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Senate

(Legislative day of Wednesday, July 10, 2002)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

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

Blessed God, we praise You for this new day. You gave us good rest last night, replenishing our souls and our bodies. You awakened us with the reminder that this is Your day and You will show the way. With awe and wonder we acknowledge that any wisdom we will have will be a gift from You. You have given the Senators oversight of this Nation; now give them insight to know and do Your will. Give them humility to ask for a clear picture of Your best for each of the challenges ahead and for how they are to vote on the crucial legislation before them. You give wisdom to the humble, vision to the open-minded, and guidance to the receptive. Bless these Senators today, dear God. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 12, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, the two managers will be here shortly. Senator SARBANES is now here. The vote will occur at 9:30 a.m. There are a number of people who have requested I not extend the time because they have work to do. So we will vote at 9:30 a.m. Additional rollcall votes could be possible until 12 noon today. As indicated last night, there will be votes Monday afternoon beginning at 2 o'clock.

RESERVATION OF LEADER TIME

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

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002

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

The 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.

Pending:

Edwards modified amendment No. 4187, to address rules of professional responsibility for attorneys.

Daschle (for Levin) amendment No. 4269 (to amendment No. 4187), to address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits.

McCain motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs with instructions to report back forthwith with amendment No. 4270, to require publicly traded companies to record and treat stock options as expenses when granted for purposes of their income statements.

Reid (for Edwards) amendment No. 4271 (to the instructions of the motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs), to address rules of professional responsibility for attorneys.

Reid (for Levin) amendment No. 4272 (to amendment No. 4271), to address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 9:30 a.m. shall be equally divided between the two managers for debate only. Who yields time?

• 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 Senator from Maryland.

Mr. SARBANES. Madam President, I understand there will be about 5 minutes allotted each manager now. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. SARBANES. Madam President, very shortly we will be voting on a cloture petition with respect to this legislation, S. 2673. I urge my colleagues to vote for the cloture motion.

I know there are a lot of amendments pending, but we have now been on this legislation a full week. Even with the voting of cloture today, this matter will carry over into next week. There have been a range of amendments, some that are pending that are germane under cloture to the bill. In other words, they have been drawn in a way and the subject matter is focused and limited enough that they remain germane even after cloture.

There are a number of amendments that are relevant to the bill but not germane. Once cloture is invoked, they will fall. I know that is a matter of some concern to those who are proposing those amendments, but I do not know how we can handle this differently and move along towards a resolution.

In addition to those relevant amendments—and I have sympathy there because while they may not meet the very narrow definition of germaneness, they do touch the subject matter of the legislation—there are also amendments that are not even relevant to the bill that are sort of—I was going to say floating around, but it would be more accurate to say they are sort of present. They touch matters that have nothing to do with this legislation.

I am frank to say to my colleagues, I do not see how we can progress and move towards a final vote and resolution on this issue without invoking cloture this morning. We tried not to precipitate that early on, although I know people were then blocked from getting votes, and I regret that. I was concerned, as anyone, to get the votes and give people a chance to have their amendments considered. Nevertheless, we are now where we are, and I urge my colleagues to vote for cloture.

We have to move forward on this legislation. This is important legislation. I think the committee and my colleagues have fashioned legislation which will make a very important contribution toward addressing the serious economic challenge now confronting the country and this loss of confidence in the workings of our economic system. The fact that people cannot have any trust in or reliance on the basic financial information upon which they make important economic decisions is having a major impact on the workings of the economy and carries with it the very real potential of having an even more significant impact.

This is serious business, and the potential for an economic downturn, triggered in part by the difficulties we are

trying to address in this legislation, I think is not insignificant. So I think it is important that we move forward and pass this legislation. This is but one step along the way, and there are many steps left yet to be done.

I am hopeful at some point the administration will come to see the necessity of putting into place a statutory framework to provide for an independent oversight board with respect to the accounting industry, to address the conflict that exists on the part of auditors when they are the auditor of a company and at the same time are providing certain consulting services to the company which carry with them an inherent conflict of interest with their responsibilities as an auditor.

