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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious, liberating God, who has created us as free women and men to love You and serve You by working to assure the personal, spiritual, religious, political, and economic freedom of all people, today we celebrate the anniversary of the first public reading of the Declaration of Independence by Colonel John Nixon, and the ringing of the Liberty Bell. We remember the words of Leviticus 25:10 inscribed on the bell: ''Proclaim liberty throughout all the land unto the inhabitants thereof.'' We seek to do that today. You have revealed to us Your mandate that all Your people should be free to worship You. Help us to maintain this strong fabric of our Republic. You have placed a liberty bell in all our hearts that rings this afternoon calling us on in the battle for justice, righteousness, and freedom for all Americans and, through our world mission, for the world. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. REID. Thank you very much, Mr. President.

MEASURE PLACED ON THE CALENDAR—H.R. 4231

Mr. REID. It is my understanding H.R. 4231 is at the desk and due for its second reading.

The PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask that H.R. 4231 be read for a second time, and I would then object to any further proceedings on this matter.

The PRESIDENT pro tempore. The clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 4231) to improve small business advocacy, and for other purposes.

The PRESIDENT pro tempore. Objection having been heard, the bill will be placed on the calendar.

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

The PRESIDENT pro tempore. The Senator from Maryland, Mr. SARBANES, the manager of the bill, is recognized.

Mr. SARBANES. I thank the Chair.

Mr. President, today the Senate turns its attention to S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, which was reported from the Senate Committee on Banking, Housing, and Urban Affairs on June 18 on a strong 17-to-4 vote.

A unanimous consent agreement was entered into with respect to this legislation prior to the Fourth of July recess, which provided that at 2 p.m. today, Monday, July 8, the Senate would proceed, for debate only, to the consideration of this legislation.

I hope to take a fair amount of time to set out the process through which the committee worked and to discuss the provisions of this legislation.

As I understand it, upon convening tomorrow and going back to this legislation, amendments will be in order. There are a couple of technical amendments that I am hopeful we can approve today by unanimous consent. I will be discussing that with the distinguished ranking Republican member of the committee in the course of the afternoon.

Mr. President, I rise in very strong support of this legislation. This legislation is intended to address systemic and structural weaknesses that I think have been revealed in recent months and that show failures of audit effectiveness and a breakdown in corporate financial and broker-dealer responsibility. In fact, it is very clear that much of this has been happening over the last few years.

Hopefully, we have experienced the brunt of it. Who can guarantee that, however, when every day you come to read in the morning paper yet another story, as witnessed this morning with respect to one of the most respected pharmaceutical companies in the country.

I believe this bill is urgently needed. I hope my colleagues will agree with that and will support its swift passage.

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

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The House, earlier this year, passed legislation on this subject, but I think it is fair to say that the legislation we are bringing to the floor of the Senate is more comprehensive, more thorough, and, I believe, more effective. But, of course, once we complete our work here, we will have the challenge of going to conference with our colleagues on the other side of the Capitol to work out the differences between the two versions of the legislation.

Let me discuss for a few minutes the backdrop against which this bill was crafted. Our financial markets have long been regarded as the fairest, the most transparent, and the most efficient in the world. In fact, I think it is fair to say—and many of us have said it time and time again—that the American capital markets are one of the great economic assets of this country and a very important source of our economic strength.

It is becoming increasingly clear that something has gone wrong, seriously wrong, with respect to our capital markets. We confront an increasing crisis of confidence that is eroding the public's trust in those markets. I frankly believe that, if it continues, this erosion of trust poses a real threat to our economic health.

Let me begin with one of the most obvious symptoms of this problem: the extraordinary increase in restatements of corporate earnings. The Wall Street Journal, citing a study last year by the research arm of Financial Executives International, the organization of the chief financial officers of corporations, reported that there were 157 financial restatements by companies in 2000, 207 in 1999, and 100 in 1998. The 3-year total of 464 was higher than the previous 10 years combined, during which the average number of restatements was 46 each year. This is a dramatic increase in the number of restatements.

Last month's revelation by WorldCom is only one example of a problem that is becoming increasingly disturbing. In a recent article titled ''Tweaking Numbers To Meet Goals Comes Back To Haunt Executives,'' the New York Times described a series of recent corporate failures or near-failures that were characterized by accounting improprieties: Adelphia Communications, ''$3 billion in loans to its founding family'' had been concealed; Computer Associates was investigated ''on suspicion of inflating sales and profits by booking revenue on contracts many years before it was paid''—you raise your revenues, there is no offsetting cost, you boost your profits. Global Crossing is being investigated ''on suspicion of inflating sales and profits by making sham transactions with other telecom companies''; Enron, ''hiding losses and loans with partnerships that were supposedly independent but were actually guaranteed by the company''—Enron filed for bankruptcy last December—Rite Aid had ''four former top executives indicted . . . in what regulators called a securities and accounting fraud that led to a $1.6 billion restatement of earnings''; Tyco International is under investigation ''on suspicion of hiding payments and loans to its top executives . . . and its ''shares have plunged 75 percent this year as investigators question whether it inflated its earnings and cashflow''; WorldCom, under investigation for ''hiding $4 billion in expenses by wrongly classifying short-term costs as long-term investments.''

Commentators have made much of the fact that while Enron had very complicated dealings, off-balance-sheet special entities and a host of other things, WorldCom simply took expenses that should have been treated as short-term costs and set them up as capital investments to be amortized over a period of time. Of course, that was a very substantial reduction in WorldCom's costs. As a consequence, its profits were boosted by $4 billion. The SEC asked them to come clean, and now we think there is probably another billion of faulty accounting with respect to their statement.

Can you imagine—the company went from showing a substantial profit to actually having a loss. People are out in the marketplace making decisions about whether to purchase this stock. Pension plans are making decisions on behalf of their members. And they are making the decision in the belief that this company is making a good profit. Instead, it is losing money.

I read one story where competitors of WorldCom were apparently debating within their own corporate ranks: How do they do it? How are these people producing this profit record? We can't do it. We are competing against them. We think we are doing everything we ought to be doing, and we just can't produce the same kind of performance. How are they doing it? What is the secret they have discovered?

The secret they had discovered was to hide their expenses by wrongly classifying short-term costs as long-term investments.

The Xerox Corporation, one of the pillars of our economic system, paid a $10 million fine to the SEC in April, the largest in an enforcement case. They reclassified $6.4 billion in revenue and restated financial results for the last 5 years. I could go on and on with other companies: Cendant, MicroStrategy, Waste Management.

What has led to this increase in restatements? The practice of ''backing into'' the forecast earnings has certainly contributed. The New York Times described this practice as follows:

> Some companies do whatever they have to do to make sure they do not miss a consensus earnings estimate. They start with the profit that investors are expecting and manipulate their sales and expenses to make sure the numbers come out right. During the last decade's boom, as executive pay was increasingly based on how the company's stock performed, backing in became more widespread and more aggressive. Just how much so is only now becoming clear.

The distinguished Columbia Law School Professor John Coffee, noted, in summarizing the trend:

> During the 1990s, the quality of financial reporting and analysis appears to have declined. While an earnings restatement is not necessarily proof of fraud, this increase strongly implies that auditors have deferred excessively to their clients.

Jack Ehnes, the chief executive of the California State Teachers Retirement System, which oversees $100 billion in investments, put it this way:

> This looks like the year of the restatement. It's certainly disturbing for investors who expect financial statements to be accurate.

Clearly, what is transpiring is having a very severe impact on hard-working American families. Corporate wrongdoing is being felt not just at the boardroom table, but it is now being felt at the kitchen table as well.

First of all, there have been tremendous job losses. The Washington Post reported that WorldCom was laying off 17,000 employees. The companies that are going into bankruptcy are shedding employees left and right. Enron laid off 7,000 people after it filed for bankruptcy. Global Crossing laid off 9,300 employees in the last year. Employment at Xerox is down 13,000 from 2 years ago. So there is a direct impact on many working families, simply through the layoffs, as the companies for which they work encounter difficult financial times.

In other words, the company is crashing down, and the workers, amongst others, are paying the price.

Second, the adverse impact on employees clearly extends to the impact of these corporate failures on employee pension funds, an impact that has led many workers to question the security of their retirement. A quick look at the numbers demonstrates how badly public pension funds have been hit.

It is reported that 21 States have combined losses of just under $2 billion from their WorldCom investments. The California public retirement system reported a loss of $565 million. And the numbers go on from there. I won't cite them all, but all across the country there are tremendous losses being incurred. It is said that the loss of value of both WorldCom and Enron has cost public State pension funds $2.7 billion.

Of course, in addition to their impact on workers and pension funds, these revelations have had a negative effect on shareholders generally. Average investors are watching their portfolios plummet and their retirement prospects decline. Worldcom's market capitalization has gone from $180 billion at its peak 3 years ago—this is just WorldCom—to $177 million last week. Tyco lost $90 billion in market capitalization between January 2001 and June 2002, and on and on.

The bond markets have also been affected. WorldCom, for example, has $28 billion in outstanding bonds that are due between now and 2025. Investors, including banks and insurance companies, stand to lose much of this sum.

So you are being hit not only if you have a direct connection with WorldCom, but also if you have an equity interest in a bank or insurance company that owns WorldCom bonds. The current market value of these bonds is 15 cents on the dollar.

The same week that WorldCom's auditing irregularities became public, Morgan Stanley observed that the spread between corporate bonds and comparable Treasury bonds had widened by 15 basis points. As the Wall Street Journal wrote on June 27:

> That is a dramatic move that will boost the borrowing costs for all kinds of companies.

Now, the problems that I have described did not develop overnight. In many ways, they reflect failures on the part of every actor in our system of disclosure and oversight. Auditors who are supposed to be independent of the company whose books they are reviewing are too often compromised by the fact that they provide consulting services to their public company audit clients. Securities analysts are not in a position, according to observers, to warn investors or direct them to other investments.

As the New York Times reported in an article earlier this year entitled ''A Bubble No One Wanted to Pop'':

> Eager to help their firms generate business selling securities to investors and reap their own rewards and bonuses, Wall Street analysts have made a habit of missing corporate misdeeds altogether.

I will come back to these issues later. But for the moment I simply want to note that the problems leading to such dramatic lapses are widespread and seem to be built into the system of accounting and financial reporting. That is what this legislation seeks to address. Our committee did not engage in an exercise in finger-pointing and placing blame but we held a series of hearings—I will discuss them in a minute—directed toward the future; in other words, we focused on the changes we can make that will help to clear up this situation. It is serious.

The Wall Street Journal, in a recent comment, said:

> The scope and scale of the corporate transgressions of the late 1990s now coming to light exceed anything the U.S. has witnessed since the years preceding the Great Depression.

One can run through the figures and find some support for that. Between its peak in 1929 and 1931, the Dow fell 79 percent. Over the same period since its peak in March 2000, the Nasdaq has fallen 73 percent. But rather than work through these figures, let me simply close this part of my statement with a comment from Benjamin Graham's classic textbook on ''security analysis'':

> Prior to the SEC legislation . . . it was by no means unusual to encounter semi-fraudulent distortions of corporate accounts . . . almost always for the purpose of making the results look better than they were, and it was generally associated with some scheme of stock-market manipulation in which the management was participating.

He was writing about the year 1929. Regrettably, that description fits some of today's events. Now, I am certainly not suggesting that this is the practice of a majority of our business people. In fact, most of them, I think, try very hard to play by the rules, and to be honest and straightforward in their dealings, and they recognize how important trust is.

But it is clear, from the number of departures we have witnessed from that standard, that what is involved is more than just a few bad apples. Those bad apples ought to be punished, and punished very severely. I certainly agree with the President when he makes that statement. But it seems to me we have to move beyond that in order to address the incredible loss of investor confidence that is now taking place.

I have been reading the newspaper articles carefully, and sometimes the most apt comments come not from the experts but from ordinary citizens. My colleague from Texas knows that very well because we have a noted citizen of his State, Dicky Flatt, who is constantly cited.

Karl Graf, a financial planner and accountant in Wayne, NJ, is quoted in the Bergen Record as saying:

> The integrity of the game is in question for now, and that's a much bigger thing than if the stock market does poorly for two years. You have to have faith in the numbers the companies are reporting, and if you don't or can't, it makes it seem more like gambling all the time. It makes me more cynical, and I'm very discouraged. It's going to take a lot to make people feel confident.

Bob Friend, an aerospace engineer from Redondo Beach, CA, a stock investor for 20 years, was quoted in the L.A. Times as saying:

> There's a complete lack of trust in corporate leadership. I think the lack of ethical behavior has destroyed investor confidence.

Morris Hollander, a specialist in financial disclosure accounting with a Miami firm, was quoted in the Miami Herald as saying:

> We always had the strongest financial markets in the world, and that was because of credible accounting standards. When you see that confidence eroding, it is not good. It is a real serious credibility crisis.

A recent poll demonstrates that these views are not unique or unusual. When asked this question: ''when it comes to financial information the major stock brokerage firms and corporations provide to you, do you or do you not have confidence that the information is straightforward and an honest analysis,'' only 29 percent of Americans said they had confidence the information was straightforward and an honest analysis. A majority, 57 percent, did not have confidence in the basic information that undergirds our equities market.

The Washington Post, on June 26, reported:

> According to economists and market analysts, these still-unfolding corporate and accounting scandals have begun to weigh heavily on the stock market, the dollar, and the U.S. economy. And the effects are likely to linger at least through the end of the year.

The same article quoted the chief economist for one of Wall Street's major firms as saying:

> The economy and markets right now are in the midst of a full-blown corporate governance shock. . . . To presume somehow that it's over or that the worst is behind us is naive.

Furthermore, it is not only American investors who are losing confidence in our markets. A recent New York Times article entitled ''U.S. Businesses Dim as Models for Foreigners'' quoted Wolfram Gerdes, the chief investment officer for global equities at Dresdner Investment Trust in Frankfurt, as saying:

> There is unanimous agreement that the United States is not the best place to invest anymore.

According to the Federal Reserve Board, foreign direct investment in corporate equities has fallen by 45 percent from 2001 to 2002. And according to a new OECD report, foreign inflows from cross-border mergers and acquisitions, which in 2001 were greater than direct foreign investment into the United States, have fallen sharply in 2002.

The Wall Street Journal said:

> The loss of faith by American and overseas investors in U.S. corporate books is churning global financial markets: Share prices are plunging in America and the dollar is losing value, setting off stock-market plunges in Asia, Europe and Latin America. If the flow of foreign capital to the United States is disrupted as a result, the world economy could be jeopardized, because the U.S. relies on overseas money to finance its huge current-account deficit, and Asia and Europe rely on America to buy imports.

As I draw this preliminary overview of the context in which we are working to a close, I want to speak for a moment about the potential loss of world economic leadership for the United States. The Wall Street Journal had an article entitled ''U.S. Loses Sparkle as Icon of Marketplace.'' It says:

> The wave of scandals in corporate America is roiling world stock markets. But the controversy may have an even greater impact in the marketplace of ideas, where the U.S. economic model is coming under attack.

One area of particular importance and now debate is adoption of accounting principles. The European Union—and I do not think many people yet in this country have focused on this matter—has indicated that the rules adopted by the International Accounting Standards Board will become mandatory for all companies throughout the European Union in 2005.

