Committee for calendar year 1994; to the Committee on the Judiciary.

EC–1100. A communication from the Attorney General, transmitting, pursuant to law, the report on Federal Prison Industries, Inc.; to the Committee on the Judiciary.

EC–1101. A communication from the Chairman of the U.S. Sentencing Commission, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on the Judiciary.

EC–1102. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report of the proposed regulations governing the public financing of the Presidential Primary and General Election Candidates; to the Committee on Rules and Administration.

EC–1103. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Substance Abuse and Mental Health Performance Partnership Act of 1995''; to the Committee on Labor and Human Services.

EC–1104. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Preventive Health Performance Partnership Act of 1995''; to the Committee on Labor and Human Services.

EC–1105. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled ''The Health Centers Consolidation Act of 1995''; to the Committee on Labor and Human Services.

EC–1106. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the implementation of the National Child Abuse and Neglect Data System; to the Committee on Labor and Human Services.

EC–1107. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of the Administration on Developmental Disabilities for fiscal year 1993; to the Committee on Labor and Human Services.

EC–1108. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the National Advisory Council on Educational Research and Improvement; to the Committee on Labor and Human Resources.

EC–1109. A communication from the Secretary of Education, transmitting, pursuant to law, the report under the Inspector General Act for the period October 1, 1994 through March 31, 1995; to the Committee on Labor and Human Resources.

EC–1110. A communication from the Secretary of Education, transmitting, pursuant to law, the report on the performance standards and measurement systems developed by States for their vocational education programs; to the Committee on Labor and Human Resources.

EC–1111. A communication from the Administrator of the Small Business Administration, transmitting, a draft of proposed legislation relative to the SBA; to the Committee on Small Business.

EC–1112. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to amend Title 38, United States Code, to authorize the termination of Servicemen's Group Life Insurance when premiums are not paid; to the Committee on Veterans' Affairs.

EC–1113. A communication from the Comptroller General, transmitting, pursuant to law, the report of proposed rescissions of budget authority; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Commerce, Science, and Transportation, and to the Committee on the Judiciary.

EC–1114. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals dated June 1, 1995; referred jointly pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986 to the Committee on Appropriations, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science and Transportation, the Committee on Environment and Public Works, the Committee on Labor and Human Resources, the Committee on Small Business, the Committee on Finance, the Committee on Foreign Relations, and to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 457. A bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

By Mr. HATCH, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 27. A joint resolution to grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Donald C. Nugent, of Ohio, to be United States District Judge for the Northern District of Ohio.

Wiley Y. Daniel, of Colorado, to be United States District Judge for the District of Colorado.

Peter C. Economus, of Ohio, to be United States District Judge for the Northern District of Ohio.

Carlos F. Lucero, of Colorado, to be United States Circuit Judge for the Tenth Circuit.

Janie L. Shores, of Alabama, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1997.

Terrence B. Adamson, of the District of Columbia, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 1997.

Andrew Fois, of New York, to be an Assistant Attorney General.

Nancy Friedman Atlas, of Texas, to be United States District Judge for the Southern District of Texas.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH (for himself, Mr. GREGG, Mr. FRIST, Mr. KENNEDY, Mrs. KASSEBAUM, Mr. GRAMS, Mr. WELLSTONE, Mr. CHAFEE, Mrs. HUTCHISON, and Mr. D'AMATO):

S. 955. A bill to clarify the scope of coverage and amount of payment under the medicare program of items and services associated with the use in the furnishing of inpatient hospital services of certain medical devices approved for investigational use; to the Committee on Finance.

By Mr. GORTON (for himself, Mr. BURNS, Mr. MURKOWSKI, Mr. STEVENS, Mr. KEMPTHORNE, Mr. CRAIG, Mr. PACKWOOD, and Mr. HATFIELD):

S. 956. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. BURNS (for himself, Mr. KYL, Mr. THOMAS, Mr. HELMS, Mr. SANTORUM, Mr. NICKLES, Mr. THOMPSON, and Mr. BROWN):

S. 957. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Labor and Human Resources.

By Mr. HELMS:

S. 958. A bill to provide for the termination of the Legal Services Corporation; to the Committee on the Judiciary.

By Mr. HATCH (for himself, Mr. LIEBERMAN, and Mr. FAIRCLOTH):

S. 959. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself, Mr. GREGG, Mr. FRIST, Mr. KENNEDY, Mrs. KASSEBAUM, Mr. GRAMS, Mr. WELLSTONE, Mr. CHAFEE, Mrs. HUTCHISON, and Mr. D'AMATO):

S. 955. A bill to clarify the scope of coverage and amount of payment under the Medicare Program of items and services associated with the use in the furnishing of inpatient hospital services of certain medical devices approved for investigational use; to the Committee on Finance.

THE ADVANCED MEDICAL DEVICES ACCESS ASSISTANCE ACT OF 1995

Mr. HATCH. Mr. President, today I am introducing S. 955, the Advanced Medical Devices Access Assurance Act of 1995, which is aimed at addressing two serious threats to high quality health care in the United States: restricted access for our senior citizens to the most advanced medical technologies; and our country's loss of clinical research activities to overseas facilities.

I am pleased to be joined in cosponsorship of this bill by Senators GREGG, FRIST, KENNEDY, KASSEBAUM, GRAMS, WELLSTONE, CHAFEE, HUTCHISON, and D'AMATO.

At the outset, I want to recognize the outstanding leadership of our House colleague, Chairman BILL THOMAS, who introduced the companion measure as H.R. 1744 on June 6. Representative THOMAS was the first in Congress to step forward and take steps to correct the problem this legislation addresses. His leadership has been—and will continue to be—invaluable as we seek to move this legislation forward.

Mr. President, the Thomas-Hatch legislation was prompted as a result of recent changes in Health Care Financing Administration [HCFA] reimbursement practices for medical procedures which include the use of so-called next generation devices, that is, medical devices that are undergoing clinical trials, yet which have a precursor device which has been approved by the Food and Drug Administration as safe and effective.

In December 1994, HCFA advised its regional administrators that Medicare must only reimburse for items and services that are reasonable and necessary; according to HCFA, reimbursement of reasonable and necessary procedures precludes payment for the use of experimental or investigational services.

The HCFA policy change came on the heels of an HHS inspector general inquiry in which patient records were subpoenaed from over 100 hospitals nationwide, including virtually all of the premier medical research bodies in this Nation.

The effect of this change in HCFA policy is to deny Medicare contractors discretion to pay for any of a beneficiary's hospital costs and related services if an investigational device were being used, even if such a device were a refinement of a proven, FDA-approved technology.

Examples might be a pacemaker which is made in a smaller version or a pacemaker with a new type of lead.

This policy denies patients in the Medicare population the benefits of the best available medical therapies which are often life-saving and life-enhancing.

In effect, in adopting such a policy, HCFA has created a two-tiered health care delivery system, consisting of privately insured individuals who can access these improved devices and Medicare beneficiaries who cannot. That is a situation which must be corrected.

Although our senior citizens are the immediate victims of this unwise policy, all Americans will ultimately suffer.

Medicare's position not only deprives this Nation's elderly population of the most advanced, efficacious care and treatment available, but it also significantly interferes with clinical advancements that might otherwise be available for generations to come.

In addition, I wish to note there are other negative effects of the HCFA policy.

First, it undermines the Food and Drug Administration's efforts to press for clinical trials to prove the scientific validity of device studies.

