percent of the electricity that powers our country and enables economic growth. The miners who produce the coal deserve the best technology to make our mines as safe as possible. But we must acknowledge that there will be future accidents in our coal mines because of the nature of the industry, and so we must also invest in additional mine rescue teams.

This tax package presented an immediate opportunity to promote mine safety. I deeply appreciate the work and support of West Virginia's senior Senator, ROBERT C. BYRD. We are a team when it comes to mine safety and coal issues, and we are working together on additional legislation that will impose strict new safety standards on the mining industry.

I am very pleased that the mine safety tax incentives have been included in this legislation. Indeed, I believe that the bill before the Senate includes many important tax provisions that we ought to enact without delay. Most of these tax cuts are longstanding, broadly supported policies that were unfortunately allowed to expire at the end of last year.

Among the tax provisions that the Senate is acting to extend here is relief from the alternate minimum tax for upper middle class families who are about to be hit with a tax only ever intended for the very wealthy. This bill would extend AMT relief for 2006 in order to be sure that families are able to benefit from the income tax cuts the Congress has enacted since 2001. I support this relief, and indeed, I believe Congress needs to act quickly to address fundamental AMT reform. I have cosponsored legislation to permanently repeal the individual AMT because this so-called millionaires' tax is no longer serving its original purpose. As part of overall tax reform that is fiscally responsible, Congress ought to permanently eliminate the specter of this parallel tax system. For now, I am pleased to at least be able to support a bill that will protect families for this year.

This bill also extends important tax incentives for the business community. For example, the bill extends the research and development tax credit to provide more than $20 billion to companies that do innovative research to keep America at the forefront of the competitive world economy. I have cosponsored legislation that would make the R&D tax credit permanent, but again, I am pleased to be able to at least support this bill which provides a 2-year extension of this valuable tax incentive.

I have also supported legislation to make permanent the welfare-to-work tax credits. The legislation before us today improves and extends these credits for 2 years. I know that many companies in West Virginia have used these credits to provide work opportunities to individuals who previously have been marginalized in our economy. There are many other provisions in this bill that enjoy my support, including an extension of the new markets tax credit, the creation of incentives for additional charitable giving, and tax breaks for our dedicated teachers who spend their own money improving the educational experiences of their students.

Having said that I support many of the provisions of this bill, I would like to take just a few moments to discuss some reservations I have with the process under which Congress is considering it. This bill is a tax reconciliation bill, meaning that it will enjoy some procedural protections in the Senate—the costs to the Treasury need not be offset and the final package can pass the Senate with a mere 51 votes.

I fear that the reconciliation procedure being used here has put us on a very dangerous course. As this legislation is conferenced with the House of Representatives, the reasonable, bipartisan tax relief that we have passed may be replaced with partisan priorities that do not serve the best interests of average Americans. The House-passed bill does not provide any relief from the alternative minimum tax but instead extends the capital gains and dividend tax cuts beyond 2008. In my own State of West Virginia, fewer than 17 percent of taxpayers reported any taxable dividend income, and fewer than 11 percent of taxpayers had any taxable capital gains. Indeed, nationwide, more than half of the benefits of these investor tax breaks goes to people with more than $1 million in income. The Senate must insist that AMT relief now is a higher priority than investor tax breaks 3 years down the road.

The impact on the deficit, facilitated by the reconciliation process, is also a serious concern. I supported a substitute amendment offered by my colleague, Senator CONRAD, which would provide all of the same tax relief but would have taken the fiscally responsible step of offsetting the losses to the Treasury. The cost of this bill could be covered by closing tax loopholes and insisting that corporations and individuals are not able to avoid taxes by gaming the system, including in some cases by simply abandoning their U.S. citizenship. I was disappointed that my colleagues did not support this fiscally responsible course at a time when the Treasury Secretary has informed us that the Congress already needs to increase the national debt limit to $9 trillion.

These reservations, and indeed the declared intention of some of my colleagues on the other side of the aisle to add investor tax breaks during conference, prevented me from supporting this legislation when the Senate first considered it last November. As I said at the time, and I would still prefer, the reasonable tax relief contained in this Senate bill could be passed using the normal legislative process, garnering well more than 60 votes.

However, earlier this month, I supported this Senate bill after two important improvements. First and foremost, the mine safety tax incentives were added to this bill. As a representative of so many coal miners and their families, I will do all I can to advance measures that encourage additional investment in mine safety. I was also encouraged that during consideration in early February, the Senate passed an amendment offered by Senator MENENDEZ, by a vote of 73 to 24. That amendment expresses the sense of the Senate that relief from the alternative minimum tax should take precedence over any additional tax cuts for capital gains and dividend income.

I hope to work with my colleagues as differences between the House and Senate bills are resolved. I hope that we can work together to enact reasonable tax relief that enjoys broad bipartisan support. And I will fight to be sure that the tax incentives for investment in mine safety are maintained in the final legislation.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Pending:

Frist (for Specter/Leahy) amendment No. 2746, in the nature of a substitute.

Specter modified amendment No. 2747 (to amendment No. 2746), to provide guidelines in determining which defendant participants may receive inequity adjustments the Administrator shall give preference.

Kyl amendment No. 2754 (to amendment No. 2746), to reduce the impact of the trust fund on smaller companies and to expand hardship adjustments.

The PRESIDING OFFICER. The motion to waive the point of order is the pending question.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the point of order which has been raised has no substance on the merits. The point of order has no substance on the merits because there is no Federal funding involved in the legislation which creates a $140 billion trust fund. All of the money comes from private sources, from manufacturers, and from the insurance companies under the agreement reached by Senator FRIST, the Republican majority leader, and then-Senator Daschle, the Democratic minority leader, establishing this trust fund.

The Congressional Budget Office filed a letter yesterday, February 13, on the substitute which was offered. Instead of having a managers' package of some 47 amendments, which could have been considered one by one, they were added to the original text of S. 852 as a substitute bill.

The Congressional Budget Office letter made the essential conclusion that the substitute is budget neutral. The key paragraph reads as follows:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate.

This is the crucial line:

Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So as a matter of the merits, the point of order has no substance because there is no Federal funding involved.

The argument which was made last Thursday by the Senator from Nevada, Mr. ENSIGN, was that some future Congress might obligate the Government to pay money. The obvious response to that, which I made on Thursday and repeat now, is that this Congress should not try to bind what some future Congress may do. It is difficult enough for us to decide what is the appropriate course of action in the year 2006, without trying to look ahead, as this budget point of order contemplates, for a 10-year period, from the year 2016 to the year 2055, on payments in excess of some $5 billion over a 10-year period.

The underlying merits of the bill, I think, have been established. You have a chaotic situation today where litigation costs on asbestos claims eat up 58 cents on the dollar, so that claimants only get 42 cents on the dollar. This has resulted in some 77 companies going bankrupt. Some $70 billion has been expended. The courts are overburdened, leading the Supreme Court of the United States to ask the Congress, on several occasions, to deal with this problem.

This legislation has been drafted and analyzed and amended and modified, I think, more than any bill in the history of legislative action. I know that is a grandiose statement. I made it last week, and I repeat it today. I would challenge anybody who knows of any bill which is as complicated to step forward.

Shortly after the bill was reported out of the Judiciary Committee in July of 2003, I asked a distinguished senior Federal judge, Edward R. Becker, who had been chief judge of the Third Circuit, to undertake the mediation of the great many complex issues involved. For 2 days in August of 2003, Judge Becker and I met with about 20 so-called stakeholders in his chambers in Philadelphia, the stakeholders being the manufacturers, the insurers, the trial lawyers, and the AFL–CIO, to try to work through the problems.

Since that time, there have been some 36 meetings held in my office. We reported a bill out of the Judiciary Committee last May 26. We have accepted a great many amendments and are here today to move ahead with the amendment process.

I have urged my colleagues and have talked to most of the Senators on an individual basis, and visited many of my colleagues in their offices, talked to many more on the floor when we have had a break in between votes. When I have talked to people and explained to them the intricacies of this complex legislation, the responses have been good. There is a proposal for a medical criteria bill. I think that is not a preferable solution because it would not provide a fund for the employees of companies which have gone bankrupt, nor would it provide funds for the veterans who have sustained their damages at shipyards or in military service. But that is something which could be debated and voted upon before cloture is invoked, or perhaps a germane amendment can be drafted which would survive cloture, which is scheduled for tomorrow.