Traditionally, the U.S. has been preeminent in the accounting field. We have by far the largest economy. We have a reputation for high standards for transparency. So generally the American argument on behalf of its standards carried great influence. Now we have the European Union, comparable in economic size to the United States, moving to adopt a uniform set

of accounting standards, to be promulgated by the International Accounting Standards Board, for all of the European Union countries. So there is a potential for real challenge to American preeminence in this area, given what is happening over here.

In fact, the New York Times reported on June 27:

> There is a groundswell among executives in Europe against the American system of corporate accounting—the so-called generally accepted accounting principles—that was supposed to be the gold standard in disclosure.
>
> Before Enron, Global Crossing and WorldCom, America had been winning the argument on accounting standards. But now, a growing number of Europeans are convinced that the American system is both too complex and too easy to manipulate.

Regrettably, in my view, unless we come to grips with this current crisis in accounting and corporate governance, we run the risk of seriously undermining our long-term world economic leadership. Why do countries look to us? They look to our capital markets. They say: your capital markets are the most transparent; they have the greatest integrity; we can rely upon them; we can make rational business decisions using the information that is provided through your system. If that is no longer the case, we can expect growing difficulties as we continue to argue for our preeminence.

The Wall Street Journal gave this summary of the problem, after which I will move onto the bill itself:

> The institutions that were created to check such abuses failed. The remnants of a professional ethos in accounting, law and securities analysis gave way to the maximum revenue per partner. The auditor's signature on a corporate report didn't testify that the report was an accurate snapshot, said [Treasury Secretary Paul] O'Neill. He says it too often meant only that a company had ''cooked the books to generally accepted standards.''

I want to be very clear about this. I believe the vast majority of our business leaders and of those in the accounting industry are decent, hard-working, and honorable men and women. They are, in a sense, tarnished by the burden of these scandals. But trust in markets and in the quality of investor protection, once shaken, is not easily restored, and I believe that this body must act decisively to reaffirm the standards of honesty and industry that have made the American economy the most powerful in the world. That is what this legislation does, and that is why I urge its adoption by my colleagues.

Let me now turn to the hearings and to the bill. I know others are waiting to speak, and I will try to summarize my remarks. We have been working on this for a long time, so obviously I could go on at some length.

First, we sought to do a very thorough and careful job in developing this legislation. The committee held a total of 10 substantive hearings and heard from a broad range of experts, as well as interested parties. I am not going to name all our witnesses, but, for example, we heard from five past Chairmen of the SEC; three former SEC chief accountants; former Federal Reserve Board Chairman, Paul Volcker; former Comptroller General and chairman of the Public Oversight Board, Charles Bowsher; the present Comptroller General, David Walker; a number of distinguished academics who have been studying these issues throughout their careers; leaders of commissions that studied the accounting industry and corporate governance; representatives of the accounting industry; representatives of the public interest community; representatives of the corporate community, and SEC Chairman Pitt.

It was a very thorough effort to gather the best thinking on these issues and to give all interested parties a chance to be heard. My colleagues on the committee, and the ranking member, Senator GRAMM, participated in this effort seriously and with commitment. Senators DODD and CORZINE early on introduced a bill dealing with oversight of accounting and auditor independence. Many of that bill's provisions are reflected in this legislation. Senator ENZI, of course, took a particular interest. He is the only certified public accountant in the Senate. Many other Members made important contributions as we moved along the way.

I will now turn to each title. Title I of the bill creates a strong independent board to oversee the auditors of public companies. Title II strengthens auditor independence from corporate management by limiting the scope of consulting services that auditors can offer their public company audit clients. This bill applies only to public companies that are required to report to the SEC. It says plainly that State regulatory authorities should make independent determinations of the proper standards and should not presume that the bill's standards apply to small- and medium-sized accounting firms that do not audit public companies.

Titles III and IV of the bill enhance the responsibility of public company directors and senior managers for the quality of the financial reporting and disclosure made by their companies. Title V seeks to limit and expose to public view possible conflicts of interest affecting securities analysts. Title VI increases the SEC's annual authorization from $481 million to $776 million and extends the SEC's enforcement authority. Title VII of the bill mandates studies of accounting firm concentration and the role of credit rating agencies.

It is my intention to go through the bill title by title in a summary fashion, but I will pause for a moment and ask my colleague whether he has any time pressures.

Mr. GRAMM. I don't have a time preference as such. My suggestion is whenever the Senator gets tired of talking and would like me to speak a while, I can speak, and then he can come back to it. But I have no objection if you want to go through your whole presentation. You certainly have that right. If you think it will work better doing it that way, that is fine. If you want to break at some point and have me speak, that would be fine.

Mr. SARBANES. Why don't I move ahead, and I will try to compress it a bit.

Title I creates a public company accounting oversight board. This board is subject to SEC review and will establish auditing, quality control, ethics, and independence standards for public company auditors and will inspect accounting firms that conduct those audits. It will investigate potential violations of applicable rules and impose sanctions if those violations are established.

Heretofore we have relied on self-policing of the audit process, private auditing and accounting standards setting, and, for the most part, private disciplinary measures. But questionable accounting practices and corporate failures have raised serious questions, obviously, about this private oversight system. Paul Volcker stated:

> Over the years there have also been repeated efforts to provide oversight by industry or industry/public member boards. By and large, I think we have to conclude that those efforts at self-regulation have been unsatisfactory.

That is obviously one of the reasons we are moving, in this legislation, to an independent public company accounting oversight board. We heard extensive testimony in favor of such a board.

The board would have five full-time members. Two of the members will have an accounting background. All will have to have a demonstrated commitment to the interests of investors, as well as an understanding of the financial disclosures required by our securities law. The board members would be appointed by the SEC after consultation with the Federal Reserve and the Department of the Treasury and would serve staggered 5-year terms. They could not engage in other business while they were doing this work.

Of course, the board will have a staff. We would expect staff salaries to be fully competitive with comparable private-sector positions in order to ensure a high-quality staff.

The bill requires that accounting firms that audit public companies must register with the board. Failure to register or loss of registration would render a firm unable to continue its public company audit practice. Upon registering, a company would consent to comply with requests by the board for documents or testimony made in the course of the board's operations.

The board would possess plenary authority to establish or adopt auditing, quality control, ethics, and independence standards for the auditing of public companies. But this grant of authority is not intended to exclude accountants or other interested parties from participating in the standard-setting process. So the board may adopt

rules that are proposed by professional groups of accountants or by one or more advisory groups created by the board.

These provisions reflect an effort to respond to the argument that you need the experts to either set the standards or help to set the standards. The experts in the industry can make these proposals, but the board will have the authority to adopt or to modify such proposals or to act of its own volition.

We provide for the inspection of registered accounting firms by the board. Firms that audit more than 100 public companies are to be inspected by staff of the board each year. Firms that audit less than that are inspected every 3 years, although the board has the power to adjust these inspection schedules.

The board also has investigative and disciplinary authority. Former SEC Chairman Arthur Levitt told the committee:

> We need a truly independent oversight body that has the power not only to set the standards by which audits are performed but also to conduct timely investigations that cannot be deferred for any reason and to discipline accountants.

If the board finds that a registered firm, or one or more of its associated persons, has violated the rules or standards, it will have the full range of sanctions available.

The board also has the power to sanction a registered accounting firm for failure reasonably to supervise a partner or employee, but we allow an accounting firm to defend itself from any supervisory liability by showing that its quality control and related internal procedures were reasonable and were operating fully in the situation at issue. I am mentioning this item, even though it may not seem that important in the context of a bill this complex, to point again to the effort that was made in the committee to balance competing concerns.

In effect, we say the firms have this supervisory responsibility. They should not duck this responsibility. Otherwise, how are we going to assure the people working for accounting firms are meeting high standards? On the other hand, we realize it is extremely difficult in large organizations to control right down to the last person. So we provided that if accounting firms have quality control and related internal procedures in place that are reasonable and that are operating fully, the operation of those procedures can serve as a defense.

The bill applies to foreign public accounting firms that audit financial statements of companies that come under the U.S. securities laws. The board is subject to SEC oversight, which is important. Finally, we formalize the role of the Financial Accounting Standards Board in setting accounting standards accounting standards are different than auditing standards, which the new oversight board will set. The bill provides for guaranteed funding of the new oversight board and the FASB by public companies, something I think we all agree is extremely important.

Some have asked, why do we need a statutory board? Why not let the SEC do something of this sort by regulation? But others have raised questions about the adequacy of the authority the SEC has to accomplish all of this by regulation alone. Clearly, a firmer base would be established, a stronger reference point, if the board were established by statute, and the potential of litigation that might arise with respect to some of these disciplinary and fee-imposing powers if they were created solely by the SEC by regulation would be avoided by a clear statutory underpinning.

Furthermore, I believe, frankly, that we need to establish this oversight board in statute in order to provide an extra guarantee of its independence and its plenary authority to deal with this important situation.

Let me turn to title II on auditor independence. This is a very important issue. Each of the country's Federal securities laws requires comprehensive financial statements. That is what is now required under the securities laws for public companies. They have to have comprehensive financial statements that must be prepared—and I now quote from the statute—''by an independent public or certified accountant.''

The statutory requirement of an independent audit has two sides to it. It is a private franchise, and it is also a public trust.

The franchise given to the Nation's public accountants is clear. Their services must be secured before an issuer of securities can go to market, have its securities listed on the Nation's stock exchanges, or comply with the reporting requirements of the securities law. In other words, the accountants have been handed by mandate a major piece of business because the statute says to these public companies that they must have comprehensive financial statements prepared by an independent public or certified accountant.

So in effect we have directed to them a significant amount of business. But the franchise, in a way, is conditional. It comes in return for the certified public accountant's assumption of a public duty and obligation.

The Supreme Court stated this well in a decision almost 20 years ago:

> In certifying the public reports that collectively depict a corporation's financial status, the independent auditor assumes a public responsibility. . . . [That auditor] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This public watchdog function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.

Richard Breeden, former chairman of the SEC from 1989 to 1993, under the previous President Bush, said in his testimony before the committee:

> While companies in the U.S. do not have to employ a law firm, an underwriter, or other types of professionals, Federal law requires a publicly-traded company to hire an independent accounting firm to perform an annual audit. In addition to this shared Federal monopoly, more than 100 million investors in the U.S. depend on audited financial statements to make investment decisions. That imbues accounting firms with a high level of public trust, and also explains why there is a strong Federal interest in how well the accounting system functions.

What has happened in recent years is that a rapid growth in management consulting services offered by the major accounting firms has created a conflict in the independence that an auditor must bring to the audit function. According to the SEC, in 1988, 55 percent of the average revenue of the big five accounting firms came from accounting and auditing services; 22 percent came from management consulting services.

By 1999, 10 years later, these figures had fallen to 31 percent for accounting and auditing services, and 50 percent for management consulting services.

In fact, a number of experts argue that the growth in the non-audit consulting business done by the large accounting firms for their audit clients has so compromised the independence of audits that a complete prohibition on the provision of consulting services by accounting firms to their public audit clients is required—a complete prohibition. According to James E. Burton, the CEO of the California Public Employees' Retirement System, CalPERS, which manages pension and health benefits for more than 1.3 million members and has aggregate holdings of $150 billion:

> The inherent conflicts created when an external auditor is simultaneously receiving fees from a company for non-audit work cannot be remedied by anything less than a bright line ban. An accounting firm should be an auditor or a consultant, but not both to the same client.

John Biggs, CEO of Teachers Insurance and Annuity Association—College Retirement Equities Fund, TIAA–CREF, the largest private pension system in the world, which manages approximately $275 billion in pension assets for over 2 million participants in the education and research communities, told the Committee:

> Because auditors owe their primary duty to the shareholders, questions about the primacy of that duty are raised if the audit firm provides other, potentially more lucrative, consulting services to the company. The board and the public auditor should both see to it that, in fact as well as in appearance, the auditor reports to the independent board audit committee and acts on behalf of shareholders. The key reason why awarding consulting contracts and other non-audit work to the audit firm is troubling is because it results in conflicting loyalties. While the board's audit committee is formally responsible for hiring and firing the outside auditor, management controls virtually all the other types of non-audit work the audit firm may do for the company. Those contracts with management blur the reporting relationship it is difficult to believe that auditors do not feel pressure for

the overall success of their firm with the client. Even their own compensation packages may be tied to consulting and non-audit services being provided by their firm to the company. . . .

By requiring public companies to use different accounting firms for their audit and consulting services, and by establishing an independent board with real authority to oversee the accounting profession you will be taking important steps toward reversing the crisis in confidence in financial markets that exists today.

We looked at this carefully. We had testimony on the other side. In the end, we took the approach that is outlined in the bill. The bill contains a short list, nine items, of non-audit services that an accounting firm doing the audit of a public company cannot provide to that company. These include, for example, bookkeeping or other services related to the accounting records or financial statements of the audit client, financial information systems design, appraisal or valuation services, actuarial services, management functions or human resources, broker or dealer or investment adviser services, and legal services.

The thinking behind drawing this line around a limited list of non-audit services, is that provision of those services to a public company audit client creates a fundamental conflict of interest for the accounting firm in carrying out its audit responsibility. If the accounting firm is not the auditor for the company, it can do any of these consulting services—it can do any consulting service it wants. But if it is the auditor—so there is a conflict of interest problem—then we take certain services and say: those services you can't do. And the reason is, first of all, in order to be independent, the auditor should not audit its own work, as it would do if it did financial information system design or appraisal evaluation services or actuarial services. It should not function as part of the management or as an employee of the audit company, as it would if it were doing human resources services, and it should not act as an advocate of the audit client, as it would do if it were providing legal and expert services. Nor should it be the promoter of the audit client's stock or other financial interest, as it would be if it were the broker-dealer or the investment adviser.

They are the public company's auditors. They have a very defined responsibility as the auditors. The bill doesn't bar accounting firms from offering consulting services. It simply says that if a firm wants to audit the company, there are certain services it cannot perform. And even in that case, the bill provides the board authority to grant case-by-case exceptions, so if a case could be made why an auditor's performing a consulting service ought to be permitted, there is some flexibility to permit it.

David Walker, the Comptroller General of the United States, in a statement on June 18 said:

I believe that legislation that will provide a framework and guidance for the SEC to use in setting independence standards for public company audits is needed. History has shown that the AICPA and the SEC have failed to update their independence standards in a timely fashion and that past updates have not adequately protected the public's interests. In addition, the accounting profession has placed too much emphasis on growing non-audit fees and not enough emphasis on modernizing the auditing profession for the 21st century environment. Congress is the proper body to promulgate a framework [on this important issue].

There are a lot of other auditing services, other than the nine I mentioned, that an auditor may want to provide and whose provision we did not preclude. In other words, the statutory system that we are establishing lists certain consulting services that, if you are the auditor, you cannot perform for the public company that is your audit client, unless you can get one of these case-by-case exemptions from the board. And those consulting services were the ones which, upon examination, seemed clearly to raise the most difficult conflict of interest questions that could result in undermining the auditor's fulfillment of his auditing responsibility.

The public company auditor can provide other non-audit services; that is, any but those on the proscribed list, if it clears them with the audit committee of the public company's board of directors. We seek to strengthen the audit committee in very substantial ways, including, as I will mention later, that they should be the ones to hire and fire the auditors—that the auditors really work through the audit committee for the board of directors and that the auditors do not work for the management. I think it is very clear, to some extent, and in some instances, it is management working with the auditors that have done these clever schemes for which we are now paying the price.

