMON. Mr. President, Naum and Inna Meiman are Jews who want desperately to leave the Soviet Union. They are a lovely, warm couple and good friends of mine whose only wish is to emigrate to their homeland, Israel.

Naum, 74, is a physicist who last worked on classified material for the Soviet Government in 1955. Since he applied to emigrate over 10 years ago, he has been harassed. He has been isolated from the scientific community. In additon, his phone has been cut off and much of his mail is confiscated.

Inna also suffers. She is seriously ill with cancer and quite frankly does not have much time left. Soviet doctors have told Inna that there is nothing more they can do for her. American, Israeli, and Swiss doctors have offered the necessary medical treatment, but the Soviets will not allow her to go abroad. She is at home in pain without even a phone to call an ambulance in case of emergency.

By refusing to allow Inna and Naum to leave, the Soviets are slowly and painfully torturing a kind, good woman and her husband whose only "crime" is their desire to live in Israel.

I strongly urge the Soviets to allow the Meimans to emigrate to Israel.●

RASPBERRY AND DE TOCQUEVILLE ON THE WELFARE STATE

● Mr. HELMS. Mr. President, on June 11 and June 13, the Washington Post published columns by William Raspberry, both of which were remarkable in their breadth of understanding of the existing welfare system in the United States.

Mr. Raspberry had run across an obscure essay by the brilliant 19th-century philosopher, economist, and statesman, Alexis de Tocqueville, which argued convincingly against the European welfare state. Mr. de Tocqueville's thesis rested on an intriguing premise: that the more industrialized and civilized the society, the greater the prevalence of pauperism.

England, the most advanced country in Europe at the time [1835], particularly fascinated de Tocqueville because it also had a disproportionately high poverty rate: one in six Britons lived on the public dole. Spain and Portugal, significantly less advanced than England, had much lower percentages of indigents. This seemed an obvious paradox.

Mr. President, de Tocqueville's explanation was simple: charity, previously the domain of the monasteries, had given way to state supervision. "Overseers" in each parish had been endowed with the power to tax citizens for the good of society. Predictably, this was a horrendous failure; de Tocqueville understood why. He put it this way:

> Man, like all socially organized beings, has a natural passion for idleness. There are, however, two incentives to work: the need to live and the desire to improve the conditions of life. Experience has proven that the majority of men can be sufficiently motivated to work only by the first of these incentives. The second is only effective with a small minority. Well, a charitable institution indiscriminately open to all those in need, or a law which gives all the poor a right to public aid, whatever the origin of their poverty, weakens or destroys the first stimulant and leaves only the second intact. The English peasant, like the Spanish peasant, if he does not feel the deep desire to better the position into which he has been born, and to raise himself out of his misery (a feeble desire which is easily crushed in the majority of men)—the peasant of both countries, I maintain, has no interest in working, or, if he works, has no interest in saving. He therefore remains idle or thoughtlessly squanders the fruits of his labors . . .
>
> Any measure that establishes legal charity on a permanent basis and gives it an administrative form thereby creates an idle and lazy class, living at the expense of the industrial and working class.

Mr. President, de Tocqueville recognized that government welfare would inherently fail—not because it was too little or too poorly administered, but because it was notoriously bad policy. His observation remains valid of U.S. welfare policy today.

The failure of Great Society-style welfarism was and is inevitable. It is inevitable because such largesse serves to perpetuate laziness and sap incentive. After all, goes the reasoning, why work and pay taxes when being on the Federal dole is just as profitable?

Mr. President, the question also occurs: how much is enough? By 1970 welfare spending by Federal, State, and local governments was $145.8 billion. The total for 1983, the latest figure available, was $641.7 billion—a 440-percent increase. If all the money spent on modern welfarism was disbursed per capita to recipients, each would be vaulted instantly above the official poverty line. This would be terrible policy, of course, but then it is never going to happen anyway because the multiplicity of Federal welfare "professionals" would be left without a constituency. The self-interested bureaucracy siphons off a large chunk of the cash intended for the poor in inflated salaries and administrative expenses. The welfare establishment will not support meaningful reform because it has a vested political interest in preserving the status quo.

Alexis de Tocqueville did not favor an absolute end to all government welfare; nor was he satisfied with merely decentralizing government. He was a great believer in private charity, voluntarism of the sort associated with families, neighborhoods, and churches.

Such privatism is not only cheaper to the taxpayers than public welfare,

but radically different in practice. As de Tocqueville pointed out, pre-welfare state English charity "established valuable ties between the rich and poor." Class differences could be overcome, he argued, by the demonstrable sharing of conflict and adversity.

Mr. President, there is a clear similarity between de Tocqueville's privatism and much of President Reagan's "New Federalism." Experience teaches us that private charity is always preferable to public welfare—in theory and practice—and this has not been lost on the great intellects and leaders of our time. I certainly hope that the administration officials who are studying the reform of our welfare system will also bear in mind these remarkable insights.

Mr. President, I ask consent to have printed in the RECORD William Raspberry's columns along with the essay, "Memoir on Pauperism," by Alexis de Tocqueville. It will be well worth the time of Senators to read this material.

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

TOCQUEVILLE AND TODAY'S "UNDERCLASS"

(By William Raspberry)

State welfare exacerbates the very poverty it attempts to relieve—not because it is inadequate or badly administered, but because its failure is built in. "The inevitable result of public charity [is] to perpetuate idleness among the majority of the poor and to provide for their leisure at the expense of those who work."

That's the French author-statesman Alexis de Tocqueville, in a fascinating and frustrating paper, "Memoir on Pauperism." The obscure document is fascinating because it provides a dispassionate look at a problem we tend to view as unique to America, and does so in a time and place—the England of 150 years ago—that avoids the complications of race and ethnicity.

It is frustrating because Tocqueville ends his devastating critique of welfare (not included in the collected works of Tocqueville published after his death) with the promise of a second paper in which he will tell us how to prevent pauperism. According to Seymour Drescher, the University of Pittsburgh professor who translated "Memoir" for his out-of-print book, "Tocqueville and Beaumont on Social Reform," Tocqueville shortly afterward ran for the French chamber of deputies and never wrote the second paper.

"He did leave some notes hinting at the direction of his thinking," Drescher said in a telephone interview. The notes, he said, underscore Tocqueville's "almost pathological fear of bureaucracy" and suggest that his preference was for worker organizations, self-help groups and voluntary associations.

It may be stretching a point, but the things Tocqueville seems to have had in mind sound very much like what Peter Berger and others have described as "mediating structures," defined as those institutions standing between the individual in his private life and the large institutions of public life."

Clearly Tocqueville shared, their preference for private charity and joint undertakings involving families, neighborhoods, churches, and voluntary associations—not because they are cheaper but because they work as public welfare cannot.

Private charity of the sort that preceded England's turn to state welfare "established valuable ties between the rich and the poor," Tocqueville said. "The deed itself involves the giver in the fate of the one whose poverty he has undertaken to alleviate. . . a moral tie is established between those two classes whose interests and passions so often conspire to separate them from each other, and although divided by circumstance, they are willingly reconciled."

The present-day theorists who speak of "mediating structures" do not prescribe an end of public aid; neither did Tocqueville. Nor do they merely urge the decentralization of government. As Berger and Richard John Neuhaus put it in their paper "To Empower People":

"Decentralization is limited to what can be done within governmental structure; we are concerned with the structures that stand between government and the individual. Nor again, are we calling for a devolution of governmental responsibilities that would be tantamount to dismantling the welfare state. We aim rather at rethinking the institutional means by which government exercises its responsibilities. The idea is not to revoke the New Deal but to pursue its vision in ways more compatible with democratic governance."

If the new emphasis on private effort sounds a lot like President Reagan's push for voluntarism (for budgetary reasons), it also sounds very much like what the black leadership is saying more and more these days.

Both the civil right traditionalists and the new black conservatives have begun to stress that the salvation of the inner-city underclass is up to the black middle class: not because government won't do it, or hasn't the means to do it, but because government can't do it.

Tocqueville, that perceptive observer of 19th century social democracy, might wonder what took us so long.

THE "UNDERCLASS"—IN 1835

(By William Raspberry)

Perhaps the toughest social problem facing America today is the persistence and growth of the so-called "underclass" in our affluent society. We don't know how to solve it, and we still debate its causes: alienation, racism, official meanness, isolation, joblessness, loss of moral compass.

I have just seen, in an old issue of the Public Interest, an obscure paper of Alexis de Tocqueville, suggesting that the debate is a good deal older and more universal than I had thought.

Tocqueville, looking at the Europe of 150 years ago, found himself intrigued by a curious phenomenon. The more industrially advanced, the more progressive, the more "civilized" the society, the greater the incidence of pauperism.

The Frenchman was particularly fascinated by England, which in 1835, when he delivered his "Memoir on Pauperism," was the most advanced country on the continent.

For all the wealth and graciousness of living that caught the Frenchman's eye, he was struck by something else: one-sixth of the population lived on the public dole. In Spain and Portugal, poorer and less cultivated by far than England, only between 1 and 4 percent of the inhabitants were indigent.

What lay behind this striking paradox? Two things, Tocqueville told the Royal Academic Society of Cherbourg. First, the more highly developed a society, the more things there are to want and, subsequently, to "need." Indoor plumbing and central heat, once beyond the dreams of kings, are modern-day necessities whose absence constitutes serious misfortune. In primitive societies, "poverty consists only in not finding enough to eat."

But according to historian Seymour Drescher of the University of Pittsburgh, who discovered the "Memoir," Tocqueville had another explanation for the paradoxical association of progress and pauperism: public welfare.

By the time of his observations, charity, which earlier had been the province of the monasteries, had been taken over by the state, with overseers in each parish given the right to tax inhabitants in order to feed the disabled and find work for the able-bodied.

It sounds like an eminently reasonable plan—as reasonable as our own welfare system must have seemed to those who devised it—and it worked out about as poorly as our own. Tocqueville thought he understood why.

"Man, like all socially organized beings, has a natural passion for idleness. There are, however, two incentives to work: the need to live and the desire to improve the conditions of life. Experience has proven that the majority of men can be sufficiently motivated to work only by the first of these incentives. The second is only effective with a small minority. Well, a charitable institution indiscriminately open to all those in need, or a law which gives all the poor a right to public aid, whatever the origin of their poverty, weakens or destroys the first stimulant and leaves only the second intact. The English peasant, like the Spanish peasant, if he does not feel the deep desire to better the position into which he has been born, and to raise himself out of his misery (a feeble desire which is easily crushed in the majority of men)—the peasant of both countries, I maintain, has no interest in working, or, if he works, has no interest in saving. He therefore remains idle or thoughtlessly squanders the fruits of his labors. . . .

"Any measure that establishes legal charity on a permanent basis and gives it an administrative form thereby creates an idle and lazy class, living at the expense of the industrial and working class."

Charles Murray couldn't have said it more harshly: our efforts to alleviate poverty only makes it worse.

But since a decent society cannot simply ignore poverty, what is to be done? Tocqueville thought he knew, but he never got around to saying.

The measures by which pauperism may be combatted preventively will be the object of a second work which I hope respectfully to submit next year to the Academic Society of Cherbourg," he said at the end of his "Memoir."

Is it possible to guess what he had in mind? Its's worth a subsequent column to try.