But, in any event, it is my expectation that we ought to be ready to vote some time this afternoon. So I urge any of my colleagues who have anything to say about this budget point of order to come to the floor so we may debate the issue and be prepared to vote.

In the absence of any Senator seeking recognition, 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. SPECTER. 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. SPECTER. Mr. President, the distinguished Senator from California is preparing to take the floor.

I wish to present a chart. I am not big on charts, but I think this is one which has some special significance; and that is, there were some projections which were made by the Senator from North Dakota, Mr. CONRAD, last week about asbestos claims going up, which is simply not factual. The fact is—as this chart shows—these are findings from the Congressional Budget Office, which show the projection of asbestos claims in a sharp decline. This is based upon the fact that the latency period for asbestos to produce damage is some 30 years. They are going to be on a sharp decline, which is one of the reasons the Congressional Budget Office has estimated that $140 billion is more than sufficient.

The other chart I want to put up is the key paragraph which comes from the Congressional Budget Office report. This is the critical paragraph in which CBO concludes definitively that the FAIR Act is deficit neutral:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

The line in red is the conclusion, which is the most emphatic: ''Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.''

So what you have here is a private trust fund taking care of people who have asbestos-related injuries, where the companies have gone bankrupt and they have no one to collect from, where you would be stopping the tremendous clogging of the Federal courts, where the Supreme Court has asked Congress to act, and where you have a situation where people can collect for their damages.

I note the Senator from California is on the floor of the Senate. So at this time, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee. I note that the ranking member is here also. If he would like to go ahead of me, I have no problem with that.

Mr. LEAHY. Mr. President, the Senator from California has been a strong and consistent voice on this issue. I will follow her. Thank you.

Mrs. FEINSTEIN. I thank the Senator very much for that.

Mr. President, let me give you at least my bottom line of this bill. Up to 2004, 74 American companies had been bankrupted. Salaries have been diminished for a large number of people. More people are thrown into the unemployment market as a product of bankruptcy. Victims receive less than 50 percent on the settlement dollar. Those are facts. It is deeply disturbing to me. I deeply believe that a no-fault fund, which has a medical board that evaluates the medical condition of an individual and automatically grants that individual an amount of money, is a much sounder way to go.

Now, clearly, this is complicated legislation and there are difficult and technical issues involved. But a lot of misinformation has plagued the asbestos debate, and it continues to be repeated. I cannot say we have a perfect bill, but we have tried, and tried very hard. This has not been a take-it-or-leave-it bill. The chairman and the ranking member have been open to suggestions. They have been open to requests for amendments. There will be a substitute amendment that further refines the bill.

Today, I want to discuss the concerns raised by those who oppose the bill and provide what I hope are important points.

On Thursday, one Senator argued:

It really comes down to a very basic question—the question of whether or not this bill has been carefully crafted, whether or not it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims that will have to count on it.

Let me address the beginning of that statement, Mr. President. I cannot think of any other bill where more

time, more effort, and more man-hours have been committed to thoroughly understanding and trying to address all of the complex issues, and even to respond to the hypothetical issues that might potentially come up. The drafters of this legislation have worked for literally thousands of hours through the process of dozens of meetings over the past six years. The Judiciary Committee has held at least 8 hearings on the asbestos bill—4 just in the past year—and has heard testimony from 57 witnesses. We have met with experts from all sides who currently evaluate asbestos claims and make statistical projections for companies, for victims, and the courts. We met with doctors, victims, corporate CEOs, and general counsels. We met with trial lawyers, insurance representatives, and individuals who work for asbestos bankruptcy trusts.

I recognize that there are real concerns from the opponents of the bill. Some people are unsatisfied with some of the compromises that have been incorporated. But to assert that the legislation was not carefully drafted is one argument that has no basis in reality.

Now for the second part of the argument. Again, it is important to remember the history. Through this extensive consultation process, it became clear that there was an expected range of claims that could come into the fund. From this, several different experts, including Goldman Sachs, calculated the amount of funding necessary to cover the claims' values that the bill provided and the number of claims that the fund would pay based on the range of claims.

We learned that the amount necessary to create a national trust was between $90 billion and $155 billion. The legislation now on the floor has funding of $140 billion—clearly, on the high side of the range of what the technical experts expect.

I also think it is important to remember that previous versions of the asbestos bill had significantly less guaranteed contributions. S. 1125 provided $108 billion, with a $45 billion contingent fund. S. 2290 provided $104 billion, with a $10 billion contingent fund. However, each of these bills assumed that part of the money to pay claims would be collected through interest on savings. They did not meet the full funding through guaranteed contributions by businesses and insurers as this bill does. That is a significant difference.

The underlying assumption of the prior two bills was that the amount of money being paid into the trust would be more than sufficient to pay claims and, instead, there would be an excess that the administrator could invest to help build the trust fund's assets. So the amount of money being paid into the fund was much less than $108 billion and $104 billion. In addition, neither of those bills contained provisions to guarantee that the remaining companies would be required to make up any potential shortfall. Yet the bill on the floor of the Senate today is over $30 billion above S. 1125 and S. 2290 in guaranteed contributions, with no contingency funding.

In addition, when the CBO was asked to evaluate how much money the fund would need to pay claims, it projected that ''the proposed fund would be presented with valid claims worth $120 billion to $150 billion.'' This is the CBO language:

> CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 billion and $150 billion, not including possible financing (debt service costs) costs and administrative expenses.

Again, $140 billion is well within the expected range. I think it is also important to note that throughout the process, the medical criteria has been tightened. I don't believe anybody really speaks to this. One category of claims—individuals who had lung cancer but no underlying asbestos markers—has been eliminated from the bill. An Institute of Medicine study has been added to the legislation that requires an evaluation of the link between asbestos exposure and cancer, other than lung cancer. If that link cannot be established by the IOM, then those claims will not receive compensation. With these modifications, the number of claims coming into the trust will be substantially reduced.

Finally, many protections have been put in place that ensure that if, in the long run, the trust does not have sufficient funding to cover all claims, individuals will be returned to the tort system—the very solution opponents are advocating now. So if the trust were to run out of money, the individual would go back to the tort system.

Some opponents also argue that passage of this act would lead to federalizing the responsibility for asbestos claims. We just heard this in the Democratic Caucus. It is this argument that is being used to make the case for a budget point of order against the bill. Some opponents have argued that the trust creates a new, albeit capped, entitlement for claimants. However, this statement is very misleading.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending which require the payment of benefits to persons if specific criteria established in the authorized law are met. If one only looked at the first part of the definition of entitlement, this concern may be understood. However, CRS further states that entitlements are not subject to discretionary appropriation from Congress. Instead, they are subject to mandatory appropriations. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment. This is not the case here.

Let me state that again. This is not the case here. The trust fund created by this legislation will be privately funded. The money collected for the trust comes from businesses and insurance companies. It does not come from the U.S. Treasury. While some opponents acknowledge that the Federal Government must play a role in the trust fund for it to be classified as an entitlement, they inaccurately conclude that if an individual satisfies the medical criteria and filing deadlines, then he or she is entitled to compensation from the Federal Government. This is not true.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from businesses and insurers. In addition, as an extra protection, it is expressly stated several times throughout the bill that the United States, or the U.S. Treasury, will in no way be required to satisfy any claim or any costs if the amount in the trust is inadequate.

This bill expressly provides:

> Repayment of moneys borrowed by the administrator is limited solely to amounts available in the fund.

It also states that nothing in this act shall be construed to create any obligation of funding from the U.S. Government, including any borrowing authorized. Read section 406(b). This is what the opponents say is not there. This is the face of the bill. It is there:

> Nothing in this act shall be construed to create an obligation of funding from the United States Government . . . or obligate the United States Government to pay any award or part of an award, if amounts in the fund are inadequate.

I don't know what better guarantee there can be. If someone can suggest one, I am sure the chairman and the ranking member, and certainly myself, would agree to add it to the bill. With these explicit statements throughout the bill, it is abundantly clear that this legislation will not be a burden on the U.S. Treasury.

While Congress can obviously pass any law it so chooses in the future, this bill specifically states multiple times in the text that taxpayers and the U.S. Treasury will in no way be required to cover any shortfall, any administrative costs, any debt or interest costs, or any costs incurred by the trust fund. Therefore, the only way taxpayers will be called upon to subsidize this legislation is if a future Congress chooses to pass, and the President signs, new legislation which would create such an obligation. This seems to me very unrealistic and highly unlikely. But even if it were to come to pass, we should not defeat this bill because of what some other Congress and some other President may or may not do at some time in the future.