Second, it delays advances in medical device technology for all Americans, not just those eligible for Medicare.

Third, it has a disproportionate impact on small-to-medium medical device companies, those who traditionally have been the leaders in developing innovative technology, and who simply cannot afford millions of dollars for clinical trials.

Fourth, the policy exacerbates current over-regulatory trends in the United States which are driving manufacturers offshore and jobs to other countries.

And fifth, it runs contrary to the recent report of the Physician Payment Review Commission, which stated that Congress should authorize an additional coverage option for Medicare so that:

For devices subject to Food and Drug Administration approval, and for other services that the Health Care Financing Administration has not approved for coverage, Medicare should pay up to the cost of standard care when the device or service is clearly substituting for an established one and is being evaluated in a Food and Drug Administration-approved or other approved study.

The situation giving rise to the legislation we offer today was first brought to my attention a year ago by officials of the LDS Hospital in Salt Lake City, UT.

LDS Hospital, which ranks among the top in the Nation for cardiac procedures, was among the more than 100 hospitals which had received a subpoena from the HHS inspector general for records relating to Medicare reimbursement of cardiac procedures reaching as far back as 10 years ago.

Included on the list of devices that are affected by this policy are implantable cardiac defibrillators, which are devices that are implanted in a patient's body and assist in correcting life threatening, irregular heart rhythms.

My colleagues may be aware of the problem with reimbursement for state-of-the-art defibrillators, as it was reported by John Carey in the June 12 issue of Business Week.

In reporting on the HCFA policy and its impact on clinical research and patient care, Mr. Carey wrote:

In some cases, the impact on the quality and cost of care was dramatic. Cardiac arrest survivors typically need defibrillators to shock their hearts back to normal whenever the fragile organ races out of control. For several years, the standard device was so large that it had to be implanted in patients' abdomens. But Minneapolis-based Medtronic, Inc. built a much smaller version that could fit in the pectoral region. In trials at the Mayo Clinic, says cardiologist Stephen C. Hammill, the new device reduced deaths from the actual operation from 3.8% of patients to zero—and cut hospital costs after implantation from $24,000 to $18,000. Yet Mayo's doctors could no longer use the device for Medicare patients—unless they found another way to pay the bills.

Let me put this in the words of one of Utah's preeminent cardiologists, Dr. Jeffrey L. Anderson, professor of medicine and chief of the division of cardiology at LDS Hospital in Salt Lake. Dr. Anderson has advised me:

Since notification of the OIG investigation and statement of the HCFA policy, the Division of Cardiology at LDS Hospital has been instructed by its Counsel to avoid use of any newer, incremental technologies in Medicare patients, including pacemakers, defibrillators, and interventional coronary devices (such as angioplasty catheters and stents) that are not final market approved.

Unquestionably, this has made our Medicare patients second class citizens, as these newer devices are generally smaller, more efficient and effective, last longer, and can be implanted with lower operative risk.

Dr. Anderson also notes a recent tendency for these new devices to be developed overseas and not readily available here. Several firms have indicated to him that initial research is now being done in Europe and elsewhere and that the devices will be only available here after final FDA approval, often with a delay of years.

Or, let me put it in the words of another distinguished Utah cardiologist, Dr. James W. Long, attending cardiothoracic surgeon at LDS Hospital. Dr. Long, has related to me:

As a cardiothoracic surgeon, I am extremely troubled by the growing restrictions which are preventing us from implementing great medical technologies for our patients in Utah. Clearly, three major impediments exist: First, reimbursement problems; second, product liability concerns; and third, FDA constraints. Those barriers are exercising a major chilling effect on the development and implementation of medical technologies which offer the hope of improving quality of life while offering cost-effectiveness.

Dr. Long goes on to state:

The current posture of HCFA to deny Medicare reimbursement for any hospital charges when a new, ''investigational'' device is used is an example of how problems with reimbursement lead to discrimination against the Medicare population. To illustrate, I can no longer implant a new, improved heart valve undergoing clinical evaluation because reimbursement for ALL hospital charges for the surgery and care (not just the heart valve charges) will be denied. This is even more frustrating when one considers that these clinical evaluations are being conducted with the approval of the FDA as well as local, hospital internal review boards or medical devices whose efficacy and safety have already been demonstrated in preclinical testing.

Mr. President, as has been demonstrated, over time, increasingly improved devices have been developed that are far more efficient and efficacious than each prior version of the device. Such refinements have not only improved the functioning of the device from a patient perspective, but also have: First, increased the longevity of the device, thereby minimizing the need for replacement; second, improved the ability to monitor the device without the need for hospitalization; and third, minimized the invasiveness of the procedure require to implant the device.

Not only have patient outcomes been greatly improved, but the overall costs and consumption of resources within the health care system have been reduced.

My concerns about the HCFA policy were reinforced by evidence revealed at a recent hearing before the Finance Committee.

During the committee's May 16 hearing on the solvency of the Medicare Program, Dr. John W. Rowe, president of the Mount Sinai Hospital and the Mount Sinai School of Medicine in New York City, shocked members by revealing that his medical center has virtually discontinued clinical research on investigational devices for Medicare beneficiaries because of the HCFA ruling.

Dr. Rowe related to the committee that:

The Inspector General of HHS has indicated that if a patient is given an investigational device—that is something that is not approved by the Food and Drug Administration for general use—during their experience in the hospital—let me be clear on this—then the entire reimbursement or payment for the admission to the hospital is not allowed and the hospital is liable for treble damages.

Dr. Rowe went on to make the point that, whereas Medicare historically has not paid for research, there are differences between real research and marginal refinements of innovations.

In subsequent correspondence to me, Dr. Rowe added another critical point. He said:

Mount Sinai's decision to stop all clinical trials was made after careful deliberation and with great regret and consternation, but is the only rational position that can be taken by an institution which, under normal circumstances, performs a large number of such trials.

This outcome is also a particularly unfortunate one given our belief that the controls put in place by the FDA's IDE approval process and Mount Sinai's own Institutional Review Board assure that there is an appropriate level of safety, efficacy, and oversight with respect to each such device. In the end, we believe that Medicare's position not only deprives this nation's elderly population of the most advanced, efficacious care and treatment available, but significantly interferes with clinical advancements that might otherwise be available for generations to come.

A survey released June 7 by the Health Industry Manufacturers Association reveals the problems inherent in this new HCFA policy.

HIMA found that 71 companies have had clinical trials with their products brought to a halt due to the new HCFA policy. The response of 40 percent of those companies was to limit the clinical research to non-Medicare patients, in other words, denying those seniors access to the latest medical technologies.

Even more indicative of this policy's ill effects, 59 percent surveyed had moved clinical trials overseas, and 57 percent said they plan to move future trials overseas.

It is clear that due the uncertainty generated by the recent change, clinical trials are being stopped around the country. Many medical technology companies are moving their life saving research technologies out of the United States to Europe, Canada, and Japan.

This loss of research will erode the base of expertise in an industry where the United States has traditionally led the world.

Mr. President, this policy must be changed for the benefit of our Nation's elderly and all Americans. The bill I am introducing today will accomplish this, and will do so without increasing Medicare costs.

Under S. 955, coverage would be limited to circumstances in which the device in question is used in lieu of an approved device or otherwise covered procedure. This latter provision permits the use of devices that are often used in lieu of far more invasive and costly procedures. Because these investigational devices reduce hospital stays, mortality and the need for repeat procedures, it is likely that this legislation will reduce total treatment costs over the long term.

