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PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

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House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, December 22, 2005, at 4 p.m.

Senate

MONDAY, DECEMBER 19, 2005

The Senate met at 9:30 a.m. and was called to order by the Honorable LISA MURKOWSKI, a Senator from the State of Alaska.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal spirit, by whose providence we have been blessed with the gift of another day, Your greatness overwhelms us. We bow in adoration because of Your merciful kindness. We thank You for disasters averted and advancements made. We thank You also for blessings that come disguised as adversity.

Bless our Senators in their significant work. Strengthen and refresh them with Your goodness. Purge them from all unworthy self-indulgence that they may not hinder but help the work of freedom. Give them hearts and hands that are willing to serve. Temper their successes with humility. Open their eyes to new levels of truth that they have not known before.

Bless also the many staffers who assist our leaders in their labors.

Empower us all to live abundantly as Your children.

We pray in Your strong Name. Amen.

NOTICE

If the 109th Congress, 1st Session, adjourns sine die on or before December 22, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman.*

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

Printed on recycled paper.

PLEDGE OF ALLEGIANCE

The Honorable LISA MURKOWSKI led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 19, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

Ms. MURKOWSKI assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Madam President, there will be a period of morning business this morning. Over the course of this morning, the House has passed both conference reports, the DOD appropriations conference report and the spending reduction reconciliation report, as well, early this morning. The first DOD appropriations passed 308 to 106 and the spending reconciliation 212 to 206 in the House just a few hours ago.

As our colleagues know, we have been waiting for House action on those bills so those bills could be sent to this body. They have now completed their work on DOD appropriations, DOD authorization, and the spending reconciliation bill, all three of which we will be addressing over the next several days.

There has been a tremendous amount of work among and between the House and the Senate and among various interested parties, and now we are on the final stretch before the holiday season. It will be a difficult time to get through the next couple of days because of a lot of tension, but I ask for our colleagues' understanding and patience as we go through what will be challenging for us as quickly as possible to address these issues. But all of these will be addressed, plus many others. We will be working over the course of the morning to schedule both conference reports, DOD appropriations and the spending reconciliation conference report.

I hope we can schedule Defense authorization, which is another bill we have had on the floor and off the floor and on the floor, and Chairman WARNER has done a tremendous job with that bill. We were hoping to do that several days ago, but the House had not acted on it until this morning. It has now been completed, and we are ready to go to that hopefully this morning. Hopefully here in a few minutes we will have a short time agreement, and then I will be working with the Democratic leader to schedule an appropriate time for that vote.

On the deficit reduction conference report, as my colleagues know, we have 10 hours for debate before that vote. We want to start that time as soon as we can. Every hour we put that off is just an hour later that we will get out of here. We want to get that time started and that debate started as soon as possible—10 hours before we vote on the deficit reduction conference report.

A number of other issues are outstanding. In terms of judges, I am not sure exactly when the next vote will be until we work out the schedule this morning. We will not have any rollcall votes this morning, but I think we have told all of our colleagues that from noon on, we may well be voting. We will just have to alert people in terms of the time.

BOY SCOUTS AND GIRL SCOUTS OF AMERICA

Mr. FRIST. Madam President, yesterday I had the pleasure of hosting Boy Scouts and Girl Scouts here in the Nation's Capitol in celebration with an event that looked at a bill that will be included in the Department of Defense appropriations bill, and this bill is the Support our Troops Act of 2005. We had an event to celebrate. We had a little press conference, and with the hot lights actually one of the Scouts got a little faint, which many of us do, and it was remarkable to see the Scouts' reaction. They knew exactly what to do and how to handle it as we stood before those cameras.

The event yesterday highlighted the tremendous contributions of Scouting, a much beloved tradition in this country under congressional charter in 1910 and since that point in time has served over 110 million Americans as participants in Scouting. Our efforts here in the Senate have been to protect that tradition for generations to come.

I have worked very closely with Roy Williams, the chief Scout executive for the Boy Scouts of America, and John Cushman, the national president of the Boy Scouts of America, in fashioning this legislation. Both were there at that event yesterday, as well as Troop 1100 from Burke, VA.

I have worked closely with Roy and John to craft what is commonsense legislation, the Support our Troops Act of 2005. It will be passed here hopefully a little bit later today as part of that DOD bill. It passed this floor in an overwhelming, bipartisan way earlier this year.

The bill is a straightforward victory for the Boy Scouts of America as well as other youth organizations that are helping to mold the hearts and the minds of our young generation today.

Without question, the success of Scouting relies on the commitment of the Scouts and their leaders and their parents. But Scouting also depends on having equal access to public facilities and participation in public programs and forums that allow Scouts to learn their field craft, to sharpen their skills, contribute to their community, and to learn the values that make America great.

Over the last few years, the Boy Scouts have been subjected to repeated attempts to exclude them from public facilities. The attacks have mounted so quickly that exclusion from Government forums has become the greatest legal challenge for the existence of the Boy Scouts.

For example, last year, the Department of Defense was required to notify American military bases worldwide that they cannot provide support to or directly sponsor the Boy Scouts of America. This unfortunate directive came about because of a lawsuit—a vindictive lawsuit—by the American Civil Liberties Union to demand that the Government discontinue its support of the Scouts. Their reason? Because they argue the Scouts are a religious organization. Most Americans would not recognize camping and building trails and fellowship and voluntarism as distinctly religious activities, but the ACLU is bound and determined to undermine the Scouting mission at a time when probably more than ever in history our Nation yearns for stronger community ties, stronger family ties, and stronger fellowship, a culture of integrity, a culture of honesty, and a culture of character for our young people.

That is why I sponsored the Support Our Troops Act, to ensure that the Boy Scouts of America and the Girl Scouts of the United States of America are not subject to unfair legal assaults, to remove any doubt that Federal agencies may, indeed, welcome Scouts onto Federal property, to ensure that State and local governments cannot discriminate against the Scouts.

I have tremendous admiration for the Boy Scouts. I was a Boy Scout. The first question I had yesterday from Scouts was: Were you an Eagle Scout? I said, no, but the one goal I set and should have done was becoming an Eagle Scout.

Scouting meant much to my three boys, Harrison, Jonathan, and Bryan, all of whom participated in Scouts, each of whom I have had the opportunity to camp with many times, with

their troops and with their Scouting entities.

Through exposure to the outdoors, through the hard work and virtues of civic duty, the Boy Scouts have developed millions of young Americans into fine citizens today, community servants and, of course, future leaders. It is an honor to support this fine organization. Those values taught by Scouts have played an important role in shaping my own life and that of my family, and now, because of the Support Our Troops Act, Scouting continues to enrich the lives of countless young boys and girls and their families and their communities as it has always done over the last 100 years, strengthening the fabric of American life.

Madam President, I suggest the absence of a quorum.

ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. STEVENS. Reserving the right to object, I will not object if I can follow the Senator.

The ACTING PRESIDENT pro tempore. It is not in order to reserve the right to object.

Is there objection?

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

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The Senator from Wisconsin.

ANWR

Mr. FEINGOLD. Madam President, I wish to bring to the attention of the body the extremely troubling tactics that some in this body have used over the past few days to try to push through a legislative proposal that, standing on its own, does not have the support of a majority of the U.S. Congress. And I think these tactics reflect poorly on this body and its leadership. Discarding the rules that govern all of us demonstrates contempt not only for the need to have and follow rules, but for the history, and future, of the United States Senate.

To be clear, I am talking about the inclusion of the Arctic National Wildlife Refuge drilling provision in the Department of Defense appropriations bill, a provision we all know is controversial and has not been able to pass Congress on a variety of occasions.

Drilling in the Arctic has absolutely nothing to do with funding the Defense Department. The distinguished minority leader has already submitted into the RECORD a letter from five retired U.S. generals who are arguing this very point: Funding for our brave men and women in uniform should not be jeopardized by including a highly controversial and unrelated provision to open up the Arctic National Wildlife Refuge for drilling.

I ask unanimous consent that this letter be again printed in the RECORD.

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

DECEMBER 17, 2005.

Hon. BILL FRIST,
Majority Leader,
Hon. HARRY REID,
Minority Leader,
U.S. Senate, Washington, DC

DEAR SENATOR FRIST AND SENATOR REID: We are very concerned that the FY2006 Defense Appropriations Bill may be further delayed by attaching a controversial non-defense legislative provision to the defense appropriations conference report.

We know that you share our overarching concern for the welfare and needs of our troops. With 160,000 troops fighting in Iraq, another 18,000 in Afghanistan, and tens of thousands more around the world defending this country, Congress must finish its work and provide them the resources they need to do their job.

We believe that any effort to attach controversial legislative language authorizing drilling in the Arctic National Wildlife Refuge (ANWR) to the defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families the resources they need in a timely fashion.

The passion and energy of the debate about drilling in ANWR is well known, and a testament to vibrant debate in our democracy. But it is not helpful to attach such a controversial non-defense legislative issue to a defense appropriations bill. It only invites delay for our troops as Congress debates an important but controversial non-defense issue on a vital bill providing critical funding for our nation's security.

We urge you to keep ANWR off the defense appropriations bill.

Sincerely,

JOSEPH P. HOAR,
General, U.S. Marine Corps (Ret.).
ANTHONY C. ZINNI,
General, U.S. Marine Corps (Ret.).
CLAUDIA J. KENNEDY,
Lieutenant General, U.S. Anny (Ret.).
LEE F. GUNN,
Vice Admiral, U.S. Navy (Ret.).
STEPHEN A. CHENEY,
Brigadier General, U.S. Marine Corps (Ret.).

Mr. FEINGOLD. Thank you, Madam President.

For the benefit of my colleagues, I would like to read from the Senate's Web page and the Web page of the Senate Committee on Rules and Administration—the very places the American public would refer to when interested in learning how the Senate has said it will conduct business. I have printed copies of the relevant pieces of these U.S. Government Web sites, and I ask unanimous consent that these be printed in the RECORD.

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

STANDING RULES OF THE SENATE

CHAPTER 28: CONFERENCE COMMITTEES; REPORTS; OPEN MEETINGS

2. Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report, and if the point of order is sustained, the report is rejected or shall be recommitted to the committee of conference if the House of Representatives has not already acted thereon.

HISTORY OF COMMITTEE ON RULES AND ADMINISTRATION

I. INTRODUCTION

All legislative bodies need rules to follow if they are to transact business in an orderly fashion. Legislatures must have established rules if they are to operate fairly, efficiently, and expeditiously.

Mr. Jefferson wrote in his Manual of Parliamentary Practice that whether the rules ''be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.''

The first Senate understood this concept, and on the next day after a quorum of the Senators appeared and took their oath of office, a special committee was created to ''prepare a system of rules for conducting business.''

The committee consisting of Senators Ellsworth (Conn.), Lee (Va.), Strong (Mass.), Maclay (Pa.), and Bassett (Del.) was appointed on April 7, 1789, and on April 13, it filed a report which ''was read, and ordered to lie until tomorrow, for consideration.''

The following day the report was read again, but consideration thereof was put off until April 15. On April 16, the new set of rules, consisting of 19 in total, was adopted, but on April 18, another rule numbered XX, not reported by the committee, was adopted.

The members of this first committee were qualified for their task; all five were lawyers with experience in various legislative bodies. Senators Ellsworth, Strong, and Bassett, in addition to their other legislative experiences, were members of the Federal Convention. Mr. Lee had been President of the Continental Congress as well as a member of other legislative bodies, and Mr. Maclay had served in the Pennsylvania Provincial Assembly.

Other special committees formed to revise or reexamine the Senate rules and to recommend changes therein, were created from time to time until April 17, 1867. On this date a committee of three Senators was appointed ''to revise the rules of the Senate, and to report thereon early in the next session.'' This committee became known as the Select Committee on the Revision of the Rules and, as such, was a continuous committee until December 9, 1874, when it was designated as a standing committee to be known as the Committee on Rules.

From 1789, when the first committee was appointed, until 1867, the beginning of a continuous committee on rules, the Senate created nine special committees to revise the rules of the Senate, but only seven (3) filed reports to the Senate, and, pursuant to such reports during that time, the Senate adopted three general revisions of its rules, none of which were at the beginning of a new session. During that same period, the Senate

occasionally amended its existing rules and adopted various procedural orders, some or most of which were included in the body of the rules when each next general revision was adopted.

The select committee, begun in 1867, consisted of three Senators and was directed by resolution adopted on April 13, ''to revise the rules of the Senate, and to ''report thereon early in the next session.'' The committee filed its report, which was ordered printed, on February 21, 1868, and the Senate adopted this general revision of its rules on March 25, 1868. On December 21, 1874, the Senate adopted a resolution instructing the standing Committee on Rules ''to consider the propriety of revising and reclassifying the rules of the Senate,'' and that it report accordingly at the earliest day practicable. The committee made its first report on March 2, 1875, which was ordered printed and recommitted.

On July 14, 1876, the committee filed another report on rules revision; the Senate proceeded to consider this report on December 18, 1876, which it recommitted on the same day. On December 26, 1876, the Committee filed another report which was ordered to lie on the table. The Senate began consideration of this report on January 15, 1877, and after three days of consideration and the adoption of various amendments, the revision of the rules was adopted on January 17, 1877.

On March 2, 1883, the Senate adopted a resolution instructing the standing Committee on Rules ''to sit during the recesses of Congress, at Washington or elsewhere, for the purpose of revising, codifying, and simplifying the rules of the Senate.'' On December 10 of that year, a report was submitted, which the Senate began to consider on December 13 and continued with from time to time until January 11, 1884, when another general revision of the rules was adopted.

On May 10, 1976, the Senate adopted Senate Resolution 156 (submitted by Mr. BYRD, the majority leader) to authorize and direct the Committee on Rules and Administration to prepare a revision of the Standing Rules of the Senate. On November 7, 1979, a report was filed pursuant to the above resolution in the form of Senate Resolution 274 (submitted by Mr. BYRD for himself and Mr. Baker, the minority leader), to revise and modernize the Standing Rules of the Senate without substantive change in Senate procedure and to incorporate therein certain other rules of the Senate. The resolution was called up on November 14, 1979, and passed by a vote of 97 to 0, after a brief discussion thereon.

Between 1884 and 1979, many changes were made in the rules of the Senate and its procedure. The history of these changes has been piecemeal. Some amendments to the rules were proposed by the Rules Committee in the form of resolutions reported by that committee and adopted by the Senate, and some resolutions amending the rules in various ways were submitted, considered, and passed immediately or soon thereafter without reference to a committee. Some changes were made by the Senate agreeing to unanimous consent requests to that effect, and precedents and practices of the Senate since 1884 have had a great effect on the rules and procedure. Additionally, some changes were made by a combination of the above methods. For example, one of the most controversial provisions of the changes in the Senate rules since 1884 includes the cloture rule. The Committee on Rules reported S. Res. 195 on May 16, 1916, to amend Rule XXII to provide for a cloture procedure. It was debated but did not come to a vote. On March 7, 1917, the Senate was called into special session, and Senator Martin of Virginia submitted a resolution (S. Res. 5) to provide for a cloture procedure. It was similar to the resolution reported by the committee and was adopted on March 8, 1917. A number of amendments have been made to this rule—some reported and adopted; and some submitted, called up for consideration without reference to a committee and adopted. The so-called post-cloture amendment to rule XXII, adopted in 1979, was called up without reference and adopted, but the Committee on Rules and Administration had reported a resolution in the previous Congress containing a section therein that was very similar to the resolution adopted in 1979.

II. RULES COMMITTEE—A BRIEF SKETCH OF ITS DEVELOPMENT

HISTORY OF SPECIAL COMMITTEES ON RULES BEFORE THE CREATION OF A STANDING COMMITTEE ON RULES

The Senate first convened on March 4, 1789 without a quorum (only eight Senators appeared) and without any rules. It was not until April 6 that a quorum of the membership appeared. During the interim, the Senate adjourned from day to day without transacting any business except acting on proposed communications to absent members requesting their attendance. On April 7, a special committee to prepare and propose a system of rules was created (Journal, p. 10) as follows: ''Ordered, That Mr. Ellsworth, Mr. Lee, Mr. Strong, Mr. Maclay, and Mr. Bassett, be a committee to prepare a system of rules to govern the two Houses in cases of conference, and to take under consideration the manner of electing Chaplains, and to confer thereupon with a committee of the House of Representatives.'' ''Ordered, That the same committee prepare a system of rules for conducting business in the Senate.''

This committee performed its assignment and filed a report on April 13, 1789, proposing 19 rules for conducting business in the Senate. The report was adopted on April 16, 1789, which gave the Senate the following 19 rules (Journal, p. 13):

The, report of the committee appointed to determine upon rules for conducting business in the Senate, was agreed to. Whereupon, ''Resolved, That the following rules, from No. I, to XIX, inclusive, be observed.''

I. The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read, to the end that any mistake may be corrected that shall have been made in the entries.

II. No member shall speak to another, or otherwise interrupt the business of the Senate, or read any printed paper while the journals or public papers are reading, or when any member is speaking in any debate.

III. Every member, when he speaks, shall address the chair, standing in his place, and when he has finished, shall sit down.

IV. No member shall speak more than twice in any one debate on the same day, without leave of the Senate.

V. When two members rise at the same time, the President shall name the person to speak; but in all cases the member first rising shall speak first.

VI. No motion shall be debated until the same shall be seconded.

VII. When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President, or any member, delivered in at the table, and read by the President, before the same shall be debated.

VIII. While a question is before the Senate, no motion shall be received unless for an amendment, for the previous question, or for postponing the main question, or to commit it, or to adjourn.

IX. The previous question being moved and seconded, the question from the Chair shall be: ''Shall the main question be now put?'' And if the nays prevail, the main question shall not then be put.

X. If a question in debate contains several points, any member may have the same divided.

XI. When the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reasons he be excused by the Senate, declare, openly and without debate, his assent or dissent to the question. In taking the yeas and nays, and upon the call of the House. the names of the members shall be taken alphabetically.

XII. One day's notice at least shall be given of an intended motion for leave to bring in a bill.

XIII. Every bill shall receive three readings previous to its being passed; and the President shall give notice at each, whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise.

XIV. No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.

XV. All committees shall be appointed by ballot, and a plurality of votes shall make a choice.

XVI. When a member shall be called to order, he shall sit down until the President shall have determined whether he is in order or not; and every question of order shall be decided by the President, without debate; but, if there be a doubt in his mind, he may call for the sense of the Senate.

XVII. If a member be called to order for words spoken, the exceptionable words shall be immediately taken down in writing, that the President may be better enabled to judge of the matter.

XVIII. When a blank is to be filled, and different sums shall be proposed, the question shall be taken on the highest sum first.

XIX. No member shall absent himself from the service of the Senate without leave of the Senate first obtained.

Two days later (April 18) the Senate adopted the following motion, giving the Senate a total of 20 rules (Journal, p. 14): On motion, Resolved, That the following be subjoined to the standing orders of the Senate:

XX. Before any petition or memorial, addressed to the Senate, shall be received and read at the table, whether the same shall be introduced by the President, or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer.

After the first session of the first Congress, a considerable number of orders and resolutions to study a particular rule or a general revision of the rules were adopted before the Rules Committee became a standing committee. This review will concern itself only with the creation of special committees which were concerned with a general revision of the rules as opposed to those created to explore a certain procedure or particular operations of the Senate. There were more special committees created to study general revisions of the rules than there were general revisions adopted; some committees never filed a report and others filed reports which were rejected.

During the entire history of the Senate, only seven general revisions of the rules since 1789 have been adopted, namely: March 26, 1806; January 3, 1820; February 14, 1828; March 25, 1868; January 17, 1877; January 11, 1884; and November 14, 1979. The last three revisions were considered and reported by the standing Committee on Rules before being adopted by the Senate.

Mr. FEINGOLD. Thank you, Madam President.

Let me start with reading from the Senate Web page's description of the legislative process—our description to

the public as to how we do business in our Nation's Capitol.

Under the heading ''Conference Committees; reports; open meetings,'' the first sentence reads:

2. Conferees shall not insert in their report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses.

This section goes on in more detail, but let me turn to what our constituents, members of the public whom we expect to abide by the laws we pass, would find if they visited the Senate Committee on Rules and Administration Web site:

All legislative bodies need rules to follow if they are to transact business in an orderly fashion. Legislatures must have established rules if they are to operate fairly, efficiently, and expeditiously.

The committee Web site goes on to quote from Thomas Jefferson's 1801 edition of the ''Manual of Parliamentary Practice,'' saying that:

. . . whether the rules ''be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by than what the rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.''

A logical follow-up question is then: How is it that we find it acceptable to knowingly break our own rules? I am truly astonished at the contempt I see certain of my colleagues showing for this institution on this issue.

I could stand here and read at length from the history of the Senate rules, as written by the Senate Committee on Rules and Administration, to reflect on how our rules came to be. I will not do that. But I do encourage my colleagues to read up on this history, because if we go forward on the path that some have set, I worry what it means for the future of this body. It most definitely opens the door to future abuses. If you don't like the rules, you break them. In fact, those who want the drilling provision included in the defense spending bill, recognizing that it breaks Senate rules, have actually put language into the conference report that says once the bill is signed into law, Senate rule 28 would come back into effect.

In fact, let me read the exact language:

Section 13, Legislative Procedure: Effective immediately, the Presiding Officer shall apply all of the precedents of the Senate under rule 28 in effect at the beginning of the 109th Congress.

So apparently you can break the rules because you will immediately reinstate the rules. Is this the message the Senate is willing to send to the American public? I have more faith in this body than to believe we are willing to sink so low.

Let's imagine the consequences if, in fact, this conference report is accepted. You can't move an unpopular proposal through the legislative process? No need to worry. You just attach language to an important funding bill that says you want to reinstate the rules after you have broken them. Is this the precedent that we, Members of both parties, want to set, a precedent that says you can break the rules because you will put them back in place? I sincerely hope not.

Additionally, how will we respond when our constituents ask us, how is it that the very people who make the laws that govern public behavior simply ignore the rules governing their own behavior? What will we say?

Madam President, I hope when it comes time for the Senate to go on record as to whether it believes its rules are important enough to stand, that a majority of this body will take the honorable position that this institution's rules are worth defending.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Madam President, I am sad to hear a Senator say that this amendment that is controversial, the amendment to allow exploration and development of the Arctic Coastal Plain, has never passed the Senate. It passed the Senate this year as part of the reconciliation package. It passed both bodies in 1995 and was vetoed by President Clinton.

With regard to the question of the concept of matters being added to conference reports, we voted in 1995 on a motion to overturn the Chair. It was a motion to overturn the Chair on the aviation reauthorization reform bill. It was the last bill before the Congress at that time. At that time, there was an appeal from the Chair, and there was a vote to overturn the Chair. The Chair was not sustained. On that vote, there were a series of Senators, here now, who voted to disagree with the Chair.

We are not changing the rules at all. Rule XXVIII is not affected by the amendment I am presenting to the Senate. I have been around here 37 years. I know the rules. I was chairman of the Rules Committee for a while. As a matter of fact, I think I wrote, during the time I was Rules Committee chair—I am still on the Rules Committee—the comments the Senator read.

As a practical matter, the right to disagree with a ruling of the Chair is inherent in any body, any legislature. In Roberts Rules of Order, it is a little different than it is here. But we have the right to appeal the ruling of the Chair. When we do, it is not destroying the rule. It represents a difference of opinion.

Do you know what the difference of opinion now is? It is whether this amendment, which is the amendment to go forward, as the Congress indicated in 1980 in the Alaska National Interest Conservation Lands Act, with the exploration and development of the Arctic Plain of Alaska, whether that is part of and related to national security.

Oil is related to national security. I will provide the statistics later on how much oil the Department of Defense uses. This is an amendment to pursue domestic production of oil, without which we will be in great difficulty. The largest consumer of oil in the United States is the Department of Defense. If the opposition disagrees with us on that position, then let's see whether the Senate believes that this is a matter that is in the interest of national security.

We should not be having people say that it has never been done, that I am trying to do something that breaks the rules. We don't break the rules. We are living by the rules. This amendment is here because of the rules. I intend to enforce the rules. One of the procedures in this Senate is to appeal the ruling of the Chair. We haven't had that ruling yet. There appears to be a presumption that it will happen.

But let's go back to 1980, to that time when we had the Alaska oil pipeline amendment. At that time, we had the same opposition from the extreme environmental groups. It was going to destroy Alaska. It was going to destroy caribou. It was going to be inconsistent with our environment. There was no filibuster. There wasn't even the threat of filibuster. The Senate at that time agreed that oil was a matter of national security, and we don't filibuster national security issues. As a matter of fact, in defense matters, on the defense Appropriations bill, et cetera, we need 51 votes, not 60, on various matters with regard to compliance and whatnot of the Senate. There are exceptions here. They could get a couple of 60-degree votes when we have this bill before the Senate.

But the point I am trying to make is, the Senate, at the time we passed the Alaska oil pipeline amendment, did not filibuster. What has happened is the constant filibuster now during this decade by people who persist in trying to reverse the provisions of the 1980 act.

I will never forget the 1980 act because that act, in 1978, had been blocked by my then-colleague, Senator Gravel, in the closing minutes of the Congress in 1978. It had passed the House. It passed the Senate. It had gone to conference. It came out of conference, and Senator Gravel blocked that by demanding that the bill be read after the adjournment resolution had been presented to the Senate.

In the next Congress in 1979, my good friend Senator Jackson of Washington came to me and said: Ted, if you want to be involved in consideration of this bill this year, you must come back to the Interior and Insular Affairs Committee. I had left that committee to come to the Appropriations Committee. But as a matter of fact, I did. I left the Appropriations Committee and went back to the Interior and Insular Affairs Committee. We worked on that same bill then for 1979 and 1980.

That was a period of extreme stress for me. I lost my wife in the 1978 accident that happened after the blocking of that bill. We all knew that we had to

come back in. As a matter of fact, the flight we were on was a flight to raise money to come back and ask people to help us lobby for the passage of something to get that bill done.

At that time Alaska's selection of lands under the act were blocked by what was called a freeze. They were blocked by an order made by President Carter under the Antiquities Act. We could not go forward without getting an act passed. So I split off from my then-colleague and said: I am going to help you. I only want one thing in this bill for sure. And that is, I wanted the right to continue to explore the Arctic Plain. The two Senators in charge of that bill, Senator Tsongas of Massachusetts, Senator Jackson of Washington said: You are right. And they put in the amendment that created section 2002 in the 1980 Alaska National Interest Lands Conservation Act. It was their amendment.

These people are filibustering fulfilling the commitment of Senator Tsongas and Senator Jackson. As a matter of fact, I did vote for that bill and, at the time, there were enormous full-page ads in newspapers in my State which said: Come home, Ted. You no longer represent us. We can't trust the Congress.

I said: I trust the Congress. I particularly trust Senator Tsongas and Senator Jackson. Unfortunately, God willed otherwise. Those two gentlemen left us prematurely and, as a consequence, we have fought now for 25 years to fulfill that commitment.

Let me tell you a little bit more history, Madam President. I was in the Department of Interior during the Eisenhower days. In 1958, I helped write the order that created what was known as the Arctic Wildlife Range. In that range, 9 million acres in northeast Alaska, oil and gas exploration was permitted.

The reason I asked for this amendment in 1980 was that I wanted to continue the fact that oil and gas exploration would be permitted.

I see I am close to the end of my time. I will finish my statement later; others want to speak but I want to finish with this one comment, with the permission of the Chair.

I am not trying to turn over the rules. I am not trying to do anything that others have not done. We have a full right to appeal the ruling of the Chair, should it take place, that we disagree with the basic assumption that oil is not needed in the interest of national security. And those of us who will vote to make sure we vote on this conference report are ones who believe in national security. We cannot mention the vote in the House, but we can mention the statements in the House. See what they said on the House floor. We believe in national security. This amendment must go through as part of the National Security Defense Appropriations Act of 2005.

I yield the floor. I will be back throughout the day, Madam President.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I wish to make a couple quick points regarding the remarks of the Senator from Alaska.

Let's be clear, the Senate has never passed the version of the Arctic drilling that is included in this Department of Defense bill. That is simply not the case.

Mr. STEVENS. The Senator didn't say that.

Mr. FEINGOLD. The Senator indicated we passed this provision before, and we had not. And if the Senator is not breaking the rules, why does he need to create language that explicitly reinstates the rule? He can't have it both ways—have language that says the rule doesn't apply in this instance but will go right back into effect. It clearly is breaking the rule, and the Senator is trying to set a precedent for all this. The aviation bill from the midnineties—I remember that one—they didn't have the votes to put in this special interest provision for Federal Express business. It is something that never passed any committee in the whole Congress. Yes, they violated the rules and abused the rules to get that one done, too. I wouldn't use that as a precedent. It is merely a precedent of the abuse that is occurring here.

Mr. STEVENS. Madam President, is it possible for me to regain the floor?

The ACTING PRESIDENT pro tempore. Yes. The Senator is recognized.

Mr. STEVENS. Madam President, let me say this. If it was possible to have an appeal of the ruling of the Chair in 1996, it is possible now. That is not breaking the rules. With regard to the version of this bill, we took the bill that passed the House and have added to it the provisions that allow funding for disaster areas and other items, but the basic portion of this bill that is coming to us in this amendment is, in fact, the bill that passed the House before.

Again, I want to say this. I think there is a lot of really extreme comments about this Senator's actions. They can't come close to really offending the rules themselves. I have done nothing illegal. I have done nothing immoral. I have done nothing wrong. I am pursuing—as a matter of fact, there hasn't been a ruling of the Chair yet, but thinking there might be, we followed the procedure that was established by the distinguished minority leader in 2000. We put a provision in there saying, look, if there is a ruling and consideration of this amendment, we do not want to disturb the rules.

By the way, after the aviation ruling that I mentioned, the Federal Aviation Reauthorization Reform Act, the rule wasn't changed; it was the interpretation of the Parliamentarian. The Parliamentarian believes that after a Chair is overruled, the rule is no longer enforceable. It is still there, but it is a question of enforcement, not a question of repealing.

Even if we have an appeal of the Chair, and the Chair is overruled, we won't take rule XXVIII out of the rules. It will be a question of whether the Parliamentarian will tell the Chair that based upon precedent that rule would no longer be enforceable.

So we put a provision in the bill saying in the event a ruling of the Chair is overturned and there is a situation where the Parliamentarian would advise the Chair that means rule XXVIII is no longer enforceable, then we use the same approach of the Senator from Nevada, and we say that will not be the case. We do not intend to destroy the rule. We intend to support the rule. We don't want it to be in hiatus.

After the 1996 act, it was inoperable for 4 years because of the interpretation of the Parliamentarian, based upon precedent. I am not criticizing the Parliamentarian; that is the basic precedent of the Senate. Once the Chair is overruled, that rule is unenforceable until reinstated. We are saying that is not our intent this time. We don't intend to attack the rule. We want the rule to stay in place. We want to make sure anybody who votes for this, in the national security interest, that we must proceed with oil exploration in the Arctic, is not being told, Oh, you are going to destroy rule XXVIII. It wasn't destroyed in 1996. It was made inoperable by an interpretation of the Parliamentarian.

By the way, again, that was consistent with precedent. We are saying that precedent will not apply to this bill, the Department of Defense appropriations bill, when it comes before the Senate.

This is going to go on for a long time, but one thing I know is that I am not violating the rules. When I proceed with this amendment in the conference report, which I fully intend to do, and trust the Senate—I am putting my faith in the Senate to support national security as a part of the conference report.

Remember now, we don't have an amendment. We have a conference report now. That is treated in a different manner than an amendment to the bill. I am not offering an amendment to the bill. I am managing a conference report on the Defense appropriations bill for 2006. As such, I expect that bill to pass, and I expect that bill to pass containing the provision which is in the interest of national security, that we now proceed with exploration and development of the Arctic Plain as was intended by two great Senators, Senator Scoop Jackson and Senator Tsongas. It was their concession to the State of Alaska, as President Carter insisted on withdrawing 105 million acres of Alaska. Only 1.5 million acres were assured for the future development of our State. One point five million were assured for the future development of the State, and 105 acres were set aside and not available for development. There can be no oil and gas development in those other areas. In this area,

we allowed 1.5 million acres to stay open for development.

More will be said later. I thank the Chair for her patience.

Mr. REID. Parliamentary inquiry, Madam President: If the Chair is overruled on rule XXVIII exceeding the scope point of order, would that set a precedent that would lower the standard for enforcement of that rule to such an extent as rendered almost impossible to enforce?

The ACTING PRESIDENT pro tempore. It would lower the standard with respect to enforcing the rule.

Mr. REID. Madam President, let me say this. Clearly what is being attempted by the distinguished Senator from Alaska is wrong. As the Senator will recall, we had another Parliamentarian who was fired over a matter similar to this. This is absolutely wrong what is being attempted here.

This is the Defense appropriations bill, and to wave the flag of national defense, even at the very best, if ANWR goes forward, it will be 10 years before any oil is produced. Oil companies made, as I indicated last night, $100 billion last year. This is a speck of oil if, in fact, it goes forward.

I know how strongly the Senator from Alaska feels about it. Why not do it the right way? Even though I voted against this being inserted in the reconciliation, which I think was wrong, it was done according to the rules, and the Senator from Alaska and what he wanted prevailed. To do it this way is absolutely wrong. It shows that if it is inconvenient, if the rules are inconvenient, then just overrule them. We will play around with it. We will sustain the Parliamentarian at one point, overrule him in another, and then come back in the same bill and pretend as if nothing had ever happened. This has never been done before.

It shows absolute contempt for the rules of this body, and it shows that Lord Acton was right. Power tends to corrupt, and absolute power tends to corrupt absolutely. That is what we have here. That is what is going on in Washington.

I will be happy to run through what I think are the ethical lapses that have taken place in this town, led by the Republicans over the past year, but that is not necessary. I believe what we have is intellectual games being played in a negative fashion. This is absolutely wrong to do this, to hold up this bill.

We will have a vote. As things now stand, we will vote on cloture probably on Wednesday. Following that cloture vote, there will be a vote in upholding the ruling of the Chair, and we will see what happens at that time. The votes are very close. I would not be a betting person either way on either cloture or this rule, but understand that sticking this in this bill has nothing to do with the national defense of this country. It has everything to do with breaking the rules to the convenience of the powerful.

I am disappointed that this happened. I think it is wrong. I think when the history of this body is written, if this is allowed to go forward, it will be a dark day in the Senate.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Madam President——

Mr. REID. Madam President, let me just finish. I have one additional thing to say.

Mr. STEVENS. Pardon me. I apologize.

Mr. REID. I will be finished just quickly.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. Regarding conversations we had on this floor about this has been done before, returning to the Chair and later fixing it, it has not been done before. This is a unilateral fix of a precedent in the same bill. Anything that has been done before has been done on a bipartisan basis. I was part of changing it back with Senator TRENT LOTT. It was the right thing to do. Scope of conference is very important. It should not be changed willy-nilly. It should not be changed because it is inconvenient. The precedents of this body are extremely important, and I think they are being played with at this time. It is really unfortunate.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Madam President, I again apologize to the Senator from Nevada. I thought he had completed his statement.

I want to read to the Senate the comments I made in 1996 at the time the point of order was pending on the FAA conference report, just to show I have maintained a constant position with regard to this. I said this:

> Mr. President, this is a rather difficult situation. We have just passed, recently, a Defense appropriations bill. I was the chairman of that conference. Before it was over, we had a whole series of other bills, a series of legislative items. It was not necessary to raise a point of order. Everybody knew we had exceeded the scope of the conference.

Now, this is 1996. I am again quoting:

> I ask any chairman of a conference if he or she has ever really been totally restricted by this rule? . . . When the leader became aware that Senator Kennedy was going to raise this point of order, the leader determined to raise it himself. I take it that having done that, there is no question this is a rather significant occasion. I hope it will be a rather narrow precedent.
>
> I point out to the Senate that this provision is not only the only matter that exceeds the scope of the conference. We had to include, at this administration's request, special authority for the executive branch to purchase and deploy explosive detection devices. We put in here the provisions that pertain to the rights of survivors of victims of air crashes. We put in the provisions requiring passenger screening companies to be certified by the FAA. That is not required under any existing law. We put in restrictions on underage pilots, following the one disaster that involved a young girl who was a pilot. We put in a provision requiring the FAA to deal with structures that interfere with air commerce.
>
> My point is, as we get to the end of a session, we, of necessity, include in a bill extraneous matters totally beyond the scope. We know they are beyond the scope. As the chairman of the Defense Appropriations Committee, I knew all those items we brought to the floor earlier this week were beyond the scope of the conference, but we did not anticipate anyone would raise a point of order.
>
> Anticipating that Senator Kennedy would bring this point of order before the Senate, the leader made this point of order. I ask the Senate to keep in mind this will be a rather limited precedent, in my opinion. I do not know whether the Chair will agree with me, but clearly when you get to the end of a Congress, some things have to be done. We did not have time to take up separate bills. We held a hearing on the bill in the Senate Commerce Committee dealing with the rights of victim-survivors of air disasters. They pleaded with us to include that bill in this legislation. We have done so.
>
> In other words, this point of order is not only valid, in my judgment, against the amendment offered by Senator Hollings, but against the other provisions where we have exceeded the scope on various matters on this bill.

What I am saying is we have had this process year after year. I know of other amendments that have gone into bills like this at the last minute where people tried to get passed something that did not pass before, and because of the circumstances they passed.

In this instance, again, the Senate is going to hear this over and over again, that this is a matter of national security that I have for 25 years tried to support the position taken by the Senator from Washington and the Senator from Massachusetts that this area should be open to oil and gas exploration. We have had two environmental impact statements. They have proved that no permanent damage will be done to this area. We have disproved all the allegations concerning destruction of wildlife. As a matter of fact, there are seven to eight times more caribou on the North Slope today than there were at the time the oil pipeline was built and at the time we were told if that pipeline is built there will never be another caribou in Alaska, in effect. They said we would destroy it.

The other day, they called it the Serengeti. I do not want to point out the Senator who said it, but one Senator went up there and viewed it. When that Senator got off the helicopter, that Senator said: What the blank is this all about? That person had looked over the area when it was snowing and said: Why would someone possibly block this?

I have to say that this is the beginning of a long debate. I yield the floor.

The ACTING PRESIDENT pro tempore. The minority leader.

Mr. REID. Madam President, if a Senate filibuster over ANWR stops a Defense bill, the legislation can be quickly modified and passed. So there is no impact on military finances. If someone proposing this loses, then we will reconstitute the conference and ANWR will be out. Now, this is not me talking. This is the distinguished

President pro tempore of the Senate, Mr. STEVENS, quoted in yesterday's Fairbanks Daily News-Miner.

Senator STEVENS said: If the Senate filibuster stops the Defense bill, the legislation will be quickly modified and passed. There is no impact on military finances. If we lose, the distinguished Senator went on to say, we will reconstitute the conference and ANWR will be out.

That is the point. I appreciate the honesty of the interview with my friend from Alaska with this newspaper because that is the way it is. If we prevail, that is, those who oppose this being in the bill, on the point of order which will likely be on Wednesday, then the Defense bill goes forward. No one voting on this point of order will stop the Defense bill. No one voting for cloture will stop the Defense bill. This bill will go forward. There is a continuing resolution that takes us to the end of the year, and we need not get that far. If, in fact, we have a majority of the Senators who vote on this point of order and it prevails, then the bill will go forward, just as the Senator from Alaska said yesterday in the Fairbanks newspaper.

So I would hope that there would come a time—we could go home today. We could be finished today. The Senator from Alaska knows he has the votes to do what he did on reconciliation again. As soon as the new session of this Congress convenes, we could take this out and goodwill would prevail. We would go home tonight, and we would be home 4 or 5 days before Christmas.

Mr. STEVENS. Will the Senator yield?

Mr. REID. I am happy to yield.

Mr. STEVENS. I agree. I agree with the statement the Senator read. I think that is true. I am not accusing anyone of delay. I would be happy to have a time agreement on the conference report, and I would be happy to have a time agreement on any type of point of order or motion to be raised on the conference report. I will be glad to have a vote on the conference report by voice vote if it passes. I am anxious to let people get home. I will be happy to get time agreements, and I do believe if we lose we can go back to conference and protect the Department of Defense.

I am not accusing anyone of harming the Department of Defense. I am urging people to think about national defense.

Would the Senator agree to any type of time agreement?

Mr. REID. I will be happy to consider anything that is reasonable. I am sure there are things we can do.

Mr. STEVENS. Good.

Mr. REID. One of the things I think would be appropriate, the way I understand things now, if everything is here by midnight tonight and cloture is filed, there will be a Wednesday cloture vote. After that Wednesday cloture vote, there will be a vote on this point of order. That would be Wednesday.

If it is necessary that there be cloture invoked on the Defense authorization bill—and I am not sure that is necessary, but it is possible—the two cloture votes would be back to back.

So I would be happy to consider working out some reasonable time agreement. Maybe we could even have the vote on the point of order first.

Mr. STEVENS. I thank the Senator. I think that is the way to go.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

THE ALASKA WILDLIFE REFUGE

Ms. CANTWELL. Madam President, I rise to raise my concerns about this process and the unbelievable avenues through which this legislation is coming before us, just to try to open up the Arctic National Wildlife Refuge for oil drilling.

As my colleagues have just been discussing on the floor, these are priorities, for Congress to pass the DOD appropriations bill and the DOD authorization bill. As this Senator sees it, we could wrap up this business today and go home. But because a provision in this legislation coming over from the House opens up drilling in the Arctic National Wildlife Refuge, you bet there are Members on this side of the aisle—Members on both sides of the aisle in the House and Senate—who have great concerns over this measure.

As one Senator who would like to wrap up the year today and go home and spend time with my family, I know there are the prospects of us staying here to fight for something we believe in. It is very clear that we could go home today if the Senator from Alaska would agree to take this language out of the bill. So, in fact, this process is being held up over the fact that he has inserted a controversial measure into this legislation. It is such a controversial measure that House Democrats and Republicans refused to vote on a budget bill while it still remained in the legislation. That gives you some idea of how controversial it is. In fact, they took it out of the budget bill because they could not get the budget bill passed with it in there.

Now my colleague wants to say that somehow he is not holding up the process when it is very clear that he is holding up the process. We could all go home today instead of arguing over something that has been argued over for 25 years. There is a reason we have been arguing over it for 25 years, and that is because there has been great division over this issue.

The notion that this is about national security is unbelievable to me. To me, what national security is really about is passing a clean DOD appropriations bill that gives resources to our troops. In fact, we should give the military in Iraq the ability to do a better job protecting the security and infrastructure of the pipeline there. We lose 800,000 barrels a day of oil in Iraq that could be part of helping the Iraqi government get on its feet and the rest of the world energy markets stabilize. But this ANWR measure is holding up a DOD bill instead of giving the military all the resources they need. We are not talking about an oil supply 10 years from now; we are talking about something we should be doing today in terms of securing existing infrastructure. We should strip this ANWR language out and pass this bill.

I understand the Senator from Alaska thinks this ANWR provision is in the interest of some, because I think it is in Alaska's interest. In 2005, petroleum counted for 86 percent of the State of Alaska's general revenues—86 percent of their State revenues. In fact, according to a published article, State officials expect that at least until 2013, 74 percent of Alaska's general purpose revenues will come from oil revenues. So I get why the State of Alaska cares so much. In fact, CBO recently calculated that Alaska will get $5 billion in revenue from this legislation if it is passed. Of course Alaska cares about this. Of course Alaska would hold up the legislative process and keep us here extra days to get this bill passed and get ANWR in by hook or crook, any possible way. Of course they would.

But don't say that this is in the national interest. What is in the national interest of our country is to get over our overdependence on foreign oil. We need to start doing that now, as well as get off of our overdependence on domestic oil and fossil fuels in general. Instead of implementing this Arctic drilling program, we ought to be implementing policies that help us diversify and move forward, so people can have affordable energy rates in this country and not be held hostage by these special interests.

It is another thing to say, somehow, this legislation has arrived here through a clean process. The fact is you would basically have to overrule the Parliamentarian—which is our judge here. It is basically like going to a Federal court, having a judge rule on something, then when the judge rules on it voting to overturn them, and then a few minutes later reinstating the rule. If that isn't a quick fix around the legislative process here, I don't know what is. But this whole ANWR measure, trying to get it on any piece of legislation that is moving, has been exactly that—every attempt to make the process go without adhering to the rules.

The fact is this legislation comes to us and basically takes away about seven different laws that would otherwise apply to drilling in the Arctic. It really is—it is a free ride, a back door that circumvents seven different Federal laws and countless regulations that have been on the books for years. So this is not just passing ANWR; this is basically giving the oil companies a sweetheart deal around Federal laws and regulations that no other company has ever gotten. I guarantee, Scoop Jackson would roll over in his grave.

There is no way Scoop Jackson would support drilling in the Arctic Wildlife Refuge when you are overturning a law, the National Environmental Policy Act, that he wrote. So you can mention Scoop Jackson's name a thousand times, there is no way he would support this process.

Did you ever ask yourself why he didn't just authorize it to begin with? I think he knew exactly what he was doing. He wanted further review, and he certainly wanted environmental laws to apply. But, no, this legislation basically overrides the environmental statutes. It creates ill-defined environmental standards. It has a waiver for the lease and sale of land and cuts off the Secretary's ability to protect environmentally sensitive areas, and it allows the Secretary to lease an unlimited amounts of coastal plain. It takes a weak reclamation standard and basically hamstrings the Federal agencies that are supposed to do their job when it comes to protecting federal lands.

Maybe it is no surprise that, after trying to stick this on the budget bill, having both Democrats and Republicans in the House defeat it, now there is an effort to try to stick it on the DOD appropriations bill.

In this Senator's opinion, this is nothing more than legislative blackmail, to try to get colleagues to vote for something because it is a must-pass bill. That's because, in fact, the proponents of this measure know that there is great opposition to this process and to drilling in the Arctic. I know the Senator from Alaska said in the Fairbanks paper that he was not going to hold up the process. But newspapers across the country know exactly what is going on. In fact, the Oregonian just said a few days ago:

> Arctic drilling has been thrown in with the defense bill and the emotionally charged matter of supporting American troops at a time of war. It does not belong there, something that ought to be obvious to all but the most cynical members of Congress.

All but the most cynical Members of Congress should see that this is obvious.

We actually had a letter from military leaders, military leaders in our country, raising the same concern:

> . . . any effort to attach controversial legislative language authorizing drilling to the Defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families the resources they need in a timely fashion.

That is coming from General Zinni and many others who wrote to us saying, don't do this. This is crazy. We want to get about the process of getting a DOD bill passed.

The New Hampshire newspaper said:

> He has threatened to attach the provision to the Hurricane Katrina relief bill or to the defense appropriations bill, a cynical ploy. . . .

Trying to attach this, basically, should be rejected. Both approaches should be rejected.

Even my newspaper in Seattle called this, ''dubious congressional standards of fair play,'' because they know that this situation is one in which any legislative rule will be thrown out, just to pass drilling in ANWR.

We know that this issue is not without controversy. We know the oil spills of the past are raising great concerns for people. If they have raised so many great concerns for us, why would we give a blanket pass to drilling in ANWR and overthrow those Federal rules and regulations that apply everywhere else? Why should we go to the extent of trying to attach it to a bill that has to pass, knowing that you are going to ask Members to overrule the Parliamentarian and then, after you basically have tried to overrule him, then go back and say the Parliamentarian was right?

How far are we willing to go? How many rules are we willing to break in this process just to get a small amount of oil 10 years from now?

What the American people want is for us to do our job and send money to the troops and get them home. They do not want to sit and watch us stay here for 3 or 4 more days to continue to complain about this process. What they want us to do is pass legislation that gives the troops the support they need. Let us give the troops the money they need to make sure that 800,000 barrels a day are protected right now. Let's do a better job of making sure we're making the right infrastructure investments, which will help everybody. Let's make sure that gets done.

But this Senator still remains in opposition to drilling in the Arctic National Wildlife Refuge, because you can't tell me that 5,504 spills on an annual basis in the North Slope since 1996 is a good track record. You just can't tell me that all those oil spills in the Prudhoe Bay area and near the Trans-Alaska Pipeline constitute a good enough track record to now say you can open up drilling in an Arctic wildlife refuge and have no impact. Last year, those spills totaled more than 1.9 million gallons of toxic substance, mostly crude oil and diesel.

We know where this is heading. We know where it is heading with no great result for the United States. We are not going to see any oil for a long time. It is a time in which the United States should be making an investment in diversifying off of our dependence on oil instead, and supporting our troops.

This Senator plans to talk a long time about this issue. This Senator knows that we could be going home today, having finished our work, having a session that is ended, having Members back at home talking to their constituents and having the troops realize that we didn't play politics with their legislation.

I hope we will get about doing business here today and closing this legislative session. That's what we should be doing instead of figuring out what three or four other rules in the process need to be broken just to try to pass ill-conceived legislation that we have been battling over for 25 years. Let us not hold the troops' money hostage. Let's pass this legislation in a clean fashion and get home to our families.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DORGAN. Madam President, my colleague from the State of Washington just discussed an issue that is going to be a recontested issue this week; that is, drilling in ANWR and an amendment that allows the drilling in ANWR in Alaska attached to the DOD appropriations bill.

I was a member of the conference committee that met yesterday starting at noon. I believe we finished close to 5 o'clock yesterday afternoon. We had a pretty aggressive and contentious discussion about this issue.

I just want to say that while I believe we need to produce more energy, I supported the Energy bill. I was a member of the Energy Committee and am proud to support the Energy bill. It does mean that we need to produce more oil, coal, and natural gas; produce more renewable forms of energy; move toward a different energy construct, such as hydro and fuel cells; have more efficiency and conservation. I support all of that.

But I said then, and I believe now that opening the most pristine area of our country that has been set aside ought to be a last resort, not a first resort. Deciding to open that now and getting oil from it 10 years from now makes precious little sense to me especially when there are alternatives. But even more importantly, adding this controversial issue to the Defense appropriations conference report that is going to come to the Senate really makes no sense at all. It adds a very controversial provision to a bill that basically is to fund the actions of the Defense Department and support our troops. I do not, for the life of me, understand why this is being done.

In order for this to be accomplished, there will have to be a debate in this Chamber. When the conference report comes to the floor of the Senate, which I assume is going to be Wednesday, the debate will ensue, and those who oppose adding this unrelated, extraneous, highly controversial issue to the Defense appropriations bill will make a point of order that it violates the rules of the Senate, and it does. There is no question about that. This is violative of rule XXVIII of the Senate. My guess is, from what I hear, the proponents of doing this will then, after the Parliamentarian and the Chair would rule that this violates rule XXVIII of the Senate, ask that the ruling be overturned and have a vote on appealing

the ruling of the Chair—in effect, changing the rules of the Senate in the middle in order to accomplish doing something that otherwise would violate the rules of the Senate.

Well, they are going to do that the Wednesday before Christmas, do it on a Defense appropriations bill. I, for the life of me, do not understand how they think that is justifiable. But as I indicated, it will be controversial and difficult this week as we go through this.

One of my colleagues who is pursuing this says he has a right to pursue it. Right; indeed, he does. He has a right to pursue it, but it will require, in my judgment, the violation of the rules of the Senate, and therefore the changing of the rules of the Senate in the middle of this process. Doing it not only upholds his right but violates the rights of others in the Senate, in my judgment. It abrogates other rights that exist in the Senate.

I know this is all inside baseball to a lot of people, and foreign language to people if they do not understand the rules of the Senate, but rules are rules. There are rules established for the way the Senate works for a very good purpose. If, in this circumstance, we decide that in this conference we can take anything, totally unrelated, anything, and stick it on this conference report, bring it to the well of the Senate in a way that is violative of the rules, but then simply by majority vote decide to appeal the ruling of the Chair, it violates the rules and changes the rules and changes them back in a minute. There is kind of an arrogance there that, in my judgment, does not befit the Senate. We will have that discussion at some point later.

I wanted to say that I also was a member of the conference yesterday in which we discussed the issue of Katrina relief; that is, relief for Hurricanes Katrina and Rita that hit the gulf coast. I said the Senator from Mississippi, Mr. COCHRAN, who comes from that region and who has pushed very hard to represent the gulf region in a very substantial way has been successful in doing that.

DISASTER RELIEF

The one piece that yesterday bothered me, and I indicated so and offered an amendment on it, was a piece that the Senate had, with the leadership of Senator COCHRAN, previously represented to the House of Representatives, and that was there are many farmers who were devastated by these hurricanes in the gulf. These hurricanes came rushing through and destroyed all the crops, and farmers were devastated. So there is about $404 million in the disaster package that will help those farmers in the gulf.

The point I made was—and I know the Senator from Mississippi had previously supported this point because the Senate position was that we should provide disaster relief not just for those farmers in the gulf—they, in fact, should have disaster relief, but there are others in this country who had weather-related disasters, and they ought to, as well, be people who would be eligible for disaster assistance.

In my State, for example, torrential rains in the spring meant that 1 million acres of land were not planted, a million acres were not able to be planted. If you are a farmer and your acreage is in that million acres, you are done. You are in huge trouble. So they ought to also qualify for disaster aid. I offered the amendment yesterday afternoon to add the $1.6 billion to the package that would have allowed us to be fair to all of the rest of the farmers in this country who have been hit with weather-related disasters, and the Senate conferees passed my amendment. We sent it to the House conferees, and they rejected the amendment. So now we have a circumstance where there is no disaster relief for those who have been hit by this disaster and weather-related disasters in other parts of the country.

Family farming is probably easy for some to forget, but family farming is very important to our country. These are families who live out under the yard light, in many cases far from town working to try to make a living against all the odds, against the potential of a grain market collapsing, against the odds that there may be disease in their crops or hail or too much rain or too little rain, all kinds of natural disasters. And we, generally speaking, reached out to those family farmers to say we want to help you because we want to be able to keep family farms on the land in this country.

Yesterday's action by which the House of Representatives rejected that aid, the disaster assistance, is, in my judgment, a huge mistake. We have had severe drought in Illinois, Missouri, parts of Iowa, and other States. As I indicated, we had torrential rains in some disaster areas in my State earlier this year, and there are other parts of the country in which family farmers suffered the same fate. I think it is wrong for this Congress to decide that some will get assistance and others will not, if all have—in terms of the groups who would be affected, if all of them were affected by weather-related disasters. I just think that is wrong.

The House of Representatives rejected that because they said the $1.6 billion was above the agreement, and the President and the White House would not support it.

I want to just talk a little about our fiscal priorities. Because something is seriously wrong here.

Last year, we had a provision in this Chamber that provided a very significant tax cut, and it was a tax cut for the largest corporations in our country.

I objected to it, standing at this desk, but it got through the Congress, and it is now law. I want to talk about that tax cut just for a minute because it is not just on the order of $1.6 billion we could have used to help family farmers struggle through a tough time, it is about a $60 billion tax cut to the biggest corporations in our country. It was something that had nothing to do with the substance of the bill. It was called the JOBS Act that was run through the Congress, the JOBS Act.

Presumably, it was titled the JOBS Act because those who offered it said it would create new jobs.

In fact, I will read a couple of comments from my colleagues. One of my colleagues says the idea is for 1 year to reduce the tax burden and bring those profits back into this country, to invest them in ways that help your business, and this creates new jobs.

Another of my colleagues said, well, this is insourcing. This insources jobs to the United States. This will create a lot of jobs in the United States.

Another of my colleagues said if you are interested in creating jobs, it has been estimated on a conservative basis this proposal will create 660,000 jobs.

What was this tax proposal? It was to say to the largest corporations in this country, do business here and overseas, if you have earned income overseas, at some point you expect to bring that income back to this country to your headquarters and to your stockholders, and when you do that you would be paying corporate income taxes.

We have a corporate income tax rate of 35 percent, and when you repatriate earnings, as they call it, from your overseas operation, you pay income taxes in this country.

But there is a special little deal that has been in law for decades and decades—in fact, the first person who tried to get rid of this special deal was John F. Kennedy. That tells you how long it has been there. It is called deferral. Do business overseas, move your plant, move your jobs, do business overseas and, by the way, you get a tax break. You don't have to pay taxes on those earnings from overseas until you bring them back to this country. So that has been around for a long time.

That tax break anticipates, though, at some point, even though you can defer paying taxes, you are going to have to bring the profits back when you do business overseas, and you are going to have to pay taxes in this country on those profits. It would be at the corporate tax rate of 35 percent, except a year ago this Congress said the following: We would like to create a great, big old dessert tray for the biggest corporations in the country. When you bring your profits back in the next year, we will tax them at 5.25 percent—no, not 35 percent, 5.25 percent.

Do people around this county have that right? Is there a Johnson or an Olson family, that brings their profits back or pays income tax at a 5.25-percent tax rate? No, no, no. Real people pay taxes at rates far in excess of 5.25 percent. But now some of the biggest corporations in the country are repatriating profits to this country and paying 5.25 percent in income taxes—5.25 percent, a fraction of what the lowest income people in this country are

paying. And, oh, by the way, they are also cutting jobs at the same time.

Now, let me just show a picture of a building in the Cayman Islands because it is part of the puzzle. This is a picture of a building in the Cayman Islands. This is a five-story building on Church Street in the Cayman Islands. It is called the Ugland House. This five-story white building on Church Street is the official address for 12,748 corporations.

Now, you may ask, how can that be? It is just an address. It does not mean anything. All it means is they set up an address in the Cayman Islands so they can run their profits through the Cayman Islands and avoid paying taxes in the United States.

Madam President, 12,748 companies run income through this building in the Cayman Islands. It is just an address.

Now, the folks who push this bill on the floor of the Senate, that has now cut taxes by $60 billion—$60 billion it costs this country in lost tax revenue from the biggest corporations in the country that are now repatriating income at tax rates that are a fraction of what every other American pays—those folks said this is going to create jobs. Well, really? Let's just look at that. I will just give you a couple examples. I could bring over a lot of charts.

Hewlett-Packard, they are bringing back $14.5 billion they made overseas, and they are going to pay a 5.25-percent income tax rate. They also announced they are going to cut 14,500 jobs.

Motorola, $4.4 billion they are bringing back in repatriated taxes, paying a 5.25-percent income tax rate. They are cutting jobs.

Colgate Palmolive, they are cutting jobs.

The list is pretty substantial, actually.

Merck Corporation is cutting jobs, and repatriating earnings.

So to my colleagues who are on the floor pointing out that if we just pass this $60 billion tax cut, in 1 year—$60 billion tax cut for the largest companies in our country that do business overseas—they would create more jobs at home, I wonder, now, how they will come to the floor of the Senate and answer the question: If you actually see the repatriation of about $200 to $220 billion, and companies using a substantial portion of that to buy back their stock, and other companies repatriating it and cutting jobs, how do you, then, justify having given a $60 billion tax cut to the biggest corporations in this country? There will not be much of an answer to that.

I think of the quote from Will Rogers when I think of the wool that was pulled over the eyes of the Congress, or perhaps it was not. Perhaps the Congress is controlled by a majority who just find it important every day to get up to see how you can give big tax breaks to the biggest corporations or the highest income earners. Perhaps that is just an advocation that is now natural for those who control this Congress.

Will Rogers once said: It is not what they know that bothers me, it is what they say they know for sure that just ain't so. That is the case with this $60 billion tax cut, in 1 year, that affects the largest corporations in this country.

Here are some of the editorials and notices about it. October 16 of this year:

> It shouldn't escape Americans' attention that U.S. companies have disclosed plans to repatriate $206 billion in foreign profits this year under a one-time tax break allowed by Congress on the grounds—you guessed it—that such a big tax break would ignite a strong spurt in job growth. The upshot, of course, is that no such job spurt appears to be materializing.
>
> Some have even announced plans to cut operations and jobs. Colgate Palmolive repatriated $800 million in foreign profits, planning to cut 4,450 jobs and a third of its plants over the next 4 years.

Interestingly,

> Even the primary advocate for the special, one-time tax break, economist Allen Sinai, is now soft pedaling his prediction of 660,000 new jobs over 5 years. He now says the efficacy of the tax break will be hard to prove.

The Chicago Tribune, August 11: Motorola disclosed Wednesday it will bring $4.4 billion in profits back under the controversial Federal tax law that was passed, and announced Wednesday it will cut 500 more workers than previously announced.

Hewlett-Packard is going to bring back $14.5 billion. And, by the way, they get to pay at a 5.25-percent income tax rate. Wouldn't every American like to pay an income tax rate of 5.25 percent? But it is not so. Just the big shots do. They pay 5.25 percent, bring back $14.5 billion, and lay off 14,500 workers. Almost perfect symmetry, isn't it? You bring back $14.5 billion, pay a bottom-rate tax rate that nobody else gets, and you lay off 14,500 workers.

It is not only this technique that is bothering me but many others these days. There was a story recently in the Wall Street Journal about some of the largest technology corporations that are setting up buildings in other countries. This one is in Ireland. You set up a building in Ireland—a tiny little quiet building, on a quiet street, in Dublin, Ireland—and then move your intellectual property, programming, and software and so on to a wholly-owned subsidiary in that country, and then license it back in other countries where you are selling it, and run billions of dollars—billions of dollars—through that little address in Ireland.

What is the purpose of that? Avoiding taxes. So you do not have to pay taxes. In this case, one of the companies avoided paying $500 million a year in taxes to the U.S. Government by moving its software to Ireland, running the licensing through Ireland, and essentially moving taxes and income away from the U.S. Government.

The question is, When will this stop? We are up to our neck in debt. We have very substantial Federal deficits, the largest trade deficits in history, and we have corporations in this country that have decided they want all the advantages America has to offer. But they do not want the responsibilities to pay taxes. And they have friends in this Congress who will say: Oh, by the way, if you do pay, we will give you a special discount rate, one of these blue light specials. Regular folks are going to pay 20 percent, 30 percent, 35 percent, 36 percent, but, no, you get to pay 5.25 percent.

I think it was Tom Paxton who used to sing that song ''I'm changing my name to Poland,'' after Poland got a Government loan some years ago. Perhaps there are American families who might want to change their name to Hewlett-Packard or Motorola or Merck. Perhaps American families would like to pay a 5.25-percent income tax rate. And maybe American families would like to set up an address on Church Street in the Cayman Islands so they can run their income through the Cayman Islands and avoid paying taxes. But maybe not.

Most American families say the Pledge of Allegiance, believe in this country and its promise, understand we have things to do together. We have a Defense Department to fund. We build roads. We have the National Institutes of Health to fund. We do so many things together in Government. We educate our kids. We have security on the streets in the form of law enforcement.

Maybe most Americans know that is what we do together, and the responsibility is to pay taxes. Do we like it? Not necessarily. Do we understand it? Sure. But not everybody apparently understands it, because some decide to run their business through this five-story building for the purpose of avoiding taxes.

Our domestic individual tax rates are 10 percent, 15 percent, 25, 28, 33, and 35. Those are the tax rates for individuals who file individual tax returns. There is only one tax rate I know of that is lower than that, and that is the tax rate the largest corporations will pay when they bring $220 billion back that this repatriation provision allows. So they will pay half the rate of the lowest rate the lowest income Americans will pay. That is unbelievable. It was pushed through this Congress with the promise that it would produce more jobs.

Most of us said that is nonsense. We knew it wasn't going to happen. But it was pushed through the Congress. At this desk right here, Senator Fritz Hollings—now not in the Senate; he retired—offered the amendment to strip this provision out of that tax bill. Those who wanted this provision would hear none of it. They wanted it. They got it. So now we have some of the highest income enterprises in the world paying a 5¼-percent tax rate on the repatriation of profits.

When I mentioned the building on Church Street in the Cayman Islands, Senator LEVIN and I had the General Accounting Office do an evaluation of who is running operations through these tax haven countries. Fifty-nine of the 100 largest publicly traded Federal contractors—companies that contract with the Federal Government, that have tens of billions of dollars in contracts with the Federal Government—had established hundreds of subsidiaries in overseas tax havens. In other words, they want to do business with the Federal Government, make income from doing so, but want to run it through tax subsidiaries in tax havens to not pay taxes to the Federal Government. It is unbelievable.

The point is, we sat yesterday in conference discussions for 4 hours and talked about all kinds of funding issues. There wasn't $1.6 billion to help family farmers through tough times, but there was $60 billion this year given to the largest corporations to repatriate their profits with the promise that they would produce new jobs. The fact is, those jobs don't exist. This was an unforgivable gift, a giveaway that made no sense. It is one more example of doing the wrong thing at the wrong time and pledging that somehow it is going to help advance the interests of our country.

A man named Uwe Reinhardt from Princeton University probably captures all of this best in terms of priorities, warped priorities, wrong priorities. In a piece he had written talking about tax cuts and health insurance, he wrote a memo at the start of it: Dear God, we had to decide between health insurance and a tax cut, and we took all the money as a tax cut. We hope that pleases you. A grateful nation.

This is, after all, about priorities, what makes our country stronger, what improves our country. We have a very substantial Federal budget deficit. Yet we will now, I believe this week, see the reconciliation bill with additional tax cuts that will substantially benefit upper income people. On top of the Federal budget deficit, we will see additional tax cuts benefiting upper income people. We have a substantial trade deficit, well over $700 billion a year, and a huge movement of American jobs overseas, especially to China. Any worry about that? Not much. You can't find much around here. I have spoken at length about it. We actually have the incentive, the perverse, obscene incentive that says to a company today, on Monday, anywhere in this country: If you fire your workers, put a padlock on the front door of your manufacturing plant and move the whole thing to China and hire Chinese workers, we will give you a deal. You get yourself a tax break.

That is unbelievable, but it is in the law. Get rid of your manufacturing workers. Shut down your American plant. Move the jobs to China, Indonesia, Sri Lanka, Bangladesh, we will give you a tax break.

We have tried four times to shut down that tax break, and unbelievably, there is a majority of Senators who believe that tax break should continue to exist, a tax break that says: On tipping the balance, we believe we ought to provide incentives to move American jobs elsewhere, get rid of American jobs in search of 30-cent labor with 1 billion people around the world who are willing to work that way and companies who are interested in finding places where you can hire people for 30 cents an hour. You can dump the chemicals into the rivers and the air. And by the way, you don't have to have a safe work plant. And importantly, if somebody tries to organize because they don't like the working conditions, you can fire them. In some countries, they will put them in jail for you.

We say: Want to get rid of your American workers, want to find cheaper labor someplace, get rid of all the encumbrances? We will give you a tax break if you want to do it.

That is unbelievable, but it is part and parcel of this whole story about a five-story building with 12,748 companies calling it home for the purpose of getting a tax break by running income through the Cayman Islands. Once again, companies that want all of the opportunities that come with being American but seem to want to avoid some of the significant responsibilities; that is, to pay taxes to support this Government.

We will, in the next 24 or 48 hours plus, have a robust and aggressive debate on the issue of attaching ANWR to the Defense appropriations bill. When that occurs—I assume on Wednesday—my hope is we will come to the right solution. The right solution is to pass legislation that will fund the troops, fund the needs of the Defense Department. We have considered and will consider the issue of ANWR in the future. There are other mechanics and other approaches by which that should be considered and will be considered in the Congress. I believe this is an inappropriate approach.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

DEFENSE APPROPRIATIONS

Mr. STEVENS. Madam President, when I spoke earlier this morning, I failed to make the comment that there are many provisions in the conference report that are beyond the scope of the original Defense appropriations bill and would be subject to rule XXVIII. For instance, the hurricane supplemental; we have $29 billion for hurricane victims, including funding for education expenses, housing, and reconstruction efforts. That was not in the bill as it came out of either House. We have the Gulf Coast Recovery Fund. This provides short and long-term funding for Louisiana, Mississippi, Alabama, Texas, and Florida. Where from? From revenues from the approval of ANWR and from revenues from the approval in the reconciliation bill of the sale of spectrum when the transition takes place between analog and digital broadcasting.

Those are predictable funds. They are currently not scored, but they are moneys that, when they do come in, will be held in the Treasury to help those people in the gulf coast who need assistance.

There are also provisions in the bill concerning liability with regard to the manufacture of vaccines for avian flu. The basic bill had a provision dealing with the provision of money for research on avian flu, but now the conference report before us ensures that the production of avian flu vaccines will be available in the United States. Without this liability provision, we cannot assure that a sufficient supply of vaccines to protect us against a flu pandemic would be available.

Our American industry moved overseas. Why? Because of decisions concerning liability. In this bill is a provision authored by many Senators and Members of the House that deals with adding to the money that we provide in the Senate version of the Defense appropriations bill, the provisions regarding liability and compensation being authorized on an emergency basis, if it is ever needed. God help us it will ever be needed.

The avian flu pandemic is a real possibility now. I think it is one of the great fears of those who are involved in medicine, and I think our majority leader is one of the leaders in trying to develop a program to prevent that pandemic, if it hits the United States, from being like the pandemic flu in the early 1900s and what it did not only to the United States but the world.

In addition to that, there is real money in this bill for home energy assistance, the so-called LIHEAP program. There is $2 billion for home heating assistance.

In addition to that, we provide 5 percent from the ANWR revenues to the Federal Government to provide a long-term funding stream to deal with the problems related to increasing fuel prices and its effect on those people who need assistance to provide heating for their homes.

We also have in the bill provisions regarding interoperable communications equipment. All of us have been trying to prepare those people, called first responders, to have the equipment necessary to carry out their work. There is money in this bill for equipment grants to State and local governments to assure that first responders can communicate during national disasters and terrorist attacks.

We also have—again, there is not any other provision in either the House or Senate bill—we have emergency preparedness grants. We have money to give all State emergency preparedness people grants, and these grants are based upon population and risk. It is a fair distribution of these grants. Some

of my friends in the Senate from the larger population States have worried about distribution of such funds. These funds will be on the basis of population and risk.

We also have for the first time—really at the basic insistence of the Senator from New Hampshire, Mr. GREGG—border security improvements. We have funds for increased border security, helicopter replacements, and security infrastructure, particularly in Arizona and California.

In addition, there is agricultural assistance that provides much-needed funding for conservation at a time when our farmers are paying such record-high energy costs. This is assistance to farmers.

Why do I point these out? Those who attack this conference report on the basis of being beyond the scope of rule XXVIII are attacking the whole conference report. The subjects I have mentioned are beyond the scope of the original Defense appropriations bill, no question about it. We added it. I urged the conference to add it because I know of the need in these areas for these funds and this legislation.

As I said before, I read the statements I made in 1996 when the Senate at another time had before it a bill pertaining to aviation where we did, in fact, have an appeal of a ruling of the Chair, and it was overruled.

The concept of overruling the Chair is not a disaster for rule XXVIII. It is an opinion. It is a disagreement on the basis of the sentiments on the floor. It is really the Senate that decides these questions. But it is true that as a result of having such a vote—by the way, I have before me now a report of the Congressional Research Service that pertains to S. Res. 160 reversing the Hutchison FedEx precedents. On two occasions in the past regarding another rule, rule XVI, there has been an overturning of the ruling of the Chair, and by adopting this S. Res. 160, the Senate directed the Presiding Officer to once again enforce the Senate rule, permitting points of order to be raised against amendments to appropriations bills authored by other Senators.

That is what we have done in this bill. The bill contains a provision which is similar to S. Res. 160, which was offered by Senator REID, to reestablish the vitality of rule XVI.

Let me say this: By adopting, as the report says, S. Res. 160, the Senate directed the Presiding Officer to once again enforce the Senate rule permitting points of order to be raised. That is what we have done in this bill. We have added a provision which is like S. Res. 160 which directs the Presiding Officer to enforce the rule as was intended.

There is a basic disagreement. We are looking to waive the rule for one time. We are not seeking a precedent. We are not seeking to find some way around rule XXVIII permanently. We are saying that in this instance, because of the vastness of the problems we face, the problems of Hurricanes Katrina, Rita, and Wilma, the problems of avian flu, the problems of LIHEAP, the problems of interoperable communications, the problems of the emergency preparedness grants, the homeland security and border security problems, the agricultural assistance that is needed, and the fact that ANWR, having passed both the House and the Senate, has been blocked by a filibuster.

What we are really trying to do is to avoid a filibuster being continued against a bill that passed the Senate and passed the House in this Congress. By putting it in the conference report, we do that. It cannot be filibustered. Conference reports can't be filibustered, but there can be points of order. We will be happy to face those.

I hope my colleagues in the Senate will understand the reason for what we have done and why we have done it. We have done it because of a sincere belief that production of oil domestically has a great deal to do with our national security and that our national defense cannot operate without the basic potential for our own production of oil.

In the event of a blockade, such as we had in the seventies, we have to depend primarily on our own oil. Today, we import almost 60 percent of our oil. In order to operate the Department of Defense in time of emergency if there is a blockade, we have to have domestic production, and that is a matter of national security. That is why we have pursued this.

Beyond this, there is no question about it, this is important to my State—to our State, Madam President. You are from our State. The Presiding Officer dignifies the Senate by presiding over it. When we look at the problem we have in oil pipelines carrying 2.1 million barrels a day—that was its production at the height of the gulf war. At this time, we are somewhere around 400,000 barrels a day. One-third of the oil is available to supply what we call the South 48 States. By law, that cannot be exported except by approval of the President. It has only been waived one time that I know of.

