Luis Guggiari, Senate, and Representative Rafael Filizzola, House of Representatives; Peru, Representative Carlos Almeri Veramendi, National Congress, and Representative Enith Chuquival Saavedra, National Congress; United States, Senator TED STEVENS, Senate Pro-Tempore, U.S. Senate; Uruguay, Senator Luis Hierro Lopez, Senate President and Vice President of Uruguay, and Representative Jose Amorin Batlle, President, House of Representatives; and Venezuela, Ricardo Antonio Gutierrez Briceno, First Vice President, National Congress.

RECESS

Mr. STEVENS. I ask unanimous consent that the Senate stand in recess for not to exceed 5 minutes so Members might greet my friends from the Congresses of the Americas.

There being no objection, the Senate, at 2:53 p.m., recessed until 2:57 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT—Continued

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield 5 minutes to the senior Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I thank the chairman and the ranking member for their kindness and generosity as we work on this bill. I am speaking now of the energy tax parts of this bill. The rest of it is the jurisdiction of the Finance Committee, and they essentially have done that. We have helped with the energy provisions because we were trying to put together a comprehensive energy package.

It is good that in the Senate, after one Senator talks and states his position, there is an opportunity for somebody else to state their position, and I want to do that because actually earlier today the distinguished Senator from Arizona talked about a bill that I do not even recognize, talked about things wrong with this bill that I am not even sure are in this bill, but certainly failed to mention anything that is good about it. So I would like to talk about some of the good parts.

It is estimated that this part of the bill will create 650,000 jobs. Those jobs will be in construction and the operation of infrastructure vital to the energy security of this country. Tax provisions will allow us to build an Alaska pipeline, which is supported by the Senate and will bring us American-owned gas all the way from Alaska. It will not do any environmental damage, and in the next 5 years we will add substantially to our inventory of natural gas.

The package provides incentives for electricity produced from clean coal. If there is anything that we need in America, it is a vital, growing, prospering energy grid in the United States. We have to have a stronger energy grid if we are going to have a stronger America. Everybody says that. This bill provides for incentives so that will happen.

Third, this package puts incentives in for biomass, geothermal, and solar.

Last, but not least, we have the renewables. We have wind energy that is to break and come through in large quantity. It is all stopped now until this bill passes and the incentives in this bill are adopted.

If you have a major solar energy facility, construction is stopped until this bill is produced. Then that will grow faster than any renewable we have ever had. In addition, clean coal technology is applied so that we can have other alternatives for the production of electricity. If there is anything we need, it is alternatives. Clean coal will be an alternative.

If we tell the world we are producing alternatives, they will believe we are worried and they will believe we can do something for ourselves, instead of continuing to put our hands out and rely upon foreign sources of energy.

There are tax provisions related to the restructuring of the electricity industry that are being imposed by the Federal Energy Regulatory Commission. It is absolutely imperative that if the Government forces utilities to sell assets as part of deregulation, it will not also turn around and punish utilities for those sales through the Tax Code.

Some of the critical incentives in this package that will encourage domestic oil and gas production are in this bill. We know it. Everybody who has studied it knows it. There may be some provisions that Senators do not like because when you put a package together you just cannot have everybody liking everything. But I submit, to come here with a Time magazine that was talking about a different bill and a different time—there are things that are alluded to that are not in this bill—is truly not something the Senate should bank on with reference to whether they vote for this. They ought to vote for this. It is half an energy package and it is better than none.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 5 minutes.

Mr. THOMAS. Mr. President, we are dealing with an issue that is probably the most important that we have before us, in terms of jobs, in terms of meeting the needs in this country. We are dealing with an issue we have talked about for 2 years or more. We have finally come up with some solutions. This is an issue that has already been on the floor that passed with 58 positive votes. The Senator from Arizona indicated it hasn't been discussed or talked about or voted on. That is absolutely not the case. It has been, and that is where we are.

There are two major issues involved. I am not going to get into the details. We are creating a policy for our future energy needs. As we look around at our families and our businesses and everything we do, there is nothing that affects our lives all day long more than energy. Whether it is lights, whether it is air-conditioning, whether it is heat, whether it is cars, whether it is receiving goods in your community, that all takes energy. So we are developing a policy, not necessarily for what is going to happen next week or next year, but down the road, where are we going to be?

The second portion deals with some of the issues that are troublesome now: The price of fuel, and the idea we are going to run short on some of the kinds of fuel we are using. All those things are there. This was part of an energy bill. It is not all of it, but it is a good part of it that we have worked on for a very long time. It is backed up by the facts. Unfortunately, to say we talked about no facts, here that is not true. This is a broad policy, for one thing, that deals with alternative sources of energy. It deals with renewables, the cleanliness of coal, with pipelines. It deals with all those things that are so important to do this job.

One thing that always strikes me, probably because we in Wyoming are the largest coal producer in the country, is that coal is the largest fossil fuel resource that we have available to us. At the same time, some other things have been easier. All the electric-generating plants over the last 15 years use natural gas. Natural gas can be used for many things where coal really is only available for this purpose, coal and nuclear. But we want to make coal energy clean so the air will be clean. This is what this bill does. It allows us to use that fuel most available to us and have it for the future.

We have been taking a look at energy usage, and what strikes us is that consumption continues to go up at a rather fast rate. We are using more in our cars; we have bigger homes; we are doing things so that consumption of energy goes up. But the production level is going down. If that doesn't create some kind of crisis in the future, I don't know what possibly could.

It was mentioned, and it should be mentioned again, that this is a jobs bill. That is really what we are trying to do. We can create more jobs in this particular provision, not only immediate jobs for the development of nuclear powerplants or power lines or coal mines or whatever, but the jobs created for other industries, of course, have to have energy available for them.

The amendment proposed here certainly would do away with one of the most important things we have done for a good long time, something we have worked on for a good long time,

something that not only deals immediately with problems but addresses the future of our families, yours and ours, and jobs. So we ought not pass this amendment. I urge my colleagues to vote against it.

I yield the floor.

Mr. GRASSLEY. Mr. President, the press and some in this body have unfairly defined this legislation as a ''porky'' tax bill. There have been articles in all the major papers following that line of attack.

One Member of the leadership on the other side said on April 20 he is worried that the sheer amount of tax breaks in the bill could end up impeding its progress. ''They've loaded this truck up and the tires are about to explode,'' he said, calling the efforts to pile sweeteners onto the bill ''haphazard.''

That Member went on and cautioned, ''any time you load it up as vigorously as they have, you create as many problems as you solve.''

Well, let's talk about the so-called ''porky'' provisions in this bill. It is a bit irritating that the complaints come from folks who say they support the bill. Every provision in the bill is the result of a joint recommendation of myself and Senator BAUCUS. We responded to requests from every Senator, including those who are critical of the bill.

I guess I would ask anyone, including the critics a question. That question would be, ''Are you willing to throw aside the provision you asked us to put in the bill?'' Are you willing to go back to your constituents and tell them you don't think their interest has merit?

I don't think I will hear any of the critics respond yes. I haven't had any takers yet and don't think I will by the time the bill's done.

Let's look at the bigger picture.

This bill has about $60 billion dedicated to the replacement of the FSC/ETI benefit. This bill has another $40 billion dedicated to international tax reforms to make our domestic manufacturers more competitive overseas.

There is another roughly $20 billion in domestic manufacturing incentives, including the research and development tax credit.

Some of that package deals with issues such as the unfair tax on bows and arrows which has a domestic job impact. There's another $8 billion dealing with the extenders, including a permanent tax credit directed at hiring hard-to-place workers. There's another $10 billion dealing with housing, rural areas, hard hit urban areas, Indian tribes, and other sectors of our economy. We're directing resources at economic development, plain and simple.

Finally, there's another almost $20 billion for the bipartisan Finance Committee energy incentives package which has passed the Senate twice.

All of this is offset with corporate loophole closers and measures aimed at curtailing tax shelters. The dollars involved in the much-criticized provisions are very small—perhaps less than 3 percent of the total cost of the bill. Members and the ''big city'' press need to keep their eyes on the ball: ending the euro tax and helping domestic manufacturers.

Senator Daniel Patrick Moynihan responded to the New York Times regarding the 1997 bipartisan tax relief bill. The press had made much of a few narrow provisions, such as a provision to provide tax relief for parachuter trainees. There is an excise tax on air travel. The tax is meant to apply to commercial travel. Read literally, the tax applied to parachute training flights even though those flights are not commercial transportation.

Senator Moynihan described the Finance Committee provisions that were designed to deal with these inequities this way: ''You will never see representative government more specific than in the Senate Finance Committee . . . It's a form of accommodation, and in between you think about the national interest, because there are things we all share.''

Like the 1997 tax relief bill, the bill before us includes a number of provisions that, at face value, may seem to be trivial. It is important to keep in mind, however, that each of these provisions was added in response to specific requests from fellow Senators who are looking out for the vital interests of their constituents. That is what representative government is all about.

The Federal tax system is vast. It touches virtually every aspect of life. From birth to grave. There are excise taxes to fund our airports and highways. There is a corporate and individual income tax to fund defense and general welfare. There are payroll taxes to fund Social Security and Medicare benefits. There is an unemployment payroll tax to fund unemployment benefits.

Now, when you go through this bill, you can find some provisions that involve animal manure or windmills. If you don't look beyond the superficial humor of the subject matter, you can have a lot of fun. Of course, big city papers like to make fun of these rural provisions. I always have to remind these folks that food doesn't grow in supermarkets. It grows on farms. The byproducts of those farms can give us clean energy. What's so bad about that?

Part of what we hear out in the heartland is get us some insurance that jobs are coming back. Especially, they say, in the area of manufacturing. The economy is coming back. The U.S. economy, the mightiest in the history of the planet, is adding jobs at a healthy rate. The people want an insurance policy.

Growing jobs in our diverse economy is not a cookie cutter exercise. This bill has general policies for the most part. Some are proactive, like the manufacturing deduction. Others are reactive, like responding to the Euro tax. Still others are particular. They may relate to small isolated communities or a single industry. When you take a look you'll find a common thread through nearly all of them: job creation.

That is what this bill is all about. Creating jobs, plain and simple.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. How much time remains on our side?

The PRESIDING OFFICER. The opposition has 6 minutes 44 seconds, and the proponents have 8 minutes 30 seconds.

Mr. BAUCUS. I yield 3 minutes 22 seconds to the Senator from Delaware, and 3 minutes 22 seconds to the Senator from Alaska following the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 3 minutes 22 seconds.

Mr. CARPER. I thank the Senator for yielding me 3 minutes 22 seconds.

Mr. President, as we gather for this debate, about 60 percent of the oil we use in this country comes from other places. We are importing all that oil. It adds to a huge trade deficit, about $500 billion and growing. About a third of that trade deficit is related to the importation of oil.

We have the opportunity with the energy provisions that are part of this bill to do some good things with respect to energy independence in this country. We have the opportunity to urge people to buy more energy-efficient cars, trucks, and vans. We have the opportunity to nurture an automotive industry which will provide fuel-cell-powered vehicles that will provide for vehicles that are powered by a combination of electric and internal combustion—maybe a combination of diesel and electric. We have the opportunity to provide incentives for people to use solar energy more frequently and more effectively, to use geothermal energy more effectively, more broadly. We have the opportunity to encourage people to use wind power as a source of electricity, and other forms of energy, through this bill.

Some would say we ought to have a comprehensive energy bill, and these elements ought to be part of the comprehensive energy bill. I will tell you I don't know if we are going to have a chance to debate a comprehensive energy bill. We do have the opportunity today to encourage solar energy, wind power, fuel cells, hybrid vehicles, and we have a chance to do this today.

About 100 miles from here there are fields on the Delmarva Peninsula—in Delaware, Maryland, and Virginia—where we are growing soybeans. We use soybeans in my part of America to feed the chickens. We take the hull and we feed the chickens and raise more chickens in Delaware, I think, than anyplace in the country. We use the corn we raise to feed the chickens. We have a lot of soybean oil we don't know what to do with, and one of the things we figured out to do is take soybean oil and mix it with diesel fuel—80-percent

diesel, 20-percent soybean oil—and we use it to power our DelDOT vehicles in the State of Delaware. We use it to power more farm equipment in the State of Delaware that is diesel power.

It works, it is energy efficient, and it is environmentally friendly. People tell me it smells like french fries.

That is one of the things we are more likely do with this bill. The intent and encouragement of this bill is to reduce our dependence on foreign oil and move to biofuels, including soy diesel. Good results come out of using soybeans for this purpose. It reduces our reliance on foreign oil, it is environmentally friendly, and it gives the folks who are raising soybeans—whether it is Delaware, Idaho, or any other place—the opportunity to have another market for their commodity. That is good for farmers, actually paying them to grow a commodity rather than paying them not to do that. This makes a whole lot of sense.

I wish the Senator from Arizona in offering his amendment had focused on section 29. That is a more narrowly crafted amendment. My hope is this will be defeated and we may reconsider it and come back to address that.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, we talk about energy all the time. There is a certain, not confusion but a real consternation about what is going on in the Senate right now and why we can't get specific provisions of the Energy bill through the Senate.

We understand energy in Alaska, whether it is gas or whether it is oil, whether it is renewable energy or thermal. What we have before us is an opportunity to make some of the energy policy a reality in the country.

Last week I had the opportunity to testify before the House Subcommittee on Energy and Air Quality about the proposed Alaskan natural gas pipeline. I talked about the role which this pipeline can play in meeting the needs of some very critical areas in the country—specifically, our national security, the health of our economy, job creation, and achieving and maintaining a healthy environment for ourselves and our families.

Whether we are talking about the creation of hundreds of thousands of jobs across the Nation from this project or providing a secure and stable domestic supply of energy, whether it is providing the critical feedstock we have heard about on the floor here today at a reasonable price for the chemical, agricultural, and other important sectors of the economy or providing an abundance of clean-burning, environmentally friendly fuel, there is no doubt about it, this project is not only in the best interests of Alaska, my State, but across the entire country.

As we talk about the project in Alaska, it has been suggested with the price of natural gas as it is, we don't need to have the incentives that are included in this legislation before us right now. With the specific proposals which are pending, why do we need the incentive? Yes, in fact, the proposals are out there, but they will tell you we need the assistance. They have stressed the necessity of Congress enacting the fiscal incentives contained in this bill in order for construction of the pipeline to go forward.

We need these provisions to achieve all of the positives a gas pipeline has to offer. It is essentially a futures contract with the American people. We provide the incentive to build the pipeline and you will receive all the benefits the gas pipeline has to offer. The Alaska natural gas pipeline is one of those rare examples of a project that is a win from every perspective. It helps us achieve our environmental goals, it helps the economy by creating a great number of good-paying jobs, and it enhances our national security. But if the McCain amendment is adopted and the energy tax provisions are stripped from this bill, the relief Alaska's natural gas can provide remains stuck in the ground.

I urge my colleagues to oppose the McCain amendment and retain the financial incentives needed to construct the Alaska natural gas pipeline.

I thank the Chair. I yield the floor.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that all time be yielded.

The PRESIDING OFFICER. Without objection, it is so ordered. All time is yielded.

Mr. GRASSLEY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The results was announced—yeas 13, nays 85, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—13

Biden	Graham (FL)	Lautenberg
Boxer	Gregg	McCain
Corzine	Hollings	Sununu
Dodd	Kennedy	
Feingold	Kyl	

NAYS—85

Akaka	Byrd	Crapo
Alexander	Campbell	Daschle
Allard	Cantwell	Dayton
Allen	Carper	DeWine
Baucus	Chafee	Dole
Bayh	Chambliss	Domenici
Bennett	Clinton	Dorgan
Bingaman	Cochran	Durbin
Bond	Coleman	Ensign
Breaux	Collins	Enzi
Brownback	Conrad	Feinstein
Bunning	Cornyn	Fitzgerald
Burns	Craig	Frist
Graham (SC)	Lott	Sarbanes
Grassley	Lugar	Schumer
Hagel	McConnell	Sessions
Harkin	Mikulski	Shelby
Hatch	Miller	Smith
Hutchison	Murkowski	Snowe
Inhofe	Murray	Specter
Inouye	Nelson (FL)	Stabenow
Jeffords	Nelson (NE)	Stevens
Johnson	Nickles	Talent
Kohl	Pryor	Thomas
Landrieu	Reed	Voinovich
Leahy	Reid	Warner
Levin	Roberts	Wyden
Lieberman	Rockefeller	
Lincoln	Santorum	

NOT VOTING—2

Edwards	Kerry

The amendment (No. 3129) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that following the disposition of the Hollings amendment, the next amendments to be offered are the following in the order provided: Senator KYL, No. 3127, 60 minutes equally divided; Senator LANDRIEU, 60 minutes equally divided; Senator LEVIN, 20 minutes equally divided; further, that there be no second-degree amendments in order to the amendments prior to the vote.

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

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, as has been ordered, after the Hollings amendment, there are three more. I am not sure any votes are needed on the three amendments the chairman just mentioned, by Senators KYL, LANDRIEU, and LEVIN. We have times, but we are trying to work with the Senators. For example, it is my understanding that the Kyl amendment will be offered and withdrawn. We may be able to work out the others as well. Nevertheless, that is the order.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senators from Pennsylvania, the senior and the junior Senators, have 5 minutes apiece to discuss something very personal to their State.

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

The Senator from Pennsylvania, Mr. SANTORUM, is recognized.

MURDER IN IRAQ

Mr. SANTORUM. Mr. President, I rise today to talk about a death in Iraq. There has been a lot of death in Iraq. We can all come to the floor and give a story about a brave man or woman who sacrificed their life for freedom in that country. Today I rise to talk about not a soldier who has bravely fought in battle over there but a civilian who was brutally murdered by a group of al-Qaida terrorists. We are now seeing this displayed on our television screens across America.

This civilian's name is Berg, Nicholas Berg. He is 26 years old, from West

Chester, PA, outside of Philadelphia. As described by an AP article that came across my desk, a group of five al-Qaida terrorists, one of them purporting to be Abu Musab al-Zarqawi, the No. 2 man of the Islamic terrorist group, wearing ski masks and scarfs, standing over Mr. Berg, who had just given a statement as to who he was and where he was from. They read a statement and then proceeded to push this man on his side and to cut off his head with a large knife, and then they held the head out before the camera.

If anybody wants to know what we are fighting and why we are fighting this war on terror, this is a very good example of it. Those who have seen the tape on television have described it as revolting and sickening, and I will describe it as an outrage to the civilized world, and one to which we must strongly condemn and respond. We must continue to respond as aggressively as possible in rooting out these terrorist cells and going after them where they are. Where they are, in this case, is in Iraq. This occurred in Iraq. He was a civilian contractor working in Iraq. His body was found a couple of days ago on a bridge in Iraq.

First and foremost, I express my sympathy to his parents, Michael and Suzanne, who I know have gone through a very harrowing experience over the past couple of months when they didn't know where their son was on more than one occasion. They did not know his whereabouts for the past month. And to find out about this tragedy, the loss of their son, in such a violent and horrific way and to not know until, I am sure, seeing it on television and hearing it described, is a nightmare for any parent.

The Bergs certainly have my prayers and I know all in this Chamber share the sorrow.

The PRESIDING OFFICER. The Senator from Pennsylvania, Mr. SPECTER, is recognized.

Mr. SPECTER. Mr. President, I join my colleague, Senator SANTORUM, in expressing sympathy for the parents and family of Mr. Nick Berg, who was the victim of a brutal assassination. Actually, it was a decapitation.

It is hard to express the shock of this kind of barbaric conduct. It is subhuman what they did—taking a video of this man, who identifies himself, identifies his mother, his father, his siblings, and then, in view of the video, they decapitate him, with the anguish of a man being brutally murdered. It is just subhuman conduct.

We ought to put on notice these murderers, assassins, that whatever it takes, the civilized world will bring them to justice. The news reports are that they were wearing masks and hoods to conceal their identities. I have seen investigations succeed even where people were wearing masks and hoods. They will talk about it, or someone will talk about it. In a cruel, barbaric world, this conduct descends to new levels.

This incident will unleash as intensive a manhunt as has ever been witnessed, with the United States leading the way—obviously, because it is an American citizen from a Philadelphia suburban town. We will be joined by all of the civilized world in bringing these malefactors, these perpetrators to justice. Just because they are wearing hoods, because their identities are disguised, doesn't mean they cannot be identified and apprehended. I know every last thing will be done to bring them to justice.

And then, beyond the identification of these specific assassins, these specific terrorists will renew our determination, which is already at the 100-percent level, to bring the terrorists to justice. They already murdered thousands of Americans on September 11, 2001, and Iraq is a magnet for terrorists from all over the area.

This underscores the necessity to confront the terrorists in Iraq. If we don't confront them there, we will be doing it again in the United States.

This is an incident which will receive enormous attention to try to determine the perpetrators and to bring them to justice.

There are some other matters which have been suggested as to Mr. Nick Berg's being in custody, one report taken into custody by the Iraqis and held by U.S. military personnel. I am advised a lawsuit was started, and then Mr. Berg was released. We are now making an effort to identify the attorneys in the matter to try to get some background before we talk to the parents and the relatives of the victim of this atrocious conduct.

There is also a question of bringing back the remains of Mr. Berg. We shall do our best to facilitate that and to help the family.

This atrocity is obviously going to receive widespread attention. In a cruel, brutal world, this descends to new depths.

Again, our sympathy to the parents. We will pursue the matter to bring these specific perpetrators to justice and to bring the terrorists to justice, generally.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 3134

(Purpose: To strike the international tax provisions that are unrelated to the FSC/ETI repeal and eliminate the phase-in of the deduction for qualified production activities income)

Mr. HOLLINGS. Mr. President, I call up my amendment No. 3134 and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 3134.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. There are 40 minutes to each side.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, the underlying bill gives a 5-percent domestic manufacturing deduction to the manufacturing industry. Of course, that is woefully insufficient. My amendment would provide a full 9-percent domestic manufacturing deduction.

The underlying bill slowly phases in the domestic manufacturing provision over a 5-year period, but instantly it gets the full effect of the overseas industry, the outsourcing. They immediately get some tax breaks over the period of the bill covering some 39, almost 40 billion bucks.

Can you imagine that? Here is a bill entitled—this is the committee report—the Jump-Start Our Business Strength, JOBS, Act. It jump-starts the jobs in Shanghai and Guadalajara and not in Philadelphia, PA, I can tell you that right now.

What my amendment does is provide the right incentives. It eliminates the tax breaks for corporations that have moved American jobs offshore and gives those tax breaks to the employers of jobs in America today.

I wish to thank, first, the distinguished ranking member, Senator BAUCUS, of our Finance Committee and his outstanding staff. They have been very helpful in trying to make this amendment not only relevant but budget neutral. I am not sure about its budget neutrality, but I am told now we do have a relevant amendment. If we have to get into the arcane discussion with respect to budget neutrality, I will be glad to join it.

I want to get to the point. We are still in a post-World War II culture, what they call up here an environment or pedigree. What happened was, after World War II, we had our finest hour with the Marshall plan. We sent money overseas. We sent expertise overseas. We sent equipment overseas. In the cold war, capitalism defeated communism. It worked. All during that almost 50-year period since World War II, we all enjoyed it because we fudged when it came to trade. We treated fair trade more or less as foreign aid, but we knew what we were doing. We had to sacrifice a certain amount of our industry, our jobs, our economic strength to prevail in this cold war.