Opponents also argue that the Federal Government's liability is likely to arise through the debt service. They argue that the administrator could borrow beyond the fund's ability to repay the Treasury.

I wish to respond to that. This statement ignores the plain text of the bill.

The administrator's ability to borrow funds from the Federal Financing Bank is only available for the first 5 years. Section 221 states:

The administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 as needed for performance of the Administrator's duties under this Act for the first 5 years.

So for the first 5 years, there can be some borrowing. How is that borrowing limited and how is the loan paid back? This same section specifically limits the borrowing capacity of the administrator so that he or she may not overextend the fund's assets by borrowing beyond what the trust fund will be able to repay.

Again, section 221 states:

The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations to the fund at the time of borrowing, can be repaid in full with interest in a timely fashion from the available assets of the fund as of the time of borrowing, and all amounts expected to be paid by participants during the subsequent 10 years.

So it requires the administrator to look at what he or she could potentially repay and what contributions are still outstanding. It is hard to believe that any private lending institution would risk lending money to the trust fund which it could not clearly repay in the future. However, even if some private institution decided to take that risk, the bill specifically prohibits the administrator from entering into such a financially risky transaction.

As I just read, the explicit language in the bill limits the administrator's borrowing capacity to an amount that can be repaid in full with interest from the available assets of the fund as of the time of borrowing and all amounts expected to be paid by participants during the subsequent 10 years.

Finally, those who support the budget point of order argue that collection of the contributions by the businesses and insurers could fail to materialize, leaving the U.S. taxpayer on the hook to cover the costs, and we should look at that. We should look at it very carefully. But this ignores explicit provisions contained in the legislation.

Senator LEAHY and I fought hard to ensure that the payment obligations included in the bill were enforceable and guaranteed.

First, the bill gives the administrator enforcement authority to compel payment by the companies, both defendant businesses and insurers alike.

Let me quote section 223. It provides:

If any participant fails to make any payment in the amount of, and according to, the schedule under this Act or as prescribed by the Administrator after demand and a 30-day opportunity to cure the default, there shall be a lien—

Not there may be a lien; there shall be a lien, mandatory language—

for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

The participants of the fund are liable for the maintenance of the fund. I don't see how it could be any clearer.

The chairman of the committee who is the author of this bill is in the Chamber. If someone has an amendment and comes to the chairman and says: Look, we think there is an oversight here or there, it could be tightened up by doing X or Y, I am sure this chairman will listen. But the language is very specific: If any participant fails to make any payment in the amount in the schedule under this act or as prescribed by the administrator after a demand and 30 days to pony up to cure the default, there shall be a lien for the amount of the payment, including interest, upon all property and rights to property. That includes every big business, every big insurance company, everyone that is in this fund, and it is only within that initial period that the administrator can, in fact, borrow. So how people come to the conclusion that the Government is on the hook for $40 billion I will never understand. If the company refuses to pay or fails to pay, the administrator must get a lien from a court on the company's assets in order to compel payment.

Secondly, the bill ensures that if any one company cannot pay its obligation under the trust fund—and this is important—if any one company can't pay its obligation under the trust fund, the other companies must shoulder the cost.

Specifically, section 204(h)—please read it, opposition—Guaranteed Payment Surcharge, states that if the required contribution does not come in,

The administrator shall assess a guaranteed payment surcharge.

Here it is, section 204(h)(3):

To the extent it is insufficient to satisfy the required minimum aggregate annual payment, the administrator—

Not may—

shall assess a guaranteed payment surcharge.

So the administrator shall collect any shortfall in contributions from other defendant companies. This legislation contains specific language to require that companies pay and that if the enforcement mechanism should fail for any reason, the the money still comes into the trust through payments from other companies.

With explicit language protecting the American taxpayer and the U.S. Treasury from ever having to contribute to the fund, with explicit language limiting the administrator's borrowing authority, and with explicit language ensuring that the anticipated contributions are made, this legislation makes it abundantly clear that in no way, shape, or form can the trust harm the Federal budget.

Opponents of the bill argue that those of us who support the bill have ''significantly distort[ed] CBO's conclusions'' and, at the same time, they assert that CBO ''likely understates'' the amount of money needed for the trust. They argue that because CBO uses qualifiers in their estimates such as acknowledging uncertainties in calculating the number of claims and the amounts to be paid, that one must draw the conclusion that CBO actually believes the cost to be much higher than that which is contained in their paper. Yet time and time again, when CBO has been asked to review their estimate and make changes based on new information, including the rather notorious Bates White study, they have declined to make changes. I was in that hearing; I heard the Director of CBO decline to make changes directly after the Bates White testimony. With each request, CBO has refused to alter its estimate of the projected costs. This is what they said in a letter to Chairman SPECTER dated December 19, 2005:

The Bates White Report contains no new information that would cause CBO to revise its cost estimate.

The size of the fund is based on the strongest statistical data and economic models available. Now, that is the best that is out there. That is the state of the art. Some can say it isn't enough. I can't counter that. All I know is that the committee sought the best, the committee sought the most responsible.

As I said on the floor previously, a leading actuary with Tillinghast-Towers Perrin, an actuarial firm for the Manville Trust, testified before the committee that ''$108 billion appears to be more than adequate,'' and the RAND Institute estimates the future remaining costs of asbestos-related loss and expense at $130 billion. In addition, the new projections calculated by Tillinghast also confirm that the contributions to the asbestos trust fund should be sufficient.

While opponents argue that the latest Tillinghast studies support their argument that there is inadequate funding, a closer analysis reveals that the new Tillinghast projections are actually in line with the projections used to calculate the money necessary to pay claims under the bill. Let me tell you how that happens.

The new Tillinghast claims projections include claims for foreign exposures as well as Manville's level VI cancers. Both of these categories of claimants are ineligible for compensation under this bill's medical criteria. When these changes are accounted for and the Tillinghast numbers are adjusted, their new projections fall squarely within the range that the asbestos trust fund is based on, and the adjusted Tillinghast numbers are actually less than CBO's projections.

In addition, by using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs which almost all experts agree consume more than half of the total amount paid out for asbestos claims.

Remember at the beginning I said that one of the most startling things to me was to realize what happens with settlements, what happens to the dollars of settlements. The fact is that 61 percent of all of the settlement monies go for defendant costs, go for plaintiff costs, go for court costs, go for legal fees. Sixty-one percent. Sixty-one percent, then, of any tort court sum goes not to the victim but to lawyers and to tort costs.

In addition, by using a no-fault administrative system, the fund significantly reduces the substantial transaction costs of the current tort system: (A) you don't need a lawyer; and (B) if you want to come in with a lawyer, that lawyer is limited to a 5-percent fee—not 30, 40, 50, 60, or 70 percent of a recovery, but 5 percent.

According to the RAND Institute, 58 percent of the money spent on asbestos claims goes toward attorney's fees—31 percent to defense attorneys, and 27 percent to plaintiff attorneys.

I urge everyone to read the RAND Institute's recent study. It is 168 pages. It describes what is happening in the tort system, and it is an independent, very good analysis.

The bottom line: The asbestos bill needs less money to pay victims fair compensation since it eliminates these transaction costs which drain money away from the individual.

This bill as amended obligates defendant and insurer participants to contribute $136 billion—that is a lot of money—$136 billion to the fund, and at least $4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds. In fact, CBO recently estimated that the amount to be contributed by bankruptcy trusts will likely be around $8 billion. Here is what CBO said:

> The value of cash and financial assets of the asbestos bankruptcy trust funds would be $7.5 billion in 2006 and $8.1 billion when liquidated.

As I stated previously, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts. With this safety net, the legislation ensures that no one is left without an avenue of recourse.

Some people have said there is a lack of certainty. A lack of certainty is not unusual when projecting what might occur in the future for the Federal budget or for future programs. I do not believe that uncertainty or ambiguity necessarily leads to the conclusion that the trust fund will require more funding. But I would hope opponents would view the ambiguities for what they are—an acknowledgment that no one can predict the future with 100 percent certainty, and the best anyone can do is make projections using sound statistical analyses, which this committee's bill has attempted to do.

We don't know how many people have been exposed to asbestos and, of course, who will develop a disease—nor can we possibly know. However, that should not mean that we do nothing, that we let the present system, which we know is not good, prevail. That does not mean that the analyses and projections that have been done are useless, not valuable, or inaccurate. Instead, we have to find the best projections available, the most sound, the ones that are based on sound calculation and real-world experience of other trusts. That is what this legislation does.