[From the Public Interest, Winter, 1983]

MEMOIR ON PAUPERISM

(By Alexis de Tocqueville)

The "Memoir on Pauperism," delivered to the Royal Academic Society of Cherbourg in 1835 and printed in the proceedings of the Academy, was not included in the collected edition of Tocqueville's works published soon after his death. Reprinted in a

French academic journal in 1911, it was little known until its translation into English by the American scholar Seymour Drescher.[1]

The "Memoir" is a critique of the system of poor relief which earned England the distinction of being, as Tocqueville said, "the only country in Europe which has systematized and applied the theories of public charity on a grand scale." That system had its origins in the sixteenth century when rising prices and land enclosures (the conversion of arable land to pasturage) created much distress and unemployment, a situation aggravated by the dissolution of the monasteries which had traditionally played a large part in the distribution of charity. After several attempts to control vagrancy and provide some measure of relief, an act passed in 1601 consolidated earlier legislation and became the basis of the system of relief that prevailed (with much modification and variation) until it was superseded by the welfare state in 1945. These Elizabethan poor laws provided for relief for the aged and infirm, apprenticeship for the children of the poor, employment of the "able-bodied" poor, and punishment or confinement in "houses of correction" for the "sturdy beggars" who persisted in seeking alms. Although the parish was the unit of administration, the system was national and compulsory; each parish was required by law to levy taxes on property (the "poor rates," as they were known) to be used for the sole purpose of discharging its obligations to the poor who had a "settlement" (a legal residence) within its boundaries.

In the course of the following two centuries, the poor laws were repeatedly modified, sometimes made more harsh and restrictive (an act of 1662, for example, permitting the parish to evict any newcomer who might become a charge on the parish), sometimes more generous and expansive, but always within the framework of the original laws. The most dramatic expansion of relief came with the "Speenhamland policy" in 1795, which pegged relief to the price of bread and the size of the family, thus supporting those who were employed but whose earnings of below a minimum standard. This policy, coming in the wake of a series of bad harvests, the French Revolutionary wars, the rapid increase of population, and the dislocations caused by the agricultural and industrial "revolutions," had the effect of vastly increasing the number of people dependent, entirely or partially, on relief (not, it is now thought, the one-sixth of the population cited by Tocqueville, although at times, it almost reached that point). By the same token it also considerably increased the poor rates, which at one point amounted to one-fifth of the total national expenditure. Mathus's "Essay on Population," published in 1799, was not the first but it was the most influential critique of the poor laws. In subsequent decades criticism mounted as relief was held responsible for a vicious cycle of evils: the decrease of wages (because wages could be supplemented out of the poor rates), the decline of productivity (pauper labor being less efficient than independent labor), and the increased dependency and demoralization of the poor (the "pauperization of the poor," as it was called).

In 1832 a Royal Commission was set up to inquire into the problem, and two years later the Poor Law Amendment Act was passed. The "New Poor Law," as it was commonly called, made no essential change in relief for the aged and sick who would continue to receive relief in money or kind while living in their own homes ("outdoor relief"). The red change came in the relief for the able-bodied, who were to be assisted only in the workhouse and only under the principle of "less-eligibility"—under conditions that were less "eligible," less desirable, than those of the laboring poor. By these means the reformers hoped to prevent the laborer from being tempted to join the ranks of the pauper. And by these means they thought it possible to reform the poor laws rather than, as Malthus would have liked, to abolish them, thus retaining relief for the needy while making it so onerous for those capable of working as to discourage them from applying for relief.

I was against this background that Tocqueville wrote his "Memoir." What is interesting is his resistence to the prevailing sentiment in England, where both the critics and the defenders of the New Poor Law—with the notable exception of Malthus—thought that it had brought about a radical change in the system of relief. Tocqueville, focussing on the principal rather than the mechanism, saw the new law as prone to all the evils of the old because it was still committed to the idea of a legal right to public relief. That principle, like the principle of democracy (Tocqueville had just completed his "Democracy in America", had its own imperatives and its internal logic, which no such "reform" could alter.—Gertrude Himmelfarb.

PART I—THE PROGRESSIVE DEVELOPMENT OF PAUPERISM AMONG CONTEMPORARIES AND THE METHODS USED TO COMBAT IT

When one crosses the various countries of Europe, one is struck by a very extraordinary and apparently inexplicable sight. The countries appearing to be most impoverished are those which in reality account for the fewest indigents, and among the peoples most admired for their opulence, one part of the population is obliged to rely on the gifts of the other in order to live.

Cross the English countryside and you will think yourself transported into the Eden of modern civilization—magnificently maintained roads, clean new houses, well-fed cattle roaming rich meadows, strong and healthy farmers, more dazzling wealth than in any country of the world, the most refined and gracious standard of the basis amenities of life to be found anywhere. There is a pervasive concern for well-being and leisure, and impression of universal propserity which seems part of the very air you breathe. At every step in England there is something to make the tourist's heart leap.

Now look more closely at the villages; examine the parish registers, and you will discover with indescribable astonishment that one-sixth of the inhabitants of this flourishing kingdom live at the expense of public charity. Now, if you turn to Spain or even more to Portugal, you will be struck by a very different sight. You will see at every step an ignorant and coarse population; ill-fed, ill-clothed, living in the midst of a half-uncultivated countryside and in miserable dwellings. In Portugal, however, the number of indigents is insignificant. M. de Villeneuve estimates that this kingdom contains one pauper for every 25 inhabitants. Previously, the celebrated geographer Balbi gave the figure as one indigent to every ninety-eight inhabitants.

Instead of comparing foreign countries among themselves, contrast the different parts of the same realm with each other, and you will arrive at an analogous result; you will see on the one hand the number of those living in comfort, and, on the other, the number of those who need public funds in order to live, growing proportionately. . . .

I think that it is not impossible to give a reasonable explanation for this phenomenon. The effect that I have just pointed out is due to several general causes which it would take too long to examine thoroughly, but they can at least be indicated. . . .

At this point, I want to examine only a corner of that immense tableau of the feudal centuries. In the twelfth century, what has since been called the "third estate" did not yet exist. The population was divided into only two categories. On the one hand were those who cultivated the soil without possessing it; on the other, those who possessed the soil without cultivating it.

As for the first group of the population, I imagine that in certain regards its fate was less deserving of pity than that of the common people of our era. These men were in a situation like that of our colonial slaves, although they played their role with more liberty, dignity, and morality. Their means of subsistence was almost always assured; the interest of the master coincided with their own on this point. Limited in their desires as well as in their power, without anxiety about a present or a future which was not theirs to choose, they enjoyed a kind of vegetative happiness. It is as difficult for the very civilized man to understand its charm as it is to deny its existence.

The other class presented the opposite picture. Among these men heredity leisure was combined with continuous and assured abundance. I am far from believing, however, that even within this privileged class the pursuit of pleasure was as preponderant as is generally supposed. Luxury without comfort can easily exist in a still half-barbarous nation. Comfort presupposes a numerous class all of whose members work together to render life milder and easier. But, in the period under dicussion, the number of those not totally absorbed in self-preservation was extremely small. Their life was brilliant, ostentatious, but not comfortable. One ate with one's fingers on silver or engraved steel plates, clothes were lined with ermine and gold, and linen was unknown; the walls of their dwellings dripped with moisture, and they sat in richly sculptured wooden chairs before immense hearths where entire trees were consumed without diffusing sufficient heat around them. I am convinced that there is not a provincial town today whose more fortunate inhabitants do not have more true comforts of life in their homes and do not find it easier to satisfy the thousands needs created by civilization than the proudest medieval baron. If we look carefully at the feudal centuries, we will discover in fact that the great majority of the population lived almost without needs and that the remainder felt only a small number of them. The land was enough for all needs. Subsistence was universal; comfort unheard of.

It was necessary to establish this point of departure in order to make clear what follows.

As time passes, the population which cultivates the soil acquires new tastes. The satifaction of the basic necessities is no longer

[1] Reprinted here with Mr. Drescher's permission from "Tocqueville and Beaumont on Social Reform," Seymour Drescher, ed. and trans., (New York: Harper & Row, Harper Torchbooks, 1968), pp. 1-27.

sufficient. The peasant, without leaving his fields, wants to be better housed and clothed. He has seen life's comforts and he wants them. On the other hand, the class which lived off the land without cultivating the soil extends the range of its pleasures; these become less ostentatious, but more complex, more varied. Thousands of needs unknown to the medieval nobles stimuate their descendants. A great number of men who lived on the land and from the land leave their fields and find their livelihood by working to satisfy these newly discovered needs. Agriculture which was everyone's occupation is now only that of the majority. Alongside those who live in leisure from the productivity of the soil arises a numerous class who live by working at a trade but without cultivating the soil.

Each century, as it emerges from the hand of the Creator, extends the range of thought, increases the desires and the power of man. The poor and the rich, each in his sphere, conceive of new enjoyments which were unknown to their ancestors. In order to satisfy these new needs, which the cultivation of the soil cannot meet, a portion of the population leaves agricultural labor each year for industry.

If one carefully considers what has happened in Europe over several centuries, it is certain that proportionately as civilization progressed, a large population displacement occurred. Men left the plow for the shuttle and the hammer; they moved from the thatched cottage to the factory. In doing so, they were obeying the immutable laws which govern the growth of organized societies. One can no more assign an end to this movement than impose limits on human perfectibility. The limits of both are known only by God.

What has been, what is the consequence of this gradual and irresistible movement that we have just described? An immense number of new commodities have been introduced into the world; the class which had remained in agriculture found at its disposal a multitude of luxuries previously unknown. The life of the farmer became more pleasant and comfortable; the life of the great proprietor more varied and more ornate; comfort was available to the majority. But these happy results have not been obtained without a necessary cost.

I have stated that in the Middle Ages comfort could be found nowhere, but life everywhere. This sentence sums up what follows. When almost the entire population lived off the soil great poverty and rude manners could exist, but man's most pressing needs were satisfied. It is only rarely that the earth cannot provide enough to appease the pangs of hunger for anyone who will sweat for it. The population was therefore impoverished but it lived. Today the majority is happier but it would always be on the verge of dying of hunger if public support were lacking.

Such a result is easy to understand. The farmer produces basic necessities. The market may be better or worse, but it is almost guaranteed; and if an accidental cause prevents the disposal of agricultural produce, this produce at least gives its harvester something to live on and permits him to wait for better times.

The worker, on the contrary, speculates on secondary needs which a thousand causes can restrict and important events completely eliminate. However bad the times or the market, each man must have a certain minimum of nourishment or he languishes and dies, and he is always ready to make extraordinary sacrifices in order to obtain this. But unfortunate circumstances can lead the population to deny itself certain pleasures to which it would ordinarily be attracted. It is the taste and demand for these pleasures which the worker counts on for a living. If they are lacking, no other resource remains to him. His own harvest is consumed, his fields are barren; should such a condition continue his prospect is only misery and death.

I have spoken only of the case where the population restricts its needs. Many other causes can lead to the same effect: domestic overproduction, foreign competition, etc.

The industrial class which gives so much impetus to the well-being of others is thus much more exposed to sudden and irremediable evils. In the total fabric of human societies, I consider the industrial class as having received from God the special and dangerous mission of securing the material well-being of all others by its risks and dangers. The natural and irresistible movement of civilization continuously tends to increase the comparative size of this class. Each year needs multiply and diversify, and with them grows the numbers of individuals who hope to achieve greater comfort by working to satisfy those new needs rather than by remaining occupied in agriculture. Contemporary statesmen would do well to consider this fact.

To this must be attributed what is happening within wealthy societies where comfort and indigence are more closely connected than elsewhere. The industrial class, which provides for the pleasures of the greatest number, is itself exposed to miseries that would be almost unknown if this class did not exist.