Now what has occurred is the competition has regeared, they have rebuilt, they have industrialized, and they have become outlandishly competitive. And here amidst a trade war, we hear those in the national Congress running around and saying: Woo, we might start a trade war; free trade, free trade, I am for free trade, when they know free trade is like dry water. There is no such thing. If you trade, you are trading something, you are

swapping an article with various countries, free trade, but we know that is not going to come to pass.

The example we set of a capitalistic free market and our endeavor in the last 50 years, the Japanese did not follow suit. They have the financing, they have the subsidies, they have the nontariff barriers, and we have yet to get into downtown Tokyo with American sales. Come on, quit kidding each other. It worked that way for Japan. Korea followed. And now China is following the same Japanese pattern of restricted and competitive trade, not free trade.

Today we are in real trouble. We are losing jobs like gangbusters overseas. We have lost 68,000 jobs in the little State of South Carolina in the last 3 years, over 3 million jobs nationally. I can tell you, 58,000 of those jobs are our textile jobs, and they are not going to be replaced. You can put all this statistical information from the Federal Reserve and Greenspan about how we are creating jobs, but they are not coming to South Carolina.

As Abraham Lincoln said some years ago: The dogmas of the quiet path are inadequate to the stormy present. As our case is new, we must think anew, we must act anew, we must disenthrall ourselves, and then working together we can save our Nation. That is the reason for this amendment.

One does not put up an amendment to this finance bill with hope. The chairman of the Finance Committee knows there are not going to be any amendments. But we might be able to disenthrall our colleagues because the country has to develop a competitive trade policy in order to subsist and survive.

I can point out survival in the very beginning of this Nation started with Alexander Hamilton. Of course, I will not read the book—Ron Chernow's ''Alexander Hamilton.'' They will not give me that much time, but I recommend to everyone this particular edition. You will find the mother country, England, prevented manufacture in the Colonies, later the United States of America. In fact, they arrested and jailed anyone with any manufacturing talent who would move from England to the Colonies.

We had a veritable struggle in the earliest days, and we had just barely 1 hour of freedom when the mother country said: Under this David Ricardo doctrine of comparative advantage, we will trade with you what you produce best and you trade back with us what we produce best.

As a result, Alexander Hamilton wrote his famous treatise, ''Report on Manufacturers.'' I will not read that and put it in the RECORD, but I will say in a phrase exactly what Hamilton told the Brits: Bug off. He told the Brits, we are not going to remain your colony, shipping you our timber, iron ore, rice, cotton, indigo, and natural resources, and importing the manufactured articles and remaining a banana republic; we are going to build up our own manufacturing.

It caused me to listen to our friend Akio Morita, the former head of Sony. Some 20 years ago in Chicago, while lecturing third world countries, he said you have to develop a strong manufacturing sector in order to become a nation state. Then he pointed to me and said: Senator, that world power that loses its manufacturing capacity will cease to be a world power.

It is economic strength that counts in this terrorism war. It is diplomacy. It is negotiation. It is not military strength. We have to disenthrall ourselves and realize when we are going around talking about we might start a trade war, it was Hamilton himself and the United States of America some 228 years ago that started the trade war.

The very first bill—well, Pat Moynihan used to correct me on that. He said the first was a resolution for the United States Seal. So let's say the second bill that passed this Congress in its history on July 4, 1789, was a tariff bill, protectionism, a 50-percent tariff on 60 different articles. We started a trade war.

When Abraham Lincoln was President, they were going to build a transcontinental railroad. They said, we are going to get the steel from England. President Lincoln said, we are going to build our own steel plants, and he put import restrictions on that British steel and we built the steel plants.

When Franklin Roosevelt was President in the darkest days of the Depression, we did not practice any comparative advantage. He put on the most successful initiative ever with import quotas and subsidies for America's agriculture. That farm crowd that is now heading up our Finance Committee gets $180 billion worth of all kinds of subsidies. Then they run around here and tell this poor little textile Senator, protectionism, protectionism, you are going to start a trade war.

We do not get a subsidy. We do not have those things the farmers have. I favor what the farmers have, I say in the same breath. I vote for it because I think it is a very successful program.

President Eisenhower, in the mid-1950s, put on oil import quotas. Yes, John F. Kennedy—I sat there with Andy Hatcher and we would grind out the mimeograph machine—and we got the seven-point Kennedy textile program of restrictions on textile imports in 1961.

Who else other than Ronald Reagan, the best of the best, he put import quotas on steel, machine tools, semiconductors, motorcycles. Last night, I was near Myrtle Beach and they told me there were 100,000 motorcyclists—I think I ran into 99,000 of them out on the highway—but do my colleagues remember what old Ronnie Reagan did? He started a trade war of motorcycles. He put a 50-percent import tariff on motorcycles. Harley Davidson now has recovered its health and we have them all running up and down the beach at Myrtle Beach, SC. So do not come now and tell me about starting a trade war.

We have had that trade war and we know simply and clearly what happens. I want to read starting on page 20 of ''Theodore Rex'' by Edmund Morris, because this is so interesting. I will read what protectionism did at the turn of the century, this is under Teddy Roosevelt, when we did not have an income tax. For the first 100 and some years, we financed this great United States of America with protectionism. I am trying to get that through so this crowd will wake up and quit pulling off this charade of the multinationals, because that is who we are facing. We are facing the U.S. Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, the Conference Board, the United Federation of Independent Businesses. The newspapers make a majority of their money on retail advertising and grind out this free trade, free trade, do not let us start a trade war.

Well, here is what the trade war gave us:

> This first year of the new century found her worth twenty-five billion dollars more than her nearest rival, Great Britain, with a gross national product more than twice that of Germany and Russia. The United States was already so rich in goods and services that she was more self-sustaining than any industrial power in history. . . .
>
> More than half of the world's cotton, corn, copper, and oil flowed from the American cornucopia, and at least one-third of all steel, iron, silver, and gold.

Here we are having trouble manufacturing steel. We were exporting one-third of the world's steel.

> Even if the United States were not so blessed with raw materials, the excellence of her manufactured products guaranteed her dominance of world markets. Current advertisements in British magazines gave the impression that the typical Englishman woke to the ring of an Ingersoll alarm, shaved with a Gillette razor, combed his hair with Vaseline tonic, buttoned his Arrow shirt, hurried downstairs for Quaker Oats, California Figs and Maxwell House coffee, commuted in a Westinghouse tram (body by Fisher), rose to his office in an Otis elevator, and worked all day with his Waterman pen under the efficient glare of Edison light bulbs. ''It only remains,'' one Fleet Street wag suggested, ''for [us] to take American coal to Newcastle.'' Behind the joke lay real concern: the United States was already supplying beer to Germany, pottery to Bohemia, and oranges to Valencia.
>
> As a result of this billowing surge in productivity, Wall Street was awash with foreign capital. Carnegie calculated that America could afford to buy the entire United Kingdom, and settle Britain's national debt in the bargain. For the first time in history, transatlantic money currents were thrusting more powerfully westward than east. Even the Bank of England had begun to borrow money on Wall Street. New York City seemed destined to replace London as the world's financial center.

Well, in the year 2004, we are broke. We have come from the greatest creditor nation to the greatest debtor nation. The Japanese are financing over $460 billion of my deficit. The Chinese are financing my debt—not me financing any other country like we started

with protectionism. The Chinese have over $200 billion of my deficit. We will end up this year in September, in a few short months, with a deficit that will approximate $700 billion.

We are spending around $2 billion a day more than we are taking in. Can you imagine that? In the early 1980s when I talked about budget matters, I spoke about how it took us 200 years of our history to get to $1 trillion in debt. The cost of the Revolution, the Civil War, Spanish-American War, World War I, World War II, Korea War, Vietnam War—it took us 200 years and the cost of all the wars to reach a $1 trillion debt.

In the last 3½ years—because we don't want to pay for our war and want to give tax breaks instead—we have already piled up $2 trillion in debt; $2 trillion in the last 3½ years.

This crowd has to sober up. We have to get hold of ourselves. We have to disenthrall ourselves and we have to start competing. Remember, it is our standard of living. That is the most frustrating thing around here. Here we add on these requirements: the minimum wage, Social Security, Medicare, Medicaid, plant closing notice, parental leave, safe working place, safe machinery, the old age act, the discrimination act, and this act and that act—all of that goes into the cost of production. It is not just the minimum wage; it is our high standard of living. Every Republican and every Democrat favors clean air and clean water. So we are not going back on our standard of living. So fundamentally we have to protect, and that is the fundamental role of Government.

I will never forget when we swore in President Ronald Reagan for his second term. It was inclement weather and we did it in the Rotunda. He raised his hand to preserve, protect, and defend. We came back and we were debating trade, and we said: Oh, we don't want to protect, we don't want to protect. The fundamental oath that we take as public servants is to protect. We have the Army to protect us from enemies without, the FBI to protect us from enemies within. We have Social Security to protect us from old age, Medicare to protect us from ill-health; clean air, clean water—antitrust laws to protect the freedom of the market. We can go right on down the list. Are we going to pass a wonderful high standard of living and then run around like ninnies hollering: Wait a minute, wait a minute, free trade, free trade. We don't want to start protectionism—they get that garbage from the Business Roundtable and the U.S. Chamber of Commerce.

I talk as one having received all of their awards. In 1992, I was man of the year of the National Chamber of Commerce. By 1998 they were sending out leaflets against me. So I speak advisedly. That crowd is not any longer interested in Main Street America. They are interested in Main Street Beijing. That is where you make the money, and the country can go to hell as far as they are concerned. So it is our duty to protect the economy and open up the markets and everything else like that.

Don't tell us more about retrain, retrain, retrain. I continually hear that. Oh, we have to retrain. I went through another little town yesterday, Andrews, SC. It brings to mind Oneida. I brought that plant in. They make little T-shirts. They closed to go to Mexico. At the time of closure they had 487 employees. The average age was 47 years.

We have done it, Senator, your way. We have retrained them and we have 487 highly skilled computer operators. Are you going to hire the 47-year-old highly skilled computer operator or the 21-year-old highly skilled computer operator? You are not going to take on the retirement, the pension cost of the 47-year-old. You are not going to take on the health cost of the 47-year-old. You are going to get the 21-year-old. So don't tell me about retraining.

We have the most productive economy—that is what Alan Greenspan says. He is sobering up himself. He came down here with this administration saying we were paying down too much debt. ''We are paying down too much debt.'' He sanctioned all these tax cuts. Now he says debt and deficits matter, and he is worried about interest rates now and everything else of that kind, and paying bills.

It is time we speak out as much as we can, early on, so we will know exactly where we stand. Where we stand is that we have to reorganize—begin to organize, I should say—our trade effort, not just the Department of Commerce, but a Department of Trade and Commerce. I have been serving for almost 38 years on what was originally the Committee of Foreign and Interstate Commerce because article I section 8 says that Congress—not the President, not the Supreme Court—but the Congress of the United States shall regulate foreign commerce.

But, instead, it is over in the hands of a deep six group known as the Finance Committee. What they do is they work out their little deals. You might get a stadium, you might get a courthouse, you might get any kind of visions of sugarplums dancing in their head.

Forget about trade. They put on fast track. After they make their deal, the vote is fixed. Then it comes to the floor of the most deliberative body that cannot, under fast track, deliberate. And we enjoy it. We have tied our hands with fast track because we don't want to take the responsibility. That is what the polls will tell you: Don't say you are for or against, just say you are concerned.

So we say we are concerned and we keep getting reelected and the country goes to hell in an economic hand pot. I can tell you right now we are in real trouble, and we have to disenthrall.

What happens is that we need to organize a Department of Trade and Commerce, take that special Trade Representative, put it under that Secretary, do away with the International Trade Commission, which is a fix. You can find the damage done by the International Trade Administration over in Commerce. Then you go over to the Commission and they find out—oh, there is never any injury because you have growth. The GNP now is 3 or 4 percent, so there is no injury. So we keep sending the jobs out of the country like gangbusters, and we ought to do away with that particular fix of the Finance Committee. Then come in and get an Attorney General—an assistant, let's say, to enforce the trade laws.

Many a trade lawyer in this city has gone all the way to the Supreme Court and found out that, well, politically it is set aside. It was that way in the Zenith case, when they were gathered around the Cabinet table and President Reagan walked in and he said: I have to take care of Nakasone. We are going to have to reverse that decision, after 3 years and millions of dollars of legal costs.

So we ought to put in, like we have for antitrust, like we have for equal employment—we have to put in an Assistant Attorney General to enforce those laws, get the Customs agents, and finally when we get right down to it, do like the others do, play their game. If you are going to sell it here, you have to make it here. Isn't that wonderful? That is exactly what China really controls.

They said, if you want to sell it here you have to make it here. I haven't gotten them that far along, I am just trying to flex their minds so we will get away from this trade war and protectionism nonsense, so we can put in a competitive trade policy and save our industrial backbone.

Mr. President, how much time do I have remaining? My distinguished colleague from Florida, Mr. BOB GRAHAM, wants to be heard.

The PRESIDING OFFICER (Mr. CHAFEE). There is 12 minutes.

Mr. HOLLINGS. Let me yield at this time to the proponents and the distinguished leadership of our Finance Committee. I retain the remainder of our time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

Senator HOLLINGS asks us to take $39 billion of international reforms and put it towards more domestic manufacturing relief.

I have told my colleagues so many times I shouldn't have to repeat it. But this bill is all about encouraging domestic manufacturing.

The level of spending in this bill is already over three to one in favor of domestic issues. We dedicate over $75 billion to domestic manufacturing relief.

FSC/ETI currently benefits manufacturing by $50 billion. Obviously, you can see this bill is a much stronger

commitment to manufacturing than the old FSC/ETI bill we are replacing. We have already accelerated the phase-in of the manufacturing tax rate. That is thanks to a bipartisan amendment by Senator BUNNING and Senator STABENOW. We have modified the transition rules to provide stronger relief in transition for manufacturing companies which presently get the old FSC/ETI benefits this bill replaces.

I hope it is easy for my colleagues to conclude that there is very little to be gained by the amendment proposed by the Senator from South Carolina.

It is time we had our rational discussion of the international reforms in this JOBS bill because we have been spending so much time on nongermane amendments. The amendment before us is not one of those nongermane amendments but it has kept us from discussing so much which is very basic with this legislation. Maybe people think there is no reason to discuss it because this bill was built from the ground up in a bipartisan way, coming out of our committee on a very overwhelming vote of 9 to 2.

I think Members will be surprised to learn that some of our international tax rules actually harm the domestic operations of U.S. companies. When foreign income is brought home, the United States allows an offset against U.S. tax for any foreign taxes paid on that income. That is why it is called the foreign tax credit. Foreign tax credits ensure that we do not double tax foreign earnings. Accordingly, the foreign tax credit plays a vital role in preserving the international competitiveness of our companies.

In the Tax Reform Act of 1986, Congress enacted a provision that causes foreign tax credits to expire every 5 years. That was done for a reason that is not very well justified because it is often used around here—to make that 1986 tax bill revenue neutral.

Some claim this is a good rule because it forces foreign earnings to be repatriated within 5 years. But that conclusion does not comport with reality. The reason companies don't bring back foreign earnings is because of double taxation. That is what occurs with foreign tax credits expiring.

I will give you an example. A U.S. company sets up new operations in Poland to serve Eastern Europe at this time when Eastern Europe is being integrated with the European Union. That happened last week. For the next 8 years in this hypothetical—quite reasonably—it takes all of the capital generated by the Polish subsidiary to expand the company's presence in Eastern Europe. At the end of 8 years, it finally has some extra cash which it can send home.

What happens? It discovers the taxes it paid to Poland from years 1 through 3 are no longer eligible for the foreign tax credit because they are more than 5 years old. The Polish tax rate is 28 percent. This means if a company repatriates those early earnings, it will pay combined Polish and U.S. taxes of 63 percent. It is really almost confiscatory. That means, of course, the money is not coming home for reinvestment in the United States. We lose the benefit.

If those early tax credits had not expired, the United States would actually pick up some tax revenues. The subsidiary would owe the difference between the 28-percent Polish rate and the 35-percent U.S. rate. That happens to be a gain of 7 percentage points of taxation into our U.S. Treasury from that company.

To ensure that double taxation no longer occurs, our JOBS bill extends the carry-forward period for foreign tax credits from 5 years to 20 years. Twenty years is the amount of time companies have to utilize net operating losses. It is only appropriate, then, that the key mechanism for avoiding double taxation should have the same shelf life.

Our JOBS bill mostly fixes problems in the foreign tax credit area. The only time a company benefits from a foreign tax credit is when it brings that money home.

To repeat a very elementary point, foreign tax credits are a benefit to that company only when that company brings foreign earnings home for reinvestment. When the credit expires, this impedes capital mobility because of double taxation, and it blocks reinvestment of foreign earnings in the United States.

Another example of guaranteed double taxation is our rule that only allows 90 percent of a company's AMT to be offset with foreign tax credits. This rule guarantees that the company will be double taxed on 10 percent of the alternative minimum tax. The JOBS bill allows what is common sense—a 100-percent offset.

To give you a real-life example of how these two changes will help U.S. operations make investments in America and create jobs in America, the largest American manufacturer in this example of a particular automobile part is bringing dividends back from its profitable foreign operations to cover losses in its U.S. operations. Their U.S. losses, when combined with the foreign dividends to fund the U.S. operations, has created huge unused foreign tax credits with a 5-year expiration period. Because of their ongoing U.S. losses, it is unlikely these credits will be used within those 5 years.

This company also has a growing alternative minimum tax because their foreign tax credits can only be offset by 95 percent of their AMT liability.

The limit is creating an annual alternative minimum tax liability because the additional 10 percent of the AMT cannot be offset with the foreign taxes that have already been paid on that income. The company is guaranteed to incur double tax on foreign earnings brought back to support the U.S. operation. This may be unbelievable to anyone listening, but this is actually happening under U.S. tax laws.

The company's foreign competitors in the United States are not equally hindered in the same way by the 90-percent alternative minimum tax, foreign tax credit limit. If a foreign competitor loses money, they get a 20-year U.S. net operating loss compared to the 5-year foreign tax credit carryforward. Our Tax Code, then, is harming a company that has operations in all 50 States and employs 38,000 people in 16 different manufacturing facilities.

This example shows why the 20-year foreign tax credit carryforward and the repeal of the 90-percent AMT foreign tax credit limits are in this very important jobs in manufacturing bill. The current rules harm U.S. operations and we need to fix it.

I also have some comments on another provision, the interest allocation provisions, to give another example of how our international rules harm U.S. operations. As I said earlier, foreign tax credits can only offset foreign income; they cannot offset income from U.S. activities. In determining the amount of foreign income, certain U.S. expenses, such as interest expense, are partially allocated to foreign income. This is used in calculating the amount of foreign tax credit a U.S. company is allowed to claim on its return. The United States arbitrarily allocates U.S. interest expense to foreign earnings, but the foreign government does not recognize that interest expense for its tax purposes. It is as if the interest expense somehow disappears into the clear air.

The interest allocation rules artificially reduce the foreign tax credits that can be used, and when the credits cannot be used the credits expire. It may surprise many Senators to hear that our interest allocation rules create a competitive disadvantage for U.S. multinationals that try to expand their operations into the United States and maybe do not get expanded here.

A portion of the interest expense on debt incurred to invest in the United States is allocated to foreign source income. A foreign corporation making the same U.S. investment is not impacted by these interest allocation rules. It gets to fully deduct the interest costs within the United States and thereby has a lower cost of capital than a U.S. company making that same investment. Therefore, the interest allocation rules actually work against U.S. multinational companies that invest in the United States. It has put some at a competitive disadvantage with foreign companies operating in the United States. I hope this is very clear, that this is not the right thing for the U.S. Tax Code to do to foreign manufacturers. Why should we encourage international competition in the United States against our own domestic manufacturer?

We have Senators demonizing the JOBS bill international provisions. This gives me an opportunity to emphasize once again how anything gets done in the Senate—only in a bipartisan way. This is a bipartisan bill.

Democrats and Republicans agree to everything in this bill, and the international provisions we agreed to were provisions that actually help U.S. job creation and help our own economic growth.

I ask the Senate to support Senator BAUCUS and this Senator in this bipartisan bill. I hope Members will not buy the distortion. None of the international changes caused jobs to go offshore. Just the opposite. These were selected to bring the foreign money back for real investment in the United States, creating jobs in the United States, creating manufacturing jobs in the United States because this is a manufacturing bill. These changes level the playing field between the United States and foreign companies operating inside the United States. They were specifically selected because they tend to help U.S.-based manufacturers more than other sectors of our economy.

The entire JOBS bill is geared towards creating jobs in manufacturing—jobs in the United States, not overseas—because American manufacturing overseas does not benefit from this bill.

It is quite simple. These are the only kinds of international provisions we could ever get bipartisan agreement on because it is so obvious. It is so obvious, it came 19–2 out of our committee. We should not allow international rules to remain in place if they harm U.S. operation. Once again, we are talking about commonsense international tax reform. In fact, if anyone wants to condemn this bill, it is that maybe we do not do anything radical in this bill. We just fix problems. We fix problems with current law. We fix problems with current law that happens to be harming U.S. domestic interests.

So I ask Members to vote against the amendment of the distinguished Senator from South Carolina.

I yield the floor.

Mr. HOLLINGS. Mr. President, I yield 8 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, we are here for two fundamental reasons. One, we are here to remove from our Tax Code a provision that has been declared illegal by the World Trade Organization, and certain industries in America are now being sanctioned for that illegal provision.

We would not be here debating an international tax law change but for the fact that the WTO declared illegal our system of encouraging U.S. manufacturers to export. I don't think any Member would challenge that statement. These international tax changes are totally being carried by the need to eliminate this WTO-offending sanctions-creating provision.

There is a second step we ought to be taking. We ought to remove the incentive for U.S. firms to take jobs from the United States overseas. There are a lot of incentives that are already out there. There are incentives of lower labor costs, lower environmental standards, lower standards in terms of human rights. All of those are already in place. However, we do not need to be giving a further economic incentive to move jobs out of the United States.

Let me state briefly what I believe we ought to be thinking about as we consider this matter. Just a couple of hours ago, as I was walking to the Capitol, I ran into a large group of folks. I stopped and asked them who they were. They were machinists from Wichita, KS. Do you know what they told me? In Wichita, KS, machinists used to be 27,000 strong. Do you know how many they have in Wichita today? Only 16,000. Eleven thousand jobs have left Wichita from that one union. I asked, where did the jobs go? Did they disappear? No longer producing airplanes? No, the 11,000 jobs are still in place, but they just happen to be in places such as China, India, Brazil, and other countries which are now building the airplanes that used to be built in Wichita.

When I told that group of Wichita machinists why, in part, those jobs had left Wichita to go offshore, they were stunned. So let me tell the Senate what I told the Wichita machinists. We have a fancy provision in the international tax law called ''deferral.'' In fact, this Senate voted about 20 years ago to repeal this deferral. But that effort failed.