There are extensive provisions in this bill with respect to corporate responsibility and accountability with respect to corporate disclosure and, of course, with respect to the conflict of interest we have seen manifest with respect to stock analysts who are often in the position of giving buy recommendations on the stock of a company with which the analyst's company is also having investment banking deals which, of course, raises the question: Is the recommendation on the stock being done in order to gain the investment banking business? So we try to provide some, as they call them, Chinese walls between those two sides of the company in order to reduce the degree of that conflict.

Furthermore, this has a very significant authorization of additional monies for the SEC in order to be able to meet its responsibilities, which I think is very important. The President asked the other day in his address for another \$100 million. That is not sufficient. We have to do better than that so the SEC can do its job.

So we can move forward, I urge my colleagues to support the cloture motion which will be before us for a vote at 9:30.

I presume I have used my time, and I yield the floor so my colleague, the ranking Republican Member, may use his time.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. Madam President, we need to pass a bill. We are going to conference with a House bill that is substantially different from this bill. I believe that between the two bills, we can find a virtually unanimous vote. I think we can write a bill that will satisfy the President and both Houses of Congress. I do not think we are making the bill better. The amendments that are being offered now are largely non-germane. We have gotten into sort of a one-upmanship position, and I think we are harming the markets by convincing people that the cure may very well be worse than the disease.

It is very important that we get on with our business and that we pass this bill. I intend to vote for it today. I do not think it is the bill we need in the end, but it gets us to conference where

we can get the bill we need in the end. I urge my Republican colleagues to vote for it, not because in the end they are for this version but because they want to do something. We need to bring this debate to a close. We do have some germane amendments. We will be dealing with those, but the time has come to get on about our business. Getting on about our business means bringing this debate to a close.

So I urge my colleagues to vote to end the debate. Let us go to conference. Let us write this bill. Let us let it be known with certainty what our policy is going to be. If we do that, it will help restore confidence in the country. So I urge my colleagues to vote for cloture and, as we get to the end of the process, for the bill.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. I do not know if the manager has any time.

Mr. SARBANES. Do I have any time remaining?

The ACTING PRESIDENT pro tempore. The manager has no time.

Mr. LEVIN. Madam President, I ask unanimous consent that I be allowed to proceed until 9:30 when cloture is invoked.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEVIN. Madam President, a number of amendments have been pending where we have been unable to get a vote. These are highly relevant amendments, including mine which would have given the SEC administrative powers to impose civil fines.

The Republican manager said the amendments were not particularly relevant. Well, we had a highly relevant amendment that goes directly to the issue of abuses by corporate officers and corporate directors. The current fine structure of the SEC does not reach officers and does not reach directors, except by going to court. They have no administrative authority in the SEC to impose civil fines, the way they do with brokers and the way a lot of other agencies that regulate business have authority to do. The SEC does not have the power to impose administrative fines on directors and on officers of corporations. They should have that power administratively.

We were blocked in getting a vote, and the amendment which is pending is going to fall if cloture is invoked. That is the use of the rules. But let it be clear what the rules were used to do, which was to prevent a strengthening amendment for this bill.

It is a good bill. I compliment the sponsors of this bill. I compliment Senator SARBANES and his cosponsors that this bill can be strengthened; it should be strengthened. One of the strengthening amendments was blocked from getting to a vote yesterday and will fall if cloture is invoked.

We also have a question. What about postcloture? There are 48 germane or

arguably germane amendments. The question is whether or not the rules are going to be used again to block votes on germane amendments. I will object to that happening. I will do everything I can to make sure germane amendments, including some that I have filed, are considered postcloture.

I thank the manager for yielding. I yield the floor.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 442, S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002:

Jon Corzine, Deborah Stabenow, Paul Wellstone, Ron Wyden, Daniel Akaka, Barbara Boxer, Charles Schumer, Byron Dorgan, Harry Reid, Paul Sarbanes, Daniel Inouye, John Edwards, Barbara Mikulski, Thomas Carper, Jack Reed, Tim Johnson.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum has been waived.