However, still other causes contribute to the gradual development of pauperism. Man is born with needs, and he creates needs for himself. The first class belongs to his physical constitution, the second to habit and education. I have shown that at the outset men had scarcely anything but natural needs, seeking only to live; but in proportion as life's pleasures have become more numerous, they have become habits. These in turn have finally become almost as necessary as life itself. . . . The more prosperous a society is, the more diversified and more durable become the enjoyments of the greatest number, the more they simulate true necessity through habit and imitation. Civilized man is therefore infinitely more exposed to the vicissitudes of destiny than savage man. What happens to the second only from time to time and in particular circumstances, occurs regularly to the first. Along with the range of his pleasures he has expanded the range of his needs and leaves himself more open to the hazard of fortune. Thus the English poor appear almost rich to the French poor; and the latter are so regarded by the Spanish poor. What the Englishman lacks has never been possessed by the Frenchman. And so it goes as one descends the social scale. Among very civilized peoples, the lack of a multitude of things causes poverty; in the savage state, poverty consists only in not finding something to eat.

The progress of civilization not only exposes men to many new misfortunes; it even brings society to alleviate miseries which are not even thought about in less civilized societies. In a country where the majority is ill-clothed, ill-housed, ill-fed, who thinks of giving clean clothes, healthy food, comfortable quarters to the poor? The majority of the English, having all these things, regard their absence as a frightful misfortune; society believes itself bound to come to the aid of those who lack them, and cures evils which are not even recognized elsewhere. In England, the average standard of living a man can hope for in the course of this life is higher than in any other country of the world. This greatly facilitates the extension of pauperism in that kingdom.

If all these reflections are correct it is easy to see that the richer a nation is, the more the number of those who appeal to public charity must multiply, since two very powerful causes tend to that result. On the one hand, among these nations, the most insecure class continuously grows. On the other hand, needs infinitely expand and diversify, and the chance of being exposed to some of them becomes more frequent each day.

We should not delude ourselves. Let us look calmly and quietly on the future of modern societies. We must not be intoxicated by the spectacle of its greatness; let us not be discouraged by the sight of its miseries. As long as the present movement of civilization continues, the standard of living of the greatest number will rise; society will become more perfected, better informed; existence will be easier, milder, more embellished, and longer. But at the same time we must look forward to an increase of those who will need to resort to the support of all their fellow men to obtain a small part of these benefits. It will be possible to moderate this double movement; special national circumstances will precipitate or suspend its course; but no one can stop it. We must discover the means of attenuating those inevitable evils which are already apparent.

PART II

There are two kinds of welfare. One leads each individual, according to his means, to alleviate the evils he sees around him. This type is as old as the world; it began with human misfortune, Christianity made a divine virtue of it, and called it charity. The other, less instinctive, more reasoned, less emotional, and often more powerful, leads society to concern itself with the misfortunes of its members and is ready systematically to alleviate their sufferings. This type is born of Protestantism and has developed only in modern societies. The first type is a private virtue; it escapes social action; the second on the contrary is produced and regulated by society. It is therefore with the second that we must be especially concerned.

At first glance there is no idea which seems more beautiful and grander than that of public charity. Society is continually examining itself, probing its wounds, and undertaking to cure them. At the same time that it assures the rich the enjoyment of their wealth, society guarantees the poor against excessive misery. It asks some to give of their surplus in order to allow others the basic necessities. This is certainly a moving and elevating sight.

How does it happen that experience destroys some of these beautiful illusions? The only country in Europe which has systematized and applied the theories of public charity on a grand scale is England. At the time of the religious revolution under Henry VIII, which changed the face of England, almost all the charitable foundations of the kingdom were suppressed; and since their wealth became the possession of the nobles and was not at all distributed among the common people, the poor remained as numerous as before while the means of pro-

viding for them were partly destroyed. The numbers of the poor therefore grew beyond measure, and Elizabeth, Henry's daughter, struck by the appalling miseries of the people, wished to substitute an annual levy furnished by the local governments for the sharply reduced alms-giving caused by the suppression of the convents.

A law promulgated in the forty-third year of that ruler's reign declared that in each parish, overseers of the poor would be chosen, and that these overseers would have the right to tax the inhabitants in order to feed disabled indigents, and to furnish work for the others.

As time passed, England was increasingly led to adopt the principle of legal charity. Pauperism grew more rapidly in Great Britain than anywhere else. Some general and some special causes produced this unfortunate result. The English have surpassed the other nations of Europe in civilized living. All the observations that I made before are applicable to them; but there are others which relate to that country alone.

The English industrial class not only provides for the necessities and pleasures of the English people, but of a large part of humanity. Its prosperity or its miseries therefore depend not only on what happens in Great Britain but in a way on every event under the sun. When an inhabitant of the Indies reduces his expenditure or cuts back on his consumption, it is an English manufacturer who suffers. England is therefore the country in the world where the agricultural laborer is most forcefully attracted towards industrial labor and finds himself most exposed to the vicissitudes of fortune. In the past century an event has occurred which, looking at the rest of the world's development, can be viewed as phenomenal. For a hundred years landed property has been breaking up throughout the known world; in England it continues to concentrate. Medium-sized holdings disappear into vast domains. Large-scale agriculture succeeds small-scale cultivation. One could offer some interesting observations on this subject, but it would divert me from my chosen topic: the fact must suffice—it is a constant. The result is that while the agricultural worker is moved by his interest to abandon the plow and to move into industry, he is in a way thrust in the same direction in spite of himself by the agglomeration of landed property. Comparatively speaking, infinitely fewer workers are required to work a large estate than a small field. The land fails him and industry beckons in this double movement. Of the 25 million people of Great Britain, no more than 9 million are involved in agriculture. Fourteen million, or close to two-thirds, make their perilous way in commerce and industry. Thus pauperism was bound to grow more quickly in England than in countries whose civilization might have been equal to that of the English. Once having admitted the principle of legal charity, England has not been able to dispense with it. For two hundered years English legislation for the poor has revealed itself as nothing more than an extended development of the Elizabethan laws. Almost two and a half centuries have passed since the principle of legal charity was fully embraced by our neighbors and one may now judge the fatal consequences which flowed from the adoption of this principle. Let us examine them successively.

Since the poor have an absolute right to the help of society, and have a public administration organized to provide it everywhere, one can observe in a Protestant country the immediate rebirth and generalization of all the abuses with which its reformers rightly reproached some Catholic countries. Man, like all socially organized beings, has a natural passion of idleness. There are, however, two incentives to work: the need to live and the desire to improve the conditions of life. Experience has proven that the majority of men can be sufficiently motivated to work only by the first of these incentives. The second is only effective with a small minority. Well, a charitable institution indiscriminately open to all those in need, or a law which gives all the poor a right to public aid, whatever the origin of the poverty, weakens or destroys the first stimulant and leaves only the second intact. The English peasant, like the Spanish peasant, if he does not feel the deep desire to better the position into which he has been born, and to raise himself out of his misery (a feeble desire which is easily crushed in the majority of men)—the peasant of both countries, I maintain has no interest in working, or, if he works, has no interest in saving. He therefore remains idle or thoughtlessly squanders the fruits of his labors. Both these countries, by different causal patterns, arrive at the same result: the most generous, the most active, the most industrious part of the nation, which devotes its resources to furnishing the means of existence for those who do nothing or who make bad use of their labor.

We are certainly far from that beautiful and seductive theory that I expounded above. Is it possible to escape the fatal consequences of a good principle? For myself I consider them inevitable. Here I might be interrupted by a rejoinder: You assume that whatever its cause misery will be alleviated; you add that public assistance will relieve the poor of the obligation to work. This states as a fact something questionable. What is to prevent society from inquiring into the causes of the need before giving assistance? Why could work not be imposed as a condition on the able-bodied indigent who asks for public pity? I reply that some English laws have used the idea of these palliatives; but they have failed, and understandably so.

Nothing is so difficult to distinguish as the nuances which separate unmerited misfortune from an adversity produced by vice. How many miseries are simultaneously the result of both these causes! What profound knowledge must be presumed about the character of each man and of the circumstances in which he has lived, what knowledge, what sharp discernment, what cold and inexorable reason! Where will you find the magistrate who will have the concience, the time, the talent, the means of devoting himself to such an examination? Who would dare to let a poor man die of hunger because it's his own fault that he is dying? Who will hear his cries and reason about his vices? Even personal interest is restrained when confronted by the sight of other men's misery. Would the interest of the public treasury really prove to be more successful? And if the overseer's heart were unconcerned with such emotions, which are appealing even when misguided, would he remain indifferent to fear? Who, being judge of the joy or suffering, life or death, of a large segment of his fellow men, of its most dissolute, its most turbulent, its crudest segment, who would not shrink before the exercise of such terrible power? And if any of these intrepid beings can be found, how many will there be? In any event such functions can only be exercised with a restricted territory. A large number must be delegated to do so. The English have been obliged to put overseers in every parish. What inevitably follows from all this? Poverty is verified, the causes of poverty remain uncertain: the first is a patent fact, the second is proved by an always debatable process of reasoning. Since public aid is only indirectly harmful to society, while the refusal of aid is only indirectly harmful to society, while the refusal of aid instantly hurts the poor and the overseer himself, the overseer's choice cannot be in doubt. The laws may declare that only innocent poverty will be relieved; practice will alleviate all poverty. I will present plausible arguments for the second point, equally based on experience.

We would like work to be the price of relief. But, first, is there always public work to be done? Is it equally spread over the whole country in such a way that you never see a good deal of work to be done with few people to do it in one district and in another many indigents to be helped but little work to be undertaken? If this difficulty is present at all times, doesn't it become insurmountable when, as a consequence of the progressive development of civilization, of population growth, of the effect of the Poor Law itself, the proportion of indigents, as in England, reaches a sixth, some say a quarter, of the total population?

But even supposing that there would always be work to do, who will take responsibility for determining its urgency, supervising its execution, setting the price? That man, the overseer, aside from the qualities of a great magistrate, will therefore also possess the talents, the energy, the special knowledge of a good industrial entrepreneur. He will find in the feeling of duty alone what self-interest itself would be powerless to create—the courage to force the most inactive and vicious part of the population in sustained and productive effort. Would it be wise to delude ourselves? Pressured by the needs of the poor, the overseer will impose make-work, or even—as is almost always the case in England—pay wages without demanding labor. Laws must be made for men and not in terms of a perfect world which cannot be sustained by human nature, nor of models which it offers only very occasionally.

Any measure which establishes legal charity on a permanent basis and gives it an administrative form thereby creates an idle and lazy class, living at the expense of the industrial and working class. This, at least, is its inevitable consequence, if not the immediate result. It reproduces all the vices of the monastic system, minus the high ideals of morality and religion which often went along with it. Such a law is a bad seed planted in the legal structure. Circumstances, as in America, can prevent the seed from developing rapidly, but they cannot destroy it, and if the present generation escapes its influence, it will devour the well-being of generations to come.

If you closely observe the condition of populations among whom such legislation has long been in force you will easily discover that the effects are not less unfortunate for morality than for public prosperity, and that it depraves men even more than it impoverishes them.

There is nothing which, generally speaking, elevates and sustains the human spirit more than the idea of rights. There is something great and virile in the idea of right which removes from any request its suppliant character, and places the one who

claims it on the same level as the one who grants it. But the right of the poor to obtain society's help is unique in that instead of elevating the heart of the man who exercises it, it lowers him. In countries where legislation does not allow for such an opportunity, the poor man, while turning to individual charity, recognizes, it is true, his condition of inferiority in relation to the rest of his fellow men; but he recognizes it secretly and temporarily. From the moment that an indigent is inscribed on the poor list of his parish, he can certainly demand relief, but what is the achievement of this right if not a notarized manifestation of misery, of weakness, of misconduct on the part of its recipient? Ordinary rights are conferred on men by reason of some personal advantage acquired by them over their fellow men. This other kind is accorded by reason of a recognized inferiority. The first is a clear statement of superiority; the second publicizes inferiority and legalizes it. The more extensive and the more secure ordinary rights are, the more honor they confer; the more permanent and extended the right to relief is, the more it degrades.