We had the issue of auditor rotation before us. Many witnesses thought the audit firm itself should have to rotate every 5 years, periodically. We did not go that far. We recommend here that the lead partner and the review partner on audits must rotate every 5 years—not the audit firm itself. But we do provide that audit firm rotation should be further studied and direct the General Accounting Office to undertake such a study with respect to the mandatory rotation of the audit firm.

I will move more quickly and skip over some sections, but I can always, of course, come back to them if there are any questions.

We were concerned about the movement of personnel from audit firms to the public company audit clients. There we put a 1-year cooling off period with respect to the top positions in the company, so that you can't hold out to the audit team the immediate prospect of an important position in the company. Again, we are trying to protect the independence of the audit.

The next two titles, III and IV, deal with corporate responsibility and enhanced financial disclosure. As I said, we provide for a strong public company audit committee that would be directly responsible for the appointment, compensation, and oversight of the work of the public company auditors, which makes it clear that the primary duty of the auditors is to the public company's board of directors and the investing public, and not to the managers. We provide that the audit committee members must be independent from company management.

We require that the audit committee develop procedures for addressing complaints concerning auditing issues and also that they put in place procedures for employee whistleblowers to submit their concerns regarding accounting.

Where does an employee go when he sees a problem and is fearful of taking it up with management because his perception is that management is involved with the problem? We specifically provide that they should be protected in going to the audit committee.

We have a provision prohibiting the coercion of auditors. Some have asserted that officers and directors have sought to coerce their auditors or to fraudulently influence them to provide misleading information. Obviously, the auditors ought to be protected from that as well.

We have a provision that the CEO and the CFO who make large profits by selling company stock or receiving company bonuses while management is misleading the public about the financial health of the company would have to forfeit their profits and bonuses realized after the publication of a misleading report.

We also address the question of remedies against officers and directors who violate securities laws, something in which the SEC is very interested.

We have a provision on insider trades during pension fund blackout periods. We prohibit the insider trades. So you can't have officers and directors free to sell their shares while the majority of the employees of the company are required to hold theirs—as, of course, has happened in some instances.

On enhanced financial disclosures, we require that public companies must disclose all off-balance-sheet transactions and conflicts. We require that pro forma disclosures be done in a way that is not misleading and be reconciled with a presentation based on generally accepted accounting principles. More companies are doing these pro forma disclosures. They really are not accurately reflecting the financial conditions of the company.

We require very prompt disclosure of insider trades—actually, to be reported by the second day following any transactions.

We require the reporting of loans to insiders. There have been some enormous loans made. At a minimum, those need to be disclosed. Some argue they ought to be prohibited. We didn't go that far. Some testified there are some good reasons on occasion that a company ought to make a loan to one of its

officers. But, at a minimum, they ought to be disclosed.

This is a small item, but it may have a good benefit. We require public companies to disclose to the investors whether they have adopted a code of ethics for senior financial officers and whether their audit committee has among it a member who is a financial expert. We don't require them to have a code of ethics, although we think they should. We just require that they disclose whether they have one or not.

Title V deals with analyst conflicts of interest. We have had this incredible situation that was brought to the public attention by the efforts of the Attorney General of the State of New York, Eliot Spitzer, in which research reports and stock trades of companies that were potential banking clients of a major broker-dealer were often distorted to assist the firm in obtaining investment banking business. There was one document that actually acknowledged the conflict and, as a result, stated:

> We are off base on how we rate stocks and how much we bend over backwards to accommodate banking.

These analysts would recommend a buy rating on the stock essentially to help out the investment banking firm which was trying to get the company's investment banking business. So they get the analysts to say good things about the company, which will then lead the company to be far more favorably inclined and take on that firm in order to do their investment banking business.

In some instances, they were actually recommending buys and then they were saying to one another what a turkey the company was, but the poor investor was being taken at the time.

We set out a number of provisions in this regard. I will not go through all of them.

We prevent investment banking staff from supervising research analysts or clearing their reports.

We prohibit analysts from distributing research reports about a company they are underwriting.

We have a provision to protect analysts from retaliation for making unfavorable stock recommendations.

We heard moving testimony from someone who said: If you make an unfavorable recommendation, who knows what is going to happen to you?

We also provide—the bill here focuses on disclosure instead of prohibition—that an analyst would have to disclose if he owned the company stock. If you are doing an analysis and if you are doing a report and a recommendation, you ought to disclose whether you own the company stocks or bonds, whether you have received compensation from the company, whether your firm has a client relationship with the company, and whether you are receiving compensation based on investment banking revenues from the company. These are not prohibitions, they are just disclosures.

The thought behind this is, if you are an investor and an analyst is making a recommendation and he puts up front in his analysis that he owns the company stock, or that he is receiving compensation from the company, or that his firm has a client relationship with the company, or that he is receiving compensation based on investment banking revenues received from the company, someone is going to look at this and say: wait a second. I have to take his recommendation in the context of his involvement.

Finally, of major importance is the increase we have provided for the budget of the SEC to, No. 1, provide pay parity for SEC employees; No. 2, enhance information technology and security enhancement; and, No. 3, fund more professionals to help carry out the important investigative and disciplinary efforts of the SEC.

We provide for two studies. One concerns the consolidation of public accounting firms. Senator AKAKA was very interested in this. There has been a constant consolidation trend. We have asked the Comptroller General to do the study. And the other is by Senator BUNNING directing the SEC to conduct a study of the role of credit rating agencies in the operation of the securities markets.

In closing, there has been broad support for this legislation. Just a few days ago, the Business Roundtable came out in favor of it. The Financial Executives International early on in the process was supportive, as well as the Council of Institutional Investors.

We have tried hard to listen to the concerns people raised.

The procedure here was that before the Memorial Day recess—in fact, in early May, we put out a committee print. As we approached markup shortly before the Memorial Day recess, a number of amendments were proposed. It was urged that we put the markup over. We agreed to do that. We took all the amendments that had been put forward, and other suggestions that were being received with respect to the committee print, and went back and reworked it.

I have to say to you that, in all candor, many of those suggestions were meritorious and in fact are now reflected in the legislation that is before the Senate.

So we tried very hard to listen to people at every step of the way. We then reworked the print. We came back with another committee print. We went to markup on June 18. We made a limited number of amendments in markup and brought the bill out to the floor of the Senate by a 17-to-4 vote.

I simply close by saying how strongly I believe that financial irresponsibility and deception of the sort that we have seen in all of the instances that keep appearing on the front pages of our newspapers are a real threat to our economic recovery. We cannot afford to wait for the next corporate deception, followed by the next round of layoffs, followed by the next collapse of a company's pension fund.

We need to take action to restore public trust in our financial markets, and that really begins with restoring public confidence in the accuracy of financial information. That is what this legislation seeks to accomplish. I urge my colleagues to support this critical legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I begin by thanking Senator SARBANES for working with me as we have considered this bill. I congratulate him on this day that we are considering the bill in the Senate.

We had a series of hearings that I wish every Member of the Senate could have attended. I am not surprised that at the end of those hearings good people with the same facts, as Jefferson said so long ago, were prone to disagree.

I find myself in a position where Senator SARBANES and I agree on many of the key issues of this bill; we differ on others. It is not the first time in managing a bill that we have been on opposite sides.

I reminded Senator SARBANES this morning that it might very well be this will be the last bill we will ever manage together. Since I am leaving the Senate, and we have something like 40 legislative days left, I do not know whether, after this bill is dealt with, the Banking Committee will warrant any of those 40 days.

But I would like to say for the record that no one can object to the hearings we had, the approach the chairman has taken. Whether you agree with him or whether you do not, I think his approach has been reasoned and reasonable.

It is clear this issue has attracted a great deal of attention. It is clear that there is a mind in the Congress, if not in the country—Congress is not always reflective of the thinking of the country—but there is a sort of collective mind that we need to do something, even if it is wrong.

I lament, as we have gotten into this debate, that the media has decided that the tougher bill is the bill with more mandates; that if you decided to set up a stronger committee, a stronger board with broader powers so they might decide to go beyond the legislative mandates, that that is a weaker proposal than having Congress actually write auditing standards or conflict of interest standards.

I would submit to my colleagues—and I guess I would have to say at this point, I do not know that we will follow this adage—but I suggest this is a very important bill. I urge my colleagues, as you look at this bill, to realize we are not just talking about accounting. If this bill were just about accounting, it could do some good, it could do some harm, but it could not do too much of either.

But this bill is far more than just a bill about accounting. This is a bill that has profound effects on the American economy; therefore, I think it is very important that we try to look at the problem and that we try to come up with a solution that will be good not just for today, not just that will bring forth a positive editorial in a newspaper tomorrow, but I submit we want to try to find one that meets the front porch of the nursing home test. That is the test where, when we are all sitting around in rocking chairs in a nursing home, and we look back at what has happened under this bill, that we will be proud of what we did and how we did it.

I want to touch on several things. I want to go through and make several points, some related to what the distinguished chairman said, some just because I want to say them. I want to talk about what I believe the problem is. And I want to make it clear that I do not know how to fix it. I do not know that this bill fixes it. I do not believe it does. I do not believe my substitute I offered fixes it either. But I think somebody needs to talk a little bit about it. Then I want to talk about the bill that we have before us, and where I agree with it and where I differ, and what those differences are.

I think the good news is—from the point of view of if consensus is a good thing—there is a consensus, and has been from the very beginning, that we need to pass a law. What this President cannot do is provide an independent funding source and a legal foundation for this independent board.

I personally believe the President's 10-point program was a good program. What the Chairman of the SEC cannot do is provide an independent funding source and provide a legislative foundation for the board. The Chairman and I agree on that.

There have been people who have reached a conclusion that if you differed from Senator SARBANES, you did not really want a bill. I believe those of us who have differed do want a bill. And the one thing that we agree on, which I think is at the heart of this whole debate, is a strong, independent board to make determinations about conflict of interest and about ethics.

Now, let me touch on the things that I wanted to touch on.

I personally thank Senator SARBANES for the approach he took in focusing on the problem and on the future. Everybody knows this has now become a political issue. We know that people are either trying to go back and pin this problem on past Presidents or SEC Directors or they are trying to pin the problem on the current President and the current SEC Chairman. I think it is a testament to Senator SARBANES' leadership that he has had nothing to do with that.

The plain truth is we have had a succession of great SEC Chairmen. Arthur Levitt and I disagreed on many things, but I do not think anybody could argue that he was not an effective SEC Chairman. It is true that he had the ability, under existing law, to go back and change GAAP accounting to set up a board, to do anything he wanted to do, and he did not do it. But it is always so easy to see these things when you are looking with that wonderful hindsight.

Anybody has to give Arthur Levitt credit that he was the first to raise an issue about auditor independence. Whether you agreed when he raised it or not that it was a problem, that it was proven, it is clear that he saw a problem which may or may not be the source of our problem today, but many people believe it is. You have to give him credit. And I don't believe anybody else in his position would have done a much better job than he did.

Let me also say that I think Harvey Pitt has done an outstanding job in the short period of time he has been at the SEC. Much is made of the fact that he did legal work for accounting firms. I continue to be struck by this approach that somehow knowledge is corruption, that somehow the perfect regulator is a guy who just came in off a turnip truck and who knows absolutely nothing.

It reminds me of Senator MCCAIN was once telling a story about talking to a journalist who was covering the Vietnam War and asking the journalist if he had ever read this seminal work about the history of Vietnam. And the journalist said: No, he had never read it because he wanted to approach the subject with a totally unbiased mind.

There is a big difference, I submit, between an open mind and an empty mind. We make a grave mistake when we discount knowledge. Everybody today, when they are criticizing Harvey Pitt, talks about the fact that he represented accounting firms and security firms. I guess if he were being more aggressive than is the public mood, people would remember that he was probably the most rigorous chief counsel at the SEC in its history and, in that process, brought cases against numerous major companies. They would be saying that that experience had tainted him for his current work.

The point is, the man has broad experience as chief counsel to the SEC, where he prosecuted major firms, and he has vast experience as probably the Nation's premier security lawyer where he defended associations and businesses. And quite frankly, when in doubt, I will go with knowledge. When in doubt, I will take experience. I do not believe that experience taints you.

Let me also say that there is this current mood that anything having anything to do with accountants is somehow bad. Having just praised Harvey Pitt, let me point out an area where I disagree with him. When he set up his board to oversee accounting ethics and to look at issues such as the independence issue, on ethics issues, he does not allow people with an accounting background to vote.

Now I would have to say that I strongly disagree with that for two reasons: No. 1, since when is a person's background a source of corruption? I will address that a little more in a minute. Secondly, when you are looking at what is and what is not ethical practice, I am not saying it is absolutely essential, but it is helpful to have somebody who knows something about what practice is.

I submit that in all of these approaches, from the SEC approach to the approach of this bill, we are probably going too far in putting people in positions where they are going to have massive unchecked authority and they have no real expertise in the subject area.

Anybody who thinks this board is just going to slap around a few accountants does not understand this bill. This board is going to have massive power, unchecked power, by design. I would have to say the board that Senator ENZI and I set up in our bill has massive unchecked power as well. I mean, that is the nature of what we are trying to do here. I am not criticizing Senator SARBANES. I am just reminding people that there are two edges of this sword. We are setting up a board with massive power that is going to make decisions that affect all accountants and everybody they work for, which directly or indirectly is every breathing person in the country. They are going to have massive unchecked powers.

We need to give some more thought to who is going to be on this board and is it going to be something that is attractive enough to make people want to serve.

In the proposal Senator ENZI and I put together, I thought we could enhance its prestige by making it a little more independent of the SEC. Under the committee bill, which is before us, the SEC would appoint the members of the board. I thought that given the broad nature of its power, which goes far beyond just accounting and far beyond just securities, it would be helpful to have the SEC appoint two members—Senator ENZI and I suggested that one have an accounting background and one not—have the Federal Reserve Board appoint two; have the CFTC appoint two; and then have the President appoint the chairman. I think that board would have a higher profile. With a Presidential appointee as chairman, it would raise the prestige of the board, and we would get better people to serve on the board.

I urge my colleagues, think long and hard when you think about this board exerting tremendous, unbridled, unchecked power, about how many people you want on the board who know something about the subject matter. Today, in an environment where accountants are the evil people of the world, the enemies of the people, having no accountants on this board or relatively few and not letting them vote when ethics matters are being dealt with, I assert that kind of approach means you are not going to have first-rate people who are going to want to serve.

Let me finally get it out of my system by saying: I don't know a whole bunch of accountants. I taught at a public university. About a third of my students in economics were accounting majors. I would have to say that I have a pretty high opinion of accountants. If I had to trust the safety and sanctity of my children and my wife today, after all these revelations about bad accounting, to a politician, a preacher, a lawyer, or an accountant drawn at random in America today, without any pause I would choose an accountant.

I am not saying that there are not bad people in accounting. I am not saying there has not been abuse. But I think we have to separate people from professions.

One of my concerns is, we have already had a decline in the number of people majoring in accounting. I am wondering, I don't care what kind of law you write, I don't care what kind of board you set up, if we don't attract smart young people into accounting, people who understand it is not talent, it is not personality, it is not cool, it is character that ultimately counts, then none of these systems are going to work very well.