''Deferral'' basically means the income earned by the foreign subsidiary of a U.S. multinational is not subject to tax. They do have to pay whatever their local taxes are to China or India, but they do not pay any tax to the U.S. Government.

Do you know what that costs us every year in lost revenue for our Government? According to the Treasury Department, it costs us $11 billion a year. That is the incentive we are giving. That $11 billion, incidentally, is about what it would take to do two things we debate a lot around here: fully fund the No Child Left Behind law and fully fund our veterans program.

Over the years, this benefit has produced substantial savings to American corporations. Let me give you a few examples. Citigroup has saved, on an accumulated basis, $6 billion as a result of this provision; ExxonMobil, $22 billion; Hewlett-Packard, $14 billion; IBM, $18 billion.

Aside from taking advantage of this extremely generous tax break, which creates a positive incentive to move jobs from the United States overseas, every one of those firms appears on Lou Dobbs' ''Exporting America'' list. Every one of the firms that is getting this tremendous benefit is doing what the benefit is designed to do, which is to encourage the relocation of jobs outside the United States of America.

So in light of that, what are we doing in this bill to reduce or eliminate the incentive for jobs to leave America? Do you know what we are doing? We are increasing it by $3.7 billion per year.

I respect greatly and consider Senator GRASSLEY to be one of my friends who I most respect and admire in the Senate, but I wish he were here to answer this question. If this bill does not give greater incentives to American firms to leave America and move jobs offshore, why does it cost us $3.7 billion? Why are we going to have an additional revenue loss of that magnitude other than the fact that we are encouraging jobs that would not otherwise have left America to do so and, therefore, create more of this deferral tax benefit?

But it does not end there, as with my friends from Wichita. There is a second provision. It has the fancy name ''repatriation.'' What does that mean? That means after a company has deferred paying U.S. taxes on the $18 or $14 or $22 billion they have accumulated, and they finally decide, ''Well, I want to move some of it back to the United States,'' for whatever purpose, we are now going to say for 1 year they can do that, not at the same tax rate they would have paid had they kept those jobs in the United States—which is approximately 35 percent—they are going to be able to move that money back to the United States at 5.25 percent, which is approximately an 85-percent benefit, tax gift over what they would have paid had they kept those same jobs at home.

What is this going to cost us? What is the difference between a 35-percent and a 5.25-percent tax rate? Well, the cost to the Federal Treasury is going to be approximately $16 billion in the year this window is opened.

Now the proponents of this window are going to say: Oh, this is a temporary window. We are going to shut that thing tight after 1 year. Friends, I would be willing to make a substantial wager of Florida oranges that once this window gets in the tax law, it is going to be like all those other tax practices that were supposed to be temporary.

I say to the Senator, do you remember when the President came down here in 2001 and said: ''I want you to pass all these tax benefits, but they are only going to be temporary so we can stimulate the economy''? Now what is the President's tax plan? To make all those temporary taxes permanent.

What do you think is going to be his tax plan when it gets to be 2005, if he is still the occupant of 1600 Pennsylvania Avenue? He will be down here wanting to make this window a permanently open window.

I could not imagine, at a time when we are so concerned with the loss of jobs, we would pass legislation that would create even additional incentives for American jobs to pick up—maybe on aircraft made by Americans in Wichita, KS—and fly away to other lands.

We should support Senator HOLLINGS' amendment. And then we should vote no on final passage of this bill.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. There is 3½ minutes.

Mr. HOLLINGS. Mr. President, I yield whatever time I have to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I am going to support the amendment to strike this section. I do that because the Senator from South Carolina is absolutely right. So is the Senator from Florida. The fact is, there are several provisions that incentivize the movement of U.S. jobs overseas. At a time when we are trying to create new jobs in this country, to say to companies—which, by the way, have moved their jobs overseas already—''Repatriate your income to this country now, and we will give you a 5.25-percent tax rate,'' how about a 5.25-percent tax rate for every American? How about a 5.25-percent tax rate for those who live in North Dakota or South Carolina or Florida?

Why should we provide incentives for companies that want to move their jobs overseas? I have talked at length about Huffy bicycles. They are gone. They are now made in China. They used to be made in the United States. Radio Flyer, the little red wagons, they are gone. They used to be made in the United States. Those little red wagons are now made in China. The U.S. taxpayers provide an incentive for those companies to close their U.S. plants, fire their workers, and move their jobs overseas.

Now this bill comes to the floor of the Senate and says to those companies that moved their jobs overseas: We will give you a good deal. Repatriate some of that money, and we will lower your tax rate to 5.25 percent. Well, that sends a signal to everybody that when you decide next to move your jobs overseas to access lower labor costs, at some point in the future somebody will get behind a closed door and come up with this goofy idea that they will reduce your tax rate again—maybe to 5.25 percent, maybe to 1.25 percent. How about zero?

My question is this: If it is good enough for these companies, why is a 5.25-percent tax rate not good enough for every American? Why is it not good enough for working families?

But the Senator from South Carolina has it right. We ought not, in any circumstance, provide any additional incentive to move more American jobs overseas. They are moving overseas to access lower labor costs and less restrictions with respect to safe plants and environmental restrictions. Why on Earth would we want to give them a tax benefit as they leave this country? This makes no sense to me.

There are some provisions in the international tax section which I think are all right. But there are some that are, in my judgment, a colossal waste of money and fundamentally the wrong incentive with respect to American jobs. Because of that, because of this pernicious provision that reduces the tax rate to 5.25 percent for the repatriation of earnings for those that have already moved their jobs overseas, I am going to support the amendment that is offered by the Senator from South Carolina. He is right on track.

As you know, we had a vote a few days ago on my amendment that would have done more than this amendment, essentially. My amendment was taking out of existing law the provision that encourages companies to move overseas. The Senator from South Carolina supported that. The Senator from South Carolina now says they are creating a new piece of legislation that, in the long run, will have even more incentive to move American jobs overseas. He says: Let's stop that. Let's not do that. I agree with him completely. I think the Senator from South Carolina does a service to this Chamber by offering this amendment. I intend to support his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I say to the Senator, if you do not have any more time, then I will yield back my time and we can then vote.

Mr. HOLLINGS. Good.

Mr. GRASSLEY. Is that OK?

Mr. HOLLINGS. Yes.

Mr. GRASSLEY. Mr. President, I yield back all time on this side.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to amendment No. 3134. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 23, nays 74, as follows:

[Rollcall Vote No. 90 Leg.]

YEAS—23

Akaka	Dorgan	Inouye
Byrd	Durbin	Jeffords
Clinton	Feingold	Kennedy
Conrad	Graham (FL)	Kohl
Dayton	Harkin	Leahy
Dodd	Hollings	Levin
Mikulski	Reed	Reid
Rockefeller	Sarbanes	

NAYS—74

Alexander	Crapo	McConnell
Allard	Daschle	Miller
Allen	DeWine	Murkowski
Baucus	Dole	Murray
Bayh	Domenici	Nelson (FL)
Bennett	Ensign	Nelson (NE)
Biden	Enzi	Nickles
Bingaman	Feinstein	Pryor
Bond	Fitzgerald	Roberts
Boxer	Frist	Santorum
Breaux	Graham (SC)	Schumer
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Campbell	Hatch	Snowe
Cantwell	Hutchison	Specter
Carper	Inhofe	Stabenow
Chafee	Johnson	Stevens
Chambliss	Kyl	Sununu
Cochran	Landrieu	Talent
Coleman	Lautenberg	Thomas
Collins	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Corzine	Lott	Wyden
Craig	Lugar	

NOT VOTING—3

Edwards	Kerry	McCain

The amendment (No. 3134) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I have a unanimous consent request that has been cleared on both sides. I ask unanimous consent the pending Kyl amendment be recalled.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senator from Texas, Mrs. HUTCHISON, have 2 minutes for an amendment that she wants to offer.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3138

Mrs. HUTCHISON. Mr. President, I call up amendment No. 3138 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] for herself, Mr. SMITH, and Ms. LANDRIEU, proposes an amendment numbered 3138.

Mrs. HUTCHISON. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To make certain engineering and architectural services eligible for the deduction relating to income attributable to United States production activities and to limit an employer's deduction for entertainment expenses of covered employees to the amount which the employee includes in income)

On page 35, between lines 11 and 12, insert the following:

SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION ACTIVITIES INCLUDES INCOME RELATED TO CERTAIN ARCHITECTURAL AND ENGINEERING SERVICES.

(a) IN GENERAL.—Paragraph (1) of section 199(e) (relating to domestic production gross receipts), as added by section 102, is amended to read as follows:

''(1) IN GENERAL.—

''(A) RECEIPTS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(i) any sale, exchange, or other disposition of, or

''(ii) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(B) RECEIPTS FROM CERTAIN SERVICES.—

''(i) IN GENERAL.—Such term also includes the applicable percentage of gross receipts of the taxpayer which are derived from any engineering or architectural services performed in the United States for construction projects in the United States.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined under the following table:

''In the case of any taxable year beginning in—	**The applicable percentage is—**
2004, 2005, 2006, 2007, or 2008	25
2009, 2010, 2011, or 2012	50
2013 or thereafter	100.

(b) LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES WITH RESPECT TO COVERED EMPLOYEES.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

''(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities—

''(A) in the case of a covered employee (within the meaning of section 162(m)(3)), to the extent that the expenses do not exceed the amount of the expenses treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such covered employee on the taxpayer's return of tax under this chapter and as wages to such covered employee for purposes of chapter 24 (relating to withholding of income tax at source on wages), and

''(B) in the case of any other employee, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act, and section 15 of the Internal Revenue Code of 1986 shall apply to the amendment made by this subsection as if it were a change in the rate of tax.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to expenses incurred after the date of the enactment of this Act and before January 1, 2006.

Mrs. HUTCHISON. Mr. President, this is an amendment that is a matter of fairness and equity. It is cosponsored by Senator LANDRIEU, Senator SMITH, and myself. It is to put one sector that was in the original FSC/ETI coverage back into the bill. It is architects and engineers. We know there has been a huge outsourcing of professional jobs overseas. This is becoming more common. Our architectural and engineering firms are particularly vulnerable to foreign competition. This amendment is a pared-down amendment that would give them some of the tax deduction back. It is the only sector that was originally covered that is not covered in the bill before us.

My amendment would phase in the coverage over a 10-year period. It is offset, so there will be no cost. It is a matter of fairness. We should not lose our engineering and architectural jobs in this country. They have lost 31 percent of their margins in the last year.

I hope we will be able to agree to this amendment. It is a matter of simple equity. I believe with this phased-in tax deduction we will have an incentive to do our designing and engineering in our country, for buildings that are in our country. This is not applied to buildings built overseas, only buildings built in our country.

I urge the adoption of the amendment, but if it needs to be set aside for further consideration——

The PRESIDING OFFICER. Is there further debate on the amendment?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent the amendment by the Senator from Texas be temporarily set aside so the Senator from Louisiana may offer her amendment.

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

AMENDMENT NO. 3123

(Purpose: To improve the credit for Ready Reserve-National Guard employees, to provide a credit for replacement employees of Ready Reserve-National Guard employees called to active military duty, and for other purposes)

Ms. LANDRIEU. Mr. President, I appreciate the opportunity to speak for just a few minutes on a very important amendment to this underlying bill, an amendment I offer on behalf of Senator MURRAY, Senator JOHNSON, Senator CANTWELL, Senator CORZINE, Senator KERRY, Senator DURBIN, and Senator DODD. They offer this amendment with me. It is an amendment I understand the chairman and ranking member have looked at and both support. In just a moment, I want to ask each of them, if they would, to make some comments about this amendment. We have to dispose of it one way or the other in the next few minutes. We may not need a rollcall vote. I understand their wishes to move through this bill, but I am anxious to hear from the chairman and the ranking member about the importance of making sure this amendment is carried through the process.

This amendment has to do with the Guard and Reserve and the people who employ them stateside. It has to do with our responsibility as a government—or our obligation, if you will, our commitment to the concept of a total force that relies, now, heavily on our Guard and Reserve. This amendment provides some much-needed tax relief to patriotic employers who try to help fill the pay gap between what a man or a woman might earn when they are stateside at their regular job—and then they put on the uniform to defend us and to fight this war that we are engaged with today.

There are maybe 1,000, maybe 2,000, good, compelling stories I could share with you about our current situation. But let me begin by saying the underlying bill moves around about $120 billion. The underlying bill doesn't cost the Treasury because we are raising some fees and taxes and modifying others.

AMENDMENT NO. 3123

(Purpose: To improve the credit for Ready Reserve-National Guard employees, to provide a credit for replacement employees of Ready Reserve-National Guard employees called to active military duty, and for other purposes)

Ms. LANDRIEU. Mr. President, I call up amendment No. 3123.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU], for herself, Mrs. MURRAY, Mr. JOHNSON, Ms. CANTWELL, Mr. CORZINE, Mr. KERRY, Mr. DURBIN, and Mr. DODD, proposes an amendment numbered 3123.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Ms. LANDRIEU. Mr. President, the underlying bill moves around about $120 billion in tax relief, tax increases, changes in our Tax Code to hopefully increase employment opportunities, increase and strengthen employment across the board, and strengthen our economy here and abroad. That is the intention of the underlying bill.

This amendment moves around only $2 billion of that $120 billion. Every Senator could come here and argue that section A is more important than section C or section D. But I can tell you that, to my knowledge, this is the only section of $120 billion that deals specifically with tax credits for guys and gals who are putting on the uniforms, who are not working for the pay but are working because of their patriotism, and working in some of the most horrific and very difficult situations. The least we can do while we are debating a tax bill is to provide some much needed relief.

I could give you 2,000 stories. Because time is short, let me give you 2.

This is a family from Louisiana. It is the subject of an article. There were hundreds of articles written. This one happens to be from the Washington Post. Kathy Kiely did a beautiful job of writing this article. She starts off:

Drastic pay cuts. Bankruptcy. Foreclosed homes. They aren't exactly the kind of challenges that members of America's military reserves sign up for when they volunteered to serve their country.

But for many, the biggest threat to the home front isn't Saddam Hussein or Osama bin Laden. It's the bill collector.

Janet Wright is from Louisiana.

Kathy Kiely writes:

Janet Wright says she ''sat down and cried'' when she realized how little money she and her children, Adelia, 5, and Carolyn, 2, would have to live on when her husband was sent to the Mideast. In his civilian job with an environmental cleanup company, Russell Wright makes $60,000 a year—twice what he'll be paid as a sergeant in the Marine Forces Reserve. Back in Hammond, LA, his wife, who doesn't have a paying job, is pouring the kids more water and less milk. She is trying to accelerate Carolyn's potty training schedule to save on diapers.

Let me ask: Could we do a little better for our Guard and Reserve members who have to take a cut in pay to serve in the military for us? They knew the responsibilities when they signed on to the Guard and Reserve. They understood their commitment to training. They understood their commitment to their monthly responsibilities. And, yes, they understood it wasn't going to be a ''paid vacation,'' but because our policy in Congress is relying on their work and relying on them for longer periods of time than either they or, I might add, at least according to the generals who have testified before the Armed Services Committee, we anticipated, the least we could do in a tax bill is to give them some minimal relief.

This amendment helps families just like the Wright family in Hammond, LA, by allowing the employer to pay the difference between the $30,000 that this Marine Reserve officer will earn when he is serving our country and putting himself in harm's way, and if they pay that gap up to $30,000—it is not mandatory; it is voluntary. Many of our companies, but not all, are doing it for obvious reasons. There is a strain particularly on small businesses. But for those employers that—and I note Boeing is a good example of a very large employer with a wonderful policy, and much better, I might add, than our own Government which today has refused to adopt this policy. But at least there are some employers out there that are doing more than hanging the flag and saying the Pledge of Allegiance. They are actually taking out their checkbook in a very patriotic manner and keeping their Guard and Reserve families whole. The least we could do is give them a 50-percent tax credit, which is what our amendment does.

Let me read another example. I have 2,000; I am only going to read 2.

This is a firefighter from the Pacific coast. He earned a decent living before being called up in 2002, but active duty meant a $700 or a $1,000 a month pay cut and some very painful choices. He said:

My wife said ''We cannot live here anymore. It is too expensive.''

He said he rented a 12,100 square foot home. He moved the whole family into a two-bedroom apartment where his wife has to sleep on a couch.

I understand we all have to make sacrifices. Most certainly the men and women who sign up for our All-Volunteer Force don't sign up because they think they are going on vacation or for the pay or the benefits. They sign up because they are patriotic. They believe in the ideals of this country.

When we are passing a $120 billion bill, if we can't take $2 billion or $3 billion or $4 billion and support the hundreds of thousands of men and women who are away from their jobs stateside and away from their businesses—not 3 months, not 12 months but 18 months under very tough conditions—so their children don't have to drink more water in their cereal in the morning and the wives have to sleep on couches, I think we can do better.

That is why I have waited for several months actually to offer this amendment and to have support from both sides of the aisle.

There is a cap on the credit. So the cost is very reasonable. We have taken the necessary precautions to make sure this amendment is affordable.

According to DOD, 98 percent of the reservists have a pay gap. Sometimes it is only $1,000 a month. Sometimes it could be $500 a month. But in some cases it is more than that. But 98 percent have pay gaps under $30,000.

This amendment will cover almost the entire Guard and Reserve population. Our Guard and Reserve on deployment would not have to worry about their bills being paid and could focus on the job before them, and do it well, as the vast majority of them do day in and day out, night in and night out.

That basically is what amendment does.

There is also a replacement worker tax credit for small businesses, many of which would be affected in the State of the Presiding Officer, with 50 employees or less. It is not just helping to fill the pay gap for employers that continue to pay the salaries, but it also gives some help to small business owners that in many instances take the brunt from their service, particularly when it is extended.

I will end my remarks. I see some of my colleagues on the floor who may want to add some comments.

This affects thousands of people in all of our States. I am proud our Guard and Reserve are right there stepping up on the front lines.

We have an outstanding Guard and Reserve unit. In about a month, we will have over 5,000, almost 6,000, men and women serving in Iraq; again, some of them for much longer periods of time than they were initially told.

I understand the chairman is prepared to accept the amendment. But before I waive my right to a recorded vote, I would like to have some comments from the chairman, who has negotiated this bill beautifully through this process. If he could, I would like for him to comment about the importance of this amendment and the outlook for keeping this amendment in the conference report as we move this bill to the President's desk for his signature.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Iowa.

Mr. GRASSLEY. Madam President, I can comment very positively about the motivation behind the amendment, and the good policy of giving equity to people who are called away from jobs and away from family to go to a far-off land to defend America in a war against terrorism and doing it in a way that has never been done for guardsmen and reservists to this extent, I think going back to the Korean war. What we are doing now has not been done for a long period of time.

The Senator from Louisiana needs to be complimented on her efforts to recognize that and, particularly, to recognize that through employers who show very patriotic fervor in cooperating in this whole program.

I can say that very positively about the amendment of the Senator from Louisiana. She is asking me to predict what might happen in conference. It is very difficult to do that. I have a reputation for defending the position of the Senate and working as best I can to work through this. Obviously, I cannot make any promises to the Senator from Louisiana.

Ms. LANDRIEU. I can appreciate that. I appreciate the comments of the chairman. He has shown himself to be a great leader, a man of his word. I know he will uphold and fight for our position.

I think it would be a real shame to move a $120 billion tax bill through this Congress at this time and have not a part of it specifically directed to some of the men and women who are carrying the greatest burden right now.

I know our businesspeople of all sizes and shapes are contributing to the overall economy and creating jobs, but there would not be any country to create jobs for if it were not for the men and women in uniform who protect us here and abroad.

I appreciate the remarks of the chairman.

I ask unanimous consent to have printed in the RECORD three articles involving enlisted reservists of the National Guard, and a letter from the National Guard Association that represents thousands of current and retired guardsmen and reservists.

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

NATIONAL GUARD ASSOCIATION
OF THE UNITED STATES,
Washington, DC, May 10, 2004.

Hon. MARY LANDRIEU,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LANDRIEU: On behalf of the membership of the National Guard Association of the United States (NGAUS), thank you for your unwavering support of the men and women of the National Guard. Today, there are more than 94,000 National Guard personnel serving on active duty in support of the global war on terrorism. These men and women, who are serving in harm's way, contribute over 40% of our fighting force in the Global War on Terrorism. This number also reflects those personnel serving abroad and away from their families, communities, and employers.

Members of the National Guard must take time off from their civilian employment to perform military duties. Increased operational tempo dictates that National Guard and Reserve Component members must be placed on active duty ever more frequently. This increased operational tempo places additional financial burdens on employers, to a much greater extent than in past years. We at NGAUS believe employers should not be expected to bear the increased financial burdens that increased Guard deployments place on them.

Assisting employers with a tax credit provides them the ability to inject those funds back into their businesses in order to offset the effects of the temporary loss of their National Guard employees.

The National Guard Association of the United States urges the Members of the United States Senate to support your efforts to recognize the civic duty of those employers who, in the face of financial constraint, continue to support their National Guard employees.

Sincerely,

RICHARD C. ALEXANDER,
Major General (Ret.), AUS,
President.

[From the San Mateo County Times, Dec. 18, 2003]

WAR CARRIES A HIDDEN COST; RESERVISTS' ''PAY GAP'' OFTEN FORCES DIFFICULT CHOICES ON FAMILIES

(By Justin Jouvenal)

PACIFICA.—Scott Hellesto endured snipers and artillery fire, but one of the most difficult battles during the Navy reservist's service in Iraq came on the homefront—losing his three-bedroom home.

The Pacifica firefighter had earned a decent living before being called up in January 2002, but active duty meant a $700– to $1,000-a-month pay cut—and some painful choices. ''My wife said, 'We can't live here anymore, it's too expensive,''' Hellesto said of his rented 2,100-square-foot home in Antioch. ''So we moved the whole family into a two-bedroom apartment, where my wife had to sleep on the couch.''

This ''pay gap'' is a hidden cost of war that likely affects thousands of the state's reservists and National Guard troops as they transition from more lucrative civilian jobs to active duty. It is an extra burden for families already dealing with the pain of separation and the stress of having a loved one in a combat zone.

''There's fewer Christmas gifts and other cuts,'' said Lt. Col. Terry Knight, a California National Guard spokesman. ''Often you have a spouse left behind that ends up getting a second job.''

The pay gap has become especially difficult for reservists and National Guard troops since the 2001 terrorist attacks, as more are serving and many are going for longer stints on active duty.

About 10,000 California National Guard troops have been deployed since 9/11—the largest mobilization since the Korean War. About 4,000 are currently on active duty, including 1,600 in Iraq. They earn between $1,700 and $2,800 a month.

Hellesto, who served with the 23rd Marines Echo Company, swept into Iraq with the first wave of troops last March. He made it to Nasariyah and helped secure a Baghdad neighborhood on April 9, the day the statue of Saddam Hussein fell in Iraq's capital.

''I saw the best and the worst of humanity,'' Hellesto said.

He ran missions as a decoy to draw out Saddam's Fedayeen soldiers and withstood SCUD missile alerts. Hellesto also recalls with warmth the Iraqi soccer star who gave him his gold medal from the Asian Games because Hellesto cared for the man's son.