The poor man who demands alms in the name of the law is, therefore, in a still more humiliating position than the indigent who asks pity of his fellow men in the name of He who regards all men from the same point of view and who subjects rich and poor to equal laws.

But this is still not all: individual alms-giving established valuable ties between the rich and the poor. The deed itself involves the giver in the fate of the one whose poverty he has undertaken to alleviate. The latter, supported by aid which he had no right to demand and which he may have had no hope of getting, feels inspired by gratitude. A moral tie is established between those two classes whose interests and passions so often conspire to separate them from each other, and although divided by circumstance they are willingly reconciled. This is not the case with legal charity. The latter allows the alms to persist, but removes its morality. The law strips the man of wealth of a part of his surplus without consulting him and he sees the poor man only as a greedy stranger invited by the legislator to share his wealth. The poor man, on the other hand, feels no gratitude for a benefit which no one can refuse him and which could not satisfy him in any case. Public alms guarantee life, but do not make it happier or more comfortable than individual alms-giving; legal charity does not thereby eliminate wealth or poverty on society. One class still views the world with fear and loathing while the other regards its misfortune with despair and envy. Far from uniting these two rival nations, who have existed since the beginning of the world and who are called the rich and the poor, into a single people, it breaks the only link which could be established between them. It ranges each one under a banner, tallies them, and, bringing them face to face, prepares them for combat.

I have said that the inevitable result of public charity was to perpetuate idleness among the majority of the poor and to provide for their leisure at the expense of those who work.

If the idleness of the rich, an hereditary idleness, merited by work or by services, an idleness immersed in public consideration, supported by psychological complacency, inspired by intellectual pleasures, moralized by mental exercise—if this idleness, I say, has produced so many vices, what will come of a degraded idleness obtained by baseness, merited by misconduct, enjoyed in ignominy? It becomes tolerable only in proportion to the extent that the soul subjects itself to all this corrupting and degrading.

What can be expected from a man whose position cannot improve, since he has lost the respect of his fellow men which is the precondition of all progress, whose lot could not become worse, since, being reduced to the satisfaction of his most pressing needs, he is assured that they will always be satisfied? What course of action is left to the conscience or to human activity in a being so limited, who lives without hope and without fear? He looks at the future as an animal does. Absorbed in the present and the ignoble and transient pleasures it affords, his brutalized nature is unaware of the determinants of its destiny.

Read all the books on pauperism written in England, study the inquiries ordered by the British Parliament, look at the discussions which have taken place in the Lords and Commons on this difficult question. Then boil down to a single deafening cry—the degraded condition into which the lower classes have fallen! The number of illegitimate children and criminals grows rapidly and continuously, the indigent population is limitless, the spirit of foresight and of saving becomes more and more alien to the poor. While throughout the rest of nation education spreads, morals improve, tastes become more refined, manners more polished—the indigent remains motionless, or rather he goes backwards. He could be described as reverting to barbarism. Amidst the marvels of civilization, he seems to emulate savage man in his ideas and his inclinations.

Legal charity affects the pauper's freedom as much as his morality. This is easily proved. When local governments are rigorously obligated to aid the indigent, they necessarily owe relief only to the poor who reside in their jurisdiction. This is the only fair way of equalizing the public burden which results from the law, and of proportioning it to the means of those who must bear it. Since individual charity is almost unknown in a country of organized public charity, anyone whose misfortunes or vices have made him incapable of earning a living is condemned, under pain of death, to remain in the place of his birth. If he leaves, he moves through enemy country. The private interest within the parish, infinitely more active and powerful than the best organized nation police could be, notes his arrival, dogs his every step, and, if he wants to establish a new residence, informs the public authority who takes him to the boundary line. Through their Poor Laws, the English have immobilized a sixth of their population. They have bound it to the earth like the medieval peasantry. Then, man was forced against his will to stay on the land where he was born. Legal charity keeps him from even wishing to move. That is the only difference between the systems. The English have gone further. They have reaped even more disastrous consequences from the principle of public welfare. The English parishes are so dominated by the fear that an indigent person might be placed on their rolls and acquire residency, that when a stranger whose clothes do not clearly indicate weath temporarily settles among them, or when an unexpected misfortune suddenly strikes him, the municipal authorities immediately ask him to post bond against possible indigence, and if the stranger cannot furnish this security, he must leave.

This legal charity has not only taken freedom of movement from the English poor, but also from those who are threatened by poverty.

I know of no better way to complete this sad picture than by reproducing the following fragment from my notes on England. I traveled through Great Britain in 1833. Others were struck by the imposing prosperity of the country. I myself pondered the secret unrest which was visibly at work among all its inhabitants. I thought that great misery must be hidden beneath that brilliant mask of prosperity which Europe admires. The idea led me to pay particular attention to pauperism, that hideous and enoromous sore which is attached to a healthy and vigorous body.

I was staying at the house of a great proprietor in the south of England at the time when the justices of the peace assemble to pass judgment on the suits brought to court by the poor against the parish, or by the parishes against the poor. My host was a justice of the peace, and I regularly accompanied him to court. I find in my travel notes this portrait of the first sitting that I attended. It gives a short concise summary and clarifies everything said before. I am reproducing it with scrupulous exactness in order to render a true picture.

"The first individual who comes before the justices of the peace is an old man. His face is honest and ruddy, he wears a wig and is dressed in excellent black clothes. He seems like a man of property. However, he approaches the bar and passionately protests against the parish administration's injustice. This man is a pauper, and his share of public charity has just been unjustly diminished. The case is adjourned in order to hear the parish administrators.

"After this hale and petulant old man comes a pregnant young woman whose clothes bear witness to recent poverty and who bears the marks of suffering on her withered features. She explains that some time ago her husband set out on a sea voyage, that since then she has received neither assistance nor news from him. She claims public charity but the overseer of the poor hesitates to give it to her. This woman's father-in-law is a well-to-do merchant. He lives in the very city where the court is sitting, and it is hoped too, that in the absence of his son, he will certainly want to take responsibility for the maintenance of his daughter-in-law. The justices of the peace summon this man; but he refuses to fulfill the duties imposed on him by nature and not by law. The judges insist. They try to create remorse or compassion in this man's egoistic soul. Their efforts fail, and the parish is sentenced to pay the requested relief.

"After this poor abandoned woman come five or six big and vigorous men. They are in the bloom of youth, their bearing is resolute and almost insulting. They lodge a complaint against their village administrators who refuse to give them work, or, for lack of work, relief.

"The administrators reply that at the moment the parish is not carrying out any public work; and gratuitous relief is not required, they say, because the plaintiffs could easily find jobs with private individuals if they wanted to.

"Lord X [Radnor], with whom I had come, tells me, "you have just seen in microcosm part of the numerous abuses which the Poor Law produces. That old man who came first quite probably has the means to

live, but he thinks that he has the right to demand that he be supported in comfort, and he does not blush to claim public charity, which has lost all of its afflicting and humiliating character in the people's eyes. That young woman, who seems honest and unfortunate, would certainly be helped by her father-in-law if the Poor Law did not exist; but interest silences the cry of shame within him and he unloads a debt on the public that he alone ought to discharge. As for those young people who appeared last, I know them, they live in my village. They are very dangerous citizens and indeed bad subjects. They quickly squander the money they earn in taverns because they know they will be given relief. As you see, they appeal to us at the first difficulty caused by their own shortcomings."

"The sitting continues. A young woman comes before the bar, followed by the overseer of the poor of her parish. She approaches without showing the slightest sign of hesitation, her gaze not at all lowered by a sense of shame. The overseer accuses her of having had the baby she is carrying through unlawful intercourse.

"She freely admits this. As she is indigent and if the father remained unknown the illegitimate child would become a public charge along with its mother, the overseer calls on her to name the father; the court puts her under oath. She names a neighborhood peasant. The latter, who is present among the audience, very obligingly admits the accuracy of the fact, and the justices of the peace sentence him to support the child. The father and the mother retire and the incident does not excite the least emotion in an audience accustomed to such scenes.

"After this young woman comes another. She comes willingly. She approaches the judges with the same shameless indifference shown by the first. She declares herself pregnant and names the father of the unborn child. This man is absent. The court adjourns the case in order to have him summoned.

"Lord X tells me: 'Here again are the harmful effects produced by the same laws. The most direct consequence of the Poor Laws is to make the public responsible for the support of the deserted children who are the neediest of all indigents. Out of this comes the parish's desire to free themselves of the duty to support illegitimate children whose parents would be in a position to nurture them. Out of this also comes the paterntiy suits instigated by the parishes, proof of which is left to the woman. For what other kind of proof can one delude oneself into expecting in such a case? By obliging the parishes to become responsible for illegitimate children and permitting the paternity suits in order to ease this crushing weight, we have facilitated the misconduct of lower-class women as much as we could. Illegitimate pregnancy must almost always improve their material condition. If the father of the child is rich, they can unload the responsibility of raising the fruit of their common blunder on him; if he is poor, they entrust this responsibility to society. The relief granted to them in either way exceeds the expenses caused by the infant. So they thrive from their very vices, and it often happens that a woman who has become a mother several times over concludes a more advantageous marriage than the young virgin who has only her virtues to offer. They have a dowry of infamy.' "

I repeat that I wanted to change nothing from this passage in my diary. I have reproduced it exactly, because it seemed to me that it rendered the impressions that I would have the reader share with truth and simplicity.

Since the time of my English journey the Poor Law has been modified. Many Englishmen flatter themselves that these changes will exercise great influence on the indigents' future, on their morality, and on their number. I would like to be able to share these hopes, but I cannot do so. In the new law the present-day English have again reaffirmed the principle introduced two hundred years ago by Elizabeth. Like that ruler, they have imposed on society the obligation of feeding the poor. That is quite enough. All the abuses that I have tried to describe are contained in it, just as the biggest oak is contained in the acorn that a child can hide in its hand. It needs only time to develop and grow. To want to create a law which regularly, permanently, and uniformly relieves indigency without also incresing the indigent population, without increasing their laziness along with their needs, and their idleness with their vices, is to plant an acorn and to be stunned when a stem appears, followed by leaves, flowers, and fruits, which in turn will one day produce a whole forest from the bowels of the earth.

I am certainly far from wanting to put the most natural, the most beautiful, and the most holy of virtues on trial. But I think that there is no principle, however good, whose every consequence can be regarded as good. I think that beneficence must be a manly and reasoned virtue, not a weak and unreflecting inclination. It is necessary to do what is most useful to the receiver, not what pleases the giver, to do what best serves the welfare of the majority, not what rescues the few. I can conceive of beneficence only in this way. Any other way it is still a sublime instinct, but it no longer seems to me worthy of the name of virtue.

I recognize that individual charity almost always produces useful results. It devotes itself to the greatest miseries, it seeks out misfortune without publicity, and it silently and spontaneously repairs the damage. It can be observed wherever there are unfortunates to be helped. It grows with suffering. And yet, it cannot be unthinkingly relied on, because a thousand accidents can delay or halt its operation. One cannot be sure of finding it, and it is not aroused by every cry of pain.

I admit that by regulating relief, charitable persons in association could infuse individual philanthropy with more activity and power. I recognize not only the utility but the necessity of public charity applied to inevitable evils such as the helplessness of infancy, the decrepitude of old age, sickness, insanity. I even admit its temporary usefulness in times of public calamities which God sometimes allows to slip from his hand, proclaiming his anger to the nations. State alms are then as spontaneous as unforeseen, as temporary as the evil itself.

I even understand that public charity which opens free schools for the children of the poor and gives intelligence the means of acquiring the basic physical necessities through labor.