Now, I don't buy the idea that legislating something instead of setting up a reasoned system to make decisions is a tougher approach; and if it is, I don't want it. But what we have today is an approach that is largely taken in the media that the more mandates you have, that the more things chiseled inflexibly into law, that the more it is one-size-fits-all, whether it has any rhyme, reason, or responsibility, that that is tougher, and therefore it is better, that in today's environment is obviously appealing.

I hope this doesn't happen, but it would not shock me if we have a series of amendments offered tomorrow when we start dealing with the bill, where people try to out-tough each other—maybe one to kill all the accountants and start all over and train new ones. Well, nobody would offer such an amendment, but I think we could very easily get into this oneupsmanship that we can end up regretting. I hope that will not happen. I want to discourage that.

Let me give you an example of where Senator SARBANES and I differ in our opinions. Who is right, I don't know. I think maybe being in this business for a while convinces you that nobody has a lock on wisdom and nobody knows in each and every case what is right and responsible, but I want you to understand the difference of our approach. Let me just go right to the heart of the matter.

The substitute that I offered in committee with Senator ENZI has an independent board. I think it is better, but you can argue that the two boards are pretty similar. Ours is a little more independent of the SEC; though, in the end, to meet the constitutional test, the SEC has to have authority over it. We went a little further in terms of independence and appointing members, and I have already talked about that. But the whole heart of the difference—let's pick one issue—comes down to auditor independence. If you ask me today, should the same company that does an external audit for a firm be able to do internal audits—and I argue today I don't have the knowledge to say this—I would argue today that I really don't know enough about accounting practice and how the process works, not just at General Motors but at the smallest corporation in America, to make that decision. The bill before us sets out the law. It is written in the law that if you do an external audit, you cannot do any one of these nine different things. I don't know, it may well be that after a reasoned analysis a competent board would decide they ought to do those things. My guess is that if I had to decide today, and you forced me to make a decision that was going to be binding on the country, which is a little frightening to me, I might well agree with most, and in some cases all, of these things. But I don't believe we ought to be writing that into law. I don't think anything is gained by writing it into law, and I think a lot is lost by writing it into law.

Having read editorials, I know this makes the bill tougher, but I don't think it makes it better. What I believe we should do is set up the best and strongest board we can, make it independent, give it independent funding, and put competent people on it. The way Senator ENZI and I did it, and there is nothing magic about it other than that we did it, we decided to have the SEC, the Fed, and the CFTC appoint two members, one with an accounting background and one without, and then have the President appoint the chairman, and he could decide.

I personally think that having more accountants rather than fewer is a plus, not a minus. I don't think they all ought to have an accounting background. I don't necessarily say a majority have to have an accounting background, but I believe that day in and day out, 20 years from now when we have all left the Senate and we are not paying attention to these things, it would help to have people who know what they are doing. I don't buy the idea that people who don't know what they are doing are more moral, other things being the same, than people who do know what they are doing. In any case, I believe that rather than writing out these nine things by law that you cannot do while you are doing an external audit, we ought to set up the strongest board we can, and we ought to give them external funding and plenty of power, and we ought to say to them: you need to look at these nine things and do a reasoned analysis. You need to talk to lots of people, such as smart theorists who are accounting professors at our best universities, and you probably ought to talk to the bookkeeper in Muleshoe who is actually doing bookkeeping work, look at the practical, the theoretical, and make a determination.

Should you be able to do an external audit and do any one of these nine things? You make a decision and set it out in regulation. Why is that better than writing it into law? It seems to me it is better for two reasons: One, if you are wrong, or if accounting practices change, or if your perception of the problem changes, you can go back and change it by regulation. The problem with writing it into law is that Congress then has to come back and change the law. As we know from Glass-Steagall, it took us 60 years to fix something that had it been written in regulation by the 1940s, it would have changed. But we didn't change it until 1999.

The second reason, which I think is equally important, if not more important, is the way the bill is now written might very well make sense for General Motors. That is, it might make perfectly good sense to have a process whereby General Motors might have three or four different CPA firms—maybe more—but they are operating all over the country and all over the world. That is perfectly feasible. But the last time I looked—and I don't know, but some of these may have gone out of business and, God willing, maybe some new companies have come into business—the last time my trusty staff looked, there were 16,254 publicly held companies in America. I don't care how smart you are, I don't care how good your intentions are, you cannot write a mandate, if you get too far in the detail, that fits General Motors and also fits the 16,254th largest company in America. It just doesn't work.

One of the advantages of setting up an independent board, giving them a mandate to look at these areas, but not chiseling it into stone in legislation, is because they can then say, well, here is the principle and if you are General Motors, here is how it applies, but if you are XYZ Paint Company in Montana, or Wyoming, or wherever, you might only have one accounting firm operating in the town that you are domiciled in. I am not saying you cannot hire accountants to come from the Capital City, or wherever, to your town to do work for you, and maybe you ought not to be operating in a little town in a small State; but people choose that, and people who represent small States seem to like these companies being there. I am just saying that giving the board the ability to set a principle and apply it in one way to General Motors and in another way to a small company in a small town makes eminently good sense in practice.

Now, I know it is not a mandate in the same sense as writing it into law, but I think the result would end up being better.

One of the amendments that I will offer—and I thank Senator SARBANES for trying—and one thing I have to say

is that nobody on our committee can say that Senator SARBANES did not listen. Nobody can say he failed to try to hear them out on their concerns and that, in many cases, he didn't change the bill to try to respond to their concerns.

One of the changes that I support is giving the board, with the concurrence of the SEC, the ability to grant waivers to these rules and, in fact, to the law. The problem with waivers on an individual company basis is a practical problem, and that is, if 16,254 companies are trying to get waivers under their special conditions—they all come to Washington and hire lawyers and lobbyists; they all petition the board and the SEC—if that board has 16,254 petitions in 1 year, and it could have many times that if people are petitioning for different kinds of waivers, we are going to shut it down for any other purpose except waivers.

What will happen, not because anybody wants it to happen but because of the very nature of Government, the people who will get the waivers will not in general be the most deserving people. They will be the people who hired the best lawyers, who had the best contacts, who knew how to go about it, and who had the money to spend getting the waiver.

My guess is the smallest companies that need the waiver the most will not get them. Surely at some point we are going to fix the bill so that the accounting board, with the concurrence of the SEC, can say: OK, look, in applying this, if you fall into these categories, you have these circumstances, you have a waiver to do things in this way. Clearly, something like that has to make sense.

One of the things we have to come to recognize, and I think we all recognize it, is that having a beautiful law in a law book does not make good law. It has to be practical, and it has to take into account the 1,001—in this case, the 16,254 different circumstances that can apply.

What is the problem? I guess there are as many theories about the problem as there are people. I have my own theory about the problem, and I will share it with my colleagues and anybody else who is interested.

Why is all of this happening now? I believe it is happening because of the problems in GAAP accounting. There are other extenuating circumstances, and I want to touch on them, but here is the problem in GAAP accounting. Senator SARBANES used a perfect example of it, and I will just take his example. He talked about how WorldCom saw its market capitalization fall from $100 billion to $100 million. How is that possible? I remember when Enron went bankrupt. People said: Where are the assets? When a company goes from $100 billion to $100 million, what happened to the assets?

Here is the problem. Increasingly, the asset is a combination of know-how, credibility, and a belief by the public that you are carrying out your business in an efficient and ethical way. Increasingly, the modern corporation does not have 12 steel mills. They do not own massive physical assets. Many companies have tried, basically, to get out of the asset business into the information business. The value of WorldCom was a discounted present value of what the public believed its revenue stream was relative to its cost. It never had $100 billion worth of physical assets, anything like it. That is what the value of the ideal was as the public perceived it in a period where our wise friend, Alan Greenspan, talked about irrational exuberance. That is what they thought that company was worth, but it never had assets that were anything near $100 billion. What it had was know-how, knowledge of a market, and it had credibility.

Enron was like a bank in the 19th century before FDIC insurance. Their reputation was the source of their value, and when they made stupid business decisions that called that reputation into question, they collapsed.

I have a great sympathy for accounting because I used to be an economist, and in economics, we have something called ceteris parabis. It means ''other things being the same.'' So when we do not know what those other things are, we just utter this Latin phrase and pretend they do not exist—literally pretend they do not exist.

That is valuable in physics where you talked about force equals mass times acceleration, or for every action there is equal but opposite reaction. That is an assumption. That is a simplification because it leaves out friction, and it leaves out gravity. There is nothing wrong with it, but the problem is, accounting cannot do those things.

I had a famous and great accounting professor named David McCord Wright. Nobody remembers him anymore. I can visualize him today easily defining WorldCom. He would have talked about the discounted stream of earnings, and he would have talked about the value of their equity or market capitalization and would have plotted out a projection of revenues and a projection of costs and integrating that area to add it up, and that is where the $100 million was.

I doubt if WorldCom's physical assets ever totaled $50 million, probably not $20 million. You are an accountant and you have the job with the directions that are available through GAAP, generally accepted accounting principles. You have the job of trying to model, for accounting purposes, what WorldCom looks like. You do not have the ability to utter a Latin phrase and wish away things you do not understand. Our problem today is that our GAAP accounting has not kept pace with the world in which we live.

In this world where knowledge is power, in this world where know-how is wealth, it is very hard to model with GAAP accounting. In the decade of the 1990s, when this new model was used on a massive basis in the American economy, accountants had to figure up how much all this stuff was worth.

GAAP accounting has not kept pace with our changing economy. Our accounting is based on the old steel mill of the 1940s where you had how much you paid for the furnaces, and you had them a certain period of time, and you have depreciated them.

How do you depreciate an idea? How do you book having brilliant young people who are committed to the future in your company because they own your stock? How do you put that down in value terms?

So when we are pointing the finger at these people who call themselves accountants, when we are blaming them for every problem in the world, accountants did not put WorldCom into bankruptcy. Accountants did not put Enron into bankruptcy. Enron put Enron into bankruptcy by making bad business decisions. The accounting was a problem because it was slow to show it, but it was there. WorldCom's problems were there. The problem was not accounting. The problem was accounting did not show the problem soon enough.

So if anyone is listening to this debate and thinks some investment is going to be more valuable because we have better accounting, in the long run that is true; in the short run, I am not sure that is true. In fact, I argue these companies would have gone broke anyway. Clearly, they would have gone broke, and they would have gone broke quicker had the accounting system been better. It should have been better. It needs to be better.

The point I am trying to make is the following: When you are trying to model a company using GAAP accounting, it is hard. It is something nobody has ever done before.

We are learning how to do this, and we will—using concepts like goodwill to try to be a proxy for things like intellectual capital and know-how. That is the source of our problems.

I think the fact this came at the end of a financial bubble in the 1990s exacerbated the problem. The problem, in my opinion, is accounting was easier—maybe it was not easier initially. We figured out how to do it on the old model. We will figure out how to do it on the new model.

There is some smart accountant, probably at Texas A&M right now, studying accounting, who will probably get an MBA, who will figure out how to get all this goodwill off our books—which is a silly concept in my opinion, but it is the only one we have—and come up with models of intellectual capital that will have meaning, just as that steel furnace in the 1940s and the write-down of it that made sense, but that is not the world in which we live. That has to be dealt with.

Something the chairman's bill does, something that I very much am in favor of, is it gives independent funding to FASB. The two things that have to

be done and only Congress can do them effectively, in my opinion, are: No. 1, we have to have an independent, self-funded accounting standards board, FASB, and we have to have accountants setting accounting standards. No. 2, we need to set up this board to oversee ethics in accounting.

I do not think it matters whether it has a majority of accountants or not, but it needs to have a reasonable number of people who have a background in accounting so they know what they are doing and so they have an intellectual stake in it being done right. It is a dangerous thing when there are people with massive power who do not have any kind of intellectual stake in the application of that power, and it concerns me.

So to conclude, let me say this: Senator SARBANES and I, when we were at this point on the financial services modernization bill, were on opposite sides. I was for the bill. I saw it as the epitome of all wisdom. He was opposed to the bill and saw it in less glowing terms. By the time we got out of conference, it was our bill. We were together on it and 90 Members of the Senate voted for it. It passed the Senate initially on a very close vote, a very narrow margin.

I do not think that will be the case here. I think this bill will pass by a very large margin. I also think it is possible that by the time we have reconciled this bill with the House, that we can have a bill that will be very broadly supported. At that point, I hope I will be in a position of supporting it.

There are many good things in the Sarbanes bill. There certainly has not been a bill, since I have been in the Senate, that was better intended than this bill. I do think it can be improved. I think it legislates too much. I think it does one-size-fits-all mandates. It takes them a little bit too far. That, to some guy outside government, does not sound very important, but it is very important when one starts talking about application. If we do this thing right, and if we build a consensus and it works well, that will be the final monument of the bill.

I hope we can offer germane amendments. As of right now, I think there will probably be two amendments I will offer. One will have to do with this issue about granting waivers on a blanket basis so that rather than making every individual company that has specific kinds of problems come in and ask for an individual waiver, that the SEC and the board, when they agree, could simply issue a set of principles, and if you qualify you would get the waiver. If you do not, you do not. Pretty straightforward amendment.

The second amendment I believe I will offer will have to do with appeals. Under British common law, we have always taken a very strong position in affecting the right of a person to earn a living. We have set very high standards when it comes to taking somebody's livelihood. I believe there are people who are practicing accounting, or veterinarians or economists or any profession, there is somebody in it who ought not to be in it. I think when this board, which is a private entity—and again this is not a problem with the Sarbanes bill. This is a problem of our substitute as well. It is a strange kind of entity. We want it to be private, but we want it to have governmental powers. We have tried to structure it in ways to try to accommodate this.

The bottom line is, when this board is taking away somebody's livelihood and that person believes they have been wronged, they ought to have a right to go to the Federal district courthouse. They ought to have a right to say: I do not think that was right, and I want my day in court.

They ought to have to pay for it, and at that point I think all the material involved has to be made public, but that is a right I think people have to have. Those two amendments are very narrowly drawn, and they go to the very heart of the bill. I know some of our colleagues are thinking about offering a whole bunch of other amendments. I submit that trying to work out a compromise with the House is going to be difficult. I think we will succeed at it, but I think if we get a whole bunch of other issues involved, we are making the mountain higher. I believe we are ready to legislate in this area, and I think if we can limit what we are doing to this area that we can pass this bill, we can go to conference, and we can come back and have a bill signed into law before we leave. I think if we get into a lot of other areas, I am not saying the world comes to an end if you put an amendment on here—having us write accounting standards with regard to stock options, for example, that is a tax issue. I would probably want to make the death tax permanent as a second-degree amendment, but I am not saying the world comes to an end if we do that.

I am saying if we get off into those kind of issues, where you have strong feelings on both sides of the aisle—and that would not be any kind of partisan vote—I think it is harder for our chairman and for the members of this committee to get their job done. I hope we will have a limited number of amendments. I hope they will be germane to the bill.

Finally, at some point we are going to take up Yucca Mountain. I am not up high enough in the pecking order to have gotten the word as to exactly when that is going to be. Other things being the same, I would rather finish this bill first and then go to Yucca Mountain than to stop in the middle of it. But it is a highly privileged motion. Any Member can make it. It is not debatable. I assume at some point sometime tomorrow that motion will be made. As I figure the time limit under that privileged motion, it would take about a day.

I don't see any reason this bill should not be finished this week, and maybe much sooner if we can stay on the bill, if we don't drift on into these other areas. When people who are for the bill in its current form want to stay pretty close to the bill and people who are against it in its current form want to stay pretty close to the bill, we ought to stay pretty close to the bill.