Hellesto said he doesn't want people to think he is bitter about his service—he said he knew what he was getting into and would do it again. Still, the financial strain was difficult.

He said he could hear the edge in his wife Michelle's voice when he would secretly call home on a satellite phone supplied by a Fox News reporter.

''Sometimes, I wondered what I got my family into,'' Hellesto said.

Hellesto was able to get by with a little help from his friends and family. He turned to fellow firefighters for help when he was buying Christmas gifts for his three children last year.

The apartment—he dubbed it the ''shoebox''—was in a rough neighborhood, and someone slashed the tires and broke a window on his truck last spring. Fortunately, a friend of Hellesto's was able to pay to fix up the truck.

Scott Hellesto was called to active duty in January 2002. He served at Camp Pendleton outside San Diego for a year, before his tour of duty was extended and he was sent to Iraq.

Like many companies and local governments, the city of Pacifica kept up Hellesto's regular salary and health benefits for the first five months he was on active duty, but after that, he was on his own.

Michelle Hellesto had to go on the Navy's health plan, which meant giving up the family doctors. She also had to get government assistance to pay for formula for her children.

''It put a strain on us; it was like supporting two households when he was done at Camp Pendleton,'' she said. ''We couldn't have done it without the help of friends and family.''

Hellesto estimated that about 30 to 40 percent of the reserves he served with were in the same financial bind, but the pay gap does not affect every soldier. Many earn more on active duty than they do in their civilian jobs.

The National Guard Association estimates about a third of the Guard earn less on active duty than in their civilian jobs, while another third earn more.

Congressman Tom Lantos, D-San Mateo, introduced a bill in March that would close the gap for some troops. Specifically, the bill would entitle a reservist who is also a federal employee and on active duty for more than 30 days to receive the difference between his military and civilian pay.

The bill also would give state and local governments strong incentives to make up the pay and give private companies tax breaks if they continue to pay employees while they are on active duty.

The bill is currently before the House Subcommittee on Civil Service and Agency Organization. The U.S. Senate passed a pay-gap provision for federal employees, but it was cut out of the final version of a supplemental appropriations bill.

''It is a heavy enough sacrifice to pick up and go to Iraq,'' Lantos said. ''There is no reason to have a financial hardship as well.''

Fortunately for Hellesto, his financial burden has eased. After returning home in July, he was able to work overtime to get his family's finances back on track. He recently bought a home in Antioch and has a fourth child on the way.

But he knows things could change quickly again.

''If they asked me to go back today, I would do it,'' Hellesto said. ''But if I didn't get my per diem allowance, I would have to sell my house.''

[From the Silicon Valley/San Jose Business Journal, Apr. 26, 2004]

HE HELPED REBUILD IRAQ, NOW HE MUST REBUILD HIS BUSINESS

(By Timothy Roberts)

When Army Reservist Michael Malone left his new bride and his home in San Jose for Iraq 16 months ago, his computer business had seven employees and an office on Taylor Street. Today the employees of Star Technologies are gone, and his business partner and he have the furniture from their vacated office stacked in their garages.

He's still in business, but struggling.

''The world came crashing down,'' says Mr. Malone, ''and he (partner Erik Johnson) had to try to hold it up like Atlas.''

Says Mr. Johnson: ''First we had the tech bust, then the impact from 9/11 and then Mike got call up. That was a whole lot of blows one right after the other''.

Reservists know they may be called to action at any time, but with military resources stretched thin in Iraq and Afghanistan, the Pentagon is increasingly relying on the reserves to make up for shortages in the regular, volunteer forces. The 34-year-old Mr. Malone, who has served in the reserves for 16 years and holds the rank of captain, anticipated a short-term assignment.

''It's one of the challenges of being a small-business owner,'' he said of his Army Reserve commitment. ''You plan for it—just not for 16 months.''

Naval Reservist Frank Jewett, a small business consultant with Compass Consulting Group in San Jose, is expecting to head overseas for training soon, but wonders if he won't also be deployed for something more than training.

''You have to have a plan,'' says Mr. Jewett, who is also the vice president of the Board of Trustees of West Valley-Mission College. ''You need to talk with your employer and make sure they will support you.''

Some companies in the Valley have recently expanded their support of reservists. Up until the war on terrorism, Intel offered full salary to reservists for 30 days a year. Now it offers 180 days a year of full pay. It also has expanded child care benefits, says spokesman Mark Pettinger.

But the challenge to small businesses became apparent in the late 1990s, when the military began to tap the reserves for troop commitments in the Balkans. In 1999, Congress created the Military Reservists Economic Injury Disaster Loan to be offered by the U.S. Small Business Administration. Business owners with essential employees returning from active duty have 90 days from the reservist's discharge to apply for up to $1.5 million offered at what is now 2.7 percent interest.

The first loans were made in Aaugust 2001. When reserve units were called up for the war in Afghanistan, the loan program was expanded to include reservists from that and subsequent wars.

Since then the SBA has made $114.5 million in such loans, although according to the SBA's Western District office only $1.2 million in loans has been made to Californians. Only 11 loans have been issued to small businesses with California addresses. The only address close to Silicon Valley is in Watsonville.

''We've had this program since 2001, and frankly that's not a whole lot of loans for three years,'' says SBA spokesman Karl Whittington in the Sacramento office, which handles disaster loans for the Western states.

Mr. Malone went to the University of Washington to earn a degree in mathematics on a ROTC scholarship. He was committed to at least eight years of reserve service. Liking the camaraderie of what he describes as the ''entrepreneurs and go-getters'' among the troops, he stayed in for twice that long. He serves in the 1397 Terminal Transport Brigade, which is based in Mare Island, although he was assigned to the 368 Engineer Battalion, based in Londenderry, N.H., in Iraq.

Mr. Malone started Star Technologies in 1995 with Mr. Johnson. They began with tech support and later expanded to include Web hosting, a move that helped give them a steady source of revenue. In 2000, a client came to them and asked them to solve a problem: keeping track of real estate appraisals. With that inquiry, Star Technologies launched into software development and created eAppraisal Flow.

Today, however, Mr. Malone is focused on just getting word out that Star Technology is still around and looking for customers. He just joined the San Jose Silicon Valley Chamber of Commerce and has been making visits to small businesses to offer his Web hosting and tech support services.

''You have to talk to people,'' he says. ''That's how you get business.''

In his spare time he's giving thought to designing a battle-ready lap-top computer that would allow officers to connect to secure and standard networks at the same time and provide position data with map overlays.

He still likes the Army, although with a new wife and three children from a previous marriage and a business to rebuild, he's not eager for any more overseas assignments.

''If Uncle Sam calls again, I'll go,'' says Capt. Malone. ''But it would be the last time—if it's any time soon—because I have to rebuild my business.''

[From USA Today, Apr. 22, 2003]

RESERVISTS UNDER ECONOMIC FIRE

(By Kathy Kiely)

WASHINGTON.—Drastic pay cuts. Bankruptcy. Foreclosed homes. They aren't exactly the kind of challenges that members of America's military reserves signed up for when they volunteered to serve their country.

But for many, the biggest threat to the home front isn't Saddam Hussein or Osama bin Laden. It's the bill collector.

Four in 10 members of the National Guard or reserves lose money when they leave their civilian jobs for active duty, according to a Pentagon survey taken in 2000. Of 1.2 million members, 223,000 are on active duty around the world.

Concern is growing in Congress, and several lawmakers in both parties have introduced legislation to ease the families' burden.

Janet Wright says she ''sat down and cried'' when she realized how little money she and her children, Adelia, 5, and Carolyn, 2, would have to live on when her husband was sent to the Middle East. In his civilian job with an environmental cleanup company, Russell Wright makes $60,000 a year—twice what he'll be paid as a sergeant in the Marine Forces Reserve. Back in Hammond, LA, his wife, who doesn't have a paying job, is pouring the kids more water and less milk. She is trying to accelerate Carolyn's potty training schedule to save on diapers.

She doesn't know how long she'll have to pinch pennies. Like his fellow reservists, Russell Wright has been called up for one year. he could be sent home sooner, or the military could exercise its option to extend his tour of duty for a second year. Even so, Janet Wright considers her family lucky: She can still pay the mortgage, and the children's pediatrician accepts Tricare, the military health plan.

Ray Korizon, a 23-year veteran with the Air Force Reserve and an employee of the Federal Aviation Administration, says his income will also be cut in half if his unit ships out. Korizon, who lives in Schaumburg, IL, knows the financial costs of doing his patriotic duty from bitter experience. Before the Persian Gulf War in 1991, he owned a Chicago construction company with 26 employees. He was sent overseas for six months and lost the business.

Still, he never considered leaving the reserve. Korizon says he enjoys the work and the camaraderie. But he worries about whether his two kids can continue to see the same doctor when he shifts to military health coverage. ''It's hard to go out and do the job you want to do when you're worried about things back home,'' he says.

Once regarded as ''weekend warriors,'' they have become an integral part of U.S. battle plans. Call-ups have been longer and more frequent.

''The last time you'd see this type of mobilization activity was during World War II,'' says Maj. Charles Kohler of the Maryland National Guard. Of the Maryland Guard's 8,000 members, 3,500 are on active duty. Kohler knows several who are in serious financial trouble. One had to file for bankruptcy after a yearlong deployment, during which his take-home pay fell by two-thirds.

Stories like that are the result of a shift in military policy. Since the end of the Cold War, the ranks of the full-time military have been reduced by one-third. The Pentagon has increasingly relied on the nation's part-time soldiers. More than 525,000 members of the Guard and reserves have been mobilized in the 12 years since the Persian Gulf War. For the previous 36 years, the figure was 199,877.

The end of fighting in Iraq isn't likely to lessen the pressure on the Guard and reserves. They'll stay on with the regular military in a peacekeeping role. Nobody knows how long, but in Bosnia, Guard members and reservists are on duty seven years after the mission began.

Korizon, who maintains avionics systems on C–130 cargo planes, has been told his Milwaukee-based reserve unit may be called up for humanitarian missions.

Some of the specialists who are in the greatest demand—physicians and experts in biological and chemical agents—command six-figure salaries in civilian life. The average pay for a midlevel officer is $50,000 to $55,000.

''They were prepared to be called up. They were prepared to serve their country,'' Sen. Barbara Mikulski, D–Md., says. ''They were not prepared to be part of a regular force and be away from home 200 to 300 days a year.''

Concerns are growing on Capitol Hill. As the nation's reliance on the Guard and reserves has increased, ''funding for training and benefits simply have not kept up,'' says Republican Sen. Saxby Chambliss of Georgia, a member of the Armed Services Committee.

The General Accounting Office, Congress' auditing arm, is studying pay and benefits for Guard members and reservists. A report is due in September. Meanwhile, members of Congress are pushing several bills to ease the burden:

Closing the pay gap. Some employers make up the difference in salary for reservists on active duty. But many, including the federal government do not. A bill sponsored by Democratic Sens. Mikulski, Dick Durbin of Illinois and Mary Landrieu of Louisiana would require the federal government to make up lost pay. Landrieu is doing that for one legislative aide who has been called up for active duty.

She has also introduced a bill to give private employers a 50% tax credit if they subsidize reservists' salaries.

Closing the health gap. Once on active duty, reservists, Guard members and their families are covered by Tricare.

But for the 75% of reserve and guard families living more than 50 miles from military treatment facilities, finding physicians who participate in Tricare can be difficult.

A measure sponsored by Sen. Mike DeWine, a Republican from Ohio, would give reservists and Guard members the option of making Tricare their regular insurer or having the federal government pay premiums for their civilian health insurance while they are on active duty. Several senior Democrats, including Senate Minority Leader Tom Daschle of South Dakota and Sen. Edward Kennedy of Massachusetts, support the idea.

Keeping creditors at bay. The Soldiers and Sailors Relief Act caps interest rates on mortgages, car payments and other debts owed by military personnel at 6% while they are on active duty. But Sen. Lindsey Graham, a South Carolina Republican who is the Senate's only reservist, says the act doesn't apply to debts that are held in the name of a spouse who is not a member of the military. He plans to introduce legislation to cover spouses.

Despite a groundswell of support for troops, none of the bills is assured of passage. There's concern among some administration officials about the cost of some of the proposals. In addition, some at the Pentagon think morale would be hurt if some reservists end up with higher incomes than their counterparts in the regular ranks.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I compliment the Senator from Louisiana. This is a very important amendment. The reservists clearly, particularly under the current circumstances, deserve at least the provision suggested by the Senator from Louisiana. The Senator can be assured this Senator will fight vigorously for her amendment in conference. It is a very important amendment.

Madam President, I believe there is no more debate on this amendment.

The PRESIDING OFFICER. Do the parties yield back all time?

Mr. BAUCUS. All time is yielded back.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.

• Mr. KERRY. Mr. President, the continuing activation of military reservists to serve in Iraq and the war on

terror has imposed a tremendous burden on many of our country's businesses, especially our small businesses. Too many small businesses, when their employees are asked to leave their jobs and serve the Nation, are unable to continue operating successfully and face severe financial difficulties, even bankruptcy. That is why I am pleased to join Senator LANDRIEU to provide all American businesses with a tax credit to help them continue to pay their employees who are called to active duty and to help small businesses temporarily replace reservists who are called up.

This amendment expands upon the Small Business Military Reservist Tax Credit Act that I introduced last year which provides help to small businesses in paying the difference in salary for their reservist employees called up to active duty. My legislation, S. 1595, also provided a tax credit to help small businesses cover the cost of temporarily replacing that employee while he or she is serving our Nation.

I worked with Senator LANDRIEU to develop this amendment which honors all patriotic employers who continue to pay the salaries of their employees who are members of the National Guard and Reserve and are called up to active duty in the war on terror in Afghanistan, Iraq and elsewhere. I believe this amendment will encourage all employers, especially small businesses, to pay their reservist employees when they face a reduction in salary due to their activation. Employers who continue to pay their reservists will be eligible to receive a tax credit up to $15,000 of the wages they pay to members of the Guard and Reserve for as long as the reservist is on active duty status. The JOBS Act, which we seek to amend, only provides a tax credit for reservists on active duty status for 1 year and does not provide any assistance for small businesses to help temporarily replace their reservists. I believe this approach is insufficient and that our amendment is needed to help reservists for each day of their service to our Nation and to provide important assistance to small businesses.

I am very pleased that Senator LANDRIEU has included provision of my bill to help small businesses cover the cost of temporarily replacing the reservist employee while he or she is serving our Nation. Today, many small employers are currently having a difficult time hiring temporary workers to replace their employees who have been called up to active duty in the national Guard or Reserve. The United Sates Chamber of Commerce estimates that 70 percent of military reservists called to active duty work in small- or medium-size companies. The Landrieu-Kerry amendment will provide a tax credit of 50 percent up to $6,000 to help small employers defray the costs of hiring a worker to replace a guardsman or reservist who has been called up to active duty. Small manufacturers will be eligible for a tax credit of 50 percent up to $10,000 to assist in hiring a temporary worker.

To fight our wars and meet our military responsibilities, the United States supplements its regular, standing military with reservists, citizen soldiers who serve nobly. Not since World War II have so many National Guard members been called to serve abroad. President Bush authorized the activation of up to 1 million military reservists for up to 2 years of active duty. Today, there are about 170,000 reserves on active duty in the war against terrorism—nearly half of the more than 350,000 called to duty since the attacks of September 11, 2001. Many are serving admirably around the world, performing critical wartime functions in Iraq, Afghanistan, and elsewhere. Our Nation does not go into battle without members of the National Guard and Reserve, and we are all grateful for their service.

Just this week, the Bush administration authorized the activation of an additional 47,000 reservists. The extension will cause significant economic difficulties for the reservists, their families and their employers that are left behind. Beyond the hardship of leaving their families, their homes and their regular employment, more than 41 percent of military reservists and National Guard members face a pay cut when they are called for active duty in our Armed Forces. Many if these reservists have families who depend upon that paycheck to survive and can least afford a substantial reduction in pay.

The large number of reservists being called up to active duty has hurt many small businesses across the Nation and may impact the number who are willing to re-enlist in the National Guard and Reserve in the future. In January, the Commission of the Army Reserve, Lt. General James R. Helmly, warned of a recruiting-retention crisis in the future for the National Guard and Reserve. A recent U.S. military questionnaire of returning Army National Guard soldiers projected a resignation rate of double what it was back in November 2001. From October to December 2003, almost one-quarter of the Guard members who have had the opportunity to re-enlist have opted not to do so. Recently, the U.S. Army developed a plan to pay reservists up to $10,000 to re-enlist to stop a developing problem.

That is why the Federal Government must take action to help businesses weather the loss of an employee to active duty and protect employees and their families from suffering a pay cut to serve our Nation. It is imperative that we help families of reservists maintain their standard of living while their loved one serves our Nation. We must also ensure that the cost of that service does not force businesses into financial ruin. We must ensure that our great tradition of citizen soldiers does not fade or cease because of the effect that service has on work and family. The Landrieu-Kerry amendment will help achieve their important goals and I urge my colleagues to vote in favor of this amendment.●

Mr. MCCAIN. Mr. President, we continue to be increasingly reliant on the men and women of our Reserve forces and National Guard. In fact, 40 percent of all the ground troops in Iraq and Afghanistan are composed of National Guard and Reserve forces as well as nearly all of the ground forces in Kosovo, Bosnia, and the Sinai. Many of these soldiers, sailors, airmen, and marines leave behind friends, families, and careers to defend our Nation. Accordingly, it is the responsibility of policy makers to ensure we look after the needs of our patriots.

Many reservists that are called to active duty end up making less money with the military than they did in their civilian job. This drop in pay has placed a hardship on many of the men and women serving in the Reserve components who are called to active duty. When the military calls reservists and guardsmen to active duty, the last thing our Nation wants is to hurt the reservist's families as a result. This amendment is designed to address this problem by allowing private companies to pay the difference between the servicemember's Reserve pay and his civilian pay. If the employer chooses to pay this benefit, the Federal Government will give the company a tax credit of 50 percent of the difference in pay, up to $3,000.

Our Nation's reservists and guardsmen are an amazing resource of experience, knowledge and dedication. If we are going to continue to rely on our citizen soldiers, we must make sure that they receive their fair share of benefits and that their families are provided for in their absence. I will always support responsible legislation that accomplishes this important goal.

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

The amendment (No. 3123) was agreed to.

AMENDMENT NO. 3138

Mr. BAUCUS. I call for regular order with regard to the Hutchison amendment.

The PRESIDING OFFICER. That is the regular order. Is there further debate on the amendment?

Mr. BAUCUS. I believe there is no further debate.

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

The amendment (No. 3138) was agreed to.

Mr. GRASSLEY. I ask unanimous consent Senators HATCH and PRYOR be added as cosponsors to the Hutchison amendment.

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

Mr. BAUCUS. Madam President, I move to reconsider the vote on the previous two amendments en bloc.

Mr. GRASSLEY. I move to lay the motions on the table en bloc.

The motions to lay on the table en bloc were agreed to.

Mr. GRASSLEY. I promised the Senator from South Carolina we would have a little colloquy on an issue he was concerned about. Could we do that right now?

Mr. NICKLES. Sure.

Mr. GRASSLEY. I ask the Senator from South Carolina be recognized.

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

Mr. GRAHAM of South Carolina. I thank Senator GRASSLEY.

CHINESE CURRENCY

I rise today to express my deep concern about the Chinese government's continued manipulation of its currency. In my mind, the Chinese government's adherence to a currency valuation system that does not rest on market-based principles is wrong and constitutes an unfair competitive advantage. It is time for the unfair valuation of the yuan to stop. I understand the administration has taken steps to address the problem and some progress has been made. But this is a serious problem. Clearly more needs to be done.

Mr. GRASSLEY. As Chairman of the Senate Finance Committee, I join my colleague from South Carolina in expressing concern about the way in which the Chinese currency is valued. I certainly agree that it is a serious problem that needs to be taken seriously. A fairly valued currency is in China's own long-term interests, and is key for moving to a market driven economy. I was pleased to hear that Secretary Snow was assured that interim steps are being taken and that progress in this area will continue.

Mr. GRAHAM. I appreciate the fact that the Chairman recognizes the serious nature of this problem. Unfair manipulation of currency cannot be tolerated. I would like to see additional progress on this issue in the next 60 to 90 days. If progress is not forthcoming, I hope the Chairman would join me in supporting Senate hearings. However, these hearings should only be the first step. Should China fail to make substantial progress and the Senate fail to address this issue substantively, appropriate and responsible legislation may then be necessary, and I reserve the right to attach our China currency amendment to any available legislation that comes before the Senate.

Mr. GRASSLEY. I do appreciate the importance of this issue. If we do not see substantial progress toward adoption of a market-based currency valuation system, I would support Senate hearings at the appropriate time.

Mr. GRAHAM. I thank the Senator from Iowa, and look forward to working with him to continue to pressure the Chinese government to adopt a market-based currency valuation system.

SECTION 29

Mr. SANTORUM. Mr. President, my amendment, cosponsored by Senators VOINOVICH and DEWINE, extends the Section 29 credit to new coke facilities to encourage the construction of new facilities. This provision is important because the U.S. currently produces below the domestic demand for coke, and the situation will likely worsen in the future. Much of the country's coke capacity is over 20 years old, and most existing ovens are near the end of their useful lives. I understand that the Finance Committee chairman, Senator GRASSLEY, prefers to address this issue during conference and not at this time. I thank the chairman for his commitment to this provision and urge his strong support for extending the Section 29 credit to new coke facilities in conference.

Mr. GRASSLEY. Mr. President, I would like to thank the Senator from Pennsylvania for his commitment to the Section 29 extension to new coke facilities. Although I am supportive of the provision, the most appropriate time to address it is during the conference. I look forward to working with Senator SANTORUM and the two Senators from Ohio to include this amendment in the conference report.

PRIVACY

Mr. BAUCUS. Mr. President, my colleague from New York and my colleague from Minnesota have filed a noteworthy amendment to the Jumpstart Our Business Strength Act, S. 1637. The amendment raises the very important issue of how in this global economy we can protect the privacy of personally identifiable information that is transmitted abroad. Senator CLINTON and her staff have worked diligently with me and my staff to find a way for the Senate to address these issues. The amendment raises significant issues that I believe will benefit from being made part of any appropriate hearing this session in the Finance Committee. They have graciously recognized the importance of moving forward on the JOBS bill. That is why I have agreed to invite Senators CLINTON and DAYTON to testify on this issue during the Senate Finance Committee's hearing on offshoring. My hope is that we will schedule that hearing soon.

Mrs. CLINTON. Mr. President, I compliment my colleague from Montana for his legislative skill and determination in managing the JOBS bill on this side of the aisle. I also thank him for the patience and consideration he and his staff have shown in working with me on the Clinton-Dayton privacy amendment. I and my colleague Senator DAYTON look forward to testifying on this issue in front of the Finance Committee because it is vitally important to maintain the privacy of our constituents and Americans throughout the Nation.

