

Representative Hawkins was also a strong proponent of projects designed to benefit the residents of his district. Throughout his career, he emphasized providing funding for such projects as library additions, a reading initiative for area schools, drug testing for student athletes, and a multitude of highway projects. In fact, his efforts at securing transportation funding for his district led the citizens of Hoover, Alabama, to request that four miles of Alabama 150 be named after him because of his assistance in ensuring the widening of that highway.

Representative Hawkins, a graduate of Marion Military Institute in Marion, Alabama, and the University of Alabama, was a distinguished veteran of World War II. He was retired from Alabama Power Company after a long tenure as a special projects manager.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated public servant and long-time advocate for Jefferson County, Alabama. Representative Hawkins will be deeply missed by his family—his wife, Betty Hawkins, and his sons, John Hawkins, III, Bill Hawkins, and Davis Hawkins—as well as the countless friends he leaves behind. Our thoughts and prayers are with them all at this difficult time.

HONORING THE MEMORY OF MR.
RALPH R. WILCOX, SR.

HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 9, 2004

Mr. BONNER. Mr. Speaker, Mobile County, Alabama, and indeed the entire First Congressional District recently lost a dear friend, and I rise today to honor him and pay tribute to his memory.

Ralph Wilcox, Sr., was a devoted family man and dedicated community servant throughout his entire life. He was retired following a long career with the Kimberly Clark Corporation, and in 1982 assumed a position on the board of directors of the Mobile County Water, Sewer and Fire Protection Authority. As a part of this organization, Mr. Wilcox and his fellow board members were responsible for oversight of one of the largest public utility and fire protection organizations in the State of Alabama, consisting of over 400 miles of water lines in Mobile County.

A lifelong resident of Theodore, Alabama, Mr. Wilcox was also actively involved in the life of his community, participating in several area youth organizations. He served on the council for the Boy Scouts of America and was an active member of the board of the Theodore Athletic Association. In 1980, he was inducted as member of the Mobile Youth Baseball Hall of Fame, and was nominated by the Tillman's Corner Chamber of Commerce as its Citizen of the Year.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated community servant and long-time advocate for Mobile County, Alabama. Ralph Wilcox, Sr., will be deeply missed by his family—his wife, Margaret Floyd Wilcox, his daughters, Stephanie Van Cleave and Margie Wilcox, his son, Ralph "Hoppy" Wilcox, Jr., his sister, Lucy Clark, seven grandchildren, and one great-grandchild—as well as the countless friends he leaves behind.

Our thoughts and prayers are with them all at this difficult time.

ESOP PROMOTION AND
IMPROVEMENT ACT OF 2004

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, July 9, 2004

Mr. BALLENGER. Mr. Speaker, I am introducing legislation today to promote employee ownership through employee stock ownership plans (ESOPs). Most of our colleagues are familiar with these plans, but are they aware that the most common form of providing stock ownership to non-managerial employees today is through ESOPs?

During my service in the House, Congress has expanded employee ownership in America. I have worked to expand ownership through ESOPs by introducing, cosponsoring and advocating legislation. Many new provisions of ESOP law first surfaced in legislation I introduced in 1990, 1991, 1993, and 1995. Through the years, I have worked to build bipartisan support for ESOPs in Congress.

Let me say to my colleagues that ESOPs are not just special arrangements for the top executives in a company. ESOPs are broad-based stock ownership plans that, over the past 30 years, have created significant wealth for employees. In many instances, they have been the innovators in participatory management practices that respect the individual while maximizing the performance of the company.

Studies demonstrate that the overwhelming majority of employee-owned companies are more successful and treat their employees better than non-employee-owned companies. For example, in the most comprehensive study of ESOP companies ever done, over 1100 ESOP companies were matched against their counterparts for an eleven-year period. The ESOP companies had a survivability rate 15 percent greater than the non-ESOP companies, had annual sales 2.4 percent greater on average, and provided more retirement benefits than their counterparts. In another study, Washington State's Economic Development Office found in 1997 and 1998 that ESOP companies in Washington State, when compared with non-employee-owned companies, paid higher wages, had better retirement, and had twice the retirement income for employees.

Despite all this favorable data, I cannot say that ESOP companies are always successful. But, I will say that they are usually high-performing companies that share with employees the wealth they help create and bring a real ownership culture into the workplace.

Overall, we have good ESOP laws on the books through our tax code and the Employee Retirement Income Security Act, which is overseen by the Department of Labor. My legislation does not unravel existing law, nor does it overreach with new, costly tax incentives for ESOP creation. Rather, my bill is a modest step toward aiding the creation of employee ownership through ESOPs and helping existing ESOP companies maximize their ownership structure.

Primarily, the ESOP Promotion and Improvement Act of 2004 would make minor changes in tax law to treat S-corps the same

as C-corps in the ESOP arena, which would help foster ESOP creation. My legislation would also extend to ESOPs some of the popular features accorded to retirement programs such as 401K's. Following is a brief explanation of my legislation:

First, I will clarify what was really an oversight in the drafting of the 1997 law encouraging S corporations to sponsor ESOPs. The 1997 law prevented S corporations from taking a tax deduction for dividends ('distributions on current earnings'). Since S corporations do not pay a corporate level tax, it is reasonable not to give a corporate level tax deduction. However, under current law, distributions from current earnings on ESOP stock paid to employees of S-corps are subject to a 10 percent penalty tax because the payments are treated as if they were early withdrawals from plan contributions to the ESOP. Clearly, Congress never intended for S corporations to have their dividends on ESOP stock treated more harshly than C corporation dividends paid on ESOP stock.

To address this problem, my legislation does away with the unfair 10 percent penalty and makes it clear that, as in C corporations, dividends paid by an S corporation on ESOP stock can be deducted if the deduction is used to pay the debt incurred to acquire the stock for the employees through the ESOP.

Next, my legislation permits the owners of S corporation stock to sell that stock to an ESOP and, under tight rules, to defer the gain on that sale if the following conditions are met. First, the ESOP must hold at least 30 percent of the outstanding stock of the S corporation. Second, the seller must reinvest his or her proceeds in American companies. This treatment has been permitted for owners of C stock of a private company since 1984, and it has been a boon to ESOP creation. In fact, surveys by the ESOP Association show that 70 to 75 percent of the ESOP companies in America were created by exiting shareholders of private companies using this 1984 law. I believe that if this provision, Code Section 1042, is expanded to include S corporations, there will be many more S corporation ESOPs.

I believe we also need to clarify a 1989 law that the IRS has stretched too far. Under an IRS regulation interpreting the corporate Alternative Minimum Tax (AMT), C corporation dividends that are paid on ESOP stock are calculated as part of a company's adjusted current earnings, which is used in calculating the corporate AMT. Three taxpayers have taken cases all the way to the Court of Appeals saying the IRS went beyond the reach of the law in this interpretation. However, the Courts have rejected these claims, stating that the IRS has wide discretion in promulgating regulations. We should reaffirm our commitment to ESOP creation and clarify that Congress never intended to make an ESOP benefit a tax liability by overturning these IRS rulings.

Finally, my bill contains two technical amendments clearing up some unfair and out of date elements of the 1984 IRC 1042 provision. My bill clarifies who can participate in a 1042 ESOP, and it permits the proceeds from a 1042 sale to be invested in mutual funds of U.S. stock, versus requiring direct stock purchases. In addition, my bill brings parity to ESOPs with other defined contribution plans by permitting ESOP participants to withdraw money from the ESOP under limited circumstances to pay for a first-time home or college tuition.