Another argument made by opponents is that there will be additional costs related to the debt service that could overwhelm the trust. Some have declared:

> Debt service contributes greatly to the trust fund's insolvency, underlining the severe mismatch between the timing of payments into the fund.

Opponents have said that this conclusion is based on the argument that there will be a flood of claims at the start of the trust. However, this concern has also been examined and addressed through the process of drafting this bill. The so-called upfront funding has been significantly increased to the point where the trust fund now will have $42 billion in the first 5 years to pay claims. Under S. 2290—the old bill—the administrator would have collected up to $19 billion during the first 3 years and only $29 billion in the first 5 years. The difference is $15 billion has been added to the upfront funding of this bill. That is a 30-percent increase in the startup funding from what was provided in the bill last Congress.

In addition, the Judiciary Committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

Section 204 requires the defendant companies to pay their initial payment within 90 days from the date of the enactment, and we are very serious about that. Section 212 requires the insurers to make their first payment within the same time line. And Section 402 requires the bankruptcy trusts to also make their first payment within the first 90 days.

Here is what the bill says:

> Each defendant participant shall file, not later than 90 days; insurer participants, not later than 90 days.

This is bill language.

> The assets in any trust established to provide compensation shall be transferred to the fund not later than 90 days after enactment.

So everything is done in this bill to move a fast start forward. Within 3 months, the administrator will have collected initial payments from all the participants and will have almost $9 billion.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately—immediately—upon enactment of this legislation. That is what is so attractive to me. Someone who has a very short time to live, someone with mesothelioma, has a chance of getting paid upfront, right away—much more than a chance, a commitment. This provision ensures the terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing and most expensive claims before the trust is up and running so that there will not be an overwhelming flood of claims filed with the trust on day one.

Senator SPECTER included language in the statute of limitations to give individuals sufficient time to file their claims—5 years—so there will not be a need to rush to the fund for fear of being cut off and the administrator and the medical board can concentrate on the sickest people first.

Finally, as I mentioned previously, there are tight restrictions on how much the administrator may borrow for the express purpose of ensuring that the trust does not face a shortfall simply because of a debt service problem.

I would like to address the Bates White study in a little more depth. When opponents argue that the projections are too low, many of the arguments made to support this conclusion appear to be based on the Bates White study.

During consideration of this legislation, the Committee held a hearing on the Bates White study and asked CBO to review its conclusions. I was present and listened carefully to the testimony. Several criticisms and concerns were raised about the Bates White study, its assumptions, and its methodology. Witnesses before the Committee made several points that significantly undermined the credibility of the Bates White study.

First, witnesses argued that the Bates White study overestimated occupational exposure. In determining the overall number of individuals who could recover from the bill the Bates White study appears to have counted every employee who ever worked in an industry where there was asbestos exposure. This conclusion was reached by comparing the Bates White study to the Nicholson study.

The Nicholson, Perkel and Selikoff study, conducted in 1982, set the standard on this subject and is considered the most comprehensive asbestos study. It provides a good foundation for estimating the future cases of asbestos disease, and has been utilized in many of the models to develop future asbestos disease claims projections, including claims projections made for the Manville Trust. Yet, Bates White's conclusions are almost triple Nicholson's.

Navigant is a consulting firm that has worked on asbestos claims since the 1980s doing evaluations of claims projections and costs to companies. During the hearing, Navigant's witness explained that this discrepancy seemed to occur because Bates White simply used a straight percentage of the total U.S. workforce, whereas Nicholson conducted an extensive analysis of the industry and occupational exposure to asbestos.

Next, Bates White did not make a distinction in its calculations between exposed populations and eligible populations. This means that in the Bates White study it appears that every person who was ever exposed to asbestos was counted as eligible under the trust fund. However, not all individuals who are exposed to asbestos will become sick, nor will all individuals who are exposed to asbestos be able to meet the medical criteria and the exposure requirements necessary to receive compensation.

While considering asbestos legislation, several witnesses have pointed out that just because someone may have been exposed to asbestos at some point in their lifetime, it does not follow that they will become sick or will qualify for payment. I think this is an important point and is feeding some of the misperceptions around this bill. The science has not determined that every person who is exposed to asbestos will get sick.

This is true not just because each individual is different from one another and has differences in their immune systems, but because developing an asbestos-related disease usually requires prolonged and sustained exposure. Asbestos is a naturally-occurring mineral and most of us have been exposed to asbestos dust simply by walking outdoors. However, the current science concludes that casual contact is rarely sufficient to develop an asbestos disease.

Dr. James Crapo is Professor of Medicine at the National Jewish Medical and Research Center. He has more than 25 years of experience with asbestos-related issues, including medical research and clinical treatment of patients suffering from asbestos-related diseases and has published in the field of environmental toxicology, including the basis of asbestos-induced lung injury.

He testified that:

> All of us are exposed to asbestos from the environment and consequently have asbestos in our lungs. This background level of exposure does not cause any asbestos-related disease. Those diseases normally require substantial occupational exposures or the equivalent.

In addition, the Navigant and the labor witnesses pointed out that the Bates White study did not seem to take into account that exposure rates within certain occupations decreased over time. This means that the Bates White study did not account for the fact that as companies became more aware of the dangers of asbestos they often did more to protect their workers.

The committee also heard from Dr. Laura Stewart Welch, a board-certified physician in internal medicine and occupational medicine. She has an active medical practice and treated many workers with asbestos-related disorders. She is currently medical director for The Center to Protect Workers Rights, a research institute affiliated with the Building and Construction Trades department of the AFL–CIO, and has authored over 50 peer-reviewed publications and technical reports in the field of occupational and environmental medicine, including papers describing the findings of asbestos-related disease in this group of construction workers.

She pointed out that the overall number from which Dr. Bates calculated the claims that will go into the trust is at least ten times too big. She explained that Dr. Bates extrapolated from a study that uses 2–3 fiber years as the basis for what constitutes significant exposure. The reference to fiber years is a way to calculate how much asbestos an individual has been exposed to. However, the legislation requires at least 25–40 fiber years to constitute significant exposure. So the legislation requires a much higher level of exposure to qualify.

Witnesses concluded that by failing to adequately consider each of these factors, the Bates White study provided a significant overestimation of claims.

Next, the committee heard testimony that argued the estimates made by the Bates White study do not reflect current experiences. The Bates White study asserts that by creating a no-fault system there will be a huge increase in filing of other cancer claims because it is no-fault rather than the adversarial system in the courts. However, the Manville Trust has similar, and in some cases exactly the same, medical criteria as the criteria in the FAIR Act, and it does not have litigation costs nor the deterrent of the adversarial system.

The Manville Trust was formed in 1988, and is the first and largest asbestos trust. In fact, it is not just the largest asbestos trust, but it is the largest toxic tort or personal injury trust of any kind. As of mid-2005 the trust had paid about $3.3 billion to settle 655,096 claims. The Manville Trust has gained so much experience in the field of asbestos claims settlements that it plans to begin offering claims-resolution services to other companies. Therefore, the experience of the Manville Trust should be considered a fair starting point for projections.

When comparing the Bates White study to Manville, witnesses from the committee hearing asserted Bates White projections are four times higher for other cancers than Manville. This was viewed as well outside a reasonable difference.

In addition, witnesses pointed out that there are several evidentiary requirements that do not seem to be adequately accounted for. In the two areas where the Bates White study predicts significant growth in claims, it does not account for the role of the physicians panel which is made up of three doctors who will personally review claims.

Lastly, the committee heard from experts who stated that the Bates White study used a methodology that has not been accepted by the unions, businesses, insurers, trial lawyers, CBO, the current bankruptcy trusts, or the courts now hearing asbestos cases.

For all these reasons, many of us concluded that the Bates White analysis fell far outside acceptable ranges for projections. To be clear, throughout this process both the AFL–CIO witness as well as business witnesses disputed the assumptions underlying the Bates White study and rejected its conclusion.

The next argument used by opponents is that the asbestos trust fund is going to fail because other trust funds have failed. This is not a new concern. In fact, throughout the process we looked at previous trust funds and attempted to evaluate the problems that arose.