But I am deeply convinced that any permanent, regular, administrative system whose aim will be to provide for the needs of the poor, will breed more miseries than it can cure, will deprave the population that it wants to help and comfort, will in time reduce the rich to being no more than the tenant-farmers of the poor, will dry up the sources of savings, will stop the accumulation of capital, will retard the development of trade, will benumb human industry an activity, and will culminate by bringing about a violent revolution in the state when the number of those who receive alms will have become as large as those who give it, and the indigent, no longer being able to take from the impoverished rich the means of providing for his needs, will find it easier to plunder them of all their property at one stroke than to ask for their help.

Let us summarize in a few words. The progressive movement of modern civilization will gradually and in a roughly increasing proportion raise the number of those who are forced to turn to charity. What remedy can be applied to such evils? Legal alms comes to mind first—legal alms in all forms—sometimes unconditional, sometimes hidden in the disguise of a wage. Sometimes it is accidental and temporary, at other times regular and permanent. But intensive investigation quickly demonstrates that this remedy, which seems both so natural and so effective is a very dangerous expedient. It affords only a false and momentary stop to individual suffering, and however used it inflames society's sores. We are left with individual charity. It can produce only useful results. Its very weakness is a guarantee against dangerous consequence. It alleviates many miseries and breeds none. But individual charity seems quite weak when faced with the progressive development of the industiral classes and all the evils which civilization joins to the inestimable good it produces. It was sufficient for the Middle Ages, when religious enthusiasm gave it enormous energy and when its task was less difficult; could it be sufficient today when the burden is heavy and when it forces are so weakened? Individual charity is a powerful agency that must not be despised, but it would be imprudent to rely on it. It is but a single means and cannot be the only one. Then what is to be done? In what direction can we look? How can we mitigate what we can forsee, but not cure?

Up to this point I have examined the financial approach to poverty. But is this the only approach? After having considered alleviating evils, wouldn't it be useful to try to forestall them? Is there a way to prevent the rapid displacement of population, so that men do not leave the land and move into industry before the latter can easily respond to their needs? Can the total national wealth continue to increase without a part of those who produce this wealth having to curse the prosperity that they produce? Is it impossible to establish a more constant and exact relation between the production and consumption of manufactured goods? Can the working classes be helped to accumulate savings which would allow them to await a reversal of fortune in times of industrial calamity, without dying?

At this point my horizon widens on all sides. My subject grows. I see a path opening up, which I cannot follow at this moment. The present *Memoir*, too short for my subject, already exceeds the limits that I had thought it necessary to set for myself. The measures by which pauperism may be combatted preventively will be the object of a second work which I hope respectfully to submit next year to the Academic Society of Cherbourg.●[2]

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[2] The promised sequel to the *Memoir* never appeared and was apparently never written. It seems to have suffered the same fate as the continuation of his essay on the "Political and Social Condition

A NEW ERA FOR THE CENTRAL STATES PENSION FUND

● Mr. KENNEDY. Mr. President, I want to call the attention of my colleagues to an important recent article in Forbes magazine on the remarkable turnaround of the Teamsters Union's Central States Pension Fund. A decade ago, the fund was wracked with scandal, mismanagement, conflicts of interest, and ties to organized crime.

Today, according to the article, the fund has "cleaned up its tarnished reputation" and its assets are being well managed by distinguished outside fiduciaries and auditors.

Although prodding by the Department of Labor and the Internal Revenue Service produced the original impetus for reform, much of the credit for the revitalization of the fund goes to George Lehr, its executive director since 1981, and to the trustees who have supported his efforts to restore the integrity of the fund for the benefit of all its members.

Mr. President, I ask unanimous consent that the article from Forbes on Mr. Lehr's accomplishments be printed in the RECORD.

The article follows:

[From Forbes, May 19, 1986]

GOING STRAIGHT

(By James Cook)

Five years ago the Teamsters Union's Central States Pension Fund ranked as the most abused, misused pension fund in the U.S. (Forbes, Nov. 10, 1980). But all that has changed. Today its executive director, former Kansas City banker George Lehr, claims that Central States is the best-managed multiemployer fund in America. And he may well be right.

Last year CSPF earned a neat 26.3 percent return on its pension fund assets, roughly what IBM did, vs. the 10 percent it once averaged. Those assets—$7.2 billion currently, up $700 million since Jan. 1—are now divided between equities (56 percent) and bonds (42 percent), with only 2 percent in real estate (vs. 75 percent or so a decade ago).

With 250,000 active members and 130,000 retirees, CSPF pays out $60 million a month in pensions and $40 million to $50 million in health and welfare benefits, and takes in almost the same amount. "The trustees," Lehr says, "are committed to the 100 percent profession management of every dollar, period. They don't want any dollar managed in-house"—an oblique reference to the way Teamster officers and trustees like James R. Hoffa used to manage the fund for their personal advantage.

If CSPF has become a model fund, it had done so almost literally over the dead bodies of its trustees and the Labor Department's doubts. As recently as three years ago the union was controlled by Teamsters President Roy Williams, who in turn, it is not abundantly clear, was controlled by Kansas City mobster Nick Civella, who backed Williams' 1981 bid for the Teamsters presidency, supposedly in the hope of regaining control of the fund. How dominant was Civella's control? In 1979, when Williams got into a dispute over investment policy with the fund's de facto investment adviser, Allen M. Dorfman, it was Civella who tipped the balance in Williams' favor.

Civella and Dorfman are dead, and Williams has gone to jail. Williams' banker and longtime personal friend, George Lehr, now 49, came to the fund in 1981 and since then has cleaned up its tarnished reputation.

Yet if you drop in at the fund's 11-story International Towers headquarters in Des Plaines, ILL., CSPF officials, with a sort of bedazzled pride, will show you Dorfman's old second-floor office with its walnut paneling and rooftop putting green. Celebrity, even when earned in wicked ways, is much prized by Americans.

The tranformation of the pension fund began a decade ago when the IRS forced the trustees to appoint outside fiduciaries for the first time. That's now a permanent situation. Under a 1982 consent decree with the Labor Department, the fund is required to choose its fiduciary from among the U.S.' 25 largest banks, insurance companies and investment advisers.

The original fiduciaries—Equitable Life and Victor Palmieri—have since been supplanted by Morgan Stanley. And it has been joined by other top-ranking outfits—Milliman & Robertson (actuaries), Coopers & Lybrand (auditors) and Bear, Stearns (welfare fund fiduciaries)—and by an independent special counsel, former U.S. Attorney General William Saxbe, who monitors the fund's activities and its compliance with the consent decree at a $20,000-a-month fee.

The trustees, completely reconstituted a few years ago, still retain a great deal of power. They can fire the fiduciary without cause and help set the fund's broad investment strategy to advance the Teamsters' interests, which means no foreign investment, no venture capital and avoiding investment in nonunion companies.

They also control the Benefits & Administration Account, through which all employer contributions are funneled. A few years ago, in a move Lehr labels mistaken, they tried to pay some $6.5 million in legal and other expenses piled up by Roy Williams and other former trustees who had been charged with attempting to bribe Senator Howard Cannon (D-Nev.). The government forced the trustees' insurance company to pay back the legal fees to the fund, and these days the B&A Account is kept as low as possible—by agreement with the Labor Department, at no more than 2.5 times monthly expenses, or $150 million currently.

Lehr has been working hard to get costs down. As against perhaps 9 percent to 10 percent a few years ago, administrative costs as a percentage of contributions now run less than 6 percent for the pension fund, 6.5 percent for the health and welfare fund. Overall performance looks so good that Teamsters locals that once shunned Central States are trying to climb aboard.

In an effort to cut costs even further, the CSPF is changing its health programs in a way Lehr expects will save $25 million to $40 million a year once they get rolling. Instead of using their own doctors and hospitals, Teamster members are given incentives to use CSPF's Preferred Provider Organization—the 547 hosptials and 70,000 physicians associated with Dallas' Voluntary Hospitals of America. As an incentive for cost control, CSPF withholds 10 percent of its payment, releasing it only in proportion t whether certain cost objectives are met.

The links with the Kansas City and Chica go mobs appear to have been broken wit the death of Dorfman and the deposition o Wiliams. But Lehr himself concedes the ne cessity for vigilance. Says he: "Nobod should ever take their eyes off a $7 billio block of money, whether it be here, in bank, an insurance company or anywher else."●

THE AMERICARES FOUNDATION

● Mr. DODD. Mr. President, I woul like to call the attention of my col leagues to the splendid work of the AMERICARES Foundation located in New Canaan, CT.

AMERICARES is a private relief agency founded by Robert Macauley who serves as its president. Among its officers and advisors are such distinguished Americans as Dr. Zbigniew Brzezinski, Sol Linowitz, Prescott Bush, Jr., and William E. Simon.

The hallmark of AMERICARES' work is swiftness and effectiveness. To date it has distributed well over $70 million worth of relief supplies in 19 countries around the globe. The destinations of these shipments could form a map of the major natural and industrial disasters as well as armed conflicts of the past decade. The declaration of martial law in Poland resulted in a major medical airlift by AMERICARES. Beirut, Lebanon, has also received medical supplies as did the people of Afghanistan. Several countries in Latin America and Africa benefited from nutritional programs run by AMERICARES.

The foundation responds to major natural disasters virtually within hours. Many of its airlifts were sent to ease the disastrous famine in Africa. Medicine, blankets, and food supplies were dispatched to Mexico City after last year's earthquake, Similar cargo was sent to Colombia to help to cope with the giant mudslide. AMERICARES' latest action sent powdered milk, vitamins, and medical supplies to Poland in the wake of the Chernobyl nuclear accident. These goods were distributed in Poland by the Catholic Church.

AMERICARES epitomizes the benevolence of the American people, our acknowledged obligation to help those who are less fortunate, who are victimized by unforeseen disasters. It helps not only people in other countries but has run several effective programs in our own country. President Reagan has recognized the excellent work of AMERICARES by awarding its president, Robert C. Macauley the 1984 President's Voluntary Action Award.

Mr. President, I am proud to have AMERICARES as constituent in the State I represent in the U.S. Senate. I hope my colleagues will continue to follow its missions with interest. It deserves our gratitude as well as our sup-

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of France," written for the *London and Westminster Review* in 1836. Both projects were pushed aside in deference to the task of writing the second part of *Democracy in America*, which took years longer than originally anticipated.

port and best wishes for its future undertakings.●

BRISTOL COLLEGE BULLDOGS, 1986 NLCAA CHAMPIONS

● Mr. GORE. Mr. President, I am very pleased to bring to the attention of my colleagues the NLCAA champions, the Bristol College Bulldogs from Bristol College, Bristol, TN. I submit for the RECORD at this time a certificate of recognition signed by the mayor of Bristol, TN, citing this achievement.

The certificate of recognition follows:

CERTIFICATE OF RECOGNITION, BRISTOL COLLEGE BULLDOGS, 1986 NLCAA CHAMPIONS

Whereas, Bristol College established a basketball program for the 1985-86 season, the first such program to be implemented at the College since 1978; and

Whereas, the City of Bristol, Tennessee is extremely pleased to have been selected as the site of the National Little College Athletic Association Tournament, which was held at Viking Hall on March 8-13, 1986; and

Whereas, Bristol College was host team in this Tournament and exemplified a fine spirit of good sportsmanship and inspired team play; and

Whereas, the hard work and dedication of Coach Brien Crowder, Assistant Coach Bill Arnold, Trainer/Manager Marvin Sewell, Honorary Coach Curtis Burnett, Cheerleaders and Ball Boys, and all team members; Wayne Andrews, Granville Arnold, Kenny Baxter, Steve Crowder, Tim Hale, Dean Heywood, George Howard, Jaymie Jenkins, Jake Keys, Roger Lowrence, Derrick McGlothlin, Baron Minor, David Statzer, Michael Thomas, and John Weiner, have earned the respect and support of the entire community;

Now therefore, I, by the authority vested in me as Mayor of Bristol, Tennessee and on behalf of City Council and all of the citizens of Bristol, do hereby extend this Certificate of Recognition to the Bristol College Bulldogs for their first place finish in the NLCAA Tournament, and also express our pride in their accomplishment of winning a national title and our appreciation of the fine publicity they have brought to our community.