I thank my colleagues for their indulgence. I look forward to working on this issue. I yield the floor.

The PRESIDING OFFICER (Mr. DORGAN). The Senator from Wyoming.

Mr. ENZI. Mr. President, these are interesting times. I hope colleagues have been listening. The two presentations that preceded me were outstanding explanations of both the bill and the financial problems facing the world today. I don't think you can get a clearer explanation of the problems than those given by Senators GRAMM and SARBANES. They are very detailed and very much to the point and lay the groundwork for what we are about to do.

Usually in this Chamber, we have a solution and we are looking for a problem. Today, we have a problem and we are looking for a solution. We have a problem before the Senate. The way this process works, is that we try to place the solution in the best possible form. Under our form of government, the Senate will work on its bill; the House works on another bill on the same topic. When those two bills have been completed, there will be a conference committee and we will work out the differences. Through every one of those processes, there will be changes to the legislation. We get 100 different opinions from 100 different backgrounds on any piece of legislation. That is what makes our form of government work. At the other end of the building, there are 435 people from different backgrounds. They all lend their opinion issues that come before the House.

It is sometimes a slow process, but it is the best process in the world. It will work on this problem for which we are looking for a solution.

If the economy were different today, we would not have this problem. When there are changes in the economy, we realize accounting problems—or at least that is when the accounting problems become apparent. That is where we are today.

I am the lone accountant in the Senate. There is a good reason for that. Accountants are out there doing very detailed work. When you listen to what is in this bill, you are going to hear details that you do not hear with other legislation. It is the nature of the occupation, of the profession of accounting. In the last 6 months, there has been an increased interest in the accounting profession. Kids in colleges have been asking the Deans about this phenomenon called accounting that nobody has talked about for a long time. It is a tremendous opportunity for accountants to finally explain what they do.

Some of the kids are looking into accounting for the wrong reasons. They want to be one of the green eyeshade people bringing down huge corporations. That is not what it is about. It is an opportunity to make sure everyone understands business in America. Accountants are the people with the very basis who both know it and can explain it. That is their job.

Somewhere along the line, it is possible for people to get distracted from that main goal. We are trying to bring them back to that main goal—providing a basis where everyone can understand the value of the companies in which they are investing.

Today we are addressing accounting legislation that has been reported out of the Banking Committee. It has been through initial scrutiny. It has been through the process that leads us to the floor. I have talked about the floor process, but so far this has only been through the hearings process. We had 13 hearings in the Banking Committee. They were on very diverse topics and a very diverse bunch of people who understood each of those topics testified. I commend Senator SARBANES for the way he conducted the process of the hearings, and then the process of negotiations that led up to the committee vote. That happened over the last several months. On this issue, I can think of no other Chairman in either the House or Senate who did a more thorough job in conducting hearings. The Banking Committee stayed on the substance and did not allow enormous outside pressures on this issue to interfere with trying to get to the bottom of the real problem. The hearings were not finger-pointing. The hearings were an attempt to get valuable information to arrive at the best possible solution.

In addition, the witnesses at the hearings presented objective views. Had it been my choice to call the witnesses, I would have chosen nearly every person who testified. That shows the care and concern that went into choosing the individuals who provided this basic information. The witnesses offered several different views, and they came from diverse backgrounds.

I also thank the Chairman for the way he and his staff conducted themselves through the endless negotiations we had during that same timeframe.

Right now, it seems as if everyone is writing an accounting bill—including myself. In fact, I got calls as soon as Enron occurred from some of the House Members who said they would really like to work on a bill with me. Of course, the first question I had to ask them was, What did you find really happened with Enron? Usually the answer was, We don't know yet. Their response was, but we want to get ahead of the curve.

I am glad we had the patience to wait, to hold the hearings, and then to negotiate through a number of different bills to come up with the one before the Senate today. Those negotiations by Senator SARBANES and his staff were both honest and fair. Although we were not able to agree on everything, which is the basis of negotiation, I believe all negotiations took place in good faith. I thank the Chairman for that. I do think we have a bill that is a good basis for finishing the process and going to conference.

Enron, Global Crossing, WorldCom, and the other numerous restatements that are occurring have caused a ripple effect on the trust of corporate executives and their auditors by the public. These executives, the persons in whom shareholders put their trust, have stained the entire corporate community. A few bad apples have spoiled the bunch. As a result, the legislation we will be debating this week will restructure the way executives operate by increasing accountability and making it easier to discipline fraudulent behavior while at the same time increasing penalties for illegal activity.

This legislation will force the management of companies to be accountable to their shareholders by requiring that they certify the accuracy of their financial statements. In addition, the legislation will require that members of corporate audit committees are independent directors. We provide the audit committee the ability to engage outside consultants and advisers and provide them the resources they need to determine whether the accounting techniques being used are in the best interests of the shareholders.

In addition, all employees should be subject to the same rules when selling company stock. In this regard, the bill prevents officers and directors of a company from purchasing or selling stock when other employees are restricted. And when these officers or directors do sell stock in the companies in which they work, they should report the transaction on the next business day.

However, the cornerstone of this legislation will be to change the way in which a company's auditors interact with their clients, and also to force them to be more accountable. While I believe that accountants have extremely high ethics and standards, I do believe the current environment has highlighted a number of problems inherent in the current oversight structure of the accounting industry.

I do believe it is an awesome task to be the accountant trying to explain this to everybody else. I do need to explain a little bit why there are not more accountants in legislatures or in the Senate or in the House. That is because if you pick up experience in legislating, most of that is done during the tax season and we need the accountants during the tax season. And they need the business during the tax season. If they don't earn at least 70 percent of their revenue during that time, they are out of business, which precludes them from picking up legislative experience. There is no requirement that you have to have legislative experience before you come here. There is no requirement that you have any kind of experience. But that is why there are fewer accountants here than there are a number of other professions—it is a matter of timing.

While I am hesitant to move forward with the number of changes included in the bill, I do believe the legislation is necessary given the current lack of faith in accountants.

Make no mistake about it, this legislation is federalization of the accounting industry. This bill places a Federal Government bureaucracy at the helm of accounting regulation. While the legislation doesn't prevent the State accountancy boards from continuing to regulate accountants registered in their States, it does establish an overlord regulator to oversee the firms which audit publicly traded companies. My hope is that this new oversight structure will renew the faith the public has in auditors and the financial statements which they help prepare.

In addition to my own proposal, over the past several months I have seen a lot of different proposals. I have also spoken to and met with many of my colleagues about this issue. I have spoken with groups from different industries; I have talked to scholars, consumer advocates, and regulators. All the groups agree that steps need to be taken to enhance the oversight of accountants.

I have examined several existing models of quasi-public regulators such as the New York Stock Exchange and the National Association of Securities Dealers. One point is clear: When these organizations were established, there was a desire to appoint the most informed individuals, those who actually deal with the industry on a day-to-day basis, as majority members of the boards that oversee the industry.

For instance, the National Association of Securities Dealers, NASD, has a large board which must consist of anywhere between 17 and 27 members. Nowhere in the NASD rules does it state their board members may not serve if they have previously been involved in the securities industry. As such, the majority of the NASD board members have worked within the industry.

Why should the accounting industry be treated so differently? Why would we create a board which oversees the accounting industry and then require that a minority of its members have ever practiced accounting? The NASD plays just as important a role in the protection of investors as the accounting oversight board will, so why shouldn't the persons who sit on this board have the best possible knowledge of the accounting industry?

I do want to thank Senator SARBANES for the change he made in the legislation. Originally it said there could be no more than two accountants on this five-person board. He made the change so that two will be accountants. It is a very significant change so that accountants are represented on the board. Previously it would have been

possible to have no accountants regulating the accounting profession.

Every piece of legislation has its handful of unintended consequences, despite how well-meaning Congress can be. I fear the way in which the accounting industry will change when a group of non-accountants set the standards which accountants must follow. Lawyers do not have non-lawyers setting ethical and professional standards which they must follow, yet I would argue that those standards are as important as accounting standards and ethics.

I don't want my message to be misconstrued. I do believe that a board should be established to oversee the accounting industry. I also agree the board members should have all the tools necessary to effectively oversee the industry. I agree that the board members should be full-time and independent from the accounting firms. I agree that they should be appointed by government and not by industry. But I do not agree that the members of the board should be excluded just because they may have passed a CPA exam 25 years ago.

To the contrary, because I believe this board should be as effective as possible, I believe the board members should know how an audit engagement works and they should know the pressures that are applied to an auditor from a client. I believe with this knowledge the board may in fact apply stricter standards than a board of non-accountants.

As I said, I believe accounting firms should be subject to strict scrutiny. However, I do not believe this legislation should pave the road for the trial bar to open frivolous lawsuits against accounting firms. Arthur Andersen no longer exists. Can we really afford to lose another one or two of the final four firms? We used to call them the big five. Now we call them the final four.

It was mentioned earlier that there are 16,254 SEC-filed corporations. That is 16,254 to be reviewed, primarily by four accounting firms. If the trial lawyers pick off one after another after another of the firms because the Board provides information and because they are handed that information, how will we have those 16,254 audited at all?

I am hoping there are a lot of young people listening who are going into accounting who may start firms and grow the firm themselves so they can handle an audit of a Fortune 500 company. But it doesn't happen overnight. And we have to make sure that there is auditing, and not just consulting, which some people will point out is where most of the money is these days.

It makes me nervous to know that essentially only four accounting firms now have the resources and expertise to audit the world's largest companies. We rely on these firms to verify the books of diverse and complex companies because they are the only firms that can provide this service. If we subject them to the will of the trial bar, they will surely continue to be driven from existence, one firm at a time.

Instead, we should punish the wrongdoers to the fullest extent possible and rely on good managers of companies to do their jobs effectively. In the end, we are going to end up making the audit committee members full-time employees, and then there will not be any independence—another problem about which we have to worry.

Having said this, I do believe this legislation is needed at this time. Congress must produce a remedy to help restore investor confidence. We have seen that real penalties, or at least a threat of strong penalties, need to be hung over the heads of corporate executives to assure they maintain their obligations and responsibilities. The moral and ethical breakdown among some of those executives is disgraceful, and investors must know these executives will be punished severely when they make selfish judgments.

A major concern, as we have gone through this legislation, trying to put the bill in its present form, has been the relationship to small business. As I mentioned 16,254 companies are the ones that are registered with the SEC. There are thousands of companies out there that are not SEC registered businesses. There are thousands of entities out there that hire auditors to give confidence in the financial statements they have that are not SEC filed.

One of our concerns has been that we not change business so drastically that these small businesses will no longer be able to afford auditors. So we built in protections for the small businesses. Our intent with this bill is not to have the same principles that apply to the Fortune 500 companies apply to the mom-and-pop business. When they hire an auditor, they want that auditor to give them every bit of information they possibly can so the information they get improves their business and doesn't hide anything from investors. Mom and pop are the investors.

We have taken a lot of care to be sure we are not cascading the provisions down into small business. We will look at additional ways, I am sure, to make sure that does not happen. This is not a license to States to do the same thing that we are doing on a Federal basis. There is recognition that on a Federal basis there is a bigger problem than on a State-by-State basis.

I also want to point out there is also a responsibility by the individual investor. They have to learn to diversify and not to keep all of their eggs in one basket. I hope we can turn this situation into a chance to educate small investors as to how best to manage and invest their money. Nothing will bring back the billions of dollars employees of some of these companies have lost. But hopefully the collapse in confidence will ensure that individuals will never again lose their life savings because of a lack of diversification or knowledge of finance.

What will this legislation provide? It will provide a strong oversight body to watch the accounting industry. It will provide a set of corporate governance laws that will require corporate executives to become accountable for their financial statements. It will provide assurances that corporate boards watch the management of the company with a more critical eye—no longer will board memberships be cushy jobs with no responsibility.

It will also provide assurances to the American people that Congress will not allow these millionaire and billionaire executives to steamroll their obligations to the shareholders. It will also ensure that research analysts aren't being told what to say by the investment bankers.

To a great extent, I believe the marketplace has made remarkable changes to address a number of the issues which were highlighted by these corporate failures. First and foremost, corporate boards and audit committees will no longer turn their head when management wants to engage in questionable ethical engagements. Also, credit rating agencies will impose much more scrutiny on the companies they rate to protect financial institutions and other lenders. Lenders themselves will require more information about the stability of the companies in which they invest. Research analysts will ask more questions about the company, and more importantly, they will demand more answers from executives. But perhaps, most important of all, is the fact that investors, both institutional and individual, will be more critical.

Shareholders will wake up and learn about the power of their votes on corporate actions. We've already seen great strides from some institutional investors in that they plan to use their votes in shareholder meeting to keep executives honest and accountable. They also plan to use their votes to impact executive compensation packages. These private sector solutions will be more effective than any legislation which can be passed out of Washington.

One of our country's greatest strengths rests in the dominance of our capital markets. But the strength of our markets is only as strong as the underlying confidence in the listed companies. When these companies build facades instead of standing on principle, it shatters the entire system. Congress and the SEC must find a middle ground where we allow the marketplace to continue to operate in the capital markets to the greatest extent possible but also assures investors, both domestic and internationally, that the U.S. capital markets will continue to be worthy of their investments. We must continue to convince investors, that at the core of the American capital markets, there must be a high level of integrity and ethics by all players.

I want to reiterate another message that has been prevalent this afternoon.

As we get into this bill, there are virtually no limits on what amendments can be put on—at least unless there is a cloture motion.

I hope people will recognize the need to have something done, the need to get it done quickly, and not try and make this a vehicle for everything they ever thought needed to be done with corporations.

The purpose of this bill is not to solve the international problems of business for everything that we ever thought of.

I hope my colleagues will constrain their amendments, keep them to the corporate governance and accounting area we are working on, and help us to get this bill finished as quickly as possible.

Again, I thank Chairman SARBANES and Senator GRAMM for their tremendous efforts and insight which they provided in the previous explanation of this, and for the hours of work they have put into the solution that is before us today. I hope we can keep it to a limited solution, take care of the problems that are recognizable, and reach agreement so we can get this to conference and get a bill to the President for his signature.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent that it be in order to send an amendment to the desk and have it immediately considered. This amendment makes two simple changes to the bill. One is a technical change to conform to the budget rules, and a conforming change involving the definition of ''issuers.'' We have discussed this. It has been cleared. I would like to go ahead and take care of that business, if I could.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, there isn't any objection. I think this clarifies the bill. I think it is something that both sides are for, even though we had a previous agreement not to do any amendments today. It is simply so technical that I don't think anybody would have any concerns.

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

AMENDMENT NO. 4173

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES] proposes an amendment numbered 4173.

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

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

The amendment is as follows:

(Purpose: To make technical and conforming amendments)

On page 65, line 11, strike ''All'' and insert ''Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (h), all''.

On page 76, between lines 16 and 17, insert the following:

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking ''DEFINITION'' and inserting ''DEFINITIONS''; and

(2) by adding at the end the following: ''As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that will be required to file such reports at the end of a fiscal year of the issuer in which a registration statement filed by such issuer has become effective pursuant to the Securities Act of 1933 (15 U.S.C. 77a et. seq.), unless its securities are registered under section 12 of this title on or before the end of such fiscal year.''.

The PRESIDING OFFICER. If there is no further debate, without objection, the amendment is agreed to.