The Black Lung Disability Fund was established by the Black Lung Benefits Revenue Act to pay black lung benefits to eligible miners whose mine employment ended before 1970 or whose employers were no longer in existence and therefore could not be assigned liability for their benefits. It was funded by excise taxes levied on coal sold by mine operators, but the Act includes language for repayable advances to the fund from the U.S. Treasury. This meant that when the Black Lung Trust Fund's resources were inadequate to meet its obligations the U.S. Treasury could advance the fund money to cover the costs. This provision is intentionally not included in the asbestos bill and instead language stating the opposite is included.

It is true that the number of black lung benefit claims were vastly underestimated and the costs of the black lung program were also underestimated. However, while the Black Lung Fund's costs were to be paid by industry, by 1977, 7 years after enactment, industry had made very few payments to the fund. The fund then sustained a deficit and the U.S. Treasury had to pay claims because of this default by mining companies. We did not ignore the problems created by the Black Lung Fund, rather we included several provisions in the asbestos bill to prevent this situation from taking place.

They are: explicit language prohibiting the Administrator from requiring any costs to be paid by U.S. Treasury; limits on borrowing authority and capacity; strong enforcement provisions if businesses default; requirements that other companies cover any potential shortfall; and reversion to the tort system if the trust runs out of money. I have already discussed the language in the asbestos bill to ensure that the business and insurer contributions are made and enforced, and to limit how much the administrator may borrow.

Finally, I would like to address an overarching concern that has been repeated throughout the debate. Interestingly, opponents keep arguing for 100-percent certainty. I don't know when we are ever provided 100-percent certainty. Congress is supposed to look at all the information available, hold

hearings, raise questions, draft legislation, offer amendments and then try to pass a statute. That is exactly what has been done here.

Senators SPECTER and LEAHY have gone well beyond what is normally done around here to address problems. Every time an issue has been raised, they have tried to address the problem and find a solution. This stands in sharp contrast to the take-it-or-leave-it process that often describes legislative craftsmanship.

To now hear my colleagues express such an intense level of outrage that the bipartisan bill before the Senate does not contain adequate certainty or enough compromises is hard to swallow. To argue that a bill should not move forward because there might be unintended consequences would mean we would almost never pass legislation. And if we can't pass legislation unless we can guarantee there will never be an unintended outcome, then we might as well pack up and go home.

I should say I think this is a very important bill. Let me end with what I started. People who think the tort system is the way to go, who think it is OK that 61 percent of the settlement dollars go to transaction costs, who think that the victims who do not get this money are best served by the tort system—they are going to vote to sustain the point of order against the bill.

For those of us who believe it is the sickest victims who are going to be best taken care of in this trust, that this trust sets up an orderly and medically oriented protocol for a no-fault trust system and that victims are going to benefit from it and businesses will cease going into bankruptcy because of it, if you think that is a worthy thing, then you will vote for us.

I thank the Chair. I particularly thank the chairman and the ranking member of the committee. This has not been an easy bill. I truly believe they have both done a wonderful job, in the finest interests of the Senate, by working together across the aisle.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Vermont.

Mr. LEAHY. Mr. President, parliamentary inquiry: Are we operating under controlled time?

The PRESIDING OFFICER. We are not.

Mr. LEAHY. Mr. President, first, I thank the distinguished Senator from California. She has talked about the daunting hours the senior Senator from Pennsylvania has put in on this legislation, as well as those of us who have been concerned with it.

I note the Senator from California has spent those hours with us. She has been there, her staff has been there—I don't know how many times I have received calls that start with: Patrick, I have been thinking about this—and off we go. Usually, that is about points to which I should be paying more attention. All of that has gone toward a better bill.

The senior Senator from Pennsylvania is not on the floor looking for praise, but I am going to take a moment to praise him from this side of the aisle. I do not know a single Senator, Republican or Democrat, who came to him and said: I want to talk to you about this, who was not given a fair, thorough hearing. If they had a better way of doing it, the Senator from Pennsylvania would say: Let's consider it. He and I would talk about it, and if we were convinced it was a better way, it became part of the bill.

I have been here 31 years, as I am sometimes wont to say. My children remind me they had forgotten I was that old. But I have been here 31 years, and I very rarely have seen a chairman of either party take that much time and effort to accommodate every single Senator. I applaud my friend from Pennsylvania for doing that.

But the proof comes in the pudding. Because he did do that, we have an even better bill than when we started. We spent several years on this. I recall conducting one of the first hearings on this several years ago. We have done this through two different Congresses. We have had numerous markups, and we have come out with a better bill. It is on the floor now because it is the aggregate of great ideas.

This is why the point of order is so frustrating, the point of order that the nonpartisan Congressional Budget Office said they would not expect this legislation to add to the Federal debt. Yet we still have to face this point of order because the point of order has become for many a backdoor way of killing this bill. If it is done to kill the bill, Senators should ask themselves what they are then faced with? I will tell you what they are faced with. They are faced with thousands upon thousands of victims—and we are all for the victims. Lord knows everybody said that. But if you vote to sustain this point of order what you are telling thousands upon thousands of victims is: You are on your own. You probably have no chance of getting the recovery you would have here.

Certainly, you tell all those veterans who have no place of recovery that they are gone. That is why every single veterans group I can think of has endorsed the legislation, the Specter-Leahy legislation. They have endorsed it. That is why all those veterans organizations said: Don't vote to sustain this point of order.

I have a great deal of respect for the Senate Budget Committee. Certainly, I do for my friend, the ranking member, and my friend the chairman. But I disagree with any position that says this legislation would add to our deficit. If you fully read the text of our legislation and the testimony of the Congressional Budget Office and the recent analysis of the fiscal impact of this legislation, it does not support the point of order. We have heard people who are opposed to this say that somehow a privately funded trust will add to the Federal debt. This week, the Congressional Budget Office made it very clear that the trust fund set up under this bill does not add to the Federal debt. CBO stated in its letter that ''the legislation would be deficit neutral over the life of the fund.''

I ask unanimous consent that that letter from CBO be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 13, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the request of the Committee on the Budget, the Congressional Budget Office (CBO) has reviewed Senate Amendment No. 2746 to S. 852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005, a substitute amendment that was printed in the Congressional Record on February 9, 2006. This review addresses the amendment's year-by-year budgetary impact over the first 10 years, its aggregate impact in succeeding 10-year periods, and its cumulative budgetary impact over the life of the proposed Asbestos Injury Claims Resolution Fund (Asbestos Fund). It also addresses the potential costs of intergovernmental and private-sector mandates in the legislation.

BUDGETARY IMPACT

Assuming that the bill as amended is enacted before the end of 2006, and based on the assumptions underlying our August 2005 cost estimate for S. 852, CBO estimates that payments to eligible claimants, start-up costs, investment transactions, and administrative expenses of the Asbestos Fund would total about $64 billion over the 2006–2015 period (excluding debt-service costs). Those sums would appear in the federal budget as direct spending (see the table below). Over the same 10-year period, we estimate that the fund would collect about $58 billion from firms and insurance companies with past asbestos liability and from certain private asbestos trust funds. CBO expects that those sums would be treated in the budget as federal revenues. In addition, the Joint Committee on Taxation (JCT) estimates that enactment of the legislation would lead to a reduction of about $1.1 billion in receipts from corporate income taxes over the 2007–2015 period; this would affect the budget totals but would not affect the balances of the Asbestos Fund. Thus, CBO estimates federal revenues would increase by about $57 billion over the next 10 years under the bill.

ESTIMATED BUDGETARY IMPACT OF S. 852, IF AMENDED BY AMENDMENT NO. 2746

	By fiscal year, in billions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	*	8.7	23.1	11.1	5.3	4.0	5.1	5.0	4.9	4.7
Estimated Outlays	*	8.7	6.7	8.2	9.3	9.4	6.6	5.2	5.1	5.0
CHANGES IN REVENUES										
Asbestos Fund Revenues	0	8.7	7.0	8.2	9.3	9.1	4.0	4.0	4.0	4.0
Corporate Income Taxes	0	−0.1	−0.2	−0.2	−0.2	−0.1	−0.1	−0.1	*	*
Total Revenues	0	8.6	6.8	8.0	9.1	9.0	3.9	3.9	4.0	4.0
CHANGES IN THE DEFICIT										
Estimated Net Increase or Decrease (−) in the Budget Deficit	*	0.1	−0.1	0.2	0.2	0.4	2.7	1.3	1.2	1.0

Note: *= Between $50 million and −$50 million.