As a practical matter, what we are looking at is finding out if it is possible to increase the supply of oil that is brought by the Alaska oil pipeline to the rest of the country. That means a lot. We are here because it means jobs in our State, and it means income for our State. But this is Federal land this time. Prudhoe Bay was on State land. We are talking about Federal land.

By the way, some people argue that this is a pristine area that has never been explored for oil and gas. That is wrong. One well was drilled in this area, drilled at Kaktovik. We have had oil exploration there for years. When I was with the Interior Department in 1958, I helped draw the order that established the Arctic Wildlife Range, 9 million acres in the northeast corner of Alaska. Oil and gas exploration was permitted. Then along came the withdrawals and demands of President Carter for additional withdrawals. We had a long debate. It was a debate that lasted 7 years. It culminated in the act that was called ANILCA, Alaska National Interest Lands Conservation Act, in 1980. That act specifically reserved 1.2 million acres of that coastal plain for oil and gas exploration. When that is over, it will become part of the Arctic Wildlife Refuge, but at this time it is reserved for oil and gas exploration.

What this provision in this bill says is go ahead with that exploration, which was the commitment made to us in 1980 by Senator Jackson and Senator Tsongas. I will continue to talk about this, but I want to make sure every Senator understands, although I did say if this conference report fails, we can quickly reconstitute another conference committee. The provisions I have mentioned that are beyond the scope will be challenged. They will be challenged and some of them are part of the ANWR provision. We have taken the funds that will be received by the Federal Government and committed them to assist in the recovery of the disaster areas. We have committed them to assist in terms of low-income heating, the LIHEAP program. We have committed them across the board in many places in order to assure that funding is available for these emergency areas where it normally takes time to have Congress come in to being and consider a bill usually in a year to a year and a half.

We are saying in advance the moneys are in the Treasury and if they are needed for these emergency purposes they are to be released. In other words, the ANWR bill is not only a bill to proceed with oil and gas exploration development; it says the bonus that will be received and it will be shared in the LIHEAP program, it will be shared in the communications area and in the disaster area. As we get revenues from royalties to the Federal Government, those will be committed to further protect the completion of recovery from the disaster of these terrible hurricanes. It will be there to assist in our transition to a new form of digital communication. It will be there to assist the first responders throughout the country. The ANWR revenues are very important revenues. They are revenues that come to the Treasury from the production of oil and gas. As the price of oil goes up, those revenues go up. They are real revenues, and we are saying to the people of the United States, if we develop this area, the money that is received by the Federal Government will be committed to those people who are in great need.

So I tell the Senate, if this conference report comes down because of a point of order, we will go back to conference, but many of these provisions cannot be in there if ANWR is no longer there. I urge the Senate to listen to what is in this bill and to understand that the motivation of this Senator in regard to those provisions came

out of the trip I took when I took the Commerce Committee to New Orleans. This is not something dreamed up. I see the distinguished Senator from Louisiana is in the Chamber. We went down there and, along with the people from the city and the State, we toured that area of devastation. As I told my own people at home by television programming just recorded, I have seen devastation in my day. I saw the earthquake in Alaska in 1964. I saw the great interior of Alaska flooded in 1966. I saw enormous devastation in China in World War II where the Japanese had bombed villages and areas out of existence. But I have never seen devastation as has occurred in the New Orleans area as a result of failure of those levees and Hurricane Katrina. It is something one cannot believe unless they see it, and when they see it they come home filled with sadness. How can we possibly help those people? The Federal laws do not contemplate that kind of devastation. The Federal laws assist people from normal types of hurricanes and even typhoons and tidal waves that have hit our States, but the real possibility is that unless we pass this bill, a lot of those people are not going to receive the assistance they should have.

I see the Senator from Mississippi is behind me. I would be happy to yield the floor.

The PRESIDING OFFICER (Mr. ISAKSON). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I am pleased to congratulate my good friend from Alaska and commend him for his work as chairman of the Defense Appropriations Subcommittee of the Committee on Appropriations. He and the distinguished Senator from Hawaii, Mr. INOUYE, provided bipartisan and strong leadership in the crafting of this appropriations bill that is now before the Senate as a conference report. I am pleased as chairman of the full committee to have been a part of that conference as a member of the subcommittee and am very pleased that the leadership of Senator STEVENS and Senator INOUYE has been followed by the House and Senate Committees on Appropriations so that we have before us a bill that not only funds the Department of Defense and related agencies for the next fiscal year, 2006, but also contains amendments that were proffered and accepted by the conference dealing with relief from Hurricanes Katrina, Rita, and others that have devastated the Gulf Coast States of our country.

As the Senator from Mississippi, I have been in close touch with friends and residents of the Mississippi gulf coast area and I have been pleased to join other Senators in trips to visit Louisiana and Alabama and get an impression and find out what the facts are about the seriousness of the devastation. The provisions of this conference report will go a long way toward providing assistance that is needed right now, not over a period of years but right now, so people can rebuild and truly recover from this devastating hurricane.

I am hopeful the Senate will approve the conference report. The Senator from Alaska did a good job of outlining all of the provisions of the conference report. We are particularly grateful that the amendment relating to disaster relief due to hurricanes in the amount of $29 billion was approved by the committee last night. There are other provisions in the bill, as Senator STEVENS pointed out, that will directly affect our recovery efforts in a very positive way that are included in this bill. There is money that goes directly to levee assistance in the Louisiana area, a very high priority of the local officials there. We have specified amounts that can be reconsidered in the next fiscal year. All the money cannot be spent in 1 year. This is something people are realizing. We cannot appropriate in 1 year all that is going to be needed in the outyears. Some of these projects are going to take not a few months to complete but a few years to complete. So we are hopeful that with the full understanding of the Senate this conference report will be agreed to by a large vote of support for the committee's work in this area.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise to speak this morning on the great success of the conference committee in reaching this package and urge all of my colleagues in the Senate, Republican and Democrat, to come together to have these necessary votes and to pass this important legislation.

Let me start by thanking and recognizing the vital work of the two leaders in this endeavor. Senator THAD COCHRAN, the chairman of the Senate Appropriations Committee, has worked tirelessly on this package. Of course, he had all the motivation in the world coming from Mississippi, but he has also reached out to all of us from all of the devastated areas, certainly me and my colleague MARY LANDRIEU from Louisiana. I want to thank him for all of his great work and for being so generous with his time, thoughts, and efforts with regard to helping us meet our Louisiana needs as well.

I also thank and recognize the vital work of my chairman of the Commerce Committee, TED STEVENS, who spearheaded another crucial component of this overall package. TED came down at my invitation, as he mentioned on the floor a few minutes ago, to tour the devastated area in greater New Orleans. Nobody can come down there and see the devastation on the ground in New Orleans—or Mississippi, for that matter—and not help but be truly moved and have their whole perspective changed. Perhaps the single best example of that is TED STEVENS. He was very helpful and very sympathetic even before that visit in early November. But when he was there on the ground, when he saw that devastation, particularly in Lake View and the lower Ninth Ward, when we were standing there together and he saw the levee breach on the Industrial Canal and just hundreds upon hundreds of homes everywhere as far as the eye could see ravaged as a result of that, his level of understanding and his commitment grew even more. He has clearly been a vital partner in this important work. So I thank and recognize his work, along with that of Chairman COCHRAN.

I urge all my colleagues in the Senate, Republican and Democrat, to come together to make sure we have these crucial votes as soon as possible and to make sure we pass this important package.

I have been disappointed to hear some of the comments from the other side of the aisle, particularly those of the minority leader. He has expressed outrage at some of the procedures that are involved in passing this crucial bill. I chuckle a little bit when I hear those comments, for two reasons.

The first reason is that every procedure involved, every step that we will take this year to complete this important work, has been done before in the Senate and has been done before in the Senate with his support. He has voted for these same procedures in the past, every single one, every step of the way. This is regular order. This is all under the Senate rules. So for him to express this level of outrage is ironic at best.

Second, what he proposes in rejecting moving forward is to reject everything in this bill save Defense appropriations. It is not simply to reject ANWR, which is the focus of his wrath, it is to reject all of the hurricane relief, the entire package Senator COCHRAN has worked so hard to put together and fashion with his House counterparts. It is to reject all of the revenue from not only ANWR but DTV, which would also go to the devastated region. It is to reject all of that. What Senator REID is proposing is to reject $2 billion for LIHEAP funding, which is absolutely crucial for our citizens in the Northeast and elsewhere. What he is proposing is to reject crucial funding for communications interoperability, which is a key need and a key priority for homeland security.

Let's be clear. The path Senator REID is urging us to go down is not simply to vote against ANWR. We have had votes on ANWR. We are free to vote for or against ANWR. We had a clear and fair vote on ANWR earlier this year, and it passed, no ifs, ands, or buts; perfectly fair. So he is not really just talking about that. He is talking about everything in this vital package save Defense appropriations. He is talking about all of the hurricane relief. He is talking about all of that DTV and ANWR revenue that would also go to the devastated region. He is talking about all that crucial help for LIHEAP, $2 billion upfront additional money into the future. It is very important for Northeastern States and citizens and for others. He is talking about the crucial interoperability piece for our first

responders, a very important, top priority for homeland security.

We must do all that work now, this year, before Christmas, before we leave. The way we get this work done is to have these important votes. Every Member of the Senate will be free to vote for or against. Every Member of the Senate will be free to vote as their conscience deems they should on all of these procedural matters.

Again, Senator REID has voted for all these procedures in the past. Let's be clear about that. So I urge us to put the politics aside, to not make this yet another Washington partisan political fight. Far too much is at stake for us to do that. Far too much in my State of Louisiana. Far too much in the devastated State of Mississippi and Alabama and Florida, with Wilma, and Texas with Rita, and southwest Louisiana with Rita.

If there is ever a time for us to look at the substance and the national good and not Washington politics, it is now. That is what people sent us here to do, not play these partisan games. I urge everyone to put that substance first, to put the American people first, to put the people of the devastated regions of the gulf coast first and have these votes and pass this crucial package of relief.

Let me be clear. ANWR is directly related to this relief because significant revenues from ANWR would go to the devastated region for crucial needs in Mississippi, Alabama, Louisiana, Texas, and Florida. That is very much a part of this hurricane package.

Let me close as I began, by thanking the chairman of Appropriations, Senator COCHRAN, and Senator STEVENS, the chairman of the committee on which I am proud to serve, the Commerce Committee, for their vital leadership, for their vital work. But for them, we would not be in this moment of huge opportunity to meet the crucial needs of the still suffering citizens of the gulf coast.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

HURRICANE RELIEF

Mr. COCHRAN. Mr. President, I commend the distinguished Senator from Louisiana for his eloquent statement about the importance of this legislation. He has been a true leader in this effort to craft a bill that will provide money now, needed desperately by the victims of these disasters in the Gulf Coast States. He and his colleague, Ms. LANDRIEU, have been very active, as all Senators know, in describing in detail the dilemma that is faced by local governments, municipal governments, and county and parish governments in the region. Our State governments have been stressed beyond imagination in terms of trying to make resources available to help save lives, to help rescue victims, to help communities that are struggling to repair and replace damaged and destroyed infrastructure such as water and sewer systems, highways and roads and bridges. The list is almost endless of the challenges that have been faced by the people of this region.

But the Senator from Louisiana has been, more than anybody I know, on a daily basis working his heart out and trying his best to be sure that we respond in the way that we should as a Federal Government, to provide the assistance needed for a full and real recovery from these disasters.

I also think about my colleague, Senator LOTT from Mississippi, and Congressman TAYLOR in the House, who both lost their houses and suffered real, serious personal losses as a result of Hurricane Katrina. They have been tirelessly and constantly in touch with the situation as victims of this disaster but at the same time lending their energies, their imagination, their know-how, their leadership to provide guidance and suggestions all along the way.

This is not the last bill we are going to see on the subject of disaster assistance, but it is the most important because it provides real money at once. It is made available immediately upon passage for distribution to those who need the help the most. And it is urgent.

If we delay and get tangled up in a lot of parliamentary maneuvering, criticism, second-guessing, and partisan infighting, whatever kind of resistance to this important appropriations bill, it will be a disgrace. It will be a disgrace to the Congress and an injustice to the victims of this disaster.

There are a lot of people we could talk about this morning—State government leaders. Our Governor, Haley Barbour, has been up here for days answering questions, providing information, making suggestions of alternatives that would be appropriate for the Federal Government to undertake to help the recovery, and identifying ways State governments can share in the responsibility. The Community Development Block Grant Program is one of the suggestions Governor Barbour made as a conduit for funds to help rebuild communities and help landowners who have been harmed and who were outside the flood plain, didn't have flood insurance, yet they were flooded and didn't have coverage to pay for those losses and those damages. He is looking for ways to help everybody who needs help and who deserves help from their Government.

This bill provides this substantial amount of money and commitment from our Government at a time when it is truly needed. I am hopeful the Senate will act with dispatch and send this conference report to the President for his signature.

Leadership in the House and in the Appropriations Committee, the Defense Appropriations Subcommittee, has also been very important and crucial to this undertaking. The Speaker of the House, personally, and the whip, Roy Blunt from Missouri, have been personally engaged in trying to find ways to reach an accommodation with the Senate and with the States affected. They have done a wonderful job. It has culminated in the presentation of this conference report.

The Congressman from California, JERRY LEWIS, chairman of the full committee in the other body, and Congressman BILL YOUNG from Florida, who has had experiences with other disasters in the past, have been very helpful in remembering how we responded to past challenges—Hurricane Dennis, I recall—and there are others that Florida has experienced. But everybody coming together and doing their best to sort through the challenges, identify ways to help, has culminated in the presentation to the Senate of this conference report. I am hopeful we will respond.

As Senator VITTER said, everybody has an opportunity to vote to help us recover. We hope you will. It is a bipartisan effort. Democrats and Republicans have both been involved, from both sides of the aisle here in the Senate and in the House as well.

We hope we will act quickly in response to the suggestions made by leadership here in the Senate and approve this conference report. We are deeply grateful to all who have been helpful, who have come up here, stayed and talked and explained what the facts are, who testified before committees.

We have reviewed all the facts. We know what the situation is. Now it is time to act, and act is what the Senate should do now.

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. COBURN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

THE APPROPRIATIONS PROCESS

Mr. COBURN. Mr. President, in the past in this body, I have been highly critical of some of the things that have gone on in the appropriations process. But I want to say the chairman of the Appropriations Committee in this body, with the appropriations package we are going to look at today, or whenever we get to it, has done a phenomenal job. I think the American people need to know this is the type of leadership we have been looking for for a long time.

All of the additional spending for the victims of the hurricane, for LIHEAP, for all of the additional things we are going to be doing, has been paid for not on the backs of our children and our grandchildren but in fact by making hard decisions on what to trim.

A lot of resistance is probably going to come with this, and the reason people are uncomfortable with it is because we are trimming the size of the

Federal Government at the same time we have neighbors on the gulf coast who need help, and those who are unfortunate with their heating bills this year need help.

I want to have in the RECORD that both Senator STEVENS on the Defense appropriations bill and Senator COCHRAN I believe have done a fantastic job, and they have set a benchmark for where we need to go next year in terms of any new programs we need to be paying for by making reductions in other programs. What it is doing is securing the future for our children and our grandchildren.

My hat is off to them. I think they have done a great job. We have looked over the bill since last evening, since the numbers came through. We are very pleased. There are no gimmicks, no games being played with the numbers. Hard choices have been delineated in this bill which will require hard votes but for the right reasons. And for the next two generations, I thank them for their hard work on this bill.

With that, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DEFENSE APPROPRIATIONS

Ms. STABENOW. Mr. President, I rise today to express great concern about the process, about what has been happening as it relates to the Defense appropriations bill. I have supported every appropriations bill for our troops since coming here to the Senate, and before in the House. I am deeply concerned about what I see in terms of abuse of the process, abuse of power involved in this debate on a bill that is critical for our troops, a bill that without the controversial provisions I believe would have overwhelming, positive, if not unanimous, support from this Chamber.

I want to start by reading a portion of a letter from five distinguished retired generals from the Marines, the Army, and the Navy, that speaks to this in a way that I think we should all be listening to. This is a letter to our leaders in the Senate:

> We are very concerned that the FY2006 Defense Appropriations Bill may be further delayed by attaching a controversial non-defense legislative provision to the defense appropriations conference report.
>
> We know that you share our overarching concern for the welfare and needs of our troops. With 160,000 troops fighting in Iraq, another 18,000 in Afghanistan, and tens of thousands more around the world defending this country, Congress must finish its work and provide them the resources they need to do their job.
>
> We believe that any effort to attach controversial legislative language authorizing drilling in the Arctic National Wildlife Refuge to the defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families the resources they need in a timely fashion.

It goes on from there.

Mr. President, I would not agree more. I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

DECEMBER 17, 2005.

Hon. BILL FRIST,
Majority Leader,
Hon. HARRY REID,
Minority Leader,
U.S. Senate, Washington, DC

DEAR SENATOR FRIST AND SENATOR REID: We are very concerned that the FY2006 Defense Appropriations Bill may be further delayed by attaching a controversial non-defense legislative provision to the defense appropriations conference report.

We know that you share our overarching concern for the welfare and needs of our troops. With 160,000 troops fighting in Iraq, another 18,000 in Afghanistan, and tens of thousands more around the world defending this country, Congress must finish its work and provide them the resources they need to do their job.

We believe that any effort to attach controversial legislative language authorizing drilling in the Arctic National Wildlife Refuge (ANWR) to the defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families the resources they need in a timely fashion.

The passion and energy of the debate about drilling in ANWR is well known, and a testament to vibrant debate in our democracy. But it is not helpful to attach such a controversial non-defense legislative issue to a defense appropriations bill. It only invites delay for our troops as Congress debates an important but controversial non-defense issue on a vital bill providing critical funding for our nation's security.

We urge you to keep ANWR off the defense appropriations bill.

Sincerely,

JOSEPH P. HOAR,
General, U.S. Marine Corps (Ret.).
ANTHONY C. ZINNI,
General, U.S. Marine Corps (Ret.).
CLAUDIA J. KENNEDY,
Lieutenant General, U.S. Army (Ret.)
LEE F. GUNN,
Vice Admiral, U.S. Navy (Ret.)
STEPHEN A. CHENEY,
Brigadier General, U.S. Marine Corps (Ret.).

Ms. STABENOW. Now is the time—past time. There is no reason for us to be here today on this Defense bill. This could have been done. We could have made it very clear that the dollars are there—critical dollars are there—for our troops, if it were not for an effort to subvert the process and the rules of the Senate and the efforts that have gone on to put things into this Defense bill that should not be there.

Now, I am one who does not support drilling in ANWR. I have never voted for that. There is no relationship, in my mind, to energy independence or national security, as we look at the small amount of reserves that are there versus the tradeoff in terms of our environment and the commitment we have made as it relates to our environment. But regardless of that, that deserves a separate debate. We have had that debate on the floor of this Senate. We have had it a number of times.

People have a right to have that debate and to be able to cast their votes concerning that issue, but it should not be included in a bill to support our troops, the men and women who are serving right now around the world. They deserve better than that. We can do better than that. I would hope we could clean up this bill, get those provisions out of there that have been put in for political purposes because they have not been able to pass in other ways, and be able to strictly focus on a bill to support our men and women in the armed services.

What are some of the things in this underlying bill?

Well, it provides a 3.1-percent across-the-board pay raise for military personnel. I support that. I am sure my colleagues on both sides of the aisle do, as well.

It provides an increase for basic housing allowance to eliminate out-of-pocket housing expenses for military personnel. It is critical.

It provides $142 million for body armor and personal protection equipment. How many times have we heard concerns regarding this? This $142 million is important. It needs to get passed now. It should not be part of a political struggle that has been going on in the Senate, in the House, and with the administration.

The bill would provide $12 million to provide treatment for soldiers with head and blast injuries who are returning from Iraq and Afghanistan.

Again, on the equipment end, it would provide $1.4 billion for the Joint Improvised Explosive Device Task Force.

It provides $170 million for up-armored HMMWVs and another $464 million for humvee recapitalization.

It provides $293 million for Army night vision equipment.

It provides $1 billion to address equipment shortfalls for the Guard and Reserve. I can tell you, having talked with so many of our Guard and reservists, and having been there when they have left and been there when they have come home, we owe them a budget that will address the equipment shortfalls.

We also owe them efforts to support their families and the needs of their families as they have been deployed and redeployed and redeployed into Iraq and Afghanistan and around the world.

We are past time to get this done. There is no reason we should see the maneuvers going on that have gotten in the way of passing this bill.

There is no reason. I hope they do not succeed. These maneuvers should not succeed. I hope we will say no and that we will then pass quickly the bill that has been worked on in good faith by so many.

Let me give an example of another piece of legislation where this was done. I commend both the distinguished Senator from Virginia and my colleague, the distinguished Senator from Michigan, Senators WARNER and LEVIN, who worked through a complicated Defense reauthorization bill. There were a lot of similar kinds of issues of extraneous measures being placed into that bill, but they worked through it. They kept their eye on the primary goal, which was to provide support for our men and women who are serving us, who are placed in harm's way, who are fighting terrorism, who are fighting to protect our families and our country, keep the focus on them, which they did. They have been able to produce a bill that is for the troops, for the Department of Defense, for the defense of our country, without extraneous measures in the legislation. I commend both of them for their leadership. It is an example time and again of what these two distinguished Senators have been able to do because they kept their focus where it should be—on the defense of our country and the support of those who are defending us around the globe.

Compare that to what is in front of us today. Again, these measures are worth debating. The other issues that were put into the Defense bill deserve debate, have had debate on the floor of the Senate. They deserve that debate. They deserve up-or-down votes. But to take the excellent work that has been done on the Defense appropriations bill and put these together is plain wrong. I hope we will be successful in separating these issues so that those of us who strongly support this appropriations bill, who strongly support our troops, will have an opportunity to, again, hopefully, vote yes unanimously, without the debate on other issues such as drilling in ANWR where many of us are strongly in opposition to that issue and others that were placed in this bill.

This is an opportunity for us to stand together, as we have done, as we will do on Defense reauthorization, as we have done so many times in the Senate, standing up on a bipartisan basis for our troops. I hope we will be able to do so again at the end of the day when this bill finally comes before us. I am hopeful that my colleagues will join with me in separating the controversial provisions unrelated to defense from this bill and give us the opportunity to support our men and women in the manner which they deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the Senator from Michigan has asked a great question: Why are we here? And why is this bill before us? We are here primarily because, as I went through the process of trying to get the Arctic national wildlife area, the coastal plain open for exploration and development as was promised in 1980, I ran across a lot of things that were involved in this process this year that I, incidentally, support.

I support LIHEAP. There is no question that there is a demand, because of the increase in the price of energy, for assistance to those people who have to pay more for their heating oil. We tried to deal with that in connection with the reconciliation act, and there was a billion dollars in that bill for that program. We face a demand from the people who believe in it, as I do, that that be increased.

The provisions of ANWR in this bill, as we go into the process of trying to assist people who need assistance, will provide for $2 billion for LIHEAP. That is $2 billion in 2006 in terms of appropriation of moneys now. These funds will be allocated based on emergency needs. That emergency will be repaid by funds generated from this amendment. Those funds we hope will be generated in 2008.

Many people oppose declaring emergency after emergency. I agree with that. I think the greatest increase in our budget now is interest on the national debt once again. We have to stop that increase because as it increases, it squeezes out programs such as LIHEAP. But we put in here a provision to go ahead and help people in 2006 but repay it when the moneys come from ANWR.

If you don't want to vote for ANWR, you are not going to get money for 2006 for LIHEAP. People say that is bad. That is the only place they could find the money. That is a program I support very much. When you look at these other areas, I will be coming back time and again to say to people: OK, you oppose ANWR, but where are you going to get the money to do some of the things we want?

We have to stop exporting our money for oil. Every time we buy a barrel of oil from offshore, we export jobs. We export money. We can't get it back unless we reduce the value of our exports in order to try to balance our payments.

I do believe we have a lot of problems. I will be discussing them today. But it is a good question: Why are we here? We are here because the Senate passed ANWR in the reconciliation process. The House passed the bill as a legislative item. The House insisted that we try to find a way to pass the ANWR provision in the Senate without putting it in the reconciliation bill. A bipartisan plea came to me from the House to put the ANWR provision on the Defense appropriations bill. I had said before: You don't want to do that. We have it in reconciliation. Why did we put it in the reconciliation bill? Because there has been a filibuster. We are not talking about a fair vote; we are talking about an assumption by opponents of this that we must have a filibuster every time we try to find some way to increase our domestic production of oil and gas.

This is an area that is known as containing the largest single structure on the North American Continent from which oil and gas can be produced. We want to find a way to bring into production the oil from that vast area. A well was drilled there, and it was what we call a tight hole. It was agreed at the time it was drilled that the information from that drilling would only be provided to the Department of Interior and to the companies that drilled it, but it must be sealed. No one has ever published the results of that well. But the area has been drilled.

I will say to the Chair that not one of the companies that participated in funding that well ever was discouraged from seeking the leasing at ANWR. So while they can't publish that it was good, their actions over 25 years demonstrate that it was good. The question is, Should we produce it? If we produce it, revenue from the bonus bids to get the leases will be used to repay what we spend in 2006 for LIHEAP. This program is to provide low-income heating assistance. This is a very legitimate way to get money for the home energy assistance program that is needed right now.

Another thing that is tied into these funds is emergency preparedness. Another thing is equipment for first responders. Again, the funds there come from spectrum sales.

Mr. President, the budget estimated $10 billion for spectrum sales. The FCC says it will be $28 billion. I conferred with the Congressional Budget Office and said: Look, you have estimated $10 billion, and the FCC says $28 billion. I am going to assume it is going to be at least $20 billion.

They said: If you make that assumption, what you are doing in terms of spending in the bill, we cannot validate that because we deal with total predictability. You deal with probability when you look at that second $10 billion.

I was the author of spectrum originally. Before that, spectrum was available through the FCC when it was released by one company. There was a lottery to see who got the right to have it. They literally drew from a hat. Whoever got that draw out of the hat got a piece of paper that entitled them to a license from the FCC worth millions and sometimes billions.

I say: Why do that? Why don't you have an auction for that? When I was in the Department of the Interior, we used to do the same thing with leases on Federal lands. I convinced them at that time to find a way to auction those off. That is why we have the auction for the leasing of ANWR. We will get revenues from auction, and the estimated revenue by OMB and CBO is $2.5 billion. We know it is going to be at least $18 billion. All we are assuming is there is an additional $2.5 billion involved. As it comes into the Treasury, it is earmarked to pay back these emergencies we have declared. I think that is legitimate and a way to be fiscally responsible—only if we lease ANWR.

Those who want to take ANWR out of the bill are taking out funding for the things that flow from it and flow from an additional assumption that the receipts from spectrum are going to be more than estimated by CBO. I am going to be back again and again.

We have been involved in this debate for a long time. Every time I come here I remember my departed friends, Senators Jackson and Tongass. As an old friend of mine says, I get ''puddled up'' a little. They were on the other side of the aisle, but we worked for the common good and we got a commitment that 1½ million acres of Alaska would remain open for oil and gas development. As they took the Carter bill through the Senate that withdrew 105 million acres of my State's land—my State has 365 million acres. This 105 million acres is roughly the size of California. All of that is not open for oil and gas development. It is not open for hardly anything. We have national parks, wildlife refuge, wilderness areas, and a whole series of classified types of programs where the public land laws don't apply.

But the one area where the Mineral Leasing Act law still applies subject to an act of Congress to proceed is the 1½ million acres on the Arctic Plain. There is unquestioned money coming in from this auction, Mr. President. It will be big. Our oil industry is now developing throughout the world. The great, dynamic, young President of ConocoPhilips is in Moscow negotiating with the Russians today to get Russian oil for the United States. In 1980, we could not have even dreamed that we would have a chief executive officer of an American oil company in Moscow negotiating to get oil from Russia. We had just come through the embargoes of the 1970s, when the imports into the United States of oil from Arab countries was barred by an embargo.

We are at the point now where we are dependent upon foreign oil for almost 60 percent of our total needs for petroleum. What we are saying is why don't we do what we know should be done? Congress passed this bill in 1995. Both Houses voted for it. It was an amendment that went to President Clinton, and he vetoed the bill.

Mr. President, I believe we have a real problem in terms of our domestic production. Let me say this. Production from Prudhoe Bay, the area that brought in the great amount of production for the United States, averaged 1.6 million barrels a day in 1988, and it was down to 381,000 barrels this year. That pipeline is designed to carry 2.1 million barrels a day, and it did for a little while. It is down to 381,000 barrels. North Slope production has dropped from 2.1 million barrels a day to 916,000 barrels a day. The production is expected to drop even further during this period ahead of us.

The way to fill that pipeline back up is to complete exploration and development of that part of the Arctic Plain left open for development by my friends, Senators Jackson and Tongass after a long period of debate. I do believe there is a lot to be said about this bill. In 2004, our trade deficit was $651.52 billion; 25 percent of that, one-quarter—really 25.5—came from the importation of oil. People talk about our trade deficit. That is $166 billion in 2004. The reason we continue to be importing more oil is because we are producing less at home. We have doubled our energy imports since 1999. We have an insatiable demand for energy.

I agree that we should develop alternative sources, but meanwhile we have to meet the demand, which is enormous. We are importing now, in September of this year, 9 million barrels a day, at an average cost of $55 per barrel. We spent $495 million a day—almost a half billion dollars a day is going out of the country to buy oil. For every barrel of oil we import, we send that $55 abroad. If that $55 was spent in the United States, changing hands several times in our economy, as the people who work and develop and produce that oil pay for goods and services, it would generate tax revenue. One of the reasons our tax revenue is not going up as predicted is we are importing more oil.

For every $1 billion we spend to develop domestic resources, we create 12,500 jobs. That means in 2003 we lost over 1.3 million jobs by importing oil rather than producing it here. The public lands of the United States have been closed to oil and gas exploration. This area left open to oil and gas exploration in Alaska has been denied access for the oil and gas industry. We have had a 75-percent increase in the price of gasoline during this period. Why? The total cost of oil is now determined by foreign producers, not by competition with domestic producers.

By developing the resources on the coastal plain, we could create between 700,000 and a million American jobs, and we would put $60 million back into the U.S. economy every day that we produce and send that oil south in the oil pipeline.

I do believe there is every reason to be here today. There is every reason to say let's vote; let's vote on the conference report. That conference report ought to be approved. It has money for Defense and for Katrina, in terms of the disaster area; it has the money for the avian flu, and particularly the liability provisions that are necessary to make that work.

Mr. President, I think we should think twice about this and people saying something is wrong here. We have repeatedly at times in the past challenged the ruling of the Chair. We did it really in terms of very controversial subjects in terms of the FedEX bill and in terms of the aviation bill in 1996. We are not trying to do something that has never been done. I have heard some Senators accuse me of breaking the rules. I am here because of the rules, Mr. President. I am here because we are using the rules to try to achieve the passage of this very vital measure for our national defense because it has been filibustered. We did pass it in connection with the Reconciliation Act this year, and I believe we ought to recognize that there is no question about our need to develop and produce in this area.

I don't want to keep going. I could go all month about ANWR. I have been dealing with it for 25 years. I don't even need any notes to keep going for a day. The point is if anybody else wants to speak, I will be glad to yield to them.

This is a very vital subject, as far as I am concerned. The necessity for it is linked to national defense, there is no question about it.

This bill contains $446.7 billion for the Department of Defense. It includes $50 billion to sustain contingency operations for Iraq and Afghanistan. It has a 3.1 percent across-the-board pay raise for military personnel.

My colleague and I, my great friend and cochairman from Hawaii, Senator INOUYE, managed this bill. There is no question we did our best within the amount of money allowed to take care of the essential needs for the Department of Defense. Without this bill, the Department of Defense has to continue to defer spending, freeze contracts, postpone repair projects, and delay hiring. It is currently operating under a continuing resolution. I opposed a continuing resolution. I said, no, let's pass this bill, in July. I said when we came back in September, let's pass this bill.

It has been delayed. Why? Because of so many demands on the Congress coming out of Hurricanes Katrina, Rita, and Wilma. We have been immersed in trying to solve the problems that came out of those monstrous disasters.

I do believe that if the Senate votes not to take this conference report, we will need a new conference. We will have to appoint new conferees, and the process will start from the beginning. The important thing is, unless ANWR is back in there, there is not money for LIHEAP, there is not money for first responders, there is not money for interoperability, there is not the money for the various items we have been able to find ways to pay for because of the development of ANWR.

I predict we can quickly get at it if we have to, as I said, but if we vote to do it, and we can vote today—we can vote for both this and the reconciliation process today—this bill could be on the President's desk tonight. It is right there. It is on the desk. It can be voted on. We are ready to vote. The reason we sat through last night was they would not let us vote.

I do think we should understand that the failure to vote on this bill is a failure to respond to the needs of the country. My staff and I have worked many days on this. We have worked long hours, as I told my group at home. We have burned the midnight oil on this one. We examined the needs when I

went down to New Orleans with our Commerce Committee. We examined the needs in hearings of our Department of Defense Subcommittee. We examined the needs in terms of the Commerce Committee. Senator INOUYE and I heard about the needs of first responders and the need for interoperability equipment for them. This bill gives it to them. It responds to their needs.

It doesn't pay all of them right away, but it says: Look, you can get the money you need to start this, but as the money starts coming in from ANWR and spectrum, you will be able to proceed with the programs you need to have funded.

This is a serious issue. Our national security depends upon a reliable supply of oil that is not subject to the whims of a foreign country or adversaries.

The fuel used by the Department of Defense is delivered today primarily through the Trans-Alaska pipeline system, and much of it is refined in our State right now. Jet fuel in our State used by the Department of Defense includes 52 million gallons per year at Elmendorf and other places, 21 million gallons per year in Eielson, 3.5 million gallons of JP5 used by the Coast Guard. A total of 76.5 million gallons a year comes from current production of oil in Alaska.

The Alaska pipeline amendment, as I said before, was not filibustered because there was complete agreement in the Senate. Not one person suggested that pipeline amendment should be delayed. It was a close vote. The Vice President broke the tie on the Trans-Alaska pipeline. No one realizes it, but at the time, it was predicted there was to be 1 billion barrels of oil produced from that area. We have produced 14 billion barrels already.

Overall the Department of Defense uses 4.62 billion gallons of oil a year. In Iraq alone, the total amount predicted to be consumed per year is 5.76 billion gallons. And yet we are almost totally dependent now on foreign sources. It is not right.

Let me quote from my good friend Senator Jackson, then chairman of the Energy Committee, when he addressed the Senate on the pipeline. Senator Jackson said:

> The pipeline involves a national security issue. There is no serious question today that it is urgently needed in the national interest to start the North Slope oil flowing to markets.

That is the Democratic Senator from Washington, chairman of the Energy Committee at the time.

People today challenge my statement that oil is a national security issue. He said that at the time of the debate on the oil pipeline amendment in 1973. He said, I repeat:

> This involves a national security issue. There is no serious question today that it is urgently needed in the national interest to start North Slope oil flowing to markets.

This area known as ANWR is the balance of the North Slope production area, and it should be available for production.

I have a lot of other issues to mention. At the very least, we ought to compare our situation. In 1973, when the oil embargo took place, we imported one-third of our oil, our petroleum. Now we import 60 percent. Without ANWR, by 2025, we will import 70 percent of our oil. We will be more than two-thirds dependent upon foreign sources for oil.

What will we do in times of need? I remember those lines in the seventies. Some of us remember them well. I remember rationing in World War II. Are we going to go to a system of rationing? Our foreign imports are not that secure, no matter what anybody says.

Senator HUTCHISON is on the floor, and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise today to speak in favor of the Defense appropriations bill, in favor of Katrina and Rita supplemental help. This is such an important piece of legislation. This is a bill that has already passed the House. It only lacks Senate approval to go to the President and give the Defense Department the appropriations it needs to do the job we are asking them to do. It will also help the people on the gulf coast who have been waiting for the signal that they will have some relief.

I start by talking about the defense part of this bill and say that it would be unthinkable not to pass the Defense appropriations that we must have to stay in an orderly way, going into the next year, with the priorities we have set for this fiscal year. Continuing resolutions are last year's priorities. So it is essential for Congress to act.

I have heard some on the floor say: ANWR is a big surprise. ANWR is hiding the ball. Putting ANWR in this bill is somehow thwarting the will of the Senate. The opposite is true. The Senate has voted in favor of ANWR. The House and the Senate have voted in favor of ANWR.

If we were putting something in a conference report that had never passed the Senate, that would be one thing. ANWR has been adopted by the Senate. Those who would hold up this bill are thwarting the will of the majority. I do believe we have a national security issue and an economic viability issue for our country if we put our heads in the sand and say, well, we know there is a shortage of energy, we know the price of gasoline has gone up almost a dollar—it went up almost $2 after the hurricanes hit for a short period of time, but thanks to the leadership of the President, who took very swift action opening the reserves, we were able to bring the price back down, but we know there is an energy shortage in the world. We know there are various reasons for that because there are more consumers now, because the economies of China and India and other places are now using more energy.

So if we are a country that is looking out toward the future, if we are a country that is going to make sure we have economic viability, we must take the steps to assure that we have energy supplies from our own resources in order to meet this challenge, and that means that we look for new sources of energy. It means we do research for renewable sources of energy. It means we highlight conservation and give tax credits for all of these items that would add to our energy stability, and yes, it also means we provide more opportunity to drill for the basic energy providers for our country, and that is oil and gas.

For some of those whom I have heard debating, to say, Oh, yes, we have an energy crisis in this country, but we should not drill on the east coast and we should not drill on the west coast and now we should not drill within 200 miles of Florida and we should not open up ANWR, is irresponsible. We should be looking to open up our own resources so that we are not dependent on foreign countries for our energy needs, and we should do it by opening up ANWR, which is the largest domestic resource we have. Approval for this has been passed by a majority of the Senate and a majority of the House time and time again. The will of the majority is being thwarted again, because we are looking to the future.

Let us take another argument that could be made. Maybe the people who live around ANWR or in whose State ANWR is do not want it. Are we forcing something on them by allowing this drilling? Oh, no. The people of Alaska have said time and time again they do want to drill in ANWR. They want to drill in ANWR because they know it will be done in an environmentally safe way. They know that the area which would be drilled is an area about the size of Washington National Airport in ANWR, which is an area the size of the State of South Carolina. The people of Alaska know that. They know it will not hurt the environment of their own State. They know it will provide jobs for their people. They know it will provide quality education for their children and small business opportunities for the people who live there and would come there to add to the economy of Alaska. So the people of Alaska who would feel the direct impact of drilling in this very small area want ANWR to be drilled because they know what it will do for the economy of their home State of Alaska. So we have the capability to drill in a very small area.

By the way, it is grassland. There are no trees in this part of ANWR. Sometimes I see the pictures on television against drilling in ANWR, and it looks like a pristine forest. There are no trees in this area. It is a grassland. In fact, there will be drilling when everything is iced over anyway. The roads will be ice roads that will melt in the summer, when there will not be drilling, so there will be no footprint. So I cannot think of anything more environmentally safe, and I think it is very

important for the future of the economy of Alaska and more importantly for the future security of our country because economic security is national security.

Can one imagine an economic downturn when we have had so many crises in our country in the last 5 years, starting with 9/11, a war on terror, an insurgency in Iraq, Afghanistan, which is on its way to self-governance, and then there is Katrina and Rita, a tsunami and an earthquake in Pakistan, and we are trying to help all of the people affected by these tragedies? An economic downturn—it would be irresponsible for us to allow it to happen if we have any control, and ANWR is part of establishing our economic security by assuring that we will have energy no matter what else happens, whether it is a hurricane or whether it is a foreign country that provides a good source for us of oil and gas that all of a sudden says: Well, we are not going to provide that anymore, or if we do, it is going to be at such a price that it will affect your economy.

We are over 50 percent dependent on foreign sources for our energy needs today in America, and that is not a sign of the strongest Nation on Earth. So to say that ANWR is a surprise is wrong. To say that it has blind-sided the minority in this body is wrong. The Senate has passed ANWR before. We have passed it this year, and it is time that we get this bill to the President.

In the supplemental appropriations for the victims of Katrina and Rita, it is so important that we have accomplished the first real help that goes not only directly to the people but also to begin the infrastructure improvements where the gulf coast has been ravaged. One of the things I have tried to do in this bill is to ensure that where the evacuees have gone, the money will also go. This is hurricane assistance like we have never seen before.

In a normal hurricane, there are maybe 2 or 3 months of significant displacement, and there is a lot of cleanup and a lot of rebuilding, but most people are back in their area after a few weeks. Katrina so devastated Louisiana and Mississippi that people have had to flee with absolutely nothing, and they have had to stay in other States, get jobs if they can, get housing where they can, and educate their children. So that has meant that States such as Texas, Arkansas, Oklahoma, Georgia, and Tennessee have paid a large part of the expense of the taking care of the people displaced by this hurricane, rather than the burden being on those States actually hit by the hurricane.

So we have had to rethink the model for how to provide this assistance and how we meet the needs of today. My home State of Texas, I think it is well known, has taken in the range of 400,000 evacuees. We have in the range of more than 40,000 in our school systems. We have had almost no reimbursement for the education of these children. We have had to repair schools that were closed so they can reopen. We have had to add temporary facilities. We have had to hire teachers and also try to welcome these children in so they would be able to function in the classroom. This has taken huge resources, tens of millions of dollars from our State.

I passed a bill in September that would have allowed the per-pupil cost of educating these students to be reimbursed, which would have especially helped these States which have taken large numbers. Texas has taken the most, but other States, relative to their populations, are in much the same situation. These are hits on education systems that they cannot absorb. Yet the bill I passed in the Senate in September never passed the House. Finally, last night, in this supplemental appropriations bill we have addressed the needs of these children in the way I had asked in September that they be helped. We are giving the help to these school systems that have taken in these children.

Our school districts and our States have been footing the bill for these added education expenses since the children came over—in desolation, frankly—right after that level-5 hurricane hit the gulf coast of America.

To think this bill would be held up because there are people on the other side who want to thwart the majority that has passed ANWR and would hold up our Defense Appropriations bill and our supplemental appropriation for the victims of Katrina and Rita. I hope those who would thwart this bill would reconsider.

In this bill, we have money for the education of the students, which has been a priority for me. It also includes money for repairs and dredging of waterways in the hurricane-affected States; plus, of course, money to start rebuilding the levees in New Orleans; grants for the Department of Labor for displaced workers; social services block grants; Head Start money for children displaced by the hurricanes; community development block grants in the hurricane-affected States, which includes Texas. Texas has spent just about all of its community development block grant money, much of it for hurricane assistance, so we will look forward to replenishing some of that which was needed before the hurricane. It has money for highway, road, and bridge repairs, and for State and local law enforcement assistance. I can tell you, having toured in Houston, Austin, and Dallas, the convention centers where evacuees were being held, there was a lot of overtime money for the law enforcement personnel, and that needs to be reimbursed because those police departments and sheriffs departments are not able to absorb that. There is money from the Small Business Administration for disaster loans and money for manufacturing extension centers.

There is an offset for all of this added money because there are many people in our country who believe that spending more money and adding to our deficit is not the responsible thing to do. So there is a 1-percent across-the-board cut in discretionary spending. Veterans are exempt from this. Obviously exempt from this would be salaries of our military and civilian personnel. There will be no cuts in veterans health care. That is something I talked to Senator COCHRAN about on Sunday, to make sure we did not cut into the veterans health benefits, because we had just put in an added $1.2 billion because there were more calls on the veterans health care programs. I certainly didn't want to get into a hole in that department.

We have offset this supplemental expenditure with an across-the-board cut in the discretionary spending and other areas so we do not add to the deficit.

In addition, in this conference report, we have ensured that avian flu vaccines will be available in this country. Again, we are looking out for something that we see happening in another part of the world and are trying to protect our citizens if somehow avian flu does come to our shores.

The LIHEAP money we have passed on this floor has an added amount of $2 billion for home heating assistance. That is very important in certain places in our country where heating assistance is needed. We all know the cost of energy is going to be very high this winter.

There are border security improvements. I come from a State that is very concerned about the security of our borders. I went with the majority leader just 2 months ago on a helicopter tour of the border, where we saw the footprints that were very fresh in the fields in Mexico, that walk right into the Rio Grande River, knowing those were illegal aliens who had just come into our country. We went to one of the border stations where we saw illegal aliens being processed. They were not from Mexico, they were from other countries. So the funds for increased border security are in this bill. This is something that is important to the security of our country.

I hope we will be able to pass this bill without being thwarted by the minority. We will have more than a majority if we are forced to cloture. I do not know if we will have 60 votes, but it will be the majority of the Senate speaking on these important issues: the Department of Defense appropriations and the Katrina and Rita supplemental appropriation which will get people the help they need in important areas such as education, debris cleanup, medical treatment, and reimbursement. It has provided for other areas of emergency needs such as the avian flu vaccine, LIHEAP assistance, border security improvements—things that we have worked on all year in the Senate and which have the support of a majority of this body.

This is not the time to be held up on procedural motions that would require

60 votes when the majority should be able to go forward on policies that have been set in the Senate all year. The Senate has passed ANWR. The Senate has passed Katrina- and Rita-related supplemental appropriations. The Senate always passes the Department of Defense appropriations. It would be unthinkable not to be able to do that before we leave for the year, to fulfill our responsibility. I hope we can come together at a time when we should show our country this unity.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COBURN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I ask unanimous consent to speak in morning business for not to exceed 15 minutes.

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

The Senator from Maine is recognized.

The remarks of Ms. COLLINS pertaining to the introduction of S. 2145 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The minority leader.

USA PATRIOT ACT

Mr. REID. Mr. President, the issue before this body in the waning days and hours of this first session of the Congress is whether the PATRIOT Act should be extended.

Why are people concerned about the PATRIOT Act? Let me read an interview that took place, which is a condensation of a long story that appeared in the Washington Post about Las Vegas, NV. Barton Gellman was the writer of the article, and here is what he said:

> At the end of 2003 there was an . . . alert. One of the reasons was a fragmentary report. . . . [At the end of 2003] they tried [the Federal Government] for the first time ever to create an instant real-time moving census of every tourist and visitor in the city during its most visited period of the year.

Forty-four million, 50 million people come to Las Vegas every year.

Continuing the statement of Mr. Gellman:

> They sifted through about a million people who were considered potential suspects to see if they could find any match with any other indicator in their big database of the terrorist universe. So they used grand jury subpoenas, they used national security letters and they got every hotel guest, every air passenger, every person who rented a car or a truck or a storage space, and they made a giant database out of that and started sifting [through] it.
>
> In the parlance of the intelligence community, the whole thing washed out. They had no suspects. There was no attack. They had an undeniably important motivation here, but one of the prices that the country has paid for that is that on the order of a million people are now in government databases and are staying there. So if you got a Las Vegas hotel room and maybe if you were there with someone you ought not to have been there with, what happened in Las Vegas did not stay in Las Vegas.

The question was asked:

> How can it be that four years into the Patriot Act the national security letters have not been challenged in court as, you know, a blatant intrusion of privacy?

Mr. Gellman continues:

> Well, there have recently been two court cases. We know of only two cases ever in which they were challenged. The plaintiffs are not officially known to the public. I discovered one of them. In the Connecticut library case that was the lead of my story, the librarian who received a national security letter was afraid to call a lawyer because the letter said that he shall not disclose to any person that he'd received it. But the reason there hasn't been much public debate until now is because no one had any idea what scale they were being used on. And crucially, people did not know, even in Congress, that the great majority of these letters asked for information about ordinary Americans and U.S. visitors who are not suspected of any wrongdoing.

We do not know the exact number of these letters. And ''letters'' is a word that is not appropriate. These ''demands.'' We know there are 30,000. Could be more, may be less, but tens of thousands of Americans, just like what happened New Year's Eve in Las Vegas. That is why people are concerned, on a bipartisan basis, about the PATRIOT Act.

The President and the Republican leadership should stop playing politics with the PATRIOT Act. They should join the bipartisan group of Senators who agree the Government can fight terrorists and protect the privacy and freedom of innocent Americans.

Americans want both liberty and security. These two terms are not contradictory. We do not have to sacrifice our basic liberties in the course of strengthening national security.

Democrats voted to support the PATRIOT Act. We voted for the original act in 2001. It passed with all but one Democratic vote. We voted unanimously for an extension of the bill in July of this year. Virtually every Senate Democrat has cosponsored Senator SUNUNU's—a Republican—bill to extend the act for 3 months while negotiations on a longer term extension continue.

We support the act, but we want to improve it. That is what this is all about.

Now, the President in his press conference today, of course, directed his attention to me, among others. The President, I think, talked about trust and credibility. So I am willing to take that at face value: trust and credibility. I think it should be based on liberty and security, but he wants to do it on trust and credibility.

Let's take a look at this. On 9/11, we had a terrible calamity in this country. We responded quickly and passed the PATRIOT Act. We were wise, though, in setting certain sunsets; that is, if they were not renewed, they would expire. We did that. That was the right thing to do.

We are now back, and the time has come to look at how the PATRIOT Act has worked. I read to the Senate what has happened with New Year's Eve in Las Vegas.

Trust and credibility: The President told us there were weapons of mass destruction in Iraq, that there were secret meetings in Europe, al-Qaida training in Iraq. The Secretary of State still talks about the aluminum tubes. She talked about them then—yellowcake, things that were supposedly there so they could develop these weapons of mass destruction.

Every one of these the administration either knew or should have known was absolutely not true. We were told that we would invade Iraq, and as we proceeded up these boulevards, they would be throwing bouquets. Well, there are 2,200 dead Americans, 17,000 wounded Americans, a third of them grievously wounded, missing arms and legs and blind and head injuries, costing the American people $2 billion a week.

Ronald Reagan said: Trust but verify. And that is what this is all about, verifying what has gone on in the last 4 years with this PATRIOT Act.

I supported the first PATRIOT Act. I do not regret my vote. I supported the bill that came out of the Senate Judiciary Committee unanimously. I supported the bill that came out of the Senate unanimously. But I, with other Senators, believe the PATRIOT Act as presently designed is not good for America.

Mr. DURBIN. Will the Senator yield for a question?

Mr. REID. I am happy to yield.

Mr. DURBIN. Is the Senator from Nevada aware of the fact that the President said today, at his press conference:

> In a war on terror, we cannot afford to be without this law [the PATRIOT Act] for a single moment.

I ask the Senator from Nevada: Did the Senator from Nevada not ask unanimous consent to extend the PATRIOT Act as written for 3 months, and is it not true that when you made that request a few days ago, the Republican leader of the Senate objected to extending the PATRIOT Act for 3 months, after the revision of the law was held up here on the Senate floor?

Mr. REID. Mr. President, I asked unanimous consent that a bipartisan piece of legislation extending this bill for 3 months be made operative. It was objected to by the Republican leader.

The President wants to talk about trust and credibility. I think we need to look at that statement: Not for a single minute, not for a single hour should the PATRIOT Act not be in effect. Well, the burden of it not being in effect is solely on the shoulders of the

President without any question. All he would have to do is pick up the phone, call his Republican leader in the Senate, say go ahead, 3 months, maybe you guys can work something out.

This is a bipartisan piece of legislation. We support the act. We want to improve it. That is what this is all about. Let's be clear who is killing the PATRIOT Act. Yes, we killed the conference report on a bipartisan basis. We did the right thing for America because we believe that liberty and security should be part of this Government. Twice last week a bipartisan group of Senators tried to move forward on a 3-month extension but instead of joining us, the President and the Republican leadership decided that they would rather see the bill expire.

Maybe the President has trouble getting away from being ''campaigner in chief,'' maybe not wanting to be as badly the Commander in Chief as he wants to be ''campaigner in chief.'' Maybe he thinks this gives him a political advantage. The responsibility of this bill going up or down is his and no one else's. It is time for the President to put politics aside and national security first. The President and the Republican leadership should join us in supporting the PATRIOT Act and protecting Americans. It would be irresponsible and a dereliction of duty for the administration to allow these provisions to expire.

Nobody seriously believes that the expiring provisions of the PATRIOT Act should be allowed to lapse while this debate continues. Senator SPECTER and Senator LEAHY can work this out. Democrats are not the only ones who believe we should improve the PATRIOT Act. Senators SUNUNU, CRAIG, HAGEL, and MURKOWSKI voted not to terminate debate last week. All four of these Republican Senators have cosponsored the bill to extend the act for 3 months. I have had Senators from the other side of the aisle come and say: That was a very close call. That was a hard vote for me.

There is a bipartisan coalition of Senators wanting a 3-month extension of the PATRIOT Act in its current form so that we can pass a better bill that will have the confidence of the American people.

RUSS FEINGOLD, the Senator from Wisconsin, one of the finest Members of Congress I have ever served under, a person who I believe is one of the consciences of the Congress, someone with an impeccable record of academics, a Rhodes scholar, Harvard law, he was the only person to vote against the PATRIOT Act the first time. He took this on during a campaign for reelection. Millions and millions of dollars were spent to try to exploit this by his Republican opponent, and it didn't work. He won overwhelmingly. He said at a press conference this morning:

> It is the President who wants to play chicken here. He wants to have the risk taken that this would expire. All he has to do is be just a little reasonable, [allow] the will of the Senate. The law will be extended permanently, other than certain sunset provisions. I think it's clear that the president is the one who is playing politics with this.

So says RUSS FEINGOLD. Just as Senator JOHN MCCAIN called the President's bluff on torture not being part of what America does—rather than calling bluffs, he persuaded the President that we needed to check potential excesses in interrogation tactics—we also need to ensure that we put in place checks on the Government's power to trample on the privacy of innocent Americans.

I would hope the President would put down his campaign hat and put on his hat that is the President of the United States, Commander in Chief, and recognize that legislation is the art of compromise.

I want to first ask unanimous consent——

Mr. GREGG. Will the Senator yield for a question?

Mr. REID. I am happy to yield for a question to my friend.

Mr. GREGG. If the majority or even a few Members beyond the two who voted for cloture had voted with the Republicans for cloture on the PATRIOT Act, isn't it true that the PATRIOT Act would have been on the floor?

Mr. REID. I am sorry. Say that again.

Mr. GREGG. If we had been allowed to go forward without cloture, isn't it true that the PATRIOT Act would have been on the floor, if the Democratic membership had voted for cloture?

Mr. REID. The PATRIOT Act is still on the floor. Cloture was not invoked, so the PATRIOT Act is still in order.

Mr. GREGG. But wouldn't we be able to complete the business of the PATRIOT Act if cloture had been invoked?

Mr. REID. As I explained, and it has been talked about for some time, the PATRIOT Act in its present form is not something that can muster the parliamentary procedure to get through the Senate. As has been indicated, cloture was not invoked on this bill. The bill is still before the Senate. The reason being, a bipartisan group of Senators believes the bill is bad. I have given a number of reasons it is bad. These should be corrected. The bill in its present form is not good. The law that is now in effect, we have agreed that there should be a 3-month extension on it. It is a bipartisan group of Senators who have agreed to that. So I say to my friend from New Hampshire, it is the considered opinion of this Senator that if this goes down, based on what the President said this morning, if this bill is not in effect for one day, the country can't afford that and, therefore, I think if he believes what he said, then he should agree to the 3-month extension.

Mr. GREGG. If the Senator will yield for an additional question.

Mr. REID. I am happy to yield.

Mr. GREGG. My point was, if there had been a vote which had invoked cloture so that we could have completed the business of the PATRIOT Act, we would have a vote on final passage of the PATRIOT Act, and it would have been put into law because a majority of Members were for it. So since the Democratic leader basically led the opposition to cloture, therefore led the opposition to the ability to get to a final vote on the PATRIOT Act, it does seem to me that you are a little bit in the position right now like the person about 50 years ago in New Hampshire who shot his parents and then, when he was brought before the court on the murder charge, threw himself on the mercy of the court because he claimed he was an orphan. Are you an orphan?

Mr. REID. I say to my friend, who usually is very analytical and concise, that example is pretty bad. I would also say that we could stand out here and say the reason we haven't finished the Defense appropriations bill is because there is extraneous matter put in the bill. If that had not been in the bill, we would be home wrapping our Christmas presents now. There are a lot of hypotheticals. That hypothetical doesn't apply. We are here in the real world. The real world is that cloture was defeated on the effort to cut off debate by a bipartisan group of Senators. There is legislation now pending that would take a matter of a minute to approve; that is, to approve a 3-month extension.

UNANIMOUS CONSENT REQUEST—S. 2082

Therefore, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2082, the 3-month extension of the PATRIOT Act; that the Senate proceed to its immediate consideration; the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, I object.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the PATRIOT Act, as reported by the Judiciary Committee, S. 1389, Calendar No. 171; that the committee substitute be agreed to, the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Reserving the right to object, would the minority leader stand for a question?

Mr. REID. Of course.

Mr. KYL. In the Philadelphia Inquirer, a reporter by the name of James Kuhnhenn has quoted the distinguished minority leader, and this has been out on the airwaves. I don't want people to be quoted inaccurately. This was according to a report of December 17, 2005, and this comment is attributed to the Senator from Nevada: ''We killed the PATRIOT Act.''

I ask my friend, the distinguished minority leader, whether that is an accurate quotation of what the Senator said.

Mr. REID. Mr. President, I stated earlier in my remarks a few minutes ago that it is absolutely true that the conference report on this bill was killed. Cloture was not invoked. I say to my friend, the Senator from Arizona, that is a fact. Maybe the term was the wrong term. Maybe I should have said defeated or whatever. But that quote is accurate, sure.

Mr. KYL. I will explain why I ask the question. It was reported to me that in the remarks the distinguished Senator made, he said, ''Let's be clear about who is killing the PATRIOT Act.'' I just wanted it to be clear that the action taken to prevent us from getting a vote on the PATRIOT Act was an action, a filibuster, or not invoking cloture, and that action has prevented us from completing action on the PATRIOT Act, which means we were not able to take a final vote on it and therefore to reauthorize it.

Mr. REID. Reclaiming my time, Mr. President, I appreciate the example——

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Objection, Mr. President.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Reclaiming my time, the example given by my friend, the distinguished Senator from New Hampshire, about killing a parent and claiming to be an orphan, and my friend from Arizona talking about our having killed the PATRIOT Act—look, everyone knows Senate procedure. The conference report was defeated. The ability to extend the conference report was made minutes after that, saying—in fact, it is no secret. I told the majority leader on the morning before that vote:

You don't have enough votes to invoke cloture. Why don't you extend it for 3 months?

That wasn't done then. We offered to do that immediately after cloture was defeated. We offered it again today. Not only did we offer to extend it for 3 months, we offered to take up the bill that passed the Judiciary Committee and the Senate unanimously and pass it in the Senate unanimously.

I think the appropriate thing to do would be to have the 3-month extension. Obviously, this business doesn't mean as much to the President as he said to the American public in his statement because it is up to him.

The PATRIOT Act does not expire until the 31st day of December of this year.

Mr. DURBIN. Will the Senator yield for a question?

Mr. REID. Yes.

Mr. DURBIN. I want to make the record clear. I was with the Democratic leader when he made the statement about the PATRIOT Act. I took it to mean that we defeated cloture on the conference report on the PATRIOT Act. That was the way I understood it. It has been twisted a little bit by some who want to read more into it. But it is accurate, I believe, to say that.

I will just ask the Senator from Nevada, at least once informally with Senator FRIST, and now four different times on the floor of the Senate, we have tried to extend the PATRIOT Act for 3 additional months while we work out our differences—an extension which would not change the PATRIOT Act in any way whatsoever—so that for 90 days, at least, it could continue to be used and enforced without question. Now we have had the Senator from Arizona, Mr. KYL, object to extending the PATRIOT Act for 90 days.

One could reach the conclusion that the Senator from Arizona opposes the PATRIOT Act as currently written if he opposes extending it for 90 days, I might say. I am happy to allow the Senator to reply. If the Senator from Arizona supports the PATRIOT Act as currently written, why would the Senator object to extending the PATRIOT Act for 90 days?

Mr. REID. Reclaiming my time, Mr. President. Mr. President, maybe——

Mr. KYL. If I may ask the minority leader——

Mr. REID. Mr. President, maybe I didn't have the education of a lot of my friends. I was educated in a little school in Searchlight, NV. We didn't have English class. Maybe my choice of words wasn't perfect. Maybe I should have said we killed the conference report. But the fact is, that is what we had done. People can try to change the words and the meaning of it all they want, but that is what happened. I may not have the ability to express myself like the folks who were educated in all these private schools and fancy schools, but I understand the Senate rules. Everyone knows that cloture was defeated, killed, whatever you want to call it. That means that cloture was defeated and that bill is still before the Senate.

Any time the leader wants to bring it up again, he can do that. But the fact is, we have offered on numerous occasions to extend it for 3 months. If it is not extended past December 31, 2005—as the President said, we have to have it every minute of every day. He should understand that the brunt of it not being extended is on his shoulders. Even the only Senator who voted against it 4 years ago said it should be extended. That is RUSS FEINGOLD. We have I don't know how many cosponsors, but a significant number who believe that could be done.

But it appears to me that the White House and the Republican leadership in the House and Senate think they have a political issue. If they think the American people are that unable to understand, then they have a lot coming. The American people understand by virtue of this bipartisan vote that this extension should be done the right way. The right way is to extend it 3 months and see if the kinks can be worked out. Remember, the extension of the PATRIOT Act passed this body unanimously. It was changed in the House. They put a lot of things in it that should not be in it. It came back and Republicans and Democrats raised their arms and said: You cannot do this.

So the fact is, if the PATRIOT Act is not extended, the whole burden is upon the White House and the Republican leadership in this Congress.

Mr. KYL. Mr. President, the minority leader has the time right now; is that correct?

Mr. REID. That is true.

The PRESIDING OFFICER. He has the floor, yes.

Mr. KYL. If the leader would like to relinquish the floor to me, I can respond to the Chair rather than going through the minority leader. Otherwise, I will go through the leader and respond to the Senator from Illinois that way.

Mr. REID. I yield the floor.

Mr. KYL. Mr. President, let me respond to the minority leader and to the question asked of me. The words that the minority leader used were ''killed the PATRIOT Act.'' I don't suggest that this reflects his view that the PATRIOT Act should not exist. I want to be very clear about that, just as I am sure the question posed to me by the Senator from Illinois doesn't mean to suggest that my objecting to a 3-month extension means that I don't want the PATRIOT Act to exist. I have made it crystal clear in all of my comments before today that that is precisely what I want to see—if not the PATRIOT Act in its existing form, until December 31, in the modified form as developed in conference between the House and Senate. I think we can both agree that we understand that the PATRIOT Act is a good thing and indeed it is a good thing whether in the existing form or in the form that came out of conference committee.

Let me address that for a moment. As we know, in the Senate, we passed it out unanimously—unanimously—and it is difficult for me to see why Members of the other side of the Chamber are proud of having filibustered it so it cannot come up—don't use the word ''killed it''—having prevented it from coming to a vote when, by everyone's agreement, about 80 percent of what the Senate passed unanimously ended up in the final version of the conference committee report. By 80 percent, I mean of the contentious issues. Most of the bill was not contentious. There were a few provisions that were. On those, the House of Representatives in the conference committee conceded most of the ground. So, in other words, the Senate mostly got its way in that discussion.

It seems to me that what the other side is basically arguing is, unless we get our way 100 percent, then we are not going to agree to this. The distinguished minority leader pointed out that everybody knows how the filibuster rules work. I think it is also clear everyone knows how the two Chambers work together. We pass our version of the bill, the House passes its version of the bill, there are a few items in disagreement, and those are

compromised. It is not that one Chamber gets its way and the other Chamber has to concede to everything.

What has been clear from the House of Representatives is that 3 months, 6 months, 1 year is not going to change anything. They have come to the conclusion that they have already conceded more than they should have. Frankly, from my position, I would be of that same view.

Mr. DURBIN. Will the Senator yield for a question?

Mr. KYL. It seems to me that were there to be additional concessions made, we would no longer have a PATRIOT Act that could easily be used by our law enforcement and intelligence people to protect us. It would make it more and more difficult. As a result, you do have to draw the line somewhere and say: Look, if you try to change this any more, it is not going to protect the American people; in fact, it is going to prevent law enforcement and intelligence people from doing their job of protecting the American people.

There does come a point in time when you have to say this is it. Either you are going to be for extending this or not, and that is the position we were in last week when the minority—a majority favored moving forward; I think it was 52, 53 votes. A minority said no, but that minority under our rules had the ability to prevent us from moving forward.

I will be happy to yield for a question.

Mr. DURBIN. I would like to ask the Senator from Arizona if he would consider two questions. The first question is this: Is it not true that the position we are arguing in the PATRIOT Act is the same position that the Senator from Arizona voted for in the Judiciary Committee and at least did not object to on the floor of the Senate? So to suggest it is a radical position—I would like to ask the Senator, has he changed his view on that?

Mr. KYL. Let me answer that question, and I will be happy to yield again.

I don't believe the Senator heard me use the words ''radical position.'' I have not contended anything is a radical position. What I have said is it would not work. We do want something that will work to protect the American people.

Mr. DURBIN. If the Senator will yield, I believe it worked when I voted for it in the Judiciary Committee, as the Senator did, and agreed to in passing it unanimously on the floor. I think it still will work.

The second question I ask the Senator is this: Here is the choice we have. The PATRIOT Act can expire on December 31 of this year or it can be extended at least 90 days by a request being made on the floor. Does the Senator from Arizona think it is better for the PATRIOT Act to expire December 31 than to extend it 90 days?

Mr. KYL. Mr. President, let me answer the question this way: Since it is not at all clear, given the holidays and the fact the Senate is only in session at the very end of January, that we could resolve heretofore unresolvable issues in 90 days, how about a 1-year extension? That way, we would make sure the PATRIOT Act did not expire, we would have it in force, and whatever time it took for us to try to reach agreement, there would at least not be uncertainty; we would know what the law was. If we were able to reach agreement in the meantime, then, of course, we could pass the bill and whatever changes that would be made were made. Let me answer the question that way and perhaps not pose a specific unanimous consent request but see what the response of the Senator from Illinois would be were I to do that.

Mr. DURBIN. I say through the Chair—and I am not sure of the exact parliamentary form we are using here—in a question to the Senator from Arizona, based on his experience working in both the House and Senate, is it not more likely that when you say 1 year, it will be 11 months, 3 weeks, and 6 days before we consider this seriously again? Has it not been his experience—it has been mine—that in this legislative body, if one says 90 days, it is more likely people will get serious within a few weeks and start talking about real change? Perhaps the Senator's experience is different from mine. Giving it a year means putting off the inevitable. Let's get this resolved and move forward.

Mr. KYL. The Senator from Illinois certainly makes the point that when you have a longer deadline, work tends to be put off. I make this point: The distinguished chairman of the Judiciary Committee is here. We have been working for the better part of a year on this reauthorization of the PATRIOT Act. The chairman can tell us when the Judiciary Committee took it up. There were a lot of sessions before that. For many months now, this issue of reauthorization has been well known to all of us. We have known what the deadline was, and we worked on it and worked on it hard.

I think people of good faith have reached the degree of compromise they believe they can reach at this point. Given the fact that most of the concessions were made by our House colleagues and that they have indicated they are not ready to make any additional concessions and that the President has made it clear he does not want to see the act degraded any further than the conference report presented to us, I suggest that at some point legislators need to make a decision either to vote yes or no and not to hide behind what is, in effect, a procedural vote—namely, a filibuster—and saying: We are really for it; that wasn't really a vote to kill it; we were just voting not to vote on it. When you filibuster a bill, when you vote not to vote on something, it is the same thing as voting against it in practical effect when the act expires on December 31.

So my suggestion is that we roll up our sleeves, if you want a real deadline, instead of 3 months from now, we have another week. We are going to be here apparently until Friday. Let's conclude our work, vote on it, have an up-or-down vote, and see whether people really are ready to go into the new year without an extension of the PATRIOT Act.

I am happy to yield the floor to the Senator from Pennsylvania.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I will pick up on comments made both by the Senator from Arizona and the Senator from Illinois.

When the Senator from Illinois says if you have a 1-year extension, nobody will get serious about it until 11 months, 3 weeks, and 6 days, I agree with that. But if you have a 3-month extension, nobody will get serious about it until 2 months, 3 weeks, and 6 days.

The Senator from Arizona has made the comment that we are going to be around here for a while. I usually like to agree with Senator KYL, but I hope he is wrong about Friday, or maybe, long about Thursday, I will hope he was right about Friday. We may be here longer than Friday. But we know we have a cloture vote on Wednesday. So that means we have 2 days, which is twice as long as the Senator from Illinois postulates if we have a 1-year extension. That is twice as long, 2 days, to work on it.

I do not know what the House of Representatives is going to do. I know that Chairman SENSENBRENNER has been very cooperative, but I don't know what his rejoinder would be. He is talking about an extension, or I have heard a rumor that there is talk in the House about an extension for 4 years. I do not know what the President is going to do. He said he will not sign an extension. I do not know what the majority leader is going to do. He said he is not going to bring it up. But I am ready, willing, and able to sit down with the Senator from Idaho, who is in the Chamber. I cosponsored his so-called SAFE Act. I am trying to work it out.

We passed a good bill out of the Senate. Everybody agrees with that because it was unanimous. We made certain changes because we have a bicameral system. I am ready to sit down at 2:10, 2 minutes from now, or right now, and see what people have in mind.

The distinguished ranking member at one time said that if we had a modification on the conclusive presumption about which he feels very strongly—it was the subject of a lot of floor debate—so that we did not have a bar that on representation by certain ranking officials, the national security interests or foreign diplomacy issues were conclusively presumed, there couldn't be disclosure, if there could be modification of that standard, I think we might work that out.

That is a big point. It would be great for the country if it were to be seen

that Republicans and Democrats get together on something, practically anything.

I yield to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I think in the closing moments prior to the cloture vote and following that the Senator was very open, and I appreciate his willingness to come together with the House to try to resolve it. What is most important—and I want to say it and I want to say it again—for those of us who offered the SAFE Act and stood together, our intent was not to kill the PATRIOT Act and it never has been. I would hope that this process does not end up in the PATRIOT Act expiring without modifications of it and the reauthorization of it. The chairman certainly has spent a good deal of time in that effort, as have I and many others. His willingness now to sit down and to attempt to work this out, all of that is doable and can be accomplished, especially if the time we are now involved in, in dealing with DOD conference and DOD reauthorization and the budget reconciliation conference is going to be protracted to the extent of the rules of the Senate, then we do have that time more than ever.

I would hope it is possible to come together. I do know the Justice Department has stated that all ongoing investigations would not be compromised during the period of time in which the PATRIOT Act might expire. That is not the point. The point is we ought to do it. We ought to do it appropriately, and I would hope that in the end the chairman would take us as close to the Senate version as we could possibly get because I think the work that came out of the Senate Judiciary Committee is what this Senate ought to vote on once again and what ought to become law.

I thank the chairman for yielding and I yield the floor.

Mr. DURBIN. Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, I do not know if anybody is going to agree with the proposed change that was made on the conclusive presumption. It may be that it is not negotiable. I do not know. All I have to say is that there are a lot of people with a lot of diverse viewpoints, and I am prepared to sit down with anybody or everybody and see what those viewpoints are.

The Senator from Arizona has been very cooperative. He has views. The Senator from Illinois does, the Senator from Idaho does. I am trying to get it worked out. On the floor, I am not prepared to say what concessions would be made, but as long as we are going to be around here, there is no harm in talking.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am glad we are having this conversation. I think it shows that there is some room for dialogue and, I hope, for progress to be made on this issue. I think it is unfortunate some of these statements made earlier today by the President suggesting that those who did not share his point of view on this issue were somehow not as sensitive to the threat of terrorism. I can assure the President and all listening to this debate there is sensitivity to that threat of terrorism on both sides of the aisle by people who were on both sides of that cloture vote on the PATRIOT Act.

What is at issue are some fundamental questions about our constitutional rights, our freedoms, and liberties in America. Each of us, when we assume the responsibility of Senator, swears to uphold the Constitution. There are so many important elements within that Constitution, but one might argue that the Bill of Rights is the most important because it is a guarantee of our individual rights and freedoms. So when we initially enacted the PATRIOT Act in the fear that was gripping this country after 9/11, there was a concern that perhaps we had gone too far; perhaps we had given the Government more authority over our privacy, more authority over our freedom, than was necessary.

In the bipartisan wisdom of those who wrote the act, we promised that 4 years afterwards we would revisit it and see if, in fact, it needed to be changed in any respect. That is what this debate is all about.

There may be some today who argue we should do away with the PATRIOT Act, but I cannot say who they might be. The only Senator who voted against it is supporting the reform that passed the Senate Judiciary Committee, so it is clear that he was prepared to vote for a PATRIOT Act with some modifications.