In fact, the legislation specifically states that the amount of payment for any item or service associated with the use of an investigational device may not exceed the amount which would have been made for the approved device. This will ensure the bill's budget neutrality.

Before closing, Mr. President, I want to discuss for a moment one other factor which led us to introduce S. 955.

After Senator GREGG and I decided to explore legislation in this area, we contacted both HCFA and the OIG.

The IG's office advised us that ''This is an open active investigation in the OIG. It is the policy of the OIG not to comment on investigations which are active.''

HCFA officials, however, were extremely helpful, and shared with us the results of the considerable time they have spent on this issue.

Two factors, however, led us to conclude that legislation is necessary.

First, we were not persuaded that the agency's efforts would be concluded as quickly as we would like. And, second, while we agreed with HCFA's conclusion that Medicare should not be subsidizing pure research, we did not feel that these clinical investigations could be termed as such.

We were, however, concerned that the concept underlying the agency's proposed rule-making could lead to more regulation at the Food and Drug Administration, in that FDA is considering a system whereby investigational devices would be certified as eligible for Medicare reimbursement. With the device approval rate lag already the subject of mounting congressional concern, a process which adds even more review is not viable.

As I close, I would like to note the considerable support this legislation enjoys. It is supported by the American Academy of Orthopedic Surgeons, American College of Cardiology, American Hospital Association, American Medical Association, Association of American Medical Colleges, Association of Professors of Medicine, California Health Care Institute, Catholic Health Association, Cleveland Clinic, Coalition of Boston Teaching Hospitals, Federation of American Health Systems, Greater New York Hospital Association, Health Industry Manufacturers Association, Mayo Clinic, Medical Device Manufacturers' Association, North American Society of Pacing and Electrophysiology, Society of Thoracic Surgeons, and last but not least, the Utah Life Science Industries Association.

In introducing this legislation today, it is our hope that the bill can be incorporated in this year's reconciliation legislation and moved swiftly to the President for signature. I urge my colleagues to support the Advanced Medical Devices Access Act of 1995.

Mr. GREGG. Mr. President, I am pleased to join my colleagues, especially my colleague from Utah, Senator HATCH, in introducing this important piece of legislation. The Advanced Medical Devices Access Assurance Act of 1995 was developed to ensure that our senior population can be treated with the most advanced—and most cost-effective—medical technology available in the United States.

As chairman of the Aging Subcommittee in the Senate, I hear constantly from older individuals who are concerned about their medical options: They read about a breakthrough technology that is being explored, and want an opportunity to have access to such a product. Believe me, these folks are often more up-to-speed about their medical choices than you or I; they take the time to do their homework on their health care.

As my colleague, Senator HATCH, has mentioned, this bill is designed to get at the heart of a problem which has arisen from a Health Care Financing Administration policy. HCFA has ruled that it will not provide Medicare reimbursement for any episode—any portion of the care associated with the device, including the hospital stay—which uses a medical device not defined as ''reasonable or necessary.'' ''Reasonable and necessary'' excluded medical devices which are being implanted under an FDA investigation device exemption, or IDE.

In other words, if a surgeon who is performing state-of-the-art medicine wants to take advantage of a product which has been granted an IDE, he or she can only do so on their population under age 65. The random nature of a person's date of birth controls their ability to receive the most modern care, to get that technology that we are constantly touting as the ''best in the world.''

A clear backlash from this policy has also been seen in the form of a mass exodus of clinical trials being conducted in the United States. The brain drain in medical device development and manufacturing in this country has already begun to have devastating results. Not only does the United States now have an atmosphere unconducive to research and development, but it has evolved into an environment that is unattractive for investment capital to be risked on medical devices. Not only does this relegate the citizens of this country to antiquated generations of technology, it moves jobs and innovation overseas.

I am hopeful that the administration will listen to the plea we are making here today to address this critical issue. While it may seem like a small item on the agenda of the day, it is probably the greatest accomplishment we could achieve for those individuals whose lives and medical care we can so easily improve.

Mr. KENNEDY. Mr. President, it's an honor to join Senator HATCH and other Members of the House and Senate in sponsoring this important bipartisan legislation. Insurance coverage for physician and hospital costs in clinical trials is essential to the progress of medicine.

The current policy under Medicare is especially counterproductive, because it denies reimbursement even if expensive care would be required if the patient does not participate in the clinical trials.

The current rules are clearly impeding research at leading hospitals around the country. Needed medical care is being denied to many elderly patients. It's time to change the rules and take this step to enhance research and improve patient care.

Mr. WELLSTONE. Mr. President, I am pleased to be a cosponsor of the Advanced Medical Devices Access and Assurance Act of 1995 which would ensure that seniors can participate in clinical trials that involve investigational medical devices. It signifies a bipartisan first step toward addressing patient concerns about access to the latest technologies. It also addresses the medical research community's concerns about its ability to continue clinical trials and keep our Nation at the forefront of state-of-the-art medicine, and industry's concerns about being forced to ship all of its resources and brainpower overseas.

Minnesota's patients, researchers, and world-famous medical device industry have a clear stake in both the upcoming Medicare and FDA reform debates. Researchers and industry need to know that the Government will create a favorable environment for innovation, thus propelling this country's leadership position into the 21st century. And, Minnesota's patients need to know that they will have access to the best technologies and the latest treatments and that, when appropriate, these will be covered by their health insurance policies.

Unfortunately, access to leading-edge technologies and next generation medical devices for seniors—the population for whom they are often most appropriate—has recently been jeopardized by the Medicare Program's refusal to pay for them in clinical trials.

A next generation device could be a pacemaker that enables a person to lead a more normal life than a traditional pacemaker. It could be a pacemaker that would last longer than an older model and be more reliable. Next generation devices are medical devices which are undergoing clinical trials, yet which have a precursor device which has been approved by the Federal Food and Drug Administration [FDA] as safe and effective. Medical devices—unlike drugs—are continually updated and improved incrementally even after they are approved by the FDA.

But currently, Medicare just flat-out denies payment for the surgery or illness if an investigational device is used. Medicare will pay for the costs associated with the hospital stay and procedure only if the soon-to-be-obsolete device is used and not the newest model. Therefore, even though the patient potentially benefits from receiving a modified and updated pacemaker and clinical studies are necessary to prove what works and what does not, hospitals and physicians are being forced to exclude seniors from clinical trials. Providers and manufacturers would rather more their studies to Europe where everybody has health insurance than confront reimbursement practices that discourage participation in clinical trials. But patients want the leading-edge technologies available in the United States as quickly as possible.

Some may surmise that Medicare has refused to pay for this technology because of safety concerns. But any next generation device involved in a clinical trial has already received approval from the FDA to test the device in humans. During a study of an FDA-approved investigational device, physicians and hospitals follow strict procedures. Hospitals and physicians must have the informed consent of the patient in order for the patient to be eligible to participate in the investigational device studies. And the manufacturer of the device is prohibited from promoting or commercializing the device or charging a price that exceeds the amount necessary to recover its costs.

So how much would it cost the Medicare Program to pay for the most advanced technologies? Currently, Medicare pays a lump sum for surgeries and hospitalization based on the illness of the patient. If you need a pacemaker and choose to be a part of an FDA-approved clinical trial, it shouldn't matter to the Medicare Program whether you get the next generation model of the pacemaker or the current model—as long as the FDA has approved the clinical trial and you gave your informed consent to participate. In other words, Medicare should pay the hospital a lump sum based on the illness of the patient regardless of which device is used.