The question is, Is it the sense of the Senate that debate on S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOLINOVICH), the Senator from Idaho (Mr. CRAPO), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

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

The yeas and nays resulted—yeas 91, nays 2, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—91

Akaka	Cleland	Frist
Allard	Clinton	Graham
Allen	Cochran	Gramm
Baucus	Collins	Grassley
Bayh	Conrad	Gregg
Bennett	Corzine	Hagel
Biden	Craig	Harkin
Bingaman	Daschle	Hatch
Bond	Dayton	Hollings
Boxer	DeWine	Hutchinson
Breaux	Dodd	Hutchison
Brownback	Domenici	Inhofe
Bunning	Dorgan	Jeffords
Burns	Durbin	Johnson
Byrd	Edwards	Kennedy
Campbell	Ensign	Kohl
Cantwell	Enzi	Kyl
Carnahan	Feingold	Leahy
Carper	Feinstein	Lieberman
Chafee	Fitzgerald	Lincoln

Lott	Reid	Specter
Lugar	Roberts	Stabenow
McConnell	Rockefeller	Stevens
Mikulski	Santorum	Thomas
Miller	Sarbanes	Thompson
Murkowski	Schumer	Thurmond
Murray	Sessions	Torricelli
Nelson (FL)	Shelby	Wellstone
Nelson (NE)	Smith (NH)	Wyden
Nickles	Smith (OR)	
Reed	Snowe	

NAYS—2

Levin
McCain

NOT VOTING—7

Crapo	Kerry	Warner
Helms	Landrieu	
Inouye	Voinovich	

The PRESIDING OFFICER (Mr. CARPER). On this vote, the yeas are 91, the nays are 2. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The pending motion to recommit is out of order.

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

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

The motion to lay on the table was agreed to.

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

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

The Senate is not in order. The Senate will be in order. The Senate is not in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, we can have order in the Senate with Senators in their seats. At least they do not need to be cluttering up the well. I want to say a few words.

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I have the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

SUPPLEMENTAL APPROPRIATIONS

Mr. BYRD. Mr. President, no committee in this Senate works harder than the Appropriations Committee. We have been working for months on the supplemental appropriations bill. We held hearings, months ago now, on the supplemental appropriations bill, hearings specifically concerning budget requests for homeland security.

The administration put its feet in cement and its head in the sand and adamantly opposed the committee's request, which was in writing, and signed by Mr. STEVENS and myself, to have Mr. Ridge come up and testify so that the Appropriations Committee in the

Senate, following a practice of 135 years of having witnesses appear in open sessions so that the people can hear what they said—the administration did not want that, and the President put a muzzle on his Homeland Security Director and said, no, he will not come.

Mr. STEVENS and I wrote a joint letter asking for an appointment with the President. We wanted to state our case. The President did not answer that letter. No. Some underling answered the letter.

So we had to proceed. We did. We proceeded as best we could. The full committee had excellent hearings over a period of 5 days, with testimony from firemen, policemen, local health officials, also testimony from seven Cabinet Members and the Director of FEMA.

So we proceeded as best we could. We put together a bill we thought was a good bill. Then, however, the President threatened to veto it because it had too much money, in his way of looking at it, too much money for homeland security. So there was the threat to veto the bill.

Only this week—perhaps it was Monday—the President, in a speech, assailed Congress for “delay” in getting this appropriations bill downtown, saying the Defense Department is hard up for moneys. So Mr. YOUNG, chairman of the House Appropriations Committee, Mr. OBEY, Mr. STEVENS, and I have been meeting. We met yesterday and we thought we had the whole thing pretty much wrapped up and that we could meet this morning in full committee and vote the conference report out, and send it back to both Houses for their judgments.

Lo and behold! At 7 o'clock last night, here comes a request from the White House to hold up further action. They want to send up a different budget.

So, who is holding up defense? The President, in a public speech, lambasts the Congress for not getting this appropriations bill to him sooner. We have been wanting to go with the President and get this bill on his desk, but he just has not supported the efforts of the appropriations members on both sides of the Capitol to move this bill, first withholding Mr. Ridge, who is the point man for the administration on homeland security, adamantly refusing to let him testify; then threatening to veto the bill. This is a difficult bill. The staffs work into the night around here on this bill; we try to work hard to get the bill down to the President. He assails the Congress for not sending the bill to him, saying that if he doesn't have it by a certain hour or day, it is going to affect the national defense, going to affect the military with personnel reductions and so on.

So we were prepared today to have a conference. I want all appropriations members within the sound of my voice to know that the meeting is canceled. Canceled, why? I understand that Mr.