The amendment (No. 4173) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. SARBANES. 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. REID. 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. REID. Mr. President, I first want to extend my appreciation to the Senator from Maryland for this bill. It is really well timed and well done.

I received a letter today from the Secretary of State of the State of Nevada, a Republican.

By the way—the Senator from Connecticut is in the Chamber—the Secretary of State worked very closely with the Senator from Connecticut. As the Senator will recall, he is a very fine man. I wish he were a member of the Democratic Party. He is not. But he is an outstanding public servant.

He wrote me a letter, which said:

DEAR SENATOR REID: Investor confidence in the integrity of U.S. securities markets has been badly shaken as a result of Enron, Global Crossing, WorldCom, and other alleged wrongdoing. The failure of several large corporations to police themselves cries out for reform before the negative impact on our markets damages our National economy.

The Senate is to begin consideration of S. 2673, The Public Company Accounting Reform and Investor Protection Act of 2002, on Monday, July 8. I fully support S. 2673 and oppose any efforts to weaken its provisions.

If I could have the attention of the Senator from Maryland, the manager of this bill, I have here a letter from the secretary of state of the State of Nevada, who says:

I fully support S. 2673 and oppose any efforts to weaken its provisions.

I say to the Senator, one of the things the Secretary of State of Nevada is worried about is someone attempting to weaken the bill that you have brought forward to prevent State securities agencies from looking at wrongdoings in the State of Nevada.

As the Senator from Maryland knows, the attorney general from New York, who has been here, is very concerned about this. It is my understanding this bill does nothing to weaken that; is that true?

Mr. SARBANES. If the Senator would yield.

Mr. REID. I would be happy to yield.

Mr. SARBANES. That is correct. At one point there was talk of an amendment floating around but——

Mr. REID. But the point is, it is not in the bill?

Mr. SARBANES. No, it is not in the bill.

Mr. REID. On behalf of the secretary of state of Nevada, who I indicated earlier worked closely with the Senator from Connecticut in bringing forward a very good election reform bill—he is very progressive, and a fine secretary of state—throughout this letter, he acknowledges how important this legislation is. I wanted this to be spread on the RECORD before my friend's attention was diverted.

Mr. SARBANES. I appreciate the Senator's comments.

Mr. REID. My friend, secretary of state Heller, goes on to say:

As Nevada's chief securities regulator, I believe there is an immediate need to restore investor confidence in our securities markets.

I stand with my fellow state securities regulators in endorsing Title V, Analyst Conflicts of Interest, in its current form and strongly oppose any amendment to this title that would reduce our ability to investigate wrongdoing and take appropriate enforcement actions against securities analysts. However, an industry amendment has been circulated that would prohibit state securities regulators from imposing remedies upon firms that commit fraud if it involves securities analysts and perhaps even broker-dealers that serve individual investors. If Nevada's investigative and enforcement authority in this area are weakened, so too will the confidence of Nevada investors.

He certainly opposes this.

Mr. President, I ask unanimous consent that the letter from our secretary of state be printed in the RECORD.

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

OFFICE OF THE SECRETARY OF STATE,
July 8, 2002.

Hon. HARRY REID,
U.S. Senator, Hart Senate Office Building, Washington, DC

DEAR SENATOR REID: Investor confidence in the integrity of U.S. securities markets has been badly shaken as a result of Enron, Global Crossing, WorldCom, and other alleged wrongdoing. The failure of several large corporations to police themselves cries out for reform before the negative impact on our markets damages our national economy.

The Senate is to begin consideration of S. 2673, The Public Company Accounting Reform and Investor Protection Act of 2002, on Monday, July 8. I fully support S. 2673 and oppose any efforts to weaken its provisions. As Nevada's chief securities regulator, I believe there is an immediate need to restore

investor confidence in our securities markets.

I stand with my fellow state securities regulators in endorsing Title V, Analyst Conflicts of Interest, in its current form and strongly oppose any amendment to this title that would reduce our ability to investigate wrongdoing and take appropriate enforcement actions against securities analysts. However, an industry amendment has been circulated that will prohibit state securities regulators from imposing remedies upon firms that commit fraud if it involves securities analysts and perhaps even broker-dealers that serve individual investors. If Nevada's investigative and enforcement authority in this area are weakened, so too will the confidence of Nevada investors.

An amendment may be offered on the Senate floor under the guise of creating national uniform standards for securities analysts. Its real intent, I fear, is to eliminate remedies that state securities regulators may impose on firms should fraudulent activity be unearthed in an investigation. This approach is clearly ill-advised in today's climate of investor uncertainty.

As Nevada's Secretary of State, my office is charged with administering the Nevada Uniform Securities Act. My office is in current negotiations with Merrill Lynch regarding a possible settlement of analyst conflicts discovered in a lengthy investigation by the New York Attorney General's office. My staff is also participating in a task force investigation of UBS Paine Webber/UBS Warburg. This amendment would greatly hamper our ability to investigate analyst conflicts and would have a detrimental effect on Nevada investors.

I urge you to support S. 2673 and to vote against any amendment to weaken the enforcement powers of state securities regulators. The result of an amendment such as this could be that virtually every one of the thousands of actions brought by state securities regulators every year would be preempted, as well as all civil suits and arbitrations under state law. In light of the recent Enron and WorldCom debacles, it simply does not make sense to limit or preempt the state's ability to bring enforcement actions against analysts who lie to Nevada investors. The public is looking for elected officials to help them regain their confidence in corporate America.

As Nevada's Secretary of State, I have a duty to protect our state's investors. Any measure that dilutes my authority as the state's chief securities regulator is counter to the mission of my office and to state securities regulators nationwide. Accordingly, I again urge you to vote against any amendment to S. 2673 that would weaken the enforcement powers of state securities regulators.

Please call me at (775) 684-5709 if you have any questions or need additional information

Sincerely,

DEAN HELLER,
Secretary of State.

Mr. REID. Mr. President, our Nation is experiencing a crisis in confidence among the investing public. Americans hear on the news and read in the papers every day more and more cases of corporate executives bilking employees and investors, and of auditors who looked the other way, of boards of directors failing to provide the oversight expected of them, and of well-connected investors buying and selling stock based on insider information. Investors do not know who they can trust.

We have been in a mad rush the last many years to make sure that the quarter you are involved in has a good financial statement. People go to whatever ends they can to make sure that that quarterly statement looks good to keep the stock price up. That is all that matters. It does not matter whether the company is losing money. It does not matter if their employees are being laid off. It does not matter, as long as they do everything they can to do what can be done to make sure that stock price stays the same or goes up.

I have spoken previously on efforts of Senators to secure the future for American families. In fact, Senate Democrats are using that as a theme: to secure the future for all American families. Securing our future means not only making sure our borders are safe but also securing educational opportunities for all our children and access to affordable prescription drugs and affordable health care.

We must also provide pension protection for American families. In part, that means extending pension coverage. There will be an opportunity, before this legislative year ends, where we can have a good debate.

The vast majority of workers in Nevada have no pensions. As a consequence, they face their retirement years with inadequate resources. Senator BINGAMAN, chairman of a task force, has raised awareness of the lack of pension coverage for American workers and is working on legislation to address that problem.

My colleagues have also led the way with other legislative initiatives to restore investor confidence and provide safeguards to secure Americans' investments, pensions, and retirement savings.

Chairman SARBANES has introduced important legislation that will create a strong, independent oversight board to oversee the conduct of auditors of public companies, and he has done this on a bipartisan basis. That bill was reported out of committee, as I recall, by a vote of 17 to 4, with overwhelming bipartisan support.

This legislation would establish guidelines and procedures to assure that auditors of public companies do not engage in activities that could undermine the integrity of the audit. It ensures greater corporate responsibility by setting standards for audit committees and for corporate executives, but it would, we would hope, impose penalties when standards are violated. It would establish additional criteria for financial statements and require enhanced disclosures regarding conflicts of interest.

This legislation also directs the Securities and Exchange Commission to adopt rules to improve the independence or research and disclose potential conflicts of interest. It also would provide a significant boost in funding for the SEC, the Securities and Exchange Commission, to help it carry out its responsibilities in a fashion that would help restore investors' confidence in the markets.

This legislation goes a tremendous distance in addressing some of the major concerns I have heard from people in Nevada. And I am pleased this bill has gained, as I have indicated, bipartisan support.

Indeed, it seems that after staying silent for so long, and after allowing a permissive atmosphere where businesses could do no wrong, the President, our President, and Republicans in Congress, quite frankly, are now reversing course. Some are falling all over themselves to jump on the bandwagon and support this legislation. They have done it after hearing from an outraged public. And that is good.

Tomorrow I will be eager to hear what the President has to say in New York. I hope that he does not say we are going to have to enforce the law that we have, because the law we have has not been enforced, especially by the people who surround this President and his administration.

For him to go to New York and say we need to enforce the law more strongly will not do the trick. He needs to jump on the bandwagon with this legislation. We need additional legislation.

The President ran a campaign based on themes such as responsibility and accountability, but recent news reports suggest that both have been lacking in his explanations of his past dealings in the business world.

Prior to holding public office, our President has parlayed his connections as a member of a wealthy and powerful family to arrange a number of, some would call, sweetheart deals. In editorials they have been referred to that way for the past several days. Despite a string of business failures, our President always seemed to land on his feet and seemed to profit.

Now there are disturbing indicators that he has played fast and loose with some of the rules that he is now being asked, through his administration, to enforce. When asked about his business dealings, the President has not accepted personal responsibility, instead shifting blame to accountants and lawyers or implying that he was just doing business as usual.

I would have to say there are questions not only about the Harken business dealings but about the business and accounting practices of Halliburton, where Vice President CHENEY enriched himself, walking away with tens of millions of dollars.

So the problems we have heard go far beyond Enron and the President's friend, as he referred to him, ''Kenny boy,'' Kenny Lay. They are not limited to the handful of companies getting most of the media coverage in recent weeks. Instead, there are fundamental and systematic problems that have to be corrected. That is what this legislation is all about.

I applaud the chairman and the committee for reporting out this bipartisan legislation.

I hope, I repeat, that the President will join in supporting this legislation.

We need to make sure that those who serve as corporate executives and on boards accept the responsibility of their roles when they sign their name on a financial report. The American people need to be able to trust corporate leaders.

Likewise, the President, and those in his administration who came to office from the corporate world, need to show more transparency in letting the American people know how they are making policy decisions, who has access to them, who is influencing them, who is meeting with them.

I joined in an amicus brief with the General Accounting Office to have the Vice President disclose who he met with to come up with energy policy that this administration enumerated. We need to know with whom he met, when he met with them, and why he met with them. They refused to give us that information. That is why I joined in that litigation.

This administration must set aside what I believe and agree with some—again, it is replete in the editorials of the last few days—is their arrogance and secrecy and instead be open and forthcoming public servants.

This legislation is timely. The Banking Committee jumped right on it. Most of us thought the Enron thing was something that was a rare dealing in corporate America. We have come to find out it is not a rare dealing in corporate America. It has happened since then time and time again. We have only seen the beginning of it, I am sure.

The Banking Committee is to be applauded for moving this legislation forward on a bipartisan basis. By a vote of 17 to 4, it was reported out of committee. I would hope we can get this bill out of the Senate as quickly as possible. It is good legislation. It is legislation that the American people need to reestablish confidence in corporate America and those people they rely on so that they feel better about having their pensions supplemented with investments made in the stock market.

The stock market is an indication, as far as I am concerned, of how people feel about what is going on in business. As we know from recent days, people have not felt very good about it. We have had tremendous losses. I heard the chairman of the committee, Senator SARBANES, speak about the Nasdaq losing some 74 percent of its value. That is a significant loss to our country.

I know the Members of the Senate understand the importance of this legislation. I hope that they understand why it is important to move it as quickly as possible. We have a few short weeks to complete lots of extremely important legislation prior to the August recess. As I have said on four separate occasions, this legislation is as important as anything we could do, and it is very timely.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me begin my remarks by commending the distinguished chairman of the Banking Committee. I have said on other occasions and in other places that for students of the Congress who wish to find a good example of how to prepare a committee and ultimately the Chamber for a moment such as this, a good model to use would be the hearings conducted by the chairman of the committee on this very question.

There were 10 hearings—there may have been more, certainly 10 full hearings—to which were invited virtually everyone from across the spectrum on this question. This was hardly a set of hearings where we heard from one side. We literally invited the best experts in the country; they came and shared with us their views and thoughts on what sort of steps we should be taking to reform the accounting profession, to reform the rules affecting the accounting profession.

I begin by extending my compliments to the chairman and his staff for the tremendous job done to lay the groundwork. Oftentimes we will see, particularly in light of a crisis that occurs, there is a rush to judgment. We will come very quickly to the floor with a sort of a cut-and-paste job with the legislation. I am not suggesting intentions are not good, but that is oftentimes how we react.

This set of hearings did, very deliberately, with a great deal of patience and thought, lay out the foundation for the legislation now before the Senate.

Certainly, while there will be ideas offered to improve the legislation, we think the committee has produced a very fine product. The best evidence of that is the fact that 17 of us in the committee found this proposal to be worthy of our support. There were four dissenters. I think even among dissenters, there was a sense that we were heading in the right direction. Some may have fundamentally disagreed, but if there were one in the four, I don't know which one it would have been. Most thought we were doing the right thing, either that we went a little too far or didn't go far enough possibly, but this is a very balanced approach.

I urge our colleagues to be careful of two potential actions in the coming days. One would be to dilute this product in some way. We are not suggesting we have written perfection here, but we think this is a well-balanced proposal.

Senator SARBANES has worked closely with our colleague from Wyoming, Senator ENZI, who is the only Member of this body who is actually a former member of the accounting profession. He brings a wealth of personal knowledge and awareness to the issue. He worked very closely with him and other members of the minority, as well as with those of us on the majority side, to finally bring this product to the Chamber. It already has involved some compromise.

At this hour, when investor confidence is going to be absolutely critical and the steps that we take and the language we use will in no small measure contribute to the restoration of confidence, it can just as easily do the opposite, if we are not careful. This is a critical moment in the economic history of our country.

The steps taken by those who are in significant positions to affect the outcome of the course we are on are going to be critically important.

The second caution I express is that we don't try to also overburden this bill to say that this is the only opportunity for us to deal with every other issue affecting corporate business life in America. I am not suggesting the ideas Members will want to bring to the table are bad. But we can so load down a good bill that we can sink this effort if we are not careful. I urge my colleagues as well to be restrained in the temptation to bring up every other idea and incorporate it as part of an accounting reform proposal. Those are the two cautionary notes I have.

Let me also add my voice to those who have expressed theirs earlier today. Tomorrow I know the President of the United States is going to give a very important speech on Wall Street in New York, the financial capital of our country. I commend him for doing so. I think it is extremely important that he actually go to Wall Street to share his views.

My hope would be that this evening, as he makes the final preparations for his remarks, he would come out four square and endorse this proposal that we have brought out of our committee by a vote of 17 to 4. I can't think of anything more the President could do in the next 24 hours, aside from the rhetoric he will offer, than to endorse this bill and to say this was a good effort and to talk about the laborious hearings we have held to learn exactly what was necessary to incorporate in this legislation.

Lastly, I would hope we would get this bill done fairly soon and not let this go on too long. We would love to be able to not only finish our work here but to go to conference with the House, which has another proposal. It is a weaker proposal, in my view, but nonetheless we will have to work with them to resolve our differences and to send a bill to the President for his signature.