This legislation provides a commonsense solution that protects patient safety, access to high-quality health care, and Federal dollars. For the sake of Minnesotans, we must meet these standards during the broader Medicare and FDA reform debates.

By Mr. HELMS:

S. 958. A bill to provide for the termination of the Legal Services Corporation; to the Committee on the Judiciary.

LEGAL SERVICES CORPORATION TERMINATION ACT

Mr. HELMS. Mr. President, with a Federal debt of $4,898,068,854,045.71 as of the close of business yesterday, Wednesday, June 21, it is time to ask ourselves a question: Should Congress continue to force the American taxpayers to provide $400 million every year to pay the salaries of, and to otherwise fund, a cadre of liberal lawyers to push their social policies down the throats of local governments and citizens?

I think not—and I suspect most Americans will agree, which is why I today offer legislation to put an end to Federal funding of the Legal Services Corporation.

North Carolina has been harassed by the LSC for years and, adding insult to injury, LSC attorneys in my State—whose salaries are federally subsidized—are now demanding through the courts that the State of North Carolina pay them $320,000 in additional attorney's fees.

Mr. President, a few details about this specific outrage may be in order.

In 1975, Legal Services attorneys successfully took on the State of North Carolina on behalf of applicants enrolled in the Federal Aid to Families with Dependent Children and Medicaid programs. And what was the great offense by North Carolina's local Departments of Social Services to justify this law suit? In the arrogant judgment of the Legal Services lawyers, it was taking the local Departments of Social Services too long to process benefits.

Since that time, the local Departments of Social Services have done their best to follow the numerous court-imposed requirements. In the meantime, the Legal Services attorneys have collected—now get this, Mr. President—an estimated $1 million in attorney's fees from the State of North Carolina. But that doesn't satisfy them. On June 14, a little more than a week ago, the Legal Services attorneys demanded another $320,000 in attorney's fees.

So, Mr. President, these Legal Services attorneys are paid with Federal funds through the Legal Services Corporation and with State and local Legal Services agencies to sue the State of North Carolina. In addition to the taxpayers' money they receive to dismantle local government policies, the Legal Services attorneys are demanding additional money for themselves—out of the pockets of North Carolina's taxpayers.

The legislation I introduce today will fix this costly problem—by ending Federal funding of Legal Services Corporation, which like most other social programs spawned in the 1960's, has strayed far from any meaningful purpose and deserves a quiet funeral.

For the record, the Legal Services Corporation was created in 1974 ostensibly to provide legal assistance to low-income citizens in civil, noncriminal matters. Its first annual budget, for fiscal year 1976 was $92 million. It will cost the taxpayers $400 million in 1995. It does not provide services directly, it makes grants to local agencies which in turn are charged with providing legal services to those who can't afford a lawyer—low-income individuals, migrants and immigrants, and minorities.

Mr. President, it is precisely these local agencies throughout the country which, instead of carrying out the mission of providing legal assistance to those who can't afford it, have promoted a liberal public policy and propaganda mechanism. It has unmercifully harassed law-abiding citizens and has imposed countless dollars in litigation costs upon hapless small businessmen, farmers, and so forth.

Another example from North Carolina:

The Department of Labor, in conjunction with local legal services agencies, has done its best to dismantle the H–2A Immigrant Farm Labor Program—a Federal program allowing small farmers to employ temporary immigrant workers for seasonal harvests. Since North Carolina's farmers have had difficulty finding citizens to work on their farms, this program is a must for the survival of many of these small farms.

There is no other reason for the local legal service agency to harass North Carolina's farmers beyond furthering the protection and rights of immigrants brought in to work.

Mr. President, the North Carolina Growers Association is today mired in a legal battle to protect the rights of farmers to participate in a program designed by Congress to assist farming production. The irony is that the American taxpayer is forced to fund the LSC and its liberal assault on law-abiding citizens, North Carolina's farmers included.

Of course, the LSC has not limited its activities to bullying citizens. The corporation has set its sights on changing State laws through litigation and direct lobbying as well as tearing apart programs designed to help the poor and needy.

For example, as the Heritage Foundation notes in its publication ''Rolling Back Government: A budget plan to rebuild America,'' the LSC recently filed a lawsuit in New Jersey challenging that State's welfare reform initiatives. In New York City, the LSC filed suit against HELP, a proven nonprofit organization that assists the homeless. The LSC has even pursued cases to provide free public education for illegal aliens. The Heritage Foundation report concludes, ''rather than helping the poor settle landlord disputes, wills, and other common legal problems, the LSC increasingly is concerned with public policy.''

Perhaps William Mellor, president of the Washington-based Institute for Justice, said it best in his February 1, 1995, editorial, ''Want Welfare Reform? First Fight Legal Services Corporation.'' Mr. Mellor writes:

> Instead of just helping the poor with problems such as child support and rent disputes, LSC lawyers have worked for years to get the courts to enshrine a constitutional right to welfare.

Mr. President, is this the kind of arrogant absurdity that was intended for LSC? Why should the U.S. Congress be concerned with—as candidate Bill Clinton put it—''changing welfare as we know it,'' when the taxpayers are required to pay lawyers to convince the Federal courts to make welfare a constitutional right?

The American people in the 1994 election emphatically stated that government is running their lives. There is far more waste in government than the American people should be forced to pay for.

Congress, for a half century, has been wasting billions of dollars, running up a Federal debt of about $4.9 trillion. Fortunately, for the American people, the House of Representatives has proposed eliminating funding for the Legal Services Corporation, the cost of which has exploded from $92 million in fiscal year 1976 to $400 million in fiscal year 1995. And according to the Heritage Foundation, despite this large budget and tremendous growth, only 4 percent of the Nation's poor directly benefited from the LSC in 1993.

So, Mr. President, the legislation I offer today, to eliminate Federal funding of the Legal Services Corporation, is long past due. While saving the taxpayers millions of dollars, my bill will end the forced sponsorship by the U.S. taxpayers of an agency the purpose and mission of which was laid aside and forgotten long ago in its rush to promote a leftwing social agenda. It's time for the Legal Services Corporation to be discarded—forever.

By Mr. HATCH (for himself, Mr. LIEBERMAN, and Mr. FAIRCLOTH):

S. 959. A bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes; to the Committee on Finance.

CAPITAL GAINS FORMATION ACT OF 1995

Mr. HATCH. Mr. President, on behalf of myself, Senator LIEBERMAN, and Senator FAIRCLOTH, I rise today to introduce the Capital Gains Formation Act of 1995.

Mr. President, reducing the high rate on capital gains has long been a priority of mine. Earlier this year, I joined my good friend, the chairman of the House Ways and Means Committee, BILL ARCHER, in introducing the Archer-Hatch capital gains bill in Congress. In the Senate, this was S. 182. A modified version of this bill was passed by the House in April.

Now that the Congress is on the verge of passing a budget resolution that will almost certainly allow for some tax reductions, Senator LIEBERMAN and I concluded that it is now the right time to introduce a bipartisan capital gains tax reduction bill that will contribute to economic growth and job creation. We are exceptionally pleased to be joined in this effort by Senator FAIRCLOTH.