The Senator from Idaho, Mr. CRAIG, and I have been the lead cosponsors of the SAFE Act which, as he accurately described, was an attempt to modify the PATRIOT Act, not to abolish it, but to modify it, in certain respects, so as to protect our basic freedoms and liberties. We were happy at the end of the debate in the Senate when the bill came forward in the Judiciary Committee on a unanimous, bipartisan vote, which I hasten to add is a rare thing in the Judiciary Committee, if not the Senate. A unanimous, bipartisan vote on this measure brought it to the floor where it was enacted by a voice vote since there was no objection to it on the Senate floor. That is an amazing testimony to the fine work of the Senator from Pennsylvania as chairman of the committee and all the Members who compromised to reach that point.

It is worth noting for the record when that occurred. It occurred in July. It was in July that we finished our work on this and sent it over to the House of Representatives, understanding we were backing up against the deadline of December 31. It was not until November 9 of this year that the House appointed their conferees. They waited 3 months or more before they appointed conferees and sat down to seriously debate this issue. Then a few weeks later, even with Thanksgiving intervening, they produced this conference report. So if it is a matter of timing, it does not take that long to try to work out differences.

That is why those of us who are proposing a 3-month extension believe it is entirely appropriate and possible that we would reach an agreement in that short period of time.

I would like to spend a moment reflecting on the substance of this debate. We have talked about the Senate procedure and timing and what words were spoken by Members and what they meant, but it is important to get down to the substance of the issue to understand that what we are talking about are some fairly fundamental issues.

The first is the question of Section 215. That is a section that will allow the Government to obtain medical records, financial records, library records and other sensitive personal information simply by showing, under the current PATRIOT Act, that the information might be relevant to an authorized investigation. That is as low a standard as I can imagine, and it basically means that the Government, without proof of any wrongdoing on the part of any individual or group of individuals, could secure a great deal of private personal information and cull through it simply by saying it may be relevant to an authorized investigation.

When we passed the Senate bill reauthorizing the PATRIOT Act, we said that it really should be a higher standard, not an impossible standard but a higher standard; that the person whose records are being sought has at least some connection to the kind of conduct we are trying to guard against. That is not a huge leap in terms of our legal standard in America. It is consistent with what we call due process.

The second concern with Section 215 is an equally important one. Assume that one is the custodian administrator of records, either at a business or at a hospital, and they receive a notice under section 215 of the PATRIOT Act, the Federal Government wants all of their records in their hospital on hundreds, if not thousands, of patients, and they believe that is an unwarranted intrusion into the privacy of their clients; what can one do if they believe the Government has gone too far?

Currently, under the PATRIOT Act, they are precluded from even arguing their case in court, arguing that the Government has gone too far. And section 215 has an automatic permanent gag that prevents any person from speaking out, even if he believes his rights have been violated. In my mind, that is a fundamental attack on a very basic freedom in America.

So when we wrote the revision of the PATRIOT Act in the Senate, which all

of the Senators voted for, Democrats and Republicans, we said we would give a person the right to go to court and to ask that this gag order be lifted so that they could argue the merits of the Government's activities. Those are two critical issues when it comes to the rights of the freedoms of Americans.

To argue that they are inconsequential, that they are not worthy of fight, is to ignore our basic responsibility. Many of us who are arguing to extend the PATRIOT Act also want to include in it some very fundamental protections of the rights of Americans. That is what this debate is about.

It is not about who can get the upper hand on the political debate on a day-to-day basis. I think most Americans are weary of that. I am. What we are trying to do is extend the PATRIOT Act for 90 days past December 31 and work out these differences, significant differences but differences we can address and address successfully.

It is interesting to note that this debate about the PATRIOT Act, which is going on on the floor of the Senate and in the President's press conference, is occurring at a moment in time which is freighted with significance in terms of the activities of this Government in relation to the privacy and the personal rights of its citizens.

It was disclosed in the New York Times and Washington Post and other major papers last week that for several years now our Government has been eavesdropping on American citizens through the National Security Agency. This, to me, is a dramatic departure from the basic rules and process we followed for over 30 years in America, where we have said that if you want to listen in on the conversation of my neighbor or someone in my family, you need to have a legal right to do so and that legal right will be established by going to court to establish why it is necessary for you to listen in on that conversation; to establish, for example, probable cause that a crime has been committed or probable cause or evidence that someone has engaged in unlawful activities. That is the American standard. It appears now, from what the President has said, that this administration for several years has rejected that standard. The President has assumed the power to eavesdrop on the conversations of innocent Americans on the possibility that they will come up with some evidence of wrongdoing. This is not only illegal, it borders if not crosses the border into a violation of criminal law. It is extremely significant.

In this holiday season with all the other things we are thinking about personally, with the rush of Congress to adjourn and go home and be with our families, I don't know if we are reflecting on the significance of what we have learned in the last several days. To think that any President of the United States believes he has the power as Commander in Chief to basically avoid, ignore, or violate the laws of the land is a significant charge.

I am encouraged that Senator SPECTER, the chairman of the Senate Judiciary Committee, a member of the President's own party, from Pennsylvania, has promised us a thorough investigation when we return in January as to what has been occurring in terms of the National Security Agency and this eavesdropping. But I raise this because our entire discussion of the PATRIOT Act is in the context of this consideration: Simply stated, have we gone too far in violating the basic rights and liberties and freedoms of Americans in our pursuit for security and safety? Can we strike a balance and be safe as a nation without endangering our basic freedoms and liberties? I think this question of eavesdropping on hundreds if not thousands of innocent Americans raises that question foursquare. But I also believe the extension of the PATRIOT Act does as well.

When the Democratic leader of the Senate comes before the body twice today, as he did last week, and asks for an extension of time so the PATRIOT Act will still be in force, can still be used for 90 days while we work out these significant questions, it is a good-faith offer. For his critics—whether in the executive branch or legislative branch—to suggest that he wants to do away with the PATRIOT Act or he is insensitive to the terrorist threat is not a fair characterization of his position nor the position of many of us. We believe the PATRIOT Act is important, but we believe some modifications will make it an act that is more consistent with our constitutional rights.

I hope the Republican leadership in the Senate will reconsider their position. I hope they will allow us to extend the PATRIOT Act for 90 days. We can go home for the holidays and return in January, which the Senate Judiciary Committee is going to do, anyway, and get down to business, rolling up our sleeves to work out this conference committee. Let's make sure the PATRIOT Act is not only reenacted but in a fashion that is consistent with our basic freedoms.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. NELSON of Florida. I want to again commend the Senator for reminding the Senate of the substance of the issue. The substance of the issue is that Americans are quite concerned they are going to lose their civil liberties. They certainly want the Government of the United States to in fact prosecute the war against terrorists, but they don't want our society, because of our protection of civil liberties, to change into some other kind of society. Would the Senator agree that is the substantial majority opinion in this country, to protect our civil liberties?

Mr. DURBIN. It certainly is in my State of Illinois and I suspect nationwide. It is interesting to me, the passions that many of our colleagues bring to the fight of protecting a person's money—which is an important part of our job—but when it comes to protecting our freedoms, I don't see the same level of passionate commitment. I hope we will see that change during the course of this debate. But I think Americans value their freedoms very much.

I always recall, as a practicing attorney, how many people would be dismissive of criminal procedures to protect defendants until it was their teenage son or daughter who was arrested and then they came to their attorney and said, What can we do? What does the law provide to protect us?

I think we should all be sensitive to that fact.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in a few moments—there are a few details being worked out in the next few seconds—we will be moving to hopefully get the clock started on the omnibus deficit reduction bill. As our colleagues know, as I outlined this morning, we have 10 hours to spend on that conference report. Then I know there are other discussions and comments that are wanted to be made about the PATRIOT Act. We plan on doing that using that time. A number of people have been waiting to speak on that.

At this juncture, while we work out the last few remaining details, 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. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, our intention has been to go to the Omnibus deficit reduction bill, but apparently not all the papers are in order at this juncture; therefore, we will postpone that for a bit of time, although as soon as that paperwork is available I will be coming back to the floor in order to proceed to the consideration of the conference report, which is going to require a vote. That is for getting the clock started.

But, in the meantime, because we are sitting here with empty time, I ask unanimous consent that Senator KYL be permitted to speak, followed by Senator KERRY, in which case my intention is to come back and propound the unanimous consent request at that juncture.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Arizona.

PATRIOT ACT

Mr. KYL. Mr. President, this resumes our discussion of the PATRIOT Act, which we were discussing before this little interlude. Since much of the attention has been focused on section 215 of the PATRIOT Act, I want to discuss that for a little bit.

The Senator from Illinois, for example, was talking about that just before we broke and, specifically, talked about the subject of section 215, which includes financial records, library records. Incidentally, ''library'' is never mentioned in the PATRIOT Act. It is just that library records are included in the general definition of business records. As a result, people have focused on that. So we are going to talk about that for just a little bit.

As he pointed out, the standard for a court to issue a warrant is relevance. That is the same standard that is used in all the other civil subpoenas. It is a standard that the courts had begun to impose since we did not have a standard within the law itself. Given the fact that is the standard the courts began to impose—and it is a reasonable standard—we amended that into the law. Part of what passed the Senate unanimously was a relevance standard. So there is nothing wrong with having a relevance standard. I would think those who are weary of the application of the PATRIOT Act would agree this was a good addition. It is an additional safeguard to have a relevant standard.

What exactly is section 215? That is what I would like to address. What it allows is for the FBI to seek an order from the Foreign Intelligence Surveillance Act Court for the production of tangible things—that is the definition—including books, records, papers, documents, and other items for an investigation to obtain foreign intelligence information. That is the key. You are before the Foreign Intelligence Surveillance Act Court, and you are asking for information that pertains to an investigation of foreign intelligence information. That is further defined in the act as information relating to foreign espionage, foreign sabotage or international terrorism.

It is impossible to get from the court—talking about getting an order from a judge—anything that isn't relevant to foreign espionage, foreign sabotage or international terrorism. All of this concern about wanting to find out what kind of books you checked out from the library is simply wrong. Anybody who talks about it in those terms and knows what I have said cannot be serious about objecting to section 215 of the PATRIOT Act.

Let's put it in context. There are 335 administrative subpoenas authorized for our Government. For example, if you are suspected of Medicare fraud, the Department of Health and Human Services has to issue an administrative subpoena to get information relating to whether you might be guilty of Medicare fraud, such as your business records or somebody else's business records that would perhaps go to proving that case. Or perhaps bank fraud, you could get the bank records that might pertain to that. In none of these other 335 cases is it necessary to go to a court first. There is only one exception. Under the PATRIOT Act, you are required to go to the FISA Court in order to get a subpoena with respect to terrorism. One would think that given the seriousness of terrorism and sometimes the emergency nature of it, it would be easier to get a subpoena dealing with terrorism than it would Medicare fraud or bank fraud. That is not the case. We care so much about civil liberties, we added this requirement that you have to go to court first in order to get the subpoena. This is not a search warrant. This is a subpoena. It is merely a request for information. Unlike a warrant, a subpoena does not allow the Government to enter someone's home or business or property to take things. It is only a request. If the recipient objects to it, the Government has to go to court and defend the subpoena and seek an order for its enforcement. That, too, is where I disagree with my friend from Illinois. There is an ability to say, no, we will not submit the records, in which case the Government has to prove them in court.

Most Government agencies already have the authority to issue subpoenas, and there are 335 of them in the code. It is interesting. If Mohamed Atta were suspected of Medicare fraud, then the Department of Health and Human Services could get a subpoena into business records that might demonstrate whether he is connected with that Medicare fraud. It seems to me to be a little bit incongruous not to allow the Department of Justice to go to the FISA Court and ask for a subpoena in the event that they suspect him of terrorism, especially when we have added the other protections in here that the conference report has added—the relevancy standard and an additional three-part test that makes it clear that it has to relate to foreign espionage or terrorism.

Some people say: The section 215 subpoena is a little different because these other subpoenas relate to regulated industries. Even subpoenas that are involved in investigating industries that are used to get information from citizens outside the regulated industry use it in a situation where people are outside of the industry and not just the regulated industry itself. For example, if you are talking about some kind of business fraud, if the SBA is seeking an administrative subpoena, they are not just subpoenaing the beneficiary itself. They can subpoena others doing business with the entity under investigation. In one important way, the PATRIOT Act has more protections in it than any of the others because you are required to go to court first. I dare say that most of the people who are raising questions about this don't advertise the fact that you have to go to court, you have to get approval from a judge first.

Even a subpoena to appear before a grand jury is issued without going to the judge. There may be a misconception about that, but all the prosecutor has to do is write out the subpoena and you have to supply these business records in accordance with the law to the grand jury. You never have to go to a court first. The only time you have to go to court first is a subpoena invoked under section 215.

One of the complaints is that 215 can be used to obtain books from libraries or other kinds of business records. Of course, to the extent library records are business records, that is true. But it does not, obviously, allow the FBI to simply go into a library and figure out what somebody is reading. It can be used to get library records but only if they are relevant to an investigation into foreign espionage or terrorism.

Let me give an example. Some people remember the case of the Unabomber, Ted Kaczynski. This was an example given by the Justice Department because his brother had actually relayed to Federal agents his suspicion that Ted Kaczynski was behind the decades-long string of attacks. Remember the mail bomb attacks? At the time, the Unabomber had published his manifesto in the New York Times which cited several obscure, even ancient texts. In order to confirm the brother's suspicions, Federal agents subpoenaed Ted Kaczynski's library records and discovered that he had, in fact, checked out the obscure texts that had been cited in the manifesto, thus helping lead them to Ted Kaczynski as the Unabomber. Is there anything wrong with that? Would anybody have an objection to that? That didn't even require going to a court to get the subpoena.

Section 215 also could have been used directly in investigating the conspirators who acted on September 11. How so? We now know that in August of 2001, a month before September 11, individuals using Internet accounts registered to Nawaf al Hazmi and Khalid al Midhar had used public access computers in the library of a State college in New Jersey. The computers in the library were used to shop for and review airline tickets on the Internet travel reservation site. Al Hazmi and al Midhar were hijackers aboard American Airlines Flight 77, the flight that took off from Dulles Airport and crashed into the Pentagon. The last documented visit to the library occurred on August 30, 2001, a dozen or so days before that fateful day. On that occasion, records indicate that a person using al Hazmi's account used the library's computer to review September 11 reservations he had previously booked.

I hope the significance of this sinks in. Library records confirmed airline reservations on September 11. During that same month, August of 2001, Federal agents knew that al Midhar and al Hazmi had entered the United States and initiated a search for those two

known associates of al-Qaida. Had the investigators caught the trail of these individuals and had the PATRIOT Act already been law, the investigators likely would have used section 215 to review the library's records of their Internet usage. Imagine if we had then picked them up, how the course of history might have changed.

This is the use of section 215 relative to library records. It has nothing to do with you and me, nothing to do with what we read in the library. It has to do with determining whether there is information relevant to a foreign terrorist or international espionage, nothing more. It could theoretically have had an impact on the course of events that occurred on September 11, had we been able to use it in connection with al Hazmi and al Midhar. I also want to mention the fact that over half a dozen reports submitted by the inspector general of the Department of Justice have uncovered no instances of abuse of this section. The latest public report indicates that the authority had been used approximately three dozen times and that it had not been found to have been abused. Moreover, in the conference report which was filibustered, the one we would like to be able to vote on so that the act could be reauthorized, we require reports every 6 months to the Congress. These reports are very specific as to the kinds of information with respect to section 215 that we want to review, including whether, as a result of the audits done by the inspector general, there is any potential abuse or there was any potential abuse of this section.

So, Mr. President, we have the original section 215, which already had protections that are unlike any other use of an administrative subpoena; added onto that is the requirement that you have to go to the FISA Court, that it must relate and must be relevant to an investigation into espionage or terrorism. And we have an after-the-fact report so that if anything went wrong, or that the inspector general had reason to suspect. That information comes to the Members of Congress every 6 months. It seems to me that any fair reading and fair consideration of section 215 would lead to the conclusion that it is an authority that we need, that it is an important tool for law enforcement, that it has adequate protections built into it, and that all of the hype that surrounds this is, frankly, just exactly that—that it is an effort to draw some kind of conclusion, create some kind of confusion here that something is wrong with the law, that it is potentially used to eavesdrop on American citizens or somehow sneak their records in a way that could nefariously be used by the U.S. Government.

There is not one example where this has occurred or where anybody is complaining about the use of section 215 that harmed them. With all of the protections we have built in, I ask my colleagues, what else exactly do you want? What could you do? How would you change this? What would be different? Why isn't the bill that is before us adequate to both protect American civil liberties and, importantly, protect all of our freedoms by giving law enforcement and intelligence agencies the ability they need to carry out their mission?

Let me conclude with respect to this argument that if we just had a little bit more time, maybe we could reopen this and resolve issues. First of all, the conference committee is closed. As a matter of procedure, we cannot just reopen a conference committee. Secondly, a lot of things could have been raised or were raised in conference committee that would be revisited.

I will tell you what some of those things would be in the event you are interested in having these things revisited. I wanted to include a provision relating to terrorist hoaxes. That is not in here. We know when somebody phones in with a hoax, the police or the fire department or the bomb squad or the hazardous material squad need to be sent out. It can be a horrible drain on law enforcement, and there ought to be a way to deal with these hoaxes in a much more serious way.

Law enforcement would like to have a better definition of ''material support.'' This is used in statutes to deal with people who are providing support—the accessory before the fact kind of situation. Because of the kind of support that can be provided to terrorists, that section probably could stand some further definition. I would like to be able to do that in another conference committee.

The Classified Information Procedures Act is something that was initially considered and should be considered again if a new conference committee is opened. Frankly, the House was asked to eliminate an important death penalty provision, and they did that in conference, as well as some other provisions that I very strongly would like to have in the bill.

Let it be clear that if a new conference committee were created, there would be all sorts of issues that would be brought to bear, and negotiation is a two-way street. There are other ways we could improve on by strengthening the PATRIOT Act. I would want to be sure that those things are developed and are brought to bear.

Finally is this matter that has been brought up regarding eavesdropping on the citizens of the United States. A couple of my colleagues, just before the vote on the PATRIOT Act on the cloture motion, said they had been going back and forth on whether to support it. They read the article in the New York Times and that was dispositive in their minds that they had to vote against cloture. Bear it in mind, it has nothing to do with the PATRIOT Act. In other words, the disclosure of this kind of intelligence gathering that has been in the news in the last 72 hours or so has nothing whatsoever to do with the PATRIOT Act. I gather there is a view that, well, if the administration does one kind of thing, they might therefore be willing to abuse the law in another situation. That is exactly why all of these protections have been built into the PATRIOT Act.

I would think my colleagues would want to pass the PATRIOT Act, make sure that it is now the law, rather than leaving the PATRIOT Act the way it is today. They asked for an extension. Yet if they wanted to improve it and add additional protections, one would think they would want to act quickly to get these protections into the law. Congress will, in fact, obviously, be looking into these new allegations. I urge my colleagues, as well as the American citizens, to think about two things. First of all, the question of whether anybody has complained during the time, under both President Clinton and President Bush, the procedures have been in effect for us to be able to gather certain kinds of information and to do so under the powers of the President. When we are at war, he has ability to accept communications of the enemy. Nobody has to point to a section of the law that gives him some kind of search warrant authority to go to a judge and ask for the ability to do that. All Presidents have always used that authority in a time of war. The President relies upon that authority in this particular case. Members of Congress had been briefed on that for years.

Only until this New York Times article came out did Members of Congress find themselves absolutely shocked that this kind of activity might be going on and, furthermore, that it caused them to vote against consideration of the PATRIOT Act, which that has nothing to do with. I will say it again.

These stories in the media have nothing to do with the PATRIOT Act. So it seems to me that that is not a good excuse for not being able to vote on the PATRIOT Act.

The second thing I want to say with respect to that is—and I certainly do not refer to any of my colleagues in the Senate when I make this comment—but there is in the media a significant degree of hypocrisy. I note some of the stories day after day were focused on the improper disclosure of the identity of a person working for the CIA, as if this is about the worst thing that could ever occur. ''How dare anybody leak classified information'' was the mantra day after day. How indeed.

But have you heard anybody raise the question of the appropriateness of the leaking of this very highly classified program that is now out in the media and discussed by American citizens, about the collection of information that relates to terrorists? It is called eavesdropping on American citizens, but that is not what it is. The President made clear in his press conference this morning that we are talking about communicating with terrorists or people who have connections

with known terrorists. If you call one of those people, you might expect that somebody might want to know about that. Or if they call you. In that case, I guess you might consider yourself vulnerable to the U.S. Government being interested in what you are doing talking to a terrorist. But we are not eavesdropping on American citizens.

The real question I ask is, where is the outrage with respect to the release of this classified information, disclosure of this highly classified program which, as the President noted this morning, can greatly degrade our intelligence capability and harm our ability to fight the war on terrorism? He was asked to give an example, and he did. He gave the example of how it used to be that we knew how Osama bin Laden was communicating. He was communicating pursuant to a certain device. Somebody leaked to media that we had the ability to intercept the communications from that particular device. Guess what he did. He stopped using it. He went underground, and we could no longer listen in to what he was saying. What he was saying beforehand was very helpful. Now we cannot hear anything.

The same thing is true here. Somebody, in order to hurt the administration, I gather, decided it would be a really dandy thing to leak to the public a highly sophisticated program used to gather information from terrorists, to help us protect the American people in the war on terrorism. Have you heard any condemnation of that on the Senate floor? Have you heard any condemnation of it in the mainstream media? No, they were very concerned when the identity of a CIA agent who is known anyway, I gather, was released. I guess that is high dudgeon. I have not heard a peep out of anybody in the mainstream media criticizing whoever it was that leaked this highly classified program, that is now out in the public.

Mr. President, this leaker has to be brought to justice, and the President this morning said he gathered that the usual processes in the Department of Justice to look after such things were in place and were being pursued. I certainly hope so because every time a leak such as this occurs, it degrades the country's ability to protect the citizens of the United States. Whatever this collection methodology is—and thankfully it hasn't been described in much more detail, but whatever it is, we don't want the other side to stop doing it or that is another avenue of information that is closed off to us.

So why would we want to make a big public disclosure of all of this? At a minimum, when those of us in the Congress look into this further, as we surely will, we will need to do this in a classified setting. I wonder how much of that will remain classified. I wonder whether we are able to keep a secret around here.

If we are going to fight the war on terror, let's remember, unless we want to fight it on the battlefields of Afghanistan or the streets of Baghdad, the best way to defeat the terrorists is through intelligence-gathering agencies. What that means is having the capability to find out what the other side is doing so we can try to stop it by infiltrating their organization, by compromising it in one way or another. That is critical to fighting the war on terror.

Intelligence is our main method of dealing with this war. If we keep compromising our capability because people feel compelled to breach our national security, to violate the law because they want to bring information out that will embarrass the administration or that will affect the PATRIOT Act—the article, remember, according to some was written a year before the New York Times published it on the day we had the vote on the PATRIOT Act. Perhaps coincidence. But unless we are going to start objecting to that kind of behavior, it will continue. Then we will wonder why our intelligence agencies and law enforcement agencies were not better able to protect us when there is another attack.

I urge my colleagues, as well as the American people, to consider the losses we will suffer as a result of this kind of behavior and to try to bring to account those who engage in this kind of behavior, not to condone it.

We in the Congress will do everything we can to make sure all authorities are used legally. The President can be assured of that. But in the meantime, it seems to me we ought to feel a little bit more secure that we have great capabilities collecting intelligence, and we need the ability to do that in order to protect the American people.

I hope we will have another opportunity to take a vote on the PATRIOT Act, that we can extend it, we can reauthorize it so it can again be used to protect the American people from this evil of terrorism that we face.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to proceed for such time as I use.

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

THE PATRIOT ACT AND DEFENSE APPROPRIATIONS ACT

Mr. KERRY. Mr. President, I listened carefully, as others have, to the distinguished Senator from Arizona. I guess we certainly all agree with his last statement about dealing with the evil of terrorism. We are all united in that effort, and all of us are pledged to do so according to the resolution we passed in the aftermath of 9/11, giving the President extraordinary power and authority to respond to those attacks. We are united in our efforts to deal with terrorism.

What we are not evidently as united on is our efforts to protect the Constitution of the United States of America, to protect the rights of individual Americans. On that there is a division between the House and the Senate.

I remind my colleague from Arizona, I think it was a couple of hours ago when he was talking about this subject, that he talked about how we don't want to see the PATRIOT Act further degraded; in other words, somehow implying that if we go back to what we passed in the Senate unanimously, we would somehow be degrading the PATRIOT Act. We were admonished not to ''hide behind the filibuster,'' that somehow people are hiding behind the filibuster which is the same thing as voting against the PATRIOT Act.

With all due respect, I never heard a more absurd or insulting argument to the rules of the Senate and to the nature of the Senate. In the 21 years I have been here, I have seen Jesse Helms and countless others stand up on the other side, in the minority or otherwise, and employ the rules of the Senate which allow the Senate to take a little bit longer to consider issues. That is always what has separated us from the House and, indeed, which has provided a measure of safety with respect to the legislation we pass for the country.

The fact is that what he has termed degrading the PATRIOT Act for many of us is protecting the PATRIOT Act, protecting the Constitution, protecting the country, protecting individual citizens. The fact is the Senate unanimously passed a PATRIOT Act that went over to the House with adequate, better protections for the citizens of our country.

Let me be more specific about that for a minute, if I may, and I didn't intend to speak about the PATRIOT Act. I intended to talk about this morass we find ourselves in with respect to the Defense appropriations bill and the Arctic National Wildlife Refuge, and I will talk about that in a minute. But I want to talk about the PATRIOT Act for a minute.

Every single one of us in the Senate joined together a few months ago—in July, I think, precisely—to unanimously allow the PATRIOT Act to be passed. We supported the PATRIOT Act, and we supported it because we know we need to give the President the tools to fight terror and it would be irresponsible not to do certain things in the current threat we face to respond appropriately. But we also have an obligation to protect the privacy rights of Americans.

Americans all across this country increasingly are concerned about medical records that find their way into the public sector, financial records that are lost, banking records that turn up in public, about the theft of identity, Social Security numbers that are stolen. The constant invasion on the privacy of Americans is something that ought to concern all of us, and there ought to be a balance as we fight terror.

Sure, we all want to take the maximum steps possible in order to prevent another act of terrorism. Who here in their right mind isn't going to do what is reasonable to prevent another 9/11? This is almost an absurd argument. It is the traditional sort of let's create a wedge, drive a big wedge between the American people and pretend to the American people the argument is about something that it isn't, pretend to the American people that everybody from this line in the United States over doesn't care about the security of our country and pretend that the only people who do are over there. It is ridiculous on its face. It is an insult to the American people.

We ought to be doing everything in our power to guarantee we don't engage in those kinds of silly arguments, particularly when we are stuck here 5 days before Christmas Eve struggling over reasonableness and then we have a whole bunch of unreasonably, classically political wedge-driving issues.

If the same PATRIOT bill was on the floor today that we sent off the floor, every Senator would vote for it. But it is not, and we are being told that somehow we have to rush to judgment and give away rights a lot of people here think are important and worth fighting for because the House insists they have a couple of provisions that were not in our bill.

Look at those provisions. The fact is the 215 section the Senator from Arizona was talking about—here is what it allows. It allows the Government to obtain library, medical, gun records, and other sensitive personal information on a mere showing that those records are relevant to an authorized intelligence investigation. That is it. That is all it requires.

In the Senate bill, we passed an additional test.

We said it has to be relevant, but in addition to being relevant we specifically put in the word ''and.'' It has to be relevant, and one of the three following things has to be shown: It has to pertain to a foreign power or agent of a foreign power, it has to be relevant to the activities of a suspected agent of a foreign power, or it has to be pertinent to a particular effort that is taken against a foreign power. Those are the three tests which we added to the relevancy test. We did that specifically because we thought we ought to protect the rights of Americans.

The fact is that requiring it to be pertaining to an individual who is in contact with a foreign government is a specific test that requires either to go further than mere relevancy. It requires the Government to have a cause that is legitimate to be able to go in and invade those kinds of rights.

Every Member of the Senate decided that was a worthy test and, unfortunately, that test was dropped. So that small change will actually allow the potential invasion of the privacy of American citizens who may have no connection at all to a suspected terrorist or spy. We think that is an important restriction. That is what we are fighting about. We are not fighting about not having a PATRIOT Act; we are fighting about having the rights of Americans protected.

In addition, unlike the Senate bill, the conference report provides absolutely no mechanism for the recipient of a 215 order. In other words, if someone has received a 215 order and it is sent to them notifying them with respect to the request for that information, there is no way for them to challenge an automatic gag order on that particular requirement.

So the Foreign Intelligence Surveillance Act's court review is not sufficient. We do not think it provides adequate protection to an American. The court only has the power to review the underlying order; that is, to say whether the order was appropriately issued. They do not have the right to review whether that person has a right to challenge it, a right to speak about it. They do not have the power to make an individualized determination about whether there ought to be a gag order with respect to it. So the recipient of a 215 order is automatically silenced under any circumstances. How is that fair? How is that consistent with American democratic principles?

The conference report also does not provide judicial review of national security letters. The Senate bill did provide a judicial review. We believe judicial review is important. So what we are fighting for is not whether to have a PATRIOT Act; what we are fighting over is whether to have a PATRIOT Act that keeps faith with the Constitution that we all swore to uphold and with our interpretation of the legitimate limits of intrusion on the rights of Americans. That is what we are fighting for.

I would also mention that there are sneak-and-peek search warrants in the conference report. Unlike the Senate bill, the conference report does not include any protections against those warrants. So rather than requiring the Government to notify the target of those warrants within 7 days, as the Senate bill did, the conference report requires notification within 30 days. Now, that is a long time to go—even 7 days is a long time to go, but 30 days is a really long time to go before one is notified of a Government search.

Those are just a few of the problems.

Let us repeat—because again it is part of the game that is played—it is not a good game. A lot of folks on the other side of the aisle are trying to suggest, Well, America, there are a bunch of folks who are strong on defense and people who are weak; there are a bunch of folks who want to protect the Constitution and those who do not.

Let me say something. This is not about that. If it were, we would have passed the 3-month extension of the PATRIOT Act right away. On several different occasions, Senator REID has asked the Senate to proceed. We do not have to waste 1 day, not 1 hour, not 1 minute without a PATRIOT Act. We could extend the PATRIOT Act for 3 months right away, do it this afternoon, this evening, and then we could actually sit down and work out the differences in a reasonable way so that we provide the protections which people think are worth fighting for.

So this whole debate is just part of a larger breakdown in the Senate. The shame of what is happening with the Defense appropriations bill is that this entire debate is unnecessary, and it is also inappropriate. The fact is that the Arctic Wildlife Refuge drilling was put on the budget bill by breaking the budget rules. Everybody here knows that. The budget rules were changed so that drilling could be put on the bill because they were unable to muster enough votes to do it under the normal procedures of the Senate.

Then some courageous Republicans in the House stood up and said: This is wrong; we are not going to go along with this. All of a sudden, the first breaking-of-the-rules route was found to be unacceptable. So what is the response? To accept the rules of the Congress, to go along with the will of the Congress? Oh, no, not that. We have to go find another way to break the rules. We have to go find another way to reinterpret it. So when the Parliamentarian rules that something is not legitimately within the scope of the bill, as the rules of the Senate say it ought to be, they are going to go ahead and try to vote and say: Oh, yes, it is, we overrule the Chair, change the rules. If one does not like the rules the way they are, they change them. How many kids in American schools are taught that is the way to play? How many families teach their kids in America that what one does is break the rules if they do not like them? How many institutions in this country would get along if that is the way it is played?

The example we set is bigger than what happens on this floor or what happens to Alaska and to the oil drilling. The fact is that what is happening is, make no mistake about it, right on the Senate floor, Republicans are putting oil companies ahead of troops. They are putting oil companies ahead of the Defense bill. They are trying to hold a whole bunch of Senators hostage to the very arguments we are hearing about whether one is for defense or against defense.

My colleague, Senator LIEBERMAN, who earlier joined us at a press conference, made it very clear there is nobody with a stronger defense record in the Senate, but he is not going to stand up and be pushed around that way and be put in a corner that suggests that he does not stand for defense, and nor should any other Senator. This is wrong. It is wrong for the Senate. It is wrong for the country. It is the wrong example.

The fact is that this Defense bill could have been passed months ago.

But who held it up? Do my colleagues know what held it up? What held it up was a President and a Vice President of the United States who were lobbying for torture. For months, they wanted to have the right to be able to finesse the rules and say that torture is permitted under certain circumstances. It took a Republican Senator, Mr. MCCAIN, to stand up and say that is wrong, that is not in the interest of our troops, and that is not in the interest of our country. So the Defense bill was held up for almost 3 months because folks on the other side thought we ought to torture. Now here we are holding it up because they have attached to it drilling in the Arctic Wildlife Refuge.

I will state what the Military Officers Association thinks of that: There is a possibility that negotiators might try to include a provision allowing oil drilling in the Alaska National Wildlife Refuge in the bill. We are concerned—that is, the Military Officers Association of America is concerned that insertion of any divisive nondefense-related issues at the last minute could further delay enactment of this crucial legislation. Both defense bills are urgently needed to support our military efforts. Congress is already 3 months late passing them and needs to get off the dime.

We do need to get off the dime, but it is not just the Military Officers Association that has weighed in. Yesterday, a group of five high-profile military officials sent the following letter to the Senate, which I ask unanimous consent to have printed in the RECORD.

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

DEAR SENATOR FRIST AND SENATOR REID: We are very concerned that the FY2006 Defense Appropriations Bill may be further delayed by attaching a controversial non-defense legislative provision to the defense appropriations conference report.

We know that you share our overarching concern for the welfare and needs of our troops. With 160,000 troops fighting in Iraq, another 18,000 in Aghanistan, and tens of thousands more around the world defending this country, Congress must finish its work and provide them the resources they need to do their job.

We believe that any effort to attach controversial legislative language authorizing drilling in the Arctic National Wildlife Refuge (ANWR) to the defense appropriations conference report will jeopardize Congress' ability to provide our troops and their families the resources they need in a timely fashion.

The passion and energy of the debate about drilling in ANWR is well known, and a testament to vibrant debate in our democracy. But it is not helpful to attach such a controversial non-defense legislative issue to a defense appropriations bill. It only invites delay for our troops as Congress debates an important but controversial non-defense issue on a vital bill providing critical funding for our nation's security.

We urge you to keep ANWR off the defense appropriations bill.

Sincerely,

JOSEPH P. HOAR,
General, U.S. Marine Corps (Ret.).

CLAUDIA J. KENNEDY,
Lieutenant General, U.S. Army (Ret.).

ANTHONY C. ZINNI,
General, U.S. Marine Corps (Ret.).

LEE F. GUNN,
Vice Admiral, U.S. Navy (Ret.).

STEPHEN A. CHENEY,
Brigadier General, U.S. Marine Corps (Ret.)

Mr. KERRY. Mr. President, we have debated for years, all the years that I have been here, the Arctic Wildlife Refuge. It is stunning that an issue as controversial, as divisive as that would be put on a bill that needs to pass by unanimous consent. I know Senator STEVENS and others have said we have had bills on which we have put a number of different items, such as the omnibus bill back in the days of President Clinton where we put seven or eight items on it—I forget exactly how many. But the difference is we did it with unanimity. We did not have a divided Senate over that issue. We did not have a vote. We all agreed all of those items ought to go into the bill.

What is different here is the disagreement, is the division over this issue. The fact is, many of us are very passionate about this issue, so much so that the Senate has been divided by one vote. A one-vote division is being disrespected in this effort because they know the rules of the Senate would prohibit them from doing it without changing and breaking those rules.

The fact is, ANWR, the Arctic National Wildlife Refuge, according to any definition I have ever seen, ceases to be a refuge. All the efforts to gloss over it do exactly that, they simply gloss over it. The fact is, we have heard arguments that you can somehow drill in the Arctic National Wildlife Refuge in an environmentally friendly manner. We have heard that drilling in the refuge is going to reduce our dependence on foreign oil. We have heard it is going to bring down gas prices at the pump. We have even heard that it belongs in the national budget because of the revenues that are going to come from the lease sales.

Every single one of those arguments fails before legitimate, honest scrutiny. First of all, by definition, an industrial zone and a wilderness cannot occupy the same space—can't do it. You can't have a wilderness and have an industrial zone. So the minute you declare ''industrial zone,'' gone is the wilderness. What has been set aside all these years since President Eisenhower, is eradicated, gone—gone for all time.

In 1960, the Eisenhower administration first recognized the value of that area, and it was established to be a unique wildlife and landscape. Drilling proponents keep claiming we are only going to drill on 2,000 acres—the oil corporations. But the fact is, when you look at the plans and you examine how they go at it, in fact, the entire 1.5 million acres, the 102 area is going to be open to testing, to leasing, and exploration, and it does not happen in one compact area. That is because, as with the North Slope oilfields west of the Arctic refuge, you have the development sprawling over a very large area stretching across the Coastal Plain.

According to the U.S. Geological Survey, the potential oil under the Coastal Plain is not concentrated in one large reservoir. It is put in many small deposits all across the plain. So to produce oil from this vast area, you have to create a network of pipelines and a network of roads, and all of those change the habitat of the entire Coastal Plain.

I will acknowledge that new drilling technology is more efficient, and we have done wonders in many ways. It is less harmful to the environment. But the advantages with respect to this particular area have been greatly exaggerated. Even the new technology, such as directional drilling, does irrevocable damage. You have to have permanent gravel roads. You have to have busy airports for access. You have production wells that are scattered throughout the area, across more than a million acres of Coastal Plain, and you are going to have the connection of pipelines. And the entire complex is going to produce more air pollution than the city of Washington, DC.

No matter how well it is done, oil development has a lasting impact on the environment. The industry itself has told us that. None other than British Petroleum said, ''We can't develop fields and keep wilderness.'' That is the oil company speaking for itself.

If the facts and the frank admission of an oil company are not enough, then people ought to take a look at what the National Academy of Sciences said, and the Department of Interior, and a host of others who have come to the same conclusion.

We also hear about the dependence on foreign oil. If the Arctic Wildlife Refuge produces the maximum amount of oil they say it might be able to produce, if 20 years from now it is at maximum pumping—which does nothing, obviously, to affect prices and supply today—it is possible that at best you could reduce oil imports from 62 percent to 60 percent. That is it—62 percent to 60 percent. It is not enough to affect the price of oil. It will not affect the global supply. It will not affect our dependence on the Middle East. But it will destroy the Arctic National Wildlife Refuge and provide some profits to the companies that take it out in the meantime.

So everybody ought to understand that in its peak year for a single year, somewhere around 2020, drilling might reduce your dependency by about 2 percent. The price of oil will not drop, the price of energy will not drop, the price of gasoline will not drop, and our vulnerability to world oil prices and to world unrest and to dangerous regimes will not change. After that single year,

the flow of oil from the refuge is going to start to decline as the reserves are depleted.

Also, this is a phony argument that we need to somehow be doing this now. It has nothing to do with the immediate security of our country. The fact is, 95 percent of the Alaska oil shelf is open for drilling/leasing today—95 percent of it. There are vast areas of that shelf that are open that are still not leased, still not producing. In addition, we have the largest oilfield in the world that is unexploited, which is in the Gulf of Mexico, the deepwater drilling of the Gulf of Mexico. Those leases have already been granted. They have already been environmentally permitted, but they are not being drilled. Why? Because the price differential thus far has not brought people to do that.

If we want to do something for immediate American help, provide a subsidy, provide some assistance, do something that provides an incentive so that drilling takes place now. That would have far more effect than what is happening in this Alaska argument.

The bottom line: I said it again and again everywhere I went over the course of the last 2 years during the Presidential race. Every time I had a chance, I talked about how we only have 3 percent of the world's oil reserves. That is all we have in America—3 percent. The Saudis have 46 percent. The Middle East has 65 percent. There is absolutely nothing the United States of America can do to drill our way out of our predicament—our dependence on oil. We have to invent our way out of it, and inventing our way out of it means moving to alternative fuels, means pushing the curve of discovery, doing what America has always done in terms of creation of new jobs and new technologies. That is why it is a phony argument. That is the bottom line of why we don't have to be here pushing to do this on a defense bill which is important to our troops and to our country.

My hope is that in the next hours perhaps we can get a measure of reasonableness. But the bottom line still remains the same. There are people who believe deeply in drilling. I understand that. I respect that, and they can talk about that belief. That it not what this vote is about.

What this vote is about, in the end, is whether this effort to open the Arctic National Wildlife Refuge ought to be allowed to circumvent the rules of the Senate and whether this is the message we want to send about the rules and how the Senate works; that nothing means anything around here as long as you can change it whenever you want.

We have to remember that what goes around comes around. I don't think it is good for the Senate. I don't think this is good for this institution. I don't think it is good for a majority or a minority, one of which may be the other any day in the future, and regret this kind of this kind of effort.

When we stand up for the rules, we stand up for history, we stand up for the Constitution, and we stand up for what this Constitution gives to us as an individual responsibility—each and every one of us. And when we break the rules, we send a damaging, dangerous message to the rest of our country that looks to this place—ostensibly used to look here anyway—for leadership.

When you read the polls today about where the Congress is and the esteem of the American people, you ought to think twice about whether this is the way to proceed.

I yield the floor.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Alabama.

PATRIOT ACT

Mr. SESSIONS. Mr. President, I want to share some thoughts about the PATRIOT Act and the situation we find ourselves in now with this legislation that we passed 4 years ago that expired December 31. This legislation that passed the Senate by a vote of 80-something, with one ''no'' vote, all the rest of the Senate voted for it. It was made law, and we agreed to reauthorize it after 4 years. We have been involved in that process.

I wish to say this has not been a rushed-up deal. We have not gone into this without watching over it.

We have had—I am sure some of the Members may have forgotten—a host of committee hearings dealing with the PATRIOT Act. In fact, the numbers I have is that the Senate Judiciary Committee had 13 oversight hearings over the PATRIOT Act. The House Judiciary Committee had 12 oversight hearings this year alone dealing with the PATRIOT Act and our law enforcement against terrorism.

For example, I have a list of the hearings we held. On November 28, 2001, not long after the act passed, there was a hearing entitled, ''Department of Justice Oversight: Preserving Our Freedom While Defending Against Terrorism,'' witness Michael Chertoff, then-Assistant Attorney General, Department of Justice, Chief of the Criminal Division. He is now the Department of Homeland Security Secretary.

Also on that panel were William Barr, former Attorney General of the United States; Philip Heymann, James Barr Ames, Professor of Law at Harvard Law School; Griffin Bell, senior partner at King and Spalding, a former Attorney General of the United States under President Jimmy Carter; Scott Silliman, executive director of the Center of Law, Ethics and National Security at Duke University School of Law; Kate Martin, Director of the Center for National Security Studies; Neal Katyal, visiting professor, and Yale Law School professor of law at Georgetown University.

Also, in December of 2001, another hearing: ''Department of Justice Oversight, Preserving Our Freedom While Defending Against Terrorism.'' The primary witness was Attorney General John Ashcroft.

Oversight Hearings on Counterterrorism, June of the next year, witness list: Honorable Robert S. Mueller, III, Director of the Federal Bureau of Investigation; Honorable Glenn A. Fine, inspector general for the U.S. Department of Justice; Special Agent Colleen Crowley, chief division counsel for the FBI.

You remember she is the one who complained they did not listen to the evidence she had. And in fact, she made a lot of complaints. But if you boil it down to the bottom, the wall that had been put up, some of the rules and regulations and bureaucratic situations created by existing law at the time of 9/11, made it difficult for information to be shared. That has been fixed, in large part, by the PATRIOT Act and other acts that were passed.

Another one on oversight: Department of Justice with the Attorney General himself; then another one in September of that year, ''USA PATRIOT Act In Practice: Shedding Light on the FISA Process.''

Foreign Intelligence Surveillance Act, ''Court and Process,'' had a hearing on all of that so your people understand it.

The Honorable David Kris, associate counsel, Department of Justice; Kenneth Bass, senior counsel with Sterne Kessler; William Banks, professor of law at Syracuse; Morton Halperin, director of the Open Society Institute, a true civil libertarian, he had his day to be heard.

''Tools Against Terror'' was another hearing, ''How the Administration is Implementing the New Laws to Protect our Homeland''—oversight on how these laws are being carried out; Glenn Fine, the inspector general, testified; Scott Hastings, associate commissioner of the Office of Information Resources Management; Alice Fisher, Deputy Assistant Attorney General; Dennis Lormel, Chief of the Financial Crimes Section.

Another one: ''War Against Terror: Working Together to Protect America,'' Attorney General John Ashcroft; Secretary of Homeland Security Tom Ridge; Honorable Robert Mueller, Director of the FBI.

We had them there to answer how we are working better with these new laws to protect America.

Another one, oversight hearing: ''Law Enforcement and Terrorism,'' Honorable Robert Mueller, Director of the FBI; Honorable Asa Hutchinson, Undersecretary for Border and Transportation Security.

Senator HATCH had a hearing in Utah with about 10 witnesses dealing with all of the issues related to homeland security.

Another one: ''FBI Oversight, Terrorism and Other Topics''; ''DOJ Oversight: Terrorism and Other Topics''; Department of Homeland Security, ''Oversight, Terrorism and Other Topics.''

The top people in Department of Justice—and that is in the Senate, and that does not count the Intelligence Committee that has had hearings, and it does not count the 12 or 13 or more hearings which the House Judiciary Committee has had.

First, I want to say that we spent a great deal of time 34 years ago in drafting the first PATRIOT Act. How did it pass with only one ''no'' vote if it was an extreme act? It passed with such an overwhelming vote because we made a commitment from the beginning that we would not undermine any of the great civil liberties that we as Americans have come to know and respect and cherish.

I remember asking witnesses. Somebody one time thought it was humorous. But I asked these witnesses: Is there anything in this PATRIOT Act that any court is going to declare to be unconstitutional? Every one of them said ''no.''

Why did they say that? Because the techniques that we allowed terrorism investigators to utilize have already been approved and were being utilized in other aspects of law enforcement already, but they weren't available in an effective way for these investigators.

If there was something that was expanded in any way, it was well within the principles of the law as had already been established by the Supreme Court of the United States. For example the roving wiretap—you could always get a wiretap on a specific phone of a person, and you have to have a big affidavit. It has to be monitored, and the judge has to approve it to be satisfied. You approved it in advance of that wiretap being effective, that you had probable cause to believe that it was a justified act. Those facts are reviewable. If the judge was wrong, all the evidence that was gained pursuant to that would be dismissed, would be fruit of the poisonous tree and not be admitted in a court of law.

We simply said: Wait a minute, we are seeing more and more terrorists who travel around, use one cell phone and then another cell phone, move from apartment to apartment. Why not allow the courts to have an intercept of communications based on the phones that person may use if there is sufficient evidence to show that person is connected to terrorism and it is relevant to a terrorism investigation and it meets all the standard burdens of proof that have always been used in intercepting communications?

I was a U.S. attorney for 12 years. In that 12 years, I think we did one wiretap. These are not done routinely. In a big international terrorism security case, a wiretap can be incredibly valuable. It is one thing to have a wiretap on a Mafia gang or a drug gang; it is another thing to need to know a terrorist group may be plotting to kill thousands or tens of thousands of American people. If these intercepts are lawful for a drug gang, for a group of white-collar criminals, for a Mafia group, they sure ought to be lawful for surveillance on terrorists.

We made that change and set forth all the standards, and we went through the legislation. We worked on the exact wording, word by word by word, and the bill we passed in this Senate unanimously came out of our Senate Judiciary Committee 18 to 0 a few months ago to reauthorize it. It said the order must describe a specific target with particularity so that there could not be any confusion about which person for whom the intercept is permissible.

The House bill had language they considered carefully. They came out with this language: ''based on specific facts provided in the applications.'' Then it goes to conference. We go over the House bill and the Senate bill and try to hammer out on agreement. Many of the provisions were complementary; they were approved in both bills. Where the provisions were in conflict, the Senate language was adopted.

With regard to the roving wiretap multipoint wiretap provision, section 206 of the original PATRIOT Act, basically the Senate version prevailed. I will talk about that for a few minutes because we have Members of the Senate on the Senate Judiciary Committee who voted for the bill when it passed unanimously a few months ago. We have Members of the Senate objecting today who were part of the majority of the unanimous Senate that approved it who are contending there were big changes made in conference. These changes are why they are now opposing a bill that just a few days ago they were supporting.

They should listen to the chairman of the Judiciary Committee, Senator SPECTER. Senator SPECTER was part and parcel of all negotiations. Members contended to get their own version of things. Frankly, some Members thought the language was not clear enough, and there were some difficulties for law enforcement we would like to have seen closed because it could have led to jeopardizing national safety. We held out and held out, but at the end, basically we gave in. As Senator SPECTER said, the bill that came out of conference was 80 percent the Senate bill. The Senate prevailed time and again even though on some occasions I thought the House provisions were better. We came in and moved a bill we thought we would have bipartisan support for.

For example, there was a question about sunsets, what would be made permanent in the bill and what would have to come up for reauthorization or would sunset. The Senate bill eliminated all but two of the PATRIOT Act sunsets—the roving wiretap and the business records sunset. They were extended for 4 years. We said we will go 4 more years with these two provisions. We extended the lone wolf provision for the same period in the Senate. We passed it; 4 more years for those three provisions.

The House did not sunset the lone wolf provision but did sunset section 206 and 215, but for 10 years. They said they would be extended for 10 years. So we go to conference and we debate this issue. I thought the original agreement was we would split the difference, as is commonly done, and we would do it for 7 years. In fact, I signed the conference report at that point. I believe that is when I signed it. But Senator LEAHY and other Members of the conference did not like it and held out and held out.

We talked to Senator SPECTER and asked: Why are we coming back in 4 years again? We just had a 4-year bill.

Senator SPECTER said: Look, it is important to the Members. We want some bipartisan support, Senator SESSIONS. Would you support us on it in 3 to 4 years?

I said: All right, we will take the 4 years, the exact Senate bill language.

Senator KYL felt strongly about this also as we discussed it.

So we send that, thinking we made people happier and they would be enthusiastic supporters of a bipartisan piece of legislation important to protect the safety of the people of the United States of America.

Now, here is another example of the flap, this spasm we are having that amounts to little or nothing: the delayed notice search warrant. As a person who has been involved in supervising investigations relating to large-scale international drug smuggling groups—not terrorist groups but those kinds of conspiracies—I have been made familiar with the difficulties of law enforcement, the burdens on law enforcement, the need to do things right. Our law enforcement agencies do things right according to the instructions they are given.

There comes a time when it is important in an investigation to execute a warrant, but at the time you execute it, it is not an appropriate time to arrest the people involved. That happened a lot. Maybe it is less important in a drug case than in a terrorism case where people may have poisonous gas or biological weapons hidden in their apartment, but in a drug case this is what you come down to. The law allowed and has always allowed, to my knowledge, a warrant with specific stated facts. It could be approved, but that warrant has to be based upon the same factual proof we have always had, but you would want to ask the court to allow a search to be conducted of a house. Instead of immediately telling the person whose house or business or automobile is being searched that you searched it, you delay notifying them. You still have protected them from an unlawful search because you have gotten a lawful court order based on facts proven to a Federal judge. In the case of terrorism and these cases I dealt with, proof had to be submitted. And then you could ask the court to allow you to delay notifying the person who is searched for a period of time.

This is important because otherwise you tip off the whole group, and they will scatter like a covey of quail. They will be gone. If you do not have everybody there at the time you do that search, then they have the ability to notify one another and scram, and the whole thing can go down in a hurry. So dealing with that complex issue is an important thing.

So with regard to the delayed notice warrants, I just want to say to my colleagues and friends, I cannot tell you how important this is to our investigators, who may be out there this very moment surveilling some sleeper cells of terrorist groups and who need to obtain information that could be critically important to identifying a major organization.

Maybe the individual they have information about, and for which they have probable cause sufficient to conduct a search warrant of their house, is the only name they really have, but maybe they have good evidence this individual is talking to a number of other persons, and that they may even be planning to bring a chemical or biological weapon or some other explosive device into the country or into that house, and they want to search that house, and they have proof sufficient to allow that to occur by presenting it to a Federal judge to get approval. But they do not need to tell them right then because you are trying to penetrate the organization and get all of them, not just one or two. Maybe there are 20 or 30, and maybe you only know of 1 or 2 of them, so you conduct these warrants, and you delay notification.

So I want to point out that what the big difference fundamentally was is this: The Senate bill said the investigators who go out and conduct that warrant have to report back to the judge—in all of our legislation, they have to report back to the judge—to see what they did and how they did it and make an official report; they just don't tell the person whose house is searched. So the Senate bill said they should have an initial period of delay of 7 days. The House bill said they would have an initial period of delay of up to 180 days.

So we went to conference, and the House said: Well, we think 180 is appropriate under these circumstances. These are groups, terrorist groups, whatever. It might be really necessary to have more time. We were at 7. And then you could come back and ask the judge to extend it under either one of the bills. So we hammered around and worked around, and we agreed on 30 days—much closer to the Senate bill's version, our version, than the House bill's version.

So how is this some big deal? So we have Senators down here saying: Well, I think it is all right to have a delayed warrant for 7 days. I just don't want to have it for 30 days. So I think we need to get our act together here and try to reach some agreements and get this bill passed.

But I will say this: For those of us who believe strongly this act is important, it should not just be seen that we are now going to come back and water down this bill and erode the provisions that are in it and not have delayed warrants, not have section 215 authority, to eliminate national security letters that have been part of the law for 25 years. We cannot take these things out.

Mr. President, I urge my colleagues to study this legislation carefully. Talk to the Department of Justice attorneys, call the FBI, if you need to. They will go over it step by step, word by word, line by line. As you go through that and consider the history of law enforcement, what is allowed to be done now, how this all occurs, you are going to feel so much better about it and not just react to this unfair choice that is presented: civil liberties or protection. We gave greater protection while protecting civil liberties.

Mr. SESSIONS. Mr. President, we just go back to trying to comprehend the enormity of what has happened as Senator REID, the Democratic leader in the Senate, had a big press conference to declare victory. He said:

We killed the PATRIOT Act.

It is not something I think is worthy of a leader of any great party in the Senate. It is the equivalent of the Democratic leader saying we have no way to win in Iraq. These are the kind of statements that are really contrary to what this Nation needs to do right now.

The PATRIOT Act is an act that we passed with one dissenting vote 4 years ago and that we passed out of this Senate unanimously and out of the Judiciary Committee unanimously just a few weeks ago and which has now come back as only a modestly modified conference report. It ought to be unanimously affirmed again.

We have ended up with a filibuster led by the Democratic leader. I am disappointed at that. I can't comprehend why it occurred and why this would happen. There were a lot of contests, let me say, in the conference committee; a lot of hard work over every single word in the bill. But our version, the one we supported in a bipartisan way, was overwhelmingly the version that was adopted. We brought it back with everyone thinking we would have a great opportunity to pass it. In fact, some of us thought we went too far and that we had weakened law enforcement in ways that were not necessary.

We tried to resist, but in the end, at the request of Senator SPECTER, in a bipartisan effort to move the bill quickly through the Senate, we dropped our objections and went along with that provision.

Lo and behold, we end up with another obstructing tactic to block one of the most important pieces of legislation we have passed in a long time. At many of the hearings I mentioned before, the witnesses testified unequivocally that this act had made America a safer place.

I mentioned earlier the sunsets. We have differences of agreement on the sunsets. The Senate version was totally adopted on the roving wiretaps. By far, the Senate version was adopted on the delayed notice search warrants. I have explained how important and critical they are. Just ask an FBI agent or talk to a Federal prosecutor who has worked on one of these cases how critically important it can be to have this delayed notification. The Senate version of the bill was 7 days, the House version 180 days, and we agreed on 30. One would have thought that would be the case.

With regard to the business records, the Senate bill had a very troubling part to it. It had a three-part relevancy test. This test required the FBI, before they could obtain these records—and these are not records in the personal dominion of a potential defendant; these are records they don't control but are in the control of a bank or telephone company. They are not the words one says in a telephone message, but the telephone toll records. These are part of the records and have always been subject to a subpoena by law enforcement. Any county attorney in America can subpoena these records.

Because we wanted to go an extra mile and deal with the question of immediate notification of the person whose records are being sought, we enhanced the requirements. So instead of issuing a subpoena, such as an IRS agent, without going to a U.S. attorney or without going to any court—an IRS agent can issue a subpoena for your income tax records to see if you paid your taxes. A DEA agent can get your bank records to determine whether a person made money selling dope. For white collar crime, Customs agents, there are about 200 or 300 provisions that allow for these kinds of records to be obtained by administrative subpoena. But we don't have that under section 215. They have to get a prior approval, and the agent has to certify it is related to a national security investigation. Only then are they able to get library records or your bookstore records.

I don't know why they think that is just so big. Pardon me if I am amused a bit. A county attorney in Illinois or Idaho can issue a subpoena right now to the library for somebody's records. What is this deal? But the association raised a ruckus, so we gave them all kinds of enhanced protections under this bill.

Again, the conference report went further than the Senate bill in many areas in the direction of civil liberties. We did have private briefings, secret briefings from Federal investigative agencies, and we learned why there were defects in the three-part relevancy test.

By the way, the average district attorney in America and, I think, the Federal attorneys, when they issue subpoenas for records, it only has to be relevant to an investigation. For a U.S. attorney, it has to be relevant to a Federal investigation. But, oh, here we

go much further. You have to have a three-part test to what relevancy is in addition to certifying it is important to national security.

So we dealt with that problem. I thought we had reached an agreement in language that did not leave serious gaps in the need for records and ability to obtain records that law enforcement was concerned with. We were concerned about that, and we tried to change it, fix it. I thought we reached an agreement on it. I thought we went too far, but I agreed to sign it because we needed to do this bill. That is why I agreed to sign the conference report.

Civil liberties that were not passed by the Senate or the House were added to the conference report at the request of Senate conferees, mostly Democratic conferees. So we added some items in addition.

Under the report, the Attorney General must adopt minimization procedures within 180 days of enactment of the legislation; that is, he must create procedures that minimize any likelihood that civil liberties could be adversely affected. And he must submit an annual report to Congress which enumerates the total number of applications made under the act, the number granted, the number modified, the number denied so we can have oversight over this issue.

Who is overseeing the county attorney? Who is overseeing the U.S. attorney who may be investigating a Member of Congress or the Senate or a Governor for tax fraud or something such as that? They are issuing subpoenas every day.

This is a very responsible, fully debated, intensely discussed piece of legislation. It is important to the safety of our country. It is important that we pass it and extend this act and reauthorize it. As of January 1, the wall will go back up that would deny the right of the CIA to share foreign intelligence with the FBI that may have domestic intelligence and, therefore, be able to put the pieces together in a puzzle that will identify a criminal gang that may be intent on destroying large parts of our country.

I believe that every effort has been made to assure that all the provisions of this act are consistent with established constitutional procedures. I believe not one line of it is going to be found to be unconstitutional. I believe it has all the protections and details that are necessary for good legislation.

There are some things in it that I think hamper law enforcement more than necessary that have little or no relevancy to real civil liberties issues, but they are in there because people were concerned. People are concerned so we dealt with the concerns, but we do not need to weaken this act any more. It is time for us to pass this legislation, to reauthorize this act and not allow it to expire as of the end of this year.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank my friend from Alabama. On many issues, we are together, and that is as it should be. On other issues, we, perhaps, do not agree. But I always—I always—hold his opinions in great respect, great respect. I admire him. And I admire the heritage he brings to us from that great State of Alabama. I thank him always for his service.

ABUSES OF POWER

Mr. BYRD. Mr. President, perhaps the greatest oration ever delivered was the Oration on the Crown, delivered by Demosthenes in the year 330 B.C. In that inimitable oration, it seems to me the question was posed: Who least serves the state? And the question was answered in that oration: He who does not speak his mind.

In this day, we should remember that. And I shall attempt to honor that credo.

Mr. President, Americans have been stunned at the recent news of the abuses of power by an overzealous President. It has become apparent that this administration has engaged in a consistent and unrelenting pattern of abuse against our country's law-abiding citizens and against our Constitution.

We have been stunned to hear reports about the Pentagon gathering information and creating databases to spy on ordinary Americans whose only sin is to choose to exercise their first amendment right to peaceably assemble. Those Americans who choose to question the administration's flawed policy in Iraq are labeled by this administration as ''domestic terrorists.'' Shame!

We now know that the FBI's use of national security letters on American citizens has increased exponentially, requiring tens of thousands of individuals to turn over personal information and records.

These letters are issued without prior judicial review, and they provide no real means for an individual to challenge a permanent gag order. And through news reports, my fellow Americans, through news reports we have been shocked to learn of the CIA's practice of rendition and the so-called black sites, secret locations—hear that, secret locations—in foreign countries where abuse and interrogations have been exported to escape the reach of U.S. laws protecting against human rights abuses.

We know that our Vice President, DICK CHENEY, has asked for exemptions for the CIA from the language maintained in the McCain torture amendment banning cruel, inhumane, and degrading treatment. Thank God, Vice President CHENEY's pleas have been rejected by this Congress.

Now comes the stomach-churning revelation, through an Executive order, that President Bush has circumvented both the Congress and the court. Get that. Shame! Shame! He has usurped the third branch of Government, the branch charged with protecting the civil liberties of our people, by directing the National Security Agency to intercept and eavesdrop on the phone conversations and e-mails of American citizens without a warrant, which is a clear violation of the fourth amendment. Get that. He has stiff-armed the people's branch of Government, this branch, the people's branch. He has rationalized the use of domestic civilian surveillance with a flimsy claim that he has such authority because we are at war.

The Executive order, which has been acknowledged by the President, is an end run around the Foreign Intelligence Surveillance Act, which makes it unlawful for any official to monitor the communications of an individual on American soil without the approval of the Foreign Intelligence Surveillance Court. What is the President thinking? What is the President thinking?

Congress has provided for the very situations which the President is blatantly exploiting. The Foreign Intelligence Surveillance Court, housed in the Department of Justice, reviews requests for warrants for domestic surveillance. The court can review these requests expeditiously and in times of great emergency. In extreme cases, where time is of the essence and national security is at stake, surveillance can be conducted before the warrant is even applied for. This secret court was established so that sensitive surveillance could be conducted and information could be gathered without compromising the security of the investigation. The purpose of the FISA Court is to balance the Government's role in fighting the war on terror with the fourth amendment rights afforded to each and every American. Yet the American public is given vague and empty assurances by the President that amount to little more than ''trust me.''

But we are a nation of laws and not of men. Where is the source of that authority the President claims? I defy the administration to show for the record where in the Foreign Intelligence Surveillance Act or where in the United States Constitution they are allowed to steal into the lives of innocent American citizens and spy.

When asked recently what the source of that authority was, Secretary of State Condoleezza Rice had no answer. Secretary Rice seemed to insinuate that eavesdropping on Americans was acceptable because FISA was an outdated law and could not address the needs of the Government in combating the new war on terror. This is a patent falsehood. The USA PATRIOT Act expanded FISA significantly, equipping the Government with the tools it needed to fight terrorism. Further amendments to FISA were granted under the Intelligence Authorization Act of 2002 and the Homeland Security Act of 2002. In fact, in its final report, the 9/11 Commission noted that the removal of the

pre-9/11 ''wall'' between intelligence officials and law enforcement was significant in that it ''opened up new opportunities for cooperative action.''

But the President claims—hear me!—that these powers are within his role as Commander in Chief of the Army and Navy. Make no mistake, the powers granted to the Commander in Chief in this Constitution are specifically those as head of the Armed Forces.

These warrantless searches are conducted not against a foreign power but against whom? Against unsuspecting and unknowing American citizens—like you, like you, like you, and like you! They are conducted against individuals living on American soil—not in Iraq, not in Afghanistan. There is nothing within the powers granted in the Commander in Chief clause that grants the President the ability to conduct clandestine surveillance of American civilians. Nothing. We must not allow such groundless, foolish claims to stand unchallenged.

Now, the President claims boundless authority, an unlimited authority through the resolution that authorized war on those who perpetrated the September 11 attacks. But that resolution does not give the President unchecked power to spy on our own people. Read it. That resolution does not give the President unchecked power to spy on our own people. That resolution does not give the White House, this administration, the power to create covert prisons for secret prisoners. That resolution does not authorize the torture of prisoners to extract information from them. That resolution does not authorize running black hole secret prisons in foreign countries to get around U.S. law. That resolution does not give this President, or any President, the powers reserved only for kings and potentates.

I continue to be shocked and astounded by the breadth with which this administration undermines the constitutional protections afforded to the people—the people—and the raw arrogance with which it rebukes the powers held by the legislative and judicial branches. The President has cast off Federal law enacted by Congress, often bearing his own signature, as mere formality. He has rebuffed the rule of law, and he has trivialized and trampled upon, trampled under foot the prohibitions against unreasonable searches and seizures guaranteed to Americans by the United States Constitution. This Constitution still lives. This Constitution was made for all time, for all administrations, for all Presidents, for all Senators.

We are supposed to accept these dirty little secrets, and we are told that it is irresponsible to draw attention to President Bush's gross abuse of power and constitutional violations. But what is truly irresponsible is to neglect to uphold the rule of law.

We listened to the President speak last night on the potential for democracy in Iraq. The President claims to want to instill in the Iraqi people a tangible freedom and working democracy, at the same time that he violates our own U.S. laws and checks and balances. President Bush called the recent Iraqi election ''a landmark day in the history of liberty.'' I daresay in this country we may have reached our own sort of landmark. Never have the promises and protections of liberty seemed so illusory, so fleeting. These renegade assaults on the Constitution and our system of laws strike at the very core of our values and foster a sense of mistrust and apprehension about the reach of Government.

I am reminded of Thomas Payne's famous words: ''These are the times that try men's souls.''

These astounding revelations about the bending, the twisting, the stretching, and contorting of the Constitution to justify a grasping, irresponsible administration under the banner of ''national security'' are an outrage. Congress can no longer sit on the sidelines. It is time to ask hard questions of the Attorney General. It is time to ask hard questions of the Secretary of State, of the Secretary of Defense, and of the Director of the CIA. The White House should not be allowed to exempt itself from answering the same questions simply because it might assert some kind of ''executive privilege'' in order to avoid further embarrassment.

The practice of domestic spying on citizens should stop immediately. Oversight hearings need to be conducted. Judicial action may be in order. We need to finally be given answers to our questions: Where is the constitutional and statutory authority for spying on American citizens? Where? Where is that authority to be found?

What is the content of these classified legal opinions asserting that there is a legality in this criminal usurpation of rights?

Who is responsible for this dangerous and unconstitutional policy?

How many American citizens' lives have been unknowingly affected?

Mr. President, fellow Senators, let us in our day remember the words of Brutus to Cicero:

> Our ancestors scorned to bear even a gentle master!

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

UNITED STATES CONSTITUTION

Mr. DURBIN. Mr. President, I come to the floor to commend my colleague from West Virginia, ROBERT C. BYRD. Some of the people who are witnessing this session of the Senate had a chance to hear this man speak just moments ago. I do not know of another Senator more dedicated to our U.S. Constitution or one who has been more fearless in attacking Presidents of both political parties when he thinks that they have gone too far. Senator BYRD's speech should be read by every American as a reminder of basic freedoms in this country that we should never, ever take for granted.

I listened to his speech as I was sitting in my office and I thought I would come to the Chamber and try to follow in his footsteps, though what I have to offer cannot possibly match what he had to say.

Several things have occurred over the last several years which are historic in nature and troubling. This administration has decided on three occasions, at least three separate occasions, to depart from the traditions of America, traditions which we have followed for generations, Presidents, Republican and Democratic alike.

It was this administration which told us we could no longer wait to be threatened by another country, we could no longer wait to be attacked by another country, we must act preemptively, we must strike first, based on intelligence and information we must attack first, and that is why we invaded Iraq. What did that intelligence lead us to believe? That Iraq had weapons of mass destruction threatening the United States and our allies; that Iraq was developing nuclear weapons that could threaten the Middle East and the United States; that Iraq was in concert in some way with al-Qaida and responsible for the 9/11 attacks; that Iraq was securing fissile material from Africa to manufacture into nuclear weapons. All of those things were told to the American people, some by the President in his State of the Union address, and every single one of them turned out to be wrong.

The President told us we needed to attack Iraq for those reasons, and it turned out none of the reasons were valid, not one. So he would change the foreign policy of the United States not to wait and carefully make a decision about whether we commit our troops and our treasure but, rather, to move preemptively—a departure from foreign policy for generations.

Secondly, this administration said that we had to depart from the traditions of the United States for generations when it came to the interrogation of prisoners. This Bush administration argued that we had to redefine torture in a way that was inconsistent with treaties the United States has accepted as law of the land. Terrible things occurred. We saw the worst of them in some of the photos from Abu Ghraib and reports from other agencies.

Thank goodness for the leadership of Senator JOHN MCCAIN, a Republican of Arizona, himself a POW in the Vietnam War, also a victim of torture in that experience, who stood up to the administration and said, You are wrong. Torture is not American. If we are fighting for values, those values cannot include torture.

He was responding to our troops who were writing to Members of Congress saying, Give us clarity, give us direction, tell us if the world has changed;

soldiers, graduates of West Point, who were told we do not engage in torture as soldiers representing the flag of the United States of America. Thank goodness for the leadership of Senator MCCAIN in confronting the Bush administration and forcing them to back down when it came to this dramatic change in the standards for torture.

Now comes another chapter in changing the tradition of America under this administration relative to our right of privacy as American citizens, the PATRIOT Act, which I voted for to give this Government more powers to fight terrorism, but we said every 4 years we will look at it to make certain we have not gone too far, that we have not given up our basic rights and freedoms in the name of security and safety.

Now we are involved in a debate. My colleague from Alabama has been to the floor several times. As a former prosecutor, he argues that under the PATRIOT Act we have to trust the Government, we have to trust the prosecutors, not to go too far. Unfortunately, that is not the standard in America. The standard in America says in this Constitution, this Bill of Rights, that our basic freedoms are guaranteed to us, and before this Government takes those freedoms or infringes upon them, there must be good reason and good cause.

Last week, on a bipartisan basis, we said, Stop this version of the PATRIOT Act, make certain that changes are made so that the freedoms and rights of Americans are protected. In the midst of that debate came a revelation which is truly astounding, a revelation that for years the Bush administration, through Government agencies, has been involved in wiretaps and eavesdropping on American citizens. The reason this is of concern, of course, is that it violates a longstanding legal requirement that the Government has to obtain a court order to eavesdrop electronically on an American in the United States. We spell out with specificity what the Government must do if it is going to invade our privacy, listen to our conversations, hack into our computers, whatever it may be. The grounding for that is not just some speech on the Senate floor or the House; the grounding for that is this Constitution, where its fourth amendment makes it clear from the beginning of this Nation the standard we would use, a standard worth repeating in the fourth amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

That is in our Constitution that we have sworn to uphold. And for thousands of unsuspecting Americans, their basic records, their communications, their computers have been looked at and listened to by this Government, without legal authority.

So therein lies the third dramatic departure of this administration, from a tradition which most of us assumed would never be violated, a tradition which says that our privacy can be compromised if a President assumes the power to do it. This President did not come to Congress saying, I need powers to listen to America's conversations. No. He just did it. He said he has the power to do it as Commander in Chief.

Well, there are some obvious questions that should be asked when we hear these things. Where is the concern in Congress? Where is the sense of outrage in the Senate? Where is the sense of obligation that our generation owes to our children to make certain that we are held accountable to protect their constitutional rights? I am glad that Senator SPECTER of the Judiciary Committee has said we will have a hearing on this, and we should. This is a serious matter.

Some of us saw recently a movie about Edward R. Murrow titled ''Good Night and Good Luck.'' I remember Edward R. Murrow. As a young boy, I used to see him on television from time to time. This movie depicts the McCarthy era where the Congress in this case overstepped its authority, and one Senator from Wisconsin literally destroyed lives, literally infringed on the rights and liberties of individual citizens. The sense of outrage in America rose to such a level that eventually he was called to task and discredited for what he had done in violation of the basic rights of American citizens. It took some time. In the beginning, the red scare kept people quiet, they did not want to raise this issue.

Sadly, in this war on terrorism, we may be going through a parallel moment in history, where our fear of another 9/11 has kept us entirely too quiet and silent when this Government has gone too far. I hope what we have learned about this wiretapping and this eavesdropping, these violations of basic rights of citizens, will cause all Americans, not just those of us serving in the Senate, to stand up and speak out. If we swore to uphold this Constitution, it was not just the paper that it is written on but the spirit and values that it stands for, values of privacy and freedom which once lost may never be reclaimed.

I urge my colleagues to read carefully the earlier remarks of Senator ROBERT BYRD and consider carefully our individual responsibilities.

I yield the floor.

Mr. CRAIG. Mr. President, may I ask what the order is at this moment?

The PRESIDING OFFICER. The Senate is in morning business, with Senators permitted to speak for up to 10 minutes.