CBO's estimate of spending from the Asbestos Fund over the 2006–2015 period differs from that in CBO's August 2005 cost estimate for S. 852 because we now assume a later enactment date for the legislation. In addition, certain provisions in section 402 regarding when assets would be transferred from private asbestos bankruptcy trust funds to the proposed federal Asbestos Fund would slightly reduce both spending and revenues, relative to the amounts shown in the earlier cost estimate. CBO estimates that other provisions of the amendment would not significantly affect spending or receipts over the 10-year period, relative to the amounts shown in CBO's earlier estimate.

The revenue effects shown in the table also incorporate a change in CBO's cost estimate unrelated to the amendment. That change involves effects of the legislation on the amounts that insurers and defendant firms would deduct to arrive at taxable corporate income. In CBO's earlier estimate, it was judged that the amounts deducted as payments made over the life of the trust fund were approximately the same as would be deducted to cover claims under the current tort compensation system, producing no net effects on corporate income tax collections over the life of the fund.

This assessment has not changed. But while total deductions over the life of the trust fund would not change, their distribution over those years could. Larger deductions up front, as a result of S. 852, could produce less revenue from corporate income taxes in the earlier years, which would be offset by a revenue gain in later years. Lacking any basis for estimating this timing effect, CBO elected not to incorporate it into its cost estimate. Recently, the Joint Committee on Taxation produced an estimate of this timing effect. In its estimation, receipts from corporate income taxes would be reduced by about $1.1 billion over the 2007–2015 period. CBO has elected to incorporate JCT's estimate of this effect in its projections. That adjustment does not affect spending or receipts of the proposed Asbestos Fund.

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting the bill as amended would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

MANDATES

The proposed amendment contains the same intergovernmental and private-sector mandates as the reported bill. It would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. It also would require state governments to comply with requests for information from the Asbestos Insurers Commission. CBO estimates that any cost associated with those intergovernmental mandates would be insignificant and well below the threshold—$64 million in 2006, adjusted annually for inflation—established in the Unfunded Mandates Reform Act (UMRA).

The proposed amendment would also impose mandates on certain individuals filing claims for compensation for injuries caused by exposure to asbestos; certain companies with prior expenditures related to asbestos personal injury claims; certain insurance companies; trusts established to provide compensation for asbestos claims; health insurers; and persons involved in manufacturing, processing, or selling certain products containing asbestos. Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established by UMRA ($128 million in 2006, adjusted annually for inflation).

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Mike Waters, who may be reached at 226–2860.

Sincerely,

DONALD B. MARRON,
Acting Director.

Mr. LEAHY. Former Senator Don Nickles, with whom many of us served, raised this concern. The Government Accountability Office responded:

> [T]o ensure the Government incurs no liability for repayment of borrowing under this act, Congress may wish to explicitly state repayment of borrowing is limited solely to balances available in the fund.

That is precisely what we did in the FAIR Act.

A simple reading of the text of the bill shows that defendants and their insurers are obligated to pay $136 billion to the fund, and additionally another $4 billion of the assets from existing bankruptcy trusts. If this level of funding proves to be insufficient—most doubt it will not, but if it does—then we revert back to the tort system which we have now.

If we pass this legislation, thousands of people who had their health severely impacted through no fault of their own because of asbestos will have a chance to recover. Will some recover as much as some of the lucky few who were able to get through the whole tort system? No, nor will their attorneys even begin to recover the huge amounts some of the attorneys did.

The private companies are required under this legislation to continue making payments to the fund even after sunset until all of the fund's obligations are satisfied under section 405. Even the administrative expenses are paid from this private fund.

Finally, the bill clearly states:

> Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . .

The Senator from Pennsylvania and I have this as a touchstone all the way through, that we are not passing a piece of legislation for the taxpayers to fund. We are seeking help for those who have been injured.

Senator SPECTER and I have been working on this issue for years. We have carefully considered the design of the compensation program for asbestos victims and ways to avoid the pitfalls of other Federal compensation programs that have been enacted by Congress. Many of the compensation programs cited by the opponents of S. 852 were created by Congress with mandatory Federal spending and did not contain a provision to sunset the program if it went under-funded. We rejected such proposals for asbestos legislation.

Many opponents of our trust fund wanted the claims processing to be in a private corporation. Labor groups and victims testified that operating this trust fund in a new, private entity would delay compensation to sick victims and would entail significant administrative costs. Accordingly, we agreed to house the asbestos trust fund within the Department of Labor because it has expertise with compensation programs. It has existing staff with relevant experience and critical infrastructure and contracting capabilities to ensure an accelerated pace to pay the sickest victims within months of enactment.

Members of the financial services community recently contacted my office to rebut the conclusions made in the recent ''white paper'' distributed by the minority staff of the Senate Budget Committee. The investment community indicates that this minority staff report circulated last week dramatically overstates the financing expenses to be expected under this legislation.

This document alleges that $125 billion will be spent by the fund on borrowing because it vastly overstates claims projections and interest rates. The minority staff document ignores the fact that section 221 of the legislation provides that borrowing by the trust fund will be within a 10-year time frame. The document alleges that the FAIR Act will pay borrowing at an interest rate of a whopping 25 percent. This assumes an interest rate six times higher than the current 10-year Treasury bond rate.

In fact, the financial community opines that due to the structural aspects of the legislative language, it is ''overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit'' and therefore it would have access to highly favorable borrowing rates.

I ask unanimous consent to have printed in the RECORD the FIAR letter.

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

FINANCIAL INSTITUTIONS FOR ASBESTOS REFORM,
Washington, DC, February 10, 2006.

Re Senate Budget Committee Democratic Staff White Paper.

Hon. ARLEN SPECTER,
Hon. PATRICK LEAHY,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATORS: As members of the investing community we must take issue with the recent report prepared by the Democratic staff of the Senate Budget Committee. This staff paper flunks ''Finance 101''. The analysis by Democratic staff of S. 852 displays a basic misunderstanding of the financing that will occur in the proposed asbestos claims trust fund. It suggests that the trust fund's obligations will exceed designed contributions by a hair-raising total of $150 billion in nominal terms. This suggestion lacks any credible basis.

The Democratic staff report attributes $117 billion of this $150 billion to increased financing expenses. The report estimate of $125 billion in financing costs contrasts with a Congressional Budget Office estimate that net financing expenses for the trust will be $8 billion. This huge discrepancy is the result of flawed and unrealistic assumptions in the staff report.

The staff study projects that the trust fund will make $160 billion in claims payments, vs. $130 billion estimated by the CBO. In a worst case scenario where the incremental $30 billion of claims would be financed by borrowing in the trust fund's initial years of operation, the trust would need to borrow $50 billion as opposed to the $20 billion estimated by CBO.

Section 221 of the FAIR Act provides that borrowing by the trust fund will be within a ten year time frame. Doing the math, the trust fund would be borrowing $50 billion at an unheard of interest rate of 25% in order to generate $125 billion of net financing expenses over the ten-year borrowing period. It should be noted that ten-year Treasury bonds currently yield 4.54%.

There is not even a remote possibility that the trust fund administrator will have to borrow at rates even approaching 25%. Structural aspects of the proposed trust, including a super priority lien securing obligations of the payers, make it overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit.

If the trust gets even the lowest investment grade rating (BBB) and pays market rates, which are under 6%, its total borrowing costs under the staffs draconian scenario would be under $30 billion; a far cry from $125 billion.

Sincerely,

Financial Institutions for Asbestos Reform.

Mr. LEAHY. Mr. President, at the heart of most arguments against the funding structure provided under the FAIR Act are allegations that predictions about the number of claims expected to come to the fund have been underestimated. Over the past 5 years, the Judiciary Committee received extensive testimony from a variety of auditing companies, economic analysts and existing asbestos trusts about claims projections. Three years ago, a leading actuary with Tillinghast-Towers Perrin testified that ''$108 billion appears to be more than adequate'' while other firms estimated that $130 billion would be sufficient to cover the trust fund expenses.

It is not surprising that projections about future behavior vary from firm to firm because the assumptions are different. Some professional analysts have estimated that we will experience significantly less than $140 billion in claims and others have estimated that we will experience more.

Last week's document produced by some staff on the Budget Committee assumes that $160 billion will be paid out in claims based on a worst case scenario of one projection of claims activity.

The minority staff document circulated last week adopted claims projections plainly at odds with the experience of the Manville trust and without consideration for the medical criteria in S. 852. The overwhelming majority of nonmalignant claims paid by the Manville trust go to unimpaired claimants. The fund created by the FAIR Act would not compensate these claims, so this significant disparity must be taken into account.