Our bill combines the best elements of the House-passed capital gains bill with a targeted incentive to give an extra push for newly formed or expanding small businesses. Like the capital gains measure the House passed in April, our bill would allow individual taxpayers to deduct 50 percent of any net capital gain. This means that the top capital gains tax rate for individuals would be 19.8 percent. Also like the House bill, it grants a 25-percent maximum capital gains tax rate for corporations. Our bill also includes the important provision of the House-passed bill that would allow homeowners who sell their personal residences at a loss to take a capital gains deduction.

Unlike the House measure, however, the bill we are introducing today does not include provisions for indexing assets. Many of our Senate colleagues have expressed concern that indexing capital assets would results in undue complexity and possibly lead to a resurgence of tax shelters. While I support the concept of indexing capital assets to prevent the taxation of inflationary gains, we felt it important to streamline this bill to ease its passage in the Senate. I hope that some form of indexing can be developed, perhaps by a Senate-House conference committee, that will achieve the goals of indexing without adding undue complexity, or the potential for abuse, to the code.

In addition to the broad-based provisions listed above, our bill also includes some extra capital gains incentives targeted to individuals and corporations who are willing to invest in small businesses. We see this add-on as an inducement for investors to provide the capital needed to help small businesses get established and to expand.

Mr. President, this additional targeted incentive works as follows: If an investor buys newly issued stock of a qualified small business, which is defined as one with up to $100 million in assets, and holds that stock for 5 or more years, he or she can deduct 75 percent of the gain on the sale of that stock, rather than just the 50 percent deduction provided for other capital gains.

In addition, anytime after the end of the 5-year period, if the investor decides to sell the stock of one qualified small business and invest in another qualified small business, he or she can completely defer the gain on the sale of the first stock and not pay taxes on the gain until the second stock is sold. In essence, the investor is allowed to roll over the gain into the new stock until he or she sells the stock and keeps the money. We think that this additional incentive will make a tremendous amount of capital available for new and expanding small businesses in this country.

Let me just add, Mr. President, that these special incentives should really make a difference in the electronics, biotechnology, and other high-technology industries that are so important to our economy and to our future. The software and medical device industries in Utah are perfect examples of how these industries have transformed our economy. While these provisions are not limited to high-tech companies by any means, these are the types of businesses that are most likely to use them because it is so hard to attract capital for these higher risk ventures.

Our economy is becoming more connected to the global marketplace every day. And, it is vital for us to realize that capital flows across national boundaries these days at the speed of light. Therefore, we need to be concerned with how our trading partners tax capital.

Unfortunately, the United States has the highest rate on individual capital gains of all of the G–7 nations, except the United Kingdom. And, even in the United Kingdom, individuals can take advantage of indexing to alleviate capital gains caused solely by inflation. Germany totally exempts long-term capital gains on securities. In Japan, investors pay the lesser of 1 percent of the sales price or 20 percent of the net gain. I think it is no coincidence, Mr. President, that Germany's saving rate is twice ours and Japan's is three times as high as ours. In order to stay competitive in the world, it is vital that our tax laws provide the proper incentive to attract the capital we need here in the United States.

We are aware that some of the opponents of capital gains tax reductions have asserted that such changes would inordinately benefit the wealthy, leaving little or no tax relief for the lower- and middle-income classes. Nothing could be further from the truth. In fact, capital gains taxation affects every homeowner, every employee who participates in a stock purchase plan, or every senior citizen who relies on income from mutual funds for their basic needs during retirement.

The current law treatment of capital gains only gives preferential treatment to those taxpayers who incomes lie in the highest tax brackets. Under the Capital Formation Act of 1995, the benefits will tilt decidedly toward the middle-income taxpayer. A married couple with $39,000 in taxable income who sells a capital asset would, under our bill, pay only a 7.5 percent tax on the capital gain. Further, this bill would slash the taxes retired seniors pay when they sell the assets they have accumulated for income during retirement.

I also believe there is a misperception about the term ''capital asset.'' We tend to think of capital assets as something only wealthy persons have. In fact, a capital asset is a savings account—which we should all have—a piece of land, a savings bond, some stock your grandmother bought you, your house, your farm, your 1964 Mustang convertible, or any number of things that have monetary worth. It is misleading to imply that only the wealthy would benefit from this bill.

I want to elaborate on this point, Mr. President. Current law already provides a sizeable differential between ordinary income tax rates and capital gains tax rates for upper income taxpayers. The wealthiest among us pay up to 39.6 percent on ordinary income but only 28 percent on capital gains. We certainly feel that this 28 percent is too high. But, my point is that taxpayers in the lower bracket of 28 percent and the lowest bracket of 15 percent enjoy no difference between their capital gains rate and their ordinary income rate. Our bill would correct this problem and give the largest percentage rate reduction to the lowest income taxpayers.

Frankly, Mr. President, the introduction of a bipartisan capital gains bill couldn't come at a better time than now. There are currently some indications that our economy is slowing down. In fact, some experts feel we may be on the verge of a mild recession. Such a concern is always important, but right now, it is critical. Congress is in the midst of formulating a 7-year plan to balance the Federal budget. The elements of this plan will have consequences far beyond this year or even beyond 2002 when we hope to achieve our goal.

Crucial to the achievement of a balanced budget is the underlying growth and strength of our economy. Small changes in the behavior of the economy can make or break our ability to put our fiscal house in order. Thus, especially right now, we can ill afford to have our economy slow down. Such a recession could make it impossible for us to balance the budget. With recession comes the fear of future job insecurity. Both Republicans and Democrats alike can agree that the creation of new and secure jobs is imperative for a vibrant and growing economy.

This is where a reduction of the capital gains rate can be so important. By stimulating the economy and spurring job creation, a cut in the capital gains rate can stave off the downturn that appears to be on its way.

This is not just our opinion. Senator LIEBERMAN and I received a letter yesterday from Allen Sinai, a well-known and respected mainstream economist. In his letter, Dr. Sinai concludes that ''The enactment of this bipartisan Senate bill* * *could well help offset forces contributing to the current cooling of the U.S. economy.''

Many Americans have expressed concern about the wisdom of a tax reduction while we are trying to balance the budget. However, Mr. President, we see this bill as a change that will help us balance the budget. The evidence clearly shows that a cut in the capital gains tax rate will increase, not decrease, revenue to the Treasury. During the period from 1978 to 1985, the tax rate on capital gains was cut from almost 50 percent to 20 percent. Over this same period, however, tax receipts increased from $9.1 billion to $26.5 billion. The opposite occurred after the 1986 Tax Reform Act raised the capital gains tax rate. The higher rate resulted in less revenue.

Mr. President, the capital gains tax is really a tax on realizing the American dream. For those Americans who have planted seeds in savings accounts, small or large companies, family farms, or other investments, and who have been fortunate enough and worked hard enough to see them grow, the capital gains tax is a tax on success. It is an additional tax on the reward for taking risks. The American dream is not dead; it's just that we have been taxing it away.

I urge my colleagues on both sides of the aisle to take a close look at this bill. We believe it offers a solid plan to help us achieve our goal of a brighter future for our children and grandchildren. When it comes down to it, jobs, economic growth, and entrepreneurship are not partisan issues. They are American issues. This bill will help us get there.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 959

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Capital Formation Act of 1995''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—CAPITAL GAINS REFORM

Subtitle A—Capital Gains Deduction for Taxpayers Other Than Corporations

SEC. 101. CAPITAL GAINS DEDUCTION.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following new section:

''SEC. 1202. CAPITAL GAINS DEDUCTION.

''(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

''(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(d) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1995—

"(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1995, and

"(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

"(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund."