APPEALS REFORM ACT LANGUAGE

Mr. CRAIG. Mr. President, I rise today to express my concern that language was not included yet again by this Congress in the supplemental bill—which is now embodied in Defense appropriations—to clarify that categorical exclusions as used by the U.S. Forest Service under the Appeals Reform Act of 1993 are exempt from comment and appeals.

That sounds technical, doesn't it? It isn't so technical if you believe in the Healthy Forest Act and the ability of the Forest Service, as so prescribed by the Congress, to operate under that specific act. A legislative fix is desperately needed as projects continue to pile up and create additional backlog for our U.S. Forest Service.

At the heart of this issue is when, where, and how the public is included in the execution of categorical exclusions extended in the projects. By definition, categorically excluded projects are categories of action which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The Forest Service requires scoping on each and every project on Forest Service land in which they want to utilize the categorical exclusion.

Let me quote from the Forest Service Environmental Procedures Handbook:

> Scoping is required on all proposed actions, including those that would appear to be categorically excluded.

In other words, those actions the Forest Service may take on Forest Service ground in a given watershed that we have said are excluded under the Healthy Forest Act, as it relates to the National Environmental Policy Act—meaning an environmental impact statement—we still say the Forest Service scoping is required on all proposed actions, including those that would appear not to need a categorical exclusion.

> If the responsible officials determine, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA [and that is chapter 40]. If the responsible official determines, based on scoping, that the proposed actions may have a significant environmental effect, prepare an EIS.

That is an environmental impact statement.

In other words, we have tried to be very careful within the law to make sure that happens. I am going to submit for the RECORD a much more detailed understanding of what exactly we mean because it is critically important at this moment that we allow the Forest Service to get back on track.

Having said that, I have talked legalese as it relates to a specific act of Congress and a law that is in place now for our Forest Service to act. What does it mean in real life, what does it mean on the ground? I think all of us witnessed the fires of late fall and early winter in the greater Los Angeles watershed that were burning the scrub oak in the foothill country in back of Los Angeles. In most instances, those

fires in the past have not only consumed the scrub oak, they have consumed, in some instances, hundreds of beautiful and very expensive homes that are within those areas. This year, it is interesting that, of the thousands of acres that were burned, only one home was burned.

In talking to the firefighters, why were they able to control the fires in a better way and why were fewer homes lost, they said very clearly, because it was the thinning and the cleaning of the brush and undergrowth that was allowed by the categorical exclusions of the Healthy Forest Act. In other words, the fuel buildup that naturally occurs on public lands, and in this instance in urban watersheds in which the Healthy Forest Act is more specific, categorical exclusions were granted. In other words, the scoping process of the Forest Service to determine the impact that the action of cleaning and thinning would have on public lands was determined not to be of major environmental consequence, and therefore the Forest Service was allowed to proceed.

Along comes a judge just this summer and says: no no, you have to do an EA, you have to do an EIS, on all, including those provisions the Congress spoke specifically to as it related to categorical exclusions. In other words, within the category an exclusion is allowed for certain actions on forested public lands for the purpose of sustaining the quality of the watershed and the health of the forest, and so on and so forth.

What is clearly a loss now is that the Forest Service, in planning for next year's actions on the ground—the thinning and the cleaning of our forests to ensure forest health, to bring down the overall threat of fire—has been dramatically diminished by this judge's action.

We had hoped in the supplemental to gain the language necessary to reinstate the categorical exclusions, as was and as has been clearly debated as the intent of Congress. That has been denied. So when Congress reconvenes in January and early February, we are going to have to work overtime to make sure that we get this law into place.

What does it mean? It means protecting watersheds. It means protecting homes that have been built up against the forested lands, doing the right kinds of actions which result in the cleaning up of our forests and the ensuring of the vitality of the environment within.

What the judge's action means in essence is that you have to spend tens of millions of dollars perfecting an EA—or in this instance a full environmental impact statement—to be able to proceed. We believe that under certain circumstances where the health of the forest is critical, and in this instance the Los Angeles Basin, where we saw the action of being able to control fires because the overall fuel load on our public lands was dramatically reduced by the thinning and the cleaning in that region of the country—without that we simply will not be able to move forward as expeditiously as the Healthy Forest Act intended that we move. That is what is at issue here. I had hoped we would gain that. We have not gained that in the DOD appropriations and supplemental language that was applied.

Federal lands recovery work that is going on in Mississippi and Louisiana and Texas, work that was caused by the hurricanes Katrina and Rita, is now included in this problem. So are, overall, 800 planned, categorically excluded low-impact projects and hazardous fuel reduction projects affecting over 234 communities and 200 currently planned, prescribed burning projects that, if delayed, would more than likely put them beyond optimum and safe burning conditions, delayed because of the action of the judge and therefore pushed off for another year.

That is the critical nature of this issue and why I have come to the Chamber. As one of the chief cosponsors of the 1993 Appeals Reform Act, I know we had no expectation or belief that categorical exclusions placed in 1993 would be subject to the Appeals Reform Act. It is important that we move forward to clarify this language.

I understand some on this floor today think otherwise.

Perhaps it would be wise to review the amount of public participation involved in the development of the Categorical Exclusions regulations that both the Clinton administration and then the Bush administration have developed since the Appeals Reform Act was first passed in 1993.

In the mid-1990s, the Clinton administration proposed significant changes to the Categorical Exclusions. They did this through an Administrative Procedures Act—APA—rulemaking process which included both a proposed and final rulemaking, including extensive review of numerous public comments.

Those categorical exclusions withstood a number of legal challenges and remained in place until 2003.

In 2000, the Bush administration undertook extensive analysis of thousands of projects to develop a series of new categorical exclusion proposals.

After review of literally thousands of projects the Bush administration proposed a number of changes to the Clinton administration's categorical exclusions. They did this through an APA rulemaking that again included extensive public comments.

I think it is important that my fellow Senators understand that the original Heartwood II settlement agreement, which attempted to nullify categorical exclusions, was rejected by the District Court in which it was brought and the case was dismissed.

Now, the Eastern District Court of California has chosen to resurrect that settlement agreement and impose it nationally.

I know that some people in the Chamber today may still be concerned that the land managers may miss something and not realize there could be a potential problem.

Between the scoping that is required, the extraordinary assessment that is required, and the public notice requirements that will be required if this language is maintained, it is inconceivable to me that projects that might be environmentally detrimental could be carried out through the categorical exclusion process.

This body should reject the efforts of the ''gum up the works'' crowd who want more process to slow down more projects.

The current categorical exclusions are based on more data and analysis than anytime in history.

We have more protections to ensure they are not misused than anytime in history, and we will have more public notice on categorical exclusions than anytime in history if we adopt the language in this bill.

I hope this Congress sees fit to address this situation before it is too late. We thought we could. We will have to return early next year to get that kind of work done.

What is at stake now is the health of the forest, the health of the watershed, and literally hundreds of thousands of homes spread across the landscape that are about or near public forest, public lands, that could find themselves in a condition that would jeopardize their presence by fire, which could ensure where fuel-laden lands exist.

I thought it was important that I submit that for the RECORD because it is critically important that we move forward on that issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

THE PATRIOT ACT

Mr. DAYTON. Mr. President, last Saturday, President Bush castigated those of us who voted against cloture on the PATRIOT Act. He said:

> That decision is irresponsible and it endangers the lives of our citizens.

That is a mistaken characterization. Every Senator supported the Senate's reauthorization of the PATRIOT Act last July when it passed the Senate unanimously.

Last Friday, 47 of us said the House-Senate conference report is not yet good enough. Before we make the PATRIOT Act permanent, we must make it right.

The PATRIOT Act that we passed 4 years ago, which I supported, gave the Federal Government unprecedented powers to conduct surveillance on American citizens and demand information about their private activities, about their personal lives. We passed the PATRIOT Act hastily in the Senate 4 years ago, too hastily in retrospect. We passed it when my caucus was in the majority. So we, and I, were

responsible for that haste. It seemed necessary in the immediate aftermath of 9/11.

One important consideration for this Senator, then, when we voted for the PATRIOT Act was that it would sunset in 4 years, and this Congress would take the time to review it carefully and modify it as necessary to assure the proper balance between combating terrorism and protecting the privacy of innocent Americans.

As I said 5 months ago, the Senate passed unanimously our reauthorization of the PATRIOT Act with important changes to protect constitutional rights of innocent American citizens.

The House passed its version of the new PATRIOT Act in July, also, allowing plenty of time for the House-Senate conference committee to resolve their differences in the best interests of all Americans. But the House did not appoint conferees until last month. The House leaders chose to engage in this take-it-or-leave-it brinksmanship to try to force the Senate to accept their permanent invasion of the private lives of innocent Americans.

Last Friday, 47 Senators—5 Republicans, 41 Democrats, and 1 independent—said: No, we will not accept this version of the PATRIOT Act. We do not oppose the PATRIOT Act, as the President and others have falsely charged. Most of us voted for the original law 4 years ago, and all of us in this Senate voted for the new one last July. Many of us, myself included, have proposed extending the existing law for another 3 months to give conferees time to resolve our remaining differences to design a permanent PATRIOT Act that most of us can support.

What we haven't said is there is more brinkmanship with the President and the Senate leader threatening to let the existing law expire so they can blame 47 of us for supposedly weakening the protections of the American people.

Let us be very clear. Let the American people be very clear. If the PATRIOT Act is allowed to expire, that is the choice and the responsibility of the President and the Senate majority leadership.

Today is December 19. The Senate is still in session with 12 more days until the year's end. That is enough time either to revise the conference report so that it has broad bipartisan support in the Senate or to extend the existing law.

All of us, every Member of this Senate, supported the Senate version of the new law that passed unanimously 5 months ago. It is absurd and wrong for detractors to claim that we do not support it now when we just disagree with a few but a very important few features in it.

Last Saturday, President Bush also reasserted his right to do whatever he deems necessary to protect the American people from terrorist attacks. That is an enormous responsibility, one that Congress shares with him. However, we differ in our approaches.

The President's legal counsel has opined that he has the constitutional authority as Commander in Chief and the legal authority from Congress post-9/11 to override or ignore any laws or limitations that he decides necessary to combat terrorism.

Whether Congress intended ''any and all force necessary'' to include that authority is highly questionable. But that is the President's operating assumption.

If the President can do whatever he wants, whether it is legal or not, and his decision to do it makes it legal, then in a sense the PATRIOT Act is not even necessary because the President can order it all done anyway.

In another sense, however, our getting the PATRIOT Act right becomes even more imperative because we are a nation of laws, laws which must be followed by everyone—even the President, even the FBI, even the National Security Agency, during good times and bad, during war and peace, because our existence as a nation, as a constitutional democracy requires it and depends upon it.

No external threat to our way of life could be so great as the danger that our rule of law not be obeyed by our most powerful institutions and individuals.

This Senate exists to make those laws. Every one of us—all 100 of us—takes that responsibility most seriously because we assume that our laws matter, that they will be honored and obeyed, or that they will be enforced so that they will define the legal courses of action that everyone in this country must follow. Otherwise, we are irrelevant and laws that we enact are meaningless.

Our operating assumption, however, continues to be that our laws will be obeyed, and, thus, our efforts in the Senate do matter. That is why we want and we deserve the time necessary to get our laws right. That is the way our process is supposed to work. All 41 or more Senators to hold up legislation in order to get it right is the way our process is supposed to work.

It is strange, to say the least, that those who assert their right to ignore our rules and our laws are vilifying us in this Senate for following them.

For people watching us today who may be unfamiliar with the details of the existing PATRIOT Act, let me give you an example of what it is that we are trying to correct.

According to the Washington Post, last year, under the PATRIOT Act, some 56 FBI field agents signed over 30,000 national security letters. That is 100 times more than before the act. They were not directed toward possible terrorists but, rather, to people, to businesses, to universities, to libraries that might have information about people who might be terrorists. The PATRIOT Act requires them to turn over the information demanded, the most personal information, including health records, Internet use, upon demand, with no recourse. It is a criminal act under the PATRIOT Act for them to tell anyone else about the Government's demands, even to consult with an attorney.

Under an Executive order which President Bush signed 2 years ago, all that private-personal information remains permanently in the Government's files and can be shared with other Government agencies even after the suspect has been determined to be completely innocent.

The new PATRIOT Act, which 100 Senators unanimously supported last July, would not prevent the Federal Government from demanding that information on some 30,000 businesses, universities, and individuals every year in order to combat terrorism. It would only provide minimal legal rights of independent judicial review of those demands when some innocent person, business, library, or university believes the Federal Government has gone too far.

No one wants to prevent the Federal Government from stopping terrorists or preventing terrorist acts against the United States. We do want to prevent some people, however well intended they believe they are, from going too far. Secret torture prisons in other countries is going too far. Spying on Americans is going too far. Denying due process, even the right to consult with an attorney, for innocent Americans, is going too far.

Former Republican Congressman Robert Barr said it well:

> Enough of this business of justifying everything as necessary for the war on terror. Either the Constitution and the laws of this country mean something or they don't. It's truly frightening what is going on in this country.

Thank you, Congressman Barr.

Those in the Senate who believe the Constitution and our laws enacted under it still mean something, we are trying to get the PATRIOT Act before we make it permanent, and we deserve our right to do so. It is an inversion and a perversion of the values of this great Nation when it becomes legitimate to set up illegal torture prisons in other countries or to conduct illegal spying in this country but illegitimate for the Senate to carry out its own due process.

This Senate must not adjourn for this year until we either extend the existing PATRIOT Act or pass a new one acceptable to a broad bipartisan majority of this Senate. Anyone who prevents Members from doing one or the other is placing their personal politics ahead of the protection of the American people. That would be dangerous and destructive personal politics. That is why we must vote on a 3-month extension of the existing PATRIOT Act or a new conference report before we adjourn this year.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT—MOTION TO PROCEED

Mr. FRIST. Mr. President, I ask unanimous consent the Senate proceed to the conference report to accompany H.R. 2863, the Defense appropriations bill.

Mr. REID. I object.

Mr. FRIST. Mr. President, I move to proceed to the conference report.

Mr. REID. 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 motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

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

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—94

Akaka	Dorgan	Mikulski
Alexander	Durbin	Murkowski
Allard	Ensign	Murray
Allen	Enzi	Nelson (FL)
Baucus	Feingold	Nelson (NE)
Bayh	Feinstein	Obama
Bennett	Frist	Pryor
Bingaman	Graham	Reed
Bond	Grassley	Reid
Boxer	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Harkin	Salazar
Burns	Hatch	Santorum
Byrd	Hutchison	Sarbanes
Cantwell	Inhofe	Schumer
Carper	Inouye	Sessions
Chafee	Isakson	Shelby
Chambliss	Johnson	Smith
Clinton	Kennedy	Snowe
Coburn	Kerry	Specter
Cochran	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
Dayton	Lincoln	Voinovich
DeMint	Lott	Warner
DeWine	Lugar	Wyden
Dole	Martinez	
Domenici	McConnell	

NAYS—1

Jeffords

NOT VOTING—5

Biden	Corzine	McCain
Burr	Dodd	

The motion was agreed to.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, Signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the RECORD in the Proceedings of the House on Sunday, December 18, 2005.)

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2863, the Department of Defense Appropriations Act of 2006.

Bill Frist, John Cornyn, John Thune, Jeff Sessions, Lindsey Graham, Saxby Chambliss, Richard Shelby, Jon Kyl, Mike Crapo, Mitch McConnell, Ted Stevens, Thad Cochran, C.S. Bond, Conrad Burns, Pete Domenici, Judd Gregg, John Warner.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, I move to proceed to the conference report to accompany H.R. 1815, the Defense authorization bill.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 360 Leg.]

YEAS—95

Akaka	Dorgan	McConnell
Alexander	Durbin	Mikulski
Allard	Ensign	Murkowski
Allen	Enzi	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Bennett	Frist	Obama
Bingaman	Graham	Pryor
Bond	Grassley	Reed
Boxer	Gregg	Reid
Brownback	Hagel	Roberts
Bunning	Harkin	Rockefeller
Burns	Hatch	Salazar
Byrd	Hutchison	Santorum
Cantwell	Inhofe	Sarbanes
Carper	Inouye	Schumer
Chafee	Isakson	Sessions
Chambliss	Jeffords	Shelby
Clinton	Johnson	Smith
Coburn	Kennedy	Snowe
Cochran	Kerry	Specter
Coleman	Kohl	Stabenow
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Cornyn	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dole	Lugar	Wyden
Domenici	Martinez	

NOT VOTING—5

Biden	Corzine	McCain
Burr	Dodd	

The motion was agreed to.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1815), to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is reprinted in the House proceedings of the RECORD of Sunday, December 18, 2005.)

The PRESIDING OFFICER. The majority leader.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 1815, the National Defense Authorization Act for fiscal year 2006.

Bill Frist, John Warner, Mel Martinez, Lisa Murkowski, Mitch McConnell, Bob Bennett, George Allen, John Thune, Michael B. Enzi, Jeff Sessions, Johnny Isakson, Judd Gregg, Tom Coburn, Ted Stevens, Conrad Burns, Kay Bailey Hutchison, Pat Roberts.

DEFICIT REDUCTION ACT OF 2005—CONFERENCE REPORT—MOTION TO PROCEED

Mr. FRIST. I ask unanimous consent to now proceed to the consideration of the conference report to S. 1932, the omnibus deficit reduction bill.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. I now move to proceed to consideration of the conference report.

Mr. CONRAD. 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 motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Arizona (Mr. MCCAIN).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Jersey (Mr. CORZINE), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

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

The result was announced—yeas 86, nays 9, as follows:

[Rollcall Vote No. 361 Leg.]

YEAS—86

Akaka	Domenici	McConnell
Alexander	Dorgan	Mikulski
Allard	Ensign	Murkowski
Allen	Enzi	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Frist	Pryor
Bennett	Graham	Reed
Bingaman	Grassley	Reid
Bond	Gregg	Roberts
Boxer	Hagel	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Santorum
Burns	Inhofe	Sarbanes
Byrd	Inouye	Schumer
Carper	Isakson	Sessions
Chafee	Johnson	Shelby
Chambliss	Kennedy	Smith
Coburn	Kerry	Specter
Cochran	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lautenberg	Talent
Cornyn	Leahy	Thomas
Craig	Levin	Thune
Crapo	Lieberman	Vitter
Dayton	Lincoln	Voinovich
DeMint	Lott	Warner
DeWine	Lugar	Wyden
Dole	Martinez	

NAYS—9

Cantwell	Feingold	Murray
Clinton	Harkin	Obama
Durbin	Jeffords	Snowe

NOT VOTING—5

Biden	Corzine	McCain
Burr	Dodd	

The motion was agreed to.

DEFICIT REDUCTION ACT OF 2005—CONFERENCE REPORT

The PRESIDING OFFICER. The clerk will report the conference report.

The assistant legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1932), to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95), having met, have agreed that the Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment, and the House agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of Sunday, December 18, 2005.

The PRESIDING OFFICER. Who yields time?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, we are now on the deficit reduction conference report. We have 10 hours of debate, 5 hours equally divided. I know my colleague from North Dakota wants to speak tonight.

Just for the edification of our membership, we will run some time off the clock tonight—I think about 2 hours—and then come back tomorrow and continue the debate and hopefully wrap this up tomorrow.

This bill is a culmination of a lot of work done in the Congress, by the President, and by the Members of the Republican Party, to try to put some discipline into the fiscal accounts of the Federal Government. This bill represents the first time in 8 years that the Federal Government has attempted to control the rate of growth in entitlement spending. People who watch this debate understand this issue, but just to frame it again, Federal Government spending is divided into basically three different areas.

There is interest on debt, which we have virtually no control over.

There is the discretionary spending, otherwise known as the appropriations process, which means every year we spend a certain amount of money. It is really up to us how much we spend, and it is for specific programs. The majority of it goes to the defense spending, but other money goes to education, it goes to environmental issues, it goes to highways—things for which every year we appropriate, saying we are going to spend this much. We can change that number arbitrarily from year to year, and we do.

The third element of Federal spending is called mandatory entitlement spending. This spending occurs as a matter of law because certain people have come to certain situations in their life which allows them to receive a benefit from the Federal Government. They may be veterans who have served us well; they, therefore, get benefits. They may be persons of low income who need assistance, especially a child in a low-income family who needs assistance. They may be a retired citizen who paid into Social Security, who gets health care under Medicare, or a low-income person who gets health care under Medicaid, especially nursing care. These are entitlements. They make up the vast majority of Federal spending. Discretionary spending only makes up 30 percent of the Federal accounts, and half of that is defense spending.

Entitlements are also the fastest growing part of the Federal Government. We know because the baby boom generation is going to retire, and spending on entitlements, specifically on Social Security, Medicare, Medicaid, the health care accounts especially, is going to increase radically over the next generation's 30 years as the baby boom generation begins to retire. It is estimated today by the Comptroller General that there is a $44 trillion—that is trillion dollars with a ''T''—$44 trillion unfunded liability, which means we don't know how we are going to pay for it. The obligation is in place already for the cost, primarily for health care programs for retired people who are going to be the baby boom generation.

The practical effect of having that high an obligation out there and unpaid for is our children are going to have to pay the price. The practical effect of that is our children and our children's children, these wonderful young people who work here as pages, when they become earners and have kids of their own are going to have to pay so much to pay for programs which are already on the books to support our generation, the baby boom generation, they are essentially not going to be able to have as high a quality of life as we have. They are not going to be as comfortable in sending their kids to college, buying a car, buying a home, or just doing the day-to-day activities of life because they are going to have to pay a huge tax burden for our generation, unless we do something about it.

That is what this bill is about. For the first time in 8 years, the Federal Government has stepped up and said: We are going try to do something—the Republican side of the aisle—about this huge burden we are going to put on our children through entitlement accounts by addressing those accounts. We have been aggressive on the discretionary side. We have essentially frozen nondiscretionary spending, but on the entitlement side it continues to grow at a dramatic rate. This bill is a step, really

more than a toe, but putting our whole foot up to our ankle in the water of trying to control entitlement spending, mandatory spending. It amounts to almost $40 billion in savings in Federal spending.

If this bill passes, it will reduce the debt of the Federal Government which will be passed on to our children by $40 billion. That is a big number. It is a big number in New Hampshire, and I know it is a big number in the State of every Member of this Senate. In the context of overall Federal spending, regrettably it is not as big a number as I would like, but it is still a big step forward on the road toward fiscal responsibility, and it is the first attempt to do this in 8 years. And this is an important point to stress. This is the only opportunity any Member of this Senate is going to have in this session of this Congress to try to control spending, to try to reduce the debt of the Federal Government.

We are going to hear a lot of talk from the other side saying: Well, you have a tax relief bill out there which is being reconciled, and it is twice the size of the spending restraint here. The tax bill isn't being voted on tonight or tomorrow; the deficit reduction bill is being voted on tonight or tomorrow. If you want to reduce the deficit, if you want to reduce the debt of the Federal Government, reduce the costs that will be passed on to our children and our children's children, this is your opportunity to do it. If you want to vote against the tax relief bill, go ahead.

I note as an aside that the tax relief bill has as its major function commitments to programs which I think have vast support across this Congress. In fact, I have heard other Members on the other side of the aisle say: Why aren't we passing a patch to the AMT so 20 million people do not fall under the alternative minimum tax? That is $30 billion of the tax bill. Why aren't we extending the deductibility of State and local sales taxes? That is a big chunk of the tax bill. Why aren't we extending the R&D tax credit, which causes us to create jobs in this country by giving entrepreneurs an incentive to go out and invest in R&D?

We are hearing that from the other side of the aisle. The majority of the items in the tax relief package of $70 billion are items which have very broad support in this Congress—Democratic and Republican support. So it is a bit of a straw dog—in fact, it is a very large straw dog, maybe a Newfoundland straw dog—to claim that extension of the tax bill for some reason, the majority of which is supported on both sides the aisle, is somehow reducing the effort on the deficit in this bill.

The two don't have that much relationship, and furthermore the tax bill already has broad support on the main elements of it. The only ones at issue are dividends and capital gains, which do not even impact this year or next year because that part of the tax relief package doesn't kick in until 2009 or 2010.

This is it, folks. It is your one chance as Members of Congress, as Members of the Senate, to actually do something about the debt we are going to pass on to our children. You have an opportunity to reduce that debt by almost $40 billion.

In addition, I would note, there is a net number, the $40 billion.

There are initiatives in this bill which are fully paid for which make a lot of sense and which are pretty good policy. We decided to put them in after we had saved money to pay for them.

For example, the Pell Grant Program is expanded dramatically to low-income kids. This is a program to encourage low-income children who are especially interested in math and science to be successful in our schools. We know it is the seed corn for our productivity and our competitiveness as a Nation to promote math and science skills.

There is an expansion of Medicaid to low-income children. About 1 million—over 1 million—needy kids today who are low income, who do not have health coverage will get health coverage.

There are efforts in this bill to assist the people in the gulf coast, significant efforts. It would be very hard, I would think, if I were from the gulf coast to vote against this bill because there is a tremendous amount of funds being focused on the gulf coast, to address the needs of the gulf coast in the area of education and in the area of Medicaid. Literally billions of dollars, all paid for.

In addition, there is money for LIHEAP, $1 billion. Those from cold regions of the country know because of the runup in the price of gas and oil it will be very hard for a number of low-income families to make it through the winter. They will have to make some tough choices. We want to fund the low-income energy assistance program. This bill does it; it pays for it with spending reductions.

In addition, there is significant and positive welfare reform language which the Governors are asking for, bipartisan governorship is asking for, as well as Medicaid reform language—again, with bipartisan, strong support from the Governors—giving the Governors more flexibility and allowing them to deliver more service to more low-income people at less cost.

This bill has a lot of good policy in it as well as saving $40 billion. It is the first and only opportunity—not the first opportunity because we voted on it a few times—the last opportunity to cast a vote to save $40 billion and not pass the debt on to our children.

It is a positive bill. I hope my colleagues will support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the chairman for his spirited defense of this package. He is quite right. There are elements of this package that are positive. There are elements of this package that at some point we will adopt. Perhaps we will adopt them this year.

The chairman has left out certain chapters in the book of reconciliation. Reconciliation was part of this year's budget process. There are three chapters in the book. The first chapter is the spending cuts that have now come back from the conference report, deliberations between the House and the Senate, that cut spending $40 billion over 5 years. That is $8 billion a year when the budget is $2.5 trillion. If my math is right, that is one three-hundred-fiftieth of the spending for a year.

But what is left out of the chairman's presentation is the other chapters of the book. Chapter No. 2 is the tax cuts. He is quite right, they are not before the Senate today, but they are coming. They are part of this package. They are part of this book. They are the second chapter. The second chapter cuts $70 billion of taxes. Put the two together, a $40 billion spending cut and a $70 billion tax cut, and guess what. You have increased the deficit, not reduced it.

This is all part of a package. It is part of the budget process, three chapters that one has to read to reach a conclusion on the meaning of the book. The third chapter is the one they really do not want you to read. The third chapter increases the debt of the country by $781 billion. That is the third chapter. We do not hear them talk about that chapter at all. There is a reason for that.

If we go back and look at what the President has said—in 2001, when we enacted his economic program, he said:

> [W]e can proceed with tax relief without fear of budget deficits, even if the economy softens.

Mr. SARBANES. Will the Senator yield?

Mr. CONRAD. I am happy to yield.

Mr. SARBANES. That was in March of 2001. At that time, wasn't the Federal budget running a surplus?

Mr. CONRAD. The Senator is exactly right. The Senator from Maryland, a valued member of the Senate Committee on the Budget, remembers very well the budget was in surplus. In fact, we had a projection from the administration that we were going to have almost $6 trillion of surplus.

Mr. SARBANES. So at the time we were running this surplus—and let me just note, it had taken a lot of work to get out of an earlier deficit into surplus—and there was some concern expressed that the excessive tax cuts the President was proposing would throw us into a budget deficit and we would lose that surplus, the President told us in no uncertain terms that there was no reason to fear budget deficits; is that correct?

Mr. CONRAD. The Senator is exactly correct. The President told us there was no concern about the possibility of budget deficits. In fact, the Senator may recall this chart provided by the Congressional Budget Office and the

Office of Management and Budget of the President that said this was the range of possible outcomes going forward with the fiscal affairs of the country. They adopted the midpoint of this range of possible outcomes showing very dramatic surpluses, all above the line, dramatic surpluses throughout this entire period coming to 2005.

Look what actually happened. At that time, the worse case scenario was this bottom line. We can see for the most part it was all in surplus territory. This is what they said was the best case scenario. They adopted the middle of the range of possible outcomes.

I can remember very well our Republican friends saying to me: Don't you understand, Senator, it will be way above this midrange because the tax cuts will generate greater economic activity and more revenue.

Now we can look back and test that theory and see what happened in the real world. Here is what happened in the real world: This red line, it is far below the worst case estimate of what might happen. In fact, it represents massive deficits, the biggest in our history. That is what really happened.

Then the President said the next year, in the State of the Union Address:

. . . Our budget will run a deficit that will be small and short-term . . .

That was after saying there would not be any deficits. That proved to be wrong.

Mr. SARBANES. Will the Senator yield?

Mr. CONRAD. I am happy to yield.

Mr. SARBANES. So the previous year the President was saying there would be no deficit, and a year later, in the face of what obviously would be a deficit, he said, well, it will be a small and short-term deficit.

Mr. CONRAD. That is exactly what he stated in 2002, small and short-term deficit. Now we are able to check that record.

He made that claim in 2002, the first year we were into deficit, after running surpluses in the years leading up to that.

In 2001, the first year he was in office, the budget from the previous administration had a surplus. The next year, after his policies were adopted, we plunged into deficit. Then he told us that year the deficits were small and short term.

The chart shows what has happened. The next year the deficit got much worse. In 2003, it was approaching $400 billion. In 2004, the deficits actually exceeded $400 billion. This year, the deficit is over $300 billion. Of course, much of the Katrina costs have not been included in this year's deficit because it will be coming next year.

It is very interesting, the President was wrong about saying no deficits. We saw that in 2002. So in 2002 he said they will be small and short term. He was wrong again. Instead of small and short term, they are large and long lasting; in fact, the biggest deficits we have ever had in the history of the country.

Mr. SARBANES. Will the Senator yield for a question?

Mr. CONRAD. Yes.

Mr. SARBANES. In 4 years, after the President said there would be no deficits, we have incurred deficits of, according to my quick calculation, over $1.2 trillion; is that correct?

Mr. CONRAD. The Senator is correct.

If you go to the next step, what we have is a situation that is more serious even than that. The deficit does not capture the increases in the debt. The deficit last year was $319 billion. I say ''last year'' because we are now in Federal fiscal year 2006. That started October 1. So the 2005 deficit ending the end of September, the year ending the end of September, was $319 billion. But here is how much got added to the debt: not $319 billion but $551 billion. All of it has to be paid back.

Of course, as the Senator knows, the big difference between the two calculations—the deficit and what got added to the debt—the biggest difference is the money being taken from Social Security to pay other bills.

Last year, the last Federal fiscal year, $173 billion of Social Security money was taken to pay for other things. The result is, when you add that with the deficit and other trust funds that are being raided—another $59 billion—what got added to the debt was really $551 billion.

If we look back on the relationship between spending and revenue expressed as a share of gross domestic product—and we do it in that way because economists tell us that is the best way to make these comparisons—the red line on this chart is the spending line. You can see, the spending had come down substantially until we reached the year 2000. Spending had come down each and every year of the Clinton administration as a share of gross domestic product. Now we have had a substantial uptick because of defense costs and homeland security, rebuilding New York.

But look at the revenue line. The revenue line, which was at a peak when the President came into office—he said this was a record high. He was right—but look at how the revenue plunged with the President's policies. Most of this is tax cuts. And the other, of course, is economic slowdown. The result is, we have opened up a chasm between the revenue line of the United States and the spending line. We see that gap going forward, and really at the worst possible time because this is before the baby boomers retire.

In looking at that, the President told us—the next year, after his 2002 address—in 2003:

[O]ur budget gap is small by historical standards.

So first he told us there would be no deficits. Then he told us the deficits would be small and short term. Both of those proved to be wrong. Then he said to us, well, they will be small by historical standards.

Let's check that assertion because here is what we see: They are not small by historical standards. In fact, they are the biggest deficits we have had in the history of the United States. I know the President likes to say, well, as a share of GDP they are not as big as the deficits in the 1980s. But that is because he excludes the money he is taking from Social Security. Back in the 1980s, there was no money to take from Social Security, or very little. Now there are large amounts to take from Social Security, and the President is taking it all, every penny; last year, $173 billion.

Over the next 10 years, under the President's plan, he is going to take $2.5 trillion of Social Security money and use it to pay for other things. This is at a time when he says there is a shortfall in Social Security. Well, he is helping create the shortfall in Social Security because he is taking the money and using it to pay for other things. Then the President told us in 2004:

So I can say to you that the deficit will be cut in half over the next five years.

Let's review. In 2001, he told us there were going to be no deficits. He was wrong. In 2002, he said it was going to be small and short term. Wrong again. The next year he told us, in 2003, the deficits were going to be small by historical standards. Wrong again. They are the largest deficits we have ever had in dollar terms. And if you measure appropriately, as a share of GDP, it is as large as the deficits in the 1980s, when you include the money from Social Security that he is taking to pay for other things.

Now he says he is going to cut the deficit in half over the next 5 years. Well, let's examine that claim. Here is what the President says is going to happen: The deficit is going to get cut in half over the next 5 years. But he has really left out a lot of things to make that assertion. He has left out the war cost past September 30 of this year. There is nothing in his budget for that. He has left out the money to fix the alternative minimum tax, the old millionaire's tax that is rapidly becoming a middle-class tax trap. It costs $700 billion to fix. He has no money in his budget to do it. And, of course, his Social Security plan, which is the biggest budget buster of all, he has no money in his budget to do that.

When you put all those items back in, you see quite a different picture emerge. In fact, past this 5 years, you see the deficit growing dramatically. Of course, the biggest reason for that is, the cost of the President's tax cuts absolutely explodes in the second 5-year period.

Now, the President told us, back in 2001, how important it was to pay down the debt. He said at the time:

. . . [M]y budget pays down a record amount of national debt. We will pay off $2 trillion of debt over the next decade. That will be the largest debt reduction of any country, ever. Future generations shouldn't be forced to

pay back money that we have borrowed. We owe this kind of responsibility to our children and grandchildren.

So the President, back then, was telling us he was going to pay down the debt. Well, there is no paydown of debt occurring here. The debt is exploding. It was $5.7 trillion back in 2001. It is $8 trillion today. And here is where it is headed: By 2010, under the terms of the budget that we are discussing, the debt is going to reach $11.3 trillion. So on this President's watch, the debt will have doubled. All the while, he was telling us he was going to have maximum paydown of the debt, and that we owed it to future generations to pay down debt. There is no paydown of debt going on here. The debt is skyrocketing.

Mr. SARBANES. Will the Senator yield for a question?

Mr. CONRAD. I am happy to yield.

Mr. SARBANES. This reconciliation process really is a package, in which you have to consider not only the spending cuts but the tax cuts they are pushing through, as well as the increase in the debt. Am I correct that this reconciliation package includes raising the debt limit by some $800 billion?

Mr. CONRAD. The Senator is correct. This package really does have three chapters. The first chapter is the spending cuts, $40 billion over 5 years. There is only $8 billion a year in a $2.5 trillion budget. It is so insignificant. But then the second chapter is cutting taxes $70 billion, which, if you put the two together, there is no deficit reduction going on here. They are increasing the deficit. And the third chapter is extending the debt limit of the United States by $781 billion.

That is what happens if you read this whole book. It is not a pleasant ending.

Mr. SARBANES. If the Senator will yield further?

Mr. CONRAD. I am happy to.

Mr. SARBANES. I want to tell the Senator one story. I was in a shopping center over the weekend, and I saw a bumper sticker on a car. The bumper sticker said: ''Mr. Bush, we will be forever in your debt.'' Just then, the person whose car that was came along, and I said to them: What was it you were thinking about that the President has done when you say we are going to be forever in his debt? I thought it was for something he had done. The person said: Think about it. I meant exactly what it says. Mr. Bush, we are going to be forever in your debt.

Here is the debt, which the Senator from North Dakota is pointing out. I think the person is right. We are going to be forever in this debt. This is what is being handed to this generation, the next generation, and the generation after that.

As the Senator pointed out in the previous chart, they have doubled the debt over this very short time period.

Mr. CONRAD. They have doubled it. And the amazing thing to me is our colleagues are out here with a bill that is headlined, ''Deficit Reduction.''

If you read the fine print and look at their own estimates of what happens if this budget is finally approved and implemented, here is what it does to the debt. Anybody see any reduction of deficit here anywhere? This is taking us from $7.9 trillion of debt at the end of fiscal year 2005 and it is going to run it up to $11.3 trillion in 5 years. Each and every year, according to their estimates of what their budget does, the debt of the country is going to increase by $600 to $700 billion a year. They are out here talking about a deficit reduction package. Please. Do words have no meaning? Do we make phrases up in order to fool people? People aren't going to be fooled because each and every year they are going to be able to see what has happened under the claims that are being made. Have the deficits been reduced? Has the debt been reduced? Or is it skyrocketing?

I make the assertion today that if this budget is actually implemented for the next 5 years, for which it has been approved, at the end of the time, the debt will be dramatically larger than the debt today. The kind of stunning result of all this is that our country is borrowing more and more money, much of it from abroad. I went and looked at the external debt of the country. It took 42 Presidents—here are their pictures, all of these Presidents—224 years to run up a trillion dollars of external debt. In fact, it was $1.01 trillion of external debt. This President has more than doubled it in 5 years. This President has run up more debt that is held by foreigners than 42 Presidents did in 224 years. That is a remarkable accomplishment. I hesitate to call it an accomplishment because accomplishment suggests something positive. There is nothing positive about it.

The result is, here are the countries to which we owe money. We owe Japan almost $700 billion. We owe China almost $250 billion. And my favorite is the Caribbean Banking Centers. We owe them over $100 billion. One would think, in the midst of all this, Congress would want to actually do something to reduce the deficit.

Mr. SARBANES. Will the Senator yield for a moment?

Mr. CONRAD. Yes.

Mr. SARBANES. Let me go back to this external debt that is being held outside the country. Isn't it important to understand, as difficult as the deficit and debt problems are, that when the debt is held internally, it is Americans owing it to Americans. But when the debt is being held externally, it means that as a nation, we have to service this debt which is being held outside of the country. So that amount becomes a charge, as it were, against our own standard of living; isn't that correct? Would not our standard of living be lowered as a consequence of having to meet this external debt-servicing requirement?

Mr. CONRAD. The Senator is exactly right. What is happening now is, we used to borrow the money largely from ourselves. Now we are borrowing from abroad. Since the President took over, the debt of the country has gone from $5.7 trillion to $8 trillion. That is a $2.3 trillion increase. Look at this: The debt has increased by $2.3 trillion, but a trillion of it has come from abroad. Over 40 percent of the debt that has been increased under this President is coming from abroad. Again, I go back to the historic record. It took 224 years and 42 Presidents to run up a trillion dollars of debt held abroad. This President has exceeded that amount in 5 years.

During the President's term, the debt has increased $2.3 trillion, a trillion of it coming from foreigners.

Mr. SARBANES. Will the Senator yield? I note from his chart, in 2001, we had $5.7 trillion in debt, of which $1 trillion was held abroad.

Mr. CONRAD. Right.

Mr. SARBANES. So about a sixth, maybe 17 or 18 percent, was being held abroad.

Mr. CONRAD. That is correct.

Mr. SARBANES. This President has added $2.3 trillion in debt, of which $1.1 trillion is being held abroad. So there has been a dramatic shift in who is holding this debt and what that represents in terms of a burden on our society.

Mr. CONRAD. It is very dramatic. You can see the trend continuing. Now, when we have a bond auction, about half of the debt is being bought by foreigners.

Mr. SARBANES. There is a wonderful line in a Tennessee Williams play where Blanche DuBois says: I have always depended on the kindness of strangers. It seems to me that is what is happening to the fiscal situation of the United States. We are becoming increasingly dependent on foreigners and in particular foreign countries, since this debt now is being purchased largely by the central banks and not by individual investors. There has been a dramatic shift in terms of who is holding our debt. We are becoming increasingly dependent on others for our fiscal survival. It is a dramatic and deeply concerning development.

Mr. CONRAD. I spoke to the student council leaders of my State. There were 900 to 1,000 of them in the room. I pointed out this fact about more and more of our debt being held externally. I asked them: How many of you think this is a sign of strength and how many think it is a sign of weakness? Some people say this is a sign of strength that people will loan us this amount of money. And I would say 98.9 percent of the students said they saw it as a sign of weakness, not a sign of strength. Maybe one reason is they realize they are the ones who will have to pay this bill.

Now we have this bill before us. Here is the total spending we are going to do over the next 5 years—$14.3 trillion. Our friends come here with $40 billion of spending cuts. That is one three-

hundredth, less than one three-hundredth, in fact, one three-hundred-fiftieth of the spending that is going to occur over the next 5 years, one three-hundred-fiftieth of the spending. Of course, it is going to be completely topped by the tax cut that they are proposing, a tax cut of $70 billion that is going to occur. It is interesting. Why do we have this package before us? Here is what the chairman of the Ways and Means Committee said in the House. He told a group of lobbyists that the spending cuts are necessary to make room for tax cuts. The spending cuts are $40 billion over 5 years. The tax cuts in the Senate are $70 billion. In the House, the tax cuts are even bigger. In the House, the tax cuts over 5 years are $95 billion.

Some people have said to us: Senator, who knows what is going to happen in 5 years? How about this next year? What is the comparison in this package between the spending cuts and the tax cuts? Here you have it. In the Senate package, the spending cuts are $5 billion for the year and a $2.5 trillion budget. That is one five-hundredth of the spending. And the tax cuts are $11 billion. So in the first year, they are $6 billion under water. They are adding to the deficit, adding to the debt by $6 billion, not cutting it as they claim here in their speeches. But when you put the whole package together, they are increasing the deficit.

If you look at the House package and their proposed tax cuts, it's much worse. Five billion dollars of spending cuts, $21 billion in tax cuts in the first year. So they are adding to the deficit by $16 billion in the first year alone, adding to the debt.

(Mr. TALENT assumed the Chair.)

Mr. SARBANES. Will the Senator yield for a question on that chart?

Mr. CONRAD. I am happy to.

Mr. SARBANES. Is it not also important to ask the question, who is being affected by the spending cuts and who is benefitting from the tax cuts, because that gives you a sense of what the priorities are? It is my perception that the spending cuts are affecting those who have little—working people, or people in difficult circumstances, such as young people trying to get a college education. The tax cuts for which these spending cuts are being imposed—as the chairman of the House Ways and Means Committee said, to make room for them—are going primarily to benefit those at the upper end of the income and wealth scale. So aren't those the priorities that are being set here? People have to make the connection. They say we are doing the spending cuts to reduce the deficit. Of course, then they admit they are trying to hold the deficit down through spending cuts in order to make room for the tax cuts.

So you have to ask, who is being hit by the spending cuts? Who is getting the benefit of the tax cuts? Those priorities, it seems to me, are standing completely on their heads. They are just the wrong set of priorities. We have to make that connection, don't we, to understand what is happening?

Mr. CONRAD. We do. I have in my hand a report from the Center on Budget Policy Priorities, a group the Senator knows well, a very well respected group in this town. This is the headline: ''Budget Conference Agreement Contains Substantial Cuts Aimed at Low-Income Families and Individuals.''

One of the points they make is that this budget agreement increases the copayment and premiums for those who are on Medicaid. Those are the least fortunate among us. They say:

> A large body of research has found that such cost-sharing increases are likely to lead many low-income Medicaid patients to forego various health care services and medications or not to enroll in Medicaid at all.

Second, it provides for benefit reductions. They go on to report that the conference report retains about a third of the House-passed cuts that, for many Medicaid beneficiaries, would eliminate the Federal standards which assure that they receive comprehensive health care coverage.

It goes on. Some of the cuts are for, stunningly enough, child support enforcement. So they are cutting funds for child support enforcement. The CBO estimates show the conference report includes a billion and a half in cuts in Federal funding for child support enforcement efforts. That is funding that States use to track down absent parents, for child support orders, and to collect and distribute child support. The Congressional Budget Office has estimated that this loss in Federal child support funding will result in child support going uncollected over the next 5 years of $2.9 billion.

Some of those advocates for this say they are friendly to families. What is friendly about letting deadbeat dads escape their responsibilities to their kids and their families? That is part of what is done here. If this package were really reducing the deficit, that would be one thing. It doesn't reduce the deficit. This package, when you include the tax cuts, dramatically increases the deficit. When you look at this package, not only does it cut child support enforcement and Medicaid for those who are the lowest income among us, it also badly underfunds child care because also buried in the package is reform of welfare.

The Congressional Budget Office estimates that it would cost $8.4 billion for the States to meet the new work requirements. Only a billion dollars is provided. So if we are going to have these people go to work, one of the things that happens is the cost of childcare goes up. The cost of childcare goes up by $8.4 billion, and they short-funded it by $7.4 billion. We all know who gets the benefit of the tax cut. The tax cuts on the House side go overwhelmingly to the wealthiest among us. The average tax cut just on the capital gains and dividend provisions in the House bill provides those earning over a million dollars a year a $35,000 tax cut.

I don't find this in any religious teaching that I have been exposed to. But the message is very clear. We take from the least among us to give to those who have the most among us. That is what this bill does. On top of that, when you put the whole reconciliation package together, it increases the deficit, increases the debt, and in chapter 3 expands the debt of the United States in one fell swoop by $781 billion.

Mr. SARBANES. Will the Senator yield?

Mr. CONRAD. Yes.

Mr. SARBANES. In light of what we previously looked at as to how this debt is being financed from outside the country, in effect what is happening is that in order to give tax cuts to very wealthy people, we are borrowing from Japan, China, Korea, and the Caribbean money centers, and so forth and so on. That is where we are finding the money to fund this debt that is being created and run up in order to give tax cuts to wealthy people, is it not?

Mr. CONRAD. I was speaking to people in my State, and one person in my audience said: You know, the President says that it is the people's money and we ought to give it back to the people. Well, that is absolutely true. This person in the audience said: But it is turning out that it is the Chinese people's money, the Japanese people's money. That is whose money we are giving back. We are having to borrow from them to give it back.

This is a bizarre situation that we are in, but that is what is happening. Some say, well, if you borrow the money, somehow it will pay off. Let's make sure that Chairman Greenspan doesn't believe that. He said this before the Joint Economic Committee:

> We should not be cutting taxes by borrowing.
>
> We are borrowing in huge amounts.

This is his statement on restoring the pay-go provisions that we tried hard to get restored, which say you can have additional tax cuts, but you ought to pay for them. You can have new spending, but you ought to pay for it.

He said this on March 2 before the House Budget Committee:

> All I am saying is that my general view is I like to see the tax burden as low as possible. And in that context, I would like to see tax cuts continued. But as I indicated earlier, that has got to be, in my judgment, in the context of a pay-go resolution.

That is what we offered to our colleagues, but they didn't accept it. Here are the major provisions in this package. It cuts low-income beneficiaries in Medicaid. It cuts child support. It cuts foster care. I mean, really, is this the priority of the country to cut child support enforcement, foster care, and medical help for those who have the least among us?

It delays Social Security supplementary benefit income payments for poor, disabled individuals. Now there

are new work requirements imposing unfunded mandates on the States.

Mr. President, I think these are the wrong priorities for the country. The reconciliation bill unfairly targets Medicaid beneficiaries. The Senate proposed no increase in cost sharing for these very low income people. The House insisted on $2.4 billion from those same very low income people. The conference report included 80 percent of what the House proposed.

Mr. SARBANES. Will the Senator yield for a question?

Mr. CONRAD. Yes, I will be happy to yield.

Mr. SARBANES. The way the Medicaid Program is structured, as I understand it, is that in order to be a Medicaid beneficiary, in order to receive Medicaid to meet your health care needs, you have to be adjudged to be at an income level that is so low it is clear you can not afford medical care. In order to get Medicaid to begin with, don't you have to meet that requirement?

Mr. CONRAD. Absolutely. The Senator is correct.

Mr. SARBANES. And now they are proposing to take people who get Medicaid because their income is so low that they can't meet their health care needs in any other way, and they are imposing additional burdens on these Medicaid recipients.

Mr. CONRAD. I say to my colleagues, it is not just in Medicaid. They are cutting foster care. They are cutting child support enforcement. You have to ask yourself: What can they be thinking?

> The President's 2006 budget cites the child support program as one of the highest rated block/formula grants of all reviewed programs government-wide.
>
> This is a program that epitomizes the value of parental responsibility—increasing family self-sufficiency, decreasing public assistance use, reducing out-of-wedlock births and discouraging divorces.

That is what the Center for Law and Social Policy said on November 17 of this year. And we have a bill before us that cuts child support.

One has to wonder, What are they thinking? What are the priorities that are contained here, priorities that cut the spending $40 billion by targeting those who are the least fortunate among us—$40 billion over 5 years. It is only $8 billion a year. The first year it is only $5 billion of savings in a $2.5 trillion budget. That is one five-hundredth of the budget, and then they cut the taxes, especially for the wealthiest among us, much more. So, when you put the two together, they have increased the deficit, not reduced it; they have increased the debt, not reduced it at the very time the debt is exploding before the baby boomers even retire, which will put even more pressure on our budget.

This is a budget that makes no sense. It makes no sense. I have never seen this town more disconnected from reality than we are with this budget.

This bill hurts companies, farmers, and workers, repeals the antidumping provision, eliminating assistance that benefits U.S. companies, farmers, and workers who have been targets of unfair and predatory trade practices.

I conclude as I began. This package does not make sense. When you put together all of the elements of reconciliation, it increases the deficit, it increases the debt at the very time the debt has already been dramatically increased, at the very time we are borrowing more and more money from abroad to float this boat, and this budget and this budget plan pushes us down the road to more deficits and more debt, and they have labeled it deficit reduction, but nothing could be more misleading.

This is a package, when you put it all together, that increases deficits and increases debt and at the worst possible time—before the baby boomers retire—and puts even further pressure on these fiscal imbalances that are leading us to borrow more and more money from all around the world.

At some point, we have to stop and we have to get on a firmer fiscal course. We have to restore fiscal discipline to our country.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. I ask the Senator from Maryland how much time he wishes to speak?

Mr. SARBANES. Five minutes, at most.

Mr. President, I first thank and commend the very able Senator from North Dakota for a very powerful presentation and also for his work, day in and day out, as the ranking member on the Democratic side on the Budget Committee. I don't think there is anyone in the Senate who understands the fiscal situation better or has a more perceptive analysis of what has happened than the very distinguished Senator from North Dakota. I thank him for his leadership on this issue.

I will be very brief. I simply want to say that this conference report before us is worse than what the Senate passed, significantly worse. It will cut crucial assistance to working families, to students, and to the elderly, amongst others. I think these cuts will move the Nation in the wrong direction. I particularly disagree with imposing these cuts on low- and moderate-income Americans, supposedly to bring our budget deficit under control but actually to make room to give tax cuts to very wealthy people.

The budget resolution provides for reconciliation protection for both the spending bill and a tax bill. So to see the impact of the reconciliation process, one has to take the two together. Although we only have the spending bill now, the tax bill will follow along as surely as the night follows the day.

The budget resolution requires almost $40 billion in spending cuts. The same budget resolution tells the committees to report tax cuts of $70 billion. So we have a reconciliation process supposedly intended to reduce the deficit—in fact, they call it the Deficit Reduction Act; where is George Orwell when we need him?—which, when both the spending bill and the tax bill are considered, is going to increase the deficit, not reduce the deficit.

So these spending cuts are being made not to address our budget deficit, they are being made to make room for tax cuts—the quote from the chairman of the House Ways and Means Committee was absolutely on point. This legislation is a clear example of a fiscal policy that places a higher priority on tax cuts than on funding needed services and reducing the deficit. This is clearly a misplaced priority, regrettably one that has characterized this administration.

We have seen this incredible swing in our fiscal position over the last 5 years. When President Bush came into office, we were projecting, over the next 10-year period, a surplus in the Federal budget of $5.6 trillion. Today, after a series of excessive tax cuts, we are projecting a deficit over 10 years of $4.5 trillion. This is a swing in our fiscal position of $10 trillion in the wrong direction, from a $5.6 trillion projected surplus to a $4.5 trillion projected deficit.

We are risking our fiscal future. We are targeting tax cuts to those who need them the least and we are cutting programs for those who need them the most.

This is an incredibly wrong set of priorities. I am very much opposed to this conference report, and I very much urge my colleagues to reject this conference report when it comes to a vote.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from New Hampshire.

Mr. GREGG. Mr. President, I want to respond briefly to a couple of the comments that were made, and then I think what we will do—I have talked with the Senator from North Dakota and he has been very accommodating—I think we will deem 2 hours off the bill equally divided as of this evening, which means he gives up 15 minutes and I give up 45 minutes. That is how negotiations are almost every time we get together.

A couple points were made. First, that the antidumping language was taken out. Actually, the antidumping language is still in the bill.

So that item of concern by the Senator from North Dakota has been addressed, and I would think that that would cause him to vote for the bill.

The second item was the issue of child support enforcement. Now, the House bill did have some initiatives in there which the Senate spoke on relative to a motion to instruct, and the final language came very close to the Senate position on child enforcement. In fact, essentially what the bill says is that we are not going to reduce the effort on child support again. What we are not going to allow States to do,

however, is game the system where they take Federal funds, use those Federal funds, claim them to be State funds and then ask for a Federal match to Federal funds when they should be using State funds. That sounds a little confusing but the way it works is this: The State has to match $100 to get $1,000 from the Federal Government. What they will do is take $100 from the Federal Government—instead of coming up with $100 from the State, they will say they got their $100 from the Federal Government and they are going to claim it is a State $100 and then they are going to match and then they ask for another $1,000. Well, that is gaming the system and it is not appropriate. I think there is general agreement that that is bad policy.

In fact, what the bill does in the area of child support is increase child support under the current TANF laws. There is welfare reform in this bill, and it is pretty positive in the area of child support, in expanding child support. So I think that, again, there is positive child support language in here. Some of the language which was referred to is reflective of the way the original House bill was but is not reflective of the conference. The same is true for the foster care area. To the extent foster care is addressed, it is addressed in a very reasonable way, dealing with Federal-eligible children who are living with unlicensed relatives in another ineligible setting or who have not yet entered foster care. So basically, again, there is an issue of gaming the system by the States, but it does not impact—and in fact, again, this bill specifically addresses, in a positive way, the foster care issue.

So those three items were raised. There were a lot more which were raised, but those three items need to be addressed. More importantly, on a broader scale, this bill, rather than, in my opinion, impacting low-income individuals in a negative way, actually has a pretty positive impact on a lot of low-income accounts. As was mentioned earlier, there is a very large expansion of the Pell grant program for low-income students. There is a very large expansion of something called the SMART Program for low-income students who are going to participate in math and science. There is a significant expansion of Medicaid assistance. Over a million children will be picked up under this bill. The Medicaid proposals which are in this bill will basically protect the integrity of the system so that it can be expanded rather than be gamed by people who spend down inappropriately and basically pass their burdens on to the Federal taxpayer when they can actually afford some of the costs of their nursing home care, and it will give the State Governors much more flexibility.

That is why I believe it was the Governor of Virginia, Governor Warner, who came out strongly for the flexibility language and the spend-down language because, and I believe I am representing this correctly, he saw this as a positive step to be able to deliver more child care to more kids who are low income by having more flexibility and doing it with less of an increase in dollars.

Remember, we are not talking about cutting anything in Medicaid. Medicaid will spend $1.2 trillion during this 5-year window. It will grow at 40 percent. We are talking about a $5 billion cut on a $1.2 trillion base. Essentially, it does not even show up if one does a chart—because the lines are so close together—as being a significant reduction in the Medicaid accounts.

What is important about Medicaid is the policy that comes with that proposal, which policy specifically will give the Governors what they have asked for in a bipartisan way. They came to the Congress and said: This is what we would like to deliver this program more effectively to more people. This bill carries that type of language with it and that is the way we should approach this. So it is a good bill relative to low-income individuals, especially those on Medicaid and those wanting to go to college.

There are initiatives in here which will benefit those people and be positive. But it is also a good bill for all Americans. The idea that we are going to actually, if we pass this bill, reduce the debt by $40 billion is a pretty good idea. Most Americans would like to see the Federal debt go down, and they would like to see us do something to discipline Federal spending in some way, and this is not a dramatic way.

The Senator from North Dakota held up a chart to point out that it was not dramatic. He made our case for us. One cannot say all of these things are egregious and then hold up a chart that says there is $14 trillion of spending that is going to occur in the next 5 years and only $40 billion of cuts and look how small that cut is—it is not a cut but a reduction in rate of growth—compared to all the spending that is going on, so it is not relevant, and then turn around and say but the $40 billion is inappropriate because it does too much.

Well, it does not do too much. It is a step forward. It has some policy which will hopefully drive the outyears in a very positive way, give the Governors more flexibility in the Medicare area, do a number of things in a number of other accounts which will be positive. As a result, most importantly, we will have for the first time put not our toes but at least up to our ankles in the waters of trying to put some fiscal responsibility into the area of mandatory and entitlement spending, which is the single largest driver of our deficits and our outyear problems relative to being able to pay the cost of the Federal Government.

So I certainly hope we will pass this bill because it is the responsible thing to do in my view.

I ask unanimous consent that we deem 2 hours have been used on the bill and that those 2 hours would be equally divided between the parties.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. Mr. President, I would like 1 minute to respond to two points that were made and then I would be happy to agree.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GREGG. I will reserve until the Senator has used his 1 minute, which I hope the Chair will discipline very precisely.

Mr. CONRAD. Mr. President, on the question of foster care, the bill includes $343 million in net cuts in foster care funding, including two cuts that will make it harder for some States to provide federally funded foster care benefits to certain grandparents who are raising their grandchildren. That is not the right priority for the country.

On the question of child support enforcement, the Congressional Budget Office estimates show the conference report includes $1.5 billion cut in Federal funding for child support enforcement efforts over the next 5 years. This is funding that States use to track down absent parents, establish legally enforceable child support orders and collect and distribute child support owed to families.

CBO has estimated that this loss in Federal child support funding will result in $2.9 billion in child support going uncollected over the next 5 years. These cuts are smaller than in the House bill. It will nevertheless take billions of dollars out of the pockets of mothers and children who are owed child support.

This report goes on to say the conference agreement also contains some modest improvements in child support but the cuts in Federal support for the program and the associated loss of child support collections far outweigh the very modest benefits that some families would see as a result of a few improvements.

I ask unanimous consent that this report from the Center on Budget and Policy priorities be printed in the RECORD after my statement.

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

(See exhibit 1).

Mr. GREGG. Mr. President, I renew my request.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. I reserve the right to object for another 30 seconds. On the Byrd antidumping proposal, the Senator is correct that the repeal is not immediate but the repeal is still in the bill. It is postponed by 2 years. So I say on these issues we have a difference of position. I think this goes in the wrong direction. I think it expresses the wrong priorities for the country. Most seriously to me the whole reconciliation package increases the deficit and increases the debt. We ought to be doing precisely the opposite.

EXHIBIT 1

[From the Center on Budget and Policy Priorities, Dec. 18, 2005]

BUDGET CONFERENCE AGREEMENT CONTAINS SUBSTANTIAL CUTS AIMED AT LOW-INCOME FAMILIES AND INDIVIDUALS

(By Edwin Park, Sharon Parrott, and Robert Greenstein)

Some are claiming that the conference agreement on the budget reconciliation bill is closer to the Senate-passed bill in the low-income area than to the House bill and does not harm low-income Americans to any significant degree. While some low-income cuts in the House bill have been dropped, the conference agreement contains numerous cuts in various low-income areas—including Medicaid—that are much closer to those in the House-passed bill than to the provisions of the Senate bill.

Taken as a whole, the provisions in the conference agreement would cause considerable hardship among low-income families and people who are elderly or have disabilities. This is due in no small part to action by the conferees to shield certain powerful special interests—principally pharmaceutical companies and the managed care industry—and to extract deeper savings from low-income families instead.

MEDICAID

The CBO estimates show that conference agreement retains the majority of the Medicaid cuts contained in the House-passed bill that directly affect low-income beneficiaries.

According to the preliminary estimates issued by the Congressional Budget Office (no legislative language is yet available), the reconciliation conference report achieves much of its Medicaid savings by retaining a number of provisions in the House-passed reconciliation bill that would require low-income Medicaid beneficiaries to pay more out-of-pocket for health care or reduce the health care services for which many beneficiaries are covered. The conference report forgoes the Senate reconciliation bill's more balanced approach; the Senate had avoided changes that would harm low-income beneficiaries by achieving larger savings in the area of Medicaid prescription drug pricing and by reducing excessive payments made to Medicare managed care plans. Key aspects of the Medicaid component of the conference report include the following:

Increases in co-payments and premiums. The conference report leaves largely intact the House-passed cuts that would allow states to increase substantially the co-payments that many Medicaid beneficiaries are required to pay to access health care services and medications, as well as the premiums they can be charged to enroll in Medicaid in the first place. The cuts in the cost-sharing area in the conference report (i.e., the cuts resulting from increases in co-payments and premiums) are 80 percent of the size of the House-passed cuts in this area over five years, and 90 percent the size of the House cuts over ten years. A large body of research has found—and CBO has concluded—that such cost-sharing increases are likely to lead many low-income Medicaid patients to forgo various health care services and medications or not to enroll in Medicaid at all.

Altogether, the conference report includes cuts related to co-payments and premiums that total $1.9 billion over five years and $10.1 billion over ten years (as compared to $2.4 billion over five years and $11.2 billion over ten years in the House-passed reconciliation bill). The Senate bill included no increases in co-payments and premiums.

Benefit reductions. The conference report retains about one-third of the House-passed cuts that, for many Medicaid beneficiaries, would eliminate the federal standards which assure that they receive comprehensive health care coverage. Under the House bill, many beneficiaries could lose access to various medically necessary services, possibly including therapy services, personal care, eyeglasses, hearing aids, and crutches. The conference agreement includes benefit cuts of $1.3 billion over five years and $6.3 billion over ten years from a scaling back of the health care benefits that Medicaid covers. (The House bill contained $4 billion in benefit cuts over five years and $18.5 billion over ten years. The Senate included no reductions in benefit coverage in its bill.)

Overly restrictive asset transfer rules for people who need nursing home care. The conference report appears both to adopt all of the provisions in the House-passed bill to restrict eligibility for Medicaid long-term care services and to contain additional provisions not included in the House bill that would yield further savings in this area. Under the conference agreement, the savings in this area would be 11 percent larger than under the House bill, and seven times larger than under the Senate bill.

Preventing more-affluent individuals from sheltering assets that could be used to pay for their long-term care is a laudable goal. The provisions in the conference agreement, however, appear to go well beyond that. For example, one provision of the House bill that appears to have been retained in the conference report would penalize many non-affluent individuals who make modest gifts to relatives or contributions to charity, and then experience an unexpected decline in their health several years later that causes them to need long-term care. The conference agreement includes Medicaid reductions in this area of $2.4 billion over five years and $6.4 billion over ten years (higher than the $2.2 billion over five years and $5.8 billion over ten years in the House-passed bill). The Senate's more targeted and carefully designed provisions in this area would have produced savings of $335 million over five years and $890 million over ten years.

The conference report's health care provisions also move toward the House bill in another respect: they cater to powerful special interests—in particular, the pharmaceutical and managed care industries—at the expense of low-income beneficiaries.

No increase in drug manufacturer rebates. The Senate bill avoided harmful co-payment and premium increases and benefit reductions in part because it achieved much of its Medicaid savings by restraining the amounts that Medicaid pays for prescription drugs. To ensure that Medicaid gets the best prescription drug prices, the Senate bill increased the minimum rebates that drug manufacturers are required to pay the Medicaid program for drugs dispensed to Medicaid beneficiaries. The Senate bill also applied the rebates to drugs provided to Medicaid beneficiaries through managed care plans. The Senate drug rebate provisions produced Medicaid savings of $3.9 billion over five years and $10.5 billion over ten years, which helped the Senate reach its savings target without harming low-income beneficiaries.

In a victory for the powerful pharmaceutical industry, the conference agreement fails to include the Senate's significant rebate provisions. The conference agreement includes only two minor provisions related to drug rebates already included in both the House-passed and Senate-passed bills; these provisions generate savings of only $220 million over five years and $720 million over ten years.

No elimination of the Medicare stabilization fund. The conference report also protects Medicare managed care plans. It drops a Senate provision that would have eliminated a wasteful $10 billion slush fund to encourage participation in Medicare by regional Preferred Provider Organizations (PPOs). The Medicare Payment Advisory Commission (MedPAC)—the official, independent advisory body to Congress on Medicare payment policy—recommended this summer, in a nearly unanimous vote, that this fund be eliminated because it is unnecessary and unwarranted and provides an unfair competitive advantage to PPOs over traditional Medicare fee-for-service and other managed care plans such as Medicare HMOs. Nevertheless, the conference agreement leaves this fund fully intact, forgoing $5.4 billion in savings over five years (and twice that over ten years) that were contained in the Senate bill. The removal of this Senate provision likely was done at the behest of the managed care industry and the Administration, which threatened to veto the budget bill if the Senate provision was included in the final conference agreement.

Partially gutting another provision to curb overpayments to managed care plans. There is near-universal agreement among analysts that the current Medicare payment structure provides excessive payments to managed care plans, and the Administration announced earlier this year that it would act administratively to eliminate a feature of the payment formula that is responsible for a significant volume of excessive payments. MedPAC endorsed the Administration's action, and the Senate reconciliation bill wrote the Administration's planned administrative action into law, for a savings of $6.5 billion over five years and $26 billion over ten years, according to CBO. Under the conference agreement, however, the ten-year savings have been lowered from $26 billion to $4.1 billion, according to the CBO estimates. While the conference report language is not yet available, it appears that the conference agreement is written so the part of the Medicare payment formula that would be reformed would revert to its current, problematic status after five years, and after that time, managed care plans would again receive the overpayments this provision is supposed to curb.

In short, in place of the Senate's reasonable savings from eliminating the wasteful Medicare stabilization fund and lowering the prices that Medicaid pays pharmaceutical companies for prescription drugs, the conference agreement includes a hefty share of the House Medicaid provisions on cost-sharing and benefits, which the research indicates are likely to reduce the affordability and accessibility of health care for large numbers of low-income patients.

LOW-INCOME PROGRAMS OUTSIDE THE HEALTH AREA

The Senate reconciliation bill did not include cuts in any low-income program other than Medicaid, and did not seek to rewrite the welfare rules in a reconciliation bill. The conference agreement, by contrast, includes sizeable cuts in child support enforcement, SSI, and foster care, as well as highly controversial TANF provisions that would impose expensive, unfunded work requirements on states and result in the loss of child care for many low-income working families not receiving TANF cash assistance.

1. Child Support Enforcement: The CBO estimates show that the conference report includes a $1.5 billion cut in federal funding for child support enforcement efforts over the next five years and a $4.9 billion cut over the next ten years. This is funding that states use to track down absent parents, establish legally enforceable child support orders, and collect and distribute child support owed to families, CBO has estimated that this loss in federal child support funding will result in

$2.9 billion in child support going uncollected over the next five years, and $8.4 billion going uncollected over the next ten years. These cuts are smaller than those in the House bill, but will nevertheless take billions of dollars out of the pockets of mothers and children who are owed child support. (The conference agreement also contains some modest improvements in the child support program. The cuts in federal support for the program and the associated loss of child support collections, however, far outweigh the very modest benefits that some families would see as a result of a few improvements in other child support provisions.)

2. TANF: Despite representing the largest change in welfare policy since 1996, the nature of the TANF provisions in the conference report has been a closely guarded secret. CBO analyses show, however, that the conference agreement would impose very expensive new work requirements on states. Moreover, in a major change in policy that goes well beyond anything in any prior TANF bill, including the House budget reconciliation bill, the conference agreement would remove from states the flexibility they now have to apply different types of work-related requirements to people receiving assistance funded entirely with state ''maintenance of effort'' funds. (These are state funds that a state must expend to draw down federal TANF funds.)

CBO estimates that if states attempt to meet the work requirements in the conference agreement by placing more parents in welfare-to-work programs (rather than by reducing the number of poor families receiving assistance at all), the cost to states would be $8.4 billion over the next five years, which is slightly more than the cost would have been under the House reconciliation bill. CBO projects that some states would not meet the new mandates and would face fiscal penalties as a consequence.

It is widely known that there was a concerted effort in the conference to redesign the House bill's work requirements so that the Congressional Budget Office would conclude that some states would not be able to meet the requirements and thus would be subject to fiscal penalties. This was purposefully done to get around the ''Byrd rule,'' a procedural rule that generally prohibits the inclusion in a reconciliation bill of changes in policy that do not significantly reduce or increase federal costs or revenues. The goal here appears to have been to secure an estimate from CBO that the changes in the work requirements would, in fact, save money for the federal Treasury and to do so by making the new requirements sufficiently unrealistic that some states would not be able to meet them. (It remains unclear whether the TANF work provisions in the conference agreement succeed in meeting the Byrd rule test.)

3. Child Care: The conference report includes $1 billion in additional funding for child care, which is $7.4 billion less than CBO estimates to be the cost to states of meeting the new work requirements, and more than $11 billion less than what states will need both to meet the new work requirements and to ensure that their current child care programs for low-income working families not on TANF do not have to be scaled back as a result of the impact of inflation on child care costs. This means the conference agreement includes no new funding for states to help meet the intensified work requirements that will be imposed upon them or to provide child care for children whose parents will newly be placed in work programs.

To come up with the funds to meet the new work requirements and provide child care for the children of mothers placed in these excluded work programs, many states will have little alternative but to scale back child care slots for working poor families not on welfare and shift those slots to TANF families instead. As a result of the under-funding of child care in the conference agreement, we estimate that by 2010, some 255,000 fewer children in low-income working families not on TANF will receive child care assistance than received such assistance in 2004.

The $1 billion in child care funding in the conference agreement is higher than the $500 million in the House-passed bill. It is $5 billion lower, however, than the amount included for child care in the bipartisan TANF legislation approved by the Senate Finance Committee earlier this year.

4. SSI: Under the conference agreement, poor individuals with disabilities who have waited months for the Social Security Administration to review and approve their applications for SSI (a common occurrence in SSI), and consequently are owed more than three months of back benefits, would have to receive these benefits in installments that could stretch out over the course of a year. The first installment would include no more than three months of back benefits. By contrast, under current law, most such disabled individuals receive their back benefits in a single lump sum payment. Individuals owed more than 12 months' worth of benefits receive benefits in installments, but the first installment is equal to 12 months of benefits.

This provision of the conference agreement means many poor SSI recipients with disabilities would have to wait longer for benefits they are owed, making it more difficult for them to pay off arrears in bills that have built up during the period when they were unable to work due to their disability and were not receiving monthly SSI benefits because SSA was still processing their application. Under the conference agreement, some poor individuals with disabilities could die before receiving the full back benefits they are owed. (With two minor exceptions, if a person dies before being paid SSI benefits they are owed, the SSI benefits are not paid to the person's relatives or estate. These back benefits are not even available to help family members pay for funeral costs.)

This SSI provision is largely a budget gimmick; it would make most of the affected beneficiaries wait longer for the benefits they are owed, thereby shifting costs from one year to the next and providing savings in the five-year budget ''window.'' (Some ''true'' savings apparently would be achieved, as well, as a result of some individuals dying before receiving the back benefits they are owed.) CBO estimates the savings from this provision at $425 million over five years. This is an example of a budget gimmick with a real human cost, since many impoverished individuals with disabilities will face a more difficult time making ends meet as a result of the delays they will be forced to experience in receiving SSI payments that they are owed.

5. Foster Care: The bill includes $343 million in net cuts in foster care funding, including two cuts that will make it harder for some states to provide federally funded foster care benefits to certain grandparents who are raising their grandchildren.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor. He repeats his unanimous consent request. Without objection, it is so ordered.

The Senator from New Hampshire.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. 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. JOHNSON. Mr. President, I express my concerns about the fiscal year 2006 Budget Reconciliation Conference Report currently pending in the Senate. I intend to vote against the conference report because I believe it sets the wrong budget priorities for our nation.

This omnibus spending reduction bill mandates a five-year spending cut of $39.7 billion. The vast majority of the cuts enacted as a consequence of this conference report will impact poor and middle-class Americans.

While the budget reconciliation pulls out all the stops to protect the interests of insurance companies and drug manufacturers, the package makes several changes to the Medicaid program that will have a devastating impact on the health of the most vulnerable individuals in South Dakota. Low-income Medicaid recipients will see cuts in health coverage while at the same time facing increased cost-sharing through the program. Increased copayments and premiums for our poorest citizens will likely mean that many individuals will forgo necessary care until emergency services are needed, costing our health system a great deal more in the long run.