This 18th day of March, 1986.

EWELL L. EASLEY, *Mayor*.●

EXEMPTING CERTAIN VETERANS' BENEFITS FROM SEQUESTRATION

● Mr. D'AMATO. Mr. President, I rise today to cosponsor broad legislation affecting veterans and their families. I am pleased that my good friend and colleague, Mr. DECONCINI, has introduced a bill to recognize those who have fought so bravely for liberty around the world.

S. 2187 expands upon Senator MURKOWSKI's legislation, S. 2186, which I have also cosponsored. This legislation exempts certain benefits affecting disabled veterans from future Gramm-Rudman-Hollings automatic across-the-board spending cuts. Senator DECONCINI's bill exempts additional categories of veterans' funding from potential cuts. In addition to excluding vocational rehabilitation, housing, and automobile grants, and incentive work therapy programs from future cuts, S. 2187 adds the Veterans Home Loan Program and survivors education benefits to the exempt category. These additional exemptions would ensure that loans would remain accessible for veterans who desperately need to purchase or renovate a home. In addition, the legislation would insure that the families of those individuals who have fought for this country would be able to fully take advantage of the educational opportunities Congress has provided them.

S. 2187 also would retroactively restore funds that were unfairly taken away from Veterans insurance programs as a result of the 1986 Gramm-Rudman-Hollings cuts. I fully support this restoration, and I am pleased that Senator DECONCINI has targeted key areas of assistance for veterans to ensure that these benefits are not again used to reduce the Federal deficit. S. 2187 would protect at least $17 million of veterans' benefits.

I am pleased that my colleague from Arizona has introduced legislation to maintain the commitment that this Nation has to its veterans, and I am proud to be its cosponsor.●

EXEMPTING DISABLED VETERANS' BENEFITS FROM SEQUESTRATION

● Mr. D'AMATO. Mr. President, I rise today to cosponsor legislation introduced by my distinguished colleague from Alaska, the chairman of the Senate Veterans' Affairs Committee. S. 2186 will relieve disabled veterans from the unjust burden of any future sequestration. Under the Gramm-Rudman-Hollings Deficit-Reduction Act, I am pleased to support funding for those individuals who have given of themselves so selfless in service to this Nation.

Veterans were seriously affected by the Gramm-Rudman-Hollings deficit-reduction legislation. Although COLA's for veterans' benefits remained exempt from the 1986 mandatory across-the-board cuts, other parts of the VA budget suffered significant reductions.

Although I believe that the Federal deficit must be reduced, I do not believe that this reduction should be at the expense of the veterans of this country. This Nation owes a great deal to our veterans. They have borne the burden of maintaining freedom for Americans and for citizens of other nations around the world. These devoted men and women must not be asked to bear an unfair share of the burden of reducing this Nation's Federal deficit.

S. 2186 ensures that veterans are not again forced to shoulder Gramm-Rudman-Hollings cuts. This legislation exempts from any future Gramm-Rudman-Hollings cuts those benefits which are based upon the service-connected disability or death of a veteran. Specifically, S. 2186 provides that services including vocational rehabilitation, housing and automobile grants, and incentive work therapy programs would be exempt from cuts.

I am pleased that the chairman has addressed this serious issue in this way, and I fully support his efforts to assist the service-connected disabled veterans.●

PRESIDENTIAL CITATION OF AARP TAX-AIDE PROGRAM

● Mr. ABDNOR. Mr. President, the American Association of Retired Persons' Tax-Aide Program received the Nation's highest honor for private sector initiatives from President Reagan at a White House ceremony on June 18.

Tax-Aide was one of 30 top award winners selected from among 1,500 organizations registered in the 1986 President's Citation Program for private sector initiatives.

The President's Citation Program was established in 1984 to recognize and encourage public service by businesses, trade associations, and professional societies to enrich the lives of people in their communities.

AARP's Tax-Aide Program provides free tax preparation and counseling services to older persons throughout the Nation. During the past tax season, more than 21,000 Tax-Aide counselors either prepared or helped to prepare 1.3 million tax returns for older Americans, including 30,000 shut-ins and 42,000 persons at hospitals, nursing homes, and other special sites.

As chairman of the Treasury, Postal Service, and General Government Appropriations Subcommittee, I have been keenly impressed by the Tax-Aide Program. I have personally seen the effectiveness of this successful program in my home State of South Dakota. An article in the Sioux Falls, SD, Argus-Leader describes the valuable services provided by the Tax-Aide Program.

Mr. President, I ask that this article—entitled "Tax help is at hand for seniors"—be printed in the RECORD.

The article follows:

[From the Sioux Falls (SD) Argus-Leader, Feb. 9, 1986]

TAX HELP IS AT HAND FOR SENIORS

(By Jack Smith)

Seniors need not suffer nervous tremors from tax filing. Relief is close at hand in more than 9,000 centers around the United States.

These centers are staffed with Internal Revenue Service-trained volunteers of the American Association of Retired Persons. The service is known as AARP Tax-Aide. It is in its 18th year. It is free.

A moderate- or low-income senior who needs tax filing help bundles up his receipts, accounts and other papers and makes a date with a counselor at an AARP Tax Aide center. The most convenient center is available through the local AARP Tax Aide Coordinator, whose name and number may be on file at the newspaper, the chamber of commerce, the AARP chapters (clubs) in the locality, and/or through the IRS office.

If a senior is shut in, arrangements usually can be made to have a Tax Aide counselor visit the residence. In 1985, the AARP program performed 11,000 such home service consultations.

Older adults experience special problems in regard to tax reporting. When does a pension become taxable and how should payments be reported in the meantime? What determines whether a portion of Social Security income is taxable and how does one figure it? What deductions of health care expenses are allowable? What's the requirement if I sold the family home and moved into a condo? Or rented an apartment? Is there any advantage in taking tax credit for the elderly and how do I compute it? Do I have to file an estimated tax return for next year?

AARP Tax-Aide counselors are prepared to help older people understand the provisions of the tax code that affect them. They also are trained to make sure seniors do not overpay, which surveys have shown that many do. AARP volunteers have spotted costly errors in tax returns. A retired government employee received a $1,500 refund because he had forgotten to set aside his own contributions to his pension fund. A woman on a small income had donated more than $300 to political campaigns, mistakenly thinking that appeals for such funds were bills that needed to be paid.

The Tax-Aide program has won great respect from civic and government leaders. In Broward County, Fla., the volunteers were inducted into the senior Hall of Fame.

In 1984, about 18,000 volunteers helped prepare 1.3 million returns. This includes state and local returns in areas where such requirements apply. In New York State, 124,000 senior returns were prepared; in Texas, 36,000; in Florida, 95,000; in California, 155,000; in Minnesota, 76,000; in Wisconsin, 31,000; in Michigan, 63,000; in Ohio, 61,000; in Nevada, 3,000.

The Tax-Aide volunteers must like the work. About 90 percent of them have served for two or more years in a row. They have to go through a new training school each year to brush up on all the new wrinkles in the tax laws and regulations. But the joy of truly helping others is tonic, apparently. I have never met a Tax Aide volunteer who wasn't enthused about this period of the year.●

TRIBUTE TO HAROLD LEVANDER

● Mr. DURENBERGER. Mr. President, one of the great traditions of politics in Minnesota is the willingness of outstanding community leaders to devote a period of time to public service in elective office.

Too often, in today's world of high powered political consultants, 30-second television commercials, and professional politicians, we lose sight of the essential role which true citizen politicians must play in public life.

I am fortunate to have served my political apprenticeship in the company of one such citizen politician—former Minnesota Gov. Harold LeVander.

Twenty years ago, Harold LeVander combined a broad understanding of public issues, great wit and a commanding knowledge of the people and concerns of Minnesota to rise from a successful South St. Paul law practice to statewide office.

In his 4 years as Governor, Harold LeVander used his varied experience and common sense to iniate a number of legislative proposals which helped give Minnesota the reputation it has today as a State which offers high quality services and humane and innovative government.

Recently, I had the pleasure of joining a large group of LeVander administration officials and supporters in a 20th anniversary reunion. The spirit of that reunion—and the legacy of Harold LeVander—were captured in the following article written by former Minnesota Independent-Republican Party Chairman Chuck Slocum. Because of the important contributions made by this outstanding citizen politician, I ask that the article be printed in the RECORD.

The article follows:

THE CANDIDATE FOR GOVERNOR WHO WORKED A MIRACLE

(By Chuck Slocum)

Twenty years, ago, at the end of a political era in Minnesota, the unexpected happened. A 56-year-old South St. Paul attorney who had never before sought public office put together a grass-roots campaign that took advantage of divisions in the opposition party and swept to office on the theme, "Be proud of Minnesota again." His name was Harold LeVander.

The Swedish son of a Lutheran minister, LeVander won by 72,650 votes over incumbent Gov. Karl Rolvaag, who had to survive a primary challenge by endorsed DFLer A.M. (Sandy) Keith.

By today's standards. LeVander pulled off a miracle. A 1932 Gustavus Adolphus graduate and young lay preacher who once coached the debate team at Macalester College, LeVander had successfully built a coalition of backers new to politics and undeterred by long odds. For the Republican nomination, LeVander challenged the likes of former Gov. Elmer L. Andersen, businessman John Pillsbury and William Randall, the popular Ramsey County attorney. To most political experts, LeVander was the least electable of the four.

LeVander reflected on this experience at a 20-year reunion this month attended by 400 former workers and friends. To many in attendance, the 1966 campaign was the first and last time they had actually had fun in politics.

The campaign message was amplified by his son, Harold (Hap) LeVander Jr., debater-daughter Jean, and his wife of 28 years, Iantha. Thirteen-year-old daughter Diane also helped. So did lawyer-partners Fallon Kelly, Dave Durenberger, Paul Magnuson and Art Gillen. His brother, former Republican State Chairman Bernard LeVander, an unsuccessful candidate for attorney general in 1954, was the "real politician" of the group. Mary Kelly of South St. Paul and Fred Hughes of St. Cloud headed the original volunteer committee. The candidate drew rural support from his years representing the Rural Electrical Administration.

Durenberger, now a U.S. senator, recalled the black-rimmed "campaign glasses" LeVander reluctantly wore. Advisers told the candidate to quit wearing his ice-cream white shoes, seersucker suits and straw hats, LeVander's cigar-stained teeth had to be capped after he won party endorsement on the 16th ballot. But efforts to change the appearance of the candidate did not change the character of the man, Durenberger recalled.

LeVander said he hired youthful state Rep. Paul Overgaard of Albert Lea to manage his pre-endorsement contest effort "because it didn't cost us much money." General election manager Jerry Olson remembered his candidate's insistence that a small "e" be used when spelling his name. "Otherwise, they'll think you are trying to elect a Frenchman. I'm a Swede, you know."

It was a time when political teamwork meant something. The more moderate Hennepin County party activists worked hard for LeVander's election. Their own stalking horse, Douglas Head, also successfully won the attorney general's office that year. Jim Goetz, a young Winona radio-station owner who exuded confidence and charisma, became LeVander's running mate. Veterans Val Bjornson and Stafford King each had long records of public service as state treasurer and auditor and were easily reelected that year.

Bob Forsythe's 10-week campaign for U.S. senator against the 38-year-old appointed incumbent, Walter Mondale, demonstrated the highest order of party service and political sacifice "I knew who the real head of the ticket was when I went to Rolvaag on a Saturday and could only count about 60 people in the rain and round out LeVander went there on Sunday and spoke to 20,000," Forsythe remembered.