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 is amended by inserting after paragraph (15) the following new paragraph:

"(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202."

(c) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 1 is amended by striking subsection (h).

(2) Paragraph (1) of section 170(e) is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "50 percent (25/35 in the case of a corporation) of the amount of gain".

(3) Subparagraph (B) of section 172(d)(2) is amended to read as follows:

"(B) the deduction under section 1202 and the exclusion under section 1203 shall not be allowed."

(4) The last sentence of section 453A(c)(3) is amended by striking all that follows "long-term capital gain," and inserting "the maximum rate on net capital gain under section 1201 or the deduction under section 1202 (whichever is appropriate) shall be taken into account."

(5) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year or gain described in section 1203(a), proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses) or for the exclusion allowable to the estate or trust under section 1203 (relating to exclusion for gain from certain small business stock). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(6) The last sentence of section 643(a)(3) is amended to read as follows: "The deduction under section 1202 (relating to deduction of excess of capital gains over capital losses) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account."

(7) Subparagraph (C) of section 643(a)(6) is amended by inserting "(i)" before "there shall" and by inserting before the period ", and (ii) the deduction under section 1202 (relating to capital gains deduction) and the exclusion under section 1203 (relating to exclusion for gain from certain small business stock) shall not be taken into account".

(8) Paragraph (4) of section 691(c) is amended by striking "sections 1(h), 1201, 1202, and 1211" and inserting "sections 1201, 1202, 1203, and 1211".

(9) The second sentence of section 871(a)(2) is amended by inserting "or 1203" after "section 1202".

(10)(A) Paragraph (2) of section 904(b) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

"(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income."

(B) Subparagraph (A) of section 904(b)(2), as so redesignated, is amended—

(i) by striking all that precedes clause (i) and inserting the following:

"(A) CORPORATIONS.—In the case of a corporation—", and

(ii) by striking in clause (i) "in lieu of applying subparagraph (A),".

(C) Paragraph (3) of section 904(b) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraph:

"(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b)."

(D) Clause (v) of section 593(b)(2)(D) is amended—

(i) by striking "if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,", and

(ii) by striking "section 904(b)(3)(E)" and inserting "section 904(b)(3)(D)".

(11) The last sentence of section 1044(d) is amended by striking "1202" and inserting "1203".

(12)(A) Paragraph (2) of section 1211(b) is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain."

(B) So much of paragraph (2) of section 1212(b) as precedes subparagraph (B) thereof is amended to read as follows:

"(2) SPECIAL RULES.—

"(A) ADJUSTMENTS.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year."

(C) Subsection (b) of section 1212 is amended by adding at the end the following new paragraph:

"(3) TRANSITIONAL RULE.—In the case of any amount which, under this subsection and section 1211(b) (as in effect for taxable years beginning before January 1, 1996), is treated as a capital loss in the first taxable year beginning after December 31, 1995, paragraph (2) and section 1211(b) (as so in effect) shall apply (and paragraph (2) and section 1211(b) as in effect for taxable years beginning after December 31, 1995, shall not apply) to the extent such amount exceeds the total of any capital gain net income (determined without regard to this subsection) for taxable years beginning after December 31, 1995."

(13) Paragraph (1) of section 1402(i) is amended by inserting ", and the deduction provided by section 1202 and the exclusion provided by section 1203 shall not apply" before the period at the end thereof.

(14) Subsection (e) of section 1445 is amended—

(A) in paragraph (1) by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "25 percent (or, to the extent provided in regulations, 19.8 percent)", and

(B) in paragraph (2) by striking "35 percent" and inserting "25 percent".

(15)(A) The second sentence of section 7518(g)(6)(A) is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (25 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (25 percent".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following new items:

"Sec. 1202. Capital gains deduction.

"Sec. 1203. 50-percent exclusion for gain from certain small business stock."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) shall apply to contributions on or after January 1, 1995.

(3) USE OF LONG-TERM LOSSES.—The amendments made by subsection (c)(12) shall apply to taxable years beginning after December 31, 1995.

(4) WITHHOLDING.—The amendment made by subsection (c)(14) shall apply only to amounts paid after the date of the enactment of this Act.

Subtitle B—Capital Gains Reduction for Corporations

SEC. 111. REDUCTION OF ALTERNATIVE CAPITAL GAIN TAX FOR CORPORATIONS.

(a) IN GENERAL.—Section 1201 is amended to read as follows:

"SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS.

"(a) GENERAL RULE.—If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, and 831 (a) and (b) (whichever is applicable), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

"(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

"(2) a tax of 25 percent of the net capital gain.

"(b) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of any taxable year ending after December 31, 1994, and beginning before January 1, 1996, in applying subsection (a), net capital gain for such taxable year shall not exceed such net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1994.

"(2) SPECIAL RULE FOR PASS-THRU ENTITIES.—Section 1202(d)(2) shall apply for purposes of paragraph (1).

"(c) CROSS REFERENCES.—

"For computation of the alternative tax—

"(1) in the case of life insurance companies, see section 801(a)(2),

"(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

"(3) in the case of real estate investment trusts, see section 857(b)(3)(A)."

(b) TECHNICAL AMENDMENT.—Clause (iii) of section 852(b)(3)(D) is amended by striking "65 percent" and inserting "75 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

Subpart C—Capital Loss Deduction Allowed With Respect to Sale or Exchange of Principal Residence

SEC. 121. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 (relating to limitation on losses of individuals) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; and", and by adding at the end the following new paragraph:

"(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1994, in taxable years ending after such date.

TITLE II—SMALL BUSINESS VENTURE CAPITAL STOCK

SEC. 201. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.

(a) INCREASE IN EXCLUSION PERCENTAGE.—

(1) IN GENERAL.—Section 1203(a), as redesignated by section 101, is amended—

(A) by striking "50 percent" and inserting "75 percent", and

(B) by striking "50-PERCENT" in the heading and inserting "Partial".

(2) CONFORMING AMENDMENTS.—

(A) Section 1203, as so redesignated, is amended by adding at the end the following new subsection:

"(l) CROSS REFERENCE.—

"For treatment of eligible gain not excluded under subsection (a), see sections 1201 and 1202."

(B) The heading for section 1203, as so redesignated, is amended by striking "**50-percent**" and inserting "**partial**".

(C) The table of sections for part I of subchapter P of chapter 1, as amended by section 101(d), is amended by striking "50-percent" in the item relating to section 1203 and inserting "Partial".

(b) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Subsection (a) of section 1203, as redesignated by section 101, is amended by striking "other than a corporation".

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 1203, as so redesignated, is amended by adding at the end the following new paragraph:

"(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock of a member of a parent-subsidiary controlled group (as defined in subsection (d)(3)) shall not be treated as qualified small business stock while held by another member of such group."

(c) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Subsection (a) of section 57 is amended by striking paragraph (7).

(2) TECHNICAL AMENDMENT.—Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking ", (5), and (7)" and inserting "and (5)".

(d) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) Paragraph (1) of section 1203(d), as redesignated by section 101, is amended by striking "$50,000,000" each place it appears and inserting "$100,000,000".

(2) Subsection (d) of section 1203, as so redesignated, is amended by adding at the end the following new paragraph:

"(4) INFLATION ADJUSTMENT OF ASSET LIMITATION.—In the case of stock issued in any calendar year after 1996, the $100,000,000 amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000."

(e) REPEAL OF PER-ISSUER LIMITATION.—Section 1203, as redesignated by section 101, is amended by striking subsection (b).