I would hope that before we leave for our August break less than 3 weeks from today we would actually be able to give to the President a bill for his signature and not let it drag on over into September and October. It is important we act in a timely fashion.

With those background thoughts, I would like to share some general comments about the bill itself. The importance of this issue cannot be overstated. Anyone who has read a paper or turned on the news or flipped on their computer is aware of the crisis in our financial markets and, in fact, beyond that, in our Nation. No rule or regulation is enough to address this fundamental problem.

The issue causing all of this turmoil is about the simple word of ''trust.'' The question that the world is asking is not whether our companies or corporations or the workers who toil in them or the products and services are competitive, but simply whether we are telling the truth. Are we telling the truth?

The reason people of the world so often have come here and invested their hard-earned resources is not because there is a better deal to be made financially speaking. It is because there is a sense that our structures are sound, transparent, and they are fair. You may end up losing your investment; you may make money on your investment. That is always a risk when you make a financial investment. But the one thing you could always say about the United States, as opposed to almost any other place around the globe, is that when you come to America and invest your money, there is a sense of fairness and trust and soundness to our financial institutions and the structures that we created to protect them.

That trust has been fractured by the events that have occurred over the last 9 months, And it continues to be fractured with daily reports. So it is vitally important that we respond in an appropriate and thoughtful manner as the Congress of the United States. We have done so, in my view, with the proposal the chairman has brought to our attention. The very integrity of our markets is being questioned, and the Congress must respond cautiously, prudently, and also expeditiously.

Enron's collapse in December was, of course, an enormous shock to all of us. Seven or eight months later, we have seen that Enron was not an isolated incident. There have been a whole host of corporate accounting scandals and collapses—names such as WorldCom, Global Crossing, Tyco, Adelphia, the list goes on and on. I fear, as my colleagues do, that the latest corporate accounting scandal with WorldCom will not be the last. I hope it will be, but my fear is it will not be.

The Congress should address the critical issue of accounting reforms as quickly as we can. America's financial engine does not need a tuneup, it needs an overhaul. We must disassemble it in some ways, examine every nut, bolt, and working part, and reassemble it to reflect the days in which we live.

The fact is, if we fail to act on serious reforms, America will see a continuation of the dangerous and discredited corporate accounting practices that have, in the past 7 months alone, cost American shareholders and workers billions of dollars in their savings and pensions. This has deeply shaken investor confidence, and that serves as a cornerstone of our economic system.

It is important to note that in the dozens of hearings surrounding Enron's collapse, no committee has engaged in a more nonpartisan examination, focused not just on what went wrong with Enron but, far more important, what Congress can do to prevent future Enrons from occurring in the days ahead.

On March 8 of this year, Senator JON CORZINE and I introduced legislation, S. 2004, that addressed what we thought were some of the tough issues on improving regulatory oversight of the accounting profession and restoring investor confidence. I worked closely with the chairman, as did Senator CORZINE, to incorporate some of the language and spirit of S. 2004 in the legislation before us today.

I thank the chairman for including in the product before us much of what we wrote in S. 2004. I thank his staff, and I also thank my colleague from Wyoming.

Congress must act quickly. If nothing else, we must address the most prominent cause of the recent corporate scandals, the practices inherent and common to the accounting profession, and particularly the ability to audit a company's books while simultaneously providing other services to that same corporation. We saw this with Enron and Andersen. Now we see it with WorldCom and the pending investigations that have greatly contributed to the public's loss of confidence in our financial marketplace.

Since the beginning of the year, while our economy has been rebounding from last year's economic downturn and most economic indicators point to a bull market, the Nasdaq is down more than 20 percent, the Dow is down more than 3 percent, and trading volume has declined. One reason may be investor skepticism that companies are not as financially healthy as they have said they were. More restatements on corporate earnings have been filed in the past 7 months than in the last 10 years combined. Most of these restatements dramatically downgrade the financial health of the companies in question.

Not surprisingly, the public is quickly losing trust in disclosed corporate financial information. Although the investing public may be reacting to the bad behavior of a few, the possibility of conflicts of interest between accounting firms and the companies they audit creates a perception that this aggressive accounting is commonplace, even when it may not be. This perception, which takes on its own sense of reality, has led to a very dangerous, least-common-denominator thinking in which the estimated worth of all public companies may become undervalued because some are proven to be seriously overvalued.

The fact is, a few key reforms included in this bill can go a very long way toward shoring up the public's confidence in the integrity of America's financial marketplace.

Most importantly, to enhance auditor independence, the legislation restricts the ability of accounting firms to audit a company's books while simultaneously providing other services. It also addresses the revolving door through which executives from one firm leave to work for the companies they audit.

This reform legislation includes the creation of an independent body to oversee the accounting profession, with substantial authority to ensure auditor discipline and improve audit quality. The Securities and Exchange Commission will also be given the resources to hire more accounting ''cops'' to handle increasingly complex oversight responsibilities and improve the agency's investigative and disciplinary capabilities. The Government must be able to assure the public that audits meet the high standards of independence and objectivity that have been the hallmark of America's accounting profession.

The accounting profession is a great profession. There are thousands of highly qualified, talented, ethical people in the accounting profession. I feel for them at this hour. Because of the malfeasance and fraud committed by some, the many who work in this profession feel tainted by it. I regret that. The best way I know to recover the confidence people have in this profession is to provide some regulatory framework that would allow for auditor independence and for professionalism to be restored at a time when it has been so badly damaged.

Investors are depending upon us to act on this issue and set aside partisan conflicts. As I said, we should not dilute this legislation and make it far less important, less meaningful, or overburden it by trying to add too much to the bill. It is not an easy path to walk down. I urge my colleagues to listen to those of us who worked on this bill, particularly the chairman, as we try to balance the particular needs of our members and the desire to come up with a good, competent, bipartisan piece of legislation. This is not an easy path to walk down, but it is critically important if we are going to contribute to the restoration of investor confidence as part of our responsibilities as members of this historic Chamber.

The purpose of the original securities laws of the 1930s was to increase public trust in America's financial markets, the reliability of disclosed corporate financial information. The resulting openness and accuracy of corporate disclosures to the investing public paved the very way for America's rise as the unrivaled economic superpower that we had achieved. The collapses of Enron, WorldCom, and other corporations, and the accounting scandals have ended any question about whether these laws need reexamination. They do. We know that reforms are mostly needed to protect and strengthen the public trust in America's financial markets, and the time to enact them is now. I am confident and hopeful that we will do just that in the ensuing days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the very able Senator from Connecticut for his kind remarks about our work together on the committee as we tried to move this legislation forward. I particularly want to underscore the very substantial and significant contribution that the Senator from Connecticut and his colleague from New Jersey, Senator CORZINE, made when they came forward fairly early on in the process with S. 2004.

Much of that legislation is included in this legislation, and it was a seminal contribution early on in our consideration and it helped us to move ahead. I am grateful to him for that and for his efforts and support throughout this process as we have tried to move this legislation forward.

The Senator from Connecticut, of course, is a chairman of one of our subcommittees and has been enormously effective within the committee in his efforts on this legislation, and I appreciate that. I am very hopeful that we are going to get a good product at the end of the path—of course, we are not there yet—which the President will sign and which will make a substantial difference.

It is a tragedy, in a sense. The founder of the accounting firm Arthur Andersen was a man of great rectitude and very high principles. He had the slogan ''think straight and talk straight'' to guide him.

His successor, Leonard Spacek, also was a man of very high principle. For that company with those origins, in that tradition, to in effect have happen what has happened to it is a tragedy, there is no question about it.

We are anxious to reassure accountants all across the country that we think this legislation will help bring the profession back to the standards that marked it at an earlier time and which standards more thoughtful and more responsible members hope will mark it once again.

The point the Senator from Connecticut made in that regard is an interesting and important one.

Mr. DODD. I thank the chairman.

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

The PRESIDING OFFICER (Mr. DODD). Without objection, it is so ordered. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I begin by saying the Senator from Maryland has done this Senate and this country a great service, along with his colleagues, including the Presiding Officer, by writing legislation that addresses a critically important topic at a very important time in this country.

As much as I appreciate the work done on this bill, I would still like to speak about a few ways in which we can strengthen it. I listened with some attention in the last hour or so as I presided in the Senate to the suggestion that we ought not change it much. I do not disagree with that assessment, but we ought to change it some, in my judgment. There are some areas we can strengthen, and I hope we can strengthen this legislation and send it on to the President and have the expectation the President will sign it.

This Chamber has long been the site of debates about excesses and abuses, especially in America's poverty programs. We have heard over a couple of decades, and appropriately so, anecdotal stories about the Cadillac welfare queen who spends food stamp money to buy cigarettes. Congress has clamped down on all of that and said: Shame on you, you cannot do that, that is abusing the public trust. And it is. So we have taken aggressive action as we have seen these abuses.

Today this discussion is not about the abuse of the poverty program or the abuse at the bottom, this is about fraud in the boardroom; it is about abuse at the top. It is important for all of us to understand that accountability and responsibility do not just apply to poor people in this country, accountability and responsibility apply to everyone, and that includes the people at the top of the corporate structure.

I wish to talk about fraud in the boardroom, about deceiving investors, about cooking the books, about accounting firms that cannot account, about law firms that turn a blind eye. I wish to talk about the situations the country has seen in recent weeks and months that we have not seen for many decades in this country.

The victims, of course, are the people in this country who have invested in stocks, who believed in the certification of financial statements by some of the biggest accounting firms in the country that these were good corporations, that they had good income, that they were moving in the right direction, taking steps so that the funds in corporations were accounted for properly. And now we discover that was not necessarily the case in all too many instances.

Of course, there are a lot of wonderful corporations in this country, wonderful companies with terrific top executive officers who do the right thing, always do the right thing. Yes, they take some risks, but they do it in anticipation of gain for the stockholders. We ought not tarnish with the same brush all American corporations, but we ought to determine what is happening within some of these corporations that has caused the collapse and the devastation of a lifetime of savings for many Americans.

Let me use Enron as an example. We spent a fair amount of time with Enron hearings in the Commerce Committee. We had top executives of that company who had been cashing out prior to Enron going bankrupt. I have a chart that shows the way in which the top management of Enron made fortunes on the sale of Enron stock, from 1998 to the present, at the same time that they were driving their company into the ground.

Contrast this with a call I received from a fellow in North Dakota one day who said: I worked for Enron for a good number of years. I had a retirement plan, and all my retirement plan was in Enron stock. Mr. Lay and others repeatedly encouraged us to do that. My retirement plan was in Enron stock. It was worth $330,000. Now it is worth $1,700. He said: That is what happened to my life savings—$330,000 to $1,700.

What happened to the folks at the top of the ladder in Enron? Mr. Lay, the chairman of Enron, from 1998 to the present, sold $101 million worth of stock. That is what he received. Mr. Rice, $72.7 million; Mr. Skilling, $66.9 million; Mr. Fastow, $30 million.

Mr. Fastow was able to have an equity role in the special purpose entities, the off-the-books partnerships, and in one of them he actually invested $25,000 of his own money. He invested $25,000, and 2 months later paid himself $4.5 million. I do not know anybody who gets returns like that anywhere in America, except by cheating.

In the year 2001 in American corporations, the average pay for top CEOs increased by 7 percent, despite falling profits and stock values. Is there a relationship at the top between people who run the companies and the performance of the companies themselves? It does not look like it, does it?

In 1981, the average executive compensation of the top 10 highest paid CEOs was $3.5 million. In the year 2001, the average was $155 million. So we can see what has happened in this country at the top in the boardroom.

Let's look at the number of times that CEO pay exceeds average worker pay: In 1980, they made 42 times the pay of the average worker in the company. In 1990, they made 85 times the pay of the average worker in the company. But in the year 2000, it was 531 times. So forty-twofold to five hundred and thirty-onefold. That is what has happened to executive compensation at the top of the corporate ladder.

We have seen story after story about what is happening in some of the boardrooms. There are a lot of wonderful companies, and I do not think this ought to tarnish all American corporations, but we ought to be very concerned about what is happening inside some publicly traded corporations and why the safeguards have not been able to provide early warning to investors and others.

Adelphia: The drop in their stock value is 99 percent. The question is whether it failed to properly disclose $3.1 billion in loans and guarantees to the family of the founder.

Dynegy: Whether the Project Alpha transactions served primarily to cut taxes and artificially increase cashflow, 67 percent of their value lost.

Enron lost 99.8 percent of its value. In fact, as I have mentioned before, the

Enron board of directors commissioned a report called the Powers Report which looked at only three partnerships, and they described what was happening inside this company was ''appalling.'' The board of directors of the company itself said what was happening inside the company was appalling. They said that in one year they reported $1 billion of income they did not have.

Global Crossing: Whether it sold its telecom capacity in a way that artificially boosted 2001 cash revenue, 99.8 percent loss in value.

Halliburton: Whether it improperly recorded revenue from cost overruns on big construction jobs.

The list, of course, goes on.

Qwest: Whether it inflated revenue for 2000 and 2001 through capacity swaps and equipment sales.

On the weekend talk shows, I heard a panel discussion about this, and one of the panelists who is kind of an academician said the market is just adjusting. That is an antiseptic way, by an economist I suppose, to ignore the fact that families are losing their life savings.

Sure, the market is adjusting, but it means families are losing everything they have. It means investors with 401(k)s see that 401(k) shrink so their life savings are disappearing right before their eyes.

The question with all of these issues is: What has changed? Why, with big accounting firms taking a look at what is going on—and today there is a hearing on WorldCom in the House of Representatives—why, with big accounting firms looking over their shoulder, has this sort of thing occurred?

With Arthur Andersen and Enron, they had a $25 million relationship by which Arthur Andersen audited the Enron Corporation, and Arthur Andersen was also paid $27 million by the Enron Corporation for consulting services. That is one of the things that is at the root of this bill: Is that not a clear conflict of interest? Is there not enormous pressure on the accounting firm then to become an enabler for that corporation? The answer clearly is yes, and that is why this legislation takes action to deal with some of those issues.

I was driving in the car over the weekend in North Dakota and saw that the Xerox Corporation had a substantial restatement of earnings. It indicated that the SEC had previously taken a look at it and fined Xerox $10 million, which seems to me like pretty much a slap on the wrist when you consider the billions of dollars involved in the restatement. Then we hear this big story this weekend about yet another restatement. So what we have is a restatement, and then a restatement of the restatement of earnings.

What is the cause of all of this, and what is enabling it? With Enron, for example, it was an accounting firm that became an enabler; it was a law firm that became an enabler; it was CEOs who became greedy, officers of the corporation who did not pay much attention, who also, incidentally, were making a great deal of money selling stock, board members selling stock. It all became a carnival of greed.

I indicated, after having spent a lot of time looking at Enron, that there was a culture of corruption inside that corporation. The CEO of Enron took great exception to that, but it is clear every passing day, with more and more evidence of what happened inside that company, that there was in fact a culture of corruption.

How do we respond to that, and how do we deal with that? I think that, first of all, the rules have to be changed some, and that is what this legislation attempts to do. Second, even if there are changes in the rules, there must be an effective referee, a regulator. In this system of ours, we have to have effective regulation. And frankly, that has been lacking.

Mr. Pitt, who is the head of the SEC, I know has taken great exception to statements that have been made by my colleagues and myself. But the fact is that a system like this cannot work unless there is effective oversight and regulation, and that has been lacking.