LeVander put his campaign together without expensive advertising, survey research, big-name consultants or a long record of inside political fence-building.

As governor, LeVander demonstrated he could get things done. He increased the state's investment in education and added millions for highways. The Metropolitan Council, Pollution Control Agency and State Department of Human Rights were established. Through the passage of Minnesota's controversial sales tax, the property-tax system was dramatically altered, providing tax relief for homeowners, renters, the elderly and business owners and operators. The political newcomer adopted his party's 1966 platform as his own. When his term ended, LeVander could claim that the vast majority of ideas contained in that thoughtfully drafted party document had become Minnesota law.

LeVander had something special from which candidates and party activists of today could learn. He and his family had confidence that they could win. They started early, worked hard, played it straight and earned a big victory for themselves, their party and the state. In 1971, Harold LeVander returned to his law office, where he maintains his practice today.●

CONGRESSIONAL CALL TO CONSCIENCE

● Mr. WILSON. Mr. President, I would like to take the opportunity offered by the call to conscience sponsored by my colleague from Maine,

Senator MITCHELL, to express my concern. I believe I share with a large number of my colleagues the plight of today's Soviet Jews. The Helsinki accords, signed by the Soviet Union in 1975, were intended to guarantee certain basic rights, including the freedom for all to practice their religion, to maintain contacts with foreigners, and to travel uninhibited.

Sadly, however, the Soviet Union has failed to respect the agreement to which it is explicitly committed. Jewish emigration from the U.S.S.R. has declined to an average of fewer than 1,000 per year, compared with 51,300 in 1979. A total of 400,000 Soviet Jews have taken the risky step of applying for permission to leave the U.S.S.R. 50,000 have been refused permission to leave the Soviet Union for up to 20 years, earning the name "refuseniks," and consequently living as pariahs in Soviet society.

But not only do the Soviet authorities restrict individuals' ability to be reunited with their family members in Israel or other Western countries, they also take active steps to discourage Jews from applying for exit visas.

With heavy-handed methods including beatings, show trials of religious Jews and Hebrew teachers, and long labor camp sentences on charges ranging from "anti-Soviet propaganda" to "illegal possession of narcotics," the KGB is orchestrating a campaign to intimidate those families who still hope to be reunited with their parents, siblings, or even spouses abroad.

The example of Mikhail Elman, a Leningrad refusenik whose brother and sister-in-law live in California, provides a gruesome illustration of these basic human rights violations. Elman, an Orthodox Jew, has been repeatedly harassed by the KGB in connection with his Jewish activities.

Elman first applied for an exit visa in 1980. He immediately lost his job as a computer engineer and had to begin working as a bathhouse attendant to support his family. In 1981, he and a friend were arrested and detained for 10 days for attempting to lay a wreath at Babi Yar, site of the World War II massacre of thousands of Jews. In April 1982, Elman was brought before a court and charged with disobeying police orders.

In November 1984, while his wife was giving birth to their baby son, he was detained and made to sign a document saying he would cooperate with the KGB. Two days later, he was interrogated, badly beaten, and threatened by KGB agents. Soviet authorities, he was told, would put an end to all Jewish religious activity in Leningrad.

Elman sent a complaint to the Leningrad district attorney about the KGB's violations of his rights. Instead of investigating the officers involved, however, the district attorney warned Elman that his complaint could be used against him with charges of "defaming the State."

These abuses have increased in recent months, betraying a deliberate campaign by the Soviet Government to eradicate hopes for free Jewish cultural and religious expression and for open emigration. When refuseniks appeal through appropriate legal channels to protest their visa refusal or harsh treatment by the KGB, they often receive new threats. This practice contradicts not only the international agreements signed at Helsinki, but also the Soviet Constitution itself, which guarantees citizens' right to appeal mistreatment by officials.

For these reasons, I ask my colleagues to join me in demanding the safe release of Mikhail Elman and his entire family, so they may repatriate to Israel or reunite with their relatives in California. In October 1985, I addressed the Senate in anticipation of the Geneva summit, to recommend that we insist upon the historic linkage between arms control and Helsinki violations.

Now, once again, I will emphasize that there can be no genuine peace, no real trust between the superpowers until the human rights violations I have described come to an end. I encourage the Soviet Government to demonstrate its respect for international agreements by opening up the gates for Mikhail Elman and thousands like him, by ceasing persecution of political dissidents and Jewish activists, and by complying with all the provisions of the Helsinki accords.●

SENATOR BYRD FIGHTS FOR CLEAN COAL AND CLEAN AIR

● Mr. GORE. Mr. President, I should like to call attention to a provocative address the minority leader gave last Friday before the annual convention of the National Coal Association.

The distinguished Senator from West Virginia is an expert on coal and energy policy. He has been a strong advocate of efforts to develop "clean coal technology" that would improve efficiency and reduce pollution at coal-fired plants.

I share the minority leader's support for the Clean Air Act and his conviction that coal's future must be a clean one. I urge my colleagues to read his address.

I ask that the minority leader's remarks be printed in the RECORD.

The material follows:

REMARKS OF SENATOR ROBERT C. BYRD, NATIONAL COAL ASSOCIATION 69TH ANNIVERSARY CONVENTION, JUNE 20, 1986

Coal has been an energy source for mankind for millenia. The ancient Babylonians knew about coal. The ancient Greeks are said to have used coal. And Solomon and others in the Old Testament spoke of coal.

But coal did not come into its own until the modern era—as the primary energy source for the industrial revolution. And some here may remember when coal-burning stoves and fireplaces were as common in private residences as gas and oil furnaces are today.

After World War II, however, the development of other fuels—natural gas and oil in particular—sent coal into a temporary decline.

But the oil embargoes of the 1970's spurred renewed interest in coal. With this new demand created by the energy crisis, coal seemed on the verge of a second boom, for a while.

More recently, however, ecological and environmental concerns have panicked some people, and have led to sometimes irresponsible attacks against the use of coal. Portentious clouds have gathered on the horizon—clouds that signal rough days ahead for the coal and electric utility industries, especially if those of us who believe in coal's potential do not respond with intelligence and wisdom.

Principal among the ill omens is the recent progress of acid rain legislation in the House of Representatives. On May 20, the House Subcommittee on Health and Environment reported H.R. 4567 by a vote of 16 to 9. The bill has about 160 cosponsors, 21 of whom are members of the 42-member full Committee on Energy and Commerce.

My opposition to the enactment of acid rain legislation remains undiminished. Legislation such as H.R. 4567 would have a devastating impact on the economy of West Virginia and other coal-producing and coal-consuming States.

For example, the United Mine Workers has estimated that H.R. 4567 could cost over 38,000 jobs in the coal mining industry, of which 7,200 jobs would be lost in the West Virginia coal mining industry. Total annual economic losses are estimated to be over $4 billion, about $1.3 billion of which would be lost in West Virginia.

Such estimates have been disputed by supporters of acid rain legislation, and others. They suggest that West Virginia would experience "net employment gains" as new demand materializes for low sulfur coal in the southern part of the State.

Yet that argument fails to take into consideration two important factors. First, if coal production increases in southern West Virginia, the jobs will go to miners in that region who had previously been laid off. Second, such a shift in production would create ghost towns and devastated communities in northern West Virginia.

Others have suggested that the employment impacts of acid rain legislation will be much smaller than the estimates of the United Mine Workers. However, the jobs of those who work in the coal industry, and the livelihood of the communities which depend upon coal mining, are not chips to be gambled away in the acid rain debate.

The disagreements within the coal industry itself about the economic implications of acid rain legislation provide adequate testimony to the divisiveness of the issue. Coal producers and others have to realize that if acid rain legislation is enacted, whether it be H.R. 4567 or S. 2203, there would be very serious implications for the use of all coal. Indeed, the acid rain debate involves a debate over a fundamental energy policy issue—what policy is this Nation going to pursue regarding the use of coal?

Without a doubt, coal can play an increasingly prominent role in meeting this Nation's energy needs for the foreseeable future. For example, in 1985, the domestic

electric utility industry consumed about 693 million tons of coal in generating 56 percent of all electricity in the United States. According to the Energy Information Administration, about 40 percent of all the new generating capacity added between 1985 and 1995—almost 46 gigawatts—I.E., 46 billion watts—will be coal-fired. By the year 2010, the EIA estimates, coal-fired plants could account for about 60 percent of all electricity generated, and coal consumption by utilities could be nearly double what it is today.

Increased utility coal use does not necessarily mean that powerplant emissions will increase dramatically between now and the turn of the century. The Clean Air Act is working! For example, according to EPA, between 1973 and 1983, emissions of sulfur dioxide decreased 28 percent while the use of coal increased 68 percent over the same period.

However, within the last 10 or 15 years, a number of economic, regulatory, and other developments created significant disincentives for electric utilities to commit financial resources to the construction of new generating capacity. Indeed, according to the Electric Power Research Institute [EPRI], a new, large, conventional coal-fired powerplant will cost as much as $1.5 billion. Environmental controls account for about 30 percent of that cost.

Uncertainties regarding such issues as future economic growth, changes in the structure of the economy, levels of electric power demand, future emissions reduction and other environmental requirements have encouraged electric utilities to consider the economic merits of extending the service life of existing generating facilities beyond their original design lifetimes, which are usually 30 to 40 years.

According to the Energy Information Administration, by 1995 over 60 percent of all coal-fired powerplants—accounting for about one-quarter of total coal-fired generating capacity—will be more than 30 years old. By comparison, in 1985, approximately 10 percent of such facilities were more than 30 years old.

Clearly, there is a significant opportunity for the adoption of new, advanced coal technologies for retrofit applications. In 1983, I introduced the first legislation to promote the development of "clean coal technologies." In 1984, the Congress enacted the Clean Coal Technology Program as Public Law 98-473, authorizing $750 million for the program. In December 1985, the Congress appropriated $400 million for the Clean Coal Technology Program, $100 million of which is available for fiscal year 1986, and $150 million each for fiscal years 1987 and 1988.

The Department of Energy issued a Clean Coal Technology Program opportunity notice in February 1986. A total of 51 project proposals were submitted to the Department by the April deadline. The department's screening process has narrowed the number of clean coal project proposals to 39, and those projects are currently being evaluated by DOE. By August 1, the Department is to announce which projects have been selected to enter into contract negotiations.

The Clean Coal Technology Program represents a unique chance to promote the adoption of new technologies, which are more efficient and less expensive than conventional pulverized coal boilers and flue gas desulfurization. Indeed, the commercial adoption of such technologies for new and retrofit applications to meet the Nation's future energy needs together provide the key to promoting the more efficient use of the Nation's most abundant fossil energy resource. They also will ensure continuation of the progress achieved to date under the Clean Air Act. The implementation of the clean coal program is the first step in the effort to expand the use of coal in an environmentally acceptable manner.

Unfortunately, if acid rain legislation, such as H.R. 4567, is enacted, I do not believe that the promise of the Clean Coal Technology Program would be realized. The mid-1990's deadline imposed in the House bill for achieving the stringent emissions standards would force utilities to decide between installing scrubber technology, fuel switching, and retiring generating capacity. Many clean coal technologies will not be an option, because their abilities may only have been demonstrated in the early 1990's. Thus, the unique opportunities for retrofit applications could be lost because utilities would be very reluctant to gamble on technologies that have not been adequately demonstrated.

In the final analysis, the Clean Coal Technology Program promotes freedom of choice for the electric utility industry and other industrial coal users by supporting the development of an array of technologies that are more efficient and less expensive than those that are available right now.