The minority staff document also fails to account for the different medical criteria for malignant claims paid by the Manville trust. Thankfully, the CBO's estimate takes the FAIR Act's specific medical criteria into account when it considered its claims projections.

The CBO considered all relevant estimates and met with scores of stakeholders, financial experts, economists and auditors in determining whether the compensation provided for victims under S. 852 would be adequate. After years of analysis, they found that while victim compensation could range from $120 to $150 billion, its middle range estimate using its chosen claims projections would yield approximately $130 billion in claimant compensation, and that $140 billion, plus investment income, would be sufficient to cover all claims payments, administrative costs, and borrowing costs.

Of course opponents can seize upon worst case scenarios in an 11th hour attempt to scuttle this bipartisan legislation, but $130 billion in expected claims is the CBO's middle range and is provided for under our legislation.

Finally, opponents of this legislation contend that the fund will not actually receive $140 billion from the private companies obligated to contribute based on their previous asbestos expenditures. In his testimony before the Senate Judiciary Committee last Fall, then-CBO Director Douglas Holtz-Eakin clearly stated that: ''CBO projects that total receipts to the fund over its lifetime would amount to about $140 billion, including a small amount of interest earnings on its balances.''

The FAIR Act contains several provisions to ensure that the contributions will be collected through numerous enforcement provisions which provide the administrator with subpoena power and the ability to pursue punitive damages for nonpayment. In addition, our legislation contains a funding guarantee so that other companies will make up the difference if some companies are unable to pay their own contribution.

Even if the fund sunsets and victims are allowed to return to the tort system, the private companies are nonetheless required to continue to pay into the fund until all of the fund's obligations from borrowing costs and resolving victim claims are satisfied.

I understand that some of my colleagues have raised this budget point of order to sink the FAIR Act, but I urge them to consider the purpose of such budgetary mechanisms in light of the simple fact that we have created a privately financed structure that the Congressional Budget Office has estimated will not add to the Federal debt.

This point of order is a procedural mechanism intended to promote fiscal discipline. In light of CBO's explicit statement that ''CBO concludes that the legislation would be deficit-neutral over the life of the fund,'' no point of order should prevent such important, completely privately funded legislation as the FAIR Act.

This latest analysis from CBO reinforces the fact that the asbestos trust fund legislation would not add to the Government's Federal debt. The bottom line from CBO is that this bill is ''deficit-neutral.'' There is no reason to sustain the budget point of order. The FAIR Act is the right solution for victims and businesses. This bipartisan bill offers fair and efficient relief to long-suffering victims of asbestos exposure while providing business with financial certainty and an alternative to bankruptcy.

I recently received a letter from the International Association of Heat and Frost Insulators and Asbestos Workers. The workers represented by this union know first hand the devastation caused by asbestos, and I know they would hate to see the unique opportunity we have before us be destroyed by a technicality.

They wrote:

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members.

Let us not let down the very people we are seeking to help. I ask unanimous consent that the letter from the International Association of Heat and Frost Insulators and Asbestos Workers of February 13, 2006 be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,

Lanham, MD, February 13, 2006.

DEAR SENATOR: We write you to express our concern regarding the budget point of order that is currently being considered with respect to the Fairness in Asbestos Injury Resolution (FAIR) Act, S. 852. It is frankly very troubling to see critical legislation that impacts our members be imperiled by a mere technical procedural motion.

The Fund at the heart of S. 852 is financed by private dollars and it does not make sense to us that the legislation could have any real impact in the U.S. budget. We urge you to support waiving this false point of order so the Senate can work on this important legislation.

We represent tens of thousands of members and retirees who have been exposed to asbestos in the workplace.

We believe the current system is broken and must be fixed for the current victims and the victims of the future. More than seventy-five companies have gone into bankruptcy. What is most disturbing to us is the fact that only 42 cents of every dollar spent goes to the victims, their widows, and children.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

We strongly support the FAIR Act. For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members. We believe to kill the FAIR Act on a disingenuous technicality would be wrong and, as appalling as the current system itself. Our members and their families know the horrors of asbestos-induced disease and the heartache associated with it. We also know that the problem is not going away soon.

Senators Specter and Leahy along with many others have worked extremely hard over the past three years to address what almost everyone concedes is a national crisis.

Senators who oppose this Bill may vote against it in the end, but the members of our Union (International Association of Heat and Frost Insulators and Asbestos Workers Union) deserve to see this bill put to a final vote.

Sincerely,

JAMES A. GROGAN,
General President.
JAMES P. MCCOURT,
General Secretary-Treasurer.

Mr. LEAHY. Mr. President, I urge my colleagues to consider all the work that has gone into the crafting of this legislation including the specific provisions I have highlighted in this statement making it absolutely clear that the Federal Government is simply not liable under this legislation.

The Judiciary Committee received extensive testimony from economists and experts in claims projections. All of this process and expertise was considered as part of the Congressional Budget Office official estimate.

The CBO has testified that the FAIR Act is not predicted to add to the Federal debt; therefore, it should not suffer from the budget point of order raised against it. I urge my colleagues to waive the point of order. The victims of asbestos exposure will not benefit from this latest tactic to stop this legislation.

Mr. REID. 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. LEAHY. 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.

Mr. FRIST. Mr. President, discussions have proceeded since this morning on the point of order and the motion to waive the point of order, and we have come to an agreement whereby we will have a vote sometime around 6 o'clock tonight.

I ask unanimous consent that there now be 3 hours for debate in relation to the motion to waive prior to a vote on the motion, with the time divided as follows: 40 minutes for Senator SPECTER, 40 minutes for Senator LEAHY, 40 minutes for Senator ENSIGN, 40 minutes for Senator DURBIN; provided further that if the point of order is sustained, the two filed cloture motions are vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I would be the last to put forward my proficiency in math, but I do think that math is wrong.

Mr. FRIST. Mr. President, I modify my unanimous consent request, that there now be 3 hours minus 20 minutes—2 hours 40 minutes—for debate with the times as designated.

Mr. REID. Mr. President, reserving the right to object, this point of order which has been raised is a difficult vote for Democrats and Republicans. I express to my friend, the Senator from Vermont, that I hope my advocacy here on this issue has not offended anyone. I know there was a time when it did offend my friend from Pennsylvania. I have already apologized in that regard, if in fact I offended him. But Senator SPECTER, Senator LEAHY, and I have been in courtrooms long hours, and you have to put all of this stuff behind you, no matter the feeling at the time. Senator FRIST has been in the operating room involved in very critical stuff. He looks at this a little differently than I do, but our intent is the same. We need to have this vote, find out what happens there, and move on to this legislation, or whatever else comes up.

Again, if I have offended Democrats or Republicans because of my advocacy on this issue, I apologize.

I have no objection.

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

Mr. FRIST. Mr. President, to clarify, given my math being incorrect, that vote would be a little bit after 6 o'clock tonight on the motion to waive the point of order.

Mr. REID. Although people do not have to use all time.

Mr. FRIST. That is correct. It could be earlier than that. Then we would not have any more rollcall votes after that vote tonight.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am advised that Senator HATCH, Senator DOMENICI, and Senator ALEXANDER would like time, and they are welcome to it if they would come to the floor. I have already spoken on this issue at some length and reserve my time for rebuttal.

At this time, I ask unanimous consent to have printed in the RECORD a letter from the International Union of Painters and Allied Trades, dated February 14, and a letter from the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, dated February 13, objecting to the point of order.

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

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,

Washington, DC, February 14, 2006.

Subject: FAIR Act of 2005 (S. 852).

DEAR SENATOR: This week, the Senate continues consideration of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and urges all Senators to reject the technical budget point of order that has been raised against the bill.

The asbestos trust fund that would be established by the passage of this bill will be entirely financed by contributions from defendant companies and insurers and will have no impact on the federal budget, thereby invalidating the point of order against the bill. While all of the funding will be provided from private sources, the actual administration of the fund will be housed within the Department of Labor, causing this technical point of order to be raised. The IUPAT strongly feels that housing this fund within the Department of Labor will ensure that this newly established trust fund is administered in an orderly and professional manner that will be fair to victims. Therefore, we urge all Senators to defeat this budget point of order and any attempt to remove the administration of this fund from the Department of Labor at this stage in the process.