NEW MARKETS TAX CREDIT AND ECONOMIC SUBSTANCE DOCTRINE

Mr. ROCKEFELLER. Mr. President, I would like to enter into a colloquy with my good friend, Senator BAUCUS, regarding the economic substance provision of the Jumpstart Our Business Strength, JOBS Act, S. 1637.

I ask my colleague to explain what, if any, impact the codification of economic substance doctrine would have on the new markets tax credit.

As my colleague knows, the new markets tax credit, NMTC, was signed into law in 2000 and is the largest Federal economic development initiative to be authorized in 15 years. The credit promises to spur some $15 billion in new private sector investment in economic development activity in poor communities throughout the country.

The idea behind the credit is that there are good viable business and economic development opportunities in poor communities that lack access to capital. The NMTC is designed to address this capital gap by providing the incentive of a Federal tax credit to individuals or corporations that invest in Community Development Entities, CDEs, working in these communities.

While many of the businesses that receive financing through the credit will present good business opportunities, it is possible that some projects, because of their market, will present only limited economic return on top of the credit. In many cases, the investor's chief incentive will be the tax benefit available through the new markets tax credit.

There is some concern among investors and potential NMTC investors that legislation crafted to codify the economic substance doctrine and curtail transactions that are simply motivated by tax incentives would apply to and have negative impact on the NMTC.

With $2.5 billion in new markets tax credits having been allocated to CDEs around the country and another $3.5 billion expected to be awarded within the next several months, it is critical that the investor markets get some clarification on this issue.

The NMTC holds great promise for communities throughout West Virginia where economic revitalization and business development are sorely needed. It is my understanding that the economic substance doctrine contained in S. 1637 does not apply and I would appreciate my colleague's comments on this issue.

Mr. BAUCUS. I appreciate the comments of the Senator and share his commitment to the new markets tax credit.

The Senator is correct. The intent of the economic substance provision in the JOBS bill is clearly to uphold and protect congressionally mandated tax benefits while curtailing unintended abuses of the tax code. I assure the Senator that the new markets tax credit would not be adversely affected by this provision.

As the Senator knows, our intent in codifying the economic substance doctrine is to curtail the use of abusive tax shelters that have no economic substance or business purpose other than reducing the Federal tax liability of the taxpayer. This is clearly not the case of the new markets tax credit.

We attempted to clarify the intent of this provision in the Finance Committee report, 108–192, in a footnote that states:

If tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority it is not intended that the tax benefit be disallowed if the only reason for the disallowance is that the transaction fails to meet the economic substance doctrine as defined in this provision.

The report also specifically identifies the low income housing tax credit and the historic rehabilitation credit as examples of tax benefits that would not be taken into account in measuring potential tax benefits. These credits were noted as examples of the types of tax benefits that would not be considered in applying the economic substance doctrine.

The new markets tax credit was authorized with the clear intent of using a tax subsidy to attract private investors to business and economic development opportunities in poor communities—investment opportunities that otherwise might not be able to secure such investment capital. It is our intent that the NMTC be treated like the LIHTC and the HRTC and protected as a congressionally mandated tax benefit.

CANADIAN SOFTWOOD LUMBER DISPUTE

Mr. SMITH. I came to the floor today to introduce an amendment to the FSC/ETI bill relating to the U.S. approval of NAFTA panel decisions. The handling of the current case before the NAFTA panel regarding Canadian softwood lumber imports gives me cause for concern. There are substantial allegations that one panelist judging the case is, at the same time, appearing as a private lawyer in two other antidumping cases before the International Trade Commission which involve similar issues as the Canadian lumber case. This creates at the very least the appearance of impropriety and a conflict of interest. Indeed, the USTR has taken the position that the panelist is in violation of the code established to prevent conflicts of interest involving panelists. However, it seems that Canada has been able to block any action to remove this panelist from the case.

This situation is unacceptable and indicates that fundamental reform of the NAFTA panel process is required. We cannot allow NAFTA panelists with a conflict of interest to rule in these cases, especially since their rulings are equivalent to a Federal Court order. At the very least, such panel decisions should be subject to Presidential review before being implemented. I have an amendment that would implement such a review procedure. However, while this is an urgent matter that affects the outcome of the largest trade case in U.S. history, I recognize that the Senate is close to completing the FSC/ETI bill. I do not want to beleaguer that eventuality, so I am willing to withdraw this amendment, and agree instead to work with my colleagues, particularly on the Senate Finance Committee, to have this issue firmly addressed by the Senate in the near future.

Mr. BAUCUS. I want to join my colleague from Oregon in support of this amendment, which cannot be considered for inclusion in the legislation at hand. I concur that action must be taken to ensure the integrity of the Chapter 19 Panel Process. There is a clear breakdown of due process with respect to Chapter 19. The decision by the NAFTA Panel to reject the UTC's injury analysis in the softwood lumber dispute between the U.S. and Canada proves to me that the credibility of the NAFTA Panel process is in serious jeopardy. By imposing an impossible standard for proving ''material injury'', this NAFTA Panel seems to be saying that it will reject any antidumping or counterveiling duty in any circumstance. If the ANFTA dispute panel process wants to maintain its credibility, the panelists themselves must respect the limits of their responsibility. No country will allow the dispute panel process to undermine the integrity of perfectly valid trade remedies. Action must be taken to address this situation, and I can give my colleague my assurance that I will work to find an opportunity for the Senate to consider his amendment in the near future.

Mr. CRAIG. I want to echo the concerns my colleagues from Oregon and Montana have on this issue. Resolution of the Canadian softwood lumber dispute has gone on far too long. Meanwhile our domestic industry continues to suffer from subsidized and dumped Canadian lumber.

Mr. CHAMBLISS. The forestry industry is important to the State of Georgia. Let's take a look at the facts: Georgia's total land area covers 36.8 million acres of which 66 percent of that is forested; my home State has the sixth largest percentage of forested lands in the country which is twice the national average; and, commercial forest land in Georgia covers approximately 23.8 million acres, more than any other state. Georgia's forest industry generates 177,000 jobs where employees directly or indirectly work in industries supporting forest products manufacturing.

This is why I sponsored a resolution in the House of Representatives in 2001 that highlighted the problems associated with the importation of unfairly subsidized Canadian lumber and urged the administration to vigorously enforce U.S. trade laws with regard to the importation of Canadian lumber. One of my highest priorities has been to see this trade issue resolved and limit the injuries caused to the U.S. timber and lumber industries by the importation of unfairly traded lumber.

Today, Georgia's forestry industry is in serious jeopardy. That is why I echo the comments of my colleagues regarding the conflict of interest involving a NAFTA Panelist who will be hearing the Canadian Softwood Lumber case. This case is very important to the future of Georgia's forestry industry. This issue and the need to reform the NAFTA panel process must be handled in an expedient manner. I urge my colleagues to address this issue as soon as possible.

Mr. SMITH. I thank my colleagues. This is a critical matter that the Senate needs to exercise its oversight responsibilities upon. If this issue cannot be addressed in the very near future, my colleagues and I will have no choice but to bring this amendment back to the floor on another bill to have an forthright discussion about ensuring the constitutionally afforded due process U.S. citizens and interests must have in NAFTA disputes. I also want to applaud the administration in particular the U.S. Trade Representative, as well as the International Trade Commission, for acting steadfastly to enforce U.S. trade law. But their efforts are being thwarted by the current NAFTA Panel rules. This must be changed.

Mr. SMITH. I would like to engage the Senator from Iowa in a colloquy regarding section 102 of the bill in order to clarify the Senator's intentions.

Mr. GRASSLEY. I would be pleased to engage in a colloquy with the Senator from Oregon.

Mr. SMITH. I want to thank you for your strong leadership on this very important piece of legislation and call your attention to one specific provision in S. 1637 known as the domestic production activities deduction. As you know, your bill includes a provision that allows for a deduction for income from manufacturing done in the United States. However, as I understand, the provisions phases in the deduction much more slowly for companies that also manufacture abroad. At a time when American manufacturing jobs are leaving our country in record numbers, we need to support all companies that employ Americans, not penalize them. I know that we agree that multinational companies should not be penalized merely because they also manufacture abroad. Thus, I would like to clarify that it is your intent to urge your colleagues during the Senate/House conference deliberations on this bill to eliminate this penalty in the final bill that is sent to the President for his signature.

Mr. GRASSLEY. The Senator is correct. It is my intent to urge my colleagues to minimize this penalty in the final bill that is sent to the President for his signature.

INCOME FORECAST METHOD PROVISION

Mr. BREAUX. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman and ranking member of the Finance Committee, Senator GRASSLEY and Senator BAUCUS, regarding a provision in the bill that provides needed clarification and helps to insure an accurate reflection of taxpayers' income.

The provision I refer to resolves certain uncertainties that have arisen recently regarding the proper application of the income forecast method, which is the predominant cost recovery method for films, videotapes, and sound recordings. The provision merely reinforces the continued efficacy of existing case law and longstanding industry practice. For example, the provision clarifies that, for purposes of the income forecast method, the anticipated costs of participations and residuals may be included in a property's cost basis at the beginning of the property's depreciable life. This was the holding of the Ninth Circuit in Transamerica Corporation v. U.S. (1993). The provision also clarifies that the Tax Court's holding in Associated Patentees v. Comm., 4 TC 979 (1945), remains valid law. Thus, taxpayers may elect to deduct participations and residuals as they are paid. Finally, the provision clarifies that the income forecast formula is calculated using gross income, without reduction for distribution costs.

I would like to confirm my understanding with Senator GRASSLEY and Senator BAUCUS that by providing these clarifications and eliminating uncertainty the provision was intended to put to reset needless and costly disputes.

Mr. GRASSLEY. I am happy to confirm the understanding of the distinguished Senator from Louisiana. The provision was adopted to provide needed clarifications in order to eliminate the uncertainties that have arisen regarding the proper application of the income forecast method. I believe the disputes that have arisen regarding the mechanics of the income forecast formula are extremely unproductive and an inefficient use of both taxpayer and limited tax administration resources. By adopting these clarifications, I believe the committee intended to end any disputes and prevent any further waste of both taxpayer and Government resources in resolving these disputes. Any existing disputes should be resolved expeditiously in a manner consistent with the clarifications included in the bill.

Mr. BAUCUS. I agree with the distinguished chairman of the Finance Committee, Senator GRASSLEY. The disputes resulting from any uncertainty regarding the proper application of the income forecast method are extremely unproductive and wasteful. To avoid further waste, resolution of any disputes must be resolved in a manner consistent with the clarifications contained in the bill.

Mr. BREAUX. I thank both of my distinguished colleagues for this important clarification. I hope this puts to rest any uncertainty and wasteful disputes regarding the proper application of the income forecast method.

KIDDIE TAX

Mr. FRIST. In February of this year, a constituent wrote me to express his concerns about the negative impact expansion of the ''kiddie tax'' would have upon his family, and more specifically his quadriplegic daughter. His daughter's assets are in a trust administered by an independent third party trust department of an investment firm. The assets were awarded to his daughter by a court by law pursuant to a settlement agreement after she suffered from injuries at birth. The assets in his daughter's trust are to be used to provide her income after she should have been able to move into the work force. The funds will help pay for medical care and personal caregiver services.

The situation is described in more detail in a letter to me from my constituent, Mr. Gary Domm. At this time, I ask unanimous consent this letter be printed in the RECORD.

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

GARY W. DOMM, CFP,
Germantown, TN, February 10, 2004.

Subject: The planned continuation of the U.S. ''Kiddie Tax'' laws until age 18. How Tennessee Individual Income Tax is more fair. Enough is Enough!

Attention: Legislative Staff.

Dr. BILL FRIST, MD,
Memphis, TN

DEAR DR. FRIST: As you are surely aware, the Internal Revenue Code has a provision taxing unearned income of children under age 14 at their parents upper tax rates. This regulation is often referred to as the ''Kiddie Tax.'' Obviously, the whole theory behind this law is to stop investments from being transferred to the children at a lower tax rate by the parents or maybe grandparents. Fair enough. However, the law as interpreted in a court case in 1992, said that it did not matter what the source or the purpose of those assets were. This is a court ruling that needs to be overturned by legislation. If the ''Kiddie Tax'' is suppose to be a tax on assets transferred from relatives, then it should be administered in that way but not applied to all unearned income owned by children.

My quadriplegic daughter, who can not speak and will always be dependent on full time care, is subject to the ''Kiddie Tax'' law. My wife and I would be considered to have above average income, both earned and unearned. Therefore my daughter's unearned income is taxed at a much higher tax rate than if she was the child of lower income parents. My daughter's assets are in a trust administered by an independent third party trust department of an investment firm. These assets were awarded to my daughter by a court of law. My daughter's assets were never mine or under the control of relatives. I probably need not mention that the federal trust tax rates are even higher so there is no benefit to these assets being taxed instead in a trust tax return.

In my case, the assets in my daughter's trust are to provide her income after she should have been able to move into the work force under normal circumstances. They will pay for her medical care, personal caregiver services, and other expenses that most people do not have to endure until late in life but certainly not for their entire life. My wife and I rarely request reimbursement of expenses from these assets for the extra care that our daughter requires. Our plan is to financially provide for our daughter until she is at least 21 years old. Yet, my daughter's assets are not allowed to grow based on their own tax level. They are instead subjected to usurious tax rates rather than progressively higher tax rates as the income increases.

The State of Tennessee has had an exemption to state income tax since the mid 1990's on unearned income derived from assets for a quadriplegic person. Apparently, the state recognized that people that are disabled and incapable of ever working, need a tax break in order not to be more dependent on government and its agencies.

It is my understanding that Congress is now considering extending the age for the ''Kiddie Tax Law'' until age 18. Enough is enough. I have waited patiently for my daughter to reach the age of 14. She will be 14 this year and will no longer be subject to being taxed at a rate higher than her income level. That is, unless Congress changes the laws.

In my case, leaving the ''Kiddie Tax'' regulations alone would solve my problem, but that would avoid collecting the extra tax dollars for four more years on families that have transferred wealth to their children. My problem can also be solved by removing the ''Kiddie Tax'' in the case of quadriplegics and other people that will never be able to work and support themselves. The federal tax laws need to consider the Tennessee tax regulations and provide exemptions where needed. I have no doubt that if my daughter could, she would gladly give away her investments in exchange for a normal life. Instead the government is subjecting her investment income to highest taxes just because of her parents.

Correcting this injustice will not gain many votes politically, but I am sure you can see that it is the right thing to do. I am more than willing to discuss this by telephone with anyone who wishes more specific information. Being a Tennessee resident and senator, I am sure you can obtain copies of the exemption regulations for the state. It is item 3, under the exemption section in the rules mailed with the Tennessee tax forms. Also the exemption box is clearly shown on the first page of the Tennessee Tax Return.

Sincerely,

GARY DOMM.

Mr. FRIST. According to Mr. Domm, current tax law permits taxation of this unearned trust income in excess of $1,600 at the child's tax rate upon the child's 14th birthday. Up until the age of 14, the income was taxed at the parent's rate of taxation. This year, Mr. Domm's daughter will turn 14 and will no longer be subject to a tax rate higher than her income level.

Unfortunately, however, a proposed change in S. 1637 would call for taxing any unearned income in excess of $1,600 at the parent's income tax rate until the age of 18 instead of 14. I ask my colleague from Iowa, is that accurate?

Mr. GRASSLEY. Yes.

Mr. FRIST. Thank you for confirming that, Mr. Chairman. I believe that it would be good policy to provide some type of exemption to this so called ''kiddie tax'' for Mr. Domm's daughter and others like her. That way, we encourage independence and self-sufficiency and do not penalize individuals who have already had to overcome tremendous obstacles. Based on that assumption, Mr. Chairman, would you be willing to work with me and my staff to create an exemption from this tax for Mr. Domm's daughter and others similarly situated?

Mr. GRASSLEY. I agree with the Senator from Tennessee that such an exception to the ''kiddie tax'' would be

good public policy. I commit to you that my staff will work with the Treasury Department, the Social Security Administration and your staff during conference negotiations to craft language that addresses Mr. Domm's concerns but also contains solid anti-abuse language. My hope is that we could place such language in the final version of S. 1637 or another appropriate tax bill.

Mr. FRIST. I thank the Chairman for that commitment both personally and on behalf of my constituent.

BROWNFIELD REVITALIZATION

Mr. LAUTENBERG. Mr. President, I rise to engage several of my colleagues in a colloquy regarding an important provision in the manager's substitute amendment to S. 1637. Section 641 of the manager's amendment was filed by me as an amendment to S. 1637, and it was co-sponsored by Senators CHAFEE, DOLE and LIEBERMAN.

The language of my amendment is based on S. 1936, the Brownfield Revitalization Act of 2003, a bipartisan bill that was introduced last year by Senator BAUCUS and cosponsored by Senators INHOFE, DOLE and ROCKEFELLER. However, the version of my amendment that is included in the manager's substitute contains several modifications which improve it.

My amendment relieves tax-exempt entities that invest in, clean up, and then re-sell certain brownfield properties from an obscure but significant provision in the Internal Revenue Code.

First, what is a ''brownfield?'' There are various definitions of this term. In the Federal Superfund law, a ''brownfield'' is defined as ''real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.''

My own State of New Jersey uses a different definition. It defines a ''brownfield'' as ''any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.''

Brownfields are not necessarily highly contaminated sites. Often, they are moderately or lightly contaminated industrial and commercial sites that could be productively re-used if they were cleaned up. In fact, the perception of contamination might be the only thing holding back a brownfield site from redevelopment.

Reuse of a brownfield site is desirable because it preserves an open ''greenfield'' and can provide an economic stimulus to an inner city or close-in suburban area.

Our colleague, Senator DOLE, is fully aware of how serious the problem of brownfields is across the nation.

Mrs. DOLE. Mr. President, the North Carolina Department of Environment and Natural Resources estimates that there are tens of thousands of potential brownfield sites in North Carolina. To date 44 of these sites have $600 million in committed private investment which was raised with less than $500,000 in Federal funds. These 44 sites represent a good step forward to address this issue; however, there are many more steps necessary before we can declare victory. The critical component to this equation is the greater availability of private capital. Currently, the State of North Carolina has 55 more brownfield sites in the pipeline for remediation and the availability of private capital will be essential to this effort.

The Nation's mayors have estimated that there are half a million brownfield sites in the United States. Others have said that there may be as many as a million such sites. EPA, in an analysis conducted with George Washington University, has estimated that remediation costs for all brownfield sites in the country exceed $650 billion. The Chamber of Commerce estimates that, at the current rate of cleanup, it could take ten thousand years to clean up all these sites.

According to Environmental Defense, a leading environmental group, New York City alone has over 4000 acres of vacant industrial lands, the equivalent of almost four Central Parks' worth of land lying unused in the core of our largest metropolitan area.

That is why I am a strong supporter of legislation to make available greater sums of private capital to brownfield remediation efforts. This is why I am proud to join with my colleagues, especially Senators LAUTENBERG, CHAFEE, LIEBERMAN and JEFFORDS to support this proposal to allow non-profits to invest in brownfield remediation efforts. I yield back to Senator LAUTENBERG.

Mr. LAUTENBERG. In fact, in my own State of New Jersey, the Department of Environmental Protection oversees ten thousand potential brownfield sites, but admits that many more sites may exist in the State that have not yet been identified.

I ask Senator LIEBERMAN if he is aware of any barriers in our Tax Code that may be hindering the remediation of brownfields sites.

Mr. LIEBERMAN. As my colleagues know, much has been done at both the national and State levels, including our own States, to help clean up contaminated brownfield properties. However, the Federal Tax Code contains a potential roadblock.

Section 512 of the Internal Revenue Code establishes an unrelated business income tax, or UBIT, on the income that a tax-exempt entity derives from a trade or business that is not substantially related to its exempt purpose.

The UBIT applies to gains from the sale or exchange of property held primarily for sale to customers in the ordinary course of such a trade or business. The UBIT also applies to gains from the sale or exchange of any debt-financed property.

These UBIT provisions have reduced the economic attractiveness of investments in remediation and redevelopment of the nation's brownfield sites by tax-exempt entities like university endowments and private pension funds.

According to the Chamber of Commerce, tax-exempt entities hold about $7 trillion in financial assets. This is a very large pot of money that could be tapped for brownfield cleanups.

Mr. LAUTENBERG. This large potential funding source for brownfields remediation is what my amendment will address by removing one barrier to brownfields redevelopment.

My amendment allows tax-exempt entities to invest in brownfield sites without the risk of incurring UBIT liability, provided that certain conditions are met.

First, the appropriate State environmental agency must certify that the property is a brownfield site within the meaning of the Federal Superfund definition.

The amendment does not set up a new certification procedure for this purpose, but rather piggybacks on a process already in place under section 198 of the Tax Code to provide tax incentives for commercial brownfield developers. In fact, another provision of the manager's substitute amendment extends section 198 through the end of 2005.

Second, the remediation effort must be a significant one. It must cost more than $550,000, or 12 percent of the fair market value of the site, determined as if the site were not contaminated. By establishing relatively high thresholds for eligibility, the amendment excludes incidentally contaminated property and focuses new capital investment at sites that are most in need of assistance.

Third, the site must be cleaned up to comply with all environmental laws and regulations.

Finally, after the cleanup the state environmental agency or EPA must certify that the property is no longer a brownfield site. In requesting such a certification, the tax-exempt entity must attest that the anticipated future uses of the property are more economically productive or environmentally beneficial than the previous use of the property. The tax-exempt entity must also attest that it has given public notice of its request for certification.

Senator JEFFORDS, the ranking member on the Environment and Public Works Committee, has been very helpful in developing modifications to this amendment. Could the Senator from Vermont describe the modifications we have made that are designed to prevent abuse?

Mr. JEFFORDS. I am happy to fully support this amendment, as modified. There are three significant modifications:

First, a savings clause has been added to make clear that this amendment to the Tax Code has no impact on anyone's liability under the Superfund statute or any other Federal or State environmental law. Just because a tax-

entity receives a tax certification signifying that it is not subject to the UBIT tax does not mean that it can avoid environmental liability.

Second, the amendment has been modified to include a definition of ''substantially complete.'' An entity is eligible for a tax certification if its remedial actions at a brownfield site are complete or substantially complete. As originally drafted, the amendment did not include a definition of the key term ''substantially complete.'' This could have created a loophole that allowed entities to get a tax advantage without fully cleaning up a property. The modification we have made fixes this problem by borrowing EPA's definition of ''construction complete'' from the Superfund program to define this term.

The third modification expands the public notice provision that was already in the amendment. It makes clear that not only must there be public notice, there must also be a meaningful opportunity for public comment. In addition, it makes clear the agency that makes the tax certification, whether EPA or a State agency, must respond to any significant public comments.

In addition, the amendment has been carefully drafted to prevent abuse. For example, the taxpayer cannot be the party that caused the pollution and cannot be otherwise related to the polluter. In addition, all transactions, such as purchase and sale of the property, must be made at arms-length with parties unrelated to the taxpayer.

Mr. LAUTENBERG. I thank the Senator for that explanation and for his help in crafting the amendment. As I mentioned earlier, my amendment is based on S. 1936, a bipartisan bill introduced by Senator BAUCUS last year. That legislation was endorsed by groups as diverse as the Chamber of Commerce, Environmental Defense, the National Taxpayers Union, and the U.S. Conference of Mayors. I yield the floor.