The coal industry and the electric utility industry face a future full of question marks—a future with both dilemmas and possibilities. Even so, I believe that the Clean Coal Technology Program represents a first bright glimmer of a new day for coal. But there is much to do if we are to ensure that coal becomes the jewel in the crown of the Nation's energy future.●

THE DEATH OF ROBERT HUNTER

Mr. LONG. Mr. President, I am deeply saddened today by the sudden death of my old and very dear friend, Robert Hunter, a great American who loved his country and served its citizens well for almost 20 years as my administrative assistant.

Robert Hunter came to Washington as my No. 2 assistant, serving second only to the administrative assistant. When a vacancy occurred in the position of the administrative assistant, Bob filled that post. During those years, I learned to trust him implicitly.

He worked tirelessly and energetically to provide an outstanding degree of service for Louisiana. He made my office rather famous as one that cared for the needs of our constituents. On occasion, he even demonstrated to me how it was possible to accomplish things that I thought impossible. I recall, for example, how he found a way in which we could offer substantial and meaningful assistance to those who were severely injured by Hurricane Betsy.

More than 20 years ago, I had some rather ambitious ideas how we could improve on our annual Louisiana Mardi Gras Ball. The burden of it fell mostly on Bob Hunter. He performed far beyond the call of duty, so much so that it may have shortened his life. But he did it as he tended to do everything he deemed worthy of doing, with diligence and dedication.

The Louisiana Mardi Gras ball and the Krewe of Louisianians became well known, both in Washington and in Louisiana. His passing leaves us with several hundred colorful costumes which he so carefully maintained in his home.

Bob was universally known in Washington, especially on Capitol Hill. Those who knew him will remember him as one who loved his State of Louisiana and his city of New Orleans and worked tirelessly for the good of its people for many years. Bob loved life and lived it to its fullest. He loved people and was always ready with a kind word and willing to help those in need.

He served his Nation as a member of the Armed Services in wartime, as a civilian employee of the U.S. Army Corps of Engineers, as an employee of the Senate and Finally, as a retired Government employee who worked in the most ethical manner to support private citizens who had problems dealing with Government.

He will be missed by thousands of us who benefited by his friendship. My sympathy goes to his wife of many years, Marie, and his son, Pat.

Mr. THURMOND. Mr. President, I was saddened to hear of the death of Col. Bob Hunter, who was formerly an administrative assistant to the able and distinguished Senator from Louisiana, Senator LONG.

I heard about it earlier today. I reached his secretary and extended my sympathy and I am also trying to get the address of his widow to write her.

I want to say that I have known Bob Hunter for many years. He was here with Senator LONG when I first came to the Senate. Senator LONG and Senator STENNIS are the only two Members of the Senate now who were here when I first came in December 1954.

Bob Hunter ably served Senator LONG. I had the pleasure of dealing with him in matters pertaining to the Senate. I found him to be a man of integrity, a man of competence, and a man of dedication.

I also knew him as a Reserve officer. I was the commanding general of a Reserve unit here on Capitol Hill which rendered great service, I think, to our country in many ways until Secretary McNamara closed these units down when he became Secretary of Defense. I understood he closed them down because he felt they exerted too much influence on the Congress.

At any rate, Bob Hunter was a member of that unit. I have traveled with him several times on training overseas. I found him to be an able officer, a true patriot and a great American. I enjoyed working with him. I ap-

preciate his friendship. I appreciated his dedication to his country and I appreciated all that he did to help us to maintain a strong defense.

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I commend my able friend, the Senator from Louisiana, Senator LONG, for employing such a fine person, and having been connected with him for such a long period of time. Robert Hunter had charge, for Senator LONG as I understood, of the Mardi Gras and other matters, and did a magnificent job.

I want to say I deeply regret to hear of his passing. I think our Nation has lost an outstanding citizen, and I have lost a personal friend.

Mr. JOHNSTON. Mr. President, it was with deep regret that I learned today of the death of Robert E. Hunter, a fellow Louisianian who had served his State and his country in many different roles over many years.

After a long and outstanding career with the U.S. Corps of Engineers, he joined the staff of Senator RUSSELL B. LONG where he served as administrative assistant for 20 years. Even after his retirement from Capitol Hill, he devoted himself almost exclusively to activities involving the State of Louisiana and its congressional delegation.

Those of us who had the pleasure and honor of knowing this distinguished gentleman will always remember him for his ready smile, his unfailing good humor, and his unflagging energy. But most of all, we will recall his unbounding love for the people of Louisiana and his devoted work for the Louisiana delegation.

The Washington Mardi Gras, which has become an institution for the tens of thousands of Louisianians who attend each year, was shaped and molded and directed more by Robert Hunter than by any other person, with the possible exception of my colleague, RUSSELL LONG.

And I see the stunning success of the Mardi Gras as a rich tribute to Robert Hunter. For like him, it has always been a source of joy and happiness and, indeed, a celebration of life.

Though we will miss Robert Hunter deeply, we find some solace in the fact that he died with his boots on, working to the end for the Louisiana delegation, to which he was so loyal, and the State which he loved so much.

TAX REFORM ACT OF 1986

ALTERNATIVE MINIMUM TAX AND FARMER COOPERATIVES

Mr. DOLE. Under existing law, amounts allocated and paid as patronage distributions by a farmer cooperative represent income to its patrons subject to individual income taxes and not to the cooperative itself.

Consistent with the "single tax" treatment of farmer cooperatives, such allocated earnings are properly excludable from the cooperative's determination of taxable income as provided under section 1382 of the code. Except for this single tax rule, cooperatives compute their taxable income, or loss, and any resulting taxes, in the same way as any other entity taxed as a corporation under the Internal Revenue Code.

However, under the Senate bill, as proposed, 50 percent of the excess of pre-tax book income over alternative minimum taxable income would be considered a preference item and subject to the minimum tax. This provision could be construed to make half of a cooperative's patronage distributions potentially subject to the minimum tax, thereby taxing such earnings twice.

It is my understanding that the book income provision of the minimum tax was not intended to apply to deductible patronage distributions of a farmer cooperative. Is that also the Chairman's understanding?

Mr. PACKWOOD. I share the interpretation of the majority leader on this issue and can assure the majority leader that the Senate conferees will insist that the conference report be drafted to make clear that the changes made to the corporate alternative minimum tax will not subject farmer cooperatives to double taxation on patronage dividends that are intended to be singly taxed.

AT-RISK RULES

Mr. BENTSEN. Mr. President, I would like to engage in a colloquy with the chairman over an issue concerning the at-risk rules. The administration, in its tax reform plan, proposed to apply the at-risk rules to all real estate investments. The effect of that proposal would have been to allow an investor no tax basis in a building purchased with nonrecourse debt, to the extent of such debt. Therefore, any deductions claimed by the investor on account of losses would be limited to the amount of cash invested in the building.

The House tax reform bill adopted the administration's proposal, but included an exception. Under the House bill, if the investor purchases a building with nonrecourse debt, he will obtain tax basis in the building on account of the nonrecourse debt so long as the lender is a qualified financial institution. The House believed that where a financial institution is involved, there is no opportunity to artificially overstate the tax basis in the building.

When the tax reform bill came before the Finance Committee, the exception contained in the House bill was included in the chairman's proposal. During the committee's deliberations, I offered an amendment, together with Senator GRASSLEY, to further modify the at-risk proposal. My amendment provided that where the investor purchases a building with a nonrecourse loan from a qualified financial institution, he will be considered at-risk with regard to the loan even though the financial institution holds an equity interest in the building. His tax basis would therefore include the amount of the nonrecourse debt.

My concern is this. I am told that Treasury is considering promulgating regulations that could affect the allocation of tax basis among joint venturers in cases in which one joint venturer lends the money for the project to the venture and in return takes back an equity position in the project. Treasury is promulgating these regulations pursuant to a directive in the Deficit Reduction Act of 1984, which overruled the *Raphan* court case.

I would like to clarify that the regulations to be issued by Treasury pursuant to the 1984 act should also be made consistent with the intent, purpose, and scope of my amendment on the at-risk rules, so that the nonlending joint venturer in my example would be permitted to obtain his tax basis with respect to the nonrecourse debt.

Mr. PACKWOOD. I agree with the Senator from Texas that the Treasury's regulations on the *Raphan* issue should be made consistent with, and should reflect, the Senator's amendment to the at-risk provision.

ORDERS FOR WEDNESDAY

RECESS UNTIL 10 A.M.

Mr. THURMOND. Mr. President, I ask unanimous consent that once the Senate completes its business today it stand in recess until the hour of 10 a.m., on Wednesday, June 25, 1986.

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

RECOGNITION OF CERTAIN SENATORS

Mr. THURMOND. Mr. President, I further ask unanimous consent that following the recognition of the two leaders under the standing order there be special orders in favor of the following Senators for not to exceed 5 minutes each: HAWKINS, PROXMIRE, CHAFEE, LEAHY, STEVENS, BOREN, MELCHER, and HART.

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

ROUTINE MORNING BUSINESS

Mr. THURMOND. Mr. President, following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11 a.m., with Senators permitted to speak therein for not more than 5 minutes.

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

PROGRAM

Mr. THURMOND. Mr. President, at 11 a.m., it is the intention of the majority leader to begin consideration of the conference report to accompany H.R. 4515, the supplemental appropriations. Therefore, votes can be expected throughout the day on Wednesday, June 25.

Mr. President, also the Senate could turn to any of the following items: first, H.R. 4151, the embassy security bill; second, nomination of Terrence Scanlon to be chairman of the Consumer Product Safety Commission; third, any other legislative or executive calendar items.

Mr. President, I want to state that these matters have been cleared with the minority leader. I would like the RECORD to show that.

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.

RECESS UNTIL 10 A.M. TOMORROW

Mr. THURMOND. Mr. President, if there is no further business to come before the Senate, I move that the Senate stand in recess in accordance with the previous order.

The motion was agreed to, and, at 6:31 p.m., the Senate, in executive session, recessed until tomorrow, Wednesday, June 25, 1986, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 24, 1986:

THE JUDICIARY

Antonin Scalia, of Virginia, to be an Associate Justice of the Supreme Court of the United States, vice William H. Rehnquist.

DEPARTMENT OF EDUCATION

Mary McNally Rose, of Maryland, to be Deputy Under Secretary for Management, Department of Education, vice Linda M. Combs, resigned.

Justin W. Dart, Jr., of Texas, to be commissioner of the Rehabilitation Services Administration, vice George A. Conn, resigned.

LEGAL SERVICES CORPORATION

Leaanne Bernstein, of Maryland, to be a member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1989, reappointment.

Claude Galbreath Swafford, of Tennessee, to be a member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1989, reappointment.

Robert A. Valois of North Carolina, to be a member of the Board of Directors of the Legal Services Corporation for a term expiring July 13, 1989, reappointment.

NUCLEAR REGULATORY COMMISSION

Kenneth M. Carr, of California, to be a member of the Nuclear Regulatory Commission for the term of 5 years expiring June 30, 1991, vice Nunzio J. Palladino, term expiring.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 24, 1986:

IN THE COAST GUARD

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral:

Alan D. Breed
John W. Kime
Robert L. Johanson

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

DEPARTMENT OF JUSTICE

Paul R. Nolan, of Washington, to be U.S. Marshal for the eastern district of Washington for the term of 4 years.

Leon B. Kellner, of Florida, to be U.S. attorney for the southern district of Florida for the term of 4 years.

Jerome G. Arnold, of Minnesota, to be U.S. attorney for the district of Minnesota for the term of 4 years.

Andrew J. Maloney, of New York, to be U.S. attorney for the eastern district of New York for the term of 4 years.

Donald W. Wyatt, of Rhode Island, to be U.S. Marshal for the District of Rhode Island for the term of 4 years.

THE JUDICIARY

D. Lowell Jensen, of Virginia, to be U.S. district judge for the northern district of California.