Consider some of the statements that Mr. Pitt has made. This is Mr. Pitt speaking at the AICPA, which represents the accounting industry:

> For the past two decades, I have been privileged to represent this fine organization and each of the big five accounting firms that are among its members. Somewhere along the way, accountants became afraid to talk to the SEC. Those days are ended.

That was to the American Institute of Certified Public Accountants.

Then Mr. Pitt, who is, again, the head of the SEC, said:

> The agency I am privileged to lead has not, of late, always been a kinder and gentler place for accountants; and the audit profession, in turn, has not always had nice things to say about it.

So Mr. Pitt was concerned about ensuring a ''kinder and gentler'' SEC.

The New York Times did a story as a result of the initial speeches Mr. Pitt gave when coming to the SEC. It noted that Pitt ''spoke favorably of pro forma earnings reports in ways that no doubt heartened accountants who have worked so hard to find ways to make even the worst profit figures look pretty.''

It also noted that ''A major embarrassment for accountants is having the SEC force a client to restate its numbers. Mr. Pitt and his chief accountant, Robert Herdman, are sending signals that fewer such demands will be made.''

We can change the law, but if we do not have a tough, no-nonsense regulator, then it will not work.

We all watch basketball games, and we see referees. They are the ones who enforce the rules in basketball. We see a game from time to time where it is quite clear right at the start the referees are not going to call them close, and then pretty much it is ''Katy bar the door,'' and things get out of hand. Then we see other games in which it is quite clear they are going to call up close, and nothing gets out of hand. The same is true with the attitude and mindset of Federal regulators. We have regulatory agencies for a purpose. That purpose is to enforce the rules. Fairly, yes, but also aggressively.

If someone who comes from that industry and says, I represented all of you, and suggests it will be a kinder and gentler place, I wonder whether that is the regulator we ought to have.

No matter who is heading the SEC, I want that person to be a fierce advocate on behalf of the rules that protect investors. I want someone that can make this system work and require everyone to own up to their responsibilities. So people who never enter a corporate office or know nothing about a corporation but who want to invest in American business, can buy a share of stock, having never met an officer of the company, having never visited the company, and can have confidence that what the accounting firm has said about that company, what the financial statements represent about that company, are absolutely fair and accurate.

That is the only way in which the American people can participate in the raising of capital for America's business. If we do not do that and do that quickly, we undermine the entire system by which we raise capital in this country. We undermine the entire system. That is why this piece of legislation is important and timely.

There are several amendments I would like to have considered, some I hope will be accepted, and some, perhaps, we will discuss at some length, and I may or may not prevail. There are some amendments that can strengthen and improve this legislation.

One of the provisions in the legislation calls for CEOs to return profits and bonuses they wrongfully reaped in the 12 months following a published earnings report that require a restatement. I would propose that this provision apply when a company goes bankrupt, as well. This idea has been endorsed by former SEC Chairman Richard Breeden, Goldman Sach CEO Henry Paulson, and others.

There also ought to be some provision with respect to loans to CEOs by corporate boards of directors. I don't know what that limit ought to be, but I mentioned one corporation where over $3 billion was loaned to one family of the founder. This is a publicly traded corporation. I believe we ought to discuss that.

I may offer a provision dealing with something called inversion, a mechanism whereby some American corporations have decided they want to renounce their American citizenship and move their official headquarters to another country—Bermuda, for example. I want to be certain that CEOs of such

companies cannot escape the requirement of this bill that they certify the accuracy of their financial statements. I do not think that, in addition to avoiding their fair share of U.S. taxes, these companies ought to be held to a lesser standard of reporting accuracy than U.S.-based firms. So I will offer an amendment, if needed, and visit with the chairman and the ranking member about that subject.

Another issue, one requiring disciplinary proceedings to be open to the public was discussed in committee. Transparency and having those hearings open to the public are important. I hope we can consider an amendment on that.

The other issue that was discussed in the committee at great length: What is the definition of the division of responsibilities between auditing and consulting? That definition, determined by the SEC or the Congress, is critical to determining whether there is a conflict.

Having said all that, let me say to the Senator from Maryland, we are in the Senate the first week after the Fourth of July. I listened to the Senators from Texas and Wyoming and Connecticut and others speak about this bill. This is a good start. If this legislation passed without one word changed, it would make a magnificent contribution to a problem we face, a gripping problem in this country.

Having said that, I do not subscribe to those on the committee who say not to change anything. That is not what the chairman said. There are some suggestions that will come from other parts of the Senate that can strengthen and improve this legislation, a couple of which I suggested. When it goes to conference with the House, we will have something we can be proud of.

The most important thing is to show to the investors in this country who have lost, in many cases, their life savings, that we are taking action to respond to the conditions that caused this to happen.

When we talk about the people at the top getting rich and the people at the bottom losing their life savings, the American people have every right to ask: By whose authority can this happen in this kind of economy? It cannot happen if the rules are fair. It cannot happen if the rules are enforced.

The American people have a right to expect the regulators, the SEC, and the Congress to take action now to address these issues.

I yield the floor.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I initially came to the floor to talk about this bill and another issue. The Water and Power Subcommittee of the Energy and Natural Resources Committee is holding a hearing on Wednesday, and I asked to testify about the views of Missouri on the Missouri River issue. Initially, the staff said I was not going to be able to testify, and I was going to therefore have to share my testimony with the entire body. However, I have now been advised by the chairman of the committee I will have an opportunity to testify, so I will save my comments for the committee hearing.

I thank the chairman for giving me that opportunity.

Mr. DORGAN. Will the Senator yield?

Mr. BOND. I am happy to yield.

Mr. DORGAN. Let me explain to the Senator what my hope was. The Senator asked to testify, quite properly. The Missouri River manual issue is a highly controversial issue. The Senator has been involved with it for some long while. We are having a hearings. The Corps of Engineers and many others are testifying. My hope had been we could hold a hearing with all of those groups, then have a separate meeting, hearing from all Members of Congress who want to testify. It appears that that will not be the case.

We will hear from Senators at the front end of that hearing. I assume it will take some time. As the Senator from Missouri knows, having indicated, yes, we would entertain his testimony, there are a number of other Senators who have already gotten in line saying, if that is the case, please hear my statement, as well. Of course we will.

It was never a case where we would not hear testimony. The question was whether we would have a separate hearing and hear Members of the Senate. I understand the Senator's concern. Senators DASCHLE, JOHNSON, CONRAD, CARNAHAN, and many, many other Senators have great concerns about this issue.

I will lose some sleep Tuesday night with great anticipation hearing your testimony on Wednesday morning.

Mr. BOND. I thank my good friend from North Dakota and assure him I hope to be brief and to the point. I am somewhat disappointed I will not share all that testimony with my colleagues, but there will be another opportunity.

I thank the chairman of the subcommittee for his kind indulgence.

Today I rise to join in expressing my concern about recent accounting practices in publicly held companies and their auditors. As a former State auditor, I have an interest in that profession being performed properly. Obviously, something is seriously broken. We hear about Enron, Global Crossing, WorldCom, and Arthur Andersen. The people of America are very concerned. We have seen millions of families with their investments diminished or even wiped out. That is not acceptable. The vast majority of investments were not in the volatile sectors, or not what we thought were the volatile sectors of the stock market. They were invested in the so-called blue chip companies. The families who made those investments on their strong belief in the integrity of our financial markets and accounting industry now find that because of corporate shams, accounting gimmicks, and inadequate auditing, they have lost significantly the investments they planned for education or retirement—for their families.

As far as we know, overall the overwhelming majority of publicly traded companies are in full compliance with corporate accounting standards. But the fact that there has been a significant deception by a handful of companies raises suspicions of all companies. In addition, we don't know how many others will come forward in coming weeks.

We must restore the public's confidence in the market. Without this, the economic recovery which should be beginning will remain elusive.

While much of the focus in the debate here and in the news media is on the auditing problems of the big conglomerate companies, unfortunately little attention has been paid in this bill to how the impact will fall on small publicly traded companies and small auditing firms. As the ranking member on the Committee on Small Business and Entrepreneurship, I have some concerns, after reviewing this bill, that we may be pushing ahead without considering the serious effect and the unintended consequences the bill could have on smaller firms—both small auditing firms and small publicly traded companies.

The bill is clearly targeted towards abuses in extremely large businesses, which we all think should be dealt with. I personally hope it will result in prison sentences for people who are proven to have committed criminal acts in their accounting activities.

But the SEC is not even aware of how many small auditing firms there are auditing small, publicly traded companies. There are some 2,500 small companies, and we believe many of them are audited by small- and medium-size auditing firms. For small auditors, the bill will require many new elements including registration, annual filing requirements, as well as partnership rotation of lead auditors. In addition, the bill would codify a list of banned services or nonauditing services that an auditing company might conduct for a company that it audits.

While some of these elements clearly are necessary to restore confidence, and I think are going to be dealt with by regulatory action and maybe even by the industry itself, no one knows how these requirements will affect the small firms. It has been argued that the bill allows for a case-by-case exemption, but that exemption process itself could be extremely costly and untimely for small firms and lead to inconsistent results.

I fear that some of these small auditing firms will not have the resources to implement these requirements and will stop auditing services or just go out of business. The result may be that small, publicly traded companies may not be able to obtain auditing services at reasonable cost. As a result, the bill might be setting up a hurdle for small companies to reach the public markets, one

that is too expensive and too great to overcome.

Clearly, when we deal with the major problems we ought not cause significant problems for the smaller, growing entrepreneurial sector of our country.

As for publicly traded companies, the bill also places new requirements for auditing committees and for corporate responsibility. Again, many of these may be necessary. However, we need to look at how these requirements will affect the small, publicly traded companies.

The entrepreneurial spirit of our country is really the envy of the world. People know that entrepreneurship works in America. That is where we get the new ideas. That is where we get the growth. That is where we get the new services and the products. We should be careful as we adopt reforms not to put a disproportionate burden on these companies, dampening the entrepreneurial spirit or impeding access to the public markets.

I fully support accounting reform and the taking of steps necessary to restore investor confidence in the market. I think we should pass a balanced bill that will not overburden small firms and not create additional hurdles that will impede them from growing. We don't want an incidental consequence of this bill to be a monopoly of large accounting firms when it comes to corporate audits.

I agree with the other speakers that the American public is looking to us for answers. I intend to work to see that the needs of the small businesses, publicly traded small companies, and small auditing firms are protected. I am committed, and I think we all are committed, to restoring the public's confidence in the markets so families can feel safe once again in investing in America and in America's future.

I look forward to working with my colleagues to secure a balanced bill which will do that without bringing unnecessary hardship on the entrepreneurial sector of our economy.

I thank my colleague from Wyoming for the courtesy in allowing me to go ahead. I yield the floor.

Mr. ENZI. 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. SPECTER. Mr. President, during the course of the Fourth of July recess, I traveled through Pennsylvania holding some 16 town meetings, and I found many concerns among my constituents: The issue of prescription drugs; the concern about what is happening with respect to Iraq; the issue of terrorism, which confronts the United States; the concern about what might happen on July 4; concern about the suicide bombers from the Palestinians terrorizing Israel.

But high on the list of public concern was what has happened with Enron, WorldCom, and many other companies on the stock exchange, where so many of my constituents in Pennsylvania—like tens of millions of Americans, really, and even more—have had their savings decimated in their retirement accounts of a variety of sorts. The issue that was raised consistently was: What happens next?

I think it is very good that the Senate is now considering legislation to deal with the fraudulent conduct that has plagued so many companies in corporate America. There is no doubt that there is a clear-cut conflict of interest for an accounting firm to be both an adviser and an auditor. An adviser has a close relationship with a company—call it cozy, or intimate, or friendly—but that is very different from the function of an auditor, which ought to be at arm's length, scrutinizing what the company has done. That kind of a conflict should certainly be prohibited in the future. If the accounting firms do not have enough understanding of the ethics, then laws have to be enacted, with very tough penalties to follow. When you find companies having so much debt off the books, subsidiary corporations, that is a matter of fraud. Fraud is a misrepresentation of a fact where someone relies to their detriment, and that is a crime. When you have companies putting expenses in, say, a capital account that shows billions of dollars in additional income or assets of the corporation, that too is fraud.

A good part of my career has been as an assistant DA and then as district attorney. I believe this kind of white-collar crime is certainly susceptible of deterrence, providing that standards are established and penalties are provided for a breach. It is my hope that from the Senate's current consideration, some very tough legislation will follow.

(Mr. DAYTON assumed the Chair.)

LOW MEDICARE REIMBURSEMENTS

Mr. SPECTER. Mr. President, for a considerable period of time, there have been a number of counties in Pennsylvania that have been suffering from low Medicare reimbursements, which have caused them great disadvantage because their nurses, their medical personnel, are moving to surrounding areas. I refer specifically to Luzerne County, Lackawanna County, Wyoming County, Lycoming County, Mercer County, and Columbia County in northeastern Pennsylvania. Those counties are surrounded by MSAs—metropolitan statistical areas—in Newport, New York, to the north; in Allentown to the southeast; and to the Harrisburg MSA to the southwest.

When these counties are so surrounded by—and a similar situation exists in Mercer County, which has higher rates in immediately adjacent areas—there has been a flight of very necessary medical personnel. Last year, in the conference on the appropriations bill covering the Departments of Labor, Health and Human Services, and Education, the conferees were in agreement that there should be relief for these areas in Pennsylvania that were surrounded by areas that had higher MSA ratings. At the last minute, word came from the chairman of the Appropriations Committee that there would be an objection to including language in our conference report because it was not included in either bill—in the House or in the Senate. That does make it subject to a point of order, so we had a discussion. I went to the office of the chairman of the Appropriations Committee, Senator BYRD, and did my best to persuade him to make an exception in this case because of the extraordinary hardship. Senator BYRD, understandably, declined.

We then talked about bringing the matter forward in the supplemental appropriations bill. I thought it highly likely that, given the immediate history, we could accomplish this accommodation, this correction, in this appropriations bill. The House of Representatives came forward, and the House leadership on the Ways and Means Committee and the House leadership generally agreed with Congressman SHERWOOD, who represents these counties in northeastern Pennsylvania in the House of Representatives, and also Congressman PHIL ENGLISH, who represents Mercer County, that these were indeed meritorious—not that there were not other counties that had similar problems, but these counties were meritorious and should have a change in the MSA.

When the matter reached the Senate floor and I filed an amendment to have a similar result, there was resistance because, after all, it was in the House bill and it could be taken up in conference. It is custom on a matter that a colloquy was entered into between Senator BYRD and myself, and Senator BYRD said he would give every consideration to it in the conference.

It is true that there are other places in the United States that have problems, but I believe none is so pressing as what is occurring in these counties in Pennsylvania, as is evidenced by the fact that the leadership in the House of Representatives—as I say, the Ways and Means Committee chairman and the leadership of the House—agreed to these changes.

A week ago today, on July 1, I visited in Wilkes-Barre, PA, at the Gossinger Clinic, with representatives of the hospitals and went over with them the situation that had occurred and asked that they submit memoranda, which showed the extreme plight, which I could then share with my colleagues in the Senate, which I am now doing, and it will be in the CONGRESSIONAL RECORD for everyone to see.

A memorandum prepared by Bernard C. Rudegeair of the Greater Hazleton Health Alliance pointed out the following:

With competing institutions located within a 30- to 60-minute drive from our front