ENERGY TAX INCENTIVES

Mrs. LINCOLN. Mr. President, I want to congratulate Chairman GRASSLEY and Senator BAUCUS on their decision to include a package of energy tax incentives in this bill. These tax incentives will promote the future development and production of renewable fuels, which we hope one day will lessen our dependency on foreign oil.

The package of energy tax incentives now before us was first reported by the Finance Committee last year as part of H.R. 6, the Energy Tax Policy Act of 2003, and the Senate considered H.R. 6 in July of 2003. During floor debate of that legislation, I raised two concerns that I hoped would be addressed in the House-Senate conference of the energy bill. Chairman GRASSLEY agreed with my points and assured me he would use his best efforts to resolve these matters. True to his word, as always, the chairman addressed my concerns in the conference version of H.R. 6. But as we all know, the conference version of H.R. 6 failed to gain enough votes to pass the Senate.

Now, the chairman has decided to move a text that is essentially the same finance Committee package of energy tax incentives, not the conference version of the bill, as part of the FSC/ETI bill. One of my concerns, relating to the definition of a landfill gas facility, has been resolved by virtue of the fact that the provision in the Finance Committee package has been dropped. But the other concern remains. So now again, I feel compelled to raise this concern, and once again, request the chairman's assistance to address it in a House-Senate conference. So please bear with me again while I explain my concerns for the record.

On February 11 of 2003, I introduced S. 358, the Capturing Landfill Gas for Energy Act of 2003. The bill is cosponsored by Senators SANTORUM and HATCH and would provide a credit under either Section 29 or 45 of the tax code for the production of energy from landfill gas, or LFG.

In the past, Congress recognized the importance of LFG for energy diversity and national security by providing a Section 29 credit in 1980 and extending it for nearly two decades. However, the Finance Committee bill before us fails to recognize the importance of LFG in its creation of a new Section 45 credit. In contrast, the President proposed a generous Section 29 credit for LFG, and the House has passed a Section 45 credit for LFG as part of its energy bill. Both of these proposals would provide meaningful tax incentives to encourage the collection and use of LFG. Thus, this version of energy tax incentives falls well short of recognizing the importance of dealing with LFG, and I urge the chairman to address this shortfall in the House-Senate conference by affording the same incentive for LFG that other renewable energy sources are given under the final legislation.

The potential energy and environmental benefits of future LFG projects are substantial, but they will be lost if we do not provide adequate provisions to support project development. I want to thank Chairman GRASSLEY and Senator BAUCUS for their past work and support in addressing these important concerns. Further, I hope and request that they once again work with me to make sure Americans garner all of these important benefits.

Mr. GRASSLEY. Mr. President, I want to assure Senator LINCOLN that I will continue to work with her to make sure adequate incentives for LFG are included in any final package from the upcoming House-Senate conference. Her concerns are my concerns as well. She has stated them well and I will devote my best efforts to resolving them as we move forward on discussions and deliberations with the House of Representatives.

CAR PROVISION

Mr. BAUCUS. Mr. President, I raise an issue with regard to the car donation provision included in the JOBS bill. Under the provision donors are limited to deducting the actual sale price of the vehicle that is donated to charity, unless the charity uses the car, in which case donors a get fair market value deduction. This is a good rule. It will cut out abuse of this charitable giving device, and make it easier for donors to comply with the tax law. However, I am also concerned about the potential for charities that intentionally sell/transfer donated vehicles at a low or no cost to low-income recipients as part of a charitable program to be unintentionally hampered from doing so. I believe the law is written in such a way that if the car is given by the charity to a low income family, or used for parts to repair a different car, there is no sale that triggers the sales proceeds limit, and the donor gets a fair market value deduction. I agree with some folks' suggestions that the sales to needy families case does not fit within the ''use by the charity'' rules as presently drafted. But trying to modify the proposal to move away from the sale bright line rule can be tricky, and I fear we would be opening up the proposal to abuse. I pledge to charities that do sell cars to low-income or needy individuals at reduced prices as part of a charitable program, that we will expand regulatory authority during conference or a preconference period with the House to permit Treasury to issue rules excepting certain sales from the sales proceeds limit and certain reporting rules if the sale furthers a charitable purpose.

Mr. GRASSLEY. I agree with your concerns, Senator BAUCUS, and I also am in favor of giving Treasury this expanded authority.

Mr. BURNS. Mr. President, I rise today to discuss one small piece of this legislation which will make a big difference in rural States such as Montana. I am talking about the broadband expensing provision, which would encourage broadband providers to extend their networks to underserved areas, and to upgrade their networks to ''next-generation'' speeds so that they can deliver a full complement of voice, video and data services. We have been working on this legislation since 2000—Senator ROCKEFELLER, Senator BAUCUS, Senator GRASSLEY, Senator CLINTON. There are a lot of us who feel strongly about this issue. It has passed the Senate twice now, but, unfortunately, we have been unable to persuade our friends on the other side of the Capitol to support it. So I want to thank the Finance Committee for including it again in this bill, and I am going to push my colleagues on the House side to get behind it this time because it is very important. It is important for rural areas, for underserved inner city areas, for education, for health care, for energy savings, for a

whole list of reasons. And I want to say this. It is fitting for this broadband incentive to be included in the FSC/ETI bill because this provision will have a big effect on international competitiveness. We are hearing a lot about ''offshore outsourcing'' these days, and broadband is a response to that. If we have a robust high-speed network all over this country, companies will not need to send jobs to India—we can do them in Montana, and in Iowa, and in West Virginia, and in communities all across the nation where costs are lower. So this is about providing an infrastructure that makes us more productive, just as the Interstate highway system, and rural electrification, and the transcontinental railroad all made the Nation more productive. Broadband is a key infrastructure of the 21st century, and we need to construct it as quickly as possible. I believe this provision will help do that, and I look forward to working with my colleagues to ensure its enactment this year.

Mr. ROCKEFELLER. Mr. President, I am extremely pleased at the progress that the Senate has made this week on the legislation before us, known as the JOBS Act. Like most of my colleagues, I support this bill, because I believe that Congress must respond to the increasingly difficult competitive position of our manufacturing industry. I urge my colleagues to continue working on this bill, debate and vote on the relatively few remaining amendments, and then pass this bill.

For generations, American manufacturing has been a tremendous source of pride and a ladder to the middle class. Unfortunately, over the last 3 years, the manufacturing sector of our economy has suffered disproportionately and millions of good jobs have been lost. Tomorrow the Labor Department will announce new statistics on employment for the month of April. I understand that many experts expect tomorrow's news to be positive. And certainly, we were all very glad to hear that 308,000 jobs had been created in March.

A couple months of strong job growth should not lull this Congress into believing that the manufacturing sector is enjoying a healthy recovery. Indeed, in March no new manufacturing jobs were created at all. Nationwide almost 3 million manufacturing jobs have been lost since January 2001. In my home State of West Virginia, more than 10,000 manufacturing jobs have disappeared in that time.

Regardless of tomorrow's news, this Congress must stay focused on the task at hand. We must eliminate the European tariffs that are currently imposed on many of our goods, and we must enact a fair tax policy that will shore up our manufacturing base. The JOBS Act is accomplishes these goals.

The JOBS Act repeals the foreign sales corporation/extraterritorial income provisions in our current tax code in order to comply with the ruling of the World Trade Organization. Regardless of whether I agree with the obligations that the WTO has ascribed to the U.S., I believe that Congress must act quickly to resolve this impasse and restore good trade relations with Europe. Because repealing these provisions would impose a new tax burden on American manufacturers just at a time when they are already struggling to compete globally, the JOBS Act would create a new deduction for our manufacturers to reduce the cost of doing business in the U.S. In that regard, this legislation is very similar to a bill I introduced last year, the Security America's Factory Employment Act. I know that many of the CEOs in my home state find it difficult to offer good wages, provide health insurance and retirement benefits, pay taxes, and still make a reasonable profit. Passing the JOBS Act will dramatically reduce the tax burden these businesses face, helping them succeed and grow.

Indeed, while the name of this legislation is certainly awkward, the Jumpstart Our Business Strengths Act, the acronym JOBS is fitting. There are a number of very promising provisions in this bill that can offer hope to struggling businesses and the millions of Americans looking for work. In addition to lowering the tax rate on domestic manufacturing operations, this bill extends valuable tax provisions on which American companies depend.

For example, this legislation would improve and extend the research and development tax credit. By spurring investment in innovation this tax credit helps our companies stay competitive and helps keep exciting, well paid jobs in the U.S. The bill also extends tax incentives for the hiring of those who might otherwise depend on public assistance. The work opportunities tax credit and the welfare to work tax credit have been extraordinarily successful, and Congress should ensure that businesses can continue to use them.

I am also very pleased to have worked with my colleagues to provide assistance to companies that are subject to alternative minimum tax obligations by enabling them to take advantage of the legitimate tax benefits of bonus depreciation and general business credits even if their AMT liability would otherwise prevent such benefits. While I wish we could have made this provision even more substantial, this assistance creates incentives for companies to invest in new projects and purchase new equipment in—other words, it helps those companies contribute to our economic recovery.

Another key to our Nation's economic vitality is technological development and deployment. When the Senate Finance Committee considered the JOBS Act last fall, I was very pleased that the committee accepted my amendment to provide tax incentives for the deployment of cutting edge broadband technology. The United States currently ranks eleventh in the world in broadband availability. Millions of Americans, especially in rural areas, do not have access to broadband. We must remedy this situation so that everyone can benefit from activities such as telemedicine, telecommuting, and distance learning. Widespread broadband technology is critical to increasing our productivity and keeping America competitive with nations that offer technology-savvy workforces. I thank my colleagues who have worked with me to include the broadband tax incentives in this legislation, and I look forward to getting these provisions enacted this year.

I am gratified also that the managers of this bill and the leaders on both sides of the aisle have seen their way to including the energy tax provisions that many of us in the Senate have been working to enact for many years. In particular, I am happy to see the Senate working to pass, once again, meaningful incentives to promote the development of clean coal technologies and the expanded development of oil and gas from nonconventional sources. These particular incentives are crucial to meeting our Nation's future energy needs, and I cannot emphasize adequately how important they are to my state of West Virginia.

As the high price of gasoline at the pump continues to set new records, the inclusion of new incentives for the use of alternative fuels and the vehicles that use them are especially timely. I am proud to have worked for many years with a bipartisan group of Senators on these provisions, and I join them in hoping our action on the JOBS Act will lead, finally, to their enactment.

I have been a long-time advocate for a responsible energy policy for this nation. I am frustrated that the current political mindset of some in the House leadership prevents us from getting a final comprehensive bill that can pass the Senate. Still, I am pleased that the Senate has again demonstrated with these tax provisions, including important incentives for energy efficiency and conservation, the genuine bipartisan consensus the country needs to secure our energy supply and lessen our dependence on foreign sources of energy.

Because of the many important provisions I have described, I am looking forward to supporting this bill. As can be said about almost all legislation, this bill is not perfect. Rather it is the result of compromises. I was very disappointed that my colleagues did not agree to add Trade Adjustment Assistance for service workers or to improve the health care tax credit available to workers who lose their job as a result of our trade policies. In addition, I do not believe it is good policy to allow companies who have deliberately avoided U.S. taxes by keeping their profits overseas to now enjoy a tax break on repatriated income. Yet, on balance, this legislation will be beneficial for our manufacturing companies and our economy as a whole.

We have made substantial progress this week. I look forward to voting on the few remaining amendments, including a very worthy proposal to extend unemployment benefits for those workers who have been hardest hit in this economy. I urge my colleagues to continue to make progress on this legislation and work with our counterparts in the House of Representatives so that we can send this to the President.

Mr. FEINGOLD. Mr. President, while I strongly supported a timely finish to debate on this measure, I voted against the motion to invoke cloture on S. 1637. The debate over the past few days leading up to this vote has made it clear that the total time needed to consider the amendments remaining on this measure totaled less than 2 hours. So there was no need to invoke cloture on this legislation. Unfortunately, cloture does mean that critical amendments, including my own amendment to strengthen our Buy American law, would no longer be in order.

To be clear, I do not support delaying consideration of the underlying bill. As I indicated to both leaders, I was willing to enter into a short time agreement for consideration of my amendment, and I understand that others who were offering amendments were also willing to limit the time on their amendments. But cloture not only limits the time available to debate this bill, it also means that the Senate will not be able to consider my amendment, as well as other worthy proposals that relate directly to the loss of manufacturing jobs that has wracked so many communities in Wisconsin and across the country.

Mr. KENNEDY. Mr. President, all of us are pleased by Department of Labor reports showing that the economy has finally had two months of good job growth. It is welcome news. However, that news must be viewed as part of the overall economic picture. Job growth is still far behind what President Bush predicted when his tax cuts were enacted last summer—two million jobs behind. Employment in the manufacturing sector is still anemic. The pace at which American jobs are being shifted overseas is still accelerating.

Working men and women in America are facing an economic crisis which threatens their job security and their families' well-being. Since the beginning of 2001, there has been a net loss of nearly two and a half million private sector jobs. In prior economic downturns, most of the job loss was the result of temporary layoffs. As the economy picked up, workers returned to their old jobs. Unfortunately, that is no longer the case. Economists tell us that most of the millions of jobs lost in the last three years are gone for good. With each job lost, a family is placed in jeopardy. We must look behind the statistics to the people who, through no fault of their own, are now facing hardship and uncertainty.

Unfortunately, the Bush administration's response to these people has been weak and ineffective. Huge tax cuts heavily skewed to the wealthy, and rosy predictions that have consistently proven false. Long term unemployment has nearly tripled under President Bush. Unemployed workers remain without jobs longer than at any time in the last 20 years. Nor is there any basis to conclude that the hemorrhaging of jobs in the manufacturing sector is at an end. And the relatively small number of new jobs that are being created pay, on average, 21 percent less than the jobs that have been lost. The Republican strategy of tax breaks for the rich and platitudes for the public will not solve the ongoing economic crisis. We need new leaders who will give us a new economic plan.

The so-called JOBS bill which the Senate is finally considering does not provide that new economic plan. Rather, it is a hodge-podge of unrelated and sometimes inconsistent provisions. Some of them—principally the new deduction for domestic manufacturing and the extension of the research and development tax credit—will help to create jobs. However, there are many other provisions in the bill which could actually make the job loss worse.

This legislation is really schizophrenic. On the one hand, it creates over $65 billion in new tax benefits for domestic manufacturers to help them maintain, and hopefully add, jobs here at home. On the other hand, it provides nearly $40 billion in new and expanded tax breaks for companies doing business abroad. Many of these international provisions will actually make the exporting of American jobs more financially attractive to multinational corporations.

Providing assistance to domestic manufacturers is the right thing to do. We have lost more manufacturing jobs in the last three years than in the preceding twenty years—a net loss of nearly 3 million jobs since 2000. This is a genuine crisis for working families across America. They are looking to us for help, and we owe them a strong, unambiguous response.

Unfortunately, the legislation as reported from the Finance Committee does not provide that strong, unambiguous response that American workers are looking for. It contains deep internal contradictions which will seriously hamper its effectiveness in preserving domestic manufacturing jobs.

Providing more tax breaks for multinational corporations is the wrong thing to do. It's more than the loss of $40 billion in tax revenue that could be used for many better purposes that is troubling. What is most disturbing is the fact that many of these international provisions will actually encourage companies to shift even more American jobs to low wage countries.

The international provisions should be removed from the bill, and the tax dollars saved should be used to increase the tax benefits for domestic manufacturing.

It is outrageous that this bill proposes to expand the value of the foreign tax credits which multinational corporations receive. Under the legislation, these companies would pay even less in U.S. taxes on the profits they earn from their business abroad than they do today—$40 billion less. This will create further incentives for them to move jobs abroad, undermining the intent of the legislation.

From the perspective of preserving American jobs, one of the worst features of corporate tax law is a special tax subsidy for multinationals known as ''deferral.'' If a U.S. company moves its operations abroad, it can defer paying U.S. taxes on the profits it makes overseas until the company chooses to send those profits back to America.

In essence, it allows the corporation to decide when it will pay the taxes it owes to the U.S. Government. That is a luxury that companies making products and providing services here at home do not have. This is an enormous competitive advantage which the tax code gives to companies doing the wrong thing—eliminating American jobs—over companies doing the right thing—preserving jobs in the United States.

We should be eliminating this special tax break for multinationals. Instead, this bill proposes to expand it. It makes changes in the deferral rules which will actually encourage companies to keep profits earned on foreign transactions abroad longer. As a result, the return of working capital to the U.S. will be delayed even further, and the payment of corporate taxes owed to the public Treasury will be postponed even longer.

This legislation would extend from 5 years to 20 years the amount of time which a foreign tax credit can be carried forward. Often it is concern about losing foreign tax credits which leads a corporation to return foreign earned profits to the United States. By extending the carry forward period to 20 years, corporations will lose one of the strongest incentives to bring the money home. The bill also narrows what is known as Subpart F, which currently prevents the deferral of American taxation on the profits from certain types of passive investment income. It would change Subpart F to allow deferral of income from investment activities, such as commodity hedging transactions and aircraft and vessel leasing. The location of these activities can be easily manipulated for tax avoidance purposes. The bill also removes limitations on the use of foreign tax credits against the corporate alternative minimum tax, and allows companies to take advantage of foreign interest payments to make their foreign tax credits even larger. All of these provisions move the tax code further in the wrong direction, increasing the profitability of shifting jobs abroad.

If enacted, these provisions greatly enhancing the value of foreign tax credits will inevitably lead to the export of more American jobs. That is

not just my opinion. Let me cite a statement from the Finance Committee Democratic staff's analysis of the bill:

[A] dollar of taxes paid today is more costly than a dollar paid next year. Thus, on a present value basis, deferral represents significant tax savings—and the savings are greater the longer taxes are deferred. Accordingly, as a general matter, the tax burden on investment abroad is lower than on identical investment in the United States in any case where the tax rate imposed by the foreign host government is lower than the U.S. tax rate on identical investment. As a consequence, deferral poses an incentive for U.S. firms to invest abroad in low-tax countries.

Creating ''an incentive for U.S. firms to invest abroad in low-tax countries''—worth billions of dollars—just what we should not be doing, making an already bad situation for American workers worse!

Not surprisingly, the proponents of this legislation all want to talk about the tax benefits it will provide for domestic manufacturers, helping them pressure American jobs. However, the multi-national tax breaks in Title II will seriously undercut that goal. They will cost jobs, reducing the net benefit that American workers receive from this bill. Our corporate tax laws should be rewritten to increase the cost of exporting jobs and decrease the cost of maintaining jobs in America. Title II does the opposite. These international provisions should be removed from the bill, and the tax dollars saved should be used to make the tax benefits for domestic manufacturing more robust. That would truly make this legislation a JOBS bill we could all be proud of.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I wish to make a few comments regarding the bill.

First, I compliment my colleagues, Senator GRASSLEY and Senator BAUCUS. We will be successful in passing a bill today. I compliment them for it. I believe we have been on this bill for about 14 days, maybe 15 days. They have considered hundreds of amendments. In my opinion, this bill has gotten pretty expensive and I want to talk about it a little bit.

Senator KYL and I voted against the bill reported out of the Finance Committee primarily because the committee-reported bill had a differential rate for manufacturers than other corporations. It said manufacturers should have a rate of 32 percent and other corporations have a rate of 35 percent.

Prior to my coming to the Senate, I ran a manufacturing company. I should be saying, Thank you very much. I may be going back to a manufacturing company. So maybe I should say, Thank you very much. But this is terrible tax policy. The Senate and the Congress, if it becomes law, will regret it.

Members might say, Why is that? First, who is a manufacturer? You would think it would be very obvious who is a manufacturer but, frankly, it is not. The only thing that is certain out of this bill, there will be lots and lots of lobbyists lining up to be defined as manufacturers because if you are defined as a manufacturer, you get a 10-percent lower rate than all the other corporations. As a matter of fact, the bill defines manufacturers as, obviously, manufacturers, but also agriculture. So I have a lot of wheat farmers in Oklahoma who will now be manufacturers—software producers, movie producers. Now architects and engineers are going to have a lot of people asking they be defined as manufacturers.

Maybe manufacturing employment will rise as a result of people redefining themselves as manufacturing, but other than that, I am not sure it makes sense.

We also have a lot of large corporations that do a lot of things. They may have a manufacturing division but they also have services or they also have financials. Probably one of the biggest beneficiaries dollarwise in this bill, it is my guess, would be a company such as General Electric or maybe it would be a company such as Boeing or a big manufacturer. But General Electric, I would guess their financial services are bigger than their manufacturing.

We will say for part of your corporation you get a corporate rate of 32 percent, but the rest of your corporation gets 35 percent. Guess what. Where you allocate those expenses will make a difference in your bottom line. You could have an enormous amount of internal complexity trying to decide, Should this be allocated to manufacturing? Should it be allocated to our financial services? Should it be allocated to our maintenance services? And if you make a mistake, you cannot only be audited, but you can be fined. But there is a great incentive to crowd as much income, as much profit into the manufacturing sector, and as much expenses into the nonmanufacturing sector.

With the complexity of it—albeit we are all trying to help manufacturers, and I think maybe this is very well intended—I think it is faulty economic policy.

Canada tried a differential rate, a lower rate, for manufacturers than other corporations, and they did it in 1982. They repealed it in 2001. I will make a statement on the floor: If this becomes law, we will repeal it. Congress will repeal it at some point, because our colleagues are going to hear from people in the field that it does not work, or that they have been audited and the complexity is too much.

The Treasury Department made these comments:

Taxpayers will be required to devote substantial additional resources to meeting their tax responsibilities. . . .The resulting costs will reduce significantly the benefits of the proposal. . . .

It will be difficult, if not impossible, for the IRS to craft simplified provisions tailored to small businesses. . . .

Significant additional IRS resources will be needed to administer the [manufacturing deduction] provision. . . .

By distinguishing ''production'' from other activities, the provision places considerable tension on defining terms and designing anti-abuse rules.

In other words, I have heard lots and lots of people say they are for tax simplicity. This is just the opposite, and we are going to regret it. I want people to know that. I would like for them to know it before it becomes law so we do not make a mistake, because I believe it will be a mistake.

I asked the Congressional Budget Office for the economic analysis of this. I would love for the sponsors of the amendment to know this. CBO estimates the efficiency gains to the economy are $4 to $7 billion per year from an across-the-board rate cut. In other words, if we are going to cut corporate taxes, let's cut all corporate taxes the same. You could probably do that to a rate of about 33 percent or maybe 33.5 percent or something. But all corporations would be taxed the same.

We have always taxed all corporations the same. To have a differential rate for manufacturing is a mistake. CBO says the cost—well, I will finish that. They say: The gains to the economy are $4 to $7 billion per year from an across-the-board rate cut. That is $40 to $70 billion over the next 10 years. That is a significant amount, given the fact the entire bill was $110 billion. Now that was $110 billion when we reported it out of committee. The bill now moves around not $110 billion, not $120 billion, but $170 billion. It is a big bill. It adds a lot of miscellaneous provisions. A lot of them, in this Senator's opinion, should not be in the bill.