The bill also establishes very strict asset rules for seniors applying for Medicaid coverage for their nursing home care. While some adjustments to the asset tests are needed, this package goes too far and will negatively impact many average to low income earners in their final years. Finally, the payment methodology changes proposed for pharmacies are shortsighted and will reduce access to Medicaid coverage in the future. The conference package reduces reimbursements paid to pharmacies for generic drugs by approximately 40 percent by 2007. Under those circumstances, community pharmacies will have a hard time making ends meet and will lose the incentive to provide this service entirely.

I have recently received a letter signed by 142 national organizations expressing their concerns about the Medicaid provisions in this conference report. They understand the devastating impact these health care cuts will have on the poor and elderly.

The conference report also slashes funding for vital farm programs. In fact, commodity programs face the brunt of the agriculture cuts in the bill, and will be reduced by $1.7 billion over the next 5 years. In addition, the conference report cuts $934 million from conservation programs, $620 million from research, and $400 million from rural development programs.

The farm bill that was signed into law by President Bush represented a contract with rural America. Farmers have based their own financial decisions on the provisions and funding

that were promised in that bill. To now make changes to the farm bill by enacting steep cuts to commodity and conservation programs undermines our family farmers and ranchers and demonstrates the administration's lack of commitment to rural economic development.

This conference report also contains $12.7 billion in cuts to the federal student loan program. Unfortunately, this marks the largest cut to student financial aid programs in history. While the legislation does contain funding for the creation of the new Academic Competitiveness Grants and the National Science and Mathematics Access to Retain Talent Grants, National SMART Grants, the Senate-passed budget reconciliation legislation contained more than $8 billion in new need-based assistance to supplement Pell Grants.

The Academic Competitiveness Grants Program would limit aid to a small subset of financially eligible students that completed a rigorous secondary school program to be defined by the Secretary of Education. I support students taking a rigorous high school curriculum, but this would be the first time the Federal Government links need-based financial aid to the academic curriculum available to a student.

The National SMART Grants Program would limit aid to only those students choosing to major in math, science, technology, engineering, computer science, or high-need foreign language. While we all want more students to study math and sciences, we also need to find additional need-based aid for students that choose other important academic fields.

Finally, this will be the fourth year in a row that Congress has failed to increase the maximum Pell Grant award from $4,050.

The Republican leadership has argued that these cuts are a necessary step toward restoring fiscal discipline. However, when these cuts are paired with the tax reconciliation bill, they will actually cause an increase in the national debt. Leaders in Congress have made it clear that after the completion of the omnibus spending bill, Congress will consider the extension of investment tax breaks geared disproportionately toward the super rich with incomes in excess of $200,000 annually. Correspondingly, the estimated cost from these tax cuts to the Treasury and the American public far outweigh the savings forecast from the omnibus spending bill. A key intent of the reconciliation process is to reign in the governmental spending or to move through the Congress changes to mandatory domestic programs.

The majority intends to pervert this process by using the omnibus spending bill as a device to free up room in the budget for costly tax cuts primarily geared toward the wealthiest two percent of taxpayers. The end result is that future generations will be saddled with higher borrowing costs and lower economic growth in order to pay off the national debt charges run up by the fiscally irresponsible tax cuts pushed by this Congress. This vote is not for fiscal discipline and reduced deficits. Instead, those pushing through today's spending cut bill are doing so to make room for further tax cuts and billions more to the national debt.

Mr. President, I recognize we must get our fiscal house in order. However, I do not believe that budget cuts should come at the expense of ordinary people and struggling family farmers when huge agribusinesses continue to reap millions without effective payment caps in place, and tax cuts for multimillionaires are being preserved. The priorities set forth in this conference report are wrong; I will vote against the conference report and urge my colleagues to do the same.

COLONEL NORM VAUGHAN

Mr. STEVENS. Mr. President, I rise in tribute to COL Norm Vaughan who accompanied ADM Richard Byrd to Antarctica. He celebrates his 100th birthday today. The Anchorage Daily News has printed an article by Carol Phillips talking about Vaughan as a great man and good friend. I ask unanimous consent to print the article in the RECORD.

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

[From the Anchorage Daily News, Dec. 19, 2005]

VAUGHAN IS A GREAT MAN, GOOD FRIEND

(By Carol A. Phillips)

On a February day in 1964, I hurried down to the main street of my little town where the annual sled dog race was about to start. Excited about this sporing event that had always intrigued me, I lingered near the starting line as the racers made last-minute preparations and the dogs leaped and yelped their impatience to hit the trail.

Suddenly I head a voice in an accent that was music to my ears—a Bostonian here in Interior Alaska. Having emigrated recently from Maine, I was compelled to trace the source of that unmistakable accent. That was the day I met Col. Norman Vaughan, then a young 58, who was working as a handler for a New Hampshire racer. That meeting was the beginning of a beautiful friendship.

The achievements of Vaughan's extraordinary career are familiar to his legion of friends. He returned in the mid–1970s to make his home here and became such a legend in his own time that it's hard to realize he has not always been an Alaskan.

His adventures and accomplishments are diverse. He played an essential role as dog handler on the 1927 Byrd Antarctic expedition; served with distinction in the military; airlifted supplies to Dr. Wilfred Grenfell's Labrador mission; coordinated the rescue of 25 airmen stranded on the Greenland icecap; retrieved the top-secret Norden bombsight so critical-to the United States during World War II; ran in several Iditarod races; spearheaded the effort to resurrect World War II P–38s interred in Greenland's ice; drove a team of huskies in President Reagan's inaugural parade in Washington, D.C.; gave Pope John Paul II a lesson in dog mushing during the pontiff's 1981 visit to Anchorage; initiated the annual re-enactment of the 1925 Nenana-to-Nome serum run; wrote a couple of books; and ascended 10,302–foot Mount Vaughan, named for him by Adm. Richard Byrd.

Even more memorable to me are some personal experiences involving Vaughan. When my family was vacationing on a Maine island in 1966, Norman drove up from his Massachusetts home to visit us, enthralling my children with a fascinating repertoire of stories and a supply of his famous homemade root beer. When he first lived in Anchorage he walked from his tiny downtown apartment to and from his night-shift janitorial job at the university, with never a complaint.

Through his friendship with the Dr. Schultz band, I came to know those talented musicians who brightened the Anchorage scene in the late 1970s. When Joe Redington Sr. sold one-square-foot parcels of his Knik land to raise money for the creation of the now world-famous Iditarod race, Norman presented each of my four children with a landowner's deed, prompting my youngest to observe that if they pooled the deeds, ''we could build a very small but very tall house.''

Recently, one of my young grandsons, having seen Norman in a TV ad, was awestruck to learn that I knew Norman personally. He was further awed when I took him to visit the Vaughan home, where Norman talked with him not about his own accomplishments but about the child's interests, experiences and ambitions, encouraging him to pursue his special dreams.

Today, Col. Vaughan attains another remarkable goal—his 100th birthday. During that century he has enjoyed more spectacular adventures and significant achievements than the average person can imagine or aspire to. He had hoped to spend his 100th birthday atop his eponymous mountain in Antarctica, a lofty goal which could not be realized. It is said that when he was advised that the trip was not going to happen, his typically positive response was, ''Oh well, just not this year.''

It is a privilege to call this great, good man my friend. Happy birthday, Norman!

CLIMATE CHANGE NEGOTIATIONS AND IMPACTS

Mr. REID. Mr. President, with a sense of continued disappointment and dismay I read accounts of the administration's performance at the recent international climate change meetings in Montreal, Canada.

The President has been crystal clear in his complete rejection of the Kyoto Protocol treaty that all other major industrialized nations have signed, except the United States and Australia. Yet he has regularly failed to put forward a constructive alternative that will ever result in stabilizing greenhouse gas concentrations in the atmosphere. Worse, his negotiators have disrupted other nations' efforts to begin binding discussions for the post-Kyoto Protocol period.

This is not and cannot be a partisan issue. But the President's stubborn insistence on ignoring credible science and his administration's efforts to water down clear scientific evidence of manmade global warming has hobbled many Republicans' ability to act sensibly on this matter.

We have a moral obligation to take on our enormous share of responsibility for this global problem before it

is too late. Ignoring the problem is madness and a luxury we do not have the time for. The scientific data continues to flow in and none of it is good.

I urge my colleagues not to fall for the temptation of the administration's voluntary ''technology-only'' strategy. That will fail to produce any significant reductions in the timeframe necessary. There is abundant cause for concern and for faster action.

I ask unanimous consent to print in the RECORD some of the most recent scientific information on the potential impacts of global warming on Nevada and the West, as well as the rest of the country and the world.

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

Potential Climate Changes Impact on Nevada:

The Scripps Institution of Oceanography found, and their findings were subsequently published in Nature that, ''The warming trend already is showing effects in California's Sierra Nevada snow pack, the region's main water source. Climate models suggest average temperatures in the West will be about 1 to 3 degrees warmer by 2050 than at present. Even though total precipitation isn't expected to change by much, because of the higher temperatures more of it will come as rain rather than snow. At the same time, the spring runoff will come about one month earlier in the year.'' (San Francisco Chronicle, November 17, 2005—Global warming study forecasts more water shortages: Climate change already affecting Sierra snowpack.)

The National Weather Service ominously reported that ''in a year of record highs across northern Nevada, conditions are on pace for this October (2005) to be the hottest on record, said Gary Barbato of the National Weather Service. During 2003, average temperatures for the months of January, June and July were all the hottest since records began in 1888, with September 2003 and September 2001 tied for the warmest average.'' (Reno Gazette Journal, October 21, 2003—Climate experts study global warming's impact on water supplies.)

Nevada has been blessed with a rich natural heritage. ''Nevada is home to an incredible diversity of native wildlife species, including 299 birds, 123 mammals, 48 fish, 52 reptiles and 13 amphibians. Rising temperatures in the state though will likely change the makeup of entire ecosystems, forcing wildlife to shift their ranges or adapt. Loss of wildlife and habitat could mean a loss of tourism dollars. In 2001 alone, more than 657,000 people spent more than $680 million on hunting, fishing and wildlife viewing in Nevada, which in turn created more than 9,400 jobs in the state.'' (ESPN Outdoors, March 15, 2005—Hunters give big bucks to local economies: Pursuers of game big and small can tip the financial scale from red to black in small communities, and it underscores the fact that the sport is expensive.)

One animal that is already being impacted by climate change in Nevada is the pika. According to researchers, between the 1940s and the 1990s, six of 25 pika populations throughout the Western states disappeared, largely because of rising temperatures. When the same sites were visited again between 2003 and 2005, a research biologist found that two more pika populations had winked out of existence in that ten year period. (High Country News, October 17, 2005—In the Great Basin, scientists track global warming.).

Fire climatology—Collaborative studies involving the Desert Research Institute show that changes in relative humidity, especially drying over much of the West, are projected to increase the number of days of high fire danger by as much as 2–3 weeks throughout the Great Basin during this century.

Flood magnitude and frequency—A Desert Research Institute scientist has shown that increased sea surface temperatures in the Gulf of Mexico affect the timing of the onset of the North American monsoon, with important implications for the magnitude and frequency of heavy rainfall (and flooding) in southern Nevada.

Scientists from the Desert Research Institute, and the University of Nevada at Reno and at Las Vegas have been conducting controlled field and laboratory experiments on the effects of increased CO_2 on ecosystems, the carbon cycle, and stability of desert soils in the Mojave Desert of southern Nevada. Initial results show that elevated CO_2 has the potential to increase the productivity of invasive grasses (e.g., cheat grass) and thereby accelerate the fire cycle and reduce biodiversity in the Great Basin.

Potential Climate Change Impacts on the West:

The Pacific Northwest National Laboratory released a scientific report last February which showed ''from 1950 to 1997, in Oregon, western Washington and northern California, snow pack shrank by 50 to 75 percent. Decreases in the northern Rockies during that period ranged between 15 and 30 percent. The reduction in Western mountain snow cover, from the Sierra Nevada range that feeds California in the south to the snow-capped volcanic peaks of the Cascades in the Pacific Northwest, will lead to increased fall and winter flooding, severe spring and summer drought that will play havoc with the West's agriculture, fisheries and hydropower industry.'' (Pacific Northwest National Laboratory, February 16, 2004—Global warming to squeeze Western mountains dry by 2050.)

At a 2004 gathering by the American Association for the Advancement of Science in Seattle, the University of Washington's Climate Impacts Group detailed that ''Northwest temperatures will increase by about 3 to 6 degrees Fahrenheit by the 2040s, and the Cascades snowpack will decline by 59 percent by 2050.'' (AP, February 17, 2004—Warmer weather spells trouble for Northwest.)

The United States Environmental Protection Agency's website has documented how global warming and climate change are diminishing the beauty of Glacier National Park. ''Today, the park's largest glaciers are only about a third of the size they were in 1850, and many small mountain glaciers have disappeared completely during the past 150 years. The area of the park covered by glaciers declined by 73 percent from 1850–1993.'' (United States Environmental Protection Agency, August 13, 2001—Global Warming Impacts: Western Mountains.)

In 2004, a study was published in the magazine titled Conservation Biology about the severe impacts that climate change could have on the wildfire season in Montana. ''Of all the Western states, Montana's wildfire season could be most affected by the warmer temperatures associated with global climate change'', according to a new report. Published in Conservation Biology magazine, the research suggests the acreage burned each summer in Montana could increase five-fold by the end of the century. Overall, the area burned by wildfires in 11 Western states could double by 2100 if the summertime climate warms by 1.6 degrees, the scientists said. (The Missoulian, September 1, 2004—Report details global warming's role in wildfire risk.)

Potential Climate Change Impacts on the Nation and the World:

The Division of Geological and Planetary Science at the California Institute of Technology, the Department of Geological Sciences at the University of Michigan, and the Department of Geology at the Occidental College recently collaborated to publish an article about Glacial Erosion. The article, which was published in the December issue of Science, found that ''levels of carbon dioxide (CO_2), the principal gas that drives global warming, are now 27 pct higher than at any point in the last 650,000 years, according to research into Antarctic ice cores.'' (Forbes, November 24, 2005—Carbon dioxide levels highest for 650,000 years.)

On November 29, 2005, the European Environment Agency warned that ''at current global warming rates, three-quarters of Switzerland's glaciers will have melted by 2050. Ten percent of Alpine glaciers disappeared during the summer of 2003.'' (Associated Press, November 29, 2005—Global warming set to hit Europe badly: environment agency.)

At a recent meeting (2005) of the American Geophysical Union, scientists described how ''climate warming is most likely to blame for the alarmingly fast retreat of two of Greenland's largest glaciers. One of the Greenland glaciers, Kangerdlugssuaq, is currently moving at about nine miles a year compared to three miles a year in 2001, said Gordon Hamilton of the University of Maine's Climate Change Institute. The other glacier, Helheim, is speeding at about seven miles a year—up from four miles a year during the same period.'' In addition, ''Alaska's Columbia Glacier—about the size of Los Angeles—has shrunk nine miles since the 1980s. It is expected to lose an additional nine miles in the next 15 to 20 years. (The San Jose Mercury News, December 8, 2005—Scientists: Greenland glaciers pick up speed because of warming.)

The academic journal Nature has published a scientific study indicating that the ''system of circulating water currents that moderates northern Europe's weather is 30 percent slower than it was nearly 50 years ago. The slowdown is due in part to the water's declining salinity caused by the addition of less dense freshwater from melting Arctic sea ice and glaciers.'' Harry Bryden, an oceanography professor at Britain's University of Southampton and the paper's lead author said that ''the slowing is in line with computer models that suggest that Earth's warming climate could weaken and eventually halt the conveyor belt circulation altogether, causing northern Europe to become as much as 11 degrees Fahrenheit cooler in a matter of decades.'' (Contra Costa Times, December 1, 2005—Scientists find ocean-current changes.)

The National Oceanic and Atmospheric Administration recorded a record twenty six named storms formed during the 2005 Atlantic hurricane season easily surpassing the previous record of twenty one in 1933. A record for the most category-five hurricanes, three, with Katrina, Rita and Wilma was also set. (CNN, November 30, 2005—It's official: 2005 hurricanes blew records away.)

CONGRESSIONAL BUDGET ACT COMPLIANCE

Mr. GREGG. Mr. President, pursuant to section 313(c) of the Congressional Budget Act of 1974, I submit for the RECORD a list of material in the conference agreement on S. 1932 considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of section 313. The inclusion or exclusion of material on the following list does not constitute a determination of extraneousness by the Presiding Officer of the Senate.

To the best of my knowledge, S. 1932, the Deficit Reduction Act of 2005, contains no material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of section 313 of the Congressional Budget Act of 1974.

HONORING SENATOR JON CORZINE

Mr. BAYH. Mr. President, I rise today to pay tribute to one of our most remarkable members, Senator JON CORZINE, who leaves us this year to continue his work on behalf of the people of New Jersey in a new capacity. Experience and leadership qualities like his are rare, and with them, he has set himself apart as a champion of the environment, a safe homeland, affordable health care, and working men and women everywhere.

After managing one of the most successful businesses in the world, JON arrived in the Senate five years ago with the negotiating skills and leadership experience that allowed him to succeed so admirably here. Most notably, JON came to Washington with an unusual and important perspective. He understands the bottom line. He understands that it is not right for our children to inherit our unpaid bills and that we have a responsibility to ensure that we leave them a safer, more secure and more compassionate America.

In pursuit of these goals and never shying from a challenge, JON CORZINE was a leader in the fight to protect Social Security from privatization and helped lead the charge to secure our chemical facilities from terrorist attacks.

However, while tackling those critical national challenges, it was obvious that his heart was with New Jersey. Over the past 6 years, JON fought hard to improve the quality of life for all of the people of his State by investing in the local economy and protecting New Jersey's natural resources.

Last month, New Jersey residents showed their gratitude and admiration for JON's service and elected him Governor of their State. With their votes, they showed that they believed in JON's quest to make New Jersey one of the best places to live, work and raise a family. As a former Governor, I know the challenges and the rewards of running a State. And from working with JON in the Senate, I know that he will help move New Jersey forward and will make sure that the State government provides people with value for their hard-earned tax dollars, while respecting the values that unite us all.

Today, the Senate loses a valued colleague. However, today, New Jersey gains a great Governor.

JON, we will miss you. Susan joins me in wishing you all the best in the future. New Jersey is lucky to have you.

Mr. NELSON of Florida. Mr. President, I rise today to congratulate my good friend, Senator JON CORZINE, on his election to the governorship of New Jersey. The Senator from New Jersey and I joined this body in the same year, 2001, and in that time, he has worked for New Jersey and the country with skill and determination.

He is a man who believes in security, whether it is securing our homeland, securing our financial future or securing our world from genocide.

Senator CORZINE recognized the deadly risk posed by lackluster protection of our Nation's chemical plants. As we debated this year's Homeland Security appropriations bill, his amendment let everyone know that we must take steps to protect against a terrorist attack on chemical facilities within the United States.

He has doggedly fought for retirement security for all Americans, helping to protect Social Security from deep benefit cuts and preventing a substantial increase in the national debt. Senator CORZINE knows that we made a promise to our seniors that they can retire with safety and dignity, and he is helping to keep that promise.

By introducing the Sudan Accountability Act, Senator CORZINE put this body on record that we cannot allow the genocide in Darfur to continue. Hundreds of thousands are already dead, and millions have been displaced by the atrocities in Sudan. He has helped push for sanctions against those committing these crimes and to put money into our efforts to stop them.

Over the past 5 years, I have had the pleasure of working closely with Senator CORZINE on important issues.

We recognized a gaping hole in benefits provided to widows of our servicemembers, and he joined me in introducing the Military Retiree Survivor Benefit Equity Act. The bill has attracted bipartisan support based on its fundamental fairness and because it is the right thing to do for America's military retirees and their survivors.

Florida and New Jersey both have beautiful shorelines that serve important economic needs for our States, and Senator CORZINE has helped me in the fight to protect these shorelines from the devastation of oil drilling. I look forward to continuing this fight with his successor, Congressman MENENDEZ.

I expect that as Governor of New Jersey, he will take with him to Trenton the same passion to protect our homeland, to protect our environment, and to protect our future that he had here in the Senate. I thank him for his service in Washington, DC, I congratulate him on his victory, and I wish him well as he continues his service for the people of New Jersey.

Mr. LIEBERMAN. Mr. President, it is my honor today to pay tribute and bid a fond farewell to my colleague and friend Senator JON S. CORZINE of New Jersey. Senator CORZINE, as we know, will be leaving the Senate next month to serve as New Jersey's Governor, and before he leaves us to begin what I can only be certain will be a wildly successful and innovative tenure as New Jersey's chief executive, I thought it appropriate to take the time to celebrate not only Mr. CORZINE's fine service in the Senate, but his inspiring life story as well.

In many ways, JON CORZINE's life is an example of the American dream fulfilled. Mr. CORZINE was born on New Year's Day, 1947, and grew up on his family's farm in Willey's Station, IL. His father ran the farm and sold insurance; his mother was a public school teacher. Through his own hard work and that of his family, Mr. CORZINE attended the University of Illinois at Urbana-Champaign, where he graduated Phi Beta Kappa in 1969. After graduating college, Mr. CORZINE served his country by enlisting in the U.S. Marine Corps Reserves, and he continued in the Reserves until 1975, rising to the rank of sergeant in his infantry unit.

After Senator CORZINE's active duty was up, he began what would become a long and successful career in the finance sector. His first job was with the Continental Illinois National Bank in Chicago, where he worked as a portfolio analyst. At the same time, Mr. CORZINE began taking night classes at the University of Chicago's Graduate School of Business, where he received his MBA in 1973.

In 1975, after working briefly at a regional bank in Ohio, Mr. CORZINE was recruited to go to work for the New York investment firm Goldman Sachs as a bond trader, beginning what would be a meteoritic rise through the company's ranks. After only 5 years, Mr. CORZINE was named a partner in the firm. In 1994, Mr. CORZINE became both the firm's chairman and chief executive officer.

But the story doesn't end there for Mr. CORZINE had a very successful tenure at the helm of Goldman Sachs. When he took over in 1994, the proud and respected firm was in a period of some decline. But Mr. CORZINE and his team turned the company's fortunes upwards. During his 5 years as chief executive, Mr. CORZINE also oversaw the firm's successful transition from a private partnership to a public company.

While serving as chief executive, Mr. CORZINE also demonstrated a passion for public service. Under his leadership, Goldman Sachs was a strong corporate citizen, expanding its community outreach and philanthropic programs. Mr. CORZINE also chaired a Presidential commission that studied how capital budgeting could be used to increase Federal investment in education.

It is this commitment to public service that I saw JON CORZINE bring to his work in the Senate every day. Elected in 2000 by the people of New Jersey, Senator CORZINE has been a tireless advocate for corporate accountability, helping coauthor the Sarbanes-Oxley Act, and has worked to protect our environment, where he has been a steadfast ally in the fights to prevent drilling in the Arctic National Wildlife Refuge and to tackle climate change. On the international front, Senator CORZINE has sponsored the Darfur Accountability act, an act I am proud to

cosponsor, which seeks to address the terrible genocide currently occurring in the Darfur region of Sudan.

What I will remember most about Senator CORZINE's tenure is his commitment to strengthening our Nation's Homeland Security. Having worked with Senator CORZINE on several homeland security issues, I know firsthand that he was determined to do everything in his power to protect the American people from another terrorist attack. Senator CORZINE and I worked together in passing legislation that created the 9/11 Commission, whose service to the American people we are all well aware of. In addition, Senator CORZINE has been a leader in legislative efforts to increase security at our Nation's chemical plants, which remain vulnerable to attack. Senator CORZINE crafted strong legislation aimed at protecting these facilities, and I remain hopeful that Congress will act on this area of great vulnerability. I will continue to be inspired by the dedication Senator CORZINE applied to this critical issue.

Let me end my statement by taking the time to thank JON CORZINE, for his service in the Senate. I wish him, his daughter Jennifer, and his two sons, Josh and Jeffrey, nothing but the best for the future, and I look forward to seeing the fine things I know he will continue to do for the people of New Jersey, now as their Governor. Once again, thank you, JON CORZINE.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Thomas Stockwell is a 21-year-old gay man. On February 25, 2005, he was walking near his home on the Chapel Hill Campus of the University of North Carolina. For no other reason than being gay, Stockwell was attacked and beaten by a group of six men. Reports account that the group of men made sexually derogatory comments while they repeatedly punched Stockwell in the face eventually breaking his nose.

The Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.

RESPONSE TO HURRICANES KATRINA AND RITA

Mrs. LINCOLN. Mr. President, I rise today to pay tribute to the outstanding work of antihunger leaders, volunteers, and organizations throughout the gulf coast region and the Nation who have risen to the occasion and provided much needed food, support, and basic services to victims of Hurricanes Katrina and Rita. As we approach the holiday season, I want to take the opportunity to help raise awareness about the challenges the charitable food industry have met in the wake of the hurricanes as well as the increased demands on their services and food supplies.

I want to focus my remarks on food rescue and food bank organizations and antihunger advocates operating in my home State of Arkansas. I also want to highlight the amazing work done by America's Second Harvest, A2H, and its national network of food banks to bring food relief to the thousands of our fellow citizens suffering from the devastation wrought by the gulf region hurricanes.

Arkansas is fortunate to have a strong network of antihunger, food rescue, and food bank organizations that tirelessly work to feed hungry Arkansans. This dynamic network includes six A2H affiliates located across Arkansas which include the Foodbank of North Central Arkansas, Harvest Texarkana, Food Bank of Northeast Arkansas, River Valley Regional Food Bank, Arkansas Foodbank Network, and the Ozark Food Bank. Other essential partners in the network include the Arkansas Rice Depot, Potluck, Inc., Heifer International, Winrock International, local food pantries, homeless shelters, church soup kitchens, faith-based antihunger programs and advocacy groups such as the Arkansas Hunger Coalition, Arkansas Community Action Agencies, Arkansas Hunger Relief Alliance, Arkansas Advocates for Children and Families and the Interfaith Network.

I am proud of the many volunteers, employees, and financial contributors of these organizations and programs. Their commitments to feed the hungry and serve the poor is making a great difference in Arkansas for our citizens and for the thousands of hurricane victims who sought shelter in Arkansas after the hurricanes and for many that still remain.

I am also proud of America's Second Harvest national leadership to organize its network of food banks to respond to the disaster area along the gulf coast region. Within hours of Hurricane Katrina's landfall in the gulf coast, A2H food banks from around the Nation began sending truckloads of food and water to the affected areas. Volunteers and staff from the network also were dispatched to the gulf region to help with relief efforts and provide support to the food banks and food rescue organizations trying to operate in areas where many of the local food distribution agencies had been wiped out.

A2H immediately began to raise funds nationally for hurricane relief and dedicated all of these donations solely to food acquisition, transportation, storage, and distribution to the disaster victims in the gulf region. Undamaged food was rescued from the flooded New Orleans food banks and additional warehouse space was secured in other areas to ensure that the A2H network would be able to meet the dramatic increase in demand for emergency food assistance that continues to this day in the gulf region.

Staff and volunteers worked tirelessly, night and day, for weeks on end to get food and distribute it to those in need. They collected, transported, stored, and provided more than 59 million pounds of food, accounting for more than 46 million meals valued at an estimated $88 million to the gulf region. This effort is continuing as the need broadens to reach those displaced persons in other areas where so many victims have been relocated.

On Thursday, December 15, 2005, A2H released a report at a Capitol Hill press conference documenting their study on the depth and breadth of the impact of the gulf region hurricane disasters on the charitable food distribution system and the clients it serves. The study results report that there are some 40 A2H food banks located in the hurricane-impacted areas. Demands for emergency food assistance in these Gulf Coast states tripled immediately following Hurricane Katrina and continue to be more than 50 percent higher than prior to the disaster. It is clear that much more is needed to secure the basic needs of those in the gulf region. Additionally, inventories donated to the gulf region by many food banks have not been replaced and are now struggling to feed the clients and families they regularly serve.

A2H has helped shed the light on the severity of the situation that still exists for thousands of families throughout the gulf coast region. I hope that my colleagues in both the Senate and House will take a close look at these findings to reinforce the need for congressional support for our local grassroots antihunger organizations and for continued support of our vital Federal food assistance programs like Food Stamps, WIC, School Breakfast and Lunch, and Child and Adult Care Food Program.

All of these important programs and activities are essential ingredients in our Nation's battle to end hunger in America, whether it comes from natural disasters or the everyday struggles of low-income Americans to make ends meet. Thank you to America's Second Harvest and to the many antihunger volunteers and advocates throughout Arkansas and across our Nation who are making a difference.

ANWR

Mr. LIEBERMAN. Mr. President, I rise to register, in the strongest possible terms, my objection to the inclusion of provisions authorizing oil and gas drilling in the Arctic National

Wildlife Reserve in the Department of Defense Appropriations conference report.

I find it outrageous—and unacceptable—that after failing in their budget reconciliation ploy to open the Arctic wilderness to oil drilling, drilling proponents would now try to tamper with the Defense spending bill at a time when we have troops in combat in Iraq and Afghanistan. Drilling in the Arctic National Wildlife Refuge is bad policy and dragging this controversy into the Senate's conscientious efforts to ensure that our military effort is adequately funded at a time of war does not do right by our fighting men and women. It is equally outrageous that drilling proponents are attempting to exploit the Katrina-relief package included in the bill. Congress has an obligation to care for the victims of that devastating natural disaster and our fellow citizens deserve better than to have congressional efforts to provide for their needs undercut by such a desperate procedural scheme.

INTERNAL REVENUE CODE SECTION 664(G)

Mr. JOHNSON. Mr. President, I have a question for the chairman and ranking democrat of the Finance Committee with respect to one special kind of retirement plan that is defined in Internal Revenue Code section 664(g) and involves qualified gratuitous transfers of employer securities. That section of the code was added in 1997 and later amended in 2001. It provides certain rules and requirements for a business owner who wants to bequeath his company to its employees through the company retirement plan.

One of the limitations in section 664(g) is that the maximum allocation that would be permitted to any participant each year is the lesser of $30,000 or 25 percent of compensation. That limitation, which is contained in code section 664(g)(7) was intended to ensure for an orderly and fair allocation of shares received by a plan in a gratuitous transfer from a charitable remainder trust.

A question has been raised with me as to the appropriate timing of valuation of the stock that is transferred to the accounts of participants for purposes of the unique section 664(g)(7) limitation. Should the stock be valued at the time the shares are transferred to the plan or on the date the shares are allocated to the accounts of participants? It is my understanding, that the clear intent of the limitation of section 664(g)(7) was to measure the value of the stock on the date it is actually allocated to the account of the participant. Any other reading could result in potential circumvention of the statutory limitation if the value of the stock were to increase during the period between the actual transfer of the stock to the plan and the subsequent allocation to the account of the participant. Put differently, when the statute says no participant shall receive more than the lesser of $30,000 or 25 percent of compensation each year, that is precisely what was intended. To be clear, this is a unique rule that is specific to section 664(g). It has no bearing on any other rules involving plans, including employee stock ownership plans (ESOPs), that are not described in section 664(g).

Mr. GRASSLEY. I thank the Senator for his careful explanation of the law. I agree completely that the intent of the Finance Committee in including the limitation of section 664(g)(7) was to provide for an orderly and fair transfer of stock received in a gratuitous transfer and that we intended the value of the stock to be determined upon allocation to the participant's account and not upon some earlier date.

Mr. BAUCUS. Yes, I agree. In applying the unique limit of Internal Revenue Code section 664(g)(7), the valuation should be determined upon allocation to the participant's account.

TECHNICAL DESCRIPTION FOR GULF OPPORTUNITY ZONE ACT OF 2005

Mr. GRASSLEY. Mr. President, I wish to submit for the record the Joint Committee's technical explanation of the Gulf Opportunity Zone Act of 2005. This explanation is of the Senate amendment to H.R. 4440. This legislation was passed by the Senate on Friday, December 16, 2005. Let me make it clear that this technical explanation was actually submitted to the Senate at the time the bill was passed to be printed in the CONGRESSIONAL RECORD. Unfortunately, due to a clerical error this did not happen. Therefore, I ask unanimous consent that the technical explanation be printed in the RECORD.

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

INTRODUCTION

The bill provides tax benefits for the Gulf Opportunity Zone and certain areas affected by Hurricanes Rita and Wilma. It also includes tax and trade technical corrections. Finally, the bill provides that any of its provisions causing an effect on receipts, budget authority, or outlays is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress).

TITLE I—ESTABLISHMENT OF GULF OPPORTUNITY ZONE

A. TAX BENEFITS FOR GULF OPPORTUNITY ZONE

1. Definitions of ''Gulf Opportunity Zone,'' ''Rita GO Zone,'' ''Wilma GO Zone,'' and other definitions (new sec. 1400M of the Code)

GENERAL DEFINITIONS

Gulf Opportunity Zone

For purposes of the bill, the ''Gulf Opportunity Zone'' is defined as that portion of the Hurricane Katrina Disaster Area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

Hurricane Katrina disaster area

The term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

Rita GO Zone

The term ''Rita GO Zone'' means that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Rita.

Hurricane Rita disaster area

The term ''Hurricane Rita disaster area'' means an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, by reason of Hurricane Rita.

Wilma GO Zone

The term ''Wilma GO Zone'' means that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Wilma.

Hurricane Wilma disaster area

The term ''Hurricane Wilma disaster area'' means an area with respect to which a major disaster has been declared by the President before November 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, by reason of Hurricane Wilma.

2. Tax-exempt bond financing for the Gulf Opportunity Zone (new sec. 1400N(a) of the Code)

PRESENT LAW

Rules governing issuance of tax-exempt bonds

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'').

Private activities eligible for financing with tax-exempt bonds

The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond (sec. 141(e)). The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities (sec. 142(a)).

As noted above, subject to certain requirements, qualified private activity bonds may be issued to finance residential rental property or owner-occupied housing. Residential rental property may be financed with exempt facility bonds if the financed project is a ''qualified residential rental project.'' A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the ''20–50 test''). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the ''40–60 test'').

Owner-occupied housing may be financed with qualified mortgage bonds. Qualified mortgage bonds are bonds issued to make mortgage loans to qualified mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. The income limitations are satisfied if all financing provided by an issue is provided for mortgagors whose family income does not exceed 115 percent of the median family income for the metropolitan area or State, whichever is greater, in which the financed residences are located. The purchase price limitations provide that a residence financed with qualified mortgage bonds may not have a purchase price in excess of 90 percent of the average area purchase price for that residence. In addition to these limitations, qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the ''first-time homebuyer'' requirement).

Special income and purchase price limitations apply to targeted area residences. A targeted area residence is one located in either (1) a census tract in which at least 70 percent of the families have an income which is 80 percent or less of the state-wide median income or (2) an area of chronic economic distress. For targeted area residences, the income limitation is satisfied when no more than one-third of the mortgages are made without regard to any income limits and the remainder of the mortgages are made to mortgagors whose family income is 140 percent or less of the applicable median family income. The purchase price limitation is raised from 90 percent to 110 percent of the average area purchase price for targeted area residences. In addition, the first-time homebuyer requirement does not apply to targeted area residences.

Qualified mortgage bonds also may be used to finance qualified home-improvement loans. Qualified home-improvement loans are defined as loans to finance alterations, repairs, and improvements on an existing residence, but only if such alterations, repairs, and improvements substantially protect or improve the basic livability or energy efficiency of the property. Under present law, qualified home-improvement loans may not exceed $15,000.

Issuance of most qualified private activity bonds is subject (in whole or in part) to annual State volume limitations (sec. 146)). Exceptions are provided for bonds for certain governmentally owned facilities (e.g., airports, ports, high-speed intercity rail, and solid waste disposal) and bonds which are subject to separate local, State, or national volume limits (e.g., public/private educational facility bonds, enterprise zone facility bonds, qualified green building bonds, and qualified highway or surface freight transfer facility bonds).

In addition, qualified private activity bonds generally are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Small issue and redevelopment bonds also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors).

Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds.

Liberty Zone Bonds

Present law permits an aggregate of $8 billion in exempt facility bonds for the purpose of financing the construction and rehabilitation of nonresidential real property and residential rental real property in a designated ''Liberty Zone'' (the ''Zone'') of New York City (''Liberty Zone bonds''). The Zone consists of all business addresses located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan. No more than $800 million of the authorized bond amount may be used to finance property used for retail sales of tangible property (e.g., department stores, restaurants, etc.) and functionally related and subordinate property. The $800 million limit is divided equally between the Mayor of New York City and the Governor of New York State. In addition, no more than $1.6 billion of the authorized bond amount may be used to finance residential rental property. The $1.6 billion limit also is divided equally between the Mayor of New York City and the Governor of New York State. Liberty Zone Bonds must be issued before January 1, 2010.

Property eligible for financing with these bonds includes buildings and their structural components, fixed tenant improvements, and public utility property (e.g., gas, water, electric and telecommunication lines). Fixtures and equipment that could be removed from the designated zone for use elsewhere are not eligible for financing with these bonds. Issuance of these bonds is limited to projects approved by the Mayor of New York City or the Governor of New York State, each of whom may designate up to $4 billion of the aggregate bond authority.

Arbitrage restrictions on tax-exempt bonds

To prevent States and local governments from issuing more tax-exempt bonds than necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'' before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds.

EXPLANATION OF PROVISION

Gulf Opportunity Zone Bonds

The provision authorizes the issuance of qualified private activity bonds to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity Zone (''Gulf Opportunity Zone Bonds''). Gulf Opportunity Zone Bonds must be issued after the date of enactment and before January 1, 2011.

Gulf Opportunity Zone Bonds may be issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof. Issuance of bonds authorized under the provision is limited to projects approved by the Governor of the State (or the State bond commission in the case of a bond which is required under State law to be approved by such commission) in which the financed project shall be located. The maximum aggregate face amount of Gulf Opportunity Zone Bonds that may be issued in any State is limited to $2,500 multiplied by the population of the respective State within the Gulf Opportunity Zone. Current refundings of outstanding bonds issued under the provision do not count against the aggregate volume limit to the extent that the principal amount of the refunding bonds does not exceed the outstanding principal amount of the bonds being refunded. Gulf Opportunity Zone Bonds may not be advance refunded.

Depending on the purpose for which such bonds are issued, Gulf Opportunity Zone Bonds are treated as either exempt facility bonds or qualified mortgage bonds. Gulf Opportunity Zone Bonds are treated as exempt facility bonds if 95 percent or more of the net proceeds of such bonds are to be used for qualified project costs located in the Gulf Opportunity Zone. Qualified project costs include the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including buildings and their structural components and fixed improvements associated with such property), qualified residential rental projects (as defined in section 142(d) with certain modifications), and public utility property. For purposes of the provision, costs associated with improving a facility (e.g., installing equipment that enhances the pollution control of a manufacturing facility) may be permitted project costs if such costs are chargeable to the capital account of the facility or would be so chargeable either with a proper election by a taxpayer or but for a proper election by a taxpayer to deduct the costs.

Bond proceeds may not be used to finance movable fixtures and equipment. The purpose of this limitation is to ensure that property financed with the bonds will remain in the Gulf Opportunity Zone. ''Movable fixtures and equipment'' does not include components that are assembled to construct an industrial plant. Such term also does not include consumer appliances installed in owner-occupied residences and residential rental property financed with the proceeds of Gulf Opportunity Zone Bonds.

Rather than applying the 20–50 and 40–60 test under present law, a project is a qualified residential rental project under the provision if 20 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income or if 40 percent or more of the residential units in such project are occupied by individuals whose income is 70 percent or less of area median gross income.

Gulf Opportunity Zone Bonds are treated as qualified mortgage bonds if the bonds of such issue meet the requirements of a qualified mortgage issue (as defined in section 143 and modified by this provision) and the residences financed with such bonds are located

in the Gulf Opportunity Zone. For these purposes, residences located in the Gulf Opportunity Zone are treated as targeted area residences. Thus, the first-time homebuyer rule is waived and purchase and income rules for targeted area residences apply to residences financed with bonds issued under the provision. Under the provision, 100 percent of the mortgages must be made to mortgagors whose family income is 140 percent or less of the applicable median family income. Thus, the present law rule allowing one-third of the mortgages to be made without regard to any income limits does not apply. In addition, the provision increases from $15,000 to $150,000 the amount of a qualified home-improvement loan that may be financed with bond proceeds.

Subject to the following exceptions and modifications, issuance of Gulf Opportunity Zone Bonds is subject to the general rules applicable to issuance of qualified private activity bonds:

(1) Except as otherwise permitted for a qualified mortgage issue, repayments of bond-financed loans may not be used to make additional loans;

(2) Issuance of the bonds is not subject to the aggregate annual State private activity bond volume limits (sec. 146);

(3) The restriction on acquisition of existing property is applied using a minimum requirement of 50 percent of the cost of acquiring the building being devoted to rehabilitation (sec. 147(d));

(4) The special arbitrage expenditure rules for certain construction bond proceeds apply to available construction proceeds of Gulf Opportunity Zone Bonds issued to finance qualified project costs, treating such bonds as a construction issue (sec. 148(f)(4)(C));

(5) Interest on the bonds is not a preference item for purposes of the alternative minimum tax preference for private activity bond interest (sec. 57(a)(5)); and

(6) No portion of the proceeds of the bonds may be used to provide any property described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale alcoholic beverages for consumption off premises).

EFFECTIVE DATE

The provision is effective for bonds issued after the date of enactment and before January 1, 2011.

3. Advance refunding of certain tax-exempt bonds (new sec. 1400N(b) of the Code)

PRESENT LAW

In general

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of the governmental units (''governmental bonds''). Interest on State or local bonds to finance activities of private persons (''private activity bonds'') is taxable unless a specific exception applies. Bonds issued to finance the activities of charitable organizations described in section 501(c)(3) (''qualified 501(c)(3) bonds'') are one type of tax-exempt private activity bonds (''qualified private activity bonds''). Qualified private activity bonds also include exempt facility bonds. The definition of exempt facility bonds includes bonds issued to finance certain transportation facilities (e.g., airports, docks, and wharves).

Generally, qualified private activity bonds are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Certain types of qualified private activity bonds (e.g., small issue and redevelopment bonds) also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors). Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds.

Limitations on advance refundings

A refunding bond is defined as any bond used to pay principal, interest, or redemption price on a prior bond issue (the refunded bond). The Code contains different rules for ''current'' as opposed to ''advance'' refunding bonds. A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bonds. Conversely, a bond is classified as an advance refunding bond if it is issued more than 90 days before the redemption of the refunded bond (sec. 149(d)(5)). Proceeds of advance refunding bonds are generally invested in an escrow account and held until a future date when the refunded bond may be redeemed. Thus, after issuance of an advance refunding bond, there is a period of time when both the refunding bonds and the refunded bonds remain outstanding.

There is no statutory limitation on the number of times that tax-exempt bonds may be currently refunded. However, the Code limits the number of advance refundings with tax-exempt bonds. Generally, governmental bonds and qualified 501(c)(3) bonds may be advance refunded one time (sec. 149(d)(3)). Private activity bonds, other than qualified 501(c)(3) bonds, may not be advance refunded.

Under present law, certain bonds used to fund facilities located in New York City are permitted one additional advance refunding if issued before January 1, 2006. In addition to satisfying other requirements, the bond refunded must be (1) a State or local bond that is a general obligation of New York City, (2) a State or local bond issued by the New York Municipal Water Finance Authority or Metropolitan Transportation Authority of New York City, or (3) a qualified 501(c)(3) bond which is a qualified hospital bond issued by or on behalf of the State of New York or New York City. The maximum amount of additional advance refunding bonds that may be issued is $9 billion.

Arbitrage restrictions on tax-exempt bonds

To prevent States and local governments from issuing more tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'' before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds.

EXPLANATION OF PROVISION

The provision permits an additional advance refunding of certain governmental and qualified 501(c)(3) bonds issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof. The provision also permits one advance refunding of certain exempt facility bonds for airports, docks, or wharves issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof, notwithstanding the general prohibition on the advance refunding of such bonds.

The advance refunding authority under this provision only applies to bonds issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof, which were outstanding on August 28, 2005, and could not be advance refunded under Code restrictions in effect on that date. (Although section 1400L(e)(4)(A) refers to restrictions on advance refundings under ''any provision of law,'' rather than under the ''Code,'' no inference should be drawn from the use of different terms). Further, to be eligible for the additional advance refunding, the advance refunding bond must be the only other outstanding bond with respect to the refunded bond. Thus, at no time after the advance refunding authorized under the provision occurs may there be more than two sets of bonds outstanding.

The maximum amount of advance refunding bonds that may be issued pursuant to this provision is $4.5 billion in the case of Louisiana, $2.250 billion in the case of Mississippi, and $1.125 billion in the case of Alabama. Eligible advance refunding bonds must be designated as such by the governor of the respective State. Advance refunding bonds issued under the provision must satisfy present-law arbitrage restrictions and all requirements otherwise applicable to advance refunding issues (e.g., redemption requirements and prohibition on abusive transactions). Moreover, bonds may not be advance refunded under this provision if any portion of the proceeds of such bonds was used to provide any property described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale alcoholic beverages for consumption off premises).

EFFECTIVE DATE

The provision is effective for advance refunding bonds issued after the date of enactment and before January 1, 2011.

4. Increase the low-income housing credit cap and make other modifications (new sec. 1400N(c) of the Code)

PRESENT LAW

In general

The low-income housing credit may be claimed over a 10-year period for the cost of rental housing occupied by tenants having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the Internal Revenue Service so that the 10 annual installments have a present value of 70 percent of the total qualified basis. The credit percentage for newly constructed or substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially

rehabilitated is calculated to have a present value of 30 percent of qualified basis. These are referred to as the 70 percent credit and 30 percent credit, respectively.

Income targeting

In order to be eligible for the low-income housing credit, a qualified low-income building must be part of a qualified low-income housing project. In general, a qualified low-income housing project is defined as a project which satisfies one of two tests at the election of the taxpayer. The first test is met if 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income (the ''20–50 test''). The second test is met if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income (the ''40–60 test'').

Credit cap

Generally, the aggregate credit authority provided annually to each State for calendar year 2006 is $1.90 per resident with a minimum annual cap of $2,180,000 for certain small population States. These amounts are indexed for inflation. These limits do not apply in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit.

Basis of building eligible for the credit

Buildings located in high cost areas (i.e., qualified census tracts and difficult development areas) are eligible for an enhanced credit. Under the enhanced credit, the 70–percent and 30 percent credit is increased to a 91 percent and 39 percent credit, respectively. The mechanism for this increase is an increase from 100 to 130 percent of the otherwise applicable eligible basis of a new building or the rehabilitation expenditures of an existing building. A further requirement for the enhanced credit is that no more than 20 percent of the population of each metropolitan statistical area or nonmetropolitan statistical area may be a difficult to develop area.

Stacking rule

Authority to allocate credits remains at the State (as opposed to local) government level unless State law provides otherwise. Generally, credits may be allocated only from volume authority arising during the calendar year in which the building is placed in service, except in the case of: (1) credits claimed on additions to qualified basis; (2) credits allocated in a later year pursuant to an earlier binding commitment made no later than the year in which the building is placed in service; and (3) carryover allocations.

Each State annually receives low-income housing credit authority equal to $1.90 per State resident for allocation to qualified low-income projects. In addition to this $1.90 per resident amount, each State's ''housing credit ceiling'' includes the following amounts: (1) the unused State housing credit ceiling (if any) of such State for the preceding calendar year; (2) the amount of the State housing credit ceiling (if any) returned in the calendar year; and (3) the amount of the national pool (if any) allocated to such State by the Treasury Department.

The national pool consists of States' unused housing credit carryovers. For each State, the unused housing credit carryover for a calendar year consists of the excess (if any) of the unused State housing credit ceiling for such year over the excess (if any) of the aggregate housing credit dollar amount allocated for such year over the sum of $1.90 per resident and the credit returns for such year. The amounts in the national pool are allocated only to States that allocated their entire housing credit ceiling for the preceding calendar year and requested a share in the national pool not later than May 1 of the calendar year. The national pool allocation to qualified States is made on a pro rata basis equivalent to the fraction that a State's population enjoys relative to the total population of all qualified States for that year.

The present-law stacking rule provides that each State is treated as using its allocation of the unused State housing credit ceiling (if any) from the preceding calendar before the current year's allocation of credit (including any credits returned to the State) and then finally any national pool allocations.

EXPLANATION OF PROVISION

Income targeting

In the case of property placed in service during 2006, 2007, and 2008 in a nonmetropolitan area within the Gulf Opportunity Zone, the income targeting rules of the low-income housing credit are applied by replacing the area median gross income standard with a national nonmetropolitan median gross income standard. These new income targeting rules apply to all such buildings in the Gulf Opportunity Zone regardless of whether the building receives its credit allocation under the otherwise applicable low-income housing credit cap or the additional credit cap (described below). The income targeting rules are not changed for buildings in metropolitan areas in the Gulf Opportunity Zone.

Credit cap

Under the provision, the otherwise applicable housing credit ceiling amount is increased for each of the States within the Gulf Opportunity Zone. This increase applies to calendar years 2006, 2007, and 2008. The additional credit cap for each of the affected States equals $18.00 times the number of such State's residents within the Gulf Opportunity Zone. This amount is not adjusted for inflation. For purposes of this additional credit cap amount, the determination of population for any calendar year is made on the basis of the most recent census estimate of the resident population of the State in the Gulf Opportunity Zone released by the Bureau of the Census before August 28, 2005.

In addition, the otherwise applicable housing credit ceiling amount is increased for Florida and Texas by $3,500,000 per State. This increase only applies to calendar year 2006.

Basis of building eligible for the credit

Under the provision, the Gulf Opportunity Zone, the Rita Go Zone, and the Wilma Go Zone are treated as high-cost areas for purposes of the low-income housing credit for property placed-in-service in calendar years 2006, 2007, and 2008. Therefore, buildings located in the Gulf Opportunity Zone, the Rita Go Zone, and the Wilma Go Zone are eligible for the enhanced credit. Under the enhanced credit, the 70 percent and 30 percent credits are increased to 91 percent and 39 percent credits, respectively. The 20 percent of population restriction is waived for this purpose. This enhanced credit applies regardless of whether the building receives its credit allocation under the otherwise applicable low-income housing credit cap or the additional credit cap.

Carryover

The additional credit cap available for States within the Gulf Opportunity Zone for calendar years 2006, 2007 and 2008 may not be carried forward from any year to any other year. The present-law rules apply for purposes of the Rita Go Zone and the Wilma Go Zone.

Stacking rule

Within each calendar year, each applicable State within the GO Zone must treat the additional credit cap allocable under the provision to that State as allocated before any other credit cap amounts. Therefore, under the provision each applicable State within the GO Zone is treated as using credits in the following order: (1) the additional credit cap (including any such credits returned to the State) under the Gulf Opportunity Zone, then (2) its allocation of the unused State housing credit ceiling (if any) from the preceding calendar, then (3) the current year's allocation of present-law credit (including any credits returned to the State) and then (4) any national pool allocations. This generally maximizes the total amount of credit (under both otherwise applicable low income housing credit cap and the additional credit cap for the Gulf Opportunity Zone) which may be carried forward.

The present-law rules apply for purposes of the Rita Go Zone and the Wilma Go Zone.

EFFECTIVE DATE

The provisions relating to the increased credit cap, carryover and stacking rule applicable to the GO Zone are generally effective for calendar years beginning after 2005 and before 2009.

The provision relating to the increased credit cap applicable to Florida and Texas is generally effective for calendar years beginning after 2005 and before 2007.

The provision to treat the Gulf Opportunity Zone, Rita Go Zone and the Wilma Go Zone as a high-cost area is generally effective for calendar years beginning after 2005 and before 2009, and buildings placed in service during such period in the case of projects that also receive financing with the proceeds of tax-exempt bonds subject to the private activity bond volume limit which are issued during that period.

The income targeting provision is effective for property placed in service during 2006, 2007 and 2008. This provision applies to property which receives a credit allocation in any of those three years or a prior year. It also applies in the case of credit projects that receive tax-exempt bond financing subject to the private activity bond volume limit.

5. Additional first-year depreciation for Gulf Opportunity Zone property (new sec. 1400N(d) of the Code)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (''MACRS''). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Section 280F limits the annual depreciation deductions with respect to passenger automobiles to specified dollar amounts, indexed for inflation.

Section 167(f)(1) provides that capitalized computer software costs, other than computer software to which section 197 applies, are recovered ratably over 36 months.

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment generally may elect to deduct the cost of qualifying property placed in service for the taxable year. (Sec. 179.) In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

EXPLANATION OF PROVISION

The provision allows an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified Gulf Opportunity Zone property. In order to qualify, property 13 generally must be placed in service on or before December 31, 2007 (December 31, 2008 in the case of nonresidential real property and residential rental property).

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or section 263A. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, the provision provides that there is no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be property to which the general rules of the Modified Accelerated Cost Recovery System (''MACRS'') apply with (1) an applicable recovery period of 20 years or less, (2) computer software other than computer software covered by section 197, (3) water utility property (as defined in section 168(e)(5)), (4) certain leasehold improvement property, or (5) certain nonresidential real property and residential rental property. Second, substantially all of the use of such property must be in the Gulf Opportunity Zone and in the active conduct of a trade or business by the taxpayer in the Gulf Opportunity Zone. Third, the original use of the property in the Gulf Opportunity Zone must commence with the taxpayer on or after August 28, 2005. (Thus, used property may constitute qualified property so long as it has not previously been used within the Gulf Opportunity Zone. In addition, it is intended that additional capital expenditures incurred to recondition or rebuild property the original use of which in the Gulf Opportunity Zone began with the taxpayer would satisfy the ''original use'' requirement. See Treasury Regulation sec. 1.48–2 Example 5.) Finally, the property must be acquired by purchase (as defined under section 179(d)) by the taxpayer on or after August 28, 2005 and placed in service on or before December 31, 2007. For qualifying nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2008, in lieu of December 31, 2007. Property does not qualify if a binding written contract for the acquisition of such property was in effect before August 28, 2005. However, property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to August 28, 2005.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies if the taxpayer begins the manufacture, construction, or production of the property on or after August 28, 2005, and the property is placed in service on or before December 31, 2007 (and all other requirements are met). In the case of qualified nonresidential real property and residential rental property, the property must be placed in service on or before December 31, 2008. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

Under a special rule, property any portion of which is financed with the proceeds of a tax-exempt obligation under section 103 is not eligible for the additional first-year depreciation deduction. Recapture rules apply under the provision if the property ceases to be qualified Gulf Opportunity Zone property.

EFFECTIVE DATE

The provision applies to property placed in service on or after August 28, 2005, in taxable years ending on or after such date.

6. Increase in expensing for Gulf Opportunity Zone property (new sec. 1400N(e) of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or ''expense'') such costs. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2007, is $100,000 of the cost of qualifying property placed in service for the taxable year. Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400L(f)), an empowerment zone (sec. 1397A), or a renewal community (sec. 1400J). In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2008 is treated as qualifying property. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation for taxable years beginning after 2003 and before 2008.

For taxable years beginning in 2008 and thereafter, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

An expensing election is made under rules prescribed by the Secretary (sec. 179(c)(1)). Under Treas. Reg. sec. 179–5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. For taxable years beginning in 2008 and thereafter, an expensing election may be revoked only with consent of the Commissioner (sec. 179(c)(2)).

EXPLANATION OF PROVISION

Under the provision, the $100,000 maximum amount that a taxpayer may elect to deduct under section 179 is increased by the lesser of $100,000, or the cost of qualified section 179 Gulf Opportunity Zone property for the taxable year. The provision applies with respect to qualified section 179 Gulf Opportunity Zone property acquired on or after August 28, 2005, and placed in service on or before December 31, 2007. Thus, in addition to the $100,000 maximum cost of any section 179 property (including property that also meets the definition of qualified section 179 Gulf Opportunity Zone property) that may be deducted under present law, a taxpayer may elect to deduct a maximum $100,000 additional amount of the taxpayer's cost of qualified section 179 Gulf Opportunity Zone property, resulting in a maximum deductible amount of $200,000 of qualified section 179 Gulf Opportunity Zone property. (The $100,000 present-law portion of this amount is indexed for taxable years beginning after 2003 and before 2008, so the total may be higher than $200,000 after taking indexation of this portion into account.) The $100,000 additional amount for the cost of qualified section 179 Gulf Opportunity Zone property is not indexed.

The provision provides a special rule for the reduction in the $200,000 maximum deduction for the cost of qualified section 179 Gulf Opportunity Zone property. Under this rule, the $200,000 amount is reduced (but not below zero) by the amount by which the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year exceeds a dollar cap of up to $1 million. (The $400,000 present-law portion of this amount is indexed for taxable years beginning after 2003 and before 2008, so the total may be higher than $1 million after taking indexation of this portion into account.) The dollar cap is computed by increasing the $400,000 present-law amount by the lesser of (1) $600,000, or (2) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year. The $600,000 amount is not indexed.

The operation of the reduction may be illustrated as follows. In each of the following examples, assume that the taxable income limitation of section 179(b)(3)(A) does not cause a reduction in the amount that may be expensed for the taxable year. For example, assume that in the taxable year, a taxpayer's cost of section 179 property that is qualified Gulf Opportunity Zone property is $800,000, and in that year the taxpayer acquires no other section 179 property. Under the provision, the taxpayer's deductible amount is increased by $100,000 to $200,000 (the lesser of $100,000 and cost of the taxpayer's qualified section 179 Gulf Opportunity Zone property). Under the provision, the $400,000 phase-out amount in section 179(b)(2) is increased by $600,000 (i.e., the lesser of $600,000 or the $800,000 cost of qualified section 179 Gulf Opportunity Zone property), so that the phase-out amount is $1 million. The taxpayer's cost of section 179 property is $800,000 in total (less than the $1 million phase-out amount), so no reduction is made in the $200,000 amount of qualified Gulf Opportunity Zone

property that may be deducted under section 179 for the taxable year. As another example, assume for the taxable year that a taxpayer's cost of section 179 property that is qualified Gulf Opportunity Zone property is $200,000, and its cost of other section 179 property is $450,000. Under the provision, the $400,000 phase-out amount in section 179(b)(2) is increased to $600,000 by the $200,000 cost of qualified section 179 Gulf Opportunity Zone property. The taxpayer had a total $650,000 cost of section 179 property for the taxable year. The taxpayer's section 179 deduction is reduced by the $50,000 difference between $650,000 and $600,000. Thus, under the provision, the taxpayer may deduct $150,000 ($200,000 less $50,000) under section 179 for the taxable year.

Qualified section 179 Gulf Opportunity Zone property means section 179 property (as defined in section 179(d) of present law) that also meets the requirements to qualify for Gulf Opportunity Zone bonus depreciation. Specifically, for section 179 purposes, qualified Gulf Opportunity Zone property is property (1) described in section 168(k)(2)(A)(i), (2) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in that Zone, (3) the original use of which commences with the taxpayer on or after August 28, 2005, (4) which is acquired by the taxpayer by purchase on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and (5) which is placed in service by the taxpayer on or before December 31, 2007. Such property does not include alternative depreciation property, tax-exempt bond-financed property, or qualified revitalization buildings.

The provision includes rules coordinating increased section 179 amounts provided under the bill with present-law expensing rules with respect to enterprise zone businesses in empowerment zones and with respect to renewal communities. For purposes of those rules, qualified section 179 Gulf Opportunity Zone property is not treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 Gulf Opportunity Zone property into account for purposes of this provision. Thus, a taxpayer acquiring property that could qualify as either qualified section 179 Gulf Opportunity Zone property, or qualified zone property or qualified renewal property, may elect the additional expensing provided either under this provision, or under the empowerment zone or renewal community rules, but not both, with respect to the property.

Recapture rules apply under the provision if recapture applies under section 179(d)(10) or if the property ceases to be qualified section 179 Gulf Opportunity Zone property.

EFFECTIVE DATE

The provision is effective for taxable years ending on or after August 28, 2005, for qualified section 179 Gulf Opportunity Zone property acquired after August 27, 2005, and placed in service on or before December 31, 2007.

7. Expensing for certain demolition and clean-up costs (new sec. 1400N(f) of the Code)

PRESENT LAW

Under present law, the cost of demolition of a structure is capitalized into the taxpayer's basis in the land on which the structure is located. (Sec. 280B). Land is not subject to an allowance for depreciation or amortization.

The treatment of the cost of debris removal depends on the nature of the costs incurred. For example, the cost of debris removal after a storm may in some cases constitute an ordinary and necessary business expense which is deductible in the year paid or incurred. In other cases, debris removal costs may be in the nature of replacement of part of the property that was damaged. In such cases, the costs are capitalized and added to the taxpayer's basis in the property. For example, Revenue Ruling 71–161, 1971–1 C.B. 76, permits the use of clean-up costs as a measure of casualty loss but requires that such costs be added to the post-casualty basis of the property.

EXPLANATION OF PROVISION

Under the provision, a taxpayer is permitted a deduction for 50 percent of any qualified Gulf Opportunity Zone clean-up cost paid or incurred on or after August 28, 2005, and before January 1, 2008. The remaining 50 percent is capitalized as under present law.

A qualified Gulf Opportunity Zone clean-up cost is an amount paid or incurred for the removal of debris from, or the demolition of structures on, real property located in the Gulf Opportunity Zone to the extent that the amount would otherwise be capitalized. In order to qualify, the property must be held for use in a trade or business, for the production of income, or as inventory.

EFFECTIVE DATE

The provision applies to costs paid or incurred on or after August 28, 2005 in taxable years ending on or after such date.

8. Extension of expensing for environmental remediation costs (new sec. 1400N(g) of the Code)

PRESENT LAW

Taxpayers may elect to deduct (or ''expense'') certain environmental remediation expenditures that would otherwise be chargeable to capital account, in the year paid or incurred (sec. 198). The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

A ''qualified contaminated site'' generally is any property that (1) is held for use in a trade or business, for the production of income, or as inventory and (2) is at a site on which there has been a release (or threat of release) or disposal of certain hazardous substances as certified by the appropriate State environmental agency (so-called ''brownfields'').

Section 198(d)(1) defines a ''hazardous substance'' as a substance which is so defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), and any substance which is administratively designated as a hazardous substance under section 102 of CERCLA. Under section 198(d)(2), however, the term ''hazardous substance'' does not include any substance with respect to which a removal or remediation is not permitted under section 104 of CERCLA by reason of subsection (a)(3) thereof, which exempts from the scope of such provision ''the release or threat of release (A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found; (B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or (C) into public or private drinking water supplies due to deterioration of the system through ordinary use.'' However, sites which are identified on the national priorities list under CERCLA cannot qualify for expensing under section 198.

Petroleum products generally are not regarded as hazardous substances for purposes of section 198. Section 101(14) of CERCLA specifically excludes ''petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph,'' from the definition of ''hazardous substance.''

Under present law, eligible expenditures are those paid or incurred before January 1, 2006.

EXPLANATION OF PROVISION

The provision extends the present-law expensing provision for two years (through December 31, 2007) for qualified contaminated sites located in the Gulf Opportunity Zone.

In addition, under the provision, petroleum products are treated as hazardous substances for purposes of applying the expensing provision (as extended) within the Gulf Opportunity Zone. Petroleum products are defined by reference to section 4612(a)(3), and include crude oil, crude oil condensates and natural gasoline. Thus, for example, the release of crude oil upon property held for use in a trade or business in the Gulf Opportunity Zone results in such property being treated as a qualified contaminated site. The present law exceptions for sites on the national priorities list under CERCLA, and for substances with respect to which a removal or remediation is not permitted under section 104 of CERCLA by reason of subsection (a)(3) thereof, would continue to apply to all hazardous substances (including petroleum products).

Expenditures paid or incurred to abate the contamination on or after August 28, 2005 and before December 31, 2007, would be eligible for expensing.

EFFECTIVE DATE

The provision is effective for taxable years ending on or after August 28, 2005.

9. Increase in rehabilitation tax credit with respect to certain buildings located in the Gulf Opportunity Zone (new sec. 1400N(h) of the Code)

PRESENT LAW

Present law provides a two-tier tax credit for rehabilitation expenditures.

A 20-percent credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure. For this purpose, a certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

A 10-percent credit is provided for qualified rehabilitation expenditures with respect to a qualified rehabilitated building, which generally means a building that was first placed in service before 1936. The pre–1936 building must meet requirements with respect to retention of existing external walls and internal structural framework of the building in order for expenditures with respect to it to qualify for the 10-percent credit. A building is treated as having met the substantial rehabilitation requirement under the 10–percent credit only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) $5,000.

The provision requires the use of straight-line depreciation or the alternative depreciation system in order for rehabilitation expenditures to be treated as qualified under the provision.

EXPLANATION OF PROVISION

The provision increases from 20 to 26 percent, and from 10 to 13 percent, respectively,

the credit under section 47 with respect to any certified historic structure or qualified rehabilitated building located in the Gulf Opportunity Zone, provided the qualified rehabilitation expenditures with respect to such buildings or structures are incurred on or after August 28, 2005, and before January 1, 2009.

EFFECTIVE DATE

The provision is effective for expenditures incurred on or after August 28, 2005, and before January 1, 2009, for taxable years ending on or after August 28, 2005.

10. Increased expensing for reforestation expenditures of small timber producers (new sec. 1400N(i)(1) of the Code)

PRESENT LAW

Present law permits a taxpayer to elect to deduct (or ''expense'') a limited amount of certain reforestation expenditures that would otherwise be required to be capitalized, in the year paid or incurred (sec. 194(b)). No more than $10,000 of reforestation expenditures made by a taxpayer in any year can qualify for expensing with respect to each qualified timber property. The limit is reduced to $5,000 per qualified timber property for married taxpayers filing separate returns.

All members of a controlled group of corporations are treated as a single taxpayer for purposes of the $10,000 limit. A controlled group of corporations for purposes of section 194 is defined as under section 1563(a), except that the 80-percent ownership requirement is reduced to a more than 50-percent requirement. If a partnership or S corporation incurs reforestation expenditures, the $10,000 limit applies separately to the partnership or S corporation and to each partner or shareholder. For an estate with reforestation expenditures, the $10,000 limit is apportioned between the estate and its beneficiaries. Section 194(b) does not apply to trusts.

Reforestation expenditures include direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs for site preparation, seeds and seeding, labor and tools, and depreciation on equipment used in planting or seeding. Qualified timber property means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products (sec. 194(c)(1)).

If a taxpayer's otherwise qualifying reforestation expenditures exceed the amount permitted to be expensed under section 194, the remaining expenditures are amortized, and the taxpayer is entitled to a deduction with respect to the amortization of the amortizable basis (sec. 194(a)). Reforestation expenditures qualifying for amortization are deducted in 84 equal monthly installments starting with the seventh month of the taxable year during which the expenditures are paid or incurred. Only reforestation expenditures that would otherwise be included in the basis of qualified timber property qualify for expensing and, with respect to amounts in excess of the $10,000 limit, for amortization (however, costs that could be deducted in the absence of section 194 are not required to be amortized).

EXPLANATION OF PROVISION

The provision doubles, for certain taxpayers, the present-law expensing limit for reforestation expenditures paid or incurred by such taxpayers (i) during the period after on or August 28, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Gulf Opportunity Zone, (ii) during the period on or after September 23, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Rita Zone and no portion of which is located in the Gulf Opportunity Zone, and (iii) during the period on or after October 23, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Wilma Zone. The amount by which the expensing limit is increased, however, is limited to the amount of reforestation expenditures paid or incurred during the relevant portion of the taxable year.

For example, suppose an otherwise eligible calendar-year taxpayer incurred $20,000 of reforestation expenditures in June, 2005 (i.e., prior to the relevant period), and incurs an additional $5,000 of reforestation expenditures in October, 2005, in the Gulf Opportunity Zone; the taxpayer would be permitted to expense $15,000 of the expenditures (because the increase in the expensing limit is limited to the $5,000 of expenditures paid or incurred during the relevant period within the taxable year) and could amortize the remaining $10,000 under section 194(a). By contrast, if the taxpayer had incurred $5,000 of reforestation expenditures in June, 2005, and incurs an additional $20,000 of reforestation expenditures in October, 2005, then the taxpayer would be permitted to expense $20,000 of the expenditures, and could amortize the remaining $5,000 under section 194(a).

The provision applies to taxpayers with aggregate holdings of qualified timber property which do not exceed 500 acres at any time during the taxable year. ''Qualified timber property'' is defined by section 194(c)(1) as ''a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.''

The provision does not apply to any taxpayer which is a corporation the stock of which is publicly traded on an established securities market, or which is a real estate investment trust.

EFFECTIVE DATE

The proposal is effective for taxable years ending on or after August 28, 2005, (i) for expenditures paid or incurred on or after August 28, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Gulf Opportunity Zone, (ii) for expenditures paid or incurred on or after September 23, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Rita Zone and no portion of which located in the Gulf Opportunity Zone, and (iii) for expenditures paid or incurred on or after October 23, 2005, and before January 1, 2008, with respect to qualified timber property any portion of which is located in the Wilma Zone.

11. Five-year NOL carryback of certain timber losses (new sec. 1400N(i)(2) of the Code)

PRESENT LAW

A net operating loss (''NOL'') is, generally, the amount by which a taxpayer's business deductions exceed the taxpayer's gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in these years (sec. 172). NOLs generally are first applied to the earliest of the taxable years to which the loss may be carried (sec. 172(b)(2)).

In the case of an NOL arising from a farming loss, the NOL can be carried back five years. A ''farming loss'' is defined as the amount of any net operating loss attributable to a farming business as defined in section 263A(e)(4). Under section 263A(e)(4), a farming business includes the trade or business of farming, as well as the trade or business of operating a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees. It does not include the planting, cultivating, caring for, holding or cutting of trees for sale or use in the commercial production of timber products.

A farming loss cannot exceed the taxpayer's NOL for the taxable year. In calculating the amount of a taxpayer's NOL carrybacks, the portion of the NOL that is attributable to a farming loss is treated as a separate NOL and is taken into account after the remaining portion of the NOL for the taxable year.

EXPLANATION OF PROVISION

Under the provision, for purposes of determining the farming loss (if any) of certain taxpayers, income and loss is treated as attributable to a farming business if such income and loss is attributable to qualified timber property any portion of which is located in the Gulf Opportunity Zone or in the Rita GO Zone, and if such income and loss is allocable to that portion of the taxpayer's taxable year which is (i) on or after August 28, 2005 (for qualified timber property any portion of which is located in the Gulf Opportunity Zone), on or after September 23, 2005 (for qualified timber property any portion of which is located in the Rita GO Zone and no portion of which is located in the Gulf Opportunity Zone), or on or after October 23, 2005 (for qualified timber property any portion of which is located in the Wilma Zone) and (ii) before January 1, 2007. ''Qualified timber property'' is defined by section 194(c)(1) as ''a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.''

The provision applies to taxpayers with aggregate holdings of qualified timber property which do not exceed 500 acres at any time during the taxable year. Further, the provision only applies (i) with respect to qualified timber property any portion of which is located in the Gulf Opportunity Zone, if the taxpayer held such property on August 28, 2005, (ii) with respect to qualified timber property any portion of which is located in the Rita GO Zone and no portion of which is located in the Gulf Opportunity Zone, if the taxpayer held such property on September 23, 2005, and (iii) with respect to qualified timber property any portion of which is located in the Wilma Zone, if the taxpayer held such property on October 23, 2005.

The provision does not apply to any taxpayer which is a corporation the stock of which is publicly traded on an established securities market, or which is a real estate investment trust.

EFFECTIVE DATE

The proposal is effective for taxable years ending on or after August 28, 2005, with respect to income and loss which is allocable to that portion of the taxpayer's taxable year which is (i) on or after August 28, 2005 (for qualified timber property any portion of which is located in the Gulf Opportunity Zone), on or after September 23, 2005 (for qualified timber property any portion of which is located in the Rita Zone and no portion of which is located in the Gulf Opportunity Zone), or on or after October 23, 2005 (for qualified timber property any portion of which is located in the Wilma Zone) and (ii) before January 1, 2007.

12. Special rule for Gulf Opportunity Zone public utility casualty losses (new sec. 1400N(j) of the Code)

PRESENT LAW

In general

A net operating loss (''NOL'') is, generally, the amount by which a taxpayer's allowable deductions exceed the taxpayer's gross income. A carryback of an NOL generally results in the refund of Federal income tax for the carryback year. A carryover of an NOL reduces Federal income tax for the carryover year.

In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs generally are first applied to the earliest of the taxable years to which the loss may be carried.

Exceptions to the general rule

Different rules apply with respect to NOLs arising in certain circumstances. For example, a three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback period applies to NOLs from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area). Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10–year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction).

Specified liability losses

The specified liability loss rules generally apply to certain product liability losses and other liability losses. The amount of the specified liability loss cannot exceed the taxpayer's NOL for the taxable year. A specified liability loss is treated as a separate NOL for the taxable year which is eligible for a 10–year carryback period. Any remaining portion of the taxpayer's NOL is subject to the general two-year carryback period.