(f) OTHER MODIFICATIONS.—

(1) REPEAL OF WORKING CAPITAL LIMITATION.—Paragraph (6) of section 1203(e), as redesignated by section 101, is amended—

(A) by striking "2 years" in subparagraph (B) and inserting "5 years", and

(B) by striking the last sentence.

(2) EXCEPTION FROM REDEMPTION RULES WHERE BUSINESS PURPOSE.—Paragraph (3) of section 1203(c), as so redesignated, is amended by adding at the end the following new subparagraph:

"(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitations of this section."

(g) QUALIFIED TRADE OR BUSINESS.—Section 1203(e)(3), as redesignated by section 101, is amended by inserting "and" at the end of subparagraph (C), by striking ", and" at the end of subparagraph (D) and inserting a period, and by striking subparagraph (E).

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsections (a), (c), (e), and (f) shall apply to stock issued after August 10, 1993.

SEC. 202. ROLLOVER OF GAIN FROM SALE OF QUALIFIED STOCK.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 is amended by adding at the end the following new section:

"SEC. 1045. ROLLOVER OF GAIN FROM QUALIFIED SMALL BUSINESS STOCK TO ANOTHER QUALIFIED SMALL BUSINESS STOCK.

"(a) NONRECOGNITION OF GAIN.—In the case of any sale of qualified small business stock with respect to which the taxpayer elects the application of this section, eligible gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

"(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

"(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED SMALL BUSINESS STOCK.—The term 'qualified small business stock' has the meaning given such term by section 1203(c).

"(2) ELIGIBLE GAIN.—The term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012)."

"(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

"(c) SPECIAL RULES FOR TREATMENT OF REPLACEMENT STOCK.—

"(1) HOLDING PERIOD FOR ACCRUED GAIN.—For purposes of this chapter, gain from the disposition of any replacement qualified small business stock shall be treated as gain from the sale or exchange of qualified small business stock held more than 5 years to the extent that the amount of such gain does not exceed the amount of the reduction in the basis of such stock by reason of subsection (b)(4).

"(2) TACKING OF HOLDING PERIOD FOR PURPOSES OF DEFERRAL.—Solely for purposes of applying this section, if any replacement qualified small business stock is disposed of before the taxpayer has held such stock for more than 5 years, gain from such stock shall be treated eligible gain for purposes of subsection (a).

"(3) REPLACEMENT QUALIFIED SMALL BUSINESS STOCK.—For purposes of this subsection, the term 'replacement qualified small business stock' means any qualified small business stock the basis of which was reduced under subsection (b)(4)."

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a)(23) is amended—

(A) by striking ''or 1044'' and inserting '', 1044, or 1045'', and

(B) by striking ''or 1044(d)'' and inserting '', 1044(d), or 1045(b)(4)''.

(2) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

''Sec. 1045. Rollover of gain from qualified small business stock to another qualified small business stock.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to stock sold or exchanged after the date of the enactment of this Act.

SUMMARY OF CAPITAL FORMATION ACT OF 1995

The Capital Formation Act of 1995 would reduce the tax rate on capital gains and encourage investment in new and growing business enterprises through the following provisions:

I. BROAD-BASED TAX RELIEF (SIMILAR TO PROVISIONS IN HOUSE-PASSED H.R. 1215):

(1) Individual taxpayers would be allowed a deduction of 50 percent of any net capital gain. The top effective tax rate on capital gains would thus be 19.8 percent.

(2) Corporations would be subject to a maximum capital gains tax rate of 25 percent.

(3) Capital loss treatment would be allowed with respect to the sale of a taxpayer's principal residence.

(4) Indexing of capital assets would not be included.

(5) Would be effective for taxable years ending after December 31, 1994.

II TARGETED INCENTIVE TO INVEST IN SMALL BUSINESS ENTERPRISES:

(1) Provides an exclusion of 75 percent of capital gains from sale of investment in qualified small business stock held for more than five years.

(2) Allows 100 percent deferral of capital gains tax, after the five year period, if proceeds from the sale of qualified small business stock are rolled over within 60 days into another qualified small business stock. Gains accrued after the rollover would qualify for a 50 percent deduction if held for more than one year, 75 percent exclusion if held for more than another five years, or at any time, could be rolled over yet again into another qualified small business stock for 100 percent deferral.

(3) Would be effective upon date of enactment.

Example: A taxpayer buys qualified small business stock in 1996 for $10,000. She sells the stock in 2002 for $20,000. She would be allowed to exclude 75 percent of the gain, or $7,500. Of, if she chose to roll over the $20,000 proceeds from the sale into another qualified small business stock within 60 days, she would defer all tax until she ultimately sold the second stock.

Qualified small business stock is defined as newly issued stock of corporations with up to $100 million in assets and is an expansion of the current law targeted small business capital gains exclusion added by the 1993 tax act. The changes in the targeted small business stock incentive from current law would:

(1) Allow corporations to participate.

(2) Remove the current law per-issuer limitation.

(3) Repeal the working capital limitation.

(4) Expand the list of qualified businesses in which the corporation may engage.

LEHMAN BROTHERS,
June 21, 1995.

Hon. ORRIN HATCH,
U.S. Senate,
Hon. JOSEPH LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS HATCH AND LIEBERMAN: The Hatch-Lieberman Capital Gains Tax Reduction Proposal would have positive impacts on U.S. economic growth, employment and investment. The enactment of this bipartisan Senate bill, whose main features include a 50 percent exclusion for individual capital gains (a top marginal rate of 19.8 percent), a 25 percent maximum capital gains rate for corporations, and expansion of the current 50 percent exclusion for small business capital stock to 75 percent, as well as other small business provisions, could well help offset forces contributing to the current cooling of the U.S. economy.

Indexing capital gains, not included in the Hatch-Lieberman proposal, also would help stimulate economic activity and has the positive dimension of eliminating the distortion from the taxation of illusory gains that come from inflation. It would also be good to have. But of the two measures, capital gains rate reduction and indexing under limitations set by the very important first priority of moving the federal budget into balance, the rate reductions and small business provisions provide more ''bang-for-a-buck''.

A stronger economy would be stimulated by the lower cost of capital from a reduction in capital gains taxes, also business and personal saving would rise, and more business capital spending occur. This would come about, in part, from increased stock prices and higher household net worth as investors shifted funds away from other investments into stocks. The stronger economy would lead to increased hiring and new jobs. Wealth, income and profits improvement would raise spending, saving, and purchases of financial assets.

With a stronger economy and increased capital formation, greater entrepreneurship, as measured by new business incorporations, ought to raise productivity and thus the potential output of this economy. This supply-side effect, although modest, would tend to limit any potential inflationary effect of the capital gains tax reductions. In addition, an unlocking effect on tax receipts from the unrealized capital gains that would be realized ought to reduce the ex-post cost of this tax measure.

Of all the tax reductions being considered by the Congress, the most beneficial, in a balanced way, to both the demand-side and supply-sides of the economy, potentially at the least net cost, would be the capital gains tax rate reductions that are proposed.

On several criteria for judging changes in taxes—allocative efficiency, economic growth, savings and investment, international competition and fairness—capital gains tax reduction wins on almost all. The one exception is equity, because higher income families tend to hold proportionately more of the assets that could be subject to capital gains.

Sincerely,

ALLEN SINAI.