I hope and expect to be a conferee, and I will tell our conferees, I will always work with my colleague from Iowa because I have great respect for him. I think the differential rate is a mistake. I also think there are a lot of extraneous provisions that were put into the bill that should not be that are bad tax policy, and maybe they need to be reviewed very closely before they become law.

I plan on being pretty active in the conference, to try to accept amendments that make sense, to try to make us more competitive, to try to avoid the fines and the penalties and the tariffs that are being imposed by the EU. I very much agree with the objective of the bill. Let's avoid those penalties. Let's not get in a trade war. Let's not have countervailing tariffs. But let's not add a bunch of junk to the tax policy.

The table of contents, when the bill passed the Finance Committee, was about 5½ pages. The table of contents usually has about 15 or maybe 20 amendments on a page. There are now about 11 or 12 pages on the table of contents. In other words, this bill has hundreds of provisions and a lot of them have nothing to do with manufacturing. A lot of them have nothing to do with being compliant with WTO,

being compliant with trying to eliminate trade tariffs that are imposed on the United States.

So again, I regret I could not support the bill when it came out of the Finance Committee. I know it is going to pass by a big margin today. I compliment the sponsors of the amendment, Senator GRASSLEY and Senator BAUCUS. I compliment them for their work and patience and tenacity in getting us here. I look forward to working with them in conference to hopefully make a better bill, compliant with WTO, something we can afford, and something that will not add 1,000 pages to the IRS Code.

I yield the floor.

Mr. GRASSLEY. Madam President, Senators KYL and NICKLES say that a lower rate just for manufacturing is ''bad tax policy and is virtually without precedent in our history.''

Well, this is just wrong and the evidence is staring them in the face. FSC/ETI itself is a tax cut for manufacturing. FSC/ETI keeps U.S. manufacturing competitive by lowering tax rates on exports. Manufacturers could lower their rates by 3 to 8 points.

The Joint Committee on Taxation says that 89 percent of all FSC/ETI benefits go to manufacturing companies. The Kyl-Nickles Treasury proposal would take money from FSC/ETI and spread it to other industry sectors.

Kyl-Nickles will be a $50 billion tax increase on manufacturing. It will not send the FSC/ETI repeal money back to manufacturing. It is mathematically impossible for their proposal to work any other way.

We know that tax increases do not create jobs. So why would Senator KYL and NICKLES increase manufacturing taxes by $50 billion?

There are other reasons why we did not go the route of the Kyl-Nickles approach. First, their top-level rate cut would only go to the biggest corporations in America. It would not go to family-held S corporations, partnerships, or smaller corporations.

Under the Finance Committee bill, all manufacturers in America, regardless of size, get a 3-point rate cut, including S corporations and partnerships.

S corporations and partnerships benefit under current FSC/ETI law, so the Kyl-Nickles bill takes a benefit away from them and gives it to large corporations.

Kyl-Nickles claim that a manufacturing tax cut ''penalizes all other U.S. businesses.'' I think just the opposite is true. The manufacturing sector should not be a revenue offset to give investment bankers a tax cut. Kyl-Nickles claim that our definition of manufacturing is too difficult to understand. But the definition we use in the JOBS Act is the same definition used for both FSC and ETI. It covers property that is manufactured, produced, grown or extracted within the United States.

This definition is 20 years old, but suddenly no one understands what it means. We did confirm that manufacturing includes computer software, films, and processed agricultural goods. Kyl-Nickles claim that these are special interest definitions of manufacturing. However, all of these activities qualified as manufacturing under the FSC/ETI rules, which have been in place for 20 years.

We also ensured that farm co-ops get the same benefit that they do under current law.

In response to our energy crisis, we provided that refining oil pulled from American wells would qualify as manufacturing.

They claim it is too difficult to allocate income and expenses in determining the amount of manufacturing income. But for 20 years, Treasury has had administrative pricing rules on its books that tell taxpayers how to allocate expenses in figuring FSCETI benefits. Our JOBS bill grants Treasury broad latitude to revise the cost allocation rules, based on existing tax principles.

Kyl-Nickles also claims that Canada recently gave up a similar manufacturing rate cut because it did not work. This is not correct. For many years, Canada had a special lower rate for their manufacturing sector. Canada created their manufacturing rate cut in reaction to the U.S. creating FSC back in 1982. They reduced their rate on manufacturing so they could stay competitive with the U.S. Canada recently repealed that provision because they reduced all their corporate rates to the lower manufacturing rate.

Canada did not repeal their manufacturing rate cut because of its complications. Canada ended their manufacturing regime because it worked so well, that they extended it to all sectors. But when Canada reduced their overall tax rates, they did not do so at the expense of their manufacturing sector.

We put together a strong bipartisan bill, with a 19-to-2 vote out of committee, that will cut our manufacturing tax rate this very year. There is no purpose in blocking such a strong bipartisan bill. These days, is it rare that we can reach such strong agreement on anything.

Mr. President, the CBO report says the flat corporate rate cut would yield slightly more long-term growth than the JOBS bill. But the reason has nothing to do with our manufacturing tax cut.

CBO says the antitax shelter provisions and Senator SMITH'S and Senator ENSIGN's homeland reinvestment provisions are the cause.

CBO says that because we shut down shelters, corporations' taxes won't be as low and, therefore, their long-term growth is not as high.

CBO also concludes that Senators SMITH'S and ENSIGN's temporary 1-year rate cut won't help in the long-term.

The CBO concludes that a flat rate cut could be more ''efficient'' than a manufacturing rate cut. So what do they mean by ''efficient''? They said it means that a manufacturing rate cut would cause more capital to flow into the manufacturing sector.

So I have to ask, what is the problem?

I thought tax cuts were designed to increase capital investment. Isn't that what we want for manufacturing?

If we increase taxes on manufacturing, then capital should flow out of the manufacturing sector. Is that what we want?

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 3120, AS MODIFIED

Mr. LEVIN. Madam President, I ask unanimous consent that our amendment No. 3120 at the desk be modified and called up.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Without objection, it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. COLEMAN, and Mr. HARKIN, proposes an amendment numbered 3120, as modified.

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

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

The amendment, as modified, is as follows:

(Purpose: To restrict the use of abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes)

On page 204, strike lines 3 through 15, and insert the following:

SEC. 415. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking ''a penalty'' and all that follows through the period in the first sentence of subsection (a) and inserting ''a penalty determined under subsection (b)'', and

(3) by inserting after subsection (a) the following new subsections:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

''(c) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall

not be deductible by the person who is subject to such penalty or who makes such payment.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

On page 207, strike lines 1 through 18, and insert the following:

SEC. 419. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting ''the tax liability or'' after ''respect to,'' in paragraph (1),

(2) by inserting ''aid, assistance, procurement, or advice with respect to such'' before ''portion'' both places it appears in paragraphs (2) and (3), and

(3) by inserting ''instance of aid, assistance, procurement, or advice or each such'' before ''document'' in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 100 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.''.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

''(g) PENALTY NOT DEDUCTIBLE.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be deductible by the person who is subject to such penalty or who makes such payment.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

Mr. LEVIN. Madam President, I am offering this amendment along with our colleague, Senator COLEMAN. I understand the amendment has been cleared now on both sides of the aisle. I very much appreciate the effort that has been put into this matter by Senator GRASSLEY and Senator BAUCUS. They have been battling abusive tax shelters for years now, and it is a privilege to join them in this fight by providing the IRS with stronger enforcement tools.

Abusive tax shelters are undermining the integrity of our tax system, robbing the Treasury of tens of billions of dollars each year, and shifting the tax burden from high income corporations and individuals onto the backs of the middle class.

The bill before us contains a host of important reforms to combat abusive tax shelters, including codifying and strengthening the definition of when a shelter has ''economic substance.'' But there is an area where the underlying bill falls short and unnecessarily so. That's on the penalties for the people who design and sell the abusive shelters. The bill sets the penalty at 50 percent of the fees earned by these promoters, meaning they get to keep half of their ill-gotten gains.

That is the provision that our amendment addresses, but we significantly toughen this provision in a way which I think this body will totally approve.

The amendment I originally filed proposed raising the penalty on abusive tax shelter promoters and those who aid or abet tax evasion to 150 percent. Today we have reached a compromise, agreeing to set the penalty at 100 percent, which will ensure that those who peddle abusive tax shelters will not get to keep a single penny of their ill-gotten gains.

The issue is whether when you have an abusive tax shelter, one which robs the Treasury of millions of dollars, the people who cook up those tax shelters are going to be penalized in any significant way. Will the accountants or the lawyers or the investment bankers—the people who design these deceptive and sham tax shelters, which are abusive and have no economic purpose, except to avoid taxes—will they be deterred from doing this? And if they do it, will they be penalized, at least to the extent of having their ill-gotten gains being taken back from them? That is the issue.

The current law is like a slap on the wrist. It is like a parking ticket. These abusive tax shelters, which have been designed by the banks and the accounting firms, and which have made them millions of dollars, result in a maximum fine of $1,000 under current law.

What our amendment does is say, if you design and promote an abusive tax shelter which has no economic substance and you are found responsible for doing that, the IRS can get all of your fee that is ill-gotten and wrongfully obtained for cooking up that tax shelter—not $1,000 of the fee, not half of the fee, as was originally proposed in the bill, but the entire fee is going to be recoverable by the IRS.

We can take a quick look at one of these tax shelters. This is called Flagstaff. I am not going to try to explain what that tax shelter you are looking at does. It is obviously inexplicable. It has all of this mumbo jumbo, all of these boxes and arrows that were intended by JP Morgan Chase to create an impression of economic activity when there was none. That is what this bowl of spaghetti is all about: to create a sham impression that there was some economic substance to these transactions when, in fact, there was no economic substance. They were cooked up in order to create the appearance of economic substance and, thereby, obtain a tax deduction for them.

The question is, when that happens, whether we are going to say to these firms that design these tax shelters for Enron, or for whoever: We are not going to let you, the designers, the perpetrators—who are called aiders and abettors in the law, but are really the promoters of the tax shelters—we are not going to let you keep those ill-gotten fees. We are going to recover those for the Treasury of the United States.

That is the only real deterrent we have.

I want to quickly show how some of these firms analyze these fees they get. Again, we are talking about millions of dollars in fees. These are cookie-cutter tax shelters that are designed and sold by the hundreds to people who can use a tax deduction for, usually, their capital gains, but are not engaged in economic activity which would justify the non-payment of tax on these capital gains.

This is what KPMG did when analyzing one of their phony tax shelters: First, they look at the financial exposure to the firm. It is minimal. So what they are saying is: Hey, we can engage in this. We can get away with it because there is no financial exposure.

> . . . we conclude that the penalties would be no greater than $14,000 per $100,000 in KPMG fees. . . . For example, our average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.

They do a cost-benefit analysis.

They cook up and design an abusive tax shelter and then say: Now should we really go with this? Shall we peddle this, promote it, look for people who can benefit from it, sell it for hundreds of thousands of dollars and take the risk that we will be caught? Because what happens if we are caught? We are going to be paying a few thousand dollars in penalties and making $100,000. Our maximum exposure, our financial exposure, is minimal.

That is what this amendment changes.

Last November, the Permanent Subcommittee on Investigations, on which Senator COLEMAN is the chairman and I am the ranking member, held hearings that provided an inside look at how respected accounting firms, banks, investment advisors, and lawyers have become high-powered engines behind the design and sale of abusive tax shelters.

These hearings were the culmination of a year-long investigation into abusive tax shelters, which first began by pulling the curtain away from one of Enron's sham tax transactions. At the November hearings, we released a report by my subcommittee staff on four case histories of abusive tax shelters developed and marketed by KPMG. At the hearings themselves, we heard from a number of accounting firms, banks, investment firms, and others.

One of the key findings of the subcommittee investigation was that it was not taxpayers visiting their tax advisors that provided the engine for the

creation of abusive tax shelters, but rather hordes of tax advisors cooking up one complex scheme after another, and then peddling them to potential customers. There are legitimate tax shelters and abusive ones. The abusive shelters are marked by one characteristic: there is no real economic or business rationale other than a tax reduction. We found the abusive shelters being packaged up as generic ''tax products'' with boiler-plate legal and tax opinions, followed by elaborate marketing schemes to peddle these products to literally thousands of taxpayers across the country.

It is the insight gained during our close look at these shelters that led me and Senator COLEMAN to introduce the Tax Shelter and Tax Haven Reform Act, S. 2210. While the Levin-Coleman bill addresses a wide range of tax shelter issues, our amendment focuses on one key issue: the woefully inadequate penalties that are now on the books for the tax shelter promoters who concoct and peddle abusive shelters.

Existing tax shelter penalties are a joke. They provide no deterrent at all. The story begins with Enron, and I think the Enron scandal has shown us one reason this amendment is so important. The Flagstaff example I talked about earlier was designed to save Enron more than $60 million in taxes. The whole scam was built around a sham $1 billion loan that was issued to Enron but was repaid in nanoseconds, and then used to claim various tax benefits as well as creating a false impression of profits on the balance sheet. JP Morgan Chase designed and sold this concoction to Enron for more than $5 million. After Enron collapsed and this scam came to light, we learned that JP Morgan had sold the same abusive tax shelter to at least one other company as well.

Under Section 6700 of the tax code prohibiting the promotion of abusive tax shelters, JP Morgan was subject to a whopping $1,000 penalty. Let me repeat: For one tax shelter which was abusive because it was a sham and a deception, JP Morgan Chase's ill-gotten gain from one company, Enron, was $5 million. Its penalty exposure to the IRS under current law was $1,000.

As IRS Commissioner Mark Everson said when he testified at our tax shelter hearings, the current tax shelter promoter penalty is ''chump change.'' To continue quoting Commissioner Everson: ''We need significantly increased penalties to hit the promoters who don't get the message where it counts, in their wallets.''

Our tax shelter investigation found some fascinating documents as well, including one I have shown here today in the KPMG memo that shows a particular tax shelter promoter performing a specific cost-benefit analysis when deciding whether or not to take the risk of peddling an abusive shelter. The third paragraph of this KPMG memo says:

> First, the financial exposure to the Firm is minimal. Based upon our analysis of the applicable penalty sections, we conclude that the penalties would be no greater than $14,000 per $100,000 in KPMG fees. . . . For example, our average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.

The fact that all KPMG could lose if caught was a small part of its fee was a driving consideration in KPMG's decision to take the risk. This memo is proof that weak penalties encourage tax shelters and that tough penalties would deter them. Congress needs to enact meaningful, tough penalties to deter promoters from pocketing any gains from designing and peddling abusive tax shelters. We need to deter folks from making a cost-benefit analysis that encourages the promotion of a tax shelter they know is not likely to withstand scrutiny.

Our amendment would do just that by strengthening penalties for promoting abusive tax shelters.

Our amendment focuses on two key penalties. The first is the penalty for promoting an abusive tax shelter under Tax Code section 6700. The second is the penalty for aiding and abetting tax evasion under Tax Code section 6701. It would increase the penalty for both types of misconduct.

Currently, the penalty under section 6700 of the Tax Code is the lesser of $1,000 or 100 percent of the promoter's gross income derived from the prohibited tax shelter. That means in most cases, the maximum fine is $1,000. That figure is laughable, when many abusive tax shelters are selling for $100,000 or $250,000 apiece. Our investigation uncovered tax shelters that were sold for millions each. The Enron tax avoidance scam sold for more than $5 million. We also saw instances in which the same so-called tax product was sold to more than 100 clients. A $1,000 fine is like a parking ticket for raking in millions illegally.

The bill before us is an improvement over the status quo, but an unnecessarily modest one. It would increase the penalty for promoting an abusive tax shelter to 50 percent of the promoters' gross income from the prohibited tax shelter. Why should anyone who pushes an abusive tax shelter—an illegal tax shelter that robs our Treasury of much needed revenues—get to keep half of his ill-gotten gains? And what deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and all of them if they are not? That half-hearted penalty is not tough enough to do the job that needs to be done.

At the very least, a meaningful penalty for those who peddle abusive tax shelters must ensure that the tax shelter promoter does not profit from its wrongdoing. It must require the wrongdoer to disgorge every penny of the income obtained from selling the shelter. Our amendment would do just that.

My original amendment would have gone further. It would have created a maximum penalty equal to 150 percent of the promoter's gross income from the prohibited tax shelter. Under that penalty, the first 100 percent would have forced the disgorgement of the ill-begotten gains, and the remaining 50 percent would have imposed what I consider to be an actual penalty on top of that. But today, our amendment does not go that far. It stops at 100 percent. While that is not as tough as called for in the Levin-Coleman bill, it is a reasonable compromise and will ensure that those who promote abusive tax shelters will lose 100 percent of their ill-gotten gains.

The underlying bill has the same problem in the way it addresses many professional firms the accountants, law firms, banks, and investment advisors that aid and abet the use of abusive tax shelters and enable taxpayers to carry out abusive tax schemes. The underlying bill takes the same half-hearted approach of denying only 50 percent of the gross income obtained by the aider and abettor, and allowing the wrongdoer to keep half of its ill-gotten gains. Just as we do with tax shelter promoters, our amendment would raise the penalty under tax code section 6701 to 100 percent of the aider or abettor's gross income, thereby denying them 100 percent of their ill-gotten gains. In addition, our amendment would make an important change to section 6701 itself by eliminating a provision which limits the penalty to persons who prepare tax returns. Instead, our amendment would apply the penalty to all wrongdoers who knowingly aid and abet the understatement of tax liability, not just tax return preparers.

Finally, while I am pleased that today we have reached agreement to accept a 100 percent penalty, I would like to take this opportunity to observe that penalties that cause wrongdoers to not only disgorge their ill-gotten gains, but also pay a monetary fine on top of that are fair and provide a meaningful deterrent.

There is no reason why those who concoct and peddle these shenanigans should get off any easier than the taxpayers who use them. Just last week the IRS came out with an initiative to allow taxpayers who used a tax shelter known as ''Son of Boss'' to come clean. This tax shelter was marketed beginning in the late 1990s and was one of the tax shelters we looked at during our investigation. Under the terms of the IRS initiative, taxpayers are required to come forward and pay 100 percent of the tax they tried to escape. On top of that, the IRS can impose a penalty that ranges up to an additional 40 percent. That means the taxpayer faces up to a 140 percent penalty.

Son of Boss is a hellaciously complicated tax shelter that was dreamed up and carried out by tax shelter promoters and other professionals. The taxpayers who bought this shelter have to cough up 100 percent plus. It is only fair that the tax shelter promoters who made so many millions of dollars in profit on these schemes should do no less.

It is also important to realize that Congress has frequently set penalties for corporate misconduct and financial crimes that require wrongdoers to disgorge 100 percent of their ill-gotten gains plus pay a penalty on top of that, and courts have upheld those penalties as both constitutional and enforceable. For example, under current law, violation of the federal securities laws results in 100% disgorgement plus a civil fine of up to 100 percent, for a total civil penalty equal to 200 percent. In the special case of insider trading, violations result in 100 percent disgorgement plus a civil fine of up to 300 percent, for a total civil penalty equal to 400 percent. Manipulation of commodity markets results in a civil fine of up to 300 percent. False claims submitted to the Federal Government result in a civil fine of up to 300 percent. Even the tax code has penalties of this magnitude; for example, personally profiting from a charity results in a civil fine of up to 200 percent.

Men and women in our military are putting their lives on the line every day for our nation. To make sure we can provide them with the resources they need, all Americans need to contribute their fair share in taxes. While the bill before us improves the tax shelter penalties over current law, we can and should do much better. We need penalties that truly deter those who make a profit from peddling abusive tax shelters and aiding and abetting tax evasion, not penalties that would allow the promoters to keep half of their ill-gotten gains.

It is long past time to stop in their tracks the shelter abusers and the promoters who push them. This amendment would send the message to promoters that their tax schemes are unfair and unpatriotic. Again, I appreciate the bill managers accepting it into the bill.

I also thank Senator COLEMAN for being such a strong advocate of this approach, putting in the law a real deterrent to end these abusive tax shelters which have cost the Treasury and the average taxpayers of this country, who have to share the burden, so many tens of billions of dollars. That is now hopefully going to end.

Again, I thank the chairman and ranking member of the Finance Committee for the way they have worked with us to adopt this amendment.

The PRESIDING OFFICER (Mr. ALEXANDER). Who yields time?

Mr. LEVIN. I yield the balance of my time to my friend from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I commend my friend, the Senator from Michigan, for his leadership in protecting the interests of all taxpayers by originally bringing to light the nature of these abusive tax shelters. I had the opportunity to work with him to make a difference, to help shape this amendment.

I also thank Chairman GRASSLEY and Senator BAUCUS for accepting this amendment and for their leadership on this issue. I am glad the Senator from Michigan didn't try to explain and walk through all the details of his chart of these sham tax shelters. The bottom line is very clear: The Government gets ripped off. The taxpayers get ripped off. These abusive tax shelters were established for the purpose of avoiding tax liability. Those who suffer are all the taxpayers. By this amendment, by substantially increasing the penalties, by putting some real deterrent in place, I believe public trust in our laws will be restored.

In November, as chairman of Permanent Subcommittee on Investigations, I held two hearings on abusive tax shelters. The permanent subcommittee spent one year investigating the tax shelter industry. It became clear to the subcommittee that some tax avoidance schemes are clearly abusive. These abusive shelters relied on sham transactions with no financial or economic utility other than to manufacture tax benefits.

According to GAO, abusive tax shelters robbed the Treasury of $85 billion over 6 years. The use of these tax shelters exploded during the high flying 1990s, when many firms were awash in cash and more concerned with generating fees than being compliant with the Code. The lure of millions of dollars in fees clearly played a role in the decision on the part of tax professionals to drive a Brinks truck through any purported tax loophole.

Abusive tax shelters require accountants and financial advisors who develop and structure transactions to take advantage of loopholes in the tax law. Lawyers provide the cookie-cutter tax opinions deeming the transactions to be legal. Bankers provide loans with little or no risk. Yet the amount of the loan creates a multimillion-dollar tax loss.

This became a game. Otherwise reputable professionals were able to earn huge profits by providing services that offered a veneer of legitimacy to the transactions. The parties were careful to hide the transaction from IRS detection by failing to register and failing to provide lists of clients who used the transactions to the IRS.

It was clear to the subcommittee that the promoters of these tax shelters failed to register with the IRS partly because the penalties for failing to register were so low compared to expected profits. As my colleague from Michigan noted, with the risk-benefit ratio, it was worth avoiding the law because if you got caught it didn't matter; you made so much money. The penalties were so little that you took the risk of avoiding the law. In fact, the benefits were great.

This amendment changes that. Current provisions of the JOBS bill provide for increased penalties to address abusive tax shelters. However, I agree with Senator LEVIN that even stronger penalties are needed. The provision to substantially increase penalties to promoters who manufacture these sham transactions so they must give back all of their ill-gotten gains is vital to restoring the integrity of our tax laws and deterring future avoidance.