EXPLANATION OF PROVISION

The provision provides an election for taxpayers to treat any Gulf Opportunity Zone public utility casualty loss as a specified liability loss to which the present-law 10–year carryback period applies. A Gulf Opportunity Zone public utility casualty loss is any casualty loss of public utility property by reason of Hurricane Katrina which is allowed as a deduction under section 165. The amount of the casualty loss is reduced by the amount of any gain recognized by the taxpayer from involuntary conversions of public utility property located in the Gulf Opportunity Zone caused by Hurricane Katrina. The total amount of specified liability loss, including any amount of public utility casualty loss treated as such, is limited to the amount of the taxpayer's overall NOL for the taxable year as under present law. Taxpayers who elect the applicability of the proposed provision with respect to any loss are not eligible to also treat the loss as having occurred in any prior taxable year under section 165(i), nor may they include the casualty loss as part of the five-year NOL carryback provided under another provision of the bill.

For purposes of the proposed provision, public utility property is defined as in section 168(i)(10) to mean, generally, property used predominantly in a rate-regulated trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; telephone services or certain other communication services; or transportation of gas or steam by pipeline.

EFFECTIVE DATE

The provision is effective for losses arising in taxable years ending on or after August 28, 2005.

13. Five-year NOL carryback for certain amounts related to Hurricane Katrina or the Gulf Opportunity Zone (new sec. 1400N(k) of the Code)

PRESENT LAW

In general

A net operating loss (''NOL'') is, generally, the amount by which a taxpayer's allowable deductions exceed the taxpayer's gross income. A carryback of an NOL generally results in the refund of Federal income tax for the carryback year. A carryover of an NOL reduces Federal income tax for the carryover year.

In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years. NOLs generally are first applied to the earliest of the taxable years to which the loss may be carried.

Different rules apply with respect to NOLs arising in certain circumstances. For example, a three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback period applies to NOLs from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area). Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10–year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction).

Separately, under section 165(i), a taxpayer who incurs a loss attributable to a Presidentially declared disaster may elect to take such loss into account for the taxable year immediately preceding the taxable year in which the disaster occurred. This rule applies regardless of whether the taxpayer has an overall net operating loss for the relevant taxable years.

The alternative minimum tax rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income (''AMTI'') by more than 90 percent of the AMTI. However, an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, offset 100 percent of a taxpayer's AMTI.

EXPLANATION OF PROVISION

In general

The provision provides a special five-year carryback period for NOLs to the extent of certain specified amounts related to Hurricane Katrina or the Gulf Opportunity Zone. The amount of the NOL which is eligible for the five year carryback (''eligible NOL'') is limited to the aggregate amount of the following deductions: (i) qualified Gulf Opportunity Zone casualty losses; (ii) certain moving expenses; (iii) certain temporary housing expenses; (iv) depreciation deductions with respect to qualified Gulf Opportunity Zone property for the taxable year the property is placed in service; and (v) deductions for certain repair expenses resulting from Hurricane Katrina. The provision applies for losses paid or incurred after August 27, 2005, and before January 1, 2008; however, an irrevocable election not to apply the five-year carryback under the provision may be made with respect to any taxable year.

Qualified Gulf Opportunity Zone casualty losses

The amount of qualified Gulf Opportunity Zone casualty losses which may be included in the eligible NOL is the amount of the taxpayer's casualty losses with respect to (1) property used in a trade or business, and (2) capital assets held for more than one year in connection with either a trade or business or a transaction entered into for profit. In order for a casualty loss to qualify, the property must be located in the Gulf Opportunity Zone and the loss must be attributable to Hurricane Katrina. As under present law, the amount of any casualty loss includes only the amount not compensated for by insurance or otherwise. In addition, the total amount of the casualty loss which may be included in the eligible NOL is reduced by the amount of any gain recognized by the taxpayer from involuntary conversions of property located in the Gulf Opportunity Zone caused by Hurricane Katrina.

To the extent that a casualty loss is included in the eligible NOL and carried back under the provision, the taxpayer is not eligible to also treat the loss as having occurred in the prior taxable year under section 165(i). Similarly, the five year carryback under the provision does not apply to any loss taken into account for purposes of the ten-year carryback of public utility casualty losses which is provided under another provision in the bill.

Moving expenses

Certain employee moving expenses of an employer may be included in the eligible NOL. In order to qualify, an amount must be paid or incurred after August 27, 2005, and before January 1, 2008 with respect to an employee who (i) lived in the Gulf Opportunity Zone before August 28, 2005, (ii) was displaced from their home either temporarily or permanently as a result of Hurricane Katrina, and (iii) is employed in the Gulf Opportunity Zone by the taxpayer after the expense is paid or incurred.

For this purpose, moving expenses are defined as under present law to include only the reasonable expenses of moving household goods and personal effects from the former residence to the new residence, and of traveling (including lodging) from the former residence to the new place of residence. However, for purposes of the provision, the former residence and the new residence may be the same residence if the employee initially vacated the residence as a result of Hurricane Katrina. It is not necessary for the individual with respect to whom the moving expenses are incurred to have been an employee of the taxpayer at the time the expenses were incurred. Thus, assuming the other requirements are met, a taxpayer who pays the moving expenses of a prospective employee and subsequently employs the individual in the Gulf Opportunity Zone may include such expenses in the eligible NOL.

Temporary housing expenses

Any deduction for expenses of an employer to temporarily house employees who are employed in the Gulf Opportunity Zone may be included in the eligible NOL. It is not necessary for the temporary housing to be located in the Gulf Opportunity Zone in order for such expenses to be included in the eligible NOL; however, the employee's principal place of employment with the taxpayer must be in Gulf Opportunity Zone. So, for example, if a taxpayer temporarily houses an employee at a location outside of the Gulf Opportunity Zone, and the employee commutes into the Gulf Opportunity Zone to the employee's principal place of employment, such temporary housing costs will be included in the eligible NOL (assuming all other requirements are met).

Depreciation of Gulf Opportunity Zone property

The eligible NOL includes the depreciation deduction (or amortization deduction in lieu

of depreciation) with respect to qualified Gulf Opportunity Zone property placed in service during the year. The special carryback period applies to the entire allowable depreciation deduction for such property for the year in which it is placed in service, including both the regular depreciation deduction and the additional first-year depreciation deduction, if any. An election out of the additional first-year depreciation deduction for Gulf Opportunity Zone property does not preclude eligibility for the five-year carryback.

Repair expenses

The eligible NOL includes deductions for repair expenses (including the cost of removal of debris) with respect to damage caused by Hurricane Katrina. For example, expenses relating to the removal of mold and other contaminants from property located in the Gulf Opportunity Zone will be included in the eligible NOL. In order to qualify, the amount must be paid or incurred after August 27, 2005 and before January 1, 2008, and the property must be located in the Gulf Opportunity Zone.

Other rules

The amount of the NOL to which the five-year carryback period applies is limited to the amount of the corporation's overall NOL for the taxable year. Any remaining portion of the taxpayer's NOL is subject to the general two-year carryback period. Ordering rules similar to those for specified liability losses apply to losses carried back under the provision.

In addition, the general rule which limits a taxpayer's NOL deduction to 90 percent of AMTI will not apply to any NOL to which the five-year carryback period applies under the provision. Instead, a taxpayer may apply such NOL carrybacks to offset up to 100 percent of AMTI.

EFFECTIVE DATE

The provision is effective for losses arising in taxable years ending on or after August 28, 2005.

14. Gulf Tax credit bonds (new sec. 1400N(l) of the Code)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'').

Generally, qualified private activity bonds are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Certain types of qualified private activity bonds (e.g., small issue and redevelopment bonds) also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors). Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds.

Tax-credit bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue tax-credit bonds for limited purposes. Rather than receiving interest payments, a taxpayer holding a tax-credit bond on an allowance date is entitled to a credit. Generally, the credit amount is includible in gross income (as if it were a taxable interest payment on the bond), and the credit may be claimed against regular income tax and alternative minimum tax liability. Two types of tax-credit bonds may be issued under present law, ''qualified zone academy bonds,'' which are bonds issued for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other personnel at certain school facilities, and ''clean renewable energy bonds,'' which are bonds issued to finance facilities that would qualify for the tax credit under section 45 without regard to the placed in service date requirements of that section.

Arbitrage restrictions on tax-exempt bonds

To prevent States and local governments from issuing more tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'' before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds.

EXPLANATION OF PROVISION

The provision creates a new category of tax-credit bonds that may be issued in calendar year 2006 by the States of Louisiana, Mississippi, and Alabama (''Gulf Tax Credit Bonds''). As with present law tax-credit bonds, the taxpayer holding Gulf Tax Credit Bonds on the allowance date would be entitled to a tax credit. The amount of the credit would be determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit would be includible in gross income (as if it were an interest payment on the bond) and could be claimed against regular income tax liability and alternative minimum tax liability.

Under the provision, 95 percent or more of the proceeds of Gulf Tax Credit Bonds must be used to (i) pay principal, interest, or premium on a bond (other than a private activity bond) that was outstanding on August 28, 2005, and was issued by the State issuing the Gulf Tax Credit Bonds, or any political subdivision thereof, or (ii) make a loan to any political subdivision of such State to pay principal, interest, or premium on a bond (other than a private activity bond) issued by such political subdivision. In addition, the issuer of Gulf Tax Credit Bonds must provide additional funds to pay principal, interest, or premium on outstanding bonds equal to the amount of Gulf Tax Credit Bonds issued to repay such outstanding bonds. Gulf Tax Credit Bonds must be a general obligation of the issuing State and must be designated by the Governor of such issuing State. The maximum maturity on Gulf Tax Credit Bonds is two years. In addition, present-law arbitrage rules that restrict the ability of State and local governments to invest bond proceeds apply to Gulf Tax Credit Bonds.

The maximum amount of Gulf Tax Credit Bonds that may be issued pursuant to this provision is $200 million in the case of Louisiana, $100 million in the case of Mississippi, and $50 million in the case of Alabama. Gulf Tax Credit Bonds may not be used to pay principal, interest, or premium on any bond with respect to which there is any outstanding refunded or refunding bond. Moreover, Gulf Tax Credit Bonds may not be used to pay principal, interest, or premium on any prior bond if the proceeds of such prior bond were used to provide any property described in section 144(c)(6)(B) (i.e., any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal purpose of which is the sale alcoholic beverages for consumption off premises).

EFFECTIVE DATE

The provision is effective for bonds issued after December 31, 2005 and before January 1, 2007.

15. Additional allocation of new markets tax credit for investments that serve the Gulf Opportunity Zone (new sec. 1400N(m) of the Code)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity (''CDE''). The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available for a taxable year to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and

other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A ''low-income community'' is a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (rather than 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20–year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary has the authority to designate ''targeted populations'' as low-income communities for purposes of the new markets tax credit. For this purpose, a ''targeted population'' is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under such Act, ''low-income'' means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income (12 U.S.C. 4702(17)). Under such Act, a targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and at $3.5 billion per year for calendar years 2006 and 2007.

EXPLANATION OF PROVISION

The provision allows an additional allocation of the new markets tax credit in an amount equal to $300,000,000 for 2005 and 2006, and $400,000,000 for 2007, to be allocated among qualified CDEs to make qualified low-income community investments within the Gulf Opportunity Zone. To qualify for any such allocation, a qualified CDE must have as a significant mission the recovery and redevelopment of the Gulf Opportunity Zone. The carryover of any unused additional allocation is applied separately from the carryover with respect to allocations made under present law.

EFFECTIVE DATE

The proposal is effective on the date of enactment.

16. Representations regarding income eligibility for purposes of qualified residential rental project requirements (new sec. 1400N(n) of the Code)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'').

Qualified private activity bonds

The definition of a qualified private activity bond includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, 501(c)(3), or student loan bond. The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities.

Subject to certain requirements, qualified private activity bonds may be issued to finance residential rental property or owner-occupied housing. Residential rental property may be financed with exempt facility bonds if the financed project is a ''qualified residential rental project.'' A project is a qualified residential rental project if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income (the ''20–50 test''). Alternatively, a project is a qualified residential rental project if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income (the ''40–60 test''). The issuer must elect to apply either the 20–50 test or the 40–60 test. Operators of qualified residential rental projects must annually certify that such project meets the requirements for qualification, including meeting the 20–50 test or the 40–60 test.

EXPLANATION OF PROVISION

Under the provision, the operator of a qualified residential rental project may rely on the representations of prospective tenants displaced by reason of Hurricane Katrina for purposes of determining whether such individual satisfies the income limitations for qualified residential rental projects and, thus, the project is in compliance with the 20–50 test or the 40–60 test. (For a description of modifications to the 20–50 test and the 40–60 test for qualified residential rental projects financed in the GO Zone, see I.A.2. Tax-exempt financing for the Gulf Opportunity Zone, above).

This rule only applies if the individual's tenancy begins during the six-month period beginning on the date when such individual was displaced by Hurricane Katrina.

EFFECTIVE DATE

The provision is effective on the date of enactment.

17. Treatment of public utility disaster losses (new sec. 1400N(o) of the Code)

PRESENT LAW

Under section 165(i), certain losses attributable to a disaster occurring in a Presidentially declared disaster area may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

Section 6411 provides a procedure under which taxpayers may apply for tentative carryback and refund adjustments with respect to net operating losses, net capital losses, and unused business credits.

EXPLANATION OF PROVISION

The provision provides an election for taxpayers who incurred casualty losses attributable to Hurricane Katrina with respect to public utility property located in the Gulf Opportunity Zone. Under the election, such losses may be taken into account in the fifth taxable year (rather than the 1st taxable year) immediately preceding the taxable year in which the loss occurred. If the application of this provision results in the creation or increase of a net operating loss for the year in which the casualty loss is taken into account, the net operating loss may be carried back or carried over as under present law applicable to net operating losses for such year.

For this purpose, public utility property is property used predominantly in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962; or transportation of gas or steam by pipeline. Such property is eligible regardless of whether the taxpayer's rates are established or approved by any regulatory body.

A taxpayer making the election under the provision is eligible to file an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the election. As under present law with respect to tentative carryback and refund adjustments, the IRS generally has 90 days to act on the refund claim. Under the provision, the statute of limitations with respect to such a claim can not expire earlier than one year after the date of enactment. Also, a taxpayer making the election with respect to a loss is not entitled to interest with respect to any overpayment attributable to the loss.

EFFECTIVE DATE

The provision is effective for taxable years ending on or after August 28, 2005.

18. Tax benefits not available with respect to certain property (new sec. 1400N of the Code)

PRESENT LAW

Under present law, specific tax benefits do not apply with respect to certain types of property. For example, private activity bonds are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance

certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Small issue and redevelopment bonds also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors).

EXPLANATION OF PROVISION

The provisions relating to additional first-year depreciation, increased expensing under section 179, and the five-year carryback of NOLs attributable to casualty losses, depreciation, or amortization otherwise provided under new Code section 1400N do not apply with respect to certain property. Specifically, the provisions do not apply with respect to any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises. The provisions also do not apply with respect to any gambling or animal racing property.

For this purpose, gambling or animal racing property includes certain personal property and certain real property. Personal property treated as gambling or animal racing property is any equipment, furniture, software, or other property used directly in connection with gambling, the racing of animals, or the on-site (i.e., at the racetrack) viewing of such racing. Real property treated as gambling or animal racing property is the portion of any real property (determined by square footage) that is dedicated to gambling, the racing of animals, or the on-site viewing of such racing (except if the portion so dedicated is less than 100 square feet). For example, the additional first-year depreciation for a building which is used as both a casino and a hotel (and which otherwise qualifies for additional first-year depreciation under the bill) is determined without regard to the portion of the building's basis which bears the same percentage to the total basis as the percentage of square footage dedicated to gambling (i.e., the casino floor) bears to total square footage of the building.

No apportionment calculation is required with respect to real property which meets the 100-square-foot de minimis exception. Thus, for example, no apportionment calculation is required in the case of a retail store that sells lottery tickets in a less-than-100-square-foot area, nor in the case of an establishment that, while not a casino, contains a small number of gaming machines and devices in an area or areas whose aggregate size is less than 100 square feet.

EFFECTIVE DATE

The provision is effective for taxable years ending on or after August 28, 2005, except that the inapplicability of the five-year carryback of NOLs attributable to casualty losses, depreciation, or amortization, is effective for losses arising in such years.

19. Expansion of Hope Scholarship and Lifetime Learning Credit for students in the Gulf Opportunity Zone (new sec. 1400O of the Code)

PRESENT LAW

Hope credit

The Hope credit (sec. 25A) is a nonrefundable credit of up to $1,500 per student per year for qualified tuition and related expenses paid for the first two years of the student's post-secondary education in a degree or certificate program. The Hope credit rate is 100 percent on the first $1,000 of qualified tuition and related expenses, and 50 percent on the next $1,000 of qualified tuition and related expenses. The Hope credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $43,000 and $53,000 ($87,000 and $107,000 for married taxpayers filing a joint return) for 2005. These adjusted gross income phase-out ranges are indexed for inflation. Also, each of the $1,000 amounts of qualified tuition and related expenses to which the 100–percent credit rate and 50 percent credit rate apply are indexed for inflation, with the amount rounded down to the next lowest multiple of $100. The first adjustment to these qualified expense amounts as a result of inflation is expected in 2006. The Hope credit generally may not be claimed against a taxpayer's alternative minimum tax liability. However, the credit may be claimed against a taxpayer's alternative minimum tax liability for taxable years beginning prior to January 1, 2006.

The qualified tuition and related expenses must be incurred on behalf of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer. The Hope credit is available with respect to an individual student for two taxable years, provided that the student has not completed the first two years of post-secondary education before the beginning of the second taxable year.

In addition, for each taxable year, a taxpayer may elect either the Hope credit, the Lifetime Learning credit (described below), or the deduction for qualified tuition and related expenses (sec. 222) with respect to an eligible student.

The Hope credit is available for ''qualified tuition and related expenses,'' which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of an eligible student at the institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of the student's degree program. Total qualified tuition and related expenses are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student (or the taxpayer claiming the credit) during the taxable year. The Hope credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

An eligible student for purposes of the Hope credit is an individual who is enrolled in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible educational institution. The student must pursue a course of study on at least a half-time basis. A student is considered to pursue a course of study on at least a half-time basis if the student carries at least one half the normal full-time work load for the course of study the student is pursuing for at least one academic period that begins during the taxable year. To be eligible for the Hope credit, a student must not have been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

For taxable years beginning in 2004 and 2005, the Hope credit offsets the alternative minimum tax. For taxable years thereafter, the Hope credit does not offset the alternative minimum tax.

Effective for taxable years beginning after December 31, 2010, the changes to the Hope credit made by EGTRRA no longer apply. The EGTRRA change scheduled to expire is the change that permitted a taxpayer to claim a Hope credit in the same year that he or she claimed an exclusion from an education savings account. Thus, after 2010, a taxpayer cannot claim a Hope credit in the same year he or she claims an exclusion from an education savings account.

Lifetime Learning credit

Individual taxpayers are allowed to claim a nonrefundable credit, the Lifetime Learning credit, equal to 20 percent of qualified tuition and related expenses incurred during the taxable year on behalf of the taxpayer, the taxpayer's spouse, or any dependents (Sec. 25A). Up to $10,000 of qualified tuition and related expenses per taxpayer return are eligible for the Lifetime Learning credit (i.e., the maximum credit per taxpayer return is $2,000). In contrast with the Hope credit, the maximum credit amount is not indexed for inflation. The Lifetime Learning credit generally may not be claimed against a taxpayer's alternative minimum tax liability. However, the credit may be claimed against a taxpayer's alternative minimum tax liability for taxable years beginning prior to January 1, 2006.

In contrast to the Hope credit, a taxpayer may claim the Lifetime Learning credit for an unlimited number of taxable years. Also in contrast to the Hope credit, the maximum amount of the Lifetime Learning credit that may be claimed on a taxpayer's return will not vary based on the number of students in the taxpayer's family—that is, the Hope credit is computed on a per student basis, while the Lifetime Learning credit is computed on a family-wide basis. The Lifetime Learning credit amount that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between $43,000 and $53,000 ($87,000 and $107,000 for married taxpayers filing a joint return) for 2005. These phaseout ranges are the same as those for the Hope credit, and are similarly indexed for inflation.

A taxpayer may claim the Lifetime Learning credit for a taxable year with respect to one or more students, even though the taxpayer also claims a Hope credit for that same taxable year with respect to other students. If, for a taxable year, a taxpayer claims a Hope credit with respect to a student, then the Lifetime Learning credit is not available with respect to that same student for that year (although the Lifetime Learning credit may be available with respect to that same student for other taxable years). As with the Hope credit, a taxpayer may not claim the Lifetime Learning credit and also claim the section 222 deduction for qualified tuition and related expenses (described below).

As with the Hope credit, the Lifetime Learning credit is available for ''qualified tuition and related expenses,'' which include tuition and fees (excluding nonacademic fees) required to be paid to an eligible educational institution as a condition of enrollment or attendance of a student at the institution. Eligible higher education institutions are defined in the same manner for purposes of both the Hope and Lifetime Learning credits. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living or family expenses are not eligible for the credit. The expenses of education involving sports, games, or hobbies are not qualified tuition expenses unless this education is part of the student's degree program, or the education is undertaken to acquire or improve the job skills of the student.

In contrast to the Hope credit, qualified tuition and related expenses for purposes of the Lifetime Learning credit include tuition and fees incurred with respect to undergraduate or graduate-level courses (as explained above, the Hope credit is available

only with respect to the first two years of a student's undergraduate education). Additionally, in contrast to the Hope credit, the eligibility of a student for the Lifetime Learning credit does not depend on whether the student has been convicted of a Federal or State felony consisting of the possession or distribution of a controlled substance.

As under the Hope credit, total qualified tuition and fees are reduced by any scholarship or fellowship grants excludable from gross income under section 117 and any other tax-free educational benefits received by the student during the taxable year (such as employer-provided educational assistance excludable under section 127). The Lifetime Learning credit is not allowed with respect to any education expense for which a deduction is claimed under section 162 or any other section of the Code.

For taxable years beginning in 2004 and 2005, the Lifetime Learning credit offsets the alternative minimum tax. For taxable years thereafter, the credit does not offset the alternative minimum tax.

Effective for taxable years beginning after December 31, 2010, the changes to the Lifetime Learning credit made by EGTRRA no longer apply. The EGTRRA change scheduled to expire is the change that permitted a taxpayer to claim a Lifetime Learning credit in the same year that he or she claimed an exclusion from an education savings account. Thus, after 2010, taxpayers cannot claim a Lifetime Learning credit in the same year he or she claims an exclusion from an education savings account.

Definition of qualified higher education expenses for purposes of qualified tuition programs

Present law provides favorable tax treatment for qualified tuition programs that meet the requirements of section 529 of the Code. For purposes of the rules relating to qualified tuition programs, ''qualified higher education expenses'' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance at an eligible educational institution and expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance. In addition, in the case of at least half-time students, qualified higher education expenses include certain room and board expenses.

EXPLANATION OF PROVISION

The provision temporarily expands the Hope and Lifetime Learning credits for students attending (i.e., enrolled and paying tuition at) an eligible education institution located in the Gulf Opportunity Zone.

Under the provision, the Hope credit is increased to 100 percent of the first $2,000 in qualified tuition and related expenses and 50 percent of the next $2,000 of qualified tuition and related expenses for a maximum credit of $3,000 per student. The Lifetime Learning credit rate is increased from 20 percent to 40 percent. The provision expands the definition of qualified expenses to mean qualified higher education expenses as defined under the rules relating to qualified tuition programs, including certain room and board expenses for at least half-time students.

The provision applies to taxable years beginning in 2005 or 2006.

EFFECTIVE DATE

The provision is effective on the date of enactment.

20. Housing relief for individuals affected by Hurricane Katrina (new sec. 1400P of the Code)

PRESENT LAW

Under present law, employer-provided housing is generally includible in income as compensation and is wages for purposes of social security and Medicare taxes and unemployment tax (secs. 61, 3121(a), 3306(b)). Present law provides an income and wage exclusion for the value of lodging furnished to an employee, the employee's spouse, or the employee's dependents by or on behalf of the employee's employer, but generally only if the employee is required to accept the lodging on the business premises of the employer as a condition of employment (secs. 119, 3121(a)(19), and 3306(b)(14)). Reasonable expenses for employee compensation are deductible by the employer (sec. 162(a)).

EXPLANATION OF PROVISION

The provision provides a temporary income exclusion for the value of in-kind lodging provided for a month to a qualified employee (and the employee's spouse or dependents) by or on behalf of a qualified employer. The amount of the exclusion for any month for which lodging is furnished cannot exceed $600. The exclusion does not apply for purposes of social security and Medicare taxes or unemployment tax.

The provision also provides a temporary credit to a qualified employer of 30 percent of the value of lodging excluded from the income of a qualified employee under the provision. The amount taken as a credit is not deductible by the employer.

Qualified employee means, with respect to a month, an individual who: (1) on August 28, 2005, had a principal residence in the Gulf Opportunity (''GO'') Zone; and (2) performs substantially all of his or her employment services in the GO Zone for the qualified employer furnishing the lodging. Qualified employer means any employer with a trade or business located in the GO Zone.

EFFECTIVE DATE

The provision applies to lodging provided during the period beginning on the first day of the first month beginning after the date of enactment and ending on the date that is six months after such first day.

21. Special rules for mortgage revenue bonds (sec. 404 of the Katrina Emergency Tax Relief Act of 2005)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'') (secs. 103(b)(1) and 141).

Qualified mortgage bonds

The definition of a qualified private activity bond includes a qualified mortgage bond (sec. 143). Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for eligible mortgagors, purchase price limitations on the home financed with bond proceeds, and a ''first-time homebuyer'' requirement. The income limitations are satisfied if all financing provided by an issue is provided for mortgagors whose family income does not exceed 115 percent of the median family income for the metropolitan area or State, whichever is greater, in which the financed residences are located. The purchase price limitations provide that a residence financed with qualified mortgage bonds may not have a purchase price in excess of 90 percent of the average area purchase price for that residence. The first-time homebuyer requirement provides qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the ''first-time homebuyer'' requirement).

Special income and purchase price limitations apply to targeted area residences. A targeted area residence is one located in either (1) a census tract in which at least 70 percent of the families have an income which is 80 percent or less of the state-wide median income or (2) an area of chronic economic distress. For targeted area residences, the income limitation is satisfied when no more than one-third of the mortgages are made without regard to any income limits and the remainder of the mortgages are made to mortgagors whose family income is 140 percent or less of the applicable median family income. The purchase price limitation is raised from 90 percent to 110 percent of the average area purchase price for targeted area residences. In addition, the first-time homebuyer requirement does not apply to targeted area residences.

Qualified mortgage bonds also may be used to finance qualified home-improvement loans. Qualified home-improvement loans are defined as loans to finance alterations, repairs, and improvements on an existing residence, but only if such alterations, repairs, and improvements substantially protect or improve the basic livability or energy efficiency of the property. Qualified home-improvement loans may not exceed $15,000.

A temporary provision waived the first-time homebuyer requirement for residences located in certain Presidentially declared disaster areas (sec. 143(k)(11)). In addition, residences located in such areas were treated as targeted area residences for purposes of the income and purchase price limitations. The special rule for residences located in Presidentially declared disaster areas does not apply to bonds issued after January 1, 1999.

The Katrina Emergency Tax Relief Act (''KETRA'') waives the first-time homebuyer requirement with respect to certain residences located in an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina (see sec. 404 of Pub. L. No. 109–73). The waiver of the first-time homebuyer requirement does not apply to financing provided after December 31, 2007. KETRA also increases to $150,000 the permitted amount of a qualified home-improvement loan with respect to residences located in the Hurricane Katrina disaster area to the extent such loan is for the repair of damage caused by Hurricane Katrina.

EXPLANATION OF PROVISION

The proposal extends the waiver of the first-time homebuyer requirement provided by KETRA to financing provided through December 31, 2010.

(For a description of additional mortgage revenue bond rules applicable to the GO Zone, the Rita GO Zone and the Wilma GO Zone, see II.H—Special Rules for Mortgage Revenue Bonds, below)

EFFECTIVE DATE

The provision is effective on the date of enactment.

22. Treasury authority to grant bonus depreciation placed-in-service date relief (sec. 168(k) of the Code)

PRESENT LAW

In general

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system (''MACRS''). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Additional first year depreciation deduction

Sec. 168(k) allows an additional first-year depreciation deduction equal to 30 percent or 50 percent of the adjusted basis of qualified property. In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)). Second, the original use (the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer) of the property must commence with the taxpayer on or after September 11, 2001. Third, the taxpayer must acquire the property within the applicable time period. Finally, the property must be placed in service before January 1, 2005.

An extension of the placed-in-service date of one year (i.e., January 1, 2006) is provided for certain property with a recovery period of ten years or longer and certain transportation property. In order for property to qualify for the extended placed-in-service date, the property must be subject to section 263A and have an estimated production period exceeding two years or an estimated production period exceeding one year and a cost exceeding $1 million. Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after September 10, 2001, and before January 1, 2005, but only if no binding written contract for the acquisition is in effect before September 11, 2001, or (2) pursuant to a binding written contract which was entered into after September 10, 2001, and before January 1, 2005. With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after September 10, 2001. For property eligible for the extended placed-in-service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2005 (''progress expenditures'') is eligible for the additional first-year depreciation. For purposes of determining the amount of eligible progress expenditures, rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 apply.

In addition, certain non-commercial aircraft can qualify for the extended placed-in-service date. Qualifying aircraft are eligible for the additional first-year depreciation deduction if placed in service before January 1, 2006. In order to qualify, the aircraft must:

1. be acquired by the taxpayer during the applicable time period as under present law;
2. meet the appropriate placed-in-service date requirements;
3. not be tangible personal property used in the trade or business of transporting persons or property (except for agricultural or firefighting purposes);
4. be purchased by a purchaser who, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of ten percent of the cost or $100,000; and
5. have an estimated production period exceeding four months and a cost exceeding $200,000.

Aircraft qualifying under these rules are not subject to the progress expenditures limitation.

EXPLANATION OF PROVISION

The provision provides the Secretary with authority to further extend the placed-in-service date (beyond December 31, 2005), on a case-by-case basis, for certain property eligible for the December 31, 2005 placed-in-service date under present law. The authority extends only to property placed in service or manufactured in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone. In addition, the authority extends only to circumstances in which the taxpayer was unable to meet the December 31, 2005 deadline as a result of Hurricanes Katrina, Rita, and/or Wilma. The extension should be only for such additional time as is required as a result of the hurricane(s) and in no case should extend the deadline beyond December 31, 2006.

EFFECTIVE DATE

The provision applies to property placed in service on or after August 28, 2005, in taxable years ending on or after such date.

TITLE II—TAX BENEFITS RELATED TO HURRICANES RITA AND WILMA

A. SPECIAL RULES FOR USE OF RETIREMENT FUNDS (NEW CODE SEC. 1400Q)

1. Tax-favored withdrawals from retirement plans relating to Hurricanes Rita and Wilma

PRESENT LAW

In general

Under present law, a distribution from a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-sheltered annuity under section 403(b) (a ''403(b) annuity''), an eligible deferred compensation plan maintained by a State or local government under section 457 (a ''governmental 457 plan''), or an individual retirement arrangement under section 408 (an ''IRA'') generally is included in income for the year distributed (secs. 402(a), 403(a), 403(b), 408(d), and 457(a)). (These plans are referred to collectively as ''eligible retirement plans''.) In addition, a distribution from a qualified retirement or annuity plan, a 403(b) annuity, or an IRA received before age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception applies (sec. 72(t)).

An eligible rollover distribution from a qualified retirement or annuity plan, a 403(b) annuity, or a governmental 457 plan, or a distribution from an IRA, generally can be rolled over within 60 days to another plan, annuity, or IRA. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual. Any amount rolled over is not includible in income (and thus also not subject to the 10-percent early withdrawal tax).

Distributions from a qualified retirement or annuity plan, 403(b) annuity, a governmental 457 plan, or an IRA are generally subject to income tax withholding unless the recipient elects otherwise. An eligible rollover distribution from a qualified retirement or annuity plan, 403(b) annuity, or governmental 457 plan is subject to income tax withholding at a 20-percent rate unless the distribution is rolled over to another plan, annuity or IRA by means of a direct transfer.

Certain amounts held in a qualified retirement plan that includes a qualified cash-or-deferred arrangement (a ''401(k) plan'') or in a 403(b) annuity may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee. Amounts deferred under a governmental 457 plan may not be distributed before severance from employment, age 70½, or an unforeseeable emergency of the employee.

Katrina Emergency Tax Relief Act of 2005

The Katrina Emergency Tax Relief Act of 2005 (Public Law 109–73) provides an exception to the 10-percent early withdrawal tax in the case of a qualified Hurricane Katrina distribution from a qualified retirement or annuity plan, a 403(b) annuity, or an IRA. In addition, as discussed more fully below, income attributable to a qualified Hurricane Katrina distribution may be included in income ratably over three years, and the amount of a qualified Hurricane Katrina distribution may be recontributed to an eligible retirement plan within three years.

A qualified Hurricane Katrina distribution is a distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina. The total amount of qualified Hurricane Katrina distributions that an individual can receive from all plans, annuities, or IRAs is $100,000. Thus, any distributions in excess of $100,000 during the applicable period are not qualified Hurricane Katrina distributions.

Any amount required to be included in income as a result of a qualified Hurricane Katrina distribution is included in income ratably over the three-year period beginning with the year of distribution unless the individual elects not to have ratable inclusion apply. Certain rules apply for purposes of the ratable inclusion provision. For example, the amount required to be included in income for any taxable year in the three-year period cannot exceed the total amount to be included in income with respect to the qualified Hurricane Katrina distribution, reduced by amounts included in income for preceding years in the period.

Any portion of a qualified Hurricane Katrina distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed to an eligible retirement plan to which a rollover can be made. Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income. For example, if an individual receives a qualified Hurricane Katrina distribution in 2005, that amount is included in income, generally ratably over the year of the distribution and the following two years, but is not subject to the 10-percent early withdrawal tax. If, in 2007, the amount of the qualified Hurricane Katrina distribution is recontributed to an eligible retirement plan, the individual may

file an amended return (or returns) to claim a refund of the tax attributable to the amount previously included in income. In addition, if, under the ratable inclusion provision, a portion of the distribution has not yet been included in income at the time of the contribution, the remaining amount is not includible in income.

A qualified Hurricane Katrina distribution is a permissible distribution from a 401(k) plan, 403(b) annuity, or governmental 457 plan, regardless of whether a distribution would otherwise be permissible. A plan is not treated as violating any Code requirement merely because it treats a distribution as a qualified Hurricane Katrina distribution, provided that the aggregate amount of such distributions from plans maintained by the employer and members of the employer's controlled group does not exceed $100,000. Thus, a plan is not treated as violating any Code requirement merely because an individual might receive total distributions in excess of $100,000, taking into account distributions from plans of other employers or IRAs.

Qualified Hurricane Katrina distributions are subject to the income tax withholding rules applicable to distributions other than eligible rollover distributions. Thus, 20-percent mandatory withholding does not apply.

EXPLANATION OF PROVISION

The provision codifies and expands the relief provided under the Katrina Emergency Tax Relief Act of 2005 in the case of qualified Hurricane Katrina distributions to any ''qualified hurricane distribution,'' which is defined to include distributions relating to Hurricanes Rita and Wilma. Under the provision, a qualified hurricane distribution includes distributions that meet the definition of qualified Hurricane Katrina distribution under the Katrina Emergency Tax Relief Act of 2005, as well as any other distribution from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita. A qualified hurricane distribution also includes a distribution from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

The total amount of qualified hurricane distributions that an individual can receive from all plans, annuities, or IRAs is $100,000.

EFFECTIVE DATE

The provision is effective on the date of enactment.

2. Recontributions of withdrawals for home purchases cancelled due to Hurricanes Rita and Wilma

PRESENT LAW

In general

Under present law, a distribution from a qualified retirement plan, a tax-sheltered annuity (a ''403(b) annuity''), or an individual retirement arrangement (an ''IRA'') generally is included in income for the year distributed (secs. 402(a), 403(b), and 408(d)). In addition, a distribution from a qualified retirement plan, a 403(b) annuity, or an IRA received before age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception applies (sec. 72(t)). An exception to the 10-percent tax applies in the case of a qualified first-time homebuyer distribution from an IRA, i.e., a distribution (not to exceed $10,000) used within 120 days for the purchase or construction of a principal residence of a first-time homebuyer.

An eligible rollover distribution from a qualified retirement plan or a 403(b) annuity or a distribution from an IRA generally can be rolled over within 60 days to another plan, annuity, or IRA. The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual. Any amount rolled over is not includible in income (and thus also not subject to the 10-percent early withdrawal tax).

Certain amounts held in a qualified retirement plan that includes a qualified cash-or-deferred arrangement (a ''401(k) plan'') or a 403(b) annuity may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee. For this purpose, subject to certain conditions, distributions for costs directly related to the purchase of a principal residence by an employee (excluding mortgage payments) are deemed to be distributions on account of financial hardship.

Katrina Emergency Tax Relief Act of 2005

The Katrina Emergency Tax Relief Act of 2005 generally provides that a distribution received from a 401(k) plan, 403(b) annuity, or IRA in order to purchase a home in the Hurricane Katrina disaster area may be recontributed to such a plan, annuity, or IRA in certain circumstances.

The ability to recontribute applies to an individual who receives a qualified distribution. A qualified distribution is a hardship distribution from a 401(k) plan or 403(b) annuity, or a qualified first-time homebuyer distribution from an IRA: (1) that is received after February 28, 2005, and before August 29, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but the residence is not purchased or constructed on account of Hurricane Katrina.

Any portion of a qualified distribution may, during the period beginning on August 25, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted. Any amount recontributed is treated as a rollover. Thus, that portion of the qualified distribution is not includible in income (and also is not subject to the 10-percent early withdrawal tax).

EXPLANATION OF PROVISION

The provision codifies and expands the provision under the Katrina Emergency Tax Relief Act of 2005 allowing recontribution of certain distributions from a 401(k) plan, 403(b) annuity, or IRA to qualified Hurricane Rita distributions and to qualified Hurricane Wilma distributions.

A qualified Hurricane Rita distribution is a hardship distribution from a 401(k) plan or 403(b) annuity, or a qualified first-time homebuyer distribution from an IRA: (1) that is received after February 28, 2005, and before September 24, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but the residence is not purchased or constructed on account of Hurricane Rita. Any portion of a qualified Hurricane Rita distribution may, during the period beginning on September 23, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted.

A qualified Hurricane Wilma distribution is a hardship distribution from a 401(k) plan or 403(b) annuity, or a qualified first-time homebuyer distribution from an IRA: (1) that is received after February 28, 2005, and before October 24, 2005; and (2) that was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but the residence is not purchased or constructed on account of Hurricane Wilma. Any portion of a qualified Hurricane Wilma distribution may, during the period beginning on October 23, 2005, and ending on February 28, 2006, be recontributed to a plan, annuity or IRA to which a rollover is permitted.

EFFECTIVE DATE

The provision is effective on the date of enactment.

3. Loans from qualified plans to individuals sustaining an economic loss due to Hurricane Rita or Wilma

PRESENT LAW

In general

An individual is permitted to borrow from a qualified plan in which the individual participates (and to use his or her accrued benefit as security for the loan) provided the loan bears a reasonable rate of interest, is adequately secured, provides a reasonable repayment schedule, and is not made available on a basis that discriminates in favor of employees who are officers, shareholders, or highly compensated.

Subject to certain exceptions, a loan from a qualified employer plan to a plan participant is treated as a taxable distribution of plan benefits. A qualified employer plan includes a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-deferred annuity under section 403(b), and any plan that was (or was determined to be) a qualified employer plan or a governmental plan.

An exception to this general rule of income inclusion is provided to the extent that the loan (when added to the outstanding balance of all other loans to the participant from all plans maintained by the employer) does not exceed the lesser of (1) $50,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or (2) the greater of $10,000 or one half of the participant's accrued benefit under the plan (sec. 72(p)). This exception applies only if the loan is required, by its terms, to be repaid within five years. An extended repayment period is permitted for the purchase of the principal residence of the participant. Plan loan repayments (principal and interest) must be amortized in level payments and made not less frequently than quarterly, over the term of the loan.

Katrina Emergency Tax Relief Act of 2005

The Katrina Emergency Tax Relief Act of 2005 provides special rules in the case of a loan from a qualified employer plan to a qualified individual made after September 23, 2005, and before January 1, 2007. A qualified individual is an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

The exception to the general rule of income inclusion is provided to the extent that the loan (when added to the outstanding balance of all other loans to the participant from all plans maintained by the employer) does not exceed the lesser of (1) $100,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or (2) the greater of $10,000 or the participant's accrued benefit under the plan.

In the case of a qualified individual with an outstanding loan on or after August 25,

2005, from a qualified employer plan, if the due date for any repayment with respect to such loan occurs during the period beginning on August 25, 2005, and ending on December 31, 2006, such due date is delayed for one year. Any subsequent repayments with respect to such loan shall be appropriately adjusted to reflect the delay in the due date and any interest accruing during such delay. The period during which required repayment is delayed is disregarded in complying with the requirements that the loan be repaid within five years and that level amortization payments be made.

EXPLANATION OF PROVISION

The provision codifies and expands the special rules for loans from a qualified employer plan provided under the Katrina Emergency Tax Relief Act of 2005 to loans from a qualified employer plan to a qualified Hurricane Rita or Hurricane Wilma individual made on or after the date of enactment and before January 1, 2007.

A qualified Hurricane Rita individual includes an individual whose principal place of abode on September 23, 2005, is located in a Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita. In the case of a qualified Hurricane Rita individual with an outstanding loan on or after September 23, 2005, from a qualified employer plan, if the due date for any repayment with respect to such loan occurs during the period beginning on September 23, 2005, and ending on December 31, 2006, such due date is delayed for one year.

A qualified Hurricane Wilma individual includes an individual whose principal place of abode on October 23, 2005, is located in a Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma. In the case of a qualified Hurricane Wilma individual with an outstanding loan on or after October 23, 2005, from a qualified employer plan, if the due date for any repayment with respect to such loan occurs during the period beginning on October 23, 2005, and ending on December 31, 2006, such due date is delayed for one year.

An individual cannot be a qualified individual with respect to more than one hurricane.

EFFECTIVE DATE

The provision is effective on the date of enactment.

4. Plan amendments relating to Hurricane Rita and Hurricane Wilma relief

PRESENT LAW

In general

Present law provides a remedial amendment period during which, under certain circumstances, a plan may be amended retroactively in order to comply with the qualification requirements (sec. 401(b)). In general, plan amendments to reflect changes in the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs. The Secretary of the Treasury may extend the time by which plan amendments need to be made.

Katrina Emergency Tax Relief Act of 2005

The Katrina Emergency Tax Relief Act of 2005 permits certain plan amendments made pursuant to the changes made by the provisions of Title I of the Act, or regulations issued thereunder, to be retroactively effective. If the plan amendment meets the requirements of the Act, then the plan will be treated as being operated in accordance with its terms. In order for this treatment to apply, the plan amendment is required to be made on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as provided by the Secretary of the Treasury. Governmental plans are given an additional two years in which to make required plan amendments. If the amendment is required to be made to retain qualified status as a result of the changes made by Title I of the Act (or regulations), the amendment is required to be made retroactively effective as of the date on which the change became effective with respect to the plan, and the plan is required to be operated in compliance until the amendment is made. Amendments that are not required to retain qualified status but that are made pursuant to the changes made by Title I of the Act (or regulations) may be made retroactively effective as of the first day the plan is operated in accordance with the amendment. A plan amendment will not be considered to be pursuant to changes made by Title I of the Act (or regulations) if it has an effective date before the effective date of the provision under the Act (or regulations) to which it relates.

EXPLANATION OF PROVISION

The provision codifies and expands the ability to make retroactive plan amendments under the Katrina Emergency Tax Relief Act of 2005 to apply to changes made pursuant to new section 1400Q of the Code, or regulations issued thereunder.

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY HURRICANES KATRINA, RITA AND WILMA (NEW SEC. 1400R OF THE CODE)

PRESENT LAW

The Katrina Emergency Tax Relief Act of 2005 provides a credit of 40 percent of the qualified wages (up to a maximum of $6,000 in qualified wages per employee) paid by an eligible employer to an eligible employee.

An eligible employer is any employer (1) that conducted an active trade or business on August 28, 2005, in the core disaster area and (2) with respect to which the trade or business described in (1) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina. An eligible employer shall not include any trade or business for any taxable year if such trade or business employed an average of more than 200 employees on business days during the taxable year.

The term ''core disaster area'' means that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act. The term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

An eligible employee is, with respect to an eligible employer, an employee whose principal place of employment on August 28, 2005, with such eligible employer was in a core disaster area. An employee may not be treated as an eligible employee for any period with respect to an employer if such employer is allowed a credit under section 51 with respect to the employee for the period.

Qualified wages are wages (as defined in section 51(c)(1) of the Code, but without regard to section 3306(b)(2)(B) of the Code) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, during the period (1) beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and (2) ending on the date on which such trade or business has resumed significant operations at such principal place of employment. Qualified wages include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

The credit is a part of the current year business credit under section 38(b) and therefore is subject to the tax liability limitations of section 38(c). Rules similar to sections 280C(a), 51(i)(1) and 52 apply to the credit.

EXPLANATION OF PROVISION

The provision codifies the employee retention credit provisions that were enacted in the Katrina Emergency Tax Relief Act of 2005, and eliminates the provision that restricted the credit to employers of not more than 200 employees.

The provision extends the retention credit, as modified to eliminate the employer size limitation, to employers affected by Hurricanes Rita and Wilma and located in the Rita GO Zone and Wilma GO Zone, respectively. The reference dates for employers affected by Hurricane Rita and Hurricane Wilma, comparable to the August 28, 2005 date of present law for employers affected by Hurricane Katrina, are September 23, 2005, and October 23, 2005, respectively.

EFFECTIVE DATE

The codification of the provision in the Katrina Emergency Tax Relief Act of 2005 takes effect on the date of enactment. The provision that repeals the employer size limitation is, with respect to the Hurricane Katrina retention credit, effective as if included in the Katrina Emergency Tax Relief Act of 2005. The retention credit is effective for wages paid after September 23, 2005 in the case of Hurricane Rita and after October 23, 2005 in the case of Hurricane Wilma.

C. TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS (NEW SEC. 1400S(A) OF THE CODE)

PRESENT LAW

In general

In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization (sec. 170).

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Percentage limitations

Contributions by individuals

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. The contribution base is defined as the taxpayer's adjusted

gross income computed without regard to any net operating loss carryback.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (e.g., public charities, private foundations other than private non-operating foundations, and certain governmental units) may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50–percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (e.g., private nonoperating foundations) are deductible up to 20 percent of the taxpayer's contribution base.

Contributions by corporations

For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation's taxable income computed without regard to net operating loss or capital loss carrybacks.

For purposes of determining whether a corporation's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforward of excess contributions

Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years (sec. 170(d)). The amount that may be carried forward from a taxable year (''contribution year'') to a succeeding taxable year may not exceed the applicable percentage of the contribution base for the succeeding taxable year less the sum of contributions made in the succeeding taxable year plus contributions made in taxable years prior to the contribution year and treated as paid in the succeeding taxable year under this provision.

Overall limitation on itemized deductions (''Pease'' limitation)

Under present law, the total amount of otherwise allowable itemized deductions (other than medical expenses, investment interest, and casualty, theft, or wagering losses) is reduced by three percent of the amount of the taxpayer's adjusted gross income in excess of a certain threshold. The otherwise allowable itemized deductions may not be reduced by more than 80 percent. For 2005, the adjusted gross income threshold is $145,950 ($72,975 for a married taxpayer filing a joint return). These dollar amounts are adjusted for inflation.

The otherwise applicable overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation is repealed for taxable years beginning after December 31, 2009, and reinstated for taxable years beginning after December 31, 2010.

Katrina Emergency Tax Relief Act of 2005—Increase in percentage limitations

Under section 301 of the Katrina Emergency Tax Relief Act of 2005, in the case of an individual, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years as contributions described in 170(b)(1)(A), subject to the limitations of section 170(d)(1)(A)(i) and (ii).

In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income (as computed under section 170(b)(2)) exceeds the deduction for other charitable contributions. Contributions in excess of this amount are carried over to succeeding taxable years, subject to the limitations of section 170(d)(2).

In applying subsections (b) and (d) of section 170 to determine the deduction for other contributions, qualified contributions are not taken into account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Qualified contributions are cash contributions made during the period beginning on August 28, 2005, and ending on December 31, 2005, to a charitable organization described in section 170(b)(1)(A) (other than a supporting organization described in section 509(a)(3)). Contributions of noncash property, such as securities, are not qualified contributions. Under the provision, qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. In the case of a corporation, qualified contributions must be for relief efforts related to Hurricane Katrina. A taxpayer must elect to have the contributions treated as qualified contributions.

Qualified contributions do not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor. For example, a segregated fund or account exists if a donor makes a charitable contribution and the donee separately identifies the donor's contribution on its books. The donor has advisory privileges with respect to such segregated fund or account if the donor, by written agreement or otherwise, reasonably expects to provide advice to the donee as to the investment or distribution of amounts from such fund or account. In addition, a segregated fund or account also includes, but is not limited to, a separate bank account or trust established or maintained by a donee; however, in order for a contribution to such account or fund necessarily to be not a qualified contribution, the donor (or a person appointed or designated by the donor) must have or reasonably expect to have advisory privileges as to the investment or distribution of amounts in such account or fund. For instance, a donor reasonably expects to have advisory privileges with respect to contributions made by the donor if the donor understands that the donee will consider advice provided by the donor (or a person appointed or designated by the donor) in making investments or distributions. It is intended that a person shall not be treated as having advisory privileges by virtue of having a legal or contractual right or obligation, or a fiduciary duty, with respect to a segregated fund or account. If a donor makes a contribution for establishment of a new, or maintenance in an existing segregated account or fund, and the donor also provides advice with respect to amounts in such account or fund by reason of the donor's position as an officer, employee, or director of the donee, and not by reason of the donor's status as a donor, then, under the provision, the donor is not treated as having or reasonably expecting to have advisory privileges with respect to such fund or account. However, if by reason of a donor's charitable contribution to a segregated account or fund, the donor secured an appointment on a committee of the donee organization that advised how to distribute or invest amounts in such account or fund, the contribution would not be a qualified contribution notwithstanding that the donor is an officer, employee, or director of the donee organization.

The Act requires that qualified contributions by a corporation be made for relief efforts related to Hurricane Katrina. Corporate taxpayers must substantiate that the contribution is made for this purpose.

Limitation on overall itemized deductions

Under the Katrina Emergency Tax Relief Act of 2005, the charitable contribution deduction up to the amount of qualified contributions (as defined above) paid during the year is not treated as an itemized deduction for purposes of the overall limitation on itemized deductions.

EXPLANATION OF PROVISION

The provision codifies the provisions in the Katrina Emergency Tax Relief Act of 2005, and extends the definition of qualified contributions (as described above), in the case of corporations, to include contributions for relief efforts related to Hurricane Rita and Hurricane Wilma.

EFFECTIVE DATE

The codification of the provision in the Katrina Emergency Tax Relief Act of 2005 takes effect on date of enactment. The expansion of the provision applies to contributions made on or after September 23, 2005.

D. SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES (NEW SEC. 1400S(b) OF THE CODE)

PRESENT LAW

In general

Under present law, a taxpayer may generally claim a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise (sec. 165). For individual taxpayers, deductible losses must be incurred in a trade or business or other profit-seeking activity or consist of property losses arising from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty or theft losses are deductible only if they exceed $100 per casualty or theft. In addition, aggregate net casualty and theft losses are deductible only to the extent they exceed 10 percent of an individual taxpayer's adjusted gross income.

Hurricane Katrina

Under the Katrina Emergency Tax Relief Act of 2005, the two limitations on personal casualty or theft losses do not apply to the extent those losses arise in the Hurricane Katrina disaster area on or after August 25, 2005, and are attributable to Hurricane Katrina (''Katrina casualty losses''). Specifically, Katrina casualty losses meeting the above requirements need not exceed $100 per casualty or theft. In addition, such losses are deductible without regard to whether aggregate net losses exceed 10 percent of a taxpayer's adjusted gross income. For purposes of applying the 10 percent threshold to other personal casualty or theft losses, Katrina casualty losses are disregarded. Thus, such losses are effectively treated as a deduction separate from all other casualty losses.

For purposes of determining whether a loss is a Katrina casualty loss, the term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster had been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina. The States for which such a disaster had been declared are Alabama, Florida, Louisiana, and Mississippi.

EXPLANATION OF PROVISION

The provision codifies the Katrina Emergency Tax Relief Act of 2005 rule for Katrina casualty losses and expands it to include losses that arise in the Hurricane Rita disaster area and are attributable to Hurricane Rita and losses that arise in the Hurricane Wilma disaster area and are attributable to Hurricane Wilma.

EFFECTIVE DATE

The codification of the provision in the Katrina Emergency Tax Relief Act of 2005 takes effect on date of enactment. The expansion of the provision applies to losses related to Hurricane Rita arising on or after September 23, 2005, and to losses related to Hurricane Wilma arising on or after October 23, 2005.

E. REQUIRED EXERCISE OF IRS ADMINISTRATIVE AUTHORITY (NEW SEC. 1400S(C) OF THE CODE)

PRESENT LAW

General time limits for filing tax returns

Individuals generally must file their Federal income tax returns by April 15 of the year following the close of a taxable year. The Secretary may grant reasonable extensions of time for filing such returns. Treasury regulations provide an additional automatic two-month extension (until June 15 for calendar-year individuals) for United States citizens and residents in military or naval service on duty on April 15 of the following year (the otherwise applicable due date of the return) outside the United States. No action is necessary to apply for this extension, but taxpayers must indicate on their returns (when filed) that they are claiming this extension. Unlike most extensions of time to file, this extension applies to both filing returns and paying the tax due.

Treasury regulations also provide, upon application on the proper form, an automatic four-month extension (until August 15 for calendar-year individuals) for any individual timely filing that form and paying the amount of tax estimated to be due.

In general, individuals must make quarterly estimated tax payments by April 15, June 15, September 15, and January 15 of the following taxable year. Wage withholding is considered to be a payment of estimated taxes

Suspension of time periods

In general, the period of time for performing various acts under the Code, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, is suspended for any individual serving in the Armed Forces of the United States in an area designated as a ''combat zone'' or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a ''contingency operation'' or that becomes a contingency operation. The suspension of time also applies to an individual serving in support of such Armed Forces in the combat zone or contingency operation, such as Red Cross personnel, accredited correspondents, and civilian personnel acting under the direction of the Armed Forces in support of those Forces. The designation of a combat zone must be made by the President in an Executive Order. A contingency operation is defined as a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or results in the call or order to (or retention of) active duty of members of the uniformed services during a war or a national emergency declared by the President or Congress.

The suspension of time encompasses the period of service in the combat zone during the period of combatant activities in the zone or while participating in a contingency operation, as well as (1) any time of continuous qualified hospitalization resulting from injury received in the combat zone or contingency operation or (2) time in missing in action status, plus the next 180 days.

The suspension of time applies to the following acts:

1. Filing any return of income, estate, gift, employment or excise taxes;
2. Payment of any income, estate, gift, employment or excise taxes;
3. Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;
4. Allowance of a credit or refund of any tax;
5. Filing a claim for credit or refund of any tax;
6. Bringing suit upon any such claim for credit or refund;
7. Assessment of any tax;
8. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;
9. Collection of the amount of any liability in respect of any tax;
10. Bringing suit by the United States in respect of any liability in respect of any tax; and
11. Any other act required or permitted under the internal revenue laws specified by the Secretary of the Treasury.

In the case of a Presidentially declared disaster or a terroristic or military action, the Secretary of the Treasury also has authority to prescribe a period of up to one year that may be disregarded for performing any of the acts listed above. The Secretary also may suspend the accrual of any interest, penalty, additional amount, or addition to tax for taxpayers in the affected areas.

EXPLANATION OF PROVISION

Under the provision, for taxpayers determined to be affected by the Presidentially declared disaster relating to Hurricanes Katrina, Rita, and Wilma, any administrative relief from required acts, such as filing tax returns, paying taxes, or filing a claim for credit or refund of tax, shall be for a period ending not earlier than February 28, 2006.

EFFECTIVE DATE

The provision is effective on the date of enactment.

F. SPECIAL LOOK-BACK RULE FOR DETERMINING EARNED INCOME CREDIT AND REFUNDABLE CHILD CREDIT (NEW SEC. 1400S(d) OF THE CODE)

PRESENT LAW

In general

Present law provides eligible taxpayers with an earned income credit and a child credit. In general, the earned income credit is a refundable credit for low-income workers (sec. 32). The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.

Taxpayers with incomes below certain threshold amounts are eligible for a $1,000 credit for each qualifying child (sec. 24). The child credit is refundable to the extent of 15 percent of the taxpayer's earned income in excess of $10,000. (The $10,000 income threshold is indexed for inflation and is currently $11,000 for 2005.) Families with three or more children are allowed a refundable credit for the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income credit, if that amount is greater than the refundable credit based on the taxpayer's earned income in excess of $10,000 (indexed for inflation).

Hurricane Katrina

Certain qualified individuals affected by Hurricane Katrina may elect to calculate their earned income credit and refundable child credit for the taxable year which includes August 25, 2005, using their earned income from the prior taxable year (a ''Katrina election''). Such qualified individuals are permitted to make the election only if their earned income for the taxable year which includes August 25, 2005, is less than their earned income for the preceding taxable year.

Individuals qualified to make a Katrina election are (1) individuals who on August 25, 2005, had their principal place of abode in the Hurricane Katrina ''core disaster area'' or (2) individuals who on such date were not in the core disaster area but lived in the Hurricane Katrina disaster area and were displaced from their homes. For purposes of this election, the term ''core disaster area'' means that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act. The term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster had been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina. The States for which such a disaster had been declared are Alabama, Florida, Louisiana, and Mississippi.

In the case of a joint return for a taxable year which includes August 25, 2005, a Katrina election may be made if either spouse is a qualified individual. In such cases, the earned income for the preceding taxable year which is attributable to the taxpayer filing the joint return is the sum of the earned income which is attributable to each spouse for such preceding taxable year.

Any Katrina election applies with respect to both the earned income credit and refundable child credit. For administrative purposes, the incorrect use on a return of earned income pursuant to a Katrina election is treated as a mathematical or clerical error. A Katrina election is disregarded for purposes of calculating gross income in the election year.

EXPLANATION OF PROVISION

The provision codifies the Katrina election. It also expands the rule governing Katrina elections to permit certain qualified individuals affected by Hurricane Rita and Hurricane Wilma to make similar elections.

In the case of Hurricane Rita certain qualified individuals may elect to calculate their earned income credit and refundable child credit for the taxable year which includes September 23, 2005, using their earned income from the prior taxable year (a ''Rita election''). Qualified individuals for purposes of a Rita election are (1) individuals who on September 23, 2005, had their principal place

of abode in the Rita GO Zone or (2) individuals who on such date had their principal place of abode in the Hurricane Rita disaster area but outside the Rita GO Zone and were displaced from that residence.

In the case of Hurricane Wilma certain qualified individuals may elect to calculate their earned income credit and refundable child credit for the taxable year which includes October 23, 2005, using their earned income from the prior taxable year (a ''Wilma election''). Qualified individuals for purposes of a Wilma election are (1) individuals who on October 23, 2005, had their principal place of abode in the Wilma GO Zone or (2) individuals who on such date had their principal place of abode in the Hurricane Wilma disaster area but outside the Wilma GO Zone and were displaced from that residence.

Qualified individuals are permitted to make a Rita election or Wilma election only if their earned income for the taxable year which includes September 23, 2005 or October 23, 2005, respectively, is less than their earned income for the preceding taxable year.

In other respects, a Rita election or Wilma election is the same as a Katrina election under present law, except that the reference dates are September 23, 2005 for Rita and October 23, 2005 for Wilma and not August 25, 2005.

EFFECTIVE DATE

The codification of the provision in the Katrina Emergency Tax Relief Act of 2005 takes effect on date of enactment. The expansion of the provision applies to taxable years that include September 23, 2005 in the case of Hurricane Rita and October 23, 2005 in the case of Hurricane Wilma.

G. SECRETARIAL AUTHORITY TO MAKE ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS (NEW SEC. 1400S(E) OF THE CODE)

PRESENT LAW

In general

In order to determine taxable income, an individual reduces adjusted gross income (''AGI'') by any personal exemptions and either the standard deduction or itemized deductions. Personal exemptions generally are allowed for the taxpayer, his or her spouse, and any dependents (as defined in sec. 151). Personal exemptions are not allowed for purposes of determining a taxpayer's alternative minimum taxable income.

For 2005, the amount deductible for each personal exemption is $3,200. This amount is indexed annually for inflation. The deduction for personal exemptions is phased out ratably for taxpayers with AGI over certain thresholds. These thresholds are indexed annually for inflation. Specifically, the total amount of exemptions that may be claimed by a taxpayer is reduced by two percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. (The phaseout rate is two percent for each $1,250 for married taxpayers filing separate returns.) Thus, the personal exemptions claimed are phased out over a $122,500 range (which is not indexed for inflation), beginning at the applicable threshold. The applicable thresholds for 2005 are $145,900 for single individuals, $218,950 for married individuals filing a joint return, $182,450 for heads of households, and $109,475 for married individuals filing separate returns. For 2005, the point at which a taxpayer's personal exemptions are completely phased out is $268,450 for single individuals, $341,450 for married individuals filing a joint return, $304,950 for heads of households, and $170,725 for married individuals filing separate returns.

Present law provides eligible taxpayers with an earned income credit and a child credit. In general, the earned income credit is a refundable credit for low-income workers. The amount of the credit depends on the earned income of the taxpayer and whether the taxpayer has one, more than one, or no qualifying children. Earned income generally includes wages, salaries, tips, and other employee compensation, plus net earnings from self-employment.

Taxpayers with incomes below certain threshold amounts are eligible for a $1,000 credit for each qualifying child. The child credit is refundable to the extent of 15 percent of the taxpayer's earned income in excess of $10,000. (The $10,000 income threshold is indexed for inflation and is currently $11,000 for 2005.) Families with three or more children are allowed a refundable credit for the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income credit, if that amount is greater than the refundable credit based on the taxpayer's earned income in excess of $10,000 (indexed for inflation).

Hurricane Katrina

With respect to taxable years beginning in 2005 and 2006, the Secretary has authority to make such adjustments in the application of the Federal tax laws as may be necessary to ensure that taxpayers do not lose any deduction or credit or experience a change of filing status by 62 reason of temporary relocations caused by Hurricane Katrina. Such adjustments may include, for example, addressing the application of the residency requirements relating to dependency exemptions in the case of relocations due to Hurricane Katrina. Any adjustments made using this authority must insure that an individual is not taken into account by more than one taxpayer with respect to the same tax benefit.

EXPLANATION OF PROVISION

The provision codifies the Secretarial authority with respect to Hurricane Katrina. The provision also expands the Secretary's authority to make adjustments in the application of the Federal tax laws with respect to Hurricane Katrina to include taxpayers affected by Hurricane Rita and Hurricane Wilma.

EFFECTIVE DATE

The provision is effective with respect to taxable years beginning in 2005 or 2006.

H. SPECIAL RULES FOR MORTGAGE REVENUE BONDS (NEW SEC. 1400T OF THE CODE)

PRESENT LAW

In general

Under present law, gross income does not include interest on State or local bonds (sec. 103). State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or are repaid with governmental funds. Private activity bonds are bonds with respect to which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'') (secs. 103(b)(1) and 141).

Qualified mortgage bonds

The definition of a qualified private activity bond includes a qualified mortgage bond (sec. 143). Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for eligible mortgagors, purchase price limitations on the home financed with bond proceeds, and a ''first-time homebuyer'' requirement. The income limitations are satisfied if all financing provided by an issue is provided for mortgagors whose family income does not exceed 115 percent of the median family income for the metropolitan area or State, whichever is greater, in which the financed residences are located. The purchase price limitations provide that a residence financed with qualified mortgage bonds may not have a purchase price in excess of 90 percent of the average area purchase price for that residence. The first-time homebuyer requirement provides qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the ''first-time homebuyer'' requirement).

Special income and purchase price limitations apply to targeted area residences. A targeted area residence is one located in either (1) a census tract in which at least 70 percent of the families have an income which is 80 percent or less of the state-wide median income or (2) an area of chronic economic distress. For targeted area residences, the income limitation is satisfied when no more than one-third of the mortgages are made without regard to any income limits and the remainder of the mortgages are made to mortgagors whose family income is 140 percent or less of the applicable median family income. The purchase price limitation is raised from 90 percent to 110 percent of the average area purchase price for targeted area residences. In addition, the first-time homebuyer requirement does not apply to targeted area residences.

Qualified mortgage bonds also may be used to finance qualified home-improvement loans. Qualified home-improvement loans are defined as loans to finance alterations, repairs, and improvements on an existing residence, but only if such alterations, repairs, and improvements substantially protect or improve the basic livability or energy efficiency of the property. Qualified home-improvement loans may not exceed $15,000.

A temporary provision waived the first-time homebuyer requirement for residences located in certain Presidentially declared disaster areas (sec. 143(k)(11)). In addition, residences located in such areas were treated as targeted area residences for purposes of the income and purchase price limitations. The special rule for residences located in Presidentially declared disaster areas does not apply to bonds issued after January 1, 1999.

The Katrina Emergency Tax Relief Act (''KETRA'') waives the first-time homebuyer requirement with respect to certain residences located in an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina (see sec. 404 of Pub. L. 109–73). KETRA also increases to $150,000 the permitted amount of a qualified home-improvement loans with respect to residences located in the Hurricane Katrina disaster area to the extent such loan is for the repair of damage caused by Hurricane Katrina.

EXPLANATION OF PROVISION

Under the provision, residences located in the GO Zone, the Rita GO Zone, or the Wilma GO Zone are treated as targeted area residences for purposes of section 143, with the modifications described below. Thus, the first-time homebuyer rule is waived and purchase and income rules for targeted area residences apply to residences located in the

specified areas that are financed with qualified mortgage bonds. For these purposes, 100 percent of the mortgages must be made to mortgagors whose family income is 140 percent or less of the applicable median family income. Thus, the present law rule allowing one-third of the mortgages to be made without regard to any income limits does not apply. In addition, the proposal increases from $15,000 to $150,000 the amount of a qualified home-improvement loan with respect to residences located in the specified disaster areas.

The provision applies to residences financed before January 1, 2011.

(For a description of the extension of KETRA mortgage revenue bond rules, see I.A.20,—Special Rules for Mortgage Revenue Bonds, above.)

EFFECTIVE DATE

The provision is effective on the date of enactment with respect to financing provided before January 1, 2011.

TITLE III—OTHER PROVISIONS

A. GULF COAST RECOVERY BONDS

PRESENT LAW

Under Title 31, the Secretary, with the approval of the President, may issue savings bonds and savings certificates of the United States Government (31 U.S.C. sec. 3105). Proceeds from the bonds and certificates are used for expenditures authorized by law. Savings bonds and certificates may be issued on an interest-bearing basis, on a discount basis, or on an interest-bearing and discount basis. The difference between the price paid and the amount received on redeeming a savings bond or certificate is interest under the Code.

EXPLANATION OF PROVISION

The provision expresses the sense of Congress that the Secretary designate one or more series of obligations issued under Title 31 as ''Gulf Coast Recovery Bonds'' in response to Hurricanes Katrina, Rita, and Wilma.

EFFECTIVE DATE

The provision is effective on the date of enactment.

B. ELECTION TO TREAT COMBAT PAY AS EARNED INCOME FOR PURPOSES OF THE EARNED INCOME CREDIT (SEC. 32 OF THE CODE)

PRESENT LAW

Child credit

Combat pay that is otherwise excluded from gross income under section 112 is treated as earned income which is taken into account in computing taxable income for purposes of calculating the refundable portion of the child credit.

Earned income credit

Any taxpayer may elect to treat combat pay that is otherwise excluded from gross income under section 112 as earned income for purposes of the earned income credit. This election is available with respect to any taxable year ending after the date of enactment and before January 1, 2006.

EXPLANATION OF PROVISION

The provision extends the present-law rule relating to the earned income credit for one year (through December 31, 2006).

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2005.

C. MODIFICATIONS OF SUSPENSION OF INTEREST AND PENALTIES WHERE INTERNAL REVENUE SERVICE FAILS TO CONTACT TAXPAYER (SEC. 6404(G) OF THE CODE)

PRESENT LAW

In general, interest and penalties accrue during periods for which taxes were unpaid without regard to whether the taxpayer was aware that there was tax due. The Code suspends the accrual of certain penalties and interest starting 18 months after the filing of the tax return if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. If the return is filed before the due date, for this purpose it is considered to have been filed on the due date. Interest and penalties resume 21 days after the IRS sends the required notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax. The suspension only applies to taxpayers who file a timely tax return. The provision applies only to individuals and does not apply to the failure to pay penalty, in the case of fraud, or with respect to criminal penalties.

The suspension of interest does not apply to interest accruing after October 3, 2004 with respect to underpayments resulting from listed transactions or undisclosed reportable transactions.

On October 27, 2005, the IRS announced a settlement initiative for 21 identified transactions. (See Internal Revenue Service Announcement 2005–80.) Under the terms of the settlement initiative, participants will be required to pay 100 percent of the taxes owed, interest and, depending on the transaction, either a quarter or a half of the penalty the IRS will otherwise seek. The IRS will grant penalty relief for transactions disclosed to the IRS or where the taxpayer got a tax opinion from an independent tax advisor. Transaction costs paid by the taxpayer, including professional and promoter fees, will be allowed. The application deadline for the settlement initiative is January 23, 2006.

EXPLANATION OF PROVISION

Under the provision, the exception for listed transactions and undisclosed reportable transactions also applies to interest accruing on or before October 3, 2004. However, taxpayers remain eligible for the present-law suspension of interest if the year in which the underpayment occurred is barred by the statute of limitations (or a closing agreement) as of December 14, 2005. Taxpayers may also remain eligible with respect to any transactions if the Secretary determines that the taxpayers have acted reasonably and in good faith with respect to that transactions.

In addition, under a special rule, taxpayers may remain eligible for the present-law suspension of interest by participating in the IRS settlement initiative described above with respect to that transaction. In order to be eligible under the special rule, the taxpayer must be participating in the settlement initiative (or have entered into a settlement agreement pursuant to the initiative) as of January 23, 2006. Furthermore, a taxpayer's eligibility under the special rule is revoked if the taxpayer ceases to participate in the settlement initiative or the Treasury determines that a settlement agreement will not be reached within a reasonable period of time.

The special rule applies on a transaction-by-transaction basis. Thus, participation in the settlement initiative with respect to an individual transaction qualifies the taxpayer for the present-law suspension of interest only with respect to interest and penalties on underpayments resulting from that transaction. If the taxpayer has entered into other listed or nondisclosed reportable transactions and is not participating in the settlement initiative with respect to those transactions, the special rule does not apply to interest and penalties resulting from those transactions.

The provision also provides that, if a taxpayer files an amended return or other signed written document showing that the taxpayer owes an additional amount of tax for the taxable year, the relevant 18–month period is measured from the latest date on which such documents were provided.

EFFECTIVE DATE

The provision is effective as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates, except that the rule relating to the restart of the 18-month period is effective for documents provided on or after the date of enactment.

D. AUTHORITY FOR UNDERCOVER OPERATIONS (SEC. 7608 OF THE CODE)

PRESENT LAW

IRS undercover operations are exempt from the otherwise applicable statutory restrictions controlling the use of Government funds (which generally provide that all receipts must be deposited in the general fund of the Treasury and all expenses paid out of appropriated funds). In general, the exemption permits the IRS to use proceeds from an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is using proceeds from such operations and to provide an annual audit report to the Congress on all such large undercover operations.

The provision was originally enacted in The Anti-Drug Abuse Act of 1988. The exemption originally expired on December 31, 1989, and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991. There followed a gap of approximately four and a half years during which the provision had lapsed. In the Taxpayer Bill of Rights II, the authority to use proceeds from undercover operations was extended for five years, through 2000. The Community Renewal Tax Relief Act of 2000 extended the authority of the IRS to use proceeds from undercover operations for an additional five years, through 2005.

EXPLANATION OF PROVISION

The provision extends for one year the present-law authority of the IRS to use proceeds from undercover operations to pay additional expenses incurred in conducting undercover operations (through December 31, 2006).