Mr. LIEBERMAN. Mr. President, I am delighted and proud to join Senator HATCH in this bipartisan introduction of the Capital Formation Act of 1995. As a Democrat, I have often borrowed Paul Tsongas' line that you can't be pro-jobs and anti-business, because the jobs we want for people are going to come from business. The bill we are introducing today is pro-jobs and pro-business. It gives people at all income levels a reason to put their money in places where that money will help businesses start and grow and that means more jobs for Americans and more economic prosperity for our country.

We are introducing this bill at a time when the American economy may be on the verge of recession. There are those who say we are already in a recession. One of the most effective things Congress can do to give our economy a boost is to cut the capital gains tax rate.

We also have a shortage of savings and investment in this country. Our personal savings rate is now about one-third of Japan's rate and about one-half of Germany's rate. We are ill prepared to deal with the effects of recession, and we are ill prepared for the economic battles of the global marketplace. Unlike most other industrialized nations, we stifle savings and investment by over-taxing it. Nations like Japan and Germany value capital gains. Germany exempts long-term capital gains from taxes for individuals and Japan taxes these gains at either 1 percent of the sales price or 20 percent of the net gain. They reward investment.

Not only have we done too little to encourage investment, too often it is actively discouraged. To attack capital gains tax relief as a bonanza for the wealthy is quite simply missing the point.

The benefits of this capital gains tax cut will not flow just to people of wealth. Anyone who has stock, who has money invested in a mutual fund, who has investment property, who has a stock option plan at work has a stake in capital gains tax relief. That represents millions and millions of middle class American families. We have information on 310 major firms that offer their employees stock options and stock purchase plans—companies like GTE, Pfizer and Stanley Works, to name a few of the companies in my State.

Each of those workers and their spouses and children stand to gain from what we propose today. And these firms are just the tip of the iceberg.

And we're talking about direct beneficiaries—not even counting the many middle and lower income people who will get and keep jobs thanks to the investments spurred by the capital gains tax cut.

Of course, people who are wealthy can benefit from this proposed capital gains cut, but that is the point. They will benefit if they invest more of their money in ways that help our economy and create jobs. That benefits everyone. Government doesn't make people rich. But Government can and should encourage people who have money to use that money in a way that helps the economy as a whole. That is what this is about. We are simply talking about letting people who are willing to risk their money keep a little bit more of it if they invest that money in our economy.

People who oppose cutting the capital gains tax are treating profit as if it were to be avoided. I believe that we should recognize profit as being an advantage of the free market, and we want to encourage it, reward it, help it spread its benefits throughout the economy to more and more of our people. Opponents also frame this debate in a winners-and-losers context that is totally inappropriate to what is at stake here. Because a rising tide of economic growth raises all ships, there need be no losers when capital gains taxes are cut by our bill.

Finally, let me point out that this capital gains tax is broad but it also has a targeted element. It aims at directing investment in a way that maximizes the benefit for our economy. It promotes investment in small businesses—the firms that are driving job creation in our economy. It encourages people to leave their investments in small businesses, start-up businesses for a longer period of time, giving entrepreneurs the kind of predictable cash flow they need to make their businesses succeed.

The targeted feature of our capital gains tax cut will be very helpful to the kinds of small businesses we need for our future—the high technology businesses that will be the source of many new jobs in the next century, and that will be the source of our success in global markets. These businesses are high risk. They require a lot of capital investment early on. The payoff is down the road. And the benefits for America are, potentially, enormous. Not just jobs and profits for Americans. But exciting new technological innovations. New ways to educate our children. New medicines and medical devices. New services, and new opportunities for recreation. All these positive changes need the kind of investment our Capital Formation Act will encourage.

In closing, let me say that I see this bill as the first leg of a tripod of tax relief for the American people. The second leg is the President's tax credit for children and tax deduction for higher education costs, which I support.

The third leg will be a research and development tax credit that is being developed now and I hope will be introduced in the near future.

With these tax proposals, we can help more Americans raise their kids today, educate them tomorrow, and provide them with good job opportunities in thriving American businesses in the future.

Mr. FAIRCLOTH. Mr. President, today I am joining with Senators HATCH and LIEBERMAN to introduce the Capital Formation Act of 1995. This bipartisan effort sends a clear signal that there is broad-based support for a capital gains tax cut to stimulate job creation, foster sound economic growth, and enhance U.S. international competitiveness.

Prior to my election to the Senate, I spent 45 years in the private sector running a small business and meeting a payroll. I learned firsthand that a cut in the capital gains tax rate would stimulate the release of billions of dollars of unproductive capital, unlock economic assets, and encourage new investment by both mature and new businesses. Moreover, a reduction in capital gains taxes would have a powerful impact on the entrepreneurial segment of the economy, thereby creating new start-up companies and new jobs.

I commend Senators HATCH and LIEBERMAN for working together to craft a bipartisan capital gains tax cut proposal. I am proud to be the first cosponsor of this bill, and I sincerely hope that many of our colleagues—Democrats and Republicans—will join this important effort to provide much needed tax relief and encourage further economic growth.

ADDITIONAL COSPONSORS

S. 400

At the request of Mrs. HUTCHISON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 400, a bill to provide for appropriate remedies for prison conditions, and for other purposes.

S. 401

At the request of Mr. LEAHY, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 401, a bill to amend the Internal Revenue Code of 1986 to clarify the excise tax treatment of hard apple cider.

S. 495

At the request of Mrs. KASSEBAUM, the names of the Senator from Washington [Mr. GORTON] and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 593

At the request of Mr. HATCH, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 593, a bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the export of new drugs and for other purposes.

S. 854

At the request of Mr. LUGAR, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 854, a bill to amend the Food Security Act of 1985 to improve the agricultural resources conservation program, and for other purposes.

S. 896

At the request of Mr. CHAFEE, the names of the Senator from Rhode Island [Mr. PELL], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 896, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services, and for other purposes.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

AMENDMENTS SUBMITTED

THE NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

EXON AMENDMENT NO. 1462

Mr. EXON proposed an amendment to the bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes; as follows:

At the appropriate place in the bill insert the following:

SEC. 301. SHORT TITLE.

This amendment may be cited as the ''Federal Highway and Railroad Grade Crossing Safety Act of 1995''.

SEC. . INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

(a) IN GENERAL.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway Systems Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway technologies to promote safety at railroad-highway grade crossings. The Secretary of Transportation shall ensure that two or more operational tests funded under such Act shall promote highway traffic safety and railroad safety.

SEC. . STATE HIGHWAY SAFETY MANAGEMENT SYSTEMS.

(a) AMENDMENT OF REGULATIONS.—The Secretary of Transportation shall conduct a rulemaking proceeding to amend the regulations under section 500.407 of title 23, Code of Federal Regulations, to require that each highway safety management system developed, established, and implemented by a State shall, among countermeasures and priorities established under subsection (b)(2) of that section—

(1) include public railroad-highway grade-crossing closure plans that are aimed at eliminating high-risk or redundant crossings (as defined by the Secretary);

(2) include railroad-highway grade-crossing policies that limit the creation of new at-grade crossings for vehicle or pedestrian traffic, recreational use, or any other purpose; and

(3) include plans for State policies, programs, and resources to further reduce death and injury at high-risk railroad-highway grade crossings.

(b) DEADLINE.—The Secretary of Transportation shall complete the rulemaking proceeding described in subsection (a) and prescribe the required amended regulations, not later than one year after the date of enactment of this Act.

SEC. . VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31311 of title 49, United States Code, is amended by