This amendment also increases the amount of penalties for persons who knowingly aid and abet a taxpayer in understating their tax liability. Current law and the JOBS bill only apply this penalty to tax return preparers. We now get the aiders and abettors. However, the close collaboration between the lawyers, accountants, financial advisors, and banks requires us to apply penalties to all material aiders and abettors, not just those who prepare the tax returns.

This is not a victimless crime. It is not the Government that loses the money. It is the people of America, average working families who will bear the brunt of lost revenue so that a handful of lawyers and accountants and their clients can manipulate legitimate business practices to make a profit. Abusive transactions are used to avoid detection by the IRS. This amendment sends a clear message that this Congress intends to put an end to abusive sham transactions.

With the passage of this amendment, the price to be paid for participating and for promoting abuse will be very steep indeed—all of your profits.

I am appreciative that the managers have joined me in supporting this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I urge adoption of the Levin-Coleman modified amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 3120, as modified.

The amendment (No. 3120) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMBASSADORIAL APPOINTMENTS

Mr. REID. Mr. President, I was in the Chamber this morning when the distinguished Senator from Tennessee, the majority leader, complained about our holding up—the Democrats, the minority—appointments to our ambassadorial corps. I thought that doesn't sound right, but I wanted to make sure I had my facts right, even though I had a tremendous impulse to say: Mr. Leader, you are just wrong.

After having looked at the facts, I can say now: Mr. Leader, you were wrong this morning.

This is an important issue. I have been fortunate to have started off in the House of Representatives, and being on the Foreign Affairs Committee, one of my assignments was to travel. I have had the good fortune of being able to travel, in the more than two decades I have been in Congress, all over the world. I am tremendously impressed with the places I go, where we have young men and women who serve, as Senator DODD did. I think he went to the Dominican Republic. We have had other examples, but that is the only one I know of people who served in the Peace Corps. This is a wonderful organization. They do wonderful things for the country. I admire so much what they do.

But there is no one I admire as much as our career Foreign Service officers, our diplomatic corps. They do such wonderful work, without any notoriety at all. So any time we talk about our State Department, our diplomatic corps, I want to defend them. So I know this is an important issue raised by the majority leader this morning. But I thought it would be important for me to respond to some of the current concerns I have heard expressed this morning.

I was on the Senate floor last Thursday, and I was pleased that the Senate confirmed 20 Ambassadors that day, including the Ambassador to Iraq, Ambassador Negroponte, whose assignment will begin after June 30 of this year. His nomination was completed with near record speed, given that he was confirmed 1 week after he was nominated by the President of the United States. The other 19 Ambassadors confirmed that day were confirmed less than a week after they were reported out of the Foreign Relations Committee. That is remarkably good work.

By confirming these 19, the Senate filled 3 vacant U.S. Embassies. We had hoped to confirm other career Foreign Service officers that day. For example, Nepal—I have been there. There are very important events going on in that country now that we have an Ambassador there. As we know, this has been a site of considerable violence.

Unfortunately, I have been advised that the objection to the confirmation of James Frances Moriarity, of Virginia, a career Foreign Service officer, doesn't come from us; it comes from the majority, meaning this Embassy will continue to be vacant for the foreseeable future.

At the moment, I am told by the State Department that out of the nearly 170 Embassies we have around the world, 8 are vacant. So that means 162 of the 170 are filled. Eight are vacant, meaning they have no confirmed Ambassador. The President has chosen not to fill two of them. So now we are down to six. We have two that are too dangerous to fill, for reasons that are apparent—what is going on in the world. That knocks us down to four. One is awaiting action in the Foreign Relations Committee. The Republicans objected to filling another. The last two, Sweden and Finland, are vacant because President Bush's political appointees—not career Foreign Service officers, which I have no objection to because we need a mix—his political appointees decided they could not stand being there much longer and they left.

So my dear friend, for whom I have so much respect, the majority leader, better have his staff give him better facts because he is absolutely, totally wrong, for the reasons I have just indicated.

Last week, some of our friends on the majority side noted that the vacancies send a negative signal to these countries. Let the President move with dispatch to fill them then.

I also hope the President will work out another problem. We have Ambassadors who have been confirmed by the Senate to posts around the world, but they are not doing their work in the countries to which they were sent. They have been sent to Iraq. Ambassadors assigned to the Philippines, Kuwait, and Bahrain are in Iraq, not in the countries to which they were assigned. I know it is important that they help out in Iraq, but that is not the way it should be. At least, it should not be that people are complaining about these Ambassadors not having jobs and the ambassadorial corps being empty and that we are holding it up.

I recognize the jobs these men are doing in Iraq are important. The things they are performing in Iraq are obviously important or they would not have been sent there. But don't complain about the minority holding up Ambassadors because we are not, for the simple math I have given you. So I hope we can consider the whole picture and not come to the floor and complain and cry and whine about the Ambassadors not being confirmed because of us. It is simply not true.

If there is other business to come before the Senate, I will withhold suggesting the absence of a quorum.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

AMENDMENT NO. 3133

Mr. GRASSLEY. Mr. President, I ask unanimous consent to call up amendment No. 3133 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 3133.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. Is there further debate on the amendment?

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

The amendment (No. 3133) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, I think this is going pretty well now. We expect a vote around 6:30.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3040, AS MODIFIED

Mr. GRASSLEY. Mr. President, on behalf of Senator NICKLES, I call up amendment No. 3040 and send a modification to the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. NICKLES, proposes an amendment numbered 3040, as modified.

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

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

The amendment is as follows:

(Purpose: To treat electric transmission property as 15-year property)

At the end of title VIII, add the following:

SEC. ___. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property), as amended by this Act, is amended by striking ''and'' at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting '', and'', and by adding at the end the following new clause:

''(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale the original use of which commences with the taxpayer after the date of the enactment of this clause.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

''(E)(v) ..... 30''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act and prior to July 1, 2006.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, we have looked at this amendment on this side, and we are agreeable that this amendment should be adopted.

Mr. GRASSLEY. On this side, too.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3040), as modified, was agreed to.

Mr. BAUCUS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3143

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

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 3143.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. GRASSLEY. I ask for consideration of the amendment.

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

The amendment (No. 3143) was agreed to.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays on the bill.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The clerk will call the roll.

Mr. MCCONNELL. I announce that the Senator from Arizona (Mr. MCCAIN) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The result was announced—yeas 92, nays 5, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—92

Akaka	Brownback	Collins
Alexander	Bunning	Conrad
Allard	Burns	Cornyn
Allen	Byrd	Corzine
Baucus	Campbell	Craig
Bayh	Cantwell	Crapo
Bennett	Carper	Daschle
Biden	Chafee	Dayton
Bingaman	Chambliss	DeWine
Bond	Clinton	Dodd
Boxer	Cochran	Dole
Breaux	Coleman	Domenici
Dorgan	Kohl	Reid (NV)
Durbin	Landrieu	Roberts
Ensign	Lautenberg	Rockefeller
Enzi	Leahy	Santorum
Feingold	Levin	Sarbanes
Feinstein	Lieberman	Schumer
Fitzgerald	Lincoln	Sessions
Frist	Lott	Shelby
Graham (SC)	Lugar	Smith
Grassley	McConnell	Snowe
Hagel	Mikulski	Specter
Harkin	Miller	Stabenow
Hatch	Murkowski	Stevens
Hutchison	Murray	Talent
Inhofe	Nelson (FL)	Thomas
Inouye	Nelson (NE)	Voinovich
Jeffords	Nickles	Warner
Johnson	Pryor	Wyden
Kennedy	Reed (RI)	

NAYS—5

Graham (FL)	Hollings	Sununu
Gregg	Kyl	

NOT VOTING—3

Edwards	Kerry	McCain

The bill (S. 1637), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. GRASSLEY. I move to reconsider the vote.

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

The PRESIDING OFFICER (Mr. TALENT). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, now that this bill has finally passed the Senate, I take the opportunity to thank several people.

First and foremost, I thank Senator BAUCUS. I am very certain we would not be here without his good work and his cooperation. In fact, as I have said so many times in speeches, this whole effort started when Senator BAUCUS was chairman of the committee in the last Congress. He held hearings and started this process going. He has not only cooperated and put in good work during this Congress, but it all started under his leadership.

I also need to thank all the other members of the Finance Committee for their time and energy in making this bill a reality. I thank my staff on the Finance Committee: Mark Prater, chief tax counsel, and the other tax counsels, Ed McClellan, Elizabeth Paris, Dean Zerbe, Christy Mistr, and John O'Neill as well as John's predecessor, Diann Howland. These individuals, along with Adam Freed, the staff assistant for the tax team, have been real workhorses for the committee, keeping the lights burning long into the night to make this bill possible.

For the record, as evidence of the work effort, this bill was introduced on the day Hurricane Isabel blew into town. Because of hard work, the mark-up of the bill occurred in a calm environment.

I also thank the trade staff, particularly Everett Eissenstat, chief Trade Counsel, and his team of David Johanson, Stephen Schaefer, Daniel Shepherdson, and Zach Paulsen. I also thank Carrie Clark who recently left our trade staff. Thanks also needs to be paid to our administrative staff, including Carla Martin, Amber Williams, Geoff Burrell, and Mark Blair. From my personal staff, I thank Sherry Kuntz and Leah Shimp. Also helpful were our Finance Committee press team of Jill Kozeny and Jill Gerber, known around the committee as the ''Jills.'' Lastly, on my side, I thank Kolan Davis and Ted Totman, the Committee's staff director and deputy staff director for riding herd on all this work.

In addition, this bipartisan bill would not have been possible without close work and cooperation at the staff level. I appreciate and thank the minority staff for their good work. I particularly note Russ Sullivan, Democratic Staff Director, as well as Pat Heck, Democratic Chief Tax Counsel, Matt Stokes, Matt Jones, Matt Genasci, Judy Miller, Jon Selib, Liz Leibschutz, Matt Stanton, Dawn Levy, and Anita Horn Rizek. In addition, I thank Tim Punke and his trade team, along with John Angell, Bill Dauster, and Mike Evans, former Deputy Staff Director, for their time and energy.

I extend my thanks also to George Yin and his staff at the Joint Committee on Taxation for providing their extensive knowledge and guidance to this effort. I particularly point out the good work of Ray Beeman, David Noren, and Brian Meighan. Brian recently left Joint Tax for the private sector.

I also thank Acting Assistant Secretary for Tax Policy, Gregory Jenner, and his staff for their assistance on the so-called SILOs tax shelter provision of this bill.

I thank the majority leader, Senator BILL FRIST, and his leadership staff for all their assistance. The majority leader backed me and Senator BAUCUS all the way on this bill. We would not have the result today but for the majority leader's patience, determination, and dedication. It was tough going at times, but he and I knew we would get the right result. From Senator FRIST's staff, I thank Lee Rawls, Eric Ueland, Rohit Kumar, and Libby Jarvis.

I also thank our Senate leadership team and their staffs, especially our able whip, Senator MCCONNELL.

Finally, my thanks go to Jim Fransen, Mark Mathiesen, Mark McGunagle, and their capable staff at Legislative Counsel for taking our ideas and drafting them into statutory language.

I would like to tell them all to go home and get a good night's rest because the bill has been a very long time working its way through the Senate.

Now, I urge our friends in the other body to pass a companion bill. Hopefully, when that bill passes the House, our friends in the Senate Democratic leadership will not resist our efforts to go to conference. Every month of delay is another month where the Euro tax ratchets up another percentage point on our products going to Europe.

I thank everyone for their cooperation in allowing us to get to this point this evening. This, of course, is not the final step in the process. The House has

not passed their version of the FSC legislation. I anticipate the House will send a bill to the Senate at some point. When that happens, I hope we will be able to proceed to conference so that we are able to get a final product.

I appreciate the assistance of Senator BAUCUS throughout this process and hope we will be able to send a bill to committee.

ORDER OF PROCEDURE

Mr. President, following Senator BAUCUS's remarks, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I am very proud of the Senate. The Senate worked its will through a very involved and complex tax bill. I might add—I don't have the final figures here, but in the case of first impression, this probably is one of the largest tax bills the Senate has taken up and passed, outside of reconciliation—we don't know yet—in maybe a decade, or maybe close to two decades.

I say that because of the importance of protecting Senators' rights. I know this sounds like a little inside baseball, but when I say ''outside reconciliation,'' all of us in the Senate know this means the bill was taken up under the usual Senate process, which means Senators have the right to offer amendments, have the right to speak as long as they can stand on their own two feet, and have the rights Senators usually have in taking up bills. Whereas, if this were to be taken up under the process we call ''reconciliation,'' then amendments would have to be passed very easily; that is, there is no right for extended debate. Germaneness rules do not apply; that is, unless cloture is invoked.

So the main point I want to make is that the Senate has done a good job. The Senate has taken up a very complicated, very large tax bill, and done it the way the Senate should ordinarily do business; that is, outside of reconciliation. We are responsible. We can do it. We did it.

I very much thank my good friend and colleague, the chairman of the Finance Committee, who led us in a way to help make that happen. He basically did it by being so gracious, by being so fair. He has a reputation, we all know, of being one of the most honest and fair persons you would ever have the privilege to meet, not only in the Senate but in life. His credibility is unquestioned. That is a substantial reason why we were able to pass such a messy bill outside reconciliation. I thank my friend for his leadership, for his friendship, and for all he has done.

I also especially thank Senator REID of Nevada. We all know Senator REID is probably one of the masters of the floor. He knows procedure, and his main goal is to get things done. He, too, is a man whose word is his bond. He is invaluable here. If not for the efforts of not only the chairman but Senator REID, I am not so sure we would be here today. He has done a super job.

It is also very appropriate to thank a lot of my staff, and Senator GRASSLEY's staff, and many others, which I will do. But before I do that, I would like to do something a little bit differently and thank some people who helped me with this bill; that is, the people I talked with back home who provided ideas on how to structure the FSC/ETI replacement bill in a way that made the most sense for our manufacturers, not only throughout the country but in my home State of Montana.

This was a great chance for me to learn even more about manufacturing in my State, by going to manufacturers in my State and saying: What do we need? What can we do to help make this happen?

Let me give you a few examples.

The timber industry, for example, has faced very tough economic times during the last several years. In the years 2000 and before, many of these businesses paid very high taxes on solid profits.

So a provision in this bill will permit businesses in industries with cyclical profits to smooth out their tax rates. This is accomplished by permitting a loss to be carried back for up to 5 years. That will help a lot.

I thank Jim Hurst at Owens & Hurst, a small timber company located in Eureka, MT, for helping us better understand the economics of the timber business. The JOBS bill will help this company and many other companies that have very cyclical incomes.

I might add, too, that the people at Mountain Harvest Pizza Crust Company, from Billings—that does not sound like a huge American manufacturing company but they are extremely important to Montana, to Billings, and to me—helped educate me about the challenges of rising costs facing small businesses, and about how the cost of health care was getting to be too much to handle.

I might say, too, not all exporters are large corporations. We learned this from Sun Mountain Sports in Missoula. They are an S corporation. They export golf bags and other sports equipment. They are just the kind of company we want to stay strong so they can keep those manufacturing jobs here in the U.S. and so they can continue to export overseas.

Because of discussions with many small businesses such as Mountain Harvest Pizza Crust and Sun Mountain Sports, I made sure that every manufacturer would get this deduction. So we in the Finance Committee produced a bill that gives a deduction not only to C corporations but to S corporations, to partnerships, and to sole proprietorships so they all could have help and not be left behind by this legislation. The tax relief they are getting in this bill will help defray those and other rising costs.

Again, by consulting with the people at home, we were able to realize what the FSC/ETI replacement bill should be. It should not be just for big C corporations—those are large, publicly held corporations—but, rather, for any organization that manufactures, including proprietorships, small businesses, et cetera.

I also thank the people at CHS—that is Central Harvest—who showed us the role that cooperatives play in rural America and helped us better understand the importance of making this tax deduction pass through to the members of cooperatives. Agricultural cooperatives are a crucial part of the economy of my State and a lot of the West, and, I might add, a lot of other rural parts of America.

CHS helped to make sure their important contributions were not overlooked in this bill. I wanted, as I said, the bill to include all American manufacturers, and I have made sure the bill includes the agricultural cooperatives that are so important to so many States.

Also, I thank Elvie Miller at Mountain Meadow Log Homes, who talked to us about how integral good research and design is to their business. Frankly, with the addition of the amendment by the Senator from Texas, we were able to add that provision.

I also want to thank Leland Griffin and the good folks at Montana Refining Company in Great Falls. They pointed out that under the export credit this bill will repeal, oil refining operations are not eligible for tax benefits. But Montana Refining pointed out that if we are converting the laws to a manufacturing deduction, then it should cover oil and gas refining operations. Those operations are manufacturing. They take raw material, crude oil, and convert it to a usable product—gasoline and other petroleum products. I offered an amendment in committee to include refining operations in the definition of manufacturing.

All of these companies, and many more, were invaluable in passing such a strong bill in the Senate. I thank them. I thank them very much for adding their part to this bill. Were it not for their very valuable contributions, this legislation would not be as good.

I also thank a lot of people from my office. I don't have the whole list. There are so many of them. If we turned the camera over, we could see them lined up against the wall over there. Starting with Brian Pomper on the far right, he does a very good job, handles a lot of trade work. We have Pat Heck over there; Russ Sullivan; Matt Genasci; Liz Liebschutz, Matt Stokes, Jon Selib. We have Scott Landes there in the corner, Simon Chabel, many others. Wendy Carrey is there; Mac Campbell. They are our folks. They do the work. My guess is

that if I talk much longer, they are going to fall asleep, they are so tired. We all very much appreciate, deeply appreciate what they do.

I have often said that the most noble human endeavor is service—service to church, to community, to mankind, service to whatever makes the most sense to us as human beings. A lot of us who run for public office get some of the psychic rewards of service. We see our names in newspapers and on TV. Usually that is good, not always but usually.

However, the folks who work in the Senate, on Joint Tax and elsewhere, work harder. And they don't get public recognition for what they do. They are the real servants. They are the ones who really provide the most noble kind of service. I know I speak for everyone listening, for everyone else who stops and thinks about these things if only for a nanosecond, when I say how true that last statement is. They are the most wonderful folks. I take my hat off to all of them.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, I, too, congratulate Chairman GRASSLEY and Senator BAUCUS for their great work in moving this JOBS bill to completion. I certainly express the hope that once the House acts, we will be able to go to conference in the normal way that legislation is handled and get this important piece of legislation on the President's desk at the earliest possible time to prevent further penalties from being levied against our companies here in the United States.

AMENDMENT NO. 3143, AS MODIFIED

Mr. GRASSLEY. Mr. President, I ask unanimous consent, notwithstanding the adoption of amendment No. 3143, that the modification which is at the desk be agreed to.

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

The amendment (No. 3143), as modified, was agreed to, as follows:

''(ii) there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of a person as a person described in this paragraph.

''(C) RELATED PERSON.—For purposes of this paragraph, the term 'related person' has the meaning given such term by section 954(d)(3).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

On page 335, strike lines 4 through 10, and insert the following:

(2) LEASES TO FOREIGN ENTITIES.—In the case of tax-exempt use property leased to a tax-exempt entity which is a foreign person or entity, the amendments made by this section shall apply to taxable years beginning after January 31, 2004, with respect to leases entered into on or before November 18, 2003.

Mr. SMITH. Mr. President, I rise today to praise the Senate for its passage of S. 1637, the Jumpstart Our Business Strength Act, which includes my provision lowering the corporate tax rate on repatriated profits. In one short year, this provision will bring $400 billion into our economy. This money is going to create over 650,000 new jobs and get our economy moving again. At the same time, it's going to help reduce the federal deficit.

I believe this is one of the most important provisions of the JOBS Act regarding job growth and strengthening our economy. This provision would require that repatriated funds be reinvested in the United States for hiring workers and worker training, infrastructure, R&D, capital investment, or financial stabilization for the purposes of job retention or creation. It is my understanding that the concept of financial stabilization, for this purpose, encompasses use of the repatriated funds to repay debt of the U.S. parent corporation. Use of these funds to pay down debt is a qualified use for purposes of the provision. In fact, debt repayment will strengthen U.S. corporate balance sheets, which will improve a company's ability to employ and hire workers.

I thank the chairman for his strong support of this repatriation provision and look forward to swift action by the House.

MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Virginia is recognized.

IRAQI PRISONERS

Mr. WARNER. Mr. President, the distinguished majority leader, Senator DASCHLE, Senator LEVIN, and I have been working with the Department of Defense regarding additional photos relative to the tragic case of the treatment of Iraqi prisoners by U.S. personnel, military and otherwise. We have reached a decision with the total cooperation of the Department of Defense whereby those pictures will be brought to Senate S–407 tomorrow. There will be a representative from the Department there to help Members work their way through such pictures as they wish to examine from 2 to 5, at which time the pictures and everything will be returned to the Department since the Department will maintain constant custody of those, that evidentiary material throughout the time.

I ask unanimous consent the letter Senator LEVIN and I have sent to the Department regarding viewing and inspection of this material—all Senators are eligible, no staff—be printed in the RECORD.

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

U.S. SENATE
COMMITTEE ON ARMED SERVICES,
Washington, DC, May 11, 2004.

Hon. DONALD H. RUMSFELD,
Secretary of Defense, Washington, DC.

DEAR MR. SECRETARY: We request the Department of Defense provide the Committee on Armed Services an opportunity to review the photos and videos regarding the abuse of prisoners at Abu Ghraib prison in Iraq. Further, it is our intent to extend this opportunity to all Members of the United States Senate.

These materials should be brought to the Senate for review, but will remain under the control of the Defense Department. At no time will the Committee, the Senate, or any Member or employee thereof, take custody of, or assume responsibility for, these materials. A Defense Department official will return these materials to the Pentagon after the materials have been reviewed by Members, subject to our subsequent recall if necessary.

Committee staff will coordinate the details of this request directly with your office.

Sincerely,

CARL LEVIN,
Ranking Member
JOHN W. WARNER,
Chairman.

TRIBUTE TO RICHARD C. CRAWFORD

Mr. FRIST. Mr. President, I rise today to pay tribute to Richard C. Crawford who retires June 1 following a career devoted to public power, in the Tennessee Valley, that spans four decades. Mr. Crawford's retirement as president and chief executive officer of the Tennessee Valley Public Power Association, and before that as a vice president for the Tennessee Valley Authority, brings to a close a distinguished career of advocacy for public power.

Dick Crawford's contributions to public power are recognized not only in Tennessee and in the Tennessee Valley region, but across the entire country. While at TVA he was responsible for technological improvements to the utility's transmission system that resulted in enhanced electric reliability. He was also a leader in the development TVA's highly acclaimed energy conservation and efficiency programs, which were modeled by other electric utilities around the Nation. He worked with distributors of TVA power to overhaul the power contracts and helped introduce innovative pricing and economic development products, including one of the first and largest real-time pricing programs, and incentive rates to help attract industry to the Tennessee Valley.

Mr. Crawford's contributions to public power continued when he joined the staff of TVPPA in 1994. Initially, he served as director of power supply services before becoming acting executive director, and later president and chief executive officer. The knowledge he gained at TVA about the Valley's unique power supply needs and the distributors who deliver the power to the Valley's 8.3 million consumers made him a perfect choice to head TVPPA during a critical time in its history.