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. DISCLOSURES OF CERTAIN TAX RETURN INFORMATION

1. Disclosure of tax information to facilitate combined employment tax reporting (sec. 6103(d)(5) of the Code)

PRESENT LAW

Traditionally, Federal tax forms are filed with the Federal government and State tax forms are filed with individual States. This necessitates duplication of items common to both returns. The Code permits the IRS to disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body or commission a combined Federal and State employment tax reporting program approved by the Secretary. The Federal disclosure restrictions, safeguard requirements, and criminal penalties for unauthorized disclosure and unauthorized inspection do not apply with respect to disclosures or inspections made pursuant to this authority.

The authority for this program expires December 31, 2005.

Under section 6103(c), the IRS may disclose a taxpayer's return or return information to

such person or persons as the taxpayer may designate in a request for or consent to such disclosure. Pursuant to Treasury regulations, a taxpayer's participation in a combined return filing program between the IRS and a State agency, body or commission constitutes a consent to the disclosure by the IRS to the State agency of taxpayer identity information, signature and items of common data contained on the return. No disclosures may be made under this authority unless there are provisions of State law protecting the confidentiality of such items of common data.

EXPLANATION OF PROVISION

The provision extends for one year the present-law authority for the combined employment tax reporting program (through December 31, 2006).

EFFECTIVE DATE

The provision applies to disclosures after December 31, 2005.

2. Disclosure of return information regarding terrorist activities (sec. 6103(i)(3) and (i)(7) of the Code)

PRESENT LAW

In general

Section 6103 provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to the information except as provided in the Internal Revenue Code. Section 6103 contains a number of exceptions to this general rule of nondisclosure that authorize disclosure in specifically 71 identified circumstances (including nontax criminal investigations) when certain conditions are satisfied.

Among the disclosures permitted under the Code is disclosure of returns and return information for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning terrorist incidents, threats, or activities. The term ''terrorist incident, threat, or activity'' is statutorily defined to mean an incident, threat, or activity involving an act of domestic terrorism or international terrorism, as both of those terms are defined in the USA PATRIOT Act (see sec. 6103(b)(11) and 18 U.S.C. secs. 2331(1) and 2331(5)). In general, returns and taxpayer return information must be obtained pursuant to an ex parte court order. Return information, other than taxpayer return information, generally is available upon a written request meeting specific requirements. The IRS also is permitted to make limited disclosures of such information on its own initiative to the appropriate Federal law enforcement agency.

No disclosures may be made under these provisions after December 31, 2005.

Disclosure of returns and return information—by ex parte court order

Ex parte court orders sought by Federal law enforcement and Federal intelligence agencies

The Code permits, pursuant to an ex parte court order, the disclosure of returns and return information (including taxpayer return information) to certain officers and employees of a Federal law enforcement agency or Federal intelligence agency. These officers and employees are required to be personally and directly engaged in any investigation of, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These officers and employees are permitted to use this information solely for their use in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceeding, pertaining to any such terrorist incident, threat, or activity.

The Attorney General, Deputy Attorney General, Associate Attorney General, an Assistant Attorney General, or a United States attorney, may authorize the application for the ex parte court order to be submitted to a Federal district court judge or magistrate. The Federal district court judge or magistrate would grant the order if based on the facts submitted he or she determines that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity; and (2) the return or return information is sought exclusively for the use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

Special rule for ex parte court ordered disclosure initiated by the IRS

If the Secretary of Treasury possesses returns or return information that may be related to a terrorist incident, threat, or activity, the Secretary of the Treasury (or his delegate), may on his own initiative, authorize an application for an ex parte court order to permit disclosure to Federal law enforcement. In order to grant the order, the Federal district court judge or magistrate must determine that there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity. The information may be disclosed only to the extent necessary to apprise the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity and for officers and employees of that agency to investigate or respond to such terrorist incident, threat, or activity. Further, use of the information is limited to use in a Federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. Because the Department of Justice represents the Secretary of the Treasury in Federal district court, the Secretary is permitted to disclose returns and return information to the Department of Justice as necessary and solely for the purpose of obtaining the special IRS ex parte court order.

Disclosure of return information other than by ex parte court order

Disclosure by the IRS without a request

The Code permits the IRS to disclose return information, other than taxpayer return information, related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to such terrorist incident, threat, or activity. The IRS on its own initiative and without a written request may make this disclosure. The head of the Federal law enforcement agency may disclose information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity. A taxpayer's identity is not treated as return information supplied by the taxpayer or his or her representative.

Disclosure upon written request of a Federal law enforcement agency

The Code permits the IRS to disclose return information, other than taxpayer return information, to officers and employees of Federal law enforcement upon a written request satisfying certain requirements. The request must: (1) be made by the head of the Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and (2) set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. The information is to be disclosed to officers and employees of the Federal law enforcement agency who would be personally and directly involved in the response to or investigation of terrorist incidents, threats, or activities. The information is to be used by such officers and employees solely for such response or investigation.

The Code permits the redisclosure by a Federal law enforcement agency to officers and employees of State and local law enforcement personally and directly engaged in the response to or investigation of the terrorist incident, threat, or activity. The State or local law enforcement agency must be part of an investigative or response team with the Federal law enforcement agency for these disclosures to be made.

Disclosure upon request from the Departments of Justice or Treasury for intelligence analysis of terrorist activity

Upon written request satisfying certain requirements discussed below, the IRS is to disclose return information (other than taxpayer return information) to officers and employees of the Department of Justice, Department of Treasury, and other Federal intelligence agencies, who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence or investigation concerning terrorist incidents, threats, or activities. Use of the information is limited to use by such officers and employees in such investigation, collection, or analysis.

The written request is to set forth the specific reasons why the information to be disclosed is relevant to a terrorist incident, threat, or activity. The request is to be made by an individual who is: (1) an officer or employee of the Department of Justice or the Department of Treasury, (2) appointed by the President with the advice and consent of the Senate, and (3) responsible for the collection, and analysis of intelligence and counterintelligence information concerning terrorist incidents, threats, or activities. The Director of the United States Secret Service also is an authorized requester under the Act.

EXPLANATION OF PROVISION

The provision extends for one year the present-law terrorist activity disclosure provisions (through December 31, 2006).

EFFECTIVE DATE

The provision applies to disclosures after December 31, 2005.

3. Disclosure of return information to carry out income contingent repayment of student loans (sec. 6103(l)(13) of the Code)

PRESENT LAW

Present law prohibits the disclosure of returns and return information, except to the extent specifically authorized by the Code. An exception is provided for disclosure to the Department of Education (but not to contractors thereof) of a taxpayer's filing status, adjusted gross income and identity information (i.e., name, mailing address, taxpayer identifying number) to establish an appropriate repayment amount for an applicable student loan. The disclosure authority for the income-contingent loan repayment program is scheduled to expire after December 31, 2005.

The Department of Education utilizes contractors for the income-contingent loan verification program. The specific disclosure exception for the program does not permit disclosure of return information to contractors. As a result, the Department of Education obtains return information from the Internal Revenue Service by taxpayer consent (under section 6103(c)), rather than under the specific exception for the income-contingent loan verification program (sec. 6103(l)(13)).

EXPLANATION OF PROVISION

The provision extends for one year the present law authority to disclose return information for purposes of the income-contingent loan repayment program (through December 31, 2006).

EFFECTIVE DATE

The provision applies to requests made after December 31, 2005.

TITLE IV—TAX TECHNICAL CORRECTIONS

The bill includes technical corrections and other corrections to recently enacted tax legislation. Except as otherwise provided, the amendments made by the technical corrections and other corrections contained in the bill take effect as if included in the original legislation to which each amendment relates.

A. TECHNICAL CORRECTIONS

Amendments Related to the Energy Policy Act of 2005

Repeal of the Public Utility Holding Company Act of 1935 (Act sec. 1263).—The provision repeals sections 1081–1083 of the Code (relating to exchanges in obedience to SEC orders) to conform to the repeal of the Public Utility Holding Company Act of 1935. The repeal does not apply to any exchange, expenditure, investment, distribution, or sale made in obedience to an order of the Securities and Exchange Commission.

Extension and modification of renewable electricity production credit (Act sec. 1301).—The provision makes a technical amendment to Code section 45(c)(3)(A)(ii) to change the wording of the reference to ''nonhazardous lignin waste material'' to ''lignin material'' so as not to infer that lignin is hazardous or waste.

Clean renewable energy bonds (Act sec. 1303).—Section 54(1)(5) treats the credits received by a holder of clean renewable energy bonds as payments of estimated tax for purposes of sections 6654 and 6655. Under the provision, section 54(1)(5) is repealed, as it may provide a double benefit when computing the estimated tax penalty in the manner prescribed under sections 6654(f) and 6655(g). The conforming amendments to the Act section are made for taxable years beginning after 2005.

Credit for production from advanced nuclear power facilities (Act sec. 1306).—The provision clarifies the production credit for advanced nuclear power (sec. 45J) to carry out the intent that the phase-out is indexed for inflation but the credit rate is not. Specifically, it is not intended that the inflation adjustment rule referred to in section 45J(e) be interpreted to apply to the credit rate in section 45J(a)(1) as well as the phase-out referred to in section 45J(c)(2). The provision clarifies that the phase-out is indexed but the credit rate is not.

Expansion of amortization for certain atmospheric pollution control facilities in connection with plants first placed in service after 1975 (Act sec. 1309).—The provision clarifies that the 84-month amortization period only applies to facilities used in connection with a plant or other property placed in service after December 31, 1975.

Five-year net operating loss carryover for certain losses (Act sec. 1311).—A number of clerical amendments are made to section 172(b)(1)(I).

Modification of credit for producing fuel from a nonconventional source (Act sec. 1322).—The provision clarifies that the credit is allowable without the requirement to make an election.

Energy efficient commercial buildings deduction (Act sec. 1331).—The provision repeals as deadwood certain language in section 1250.

Credit for residential energy efficient property (Act sec. 1335).—The provision clarifies that the dollar limitations are applied without regard to carryovers of the credit from prior taxable years.

Under the provision, the joint occupancy rule is redrafted to apply to expenditures with respect to a dwelling unit rather than the credit allowed with respect to the unit.

The rules relating to the carryover of unused personal credits (including the new credit for residential energy efficient property) are redrafted so as to include in the Code rules for both the taxable years in which the credits are allowed against the alternative minimum tax, and the taxable years in which the credits are not so allowed. The provision is effective for taxable years beginning after 2005.

Alternative motor vehicle credit and credit for installation of alternative fueling stations (Act secs. 1341 and 1342).—Sections 30B(h)(6) and 30C(e)(2) separate business and personal credits for purposes of applying limitations on the credits. Credit property is treated as subject to the business credit limitations if it is depreciable property. Each of these rules provides that the seller of property to a tax-exempt entity can claim the credit. The provision provides that the credits for property sold to a tax-exempt entity are subject to the business credit limitations.

Expansion of research credit (Act sec. 1351).—The research credit has an explicit rule preventing amounts from being taken into account more than once under the credit (i.e., preventing double benefits). The provision clarifies that the rule preventing amounts from being taken into account more than once also applies to the provisions of the research credit relating to energy research consortia.

The provision clarifies that qualified research with respect to energy research consortia must be conducted in the United States or Puerto Rico. This conforms the treatment of such qualified research to the treatment of other qualified research under the research credit in this respect.

Amendments Related to the American Jobs Creation Act of 2004

Deduction relating to income attributable to domestic production activities (manufacturing deduction) (Act sec. 102).—With respect to the W-2 wage limitation on the allowable amount of the domestic production activities deduction, the Act does not require Forms W-2 actually to be filed, and does not specify whether the employees must be the common law employees of the taxpayer. The provision clarifies that a taxpayer may take into account only wages that are paid to the common law employees of the taxpayer and that are reported on a Form W-2 filed with the Social Security Administration no later than 60 days after the extended due date for the Form W-2. Thus, the taxpayer may not take into account wages that were not actually reported. The provision also addresses situations in which the employer uses an agent to report its wages.

The provision clarifies that, in computing qualified production activities income, the domestic production activities deduction itself is not an allocable deduction. The provision also clarifies that no inference is intended with regard to the interpretive relationship between the cost allocation rules provided with respect to the domestic production activities deduction and the cost allocation rules provided with respect to provisions elsewhere in the Act (e.g., incentives to reinvest foreign earnings in the United States). The provision also corrects a reference to ''income attributable to domestic production activities'' to refer to the defined term ''qualified production activities income.''

With regard to the definition of ''domestic production gross receipts'' as it relates to construction performed in the United States and engineering or architectural services performed in the United States for construction projects in the United States, the provision clarifies that the term refers only to gross receipts derived from the construction of real property by a taxpayer engaged in the active conduct of a construction trade or business, or from engineering or architectural services performed with respect to real property by a taxpayer engaged in the active conduct of an engineering or architectural services trade or business.

The provision clarifies that the term does not include gross receipts derived from the lease, rental, license, sale, exchange or other disposition of land.

The provision provides that gross receipts derived from certain contracts (or subcontracts) to manufacture or produce property for the Federal government are derived from the sale of such property and, therefore, are domestic production gross receipts. (Another section of the provision clarifies the authority of the Secretary to prescribe rules to prevent the domestic production activities deduction from being claimed by more than one taxpayer with respect to the same economic activity described in section 199(c)(4)(A)(i).)

The provision provides that, for purposes of determining the domestic production gross receipts of a partnership and its partners, provided all of the interests in the capital and profits of the partnership are owned by members of the same expanded affiliated group at all times during the taxable year of the partnership, then the partnership and all members of that expanded affiliated group are treated as a single taxpayer during such period. Thus, for example, assume such a partnership engages in an activity with respect to property manufactured by the partners that are members of the same expanded affiliated group, and the activity would be treated as a manufacturing activity, but for the fact that the partnership (rather than the partner) conducts the activity. Under this provision, then, the gross receipts derived from the activity are treated as domestic production gross receipts of the partnership for such taxable year. Once the partnership has determined its domestic production gross receipts in this manner, such receipts and the expenses, losses or deductions that are properly allocable to such receipts, and any other items that are allocated to partners, are allocated among the partners in accordance with the requirements of section 199(d)(1) (as amended). Similarly, if a partner engages in such an activity with respect to property manufactured by the partnership, then the gross receipts derived from the activity are treated as domestic production gross receipts of the partner. The treatment of the partners and the partnership as a single taxpayer under this rule is only for the purpose of determining domestic production gross receipts.

The provision clarifies that, with respect to the domestic production activities of a partnership or S corporation, the deduction under the Act is determined at the partner or shareholder level. In performing the calculation, each partner or shareholder generally will take into account such person's allocable share of the components of the calculation (including domestic production gross receipts; the cost of goods sold allocable to such receipts; and other expenses, losses, or deductions allocable to such receipts) from the partnership or S corporation as well as any items relating to the partner

or shareholder's own qualified production activities, if any.

The provision clarifies the treatment provided under the Act of cooperatives and patrons with respect to the deduction under section 199. The provision clarifies that a patron who receives certain payments from an agricultural or horticultural cooperative that are attributable to qualified production activities income is allowed a deduction equal to the portion of the deduction allowed to the cooperative that is attributable to such income. The provision also clarifies that the patron's deduction is allowed in the year that the payment attributable to qualified production activities income is received. The cooperative's taxable income is not reduced under section 1382 by the portion of the payment that does not exceed the portion so deductible by the patron. For purposes of the deduction under section 199, the provision clarifies that agricultural or horticultural marketing cooperatives are treated as having manufactured, produced, grown, or extracted any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted. For purposes of the deduction under section 199, an agricultural or horticultural cooperative is a cooperative engaged in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural products, or in the marketing of agricultural or horticultural products.

The provision clarifies the definition of an expanded affiliated group, so that a corporation eligible for the deduction with respect to income of a subsidiary must own more than 50 percent, rather than 50 percent or more, of the subsidiary's stock by vote and value.

The provision rewrites the rule that the deduction under section 199 in computing alternative minimum taxable income (''AMTI'') is the same as in computing the regular tax, except that, in the case of a corporation, the taxable income limitation is the corporation's AMTI.

The provision clarifies that unrelated business taxable income, rather than taxable income, applies for purposes of section 199(a)(1)(B) in computing the unrelated business income tax under section 511. (In computing AMTI of an organization which is a corporation subject to tax under section 511(a), AMTI applies for purposes of section 199(a)(1)(B). In computing AMTI of an organization other than a corporation, the section 199 deduction is the same as for the regular tax. See sec. 199(d)(6).)

The provision clarifies that the manufacturing deduction is not taken into account in computing any net operating loss or the amount of any net operating loss carryback or carryover. Thus, the deduction under section 199 cannot create, or increase, the amount of a net operating loss deduction.

The provision clarifies the authority of the Secretary to prescribe rules to prevent the domestic production activities deduction from being claimed by more than one taxpayer with respect to the same economic activity described in section 199(c)(4)(A)(i).

The provision clarifies that the manufacturing deduction is not taken into account in determining the amount of the alternative tax net operating loss deduction. For example, assume that for the calendar year 2005, a corporation has AMTI (before the NOL deduction and before the manufacturing deduction) and qualified production activities income of $1 million, and has an alternative tax net operating loss (''ATNOL'') carryover to 2005 of $5 million. Assume that the taxpayer has sufficient W–2 wages so as not to be limited under that rule. The ATNOL deduction for 2005 is $900,000 (90 percent of $1 million), reducing AMTI to $100,000. The taxpayer must then further reduce the AMTI by a manufacturing deduction of $3,000 (three percent of the lesser of $1 million or $100,000) to $97,000. The ATNOL carryover to 2006 is $4,100,000.

The provision coordinates the computation of adjusted taxable income of a corporation for purposes of computing a corporation's limitation on the deduction for interest on certain indebtedness with the deduction under section 199. The provision also coordinates the computation of taxable income for purposes of computing a corporation's charitable contribution deduction and a taxpayer's deduction for percentage depletion with respect to oil and gas wells with the deduction under section 199.

The provision clarifies that, in applying the effective date of the deduction under section 199, items arising from a taxable year of a partnership, S corporation, estate, or trust beginning before 2005 are not taken into account for purposes of the rules providing that the deduction is determined at the shareholder, partner or similar level and the application of the wage limitation with respect to such entities.

Family members treated as one shareholder of an S corporation election (Act sec. 231).—The provision repeals the requirement that a family must elect to be treated as one shareholder for purposes of determining the number of shareholders for purposes of subchapter S. The provision also provides that the determination of whether a common ancestor is more that six generations removed from the youngest generation of shareholders is made at the latest of (i) the date the subchapter S election is made; (ii) the date a family member first holds stock in the S corporation; or (iii) October 22, 2004.

The provision treats the estate of a family member as a member of the family for purposes of determining the number of shareholders.

The provision also conforms the provision relating to certain adopted individuals and foster children with the amendments made by title II of the Working Families Tax Relief Act of 2004.

Transfer of suspended losses incident to divorce (Act sec. 235).—The effective date of section 235 of the Act is corrected to provide that it is effective for transfers after December 31, 2004.

REIT provisions (Act sec. 243).—The provision clarifies that a REIT may cure de minimis failures of asset requirements (other than the requirement that the REIT may not hold more than 10 percent (five percent for certain prior years) of the value of securities of a single issuer, for which failure-specific procedures are provided) by using the same procedures as the REIT may use for larger failures of asset tests.

The provision clarifies that the new rules that permit the curing of certain REIT failures apply to failures with respect to which the requirements of the new rules are satisfied in taxable years of the REIT beginning after the date of enactment. Similarly, the provision clarifies that the new rules governing deficiency dividends that allow the taxpayer to make a determination by filing a statement with the IRS apply to statements filed in taxable years of the REIT beginning after the date of enactment.

It is intended that the provisions of the Act that allow a REIT to correct failures of REIT qualification without losing its REIT status apply to corrections of failures for which the requirements for correction are satisfied after the date of enactment, regardless of whether such failures occurred in taxable years beginning on, before, or after the date of enactment. Similarly, it is intended that the provisions of the Act that allow deficiency dividends under section 860 to correct distribution failures, provided the deficiency is identified in a statement filed after the date of enactment in accordance with the provisions of the Act, apply to failures occurring in taxable years beginning on, before, or after the date of enactment.

The provision clarifies that the new hedging rules apply to transactions entered into in taxable years beginning after the date of enactment.

The provision clarifies that securities of a partnership held by a REIT prior to the date of enactment of the Act, that would have qualified as straight debt securities if the Act had never been enacted by virtue of the prior law requirement that the REIT hold at least 20 percent of the partnership equity, will continue to qualify (regardless of whether they were disposed of before the date of enactment or whether the REIT has disposed of its interest in the partnership equity to the 1–percent-or-less interest required by the Act) while held by the REIT (or its successor) until the earlier of the disposition or the original maturity date of such securities.

Expensing of certain films and television production costs (Act sec. 244).—The provision clarifies that the $15 million production cost limitation and the 75 percent qualified compensation requirement are determined on an episode-by-episode basis (not an aggregate basis).

The provision adds rules for recapture as ordinary income of the deduction for expensing of certain films and television production costs in a manner similar to the recapture rules applicable to expensing under Code section 179.

Railroad track maintenance credit (Act sec. 245).—For purposes of the rule that prevents the claiming of the credit by more than one eligible taxpayer with respect to the same mile of track, the provision clarifies that Class II and Class III railroads that operate track under a lease are not required to obtain assignment from the track owner in order to utilize or assign the credit. Under the provision, the credit is limited in respect of the total number of miles of track (1) owned or leased by the Class II or Class III railroad and (2) assigned by the Class II or Class III railroad for purposes of the credit.

The provision clarifies that a Class I railroad is not treated as a Class II or III railroad for purposes of the credit (and it is not eligible to claim the credit with respect to track it owns) by reason of performing track maintenance services (on the same or different track) for a Class II or III railroad.

The provision also clarifies the rules governing the assignment of track by Class II or III railroads. A track mile may be assigned only once per tax year, effective at the close of the tax year, and any track mile assigned may not also be taken into account by the assignor taxpayer for the tax year. An assigned track mile is taken into account by the assignee in the tax year which includes the effective date of the assignment.

Election to determine corporate tax on certain international shipping activities using per ton rate (Act sec. 248).—The provision strikes as deadwood the rule added by the Act regarding the operation of a qualifying vessel by a non-electing corporation that is a member of an electing group.

The provision clarifies section 1354(b) to provide that an election to determine income tax on certain international shipping activities using a per ton rate is timely if made on or before the due date (including extensions) for filing the tax return for the relevant taxable year.

The provision clarifies the treatment of operating agreements under the tonnage tax rules. An operating agreement is not a charter, but is instead an agreement with an

owner or charterer of a qualifying vessel to provide operating or management services in respect of a qualifying vessel, for example, crew, technical, or commercial services. The provision makes clear that a person providing services for a vessel under an operating agreement is treated as operating the vessel and may elect tonnage tax treatment, assuming the other requirements for such treatment are met. However, a subcontractor to a person providing services under an operating agreement is neither treated as providing services under an operating agreement nor as operating a vessel for purposes of the tonnage tax. The provision of equipment, tools, provisions, or supplies would not be considered an operating agreement or part of an operating agreement unless such equipment, tools, provisions, or supplies are provided by the person providing the services under the operating agreement, and such equipment, tools, provisions, or supplies are provided in connection with such services.

Present law provides that in order to elect tonnage tax treatment, a person must meet a shipping activity requirement as well as ''operate'' a qualifying vessel. In general, the shipping activity requirement is met for a taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels ''used'' by the corporation (or controlled group) are owned by such corporation (or controlled group) or are chartered to such corporation (or controlled group) on bareboat charter terms. It is intended that a person providing services under an operating agreement is deemed to be ''using'' tonnage of qualifying vessels, and the appropriate amount of such tonnage is taken into account for purposes of this test. For example, if a corporation (not a member of a controlled group) meets the shipping activity requirement by owning or bareboat chartering sufficient tonnage of other qualifying vessels, it will qualify for 82 the tonnage tax provisions in respect of any qualifying vessel that it is treated as operating by reason of providing services under an operating agreement.

The provision clarifies that interests in operating agreements are taken into account for purposes of allocating the notional shipping income from the operation of qualifying vessels among respective ownership, charter, and operating agreement interests. In addition, in the case of a partnership operating a vessel, the extent of a partner's ownership, charter, or operating agreement interest is determined on the basis of the partner's interest in the partnership.

The provision makes a clerical amendment by eliminating subparagraph (B) of section 1355(c)(3) of the Code, because the rule of subparagraph (B) is encompassed in subparagraph (A).

Computation of foreign tax credit in determining alternative minimum tax by farmers and fisherman using income averaging (Act sec. 314).—The provision clarifies that in computing the regular tax for purposes of determining the alternative minimum tax of a farmer or fisherman using income averaging, the foreign tax credit does not need to be recomputed.

Reforestation expensing recapture (Act sec. 322).—The provision clarifies that the amortization provision applies to trusts and estates, but the deduction applies to estates (and not to trusts).

The provision provides that Code section 1245 is expanded to provide recapture rules for the new expensing provisions of Code section 194(b) (reforestation).

Depreciation allowance for aircraft (Act sec. 336).—Present-law rules for additional first-year depreciation provide criteria under which certain noncommercial aircraft, and certain property having longer production periods (as described in Code section 168(k)(2)(B)), can qualify for the extended placed-in-service date. The provision clarifies that either noncommercial aircraft or property having a longer production period can qualify.

Recharacterization of overall domestic loss (Act sec. 402)—The provision clarifies that, in a case in which an overall domestic loss is used as a carryback, the requirement in Code section 904(g)(2) that the taxpayer have elected the benefits of the foreign tax credit applies to the taxable year in which the loss is used.

Look-through rules to apply to dividends from noncontrolled section 902 corporations (Act sec. 403).—The provision adds a transition rule under which a taxpayer may elect not to apply the Act's look-through rules to taxable years beginning before January 1, 2005.

Look-through treatment for sales of partnership interests (Act sec. 412).—The provision clarifies that constructive ownership is taken into account in determining whether a controlled foreign corporation is a 25–percent owner of a partnership for purposes of the rule treating a sale of a partnership interest as a sale of a proportionate share of the assets of the partnership. This provision conforms the statutory language to the legislative history of the Act.

Repeal of foreign personal holding company rules and foreign investment company rules (Act sec. 413).—The provision repeals as deadwood Code section 532(b)(2), which coordinated the foreign personal holding company and accumulated earnings tax regimes, and instead provides that in computing a corporation's accumulated taxable income, a deduction is allowed in the amount of any income of the corporation that resulted in an inclusion for a U.S. shareholder under Code section 951(a). In the case of a corporation that is otherwise subject to the accumulated earnings tax on a gross basis (under Treas. Reg. sec. 1.535–1(b)), appropriate adjustments are made to this deductible amount to take into account deductions that may have reduced the inclusion under Code section 951(a), but which would not otherwise have been allowable in computing accumulated taxable income. For example, in the case of a corporation that is generally subject to the accumulated earnings tax on a gross basis, if Code section 954(b)(5) has had the effect of reducing the amount of a subpart F inclusion, it would be appropriate to reduce accumulated taxable income by the amount that would have been included under Code section 951(a) without applying Code section 954(b)(5).

The provision also repeals as deadwood Code section 6683, which addresses the failure of a foreign corporation to file a required personal holding company return, a rule that is no longer needed in light of the provision of the Act exempting foreign corporations from the personal holding company rules.

Modifications to treatment of aircraft leasing and shipping (Act. sec. 415).—The provision clarifies that, for purposes of the foreign tax credit limitation as in effect for taxable years beginning before January 1, 2007, shipping income was defined to include income that meets the definition of foreign base company shipping income as in effect before the definition was repealed under section 415 of the Act. The repeal is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

Application of FIRPTA to distributions from REITS (Act sec. 418).—The provision clarifies that the new rules providing an exception from FIRPTA do not apply to regulated investment companies (''RICs''), but only to real estate investment trusts (''REITs'').

The provision clarifies that the period of time during which a foreign shareholder may not have held more than five percent of the class of stock with respect to which the distribution is made is the one-year period ending on the date of the distribution.

The provision clarifies that the new rules apply to any distribution of a REIT that is treated as a deduction for a taxable year of the REIT beginning after the date of enactment.

The provision clarifies that the new rules also apply to deficiency dividends under section 860 that are paid after the date of enactment but that are treated as deductible in taxable years beginning on or prior to the date of enactment. Such dividends qualify for the exclusion from FIRPTA treatment under the Act if the other requirements of the Act are met.

Incentives to reinvest foreign earnings in the United States (Act sec. 422).—The provision amends Code section 965(a)(2)(B) to clarify that distributions made indirectly through tiers of controlled foreign corporations are eligible for the benefits of Code section 965 only if they originate with a dividend received by one controlled foreign corporation from another controlled foreign corporation in the same chain of ownership described in Code section 958(a). Thus, the first dividend in the sequence cannot be a portfolio dividend received by a controlled foreign corporation, for example.

The provision clarifies that for purposes of determining the amount of excess dividends eligible for the deduction, only cash dividends received during the elected taxable year are taken into account under Code section 965(b)(2)(A). (The base-period amounts described in Code section 965(b)(2)(B) include non-cash dividends, as well as cash dividends and certain other amounts.)

The provision also provides the Treasury Secretary with explicit regulatory authority to prevent the avoidance of the purposes of Code section 965(b)(3), which reduces the amount of eligible dividends in certain cases in which an increase in related-party indebtedness has occurred after October 3, 2004. Regulations issued pursuant to this authority may include rules to provide that cash dividends are not taken into account under Code section 965(a) to the extent attributable to the direct or indirect transfer of cash or other property from a related person to a controlled foreign corporation (including through the use of intervening entities or capital contributions). It is expected that this authority, which supplements existing principles relating to the treatment of circular flows of cash, would be used to prevent the application of the deduction in the case of a dividend that is effectively funded by the U.S. shareholder or its affiliates that are not controlled foreign corporations. It is anticipated that dividends would be treated as attributable to a related-party transfer of cash or other property under this authority only in cases in which the transfer is part of an arrangement undertaken with a principal purpose of avoiding the purposes of the related-party debt rule of Code section 965(b)(3).

For example, if a U.S. shareholder, as part of a plan to avoid the purposes of Code section 965(b)(3), contributes cash or other property to a controlled foreign corporation and then has the controlled foreign corporation pay a dividend to the U.S. shareholder (either to meet the base period repatriation level or as a dividend described in Code section 965(a)), or has the controlled foreign corporation lend the cash or other property to another controlled foreign corporation which

then pays a dividend to the U.S. shareholder, regulations issued under this authority may require the U.S. shareholder to reduce its Code section 965(a) qualifying dividends by the amount of cash or other property contributed. In addition, if as part of a plan to avoid the purposes of Code section 965(b)(3), a U.S. shareholder makes a loan to a controlled foreign corporation after October 3, 2004, such controlled foreign corporation pays a dividend to the U.S. shareholder, and then the U.S. shareholder disposes of the stock of the controlled foreign corporation, such that the U.S. shareholder is not related to the controlled foreign corporation on the last day of the U.S. shareholder's election year, regulations issued under this authority may require the U.S. shareholder to reduce its Code section 965(a) qualifying dividends by the amount of the loan.

It is anticipated that many other transfers of cash or other property will not be regarded as effectively funding dividend repatriations for purposes of this regulatory authority. For example, if a U.S. shareholder, in the ordinary course of its trade or business, transfers cash or other property to a controlled foreign corporation in exchange for property or the provision of services, such a transfer will not be considered to have a principal purpose of avoiding the purposes of Code section 965(b)(3). Likewise, if a related person transfers cash to a controlled foreign corporation in a sale of assets by the controlled foreign corporation to the related person for non- tax business purposes, such a transfer will not be considered to have a principal purpose of avoiding the purposes of Code section 965(b)(3). Similarly, a transfer of cash or other property to a controlled foreign corporation for purposes of providing initial or ongoing working capital to the controlled foreign corporation or expanding the controlled foreign corporation's operations will not be considered to have a principal purpose of avoiding the purposes of Code section 965(b)(3). In addition, a transfer by a U.S. shareholder in repayment of an obligation owed to a controlled foreign corporation will not be considered to have a principal purpose of avoiding the purposes of Code section 965(b)(3), absent special circumstances indicating that the U.S. shareholder is using the repayment effectively to fund the dividend repatriation. It is expected that these special circumstances would not be found to exist in cases involving the repayment of short-term debt (i.e., debt with a term of no more than three years).

In light of the timing of this bill and the fact that Code section 965 will expire for many affected taxpayers at the end of 2005, it is understood that the Treasury Department in all likelihood will not issue regulations under this authority. If no such regulations are issued, it would be expected that generally applicable tax principles would be invoked to reach results consistent with the principles and examples described above.

The provision also clarifies the definition of ''applicable financial statement'' under Code section 965(c)(1). In the case of a U.S. shareholder that is required to file a financial statement with the Securities and Exchange Commission (or is included in such a statement filed by another person), the provision clarifies that the applicable financial statement is the most recent audited annual statement that was so filed and certified on or before June 30, 2003. For purposes of this rule, a restatement of a previously filed and certified financial statement that occurs after June 30, 2003 does not alter the statement's status as having been filed and certified on or before June 30, 2003. In addition, the provision clarifies that the term ''applicable financial statement'' includes the notes that form an integral part of the financial statement; other materials, including work papers or materials that may be filed for some purposes with a financial statement but that do not form an integral part of such statement, may not be relied upon for purposes of producing an earnings or tax number under the provision. For example, if a note that is an integral part of an applicable financial statement states that the U.S. shareholder has not provided for deferred taxes on $1 billion of undistributed earnings of foreign subsidiaries because such earnings are intended to be reinvested permanently (or indefinitely) abroad, the U.S. shareholder's limit under Code section 965(b)(1) is $1 billion. If an applicable financial statement does not show a specific earnings or tax amount described in Code section 965(b)(1)(B) or (C), a taxpayer cannot rely on underlying work papers or other materials that are not a part of the financial statement to derive such an amount. If an applicable financial statement states that an earnings or tax amount is indeterminate (or that determination of a specific amount of earnings or taxes is not feasible), then the earnings or tax amount so described is treated as being zero. A specific earnings or tax amount can be relied upon for purposes of Code section 965(b)(1) as long as such amount is presented on the applicable financial statement as satisfying the indefinite reversal criterion of Accounting Principles Board Opinion 23 (''APB 23'') relating to deferred taxes on undistributed foreign earnings, and is disclosed as required under Financial Accounting Standards Board Statement 109 (''FAS 109''), regardless of whether the exact words ''permanently reinvested'' are used, and regardless of whether APB 23 or FAS 109 is cited by name.

The provision also clarifies that the expense disallowance rule of Code section 965(d)(2) applies only to deductions for expenses that are directly allocable to the deductible portion of the dividend. For these purposes, an expense is ''directly allocable'' if it relates directly to generating the dividend income in question. Thus, deductions for direct expenses such as certain legal and accounting fees and stewardship costs are disallowed under this provision. Deductions for indirect expenses such as interest, research and experimentation costs, sales and marketing costs, state and local taxes, general and administrative costs, and depreciation and amortization are not disallowed under this provision.

In addition, the provision clarifies that foreign taxes that are not allowed as foreign tax credits by reason of Code section 965(d) do not give rise to income inclusions under Code section 78.

The provision also clarifies that under Code section 965(e)(1), the only foreign tax credits that may be used to reduce the tax on the nondeductible portion of a dividend are credits for foreign taxes that are attributable to the nondeductible portion of the dividend. Credits for other foreign taxes cannot be used to reduce the tax on the nondeductible portion of the dividend.

The provision also clarifies Code section 965(f) to provide that an election to apply Code section 965 is timely if made on or before the due date (including extensions) for filing the tax return for the relevant taxable year.

Treatment of deduction for State and local sales taxes under the alternative minimum tax (Act sec. 501).—The provision clarifies that the itemized deduction for State and local sales taxes does not apply in calculating alternative minimum taxable income.

Naval shipbuilding (Act sec. 708).—The provision provides that the five-taxable year period for use of the 40/60 percentage-of-completion/capitalized cost method is determined with respect to the construction commencement date, not the contract commencement date. The provision further provides that any change of accounting method required by the provision is not subject to section 481.

Credit for production of refined coal (Act sec. 710).—The provision strikes the word ''synthetic'' from the definition of refined coal to carry out the intent that qualifying solid fuels produced from coal (including lignite) meet two new primary standards, an emissions reduction test and a value enhancement test, and not also be subject to a ''chemical change'' test promulgated under Treasury guidance for certain fuels from coal to qualify for credit under Code sec. 29.

Tax treatment of expatriated entities and their foreign parents (Act sec. 801).—The provision clarifies that the inversion gain rule of Code section 7874(a)(1) does not apply to an entity that is an expatriated entity with respect to an entity that is treated as a domestic corporation under Code section 7874(b).

Expatriation of individuals (Act sec. 804).—The provision clarifies that the exception to the requirement of minimal prior physical presence in the United States is both for (i) teachers, students, athletes, and foreign government individuals, and (ii) individuals receiving medical attention.

The provision clarifies that the Act does not create an additional requirement that an individual file a statement under section 6039G if such a filing was not already required under present law.

The provision clarifies that taxpayers who lose citizenship or terminate long-term resident status will continue to be treated for Federal tax purposes as citizens or long-term residents until they meet the notice and information reporting requirements of section 7701(n).

Penalty for failure to disclose reportable transactions (Act sec. 811).—The provision clarifies that the penalty for failing to disclose participation in a reportable transaction applies to returns and statements that are filed after the date of enactment, without regard to the original or extended due date for such return or statement.

Accuracy-related penalties for listed transactions and reportable transactions with a significant tax avoidance purpose (Act sec. 812).—The provision clarifies that underpayments attributable to an understatement resulting from participation in a listed transaction or a reportable transaction with a significant tax avoidance purpose are not subject to accuracy-related penalties under section 6662 to the extent that an accuracy-related penalty under section 6662A is imposed upon such underpayment. (However, in the case of underpayments resulting from substantial valuation misstatements, the accuracy-related penalty under section 6662A does not apply to the extent that the accuracy-related penalty under section 6662 is applied to such underpayments (i.e., the section 6662 penalty amount is increased under section 6662(h) because the substantial valuation misstatement is determined to be a gross valuation misstatement).) The provision clarifies that accuracy-related penalties under section 6662A do not apply to underpayments to which a fraud penalty under section 6663 is applied.

The provision clarifies that, with respect to disqualified opinions, the strengthened reasonable cause exception to section 6662A penalties does not apply to the opinion of a tax advisor if (1) the opinion was provided to the taxpayer before the date of enactment, (2) the opinion relates to a transaction entered into before the date of enactment, and (3) the tax treatment of items relating to the transaction was included on a return or

statement filed by the taxpayer before the date enactment.

Statute of limitations for unreported listed transactions (Act sec. 814).—The Act provides that the statute of limitations with respect to an undisclosed listed transaction does not expire until one year after the earlier of (1) the date on which the Secretary is furnished the required information, or (2) the date on which a material advisor satisfies the list maintenance requirements with respect to a request by the Secretary. The provision clarifies that a ''material advisor'' for this purpose includes either a material advisor as defined in section 6111(b)(1) or, in the case of material aid, assistance, or advice rendered on or before the date of enactment, a material advisor as defined in Treasury regulations under section 6112. (See Treas. Reg. sec. 301.6112–1(c)(2).)

Material advisor list maintenance requirement and penalty (Act sec. 815).—The provision clarifies that the penalty under section 6708 for failing to comply with the section 6112 list maintenance requirements applies to both (1) material advisors with respect to reportable transactions under present-law section 6112, and (2) organizers and sellers of potentially abusive 88 tax shelters under prior-law section 6112. (This provision also would clarify the determination of the date on which a material advisor satisfies the list maintenance requirements for purposes of the extended statute of limitations for undisclosed listed transactions under section 814 of the Act.)

Minimum holding period for withholding taxes on gain and income other than dividends (Act sec. 832).—The provision clarifies that the exception from the minimum holding period for certain withholding taxes paid by registered or licensed brokers and dealers on income and gain from securities also apply to gain from the sale of stock.

Disallowance of certain partnership loss transfers (Act sec. 833).—The provision redrafts the wording of the provision relating to basis adjustments to undistributed partnership property in Code section 734(b) to clarify that it applies in the case of a distribution of property to a partner by a partnership with respect to which there is a substantial basis reduction.

Repeal of special rules for FASITs and modifications to rules for REMICs (Act sec. 835).—The provision clarifies that, if more than 50 percent of the obligations transferred to, or purchased by, a REMIC are originated by a government entity and are principally secured by an interest in real property, then each obligation originated by a government entity and transferred to, or purposed by, the REMIC is treated as principally secured by an interest in real property. Thus, the provision more closely aligns this rule with the ''principally secured'' standard that generally is provided by the definition of a qualified mortgage, and the provision clarifies that the treatment of obligations as principally secured by an interest in real property under this rule does not extend to obligations that are not originated by a government entity.

Importation or transfer of built-in losses (Act sec. 836).—The provision provides that on the tax-free liquidation of a corporation, the fair market value basis rule applies only to property described in section 362(e)(1)(B), i.e., property which became subject to U.S. income tax on the liquidation. The provision is drafted to conform the scope of the liquidation rule to the rule applicable to transfers of property by shareholders to corporations.

The provision provides that the election under section 362(e)(2)(C) to apply the basis limitation to the transferor's stock basis is made at such time and in such form and manner as the Secretary may prescribe, and, once made, is irrevocable.

Sale of principal residence following section 1031 exchange (Act sec. 840).—The provision clarifies that the exclusion under section 121 is denied on the sale or exchange of a principal residence by a taxpayer who did not recognize gain under section 1031 on the exchange in which the residence was acquired (or a by person whose basis in the residence is determined in whole or in part with reference to the basis of the residence in the hands of that taxpayer). The provision also makes a clerical change to the numbering of paragraphs.

Limitation on deductions allocable to property used by tax-exempt entities (Act sec. 849).—The Act establishes rules to limit deductions that are allocable to tax-exempt use property. For this purpose, the Act generally defines ''tax-exempt use property'' by reference to the definition provided in section 168(h). Section 168(h) generally provides that tax-exempt use property includes tangible property that is leased to a tax-exempt entity, as well as certain property owned by a partnership that has a tax-exempt partner and provides for certain special allocations. The provision clarifies that the deduction limitation rules established by the Act apply without regard to whether the tax-exempt use property is treated as such by reason of a lease or otherwise (e.g., because the property is owned by a partnership that has a tax-exempt partner and provides for certain special allocations). In the case of property treated as tax-exempt use property other than by reason of a lease, the provision clarifies that the deduction limitation rules generally are effective for property acquired after March 12, 2004.

Reporting with respect to donations of motor vehicles, boats and airplanes (Act sec. 884).—The provision clarifies that the acknowledgement by the donee organization is to include whether the donee organization provided any goods or services in consideration of the vehicle, and a description and good faith estimate of the value of any such goods or services, or, if the goods or services consist solely of intangible religious benefits, a statement to that effect.

Nonqualified deferred compensation plans (Act sec. 885).—The provision clarifies that the additional tax and interest under the nonqualified deferred compensation provision of the Act are not treated as payments of regular tax for alternative minimum tax purposes. The provision also clarifies that the application of the rule providing that certain additional deferrals must be for a period of not less than five years is not limited to the first payment for which deferral is made. The provision also clarifies that Treasury Department guidance providing a limited period during which plans can conform to the requirements applies to plans adopted before January 1, 2005. The provision also clarifies that the effective date of the funding provisions relating to offshore trusts and financial triggers is January 1, 2005. Thus, for example, amounts set aside in an offshore trust before such date for the purpose of paying deferred compensation and plans providing for the restriction of assets in connection with a change in the employer's financial health are subject to the funding provisions on January 1, 2005. Under the provision, not later than 90 days after the date of enactment of this provision, the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of the funding provisions relating to offshore trusts and financial triggers will be treated as not violating such requirements if the plan comes into conformance with such requirements during a limited period as specified by the Secretary in guidance. For example, trusts or assets set aside outside of the United States that would otherwise result in income inclusion and interest under the provision as of January 1, 2005, may be modified to come into conformance with the provision during the limited period of time as specified by the Secretary.

Identified straddles (Act sec. 888).—The provision clarifies that taxpayers are permitted to identify a straddle as an identified straddle under section 1092(a)(2)(B) (by making a clear and unambiguous identification on their books and records) without regard to whether the Secretary has prescribed regulations under the mandate in that section. The provision provides that the Secretary's mandate under the provision is to issue guidance in the form of regulations or in another form.

Modification of treatment of transfers to creditors in divisive reorganizations (Act sec. 898).—The provision clarifies that the amount of the adjusted basis of property that is taken into account for purposes of Code section 361(b)(3) is reduced by the liabilities assumed (within the meaning of Code section 357(c)).

Nonqualified preferred stock (Act sec. 899).—The provision clarifies that the ''real and meaningful likelihood'' requirement under the Act (which applies so that stock shall not be treated as participating in corporate growth to any significant extent unless there is a ''real and meaningful likelihood'' of the shareholder actually participating in the earnings and growth of the corporation) applies also for purposes of determining whether stock is not stock that is ''limited and preferred as to dividends.''

Consistent amortization period for intangibles and treatment of partnership organizational expenses (Act sec. 902).—The provision corrects the reference to ''taxpayers'' to refer to ''partnerships'' in the rules relating to deduction or amortization of partnership organizational expenses.

Limitation of employer deduction for certain entertainment expenses (Act sec. 907).—Section 907 of the Act limits the deduction for certain entertainment expenses with respect to specified individuals. A specified individual is defined as any individual subject to the requirements of section 16(a) of the Securities Act of 1934 with respect to the taxpayer or who would be subject to such requirements if the taxpayer were an issuer of equity securities. The provision clarifies that a specified individual includes an individual who is subject to the requirements of section 16(a) of the Securities Act of 1934 with respect to a related entity of the taxpayer or who would be subject to such requirements if the related entity were an issuer of equity securities.

Amendment Related to the Working Families Tax Relief Act of 2004

Uniform definition of child (Act secs. 201, 203 and 207).—The provision makes conforming amendments, consistent with those enacted with respect to various other provisions, for purposes of health savings accounts, the dependent care credit, and dependent care assistance programs. Under the conforming amendments, an individual may qualify as a dependent for these limited purposes without regard to whether the individual has gross income that exceeds an otherwise applicable gross income limitation or is married and files a joint return. In addition, such an individual who is treated as a dependent under these conforming amendment provisions is not subject to the general rule that a dependent of a taxpayer shall be treated as having no dependents for the taxable year of such individual beginning in such calendar year.

The provision clarifies Code section 152(e) to permit a divorced or legally separated custodial parent to waive, by written declaration, his or her right to claim a child as a dependent for purposes of the dependency exemption and child credit (but not with respect to other child-related tax benefits). By means of the waiver, the noncustodial parent is granted the right to claim the child as a dependent for these purposes. The provision clarifies that the waiver rules under the uniform definition of qualifying child operate as under prior law.

Amendment Related to the Jobs and Growth Tax Relief Reconciliation Act of 2003

Bonus depreciation (Act sec. 201).—Present-law rules for additional first-year depreciation provide criteria under which certain noncommercial aircraft, and certain property having longer production periods (as described in Code section 168(k)(2)(B)), can qualify for the extended placed-in-service date. The provision clarifies that property acquired and placed in service during 2005 pursuant to a written binding contract which was entered into after May 5, 2003, and before January 1, 2005, is eligible for 50-percent additional first-year depreciation deduction.

The provision corrects the reference to a date in the rules applicable to qualified New York Liberty Zone property so that it refers to the January 1, 2005, date in the corresponding rule for additional first-year depreciation in Code section 168(k).

Amendments Related to the Victims of Terrorism Tax Relief Act of 2001

Rules relating to disclosure of taxpayer return information (Act sec. 201).—The provision corrects cross references within the disclosure rules (Code section 6103) relating to disclosure to the National Archives and Records Administration.

Amendments Related to the Economic Growth and Tax Relief Reconciliation Act of 2001

Option to treat elective deferral as after-tax Roth contributions (Act sec. 617).—A special rule allows employees with at least 15 years of service with certain organizations to make additional elective deferrals to a tax-deferred annuity, subject to an annual and cumulative limit. The cumulative limit is $15,000, reduced by any additional pretax elective deferrals made for preceding years. For taxable years beginning after 2005, plans may allow employees to designate pretax elective deferrals as Roth contributions. Under the provision, the $15,000 cumulative limit is reduced also by designated Roth contributions made for preceding years.

Equitable treatment for contributions to defined contribution plans (Act sec. 632).—Under the law as in effect before the Act, a special limit applied to contributions to tax-sheltered annuities for foreign missionaries with adjusted gross income not exceeding $17,000. The special limit was inadvertently dropped by the Act. The special limit was restored in a technical correction in the Job Creation and Worker Assistance Act of 2002, but did not accurately reflect the pre-Act rule. The provision revises the special limit to reflect the pre-Act rule.

Amendments Related to the Internal Revenue Service Restructuring and Reform Act of 1998

Special procedures for third-party summons (Act sec. 3415).—Code section 7609(c)(2)(F) provides that section 7609 does not apply to a summons described in subsection (f) or (g), which refers to a John Doe summons and certain emergency summonses, respectively. The provision corrects this reference, so as to make only the notice procedures of section 7609(a) inapplicable to a John Doe summons or an emergency summons, rather than making the entire section 7609 inapplicable.

Amendments Related to the Taxpayer Relief Act of 1997

Tentative carryback and refund adjustments and treatment of carrybacks or adjustments for certain unused deductions (Act sec. 1055).—The provision corrects a reference in rules relating to tentative carryback and refund adjustments to refer to coordination rules in Code section 6611(f)(4)(B). The provision also corrects a reference in rules relating to 92 carrybacks or adjustments of certain unused deductions to refer to the filing date within the meaning of Code section 6611(f)(4)(B).

Adjustments to basis of stock in controlled foreign corporations (Act sec. 1112(b)).—The provision clarifies that the basis adjustments of Code section 961(c) apply not only with respect to the stock of the controlled foreign corporation that earns the subpart F income that gives rise to the basis adjustments, but also with respect to the stock of higher-tier controlled foreign corporations in the same chain of ownership.

Notice of certain transfers to foreign persons (Act sec. 1144).—The provision corrects the omission of a conjunction in the description of transfers that are generally subject to certain information reporting requirements.

Amendment Related to the Omnibus Budget Reconciliation Act of 1990

Depreciation of certain solar- or wind-powered equipment (Act sec. 11813).—The provision clarifies that 5-year property includes certain heating, cooling, and other equipment using solar or wind (rather than solar and wind) energy.

Amendment Related to the Omnibus Budget Reconciliation Act of 1987

Clarification of earnings and profits and stock basis where LIFO recapture tax applies (Act sec. 10227).—Under present law, the LIFO recapture amount is included in the income of a C corporation that becomes an S corporation for its last taxable year that it was a C corporation (sec. 1363(d)). Any increase in tax by reason of this inclusion is payable in four equal annual installments. The provision provides that the rules relating to (1) the prohibition on adjustments of earnings and profits of an S corporation and (2) the requirement to reduce the basis of stock of the S corporation by reason of nondeductible expenses do not apply to any corporate tax imposed by reason of section 1363(d). No inference is intended as to the treatment of other corporate taxes.

Clerical amendments

The provisions include clerical and typographical amendments to the Code, which are effective upon enactment.

B. OTHER CORRECTIONS

Amendments Related to the American Jobs Creation Act of 2004

Expansion of bank S corporation eligible shareholders to include IRAs (Act sec. 233).—The provision expands the provision in the Act allowing certain bank stock to be held by an IRA (or to be sold by an IRA to the beneficiary) to include stock in a depository holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act). A depository holding company includes a bank holding company and a thrift holding company.

Exclusion of investment securities income from passive income test for bank S corporations (Act sec. 237).—The provision expands the rule in the Act which provides that, in the case of a bank, bank holding company, or financial holding company, certain interest and dividend income is not treated as passive under the S corporation passive investment income rules. Under the provision, this rule applies to a bank and to a depository holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act). A depository holding company includes a bank holding company and a thrift holding company.

Information returns for qualified subchapter S subsidiaries (Act sec. 239).—The provision provides that an S corporation and a qualified subchapter S subsidiary are recognized as separate entities for purposes of making information returns, except as otherwise provided by the Treasury Department.

ADDITIONAL STATEMENTS

NORTHWEST RESEARCH AND EDUCATION INSTITUTE

• Mr. BAUCUS. Mr. President, I rise today to comment on the long overdue establishment of a continuing medical education program in Montana. The Northwest Research and Education Institute is a joint venture of St. Vincent Healthcare and Rocky Mountain Health Network, formed to serve the research and education needs of both the Montana Region of the Sisters of Charity of Leavenworth Health System which stretches from Butte to Miles City and the nearly 500 physicians and 7 hospitals associated with Rocky Mountain Health Network in Montana and Wyoming.

As many know, for too long, Montana was the only state in the US without a continuing medical education accrediting entity. The other 49 States have been able to provide immediate continuing education programs. Montana's medical community had to go hundreds of miles out of State to further their education. The people of my great State deserve the best health care possible, and it is imperative that medical practitioners are able to continue their education. Our physicians, nurses, and pharmacists have been asking for more effective medical education services, and I am pleased to say that now they have it.

I am proud to have secured the initial $250,000 to assist the Northwest Research and Education Institute to complete the accreditation process. Securing this funding for me was a top priority as Montanans medical practioners shouldn't have to travel hundreds, if not thousands, of miles to receive their required training.

Continuing medical education programs provide education to physicians, nurses, pharmacists, therapists, and other health care professionals to keep them up to date with the latest in medicine. This, of course, translates to better health care for patients. Rural healthcare providers have special needs for continuing education because they practice so far from each other and from centers of education. Now that education can be obtained by a health care provider in Montana.

I am particularly proud that the Northwest Research and Education Institute recently completed their application and received their accreditation. The accreditation is a stamp of quality approval that puts the Northwest Research and Education Institute in a league with medical schools, professional societies and other organizations which offer the highest standards of continuing medical education.

I am proud of the accomplishments of the Institute already and I am confident that the Institute will continue to accomplish its goals of providing quality continuing medical education programs to Montana's medical community.●

RETIREMENT OF ROBBIE CALLAWAY

● Mr. HATCH. Mr. President, after 23 years of extraordinary service to America's young people, Robbie Callaway, senior vice president of government relations at the Boys & Girls Clubs of America, is moving on. Robbie's dedication to positive change and helping others has been truly inspiring. He has been a magnificent advocate for children and for the Boys & Girls Clubs in Utah and all over the country.

Robbie's untiring commitment to youth and disadvantaged communities goes back much further and encompasses much more than just his time with the Boys & Girls Clubs of America. Beginning as a juvenile justice advocate at the National Youth Work Alliance, Robbie rose to be the executive director of that coalition of community based youth service agencies. In 1982, he cofounded the National Center for Missing and Exploited Children and continues to serve on its board of directors. He also recently assisted the Cal Ripken, Sr. Foundation in bringing baseball, America's pastime, to underprivileged children. In all of these endeavors, Robbie has left an ongoing legacy of hope and inspiration.

Today, there are probably only a handful of people in Congress who do not know Robbie Callaway. He played a pivotal role in the passage of national Amber Alert legislation. He has been instrumental in expanding both the resources and reach of the Boys & Girls Clubs of America, including increasing the number of clubs in public housing facilities and onto Indian reservations. Robbie Callaway's character, built on honesty and integrity, has earned him and the organizations he has served the trust of Congress.

Although Robbie is leaving his position with the Boys & Girls Clubs, his passion for helping others remains. In his new career, he will join with a dedicated group of individuals pursuing a cure for cancer. Having witnessed Robbie's determination, I believe he can succeed.

It was a pleasure to work with Robbie Callaway and to help the Boys & Girls Clubs of America. We will miss Robbie's passion for children and for the Boys & Girls Clubs movement. I hope to work with him in his new pursuits, and I wish him great success and happiness, now and in the future.●

TRIBUTE TO MR. ALAN NEWMAN, FOREST SUPERVISOR OF THE OUACHITA NATIONAL FOREST

● Mrs. LINCOLN. Mr. President, I rise today in tribute to Mr. Alan Newman, Forest Supervisor of the Ouachita National Forest, who will retire on January 3, 2006, after more than 32 years with the U.S. Forest Service. Prior to his 10 years of service to Ouachita National Forest, Alan worked as the Forest Supervisor and Deputy Forest Supervisor of the National Forests and Grasslands in Texas and has also served with the U.S. Forest Service in Wisconsin, Michigan, Tennessee, and Kentucky. He also served as a C–130 pilot in the Air Force for 5 years including 2 years of active duty in Vietnam.

Alan has been an asset to the Ouachita National Forest throughout his tenure as Forest Supervisor. He successfully led an effort to finalize the largest land exchange in the history of the U.S. Forest Service—the Arkansas/Oklahoma land exchange of 1996. Alan has also been extremely instrumental in the restoration of historic Camp Ouachita, a former Girl Scout Camp built by the Civilian Conservation Corps, CCC, and the Works Progress Administration, WPA, and listed on the National Historic Register. It is only through his strong commitment and leadership that Camp Ouachita is now available for public use. Restoration included restoring the Camp Ouachita lodge and facilities to usable condition, while adhering to national historic standards. Alan leaves a lasting legacy with the restoration of these structures.

In 2001, the Ouachita National Forest suffered tremendous damage due to an unprecedented ice storm. Alan led the forest through a major salvage sale program designed to restore ecological health to the forest. He has fostered strong, positive working relationships with a variety of partners across Arkansas and Oklahoma. Recently, the Ouachita National Forest Plan was successfully completed in record time and with significant public involvement.

Alan's work is testament to his commitment to natural resource management. He leaves the 1.8 million acres of the Ouachita National Forest in extremely good condition. I appreciate Alan's commitment and dedication and wish him and his family well in retirement.●

UNO MAVS WIN NCAA DIVISION II NATIONAL WOMEN'S SOCCER TITLE

● Mr. NELSON of Nebraska. Mr. President, today I want to share with my colleagues that after 4 years of earning their way to the Final Four and into two national championship matches, the University of Nebraska-Omaha Mavericks women's soccer team won their first ever national title in Wichita Falls, TX.

In their season's first overtime match, Brandi Beale scored the game-winning shot to seal the Mavs' victory. The 2005 UNO women's soccer team is the first ever Nebraska soccer team to win a national title. Meghan Pile, a senior who has played in all four final fours said it best with her statement, ''It's the only way to go out.''

The team is ecstatic over their victory, and so am I. On behalf of all Nebraskans and myself, I want to congratulate these women and the coaching staff for their enormous success.●

HONORING VINE DELORIA JR.

● Mr. SALAZAR. Mr. President, I rise to honor and celebrate the remarkable life and legacy of Vine Deloria, one of the most influential American Indian people of our time, who through his writings and activism reframed the social debate about the identity of Native American people.

Deloria was born in South Dakota in 1933 to a distinguished Yankton Sioux family. He served in the Marines and graduated from Iowa State University. He earned a master's degree from the Lutheran School of Theology in Chicago, initially planning to become a minister. He then went on to earn a law degree from CU in 1970. He is survived by his wife of 47 years, Barbara; two sons, Philip and Daniel; a daughter, Jeanne Deloria; a brother, Philip; a sister, Barbara Sanchez; and seven grandchildren.

Deloria began his writing and advocacy work as executive director of the National Congress of American Indians, NCAI, in 1964. The 1960s were a crucial era for American Indians, as their community leaders worked together to combat the cumulative legacy of desperate economic conditions, political disenfranchisement, and religious repression on the reservations. While at NCAI, he challenged the century-old Federal assimilation policies of termination and relocation, and helped set the foundation for the American Indian civil rights movement in the late 1960s and early 1970s. His leadership at NCAI marked a turning point in American Indian policy.

Mr. Deloria opened the Nation's eyes both to wrongs it had wrought on American Indian people and to the solutions available to mend the disparities. Among the many areas of American Indian policy issues that he influenced, he helped to craft the American Indian Religious Freedom Act, the Indian Self-Governance Act, and the Native American Graves Protection and Repatriation Act.

His political passion also drove him to write the transformative 1969 book ''Custer Died for Your Sins,'' which helped frame the modern debate about

the boundaries of sovereignty for modern Indian nations. The book also challenged the Federal Government's unjust treatment of our Nation's tribal governments. When academic critics challenged his intellect and sophistication, he responded by writing ''The Metaphysics of Modern Existence.'' A lively discussion with Vine was an invigorating and thought-provoking sport enriched by his extraordinary and pointed sense of humor.

Deloria taught history at the University of Arizona from 1978 to 1990 and then at the University of Colorado, where he taught until his retirement in 2000.

In 2002, Deloria received the Wallace Stegner Award, the highest honor presented by CU-Boulder's Center for the American West. The inscription on Deloria's award, given to people who have made a sustained contribution to the cultural identity of the West, reads as follows:

Always grounded in the stories told by plains and ridges of your Sioux homeland, and guided by your vision of tribal sovereignty, you have become a hero for the ages in Indian country and far beyond, you have changed the West and the world through your activism during the termination crisis, your spirited leadership ever since, your vast and influential writings, and your encompassing mind and matchless courage.

I rise today on the floor of the Senate to honor and celebrate the life's work of Vine Deloria, Jr. We are a better, stronger people for having been blessed with his wisdom.●

TRIBUTE TO DR. PHILLIP A. SINGERMAN

● Mr. SARBANES. Mr. President, I rise today to congratulate Dr. Phillip A Singerman on his very successful tenure as executive director of the Maryland Technology Development Corporation (TEDCO). Dr. Singerman recently announced his intention to step down from this position at the end of the year.

The Maryland General Assembly created TEDCO in 1999 as a quasi-State investment corporation to facilitate business growth and foster technology transfer. When Dr. Singerman came from the U.S. Department of Commerce to lead TEDCO in 1999, its budget was approximately $650,000. Since Dr. Singerman began, TEDCO's assets have increased nearly ten fold. Through Dr. Singerman's leadership and drive, TEDCO created innovative partnerships between Maryland's large and growing high-tech Federal sector and start-up businesses that allowed the private sector to harness and grow applications for the cutting-edge technologies developed by the Federal Government. This work has also allowed Maryland businesses to work with the Federal Government to ''spin-in'' technology—connecting the best of the private sector's technology expertise to our Federal sector on behalf of our national interest.

Through these and other efforts, TEDCO has gained a national reputation. For the last 2 years, it has been recognized by Entrepreneur Magazine as the leading backer of seed and early stage companies in the country. In fact, TEDCO's investments have been so successful that a company receiving its seed funding now typically receives 25 times that initial amount from other venture capital firms and the Federal Government over the following 3 years. In short, Dr. Singerman has done a tremendous amount to bolster Maryland's preeminent role as a national center of excellence for high technology innovation. As Richard C. ''Mike'' Lewin, former head of the Maryland Department of Business and Economic Development put it in a recent Baltimore Sun article: ''[h]e made TEDCO from scratch what it is today, the most effective technology development operation in the country.''

Mr. President, I am proud to have worked with Dr. Singerman over the last 6 years. His contribution to the State of Maryland and to our Nation cannot be overstated, and I wish him the very best in all of his future endeavors. I ask unanimous consent to have printed in the RECORD the entire Baltimore Sun article about Dr. Singerman's tenure as executive director of TEDCO quoted above.

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

[From the Baltimore Sun, Dec. 14, 2005]

MD. TECH AGENCY'S DIRECTOR RESIGNS

(By Tricia Bishop and David Nitkin)

Phillip A. Singerman, who guided a quasi-state technology development agency from the dot-com bust into the era of homeland security-related startups, has resigned as its executive director.

In his six years leading the Maryland Technology Development Corp., the former assistant secretary of the U.S. Commerce Department in the Clinton administration helped TEDCO support tech companies with everything from promotion to venture capital. TEDCO is considered one of the top early-stage investors in the country.

''TEDCO's programs have now proven their effectiveness, the organization has achieved a new level of stability, and a competent and energetic staff has been put in place,'' Singerman wrote in a letter he submitted Monday to the agency's board of directors.

''The organizational tasks now facing TEDCO are more administrative and less, entrepreneurial. Therefore,'' he said, ''I believe the time is now appropriate for me to seek new professional challenges.''

Singerman, who was appointed to his post in August 1999 by Democratic Gov. Parris N. Glendening, did not return phone calls yesterday. His last day as executive director will be Dec. 31.

Renee M. Winsky, the group's deputy executive director, will likely step in to fill the position on an interim basis after that, although a formal announcement has yet to be made.

Because Singerman was well-respected, some of those disappointed by the resignation saw it as the result of political pressure. However, unlike, other recent turnovers at state agencies, the immediate reaction was muted.

The Maryland General Assembly created the organization in 1998, with the dot-com boom in full flower and bright kids with big ideas becoming instant millionaires. TEDCO was given the job of moving technology being developed within the state's universities and federal laboratories into the commercial world.

''It doesn't happen through osmosis. There has to be an organization that is intensely focused on making it happen,'' said Penny Lewandowski, an executive with the Edward Lowe Foundation in Michigan and a former executive director of the Greater Baltimore Technology Council. She was among the first people Singerman met when he took the TEDCO post.

''He had a real understanding of the mission and what they set out to do,'' Lewandowski said. ''For somebody, to be able to pull out these companies and give them the help that they needed and really put them on the map something that we hadn't seen before.''

Several TEDCO board members expressed, surprise at Singerman's resignation, although talks had been going on as to how the seven-year-old group could best progress.

''I think [TEDCO] has done an excellent job of getting us to what I will call the first phase of this commercialization effort,'' said Aris Melissaratos, secretary of the Department of Business and Economic Development, which oversees TEDCO. ''The challenge is to take it to the next level. I've been having strategic discussions with the board over the last couple of years of how do we do that.''

Part of those discussions centered on whether Singerman's contract would be renewed.

''I'm always looking for the next superstar to pop in. I don't think these government jobs should be forever,'' said Melissaratos, who is a member of TEDCO's board of directors. ''I like Phil because he's a good guy. He did a super job. Again, even though he did a super job, I wouldn't mind finding a way to get the organization to the next level, and I've been talking to Phillip about that continuously.''

Del. Kumar P. Barve, a Montgomery County Democrat who was a lead sponsor of the legislation that created the technology investment agency, said Singerman was expecting to be replaced by Gov. Robert L. Ehrlich Jr.'s administration.

State Board of Elections records show that Singerman contributed $950 in donations to former Lt. Gov. Kathleen Kennedy Townsend between December 2000 and July 2002, months before she lost the election for governor to Ehrlich. Singerman gave, $250 to Ehrlich last year.

Singerman ''has pretty uniformly gotten positive reviews. But the governor wants to put his guy in charge, which is technically his right to do,'' said Barve, who is the House Democratic leader and a frequent critic of Ehrlich. ''Phil was expecting to be replaced, and I'm sure that was part of his motivation for leaving. Who wants to get fired?''

Melissaratos and other board members, however, said, politics didn't push out Singerman.

''In no sense, in my view, should it be implied that Phillip was somehow forced out. He resigned his position in his own volition. People were trying to convince him—[board chairman] Frank [Adams] was trying to convince him—to stay,'' said Theodore O. Poehler, vice provost of research at the Johns Hopkins University and vice chairman of TEDCO's.

On Monday, Singerman gave his resignation to Adams, who said he reluctantly accepted it.

''When he finally told me what his reasons were, my first inclination was to talk him out of it. But as I listened carefully, it became clear as one would expect of Phillip, that he had thought this through very carefully,'' said Adams, who is also president and chief executive of Grotech Capital Group, a venture capital firm based in Timonium.

''He likened himself to an entrepreneur with a startup company. He'd gotten it off the ground, gotten it to the point where it's very stable,'' said Adams, who believes Singerman thought the time right to bring in more of a manager-type executive director to ''free him up for another endeavor.''

In 1999, Singerman was lured away from the U.S. Commerce Department, where he directed the Economic Development Administration and its $400 million budget, to become the, first executive director of TEDCO, with its seed budget of about $650,000. Last fiscal year, TEDCO's budget had grown to about $5.5 million.

Landing Singerman was considered a coup at the time. He has a bachelor's degree from Oberlin College and a master's and doctorate from Yale University, experience in politics and lobbying and was a former chief executive of a technology center in Pennsylvania. He also had spent a couple of years in the Peace Corps; teaching villagers in the Colombian Andes about economic development.

''He made TEDCO from scratch what it is today, the most effective technology development operation in the country,'' said Richard C. ''Mike'' Lewin, a former head of the Department of Business and Economic Development and a member of the TEDCO board. ''This resignation is a real, and in my opinion, unnecessary, loss. It just didn't have to happen.''

Melissaratos said the board is trying to arrange a meeting Monday to discuss how to best find a replacement for Singerman and is likely to approve deputy executive director Winsky as interim director.

''Whenever you have an organizational upheaval like this, the smart thing to do is step back and not rush into anything,'' said Adams, the chairman. ''[I hope] to find a person who can come in with fresh eyes and say, 'You could be this' or 'You could be that' and excite the board with a new sense of vitality. That's the [silver] lining in this dark cloud.''●

MESSAGE FROM THE HOUSE

At 9:03 a.m., a message from the House of Representatives, delivered by Ms. Niland, announced that the House has passed the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 275. Concurrent resolution expressing the sense of Congress regarding the education curriculum in the Kingdom of Saudi Arabia.

H. Con. Res. 284. Concurrent resolution expressing the sense of Congress with respect to the 2005 presidential and parliamentary elections in Egypt.

H. Con. Res. 326. Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred Ninth Congress.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1287. An act to designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building''.

H.R. 2099. An act to establish the Arabia Mountain Heritage Area, and for other purposes.

H.R. 3179. An act to reauthorize and amend the Junior Duck Stamp Conservation and Design Program Act of 1994.

H.R. 4000. An act to authorize the Secretary of the Interior to revise certain repayment contract with the Bostwick Irrigation District of Nebraska, the Kansas Bostwick Irrigation District N. 2, the Frenchmans-Cambridge Irrigation District, and the Webster Irrigation District No.4, all a part of the Pick-Sloan Missouri Basin Program, and for other purposes.

H.R. 4108. An act to designate the facility of the United States Postal Service located at 3000 Homewood Avenue in Baltimore, Maryland, as the ''State Senator Verda Welcome and Dr. Henry Welcome Post Office Building''.

H.R. 4109. An act to designate the facility of the United States Postal Service located at 6101 Liberty Road in Baltimore, Maryland, as the ''United States Representative Parren J. Mitchell Post Office''.

H.R. 4246. An act to designate the facility of the United States Postal Service located at 8135 Forest Lane in Dallas, Texas, as the ''Dr. Robert E. Price Post Office Building''.

H.R. 4510. An act to direct the Joint Committee on the Library to accept the donation of a bust depicting Sojourner Truth and to display the bust in a suitable location in the Capitol.

H.R. 4515. An act to designate the facility of the United States Postal Service located at 4422 West Sciota Street in Scio, New York, as the ''Corporal Jason L. Dunham Post Office''.

H.R. 4635. An act to reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2006, and for other purposes.

H.R. 4636. An act to enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

H.R. 4637. An act to make certain technical corrections in amendments made by the Energy Policy Act of 2005.

The message also announced that the House has passed the bill (S. 205) to authorize the American Battle Monuments Commission to establish in the State of Lousiana a memorial to honor the Buffalo soldiers, without amendment.

The message further announced that the House has passed the bill (S. 652) to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin, without amendment.

The message also announced that the House has passed the bill (S. 1238) to amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that protect forests, and for other purposes, without amendment.

The message further announced that the House has passed the bill (S. 1310) to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the diameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area, to allow certain commercial vehicles to continue to use Route 209 within Delaware Water Gap National Recreation Area, and to extend the termination date of the National Park System Advisory Board to January 1, 2007, without amendment.

The message also announced that the House has passed the bill (S. 1481) to amend the Indian Land Consolidation Act to provide for probate reform, without amendment.

The message further announced that the House has passed the bill (S. 1892) to amend Public Law 107–153 to modify a certain date, without amendment.

The message also announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

The message further announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

The message also announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1815) to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 467. An act to extend the applicability of the Terrorism Risk Insurance Act of 2002.

H.R. 358. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the desegregation of the Little Rock Central High School in Little Rock, Arkansas, and for other purposes.

H.R. 797. An act to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians.

H.R. 2520. An act to provide for the collection and maintenance of human cord blood stem cells for the treatment of patients and research, and to amend the Public Health Service Act to authorize the C.W. Bill Young Cell Transplantation Program.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 19, 2005, she had presented to the President of the United States the following enrolled bill:

S. 467. An act to extend the applicability of the Terrorism Risk Insurance Act of 2002.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5060. A communication from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to U.S. military personnel and U.S. individual civilians retained as contractors involved in the anti-narcotics campaign in Colombia; to the Committee on Foreign Relations.

EC–5061. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of major defense equipment and defense articles in the amount of $100,000,000 or more to Italy; to the Committee on Foreign Relations.

EC–5062. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report concerning an amendment to Part 126 of the International Traffic in Arms Regulations (ITAR) to reflect clarifications of coverage for the Canadian exemption; to the Committee on Foreign Relations.

EC–5063. A communication from the Secretary, Department of Agriculture, transmitting, a report of draft legislation to authorize improvements to the National Natural Resources Conservation Foundation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5064. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled ''Organization and Functions; Releasing Information; Privacy Act Regulations; Farm Credit Administration Board Meetings; and Enforcement on Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration'' (RIN3052–AB82) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5065. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bifenazate; Pesticide Tolerances for Emergency Exemptions'' (FRL7746–5) received on December 16, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5066. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Karnal Bunt; Addition and Removal of Regulated Areas in Arizona'' (Doc. No. 05–078–1) received on December 16, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5067. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Milk in the Arizona-Las Vegas Marketing Area—Final Order'' (Docket No. DA–03–04–A; AO–271–A37) received on December 05, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5068. A communication from the General Counsel, Office of Compliance, transmitting, pursuant to law, the General Counsel's Report on Americans with Disabilities Act inspections conducted during the 108th Congress; to the Committee on Health, Education, Labor, and Pensions.

EC–5069. A communication from the General Counsel, Office of Compliance, transmitting, pursuant to law, the General Counsel's Report on Occupational Safety and Health Inspections for the 108th Congress; to the Committee on Health, Education, Labor, and Pensions.

EC–5070. A communication from the Acting Director, Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, a report relative to the Federal Managers Financial Integrity Act (FMFIA) for fiscal year 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–5071. A communication from the Acting Director, Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Tennessee as a result of the emergency conditions resulting from the influx of evacuees from areas struck by Hurricane Katrina beginning on August 29, 2005, and continuing, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5072. A communication from the Acting Director, Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, a report that funding for the State of Colorado as a result of the emergency conditions resulting from the influx of evacuees from areas struck by Hurricane Katrina beginning on August 29, 2005, and continuing, has exceeded $5,000,000; to the Committee on Banking, Housing, and Urban Affairs.

EC–5073. A communication from the General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Community Disaster Loan Program'' (RIN1660–AA44) received on December 16, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–5074. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Independent Audits and Reporting Requirements (12 CFR Part 363)'' (RIN3064–AC91) received on December 16, 2005; to the Committee on Banking, Housing, and Urban Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–222. A resolution adopted by the Senate of the Legislature of the State of Louisiana relative to adopting legislation that would provide funding through the Department of Housing and Urban Development in the form of Community Development Block Grants to investor owned utilities for the restoration of electric and gas service damaged by Hurricanes Katrina and Rita; to the Committee on Banking, Housing, and Urban Affairs.

SENATE RESOLUTION NO. 13

Whereas, on August 29, 2005, Hurricane Katrina, a category four storm with sustained winds of one hundred and forty miles per hour came ashore in Plaquemines Parish, Louisiana, near Buras, causing unprecedented flooding and devastation in southeastern Louisiana, including the breach of the levee system and floodwalls of the city of New Orleans, the death of more than a thousand state residents, the displacement and evacuation of hundreds of thousands more, and the widespread loss and destruction of businesses and property; and

Whereas, on September 24, 2005, Hurricane Rita, a category three storm with sustained winds of one hundred and twenty-five miles per hour came ashore near the Louisiana/Texas border, causing unprecedented flooding and devastation in southwestern Louisiana and southeastern Texas, and the widespread loss and destruction of life and property; and

Whereas, Entergy Corporation (Entergy), through its subsidiaries Entergy Louisiana (ELI), Entergy Gulf States (EGS), and Entergy New Orleans (ENO), is Louisiana's largest electric and gas utility, and the resulting wind and flooding of Hurricane Katrina significantly damaged major portions of Entergy's utility infrastructure; and

Whereas, in the aftermath of the disaster, Entergy and others worked rapidly to provide emergency and temporary services and is currently working to restore permanent service to all customers in its service territory; and

Whereas, Entergy estimates that the total restoration costs for the repair and/or replacement of Entergy's electric and gas facilities damaged by hurricanes Katrina and Rita and business continuity costs are estimated to be in the range of $1.1 to $1.4 billion; with the costs to Entergy New Orleans alone to repair its utility infrastructure exceeding four hundred million dollars, not including potential incremental losses; and

Whereas, safe and reliable electric and gas utility service is vital to the state's post-hurricane recovery efforts, and the state of Louisiana deems it essential to keep Entergy and its subsidiaries as productive and financially viable companies providing safe and reliable electric and gas utility service to the residents and businesses of Louisiana; and

Whereas, the legislature is committed to the protection of Entergy's residential and business customers from the tremendous costs associated with the necessary rebuilding efforts and in assisting Entergy and its subsidiaries, particularly Entergy New Orleans, in regaining their financial strength and stability so that they will be able to continue providing safe, and reliable service to their customers; and

Whereas, following the terrorist attacks of September 11, 2001, which caused catastrophic destruction of life and property, loss of an untold number of jobs, and the displacement of many individuals and businesses, the legislature notes that billions of dollars in funds and other forms of essential assistance was provided to the state of New York, and New York City by the federal government; and

Whereas, the state of Louisiana has suffered similar, if not greater, human and economic losses as a result of hurricanes Katrina and Rita, resulting in devastating loss of life, damage to businesses and property, and destruction of much of Entergy's utility infrastructure in Louisiana; and

Whereas, the legislature notes that Congress, in Public Law 107–206, passed on August 2, 2002, authorized the United States Department of Housing and Urban Development to provide seven hundred and eighty-three million dollars in disaster assistance for damaged properties and businesses, including the restoration of utility infrastructure, and for economic revitalization directly related to the September 11 attacks. Therefore, be it

Resolved, That the Legislature of Louisiana hereby memorializes the Congress of the

United States to take all measures necessary to provide federal financial assistance to aid in rebuilding the investor-owned utility systems that are indispensable to the recovery efforts of the state of Louisiana and the city of New Orleans; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–223. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to increasing the coverage limit for a single-family structure under the National Flood Insurance Program from two hundred fifty thousand dollars to five hundred thousand dollars; to the Committee on Banking, Housing, and Urban Affairs.

HOUSE CONCURRENT RESOLUTION NO. 23

Whereas, the National Flood Insurance Program (NFIP), administered by Federal Emergency Management Agency (FEMA), makes federally backed flood insurance available in communities that adopt and enforce floodplain management ordinances to reduce further flood losses; and

Whereas, flood damage, unlike wind damage, is not covered by homeowners' insurance policies but must be purchased separately; and

Whereas, flood insurance may be purchased through insurance companies and licensed insurance agents; and

Whereas, the maximum coverage amount for a single-family structure under NFIP is two hundred fifty thousand dollars; and

Whereas, Hurricanes Katrina and Rita struck the state of Louisiana causing unprecedented and severe flooding and damage to the southern part of the state, devastating the lives of many citizens of the state, and causing damage or destruction of their property; and

Whereas, a substantial number of those single-family structures which suffered damage or destruction from these recent hurricanes are valued well in excess of two hundred fifty thousand dollars, creating a severe gap between coverage limits and the cost of repairing or replacing such homes. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to increase the coverage limit for a single-family structure under NFIP from two hundred fifty thousand dollars to five hundred thousand dollars; and be it further

Resolved, that a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–224. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to forgive the 3.7 billion dollars that the Federal Emergency Management Agency (FEMA) estimates that Louisiana owes FEMA for hurricane relief; to the Committee on Banking, Housing, and Urban Affairs.

HOUSE CONCURRENT RESOLUTION NO. 49

Whereas, the Federal Emergency Management Agency (FEMA) has estimated that the state's cost for Hurricanes Katrina and Rita amount to 3.7 billion dollars; and

Whereas, Governor Kathleen Blanco has expressed her intention to seek to have this amount reduced, as it far exceeds any expectation of how much the state would be required to pay for hurricane relief; and

Whereas, Hurricane Katrina has been called the most destructive and costliest natural disaster in the history of the nation, a burden no state has ever had to bear, negatively impacting the state's economy and the earning power of the state's citizens and businesses in countless ways; and

Whereas, even as the state faces this almost insurmountable challenge, FEMA has presented the state with a bill of proportions such as no state has ever faced, and it is a financial burden that Louisiana is not equipped to handle; and

Whereas, Louisiana is already facing a tremendous budget shortfall that renders it incapable of repaying this staggering amount of debt; and

Whereas, the United States government has generously provided a great deal of money to other countries, many of whose debts have been forgiven, and it seems unjust to forgive the debts of other countries but not the debt of taxpaying American citizens; and

Whereas, in light of how this cost would greatly hinder the state's efforts towards economic recovery, it is appropriate that Congress enact legislation to forgive Louisiana's debt incurred by Hurricanes Katrina and Rita. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to forgive the 3.7 billion dollars that the Federal Emergency Management Agency (FEMA) estimates that Louisiana owes to FEMA for hurricane relief; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–225. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to create a national wind insurance program to be combined with the National Flood Insurance Program in order to create a national catastrophe insurance program; to the Committee on Banking, Housing, and Urban Affairs.

HOUSE CONCURRENT RESOLUTION NO. 4

Whereas, Congress created the National Flood Insurance Program (NFIP) in 1968 in response to the rising cost of taxpayer-funded disaster relief for flood victims and the increasing amount of damage caused by floods; and

Whereas, in the wake of the widespread damage and devastation caused by recent hurricanes, it is only appropriate that Congress consider a similar program that would also provide wind insurance; and

Whereas, when claim issues are addressed following a hurricane, the separation of damages between wind coverage and flood coverage is potentially contentious and difficult to resolve; and

Whereas, homeowners in areas that have been stricken by hurricanes face the possibility of being dropped by their homeowners' insurance companies and being unable to obtain future coverage to protect them in the case of future disasters; and

Whereas, it would be in the best interest of citizens living in storm-prone areas to have the opportunity to participate in a federal catastrophe insurance program. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to create a national wind insurance program to be combined with the National Flood Insurance Program in order to create a national catastrophe insurance program; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–226. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to the hydrogen shortage caused by Hurricane Katrina; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION NO. 169

Whereas, There are several factories located within the area devastated by Hurricane Katrina that produce hydrogen; and

Whereas, The aftermath of the hurricane has caused those factories to shut down and has triggered a hydrogen shortage; and

Whereas, The hydrogen shortage is having a substantial negative impact on the metal industry in the Commonwealth of Pennsylvania and throughout the United States, which industry relies on hydrogen for its manufacturing processes; and

Whereas, The hydrogen shortage in the United States needs to be addressed by the Congress of the United States. Therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania urge the Congress of the United States to take appropriate action to address the hydrogen shortage in the United States due to factory shutdowns caused by the devastation of Hurricane Katrina; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–227. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to urging the Great Lakes Regional Collaboration and the United States Congress to implement the Action Plan to Restore and Protect the Great Lakes; to the Committee on Energy and Natural Resources.

SENATE RESOLUTION NO. 84

Whereas, Over 40 percent of the Great Lakes are under Michigan's jurisdiction and the Great Lakes contain 95 percent of North America's fresh surface water; and

Whereas, The Great Lakes affect all aspects of life in Michigan and are inextricably linked to Michigan's history, culture, and economy. The Great Lakes have for thousands of years supported native communities' culture and way of life; and

Whereas, The Great Lakes fuel Michigan's tourism and recreation industry. Recreational fishing alone adds $1.4 billion annually to the state's economy; and

Whereas, The state of Michigan has historically been a leader in protecting the Great Lakes, including efforts to regulate ballast water discharges that could harbor invasive species and to eliminate the disposal of dangerous contaminants in the Great Lakes; and

Whereas, Despite Michigan's efforts, the Great Lakes are ailing from a multitude of stressors, including aquatic invasive species, toxic contamination of river and lake sediments, partially or inadequately treated sewage discharges, pollution from nonpoint sources, and coastal habitat loss. Combined, these stressors will have long-lasting effects on the Great Lakes, Michigan's economy, and our way of life; and

Whereas, There has been an unprecedented collaborative effort on the part of 1,500 people representing federal, state, and local governments, Native American tribes, nongovernmental entities, and private citizens

to develop an Action Plan to Restore and Protect the Great Lakes; and

Whereas, Implementation of the Action Plan can restore the ecology of the Great Lakes and avert impending environmental threats to the region; and

Whereas, A recent report by the federal Great Lakes Interagency Task Force has, at the eleventh hour, attempted to change the rules that the Regional Collaboration operated under by recommending that the strategy be constrained by current budget projections; and

Whereas, The action plan previously developed through the Regional Collaboration includes recommendations that call on the states and federal government to take substantial new steps jointly in the restoration and protection of the Great Lakes; now, therefore, be it

Resolved by the Senate, That we urge the Great Lakes Regional Collaboration and the United States Congress to take prompt action to finalize, endorse, implement, and invest in the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That we urge the United States Congress to adopt legislation to implement and fully invest in the Action Plan; and be it further

Resolved, That we intend for the state of Michigan to continue its proud tradition of Great Lakes stewardship and fulfill its commitment to restoring the Great Lakes by taking substantial steps and, whenever practical, match federal funding to implement the Action Plan to Restore and Protect the Great Lakes; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, the Great Lakes Commission, the Great Lakes Legislative Caucus, the International Joint Commission, the Great Lakes Fishery Commission, the Michigan Office of the Great Lakes, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources.

POM–228. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to extending Louisiana's seaward boundary in the Gulf of Mexico to twelve geographical miles; to the Committee on Energy and Natural Resources.

SENATE CONCURRENT RESOLUTION NO. 8

Whereas, Louisiana's seaward boundary in the Gulf of Mexico has been judicially determined to be three geographical miles and the United States has jurisdiction past the three geographical miles; and

Whereas, Congress has the power to amend the Submerged Lands Act of 1953 to allow for the recognition that Louisiana's seaward boundary extends twelve geographical miles into the Gulf of Mexico; and

Whereas, Louisiana acts as a significant energy corridor vital to the entire United States and provides intersections of oil and natural gas intrastate and interstate pipeline networks which serve as reference for futures markets, such as the Henry Hub for natural gas, the St. James Louisiana Light Sweet Crude Oil, and the Mars Sour Crude Oil contracts; and

Whereas, Louisiana provides storage for the nation's Strategic Petroleum Reserve and is the home of the nation's major import terminal for foreign oil, known as the Louisiana Offshore Oil Port; and

Whereas, Louisiana and its coastal wetlands provide access to nearly thirty-four percent of the U.S. natural gas supply and nearly twenty-nine percent of the U.S. oil supply; and

Whereas, the United States' economic growth depends on access to stable supplies of oil and natural gas; and

Whereas, Louisiana ranks first in crude oil production, including the outer continental shelf production, and ranks second in natural gas production, including the outer continental shelf production; and

Whereas, in 2001, the state of Louisiana received only one-half of one percent of the federal oil and gas revenues off its coast; and

Whereas, hurricanes Katrina and Rita have shown that the loss of vital oil and gas infrastructure in Louisiana and the Gulf of Mexico has an immediate and direct impact upon the economy and well-being of the entire country and its citizens; and

Whereas, the hurricanes have shut-in approximately fifty-three percent of the daily oil production in the Gulf of Mexico, and shut-in approximately forty-seven percent of the daily gas production in the Gulf of Mexico; and

Whereas, for the time period of August 26, 2005, through November 3, 2005, the cumulative shut-in of oil production is approximately fourteen percent of the yearly oil production in the Gulf of Mexico, and the cumulative shut-in of gas production is approximately eleven percent of the yearly gas production in the Gulf of Mexico; and

Whereas, due to hurricanes Katrina and Rita, Louisiana has suffered loss of life and tremendous devastation to its economy, its citizens, infrastructure, and coastal landscape; and

Whereas, Louisiana's Revenue Estimating Conference estimates the budget shortfall to be approximately nine hundred seventy million dollars, and the loss of fees and self-generated revenue could increase the shortfall to one billion five hundred million dollars; and

Whereas, the governor of Louisiana has reduced state agency spending by five hundred million dollars; and

Whereas, the state has provided ten million dollars from our Rapid Response Fund for short-term, interest-free loans to struggling businesses, and granted the full Interim Emergency Fund in the amount of sixteen million dollars to local governments in order for the governments' vital services to operate; and

Whereas, Louisiana has paid out approximately three hundred million dollars in unemployment benefits to hurricane affected employees; and

Whereas, Louisiana has established a Rainy Day Fund that is worth approximately four hundred sixty million dollars, and the state is in the process of using at least one-third of this fund to balance the state budget; and

Whereas, in this special session the Louisiana legislature along with the governor are considering other options for balancing the budget, increasing revenues, and funding the massive clean-up, rebuilding, and restoration of southern Louisiana; and

Whereas, hurricanes Katrina and Rita turned approximately one hundred square miles of southeast Louisiana coastal wetlands into open water, and destroyed more wetlands east of the Mississippi River in one month than experts estimated to be lost in over forty-five years; and

Whereas, monies are desperately needed to fund the state's clean-up, rebuilding, and restoration of southern Louisiana; and

Whereas, the state of Louisiana and its citizens are in a financial crisis; and

Whereas, in order to rebuild the state of Louisiana and protect its citizens, the state needs a significant, consistent and ongoing stream of revenue; and

Whereas, the extension of Louisiana's seaward boundary into the Gulf of Mexico for twelve geographical miles will provide such stream of revenue. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to extend Louisiana's seaward boundary in the Gulf of Mexico to twelve geographical miles; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–229. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to allow the Stafford Act to provide for payment of regular pay to essential personnel; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 28

Whereas, Hurricanes Katrina and Rita struck the state of Louisiana causing severe flooding and damage to the southern region of the state; and

Whereas, the flooding and damage have adversely affected the state and local government's fiscal budget; and

Whereas, this effect is having a direct impact on their ability to continue to pay their essential staff; and

Whereas, the employment of essential staff is necessary for the effectual running of their everyday governmental operations as well as those duties which have occurred as a result of these natural disasters; and

Whereas, the Stafford Act provides an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage resulting from Hurricanes Katrina and Rita by assisting with the payment of overtime pay. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as necessary whereby the Stafford Act will allow the payment of regular pay to essential staff; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–230. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to directing the United States Army Corps of Engineers not to engage in dredging activities on the Mississippi River Gulf Outlet and to begin the necessary process to return the waterway to wetlands marsh status; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 34

Whereas, the Mississippi River Gulf Outlet (MRGO), a seventy-six-mile, manmade navigational channel which connects the Gulf of Mexico to the Port of New Orleans along the Mississippi River, was authorized by the United States Congress under the Rivers and Harbors Act of 1956 as a channel with a surface width of six hundred fifty feet, a bottom width of five hundred feet, and a depth of thirty-six feet, and it opened in 1965; and

Whereas, MRGO, which bisects the coastal marshes of St. Bernard Parish and the Chandeleur Sound, was constructed for navigational and economic purposes as a shorter route than the Mississippi River and as an

engine of industrial development for St. Bernard Parish and the city of New Orleans; and

Whereas, since MRGO was completed, the Army Corps of Engineers estimates that the area has lost nearly three thousand two hundred acres of fresh and intermediate marsh, more than ten thousand three hundred acres of brackish marsh, four thousand two hundred acres of saline marsh, and one thousand five hundred acres of cypress swamps and levee forests in addition to major habitat alterations due to saltwater intrusion from the loss of the marshes, which has resulted in dramatic declines in waterfowl and quadruped use of the marshes; and

Whereas, although the tradeoff for St. Bernard Parish's loss of marsh and habitat was anticipated to have been the resultant economic development, that development has not occurred in the forty years since MRGO opened for navigation; MRGO traffic comprises only three percent of the river traffic and is limited to only barge traffic and generally involves only four passages per day; and

Whereas, in addition to less than anticipated use of the channel, the costs of maintaining MRGO rises each year, with the cost of dredging now over twenty-five million dollars per year, or more than thirteen thousand dollars for each passage, in addition to the expenditure of millions for shoreline stabilization and marsh protection projects, with an anticipated cost increase of fifty-two percent between 1995 and 2005; and

Whereas, concerns about the environmental impact of the channel began prior to construction with other federal agencies expressing concern about hydrologic models predicting drastic salinity increases and associated loss of interior marsh, and those concerns have continued through the life of the project as indicated by the Louisiana Legislature getting involved as long ago as Senate Concurrent Resolution No. 207 of 1992 in which the legislature asked the Army Corps of Engineers to evaluate the adverse environmental impacts resulting from the operation of MRGO and to determine if there was federal interest in continuing to maintain and operate the channel; and

Whereas, concerns about the environmental impact increased through the years as evidenced by the fact that in 1998 the ''Coast 2050 Report'' contained closure of MRGO among the consensus recommendations, and the technical committee of the Coastal Wetland Planning, Preservation and Restoration Act Task Force listed closure as one of the highest-ranked strategies for coastal restoration; and

Whereas, with the waterway increasing from its original authorized dimensions to a surface width of twenty-two hundred feet and a depth of over forty feet, in 1998 the St. Bernard Police Jury voted unanimously to request closure of the waterway because of fears that the dramatic loss of coastal wetlands and marshes caused by MRGO exposed the parish and the communities in the parish to much more severe impacts from the hurricanes and tropical storms that regularly occur in the Gulf of Mexico; and

Whereas, those concerns were echoed and amplified by scientists, engineers, and citizens throughout the region as reflected in requests from the Louisiana Legislature to Congress in 1999 (SCR No. 266) and again in 2004 (HCR No. 35 and HCR No. 68) to close the waterway, and indeed, those concerns proved true in an extremely dramatic fashion on August 29, 2005, when Hurricane Katrina, a strong Category 5 hurricane, washed ashore on Louisiana's coast with a tidal surge well in excess of twenty feet; and

Whereas, there is a growing consensus that the flooding that occurred in St. Bernard Parish and the Lower Ninth Ward of New Orleans was a result of storm surge that flowed up the Mississippi River Gulf Outlet to the point where it converges with the Intracoastal Waterway and that the confluence created a funnel that directed the storm surges into the New Orleans Industrial Canal, where it overtopped the levees along MRGO and the Industrial Canal and eventually breached the levees and flooded into the neighborhoods that lie close to those three waterways, resulting in a yet uncounted number of deaths and rendering sixty-seven thousand residents of St. Bernard Parish and uncounted numbers in the Lower Ninth Ward of New Orleans homeless, without possessions, and unemployed; and

Whereas, only three weeks later, on September 24, 2005, storm waters from Hurricane Rita surged up the Mississippi River Gulf Outlet and caused additional flooding in St. Bernard Parish and the Lower Ninth Ward of New Orleans, exacerbating the traumatic losses in that area; and

Whereas, almost immediately after the two storm events, the United States Army Corps of Engineers indicated that it would seek funding to begin dredging MRGO to reestablish the forty-foot depth, which caused an enormous outcry of protest from the citizens and public officials from St. Bernard Parish and the Lower Ninth Ward of New Orleans, causing the Corps to postpone a decision as to what the next step would be for the Mississippi River Gulf Outlet; and

Whereas, the United States Army Corps of Engineers has stated that it has no authorization from congress to close the waterway or to make any attempt to return the coastal wetlands and marshes to their pre-waterway status or even to fill the waterway to allow for the development of marshes and wetlands. Therefore be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress and the Louisiana congressional delegation to suspend any current appropriations or authorizations for expenditure of funds to dredge the Mississippi River Gulf Outlet, to direct the United States Army Corps of Engineers not to engage in any dredging activities on the Mississippi River Gulf Outlet, and to begin the necessary process to return the waterway to wetlands marsh status as close as possible to what it was prior to establishment of the canal; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation and to the chairman of the Mississippi Valley Division of the United States Army Corps of Engineers.

POM–231. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to waive the nonfederal or local portion of any cost-sharing agreement for the funding of a levee reconstruction and improvement project; to the Committee on Environment and Public Works.

HOUSE CONCURRENT RESOLUTION NO. 36

Whereas, on August 29, 2005, and on September 24, 2005, Hurricanes Katrina and Rita, respectively, swept across southeastern Louisiana, demolishing homes, schools, and businesses, obliterating entire communities, and earning their place in history amid the most destructive natural disasters ever measured; and

Whereas, those charged with the mind-boggling task of rebuilding this storm-ravaged region must essentially begin from scratch, including reworking and improving the complex levee system that will protect the region and its inhabitants from future storms such as Hurricanes Katrina and Rita; and

Whereas, Hurricane Katrina, which measured as a Category 4 storm upon landfall, made painfully clear that it is not enough to rebuild and restore the battered levees to their pre-storm Category 3 level of hurricane protection; the economic recovery of this state depends upon the construction of improved levees that will be able to withstand stronger storms; and

Whereas, the building of a strong levee and flood protection system will require an enormous investment in the infrastructure of the region, but it will also entice businesses back to the region, reassure insurers that such a disaster will not happen again, and convince residents that they will be safe; and

Whereas, the strengthening of the levees is critical to the future economic development of the region, but the level of devastation brought about by Hurricanes Katrina and Rita has depleted local resources and has initiated a financial crisis that is only expected to intensify; under these circumstances the state and local governments are unable to meet their portion of the cost-sharing agreement for the funding of the levee improvement project; and

Whereas, in any cost-sharing agreement entered into for the completion of certain projects, including flood control or hurricane protection projects, 33 USC 2213 provides that congress may reduce or offer some other form of financial relief to the nonfederal interest relative to such cost-sharing agreements, upon a determination that the nonfederal interest is not financially able to render its portion of cost-sharing responsibilities. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to waive the nonfederal or local portion of any cost-sharing agreement relative to funding of projects for the reconstruction and improvement of the levee system; and be it further

Resolved, That a suitable copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–232. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to review and consideration of revising or eliminating provisions of law which reduce social security benefits for those receiving benefits from the federal, state, or local government retirement systems; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 22

Whereas, the Congress of the United States has enacted both the Government Pension Offset (GPO), reducing the spousal and survivor social security benefit and the Windfall Elimination Provision (WEP), reducing the earned social security benefit for persons who also receive federal, state, or local retirement; and

Whereas, the intent of Congress in enacting the GPO and the WEP provisions was to address concerns that a public employee who had worked primarily in federal, state, and local government employment might receive a public pension in addition to the same social security benefit as a worker who had worked only in employment covered by social security throughout his career; and

Whereas, the purpose of Congress in enacting these reduction provisions was to provide a disincentive for public employees to receive two pensions; and

Whereas, the GPO negatively affects a spouse or survivor receiving federal, state, or

local government retirement benefits who would also be entitled to a social security benefit earned by a spouse; and

Whereas, the GPO formula reduces the spousal or survivor social security benefit by two-thirds of the amount of the federal, state, or local government retirement benefit received by the spouse or survivor, in many cases completely eliminating the social security benefit; and

Whereas, the WEP applies to those persons who have earned federal, state, or local government retirement benefits, in addition to working in covered employment and paying into the social security system; and

Whereas, the WEP reduces the earned social security benefit using an averaged indexed monthly earnings formula and may reduce social security benefits for such persons by as much as one-half of the uncovered public retirement benefits earned; and

Whereas, because of these calculation characteristics, the GPO and WEP have a disproportionately negative effect on employees working in lower-wage government jobs, like policemen, firefighters, teachers, and state employees; and

Whereas, these provisions also have a greater adverse effect on women than on men because of the gender differences in salary that continue to plague our Nation; and

Whereas, Louisiana is facing a herculean recovery effort which will likely require a reduction in the public workforce, requiring employees of the state and her political subdivisions to leave public service earlier than they perhaps otherwise would, further reducing the amount of money each will receive upon retirement; and

Whereas, Louisiana is making every effort to improve the quality of life of her citizens and to encourage them to live here life-long as a part of the rebuilding and revitalization of the state. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to review the GPO and WEP social security benefit reductions, and to consider amendments thereto that would lessen or eliminate their effects; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–233. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to providing financial assistance to the state necessary to maintain essential public services to the people of Louisiana following the devastation caused by Hurricanes Katrina and Rita; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 38

Whereas, while these events contributed to an immense loss of human life and property, the ramifications continue to affect every citizen of the state; and

Whereas, the destruction of business, industry, and infrastructure in these areas has severely reduced the state's revenue stream by over one-third; and

Whereas, the Revenue Estimating Conference projects next year's revenue forecast to show a deficit of nine hundred seventy million dollars, requiring massive budget reductions to comply with the state constitution that requires a balanced budget; and

Whereas, through executive order and legislative action, state government is making a coordinated effort to balance the budget; and

Whereas, this deficit of nearly one billion dollars severely curtails the ability of the state to provide essential public services in the areas of health care, education, and infrastructure; and

Whereas, the budget process demands debilitating cuts to higher education with a total reduction of over sixty-six million dollars of which sixty-one million dollars targets individual colleges and universities; and

Whereas, health care services such as Medicaid will lose four hundred million dollars in federal matching funds due to reductions in the state's budget, causing a total reduction in health care services for Medicaid eligibles and the uninsured of six hundred thirty-eight million dollars; and

Whereas, rebuilding state facilities carries a hefty price tag estimated at over two billion dollars; and

Whereas, the extent of the impact to self-generated revenue sources remains unclear at this time; and

Whereas, Louisiana, faced with such monumental budget cuts and slow economic recovery, may be unable to repay a staggering debt currently owed to the federal government in matching funds allegedly owed for certain FEMA assistance payments. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to provide financial assistance and extraordinary funding to Louisiana necessary to maintain essential public services during these unfortunate times of diminished revenues and staggering debt; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–234. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to encouraging the banking industry to assist senior citizens and disabled persons without identification due to Hurricanes Katrina and Rita with negotiating their Social Security Supplemental Security Income checks; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 47

Whereas, Hurricanes Katrina and Rita displaced thousands of Louisiana residents, destroyed their homes and lives, and took all of their personal belongings, including their identification; and

Whereas, senior citizens and disabled persons living in areas impacted by Hurricanes Katrina and Rita are in desperate need of their Social Security Supplemental Security Income checks to purchase basic needs of food, clothing, and shelter; and

Whereas, it has been problematic for senior citizens and disabled persons without identification due to Hurricanes Katrina and Rita to negotiate their Social Security Supplemental Security Income checks. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby urge and request congress to encourage the banking industry to assist senior citizens and I disabled persons without identification due to Hurricanes Katrina and Rita with negotiating their Social Security Supplemental Security Income checks; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–235. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to grant for distributions from DROP accounts to active state and local government employees who are members of public retirement systems similar tax relief as that provided to members of qualified retirement plans by the Katrina Emergency Tax Relief Act of 2005 and to permit such distributions from tax-qualified plans; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 15

Whereas, in response to the devastation of Hurricane Katrina and the terrible economic losses sustained by many citizens on the Gulf Coast, the United States Congress enacted the Katrina Emergency Tax Relief Act, referred to as KETRA, which granted several kinds of tax relief to Hurricane Katrina victims; and

Whereas, federal tax laws generally treat any distribution from a qualified retirement plan, a tax-sheltered annuity (403(b) annuity), an eligible deferred compensation plan maintained by a state or local government (governmental 457 plan), or an individual retirement arrangement (IRA) as income for the year distributed and provide penalties for early distributions from certain pension plans or funds in the form of a ten percent early withdrawal tax; and

Whereas, provisions of KETRA legislation include an exception to the ten percent early withdrawal tax in the case of a qualified Hurricane Katrina distribution from certain qualified retirement plans, a 403(b) annuity, or an IRA, and KETRA provides for income attributable to a qualified Hurricane Katrina distribution to be included in income ratably over three years and permits the amount of a qualified Hurricane Katrina distribution to be recontributed to an eligible retirement plan within three years; and

Whereas, provisions of KETRA do not apply to tax-qualified public retirement systems (401(a) plans) such as the state and statewide retirement systems, under which an employee's contributions are withheld from his pay and do not form a part of his taxable income; and

Whereas, many active employees of state and local governments in Louisiana are participating in or have completed participation in the deferred retirement option plan of their public retirement system, and such plans, referred to simply as ''DROP'', permit an employee who has reached employment eligibility to continue in employment but to ''retire'' and, instead of receiving his retirement benefit payments, to have such payments paid for up to three years into a designated account which is invested for him with a prohibition on receiving any payments from the account until he terminates employment; and

Whereas, just like those Hurricane Katrina victims who are permitted by KETRA to access pension funds without tax penalties in this time of dire financial need, many employees of Louisiana state and local governments who have accumulated funds in their DROP accounts truly need to access those funds to meet the costs of devastating economic losses; and

Whereas, the Louisiana Legislature is considering legislation to allow active employees who are participating in or have completed participation in DROP and who are domiciled in the Katrina core disaster area to receive distributions from their DROP accounts, but such distributions will be subject to tax penalties unless such public employees are granted similar tax relief to that provided for other pension system members by KETRA; and

Whereas, providing DROP participants the tax relief provided to members of other pension systems would be a fair and effective

way of assisting these public servants to deal with the impact Hurricane Katrina has had on their homes and families. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to grant for distributions from DROP accounts to active state and local government employees who are members of public retirement systems similar tax relief as that provided to members of qualified retirement plans by the Katrina Emergency Tax Relief Act of 2005 and to permit such distributions from tax-qualified plans; and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–236. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to grant to victims of Hurricane Rita similar tax relief as that provided by the Katrina Emergency Tax Relief Act of 2005, and to include distributions from DROP accounts to active state and local government employees who are members of public retirement systems and who are victims of Hurricane Katrina or Hurricane Rita as eligible retirement plan distributions, and to permit such distributions from tax-qualified plans; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 27

Whereas, in response to the devastation of Hurricane Katrina and the terrible economic losses sustained by many citizens on the Gulf Coast, the United States Congress enacted the Katrina Emergency Tax Relief Act, referred to as KETRA, which granted several kinds of tax relief to Hurricane Katrina victims and which has been and will be of great benefit to the victims of Katrina; and

Whereas, this tax relief legislation includes provisions to allow nonrecognition of income from discharge of certain indebtedness, to remove certain penalties for early withdrawals from, certain pension plans, to provide certain tax credits for employers, to provide special rules for determining earned income when earned income for 2005 is less than the prior year, to suspend limitations on casualty losses, to extend the replacement period for nonrecognition of gain with respect to property compulsorily or involuntarily converted, to provide tax relief for persons providing housing to hurricane victims, to ease restrictions on mortgage revenue bonds, to ease restrictions on charitable contributions for Hurricane Katrina relief efforts and to give special treatment to donations of food or books, to increase the mileage rate for charitable use and to exclude certain mileage reimbursements to charitable volunteers, and to grant automatic extension of filing deadlines; and

Whereas, just as Hurricane Katrina victims will be greatly assisted along the path of recovery by these tax benefits, so, too, victims of Hurricane Rita, many of whom suffered just as significant losses, would be greatly assisted by similar tax relief; and

Whereas, concerning pension plans, federal tax laws generally treat any distribution from a qualified retirement plan, a tax-sheltered annuity (403(b) annuity), an eligible deferred compensation plan maintained by a state or local government (governmental 457 plan), or an individual retirement arrangement (IRA) as income for the year distributed and provide penalties for early distributions from certain pension plans or funds in the form of a ten percent early withdrawal tax; and

Whereas, provisions of KETRA legislation include an exception to the ten percent early withdrawal tax in the case of a qualified Hurricane Katrina distribution from certain qualified retirement plans, a 403(b) annuity, or an IRA, and KETRA provides for income attributable to a qualified Hurricane Katrina distribution to be included in income ratably over three years and permits the amount of a qualified Hurricane Katrina distribution to be recontributed to an eligible retirement plan within three years; and

Whereas, provisions of KETRA do not apply to tax-qualified public retirement systems (401(a) plans) such as the state and statewide retirement systems, under which an employee's contributions are withheld from his pay and do not form a part of his taxable income; and

Whereas, many active employees of state and local governments in Louisiana are participating in or have completed participation in the deferred retirement option plan of their public retirement system, and such plans, referred to simply as ''DROP'', permit an employee who has reached employment eligibility to continue in employment but to ''retire'' and, instead of receiving his retirement benefit payments, to have such payments paid for up to three years into a designated account which is invested for him with a prohibition on receiving any payments from the account until he terminates employment; and

Whereas, just like those Hurricane Katrina victims who are permitted by KETRA to access pension funds without tax penalties in this time of dire financial need, many employees of Louisiana state and local governments who have accumulated funds in their DROP accounts truly need to access those funds to meet the costs of devastating economic losses caused by Hurricane Katrina and Hurricane Rita;

Whereas, the Louisiana Legislature is considering legislation to allow active employees who are participating in or have completed participation in DROP and who are domiciled in the Katrina and Rita core disaster areas to receive distributions from their DROP accounts, but such distributions will be subject to tax penalties unless such public employees are granted similar tax relief to that provided for other pension system members by KETRA; and

Whereas, providing DROP participants the tax relief provided to members of other pension systems would be a fair and effective way of assisting these public servants to deal with the impact Hurricane Katrina and Hurricane Rita have had on their homes and families. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to grant to victims of Hurricane Rita similar tax relief as that provided by the Katrina Emergency Tax Relief Act of 2005 and to include distributions from DROP accounts to active state and local government employees who are members of public retirement systems and who are victims of Hurricane Katrina or Hurricane Rita as eligible retirement plan distributions and to further take such action as necessary to permit such distributions from tax-qualified plans; and Be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM–237. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to amending the Social Security Act to provide for long-term caregiver benefits; to the Committee on Finance.

HOUSE RESOLUTION NO. 43

Whereas, A crisis continues to exist in the Commonwealth of Pennsylvania relating to the rapidly escalating costs of health care, especially where individuals suffer from a prolonged illness or disability requiring in-home care; and

Whereas, Housing and other assistance is often provided to sick or disabled individuals by extended family members, friends or other generous caregivers who patiently attend to them, give them a home and even pay their expenses; and

Whereas, The cost of providing housing and other assistance to loved ones puts a significant burden on caregivers, especially where caregivers assist individuals for a prolonged period of time; and

Whereas, The Social Security Act currently provides survivor benefits to retired or disabled widows, widowers, minor or disabled children and dependent parents 62 years of age or older when an individual dies; and

Whereas, Persons not deemed eligible for survivor benefits under the Social Security Act carry a financial burden after their loved one is gone; and

Whereas, Many of these caregivers and their loved ones enlisted in the ranks of the work force for many years and contributed to the Social Security Fund and accordingly would deserve their fair share. Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the Congress to amend the Social Security Act to provide benefits for long-term caregivers; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–238. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to allowing subsequent consolidation loans; to the Committee on Health, Education, Labor, and Pensions.

HOUSE RESOLUTION NO. 460

Whereas, The 1998 Amendments to the Higher Education Act of 1965 (Public Law 105–244) provided for Federal consolidation loans to help students and graduates by reducing the cost of repaying the money that they borrowed to finance their higher education; and

Whereas, The law provides that a borrower who has a Federal consolidation loan is not eligible for a subsequent Federal consolidation loan except in the narrower circumstances in which he or she has obtained another eligible loan that is to be consolidated with the existing consolidation loan; and

Whereas, Many students and graduates would benefit from the ability to refinance their student loans more than once in order to secure a lower rate of interest. Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the Congress to amend the 1998 Amendments to the Higher Education Act of 1965 to allow for subsequent Federal consolidation loans regardless of whether the borrower has obtained a new eligible loan; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–239. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to creating a task force, working with State and local government, employers and the health care industry, to develop solutions to rapidly increasing health care cost; to the Committee on Health, Education, Labor, and Pensions.

Whereas, Rapidly increasing health care costs are resulting 6 in higher costs for government and other employers; and

Whereas, These increasing health care costs are resulting in declines in the scope of individual coverage through private plans and through programs such as Medicaid; and

Whereas, The House of Representatives of the Commonwealth of Pennsylvania recognizes the significant increase in costs to counties and employers in providing health care benefits to their employees; and

Whereas, The General Assembly of the Commonwealth of Pennsylvania recognizes the trend for many employers to reduce from the level of benefits offered to their employees, the decreasing availability of affordable health care to American families and the increased vulnerability of parts of our population as cuts are made to Medicaid budgets. Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the Congress of the United States to create a task force, working with State and local government, employers and the health care industry, to develop solutions to rapidly increasing health care costs; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM–240. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to mandating that federal contracts awarded for reconstruction of the Gulf Coast region give a preference to local contractors and workers; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 33

Whereas, the entire Gulf Coast region of the United States of America was devastated and destroyed by the awesome power of Hurricane Katrina and Hurricane Rita; and

Whereas, following the assessment of the destruction caused to the entire Gulf Coast region, President George W. Bush offered a bold and breathtaking promise to rebuild this devastated region; and

Whereas, in that speech, President George W. Bush proposed that the Congress of the United States create a ''Gulf Opportunity Zone'' which recognizes that the key to both immediate and long-term economic recovery is to spur Americans to invest in the affected area; and

Whereas, to date, the Congress of the United States of America has committed billions of emergency spending to the affected region, with an early estimate of $200 billion to be spent in the recovery, rebuilding, and revitalization of the entire Gulf Coast region; and

Whereas, the fruits of the recent recovery have accrued disproportionately to out-of-state corporate profits; and

Whereas, it is vital that local small businesses be given greater access to federal contracts in order to further assist the area in its economic recovery efforts, Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to mandate that federal contracts awarded for reconstruction of the Gulf Coast region give a preference to local contractors and workers; and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–241. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to passing the Family Education Reimbursement Act; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 46

Whereas, thousands of students were forced to abandon their schools in the aftermath of hurricanes Katrina and Rita; and

Whereas, public, private and charter schools all across the state and nation enrolled these displaced students; and

Whereas, parents should be empowered to make the best choices for their children and that the communities and schools that have opened their doors to so many students should not be financially punished for that generosity; and

Whereas, the Family Education Reimbursement Act (H.R. 4097) would provide parents of children displaced by hurricanes Katrina and Rita an opportunity to register with the federal government to create an account in which the federal government would deposit $6,700; and

Whereas, these account numbers would be given to the school enrolling the displaced child so that the schools could be reimbursed for the child's education; and

Whereas, these accounts would be accessible to private and charter schools, as well as public schools, that have enrolled these displaced students, often at free or reduced tuition; and

Whereas, the Family Education Reimbursement Act (H.R. 4097) would allow schools, which welcomed these displaced students to be reimbursed easily and quickly without being forced to navigate complicated federal, state and local bureaucracies to obtain reimbursement. Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to enact the Family Education Reimbursement Act (H.R. 4097); and therefore, be it further

Resolved, That a copy of this Resolution be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation of the United States Congress.

POM–242. A concurrent resolution adopted by the Senate of the Legislature of the State of Louisiana relative to voting against the repealing of the ''Byrd Amendment''; to the Committee on Homeland Security and Governmental Affairs.

SENATE CONCURRENT RESOLUTION NO. 27

Whereas, the United States House Committee on Ways and Means by a recorded vote of 22 to 17 reported the Budget, Entitlement Reconciliation Recommendations for Fiscal Year 2006; and

Whereas, the committee recommended to repeal the provision of the Continued Dumping and Subsidy Offset Act, commonly known as the ''Byrd Amendment,'' that required collected duties be distributed to eligible domestic producers; and

Whereas, these duties were collected under antidumping and countervailing duty orders and are required to be paid to eligible producers that initiated the petition which resulted in the imposition of the duties; and

Whereas, in January, the International Trade Commission ruled that the six countries of China, Ecuador, India, Thailand, Vietnam and Brazil dumped shrimp in the U.S. market at excessively low prices; and

Whereas, the duties collected from these countries ranged from 2.48 percent to 112.81 percent; and

Whereas, shrimpers and shrimp processors had until August 1, 2005, to apply for payments from the duties imposed on the six countries; and

Whereas, the shrimpers and shrimp processors will probably not get paid this year, and unfortunately will probably have to wait until next year for any payment; and

Whereas, due to hurricanes Katrina and Rita, the shrimp industry along with other seafood industries have suffered enormous economic and infrastructure losses; and

Whereas, a preliminary assessment estimates that for the shrimp industry the potential production losses at retail level due to Hurricane Katrina are approximately five hundred thirty-nine million dollars, and due to Hurricane Rita the losses are approximately three hundred eighty million dollars; and

Whereas, the preliminary assessment estimates that for the shrimp industry the total potential production losses at retail level due to both hurricanes are approximately nine hundred nineteen million dollars; and

Whereas, the repealing of the ''Byrd Amendment'' would cause further economic loss on the shrimp industry because the shrimpers and shrimp processors will not receive the payments from the duties. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to vote against the repealing of the ''Byrd Amendment;'' and be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–243. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to taking such actions as are necessary to require all federal jobs that have been lost or relocated due to Hurricanes Katrina and Rita and their associated funding to be restored as soon as possible; to the Committee on Homeland Security and Governmental Affairs.

HOUSE CONCURRENT RESOLUTION NO. 38

Whereas, in the wake of Hurricanes Katrina and Rita and their associated funding, many employers and employees have had to be temporarily relocated because of damaged facilities; and

Whereas, it is critical that federal employers return as soon as their facilities are repaired because Louisiana citizens need these jobs, and their return would provide a much-needed boost to the economies of the affected regions; and

Whereas, such federal employers as the United States Department of Agriculture's National Finance Center and the Space and Naval Warfare Information Technology Center, a pair of federal contracting facilities that employ approximately two thousand four hundred people, have largely resumed operations in New Orleans, but they are not yet up to full capacity, and it must be ensured that they will resume full operations and restore the jobs of all of their employees; and

Whereas, it is imperative that all of the Louisiana citizens who commute to jobs at the Stennis Space Center in Mississippi be

enabled to return to their jobs as quickly as possible; and

Whereas, it is also of utmost importance that the functions and operations of other significant federal entities, such as the United States Department of Agriculture's Southern Regional Research Center, the United States Marine Corps Reserve Command, the Eighth Coast District Headquarters, and the United States Army Reserve 377th Theater Army Area Command (TAACOM), are fully restored to help ensure the economic recovery of the New Orleans region; and

Whereas, as Louisiana struggles to recover and rebuild, of primary importance is the employment of its citizens, and it is therefore crucial that congress require federal jobs that have been lost or relocated due to Hurricanes Katrina and Rita and their associated funding to be restored as expeditiously as possible in order to bring about the revitalization of the economies of the regions affected by the storms. Therefore, be it

Resolved, that the Legislature of Louisiana does hereby memorialize the United States Congress to take such actions as are necessary to require all federal jobs that have been lost or relocated due to Hurricanes Katrina and Rita and their associated funding to be restored as soon as possible, and be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*Andrew J. McKenna, Jr., of Illinois, to be a Member of the National Security Education Board for a term of four years.

*Dorrance Smith, of Virginia, to be an Assistant Secretary of Defense.

Air Force nomination of Brigadier General Philip M. Breedlove to be Major General.

Army nomination of Maj. Gen. Gary D. Speer to be Lieutenant General.

Army nomination of Lt. Gen. Charles C. Campbell to be Lieutenant General.

Marine Corps nomination of Brig. Gen. Andrew B. Davis to be Major General.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Jolene A. Ainsworth and ending with David C. Zimmerman, which nominations were received by the Senate and appeared in the Congressional Record on July 28, 2005.

Air Force nominations beginning with Craig L. Adams and ending with Matthew C. Wyatt, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2005.

Air Force nominations beginning with Jay O. Aanrud and ending with Scott C. Zippwald, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2005.

Air Force nomination of Martin E. Keillor to be Lieutenant Colonel.

Air Force nominations beginning with Robert W. Desverreauz and ending with Chetan U. Kharod, which nominations were received by the Senate and appeared in the Congressional Record on December 14, 2005.

Air Force nomination of Julie S. Miller to be Major.

Air Force nomination of Kara A. Gormont to be Major.

Army nominations beginning with Deiby Acevedo and ending with David R. Zysk, which nominations were received by the Senate and appeared in the Congressional Record on December 13, 2005.

Army nominations beginning with Holtorf R. Alonso and ending with Richard M. Zygadlo, which nominations were received by the Senate and appeared in the Congressional Record on December 13, 2005.

Army nominations beginning with Thomas E. Ayres and ending with Peter C. Zolper, which nominations were received by the Senate and appeared in the Congressional Record on December 13, 2005.

Army nomination of Cindy R. Jebb to be Colonel.

Army nomination of Richard L. Chavez to be Colonel.

Army nominations beginning with Samuel Casscells and ending with Slobodan Jazarevic, which nominations were received by the Senate and appeared in the Congressional Record on December 14, 2005.

Army nominations beginning with Joseph J. Impallaria and ending with Arthur E. Lees, which nominations were received by the Senate and appeared in the Congressional Record on December 14, 2005.

Marine Corps nomination of Michelle A. Rakers to be Captain.

Navy nominations beginning with Tony C. Baker and ending with James J. Vopelius, which nominations were received by the Senate and appeared in the Congressional Record on December 13, 2005.

Navy nomination of Lloyd G. Lecain to be Captain.

By Mr. GRASSLEY for the Committee on Finance.

*Vincent J. Ventimiglia, Jr., of Maryland, to be an Assistant Secretary of Health and Human Services.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. SANTORUM:

S. 2142. A bill to provide for the liquidation or reliquidation of certain entries of suit pants; to the Committee on Finance.

By Mr. FRIST:

S. 2143. A bill to increase the number of students from low-income backgrounds who are enrolled in studies leading to baccalaureate degrees in science, mathematics, technology, engineering, and critical foreign languages, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TALENT:

S. 2144. A bill to authorize the Secretary of the Interior to conduct a study to determine the suitability and feasibility of designating the Soldiers' Memorial Military Museum located in St. Louis, Missouri, as a unit of the National Park System; to the Committee on Energy and Natural Resources.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COLEMAN, Mr. CARPER, and Mr. LEVIN):

S. 2145. A bill to enhance security and protect against terrorist attacks at chemical facilities; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 382

At the request of Mr. ENSIGN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 908

At the request of Mr. MCCONNELL, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 908, a bill to allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

S. 1049

At the request of Mr. FRIST, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 1049, a bill to amend title XXI of the Social Security Act to provide grants to promote innovative outreach and enrollment under the medicaid and State children's health insurance programs, and for other purposes.

S. 1139

At the request of Mr. SANTORUM, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1504

At the request of Mr. ENSIGN, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1504, a bill to establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

S. 1581

At the request of Mr. BINGAMAN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1581, a bill to facilitate the development of science parks, and for other purposes.

S. 1620

At the request of Ms. LANDRIEU, her name was added as a cosponsor of S. 1620, a bill to provide the nonimmigrant spouses and children of nonimmigrant aliens who perished in the

September 11, 2001, terrorist attacks an opportunity to adjust their status to that of an alien lawfully admitted for permanent residence, and for other purposes.

S. 1779

At the request of Mr. AKAKA, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1779, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1881

At the request of Mrs. FEINSTEIN, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Iowa (Mr. HARKIN) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the ''Granite Lady'', and for other purposes.

S. 2010

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2010, a bill to amend the Social Security Act to enhance the Social Security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 2019

At the request of Mr. SMITH, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 2019, a bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes.

S. 2082

At the request of Mr. SUNUNU, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from New Jersey (Mr. CORZINE) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 2082, a bill to amend the USA PATRIOT Act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006.

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2082, supra.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. 2082, supra.

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 2082, supra.

At the request of Mrs. LINCOLN, her name was added as a cosponsor of S. 2082, supra.

S. 2095

At the request of Mr. BIDEN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 2095, a bill to ensure payment of United States assessments for United Nations peacekeeping operations in 2005 and 2006.

S. 2109

At the request of Mr. ENSIGN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2109, a bill to provide national innovation initiative.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST:

S. 2143. A bill to increase the number of students from low-income backgrounds who are enrolled in studies leading to baccalaureate degrees in science, mathematics, technology, engineering, and critical foreign languages, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

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

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

S. 2143

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Science and Mathematics Access to Retain Talent Act''.

SEC. 2. NATIONAL SMART GRANTS.

Subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a) is amended by adding after section 401 the following:

''SEC. 401A. NATIONAL SMART GRANTS.

''(a) PURPOSE.—The purpose of this section is to increase the number of postsecondary students from low-income backgrounds who are enrolled in studies leading to baccalaureate degrees in physical, life, and computer sciences, mathematics, technology, engineering, and foreign languages critical to national security.

''(b) PROGRAM AUTHORIZED.—The Secretary shall award grants, in the amount specified in subsection (e), to eligible students to assist the eligible students in paying their college education expenses.

''(c) DESIGNATION.—A grant under this section shall be known as a 'National Science and Mathematics Access to Retain Talent Grant' or a 'National SMART Grant'.

''(d) DEFINITION OF ELIGIBLE STUDENT.—In this section, the term 'eligible student' means a full-time student who, for the academic year for which the determination of eligibility is made—

''(1) is a citizen of the United States;

''(2) is eligible for a Federal Pell Grant;

''(3) is enrolled or accepted for enrollment in the third or fourth academic year of a program of undergraduate education at a 4-year degree-granting institution of higher education;

''(4) is pursuing a major in—

''(A) the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or

''(B) a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States; and

''(5) has obtained a cumulative grade point average of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) in the coursework required for the major described in paragraph (4).

''(e) GRANT AWARD.—

''(1) AMOUNTS.—Subject to paragraphs (2) and (3), the Secretary shall award a grant under this section to an eligible student in the amount of $4,000.

''(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

''(A) the amount of a grant under this section, in combination with the Federal Pell Grant assistance and other student financial assistance available to the eligible student, shall not exceed the student's cost of attendance;

''(B) if the amount made available under subsection (f) for any fiscal year is less than the amount required to provide grants to all eligible students in the amounts determined under paragraph (1) (subject to subparagraph (A)), then the amount of the grant to each eligible student shall be ratably reduced; and

''(C) if additional amounts are appropriated for a fiscal year described in subparagraph (B), such reduced grant amounts shall be increased on the same basis as they were reduced.

''(3) LIMITATIONS.—The Secretary shall not award a grant under this section—

''(A) to any eligible student for an academic year of a program of undergraduate education for which the student received credit before the date of enactment of the National Science and Mathematics Access to Retain Talent Act; or

''(B) to any eligible student for more than 2 academic years.

''(f) FUNDING.—

''(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2006 and each of the succeeding 4 fiscal years.

''(2) USE OF EXCESS FUNDS.—If, at the end of a fiscal year, the funds available for awarding grants under this section exceed the amount necessary to make such grants in the amounts authorized by subsection (e), then all of the excess funds shall remain available for awarding grants under this section during the subsequent fiscal year.

''(g) SUNSET PROVISION.—The authority to make grants under this section shall expire at the end of the academic year 2009–2010.''.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COLEMAN, Mr. CARPER, and Mr. LEVIN):

S. 2145. A bill to enhance security and protect against terrorist attacks at chemical facilities; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today, along with my good friend and colleague, Senator JOE LIEBERMAN, to introduce the Chemical Facility Antiterrorism Act of 2005.

This legislation addresses one of the Nation's greatest vulnerabilities, the threat of a terrorist attack against a chemical facility.

My legislation would provide broad new authority to the Department of Homeland Security to ensure that the Nation's chemical facilities are better protected from terrorism.

This legislation would direct the Department of Homeland Security to establish criteria for evaluating the vulnerability of our Nation's chemical facilities to terrorist attack and to establish risk-based tiers for those facilities deemed in need of protection.

These regulations will require designated facilities to conduct vulnerability assessments and to create appropriate site security and emergency response plans. In addition, the Department would establish an office within the Infrastructure Protection Directorate responsible for implementing and enforcing the statute.

The bill also contains robust measures to ensure both compliance by chemical plants and effective implementation by the Department.

This legislation is strong medicine, and I do not prescribe it lightly. But the potential devastation that an attack on a chemical facility could cause, the sheer number of these facilities and the current widespread lack of security, as well as the clearly stated intent of terrorists to cause maximum harm to the American people and to our economy make these measures necessary.

The Homeland Security Committee has invested substantial effort in examining this threat and in deciding how best to respond to it. Our investigation included four hearings on this topic earlier this year.

From the horrifying chemical attacks of the First World War, and the tragic accident at Bhopal, India, in 1984, to the numerous and more recent accidental releases of hazardous chemicals in this country, we were reminded by expert after expert of the potential for useful productive chemicals to kill, if released accidentally or intentionally.

We also know that al-Qaida has a keen interest in the American chemical industry. Indeed, at our first hearing, Steven Flynn of the Council on Foreign Relations testified that the chemical industry is ''at the top of the list'' of al-Qaida and other terrorist groups. The chemical industry, said Commander Flynn, absolutely screams at you as essentially a weapon of mass destruction.

We should not wait until there is an attack on a chemical facility and then act after the fact. So often our security measures and our emergency legislation is passed after something horrible has already occurred and after lives have already been lost. Let us get ahead of this curve. Let us act now to address what witness after witness identified as being one of the greatest threats to our homeland.

The stakes are high and the vulnerability is widespread. The Environmental Protection Agency has cataloged some 15,000 facilities in the United States that manufacture, use, or store large quantities of hazardous chemicals for productive, legitimate purposes, but in amounts that could cause extensive harm if turned against us as weapons. And we have seen al-Qaida do this before. We have seen al-Qaida use commercial aircraft as weapons of mass destruction.

The Department of Homeland Security has identified 3,400 facilities that could affect more than 1,000 people if attacked.

According to the Government Accountability Office, tens of millions of Americans live close enough to chemical facilities to be at risk in the event of a terrorist attack. Yet despite this profound threat, only a fraction of our Nation's chemical facilities are regulated for security by the Federal Government under the Maritime Transportation Security Act of 2002, or subscribe to volunteer security standards.

While I applaud those companies that have taken voluntary measures, an unacceptable number have not. Moreover, given the severity of the threat, I believe it is a mistake in this case to rely on voluntary measures alone. The overwhelming majority of experts at our hearing testified that additional statutory authority is needed to effectively address the threat of terrorism against a chemical facility.

Leading security experts, chemical safety professionals, industry representatives, labor representatives, environmental groups, and the administration, all have testified that Federal legislation in this area is necessary, although obviously they differ considerably on the details.

The legislation I am introducing today provides that critical authority. While establishing the need for Federal legislation, our hearings stressed the importance of getting this right, of striking the right balance.

Chemical shipments in the United States approach $.5 trillion annually. The chemical industry represents our largest export sector, totaling $91.4 billion in 2003.

More than 900,000 people work directly in the American chemical industry with millions more in supplier and indirect jobs.

Chemicals are critical to our food and our water supply, our pharmaceuticals, our electronics, our clothes; in fact, just about everything.

A consistent theme that sounded throughout our hearing was that we cannot afford to drive the chemical sector out of this country in the name of security. And that is why we spent so much time in carefully crafting a bill that strikes the right balance.

Our hearings established a considerable consensus around two important concepts: First, that the legislation should be risk based. Our chemical industry is extremely diverse and any legislation must take into account that diversity. A small plant using chemicals in rural Maine faces very different risks than a major chemical manufacturing plant in the New York City area, and its security response should be structured appropriately. Security measures should be tailored to each particular facility, taking into account its vulnerabilities, its location, impact on the population, and other risk factors. High-risk facilities should undertake the strongest security precautions while obviously fewer precautions are necessary at very low-risk facilities.

Second, the legislation should be performance based. What do I mean by that? By that I mean our focus should be on having the Department establish the standards, the results, rather than prescribing exactly how a corporation should act to meet those standards, those results. Facilities should defend against particular threats. For example, the Secretary might specify that facilities should be able to protect against a hazardous release resulting from a truck bomb. Or the Secretary may mandate that every plant have a secure perimeter. Now, facilities could choose to meet those standards by building fences, erecting barriers, moving the most hazardous chemicals to a more secure area, or even switching to a less hazardous chemical altogether. By specifying the regulations should be performance based, facilities will have the incentives to identify the most effective and cost-efficient means of increasing protection.

The legislation I am introducing today meets those fundamental criteria. It is risk based and it is performance based. This legislation is modeled, in part, on the Maritime Transportation Security Act, consequently referred to as MTSA.

During the course of our four hearings, we heard substantial testimony from security industry experts, the administration and others, that the results-based cooperative approach of MTSA is a major success story. In fact, we heard so many positive things about the law that we brought in the Coast Guard's director of port security, Admiral Bone, to testify about their experience with the current law.

The first step in improving the security of our Nation's chemical facilities is to determine which facilities should be covered by Federal regulations and to what degree. This legislation requires the Department of Homeland Security to issue within 1 year of enactment regulations establishing criteria for evaluating the types of facilities that should be covered, as well as regulations establishing risk-based tiers for the designated facilities.

Following the issuance of these regulations, the Department would designate covered facilities and place them into tiers. The designations would be based on risk factors including potential likelihood of death or illness, proximity to population centers, and the potential impact on national security, the economy, and critical infrastructure. The tier would have increasingly strict security requirements as the risk and consequences of a terrorist attack at a covered facility increase.

The Department would then set security performance standards for each tier. Every facility would be required to conduct a vulnerability assessment, establish and implement a site security plan, and create an emergency response plan or update an existing plan to include provisions for an intentional attack. Vulnerability assessments would address the threats and consequences of a terrorist attack, including

vulnerabilities from the use of hazardous chemicals.

The site security plan would address the identified vulnerabilities and meet the performance standards set by the Department. The site security plan would also identify how the facility is coordinating with Federal, State, and local officials for response to a terrorist attack. The facilities would be required to drill their security plans and emergency response plans. Covered facilities would have 6 months following promulgation of regulations to certify compliance and submit their assessments and plans to the Department for approval.

If a facility fails to comply, the legislation I am introducing provides the strongest remedy to the Department. The bill gives the Secretary of Homeland Security the authority to shut down chemical facilities that are at high risk and which the Secretary believes have not adequately addressed the risk of a terrorist attack. For the highest risk facilities, the Secretary could order an immediate closure. For the other lower risk facilities, the Department could order closure but only after a process of written notification, consultation, and further time for compliance.

Now, I recognize this shutdown authority concentrates considerable power into the Secretary's hands, but the dire consequences of a terrorist attack justify giving the Secretary the authority to shut down a chemical facility that has failed to comply with the law. With hundreds of thousands of lives at stake, the Secretary must have the authority to ensure our chemical facilities have adopted security measures sufficient to reduce the risk of a terrorist attack. If a facility cannot, will not, or has not done so, it simply cannot be allowed to keep operating.

It was only after very careful consideration that I decided to include this power in my bill. I note that the Maritime Transportation Security Act provides similar authority to the Coast Guard. Admiral Bone testified since 2004 the Coast Guard has used this authority to shut down 32 facilities—three of which were chemical facilities. He testified it was imperative the Department of Homeland Security be given that closure authority.

Before closing, I will comment on a couple of very important and controversial issues. One is the issue of inherently safer technology which is often referred to as IST. My bill allows chemical facilities to choose whatever security measures best meet the performance standards required by the Department. IST is one of the recognized means of meeting a performance standard. In addition, my legislation requires the vulnerability assessment include an analysis of security measures, including vulnerabilities arising from the use, storage, and handling of dangerous chemicals. However, I make clear our legislation does not mandate IST. Not only would doing so be at odds with the performance-based approach we have endorsed in this bill, I also do not believe it is appropriate for a bill on security to dictate specific industrial processes. Such uses are outside the scope of the legislation, beyond the jurisdiction of this committee, and are not the only way to address security issues.

I fully expect some facilities will adopt inherently safer technologies. I certainly encourage them to do so if that is the best means for them. However, that should be their decision.

This legislation does not tell facilities how high to build their fences or what chemicals to use or how they may use them. It is the result that matters. I believe this bill will result in significantly enhanced security for the chemical sector. This is a Homeland Security bill. It is not an environmental regulation.

In summary, this legislation requires chemical facilities to conduct vulnerability assessments, create and implement security plans, establish emergency response plans, and to submit these plans to the Department of Homeland Security for approval or disapproval. It gives the Department broad authority to ensure that chemical facilities are addressing the risks of terrorist attacks and giving the Department the authority it needs. The legislation is risk based and performance based, and I am confident it will provide long overdue standards that will ensure stronger and more consistent security at our chemical facilities.

Before closing, I once again thank my lead cosponsor and the ranking member of the Homeland Security Committee, Senator LIEBERMAN. We have worked very hard with the members of our committee, including the Presiding Officer, all year long to explore this through a number of hearings, and we have engaged in many months of negotiations.

I also thank our cosponsors, Senator COLEMAN, Senator CARPER, and Senator LEVIN, for their hard work on this bill.

I look forward to adding additional cosponsors and working with the committee to move this vital legislation forward.

Thank you, Mr. President.

Mr. LIEBERMAN. Mr. President, I am pleased to join my colleague, Senator COLLINS, in introducing the "Chemical Facility Anti-Terrorism Act of 2005. I am also delighted that Senators COLEMAN, LEVIN, and CARPER will be joining us on this bill.

This bill is the product of extensive work in the Homeland Security and Governmental Affairs Committee to explore the risks of a possible terrorist attack on our chemical facilities, as well as the best means to guard against those risks.

Since 9/11 opened our eyes to the threats we face on U.S. soil from Islamist terrorist groups, we have moved to improve security for many of the critical elements of our society and economy. But somehow we have not yet protected one of our greatest vulnerabilities the chemical sector.

Chemicals are vital to many of the processes that feed us, heal us, and power our economy. Yet the very pervasiveness of the chemical sector makes it vulnerable to terrorism. Thousands of facilities throughout the country use or store lethal materials, often near large population centers.

We know that terrorists are interested in targeting these facilities. The Congressional Research Service reports that during the 1990s, both international and domestic terrorists attempted to use explosives to release chemicals from manufacturing and storage facilities close to population centers. The Justice Department in 2002 described the threat posed by terrorists to chemical facilities as "both real and credible," for the foreseeable future.

Former White House Homeland Security Advisor Richard Falkenrath this spring told the Homeland Security and Governmental Affairs Committee that although chemical facilities are a most serious homeland security vulnerability, the Federal Government has done almost nothing to secure them. Homeland Security expert Steve Flynn likened the Nation's 15,000 chemical facilities to "15,000 weapons of mass destruction littered around the United States."

Fortunately, the responsible players in the chemical industry have not waited for Federal legislation, and some of the leading trade groups have begun their own security programs or participated in some voluntary efforts led by DHS. Some chemical facilities are also subject to security regulation under the Maritime Transportation Security Act or the Bioterrorism Act of 2002. Yet these programs do not reach the full range of security matters addressed at the committee's hearings and in this legislation. More significant, far too many facilities that use extremely hazardous chemicals remain entirely outside the patchwork of laws, regulations, and self-protection now in place.

For several years, legislation to require security enhancements at these chemical sites has foundered in Congress, bereft of true administration support or Congressional consensus. But I am hopeful that today marks a turning point that will culminate in successful passage of a robust chemical security bill.

First, the Homeland Security and Governmental Affairs Committee has worked on a bipartisan basis to build a foundation for this effort: through four hearings that explored the issues and possible solutions regarding chemical site security and through collaboration on this legislation that has already won strong bipartisan support on our Committee.

Second, DHS has now clearly stated—in testimony to our committee—that the current voluntary efforts are

not sufficient and that the Department needs new legislative authority to regulate chemical site security.

Third, responsible segments of the chemical industry—such as the American Chemistry Council—have recognized the need for a comprehensive national program to ensure adequate security across the entire chemical sector and called for Federal legislation. I welcome this engagement by industry and believe we can work together with them, as well as the administration, and all who are concerned about security, to forge an effective national program.

This legislation is a forceful but pragmatic response to the challenge of chemical site security. It directs its greatest force and focus to those facilities that pose the highest risk in terms of potential loss of human life or other catastrophic results.

It authorizes the Department of Homeland Security to initiate a thoroughgoing security program for thousands of critical chemical sites around the country.

The Secretary would identify which facilities pose a meaningful risk due to terrorism concerns, and then require these facilities to conduct a vulnerability assessment and prepare a security plan and emergency response plan to address the results of this vulnerability analysis.

Facilities within the program would submit these assessments and plans to DHS for review and approval. DHS would then work with the facilities to ensure the plans, and implementation, are adequate. Under a tiered system of requirements, those facilities that pose the greatest risk would face the most stringent security requirements as well as a speedier and more rigorous DHS review. The bill includes civil and criminal penalties for noncompliance and, ultimately, facilities may be ordered to shut down if they do not comply with DHS orders.

This legislation recognizes that facilities will need flexibility to achieve security in the most efficient and effective manner. The bill also recognizes the work of the responsible chemical companies within the chemical sector and does not force those facilities to reinvent the wheel. Instead, the bill ensures that so long as an alternative security program's assessments and plans meet the bill's core requirements for vulnerability assessments and site security plans, facilities operating under those alternative security programs can submit these assessments and plans under the DHS program. However, where the assessments and plans do not meet the bill's core requirements, the Secretary will require appropriate modifications. Finally, the Secretary will judge all assessments and plans against the regulations promulgated under this bill.

This legislation also recognizes that sometimes the best security will come not from adding guards and gates but from reexamining the way chemical operations are carried out in order to reduce the amount of hazardous substances on site, improve the way they are stored or processed or find safer substitutes for the chemicals themselves. These changes serve to make a facility less inviting as a target for terrorists, as well as limiting the loss of life or other damage if an attack does take place. They also have the added benefit of limiting the harm from an accidental release. This bill clearly requires facilities to look at the risks and consequences related to the dangerous chemicals on site and address those specific vulnerabilities in their security plan. And it includes these process changes among the menu of security measures that chemical facilities should examine when designing their security plans.

We know that many facilities, and many security experts, already look to these less dangerous technologies as a potent and cost-effective way to improve security against a possible terror attack. But we also know that, for some facilities, there can be reluctance or structural impediments to looking at these technological solutions. That is why I feel this bill should go further and include more explicit requirements for chemical facilities to consider less dangerous technologies when they make the security enhancements required under this bill. In particular, the riskier facilities—some of which could endanger tens or hundreds of thousands of lives if attacked—should have to demonstrate that they have looked closely at options that would reduce the catastrophic consequences of a possible terrorist attack. We had a powerful example of such an adjustment close by: after 9/11 focused our attention on potential targets in our midst, Washington DC's water treatment facility ended the use of its potentially deadly liquid chlorine. This is not a question of forcing industry to conduct its operations off a Government-issued playbook. Companies would analyze for themselves whether there are less dangerous ways to conduct their business and would not be forced to implement any changes that were not feasible. But given the extraordinary risks involved, it makes little sense not to require companies to at least take a long hard look at some of the commonsense solutions that have been advocated or already adopted by others within the industry. Therefore, as this bill advances, I will seek to strengthen the requirements for facilities to carefully consider these safer technologies as a means to greater security.

The bill creates structure within DHS to oversee this regulatory program and a regional network to help implement its provisions, particularly to help ensure adequate emergency response capabilities in the event of an attack on a chemical facility. There are also provisions to safeguard sensitive information that DHS receives from the chemical facilities, while at the same time requiring DHS to share and disclose information necessary for public safety and public accountability. The bill does not affect chemical facilities' obligations to make information available to the public under right-to-know laws or other regulatory programs, and it establishes a secure channel by which members of the public can submit information about potential problems regarding the security of chemical facilities.

This bill also recognizes that Congress is not the only body that can and should help ensure the safety and security of the Nation's chemical facilities. States and localities have long regulated such facilities for various safety and environmental concerns. Since 9/11, some States have also moved to require security improvements at these facilities. These State and local protections are critical adjuncts to our effort at the Federal level, and I am pleased that this bill states clearly that it does not preempt State and local laws or regulations regarding the safety and security of chemical facilities. States and localities are free to enact more stringent chemical security legislation. Only if there is an absolute conflict, such that it is impossible for a facility to comply with both the Federal law and a State or local law or regulation on chemical security, would the Federal provision take precedence. The bill would not disrupt State and local safety and environmental law regarding chemical facilities, nor does it dislodge or alter the operation of State common law with respect to such facilities.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Monday, December 19, 2005, immediately following the next vote on the Senate Floor, in the President's Room, S–216 of the Capitol, to consider favorably reporting the nomination of Vincent J. Ventimiglia, Jr., to be Assistant Secretary of Health and Human Services for Legislation, U.S. Department of Health and Human Services, Washington, DC.

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

ORDERS FOR TUESDAY, DECEMBER 20, 2005

Mr. GREGG. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. on Tuesday, December 20. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, the Senate then resume consideration

of the conference report to accompany S. 1932, the omnibus deficit reduction bill, with 8 hours of debate equally divided remaining.

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

PROGRAM

Mr. GREGG. Tomorrow, the Senate will resume consideration of the deficit reduction bill. Today we filed cloture on the Defense appropriations conference report and the Defense authorization conference report. Senators should expect a vote on the DOD appropriations cloture motion very early in the day on Wednesday. Votes can be expected on Tuesday and for the rest of the week as we finish the deficit reduction conference report, the Defense appropriations conference report, the Defense authorization conference report, the Labor-HHS conference report, and any other necessary business before we finish for the holidays.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. GREGG. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:41 p.m., adjourned until Tuesday, December 20, 2005, at 9:45 a.m.