As this process moves forward, the IUPAT strongly believes that the FAIR Act represents the best opportunity to provide timely, equitable compensation to the victims of

asbestos related diseases. We urge you to reject the budget points of order and any other obvious attempts that seek to derail the bill or weaken any of its core provisions.

Thank you for your time and attention to this matter.

Sincerely,

JAMES A. WILLIAMS,
General President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, February 13, 2006.

DEAR SENATOR: This week the Senate is expected to continue consideration of the Specter-Leahy asbestos compensation legislation, the FAIR Act (S. 852). The UAW strongly supports this critically important legislation.

We are pleased that Senators Specter and Leahy have offered a manager's amendment that substantially addresses various concerns that have been raised by some unions. Specifically, this amendment will:

Clarify that binding settlements between victims and defendants will be preserved, not canceled by the bill;

Expressly state that civil rights and disability claims are not pre-empted by the bill;

Establish a paralegal program to help asbestos victims process claims before the trust fund, and allow lawyers to collect additional attorneys fees beyond the 5% cap for work on administrative appeals;

Ensure that individuals with both asbestos and silica disease who are sufficiently impaired to satisfy medical criteria for levels III, IV and V will in fact receive compensation under these higher award levels, and will not be required to rule out silica exposure as a ''more likely cause'' of their impairment;

Allow increased awards for mesothelioma victims with dependent children;

Improve the start up provisions so that non-exigent claimants may continue to receive payments from existing bankruptcy trusts, and thus will not have to wait for lengthy periods of time to begin receiving compensation; and

Improve the sunset provisions, both by requiring an independent audit of the status of the asbestos compensation trust fund, and by requiring the administrator's annual reports to be more comprehensive.

The UAW commends Senators Specter and Leahy for proposing these improvements to S. 852. We urge Senators to approve the manager's amendment.

At the same time, the UAW strongly urges Senators to vote against the technical budget point of order that has been raised against the bill. Because the asbestos compensation trust fund is financed entirely by contributions from corporations and insurers, there should not be any valid point of order against the bill. The only reason a technical point of order exists is because the asbestos compensation program would be administered by the Department of Labor. This is something the entire labor movement has supported, to ensure that the program is administered in a competent manner that is fair to victims. The UAW urges Senators to reject the technical budget point of order, both because it could threaten the provisions that involve the Labor Department in the administration of the program, and because it represents an obvious attempt to kill the entire legislation.

The UAW firmly believes that the FAIR Act is the best opportunity to establish a program that will provide prompt, equitable compensation to the victims of asbestos related diseases. We urge you to reject amendments that seek to undermine this legislation, to support cloture to cut off debate on this measure, and to support passage of the overall bill.

Thank you for considering our views on this measure.

Sincerely,

ALAN REUTHER,
Legislative Director.

Mr. LEAHY. Mr. President, I ask unanimous consent that at the appropriate time the Senator from Montana gain the floor and that he be granted 10 minutes of my time.

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

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I rise today to speak to you again about a special place in my state, Libby, MT.

It is important for my colleagues to know that the vote on the budget point of order affects the lives of Libby residents dramatically.

It affects the thousands of people who are sick and the hundreds more who will die.

I ask my colleagues to vote on the merits of this bill. Budget points of order should not be misused. They should not impede consideration of this important legislation.

The budget point of order should not be used to hurt the folks in Libby. They have suffered enough.

The situation in Libby is unique. The asbestos in Libby is different. It is a much different asbestos than other parts of the country. It is much more pernicious. It is wicked, awful stuff.

Libby is different because we are talking about community exposure to asbestos—not a few workers.

The entire Libby community was exposed to asbestos because of the vermiculite mine and mill.

Until the mid-1970s in Libby, W.R. Grace milled vermiculite from a mountain in Libby. W.R. Grace exposed the entire community to this deadly disease.

I have been up there. I have been at that site. It is an unbelievably dusty mess.

This asbestos bill will make W.R. Grace pay Libby residents for the intentional harm this company caused these people.

I do not use the word ''intentional'' loosely because it was intentional. Documents show it was intentional. Documents show the company knew it was harmful, that it was sending this stuff out to the people in Libby, and that many of them would become very ill and would die.

Not only were mine workers employed by W.R. Grace exposed to high levels of asbestos, but the mill's ventilation stack released 5,000 pounds of asbestos every day. Mill workers swept dust outside. Often, they could not even see their broom handles because it was so dirty with asbestos.

They dumped it down the mountainside. White dust covered the entire town.

The layers of rock where people found the vermiculite contained harmful asbestos and this vermiculite in Libby is laced with a particularly dangerous type of asbestos, called tremolite.

Asbestos in Libby is tremolite asbestos rather than the more common, chrysotile asbestos. Tremolite asbestos is a significantly more toxic than chrysotile asbestos.

The Libby tremolite disease process is different. It's far more disabling and deadly than ordinary asbestos, as bad as ordinary asbestos is and 76 percent of diagnosed patients progress to serious disease or death in Libby, MT.

Just compare this to chrysotile asbestos, where 25 percent of diagnosed patients progress to serious disease or death.

People in Libby are uniquely affected by asbestos related disease. They are sick. They suffer from asbestos-related disease at a rate 40-to-60 times the national average.

And people from Libby suffer from the asbestos cancer, mesothelioma, at a rate 100 times the national average.

The asbestos has contaminated the whole town. In addition to the mines and the mill, extensive asbestos contamination is found in homes, in ball fields, and in schools. It's found in the playgrounds and in the gardens. A recent study even found asbestos contamination in the tree bark.

I have worked very hard with the Judiciary Committee and my colleagues, the chairman of committee, Senator SPECTER, and Senator LEAHY, ranking member, to tailor a solution that addresses the unique problems in Libby. We are extremely grateful to Chairman SPECTER and Senator LEAHY for all their work to protect Libby. They have worked very hard. They have sent staffers to Libby, MT. They have seen it. I am thankful for the staff they have sent to Libby to see how bad this stuff is.

I urge my colleagues not to use this point of order to kill the bill and to kill all this hard work. Many Senators have worked very hard for years to try to find a solution, a way to get compensation to people who otherwise will not get compensation and who desperately deserve it. The people who suffer from asbestos-related diseases need our help. Let's stand up for the people of Libby, MT. Let's not turn our backs on them. If this bill goes down, this Senate will be turning its back on the people of Libby, MT.

I urge my colleagues to oppose the point of order and vote on the merits of this bill. Senators can always decide later to oppose this bill. There are many opportunities for Senators to reexamine their positions on this bill and offer amendments.

We should not kill this bill simply on a technical point of order. It will undermine months and months of very hard work of well-meaning people to try to find justice for people who are suffering from asbestos. Let's stand up for the people of Libby and not turn our backs on them.

I urge my colleagues to oppose the budget point of order and vote on the merits of the bill. The people of Libby have been through enough. They need our help. They need it now. If you do not support the bill, say so, but do not hold the people of Libby and the community of Libby hostage. We cannot do that. That would be grossly unfair.

I will do whatever it takes to continue fighting for the people of Libby and fighting for the justice they deserve.

I wish all Members of this Senate were able to sit in the living room of Gayla Benefield—when I first learned how bad things are in Libby—and look in the eyes of Les Skramstad. He is a great guy. He is dying from asbestos. He worked on the mine. He is not old. He is not an old man at all. He is a middle-age guy. He would go home, embrace his wife, the kids would jump in his lap. They now all have asbestos-related diseases. That is common.

I ask my colleagues, please, vote to waive this point of order so we can stay on the bill, work on it, and help the people of Libby. Let's work our will so these folks in Libby can get justice. W.R. Grace is bankrupt. People in Libby cannot get justice from them. W.R. Grace has turned its back on these people.

Let's say yes to the people of Libby and find a way for this to work.

I yield the floor.

Mr. LEAHY. I suggest the absence of a quorum, and I ask unanimous consent the time be equally charged.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Who yields time? The time is controlled by the Senator from Pennsylvania and the Senator from Vermont.

Mr. HATCH. I yield myself time from the time of the Senator from Pennsylvania.

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

Mr. HATCH. Mr. President, every couple of years, this august chamber is given a chance to make good on its billing as the greatest deliberative body in the world, to set aside the predictable partisanship that today passes for deliberation and, instead, work together to solve a real problem besetting our Nation.

We face such a moment today. Later this afternoon, each of us will have a choice. Either we will vote to address a litigation crisis that has made a mockery of our judicial system—and demonstrate that we, as a body, can still function when absolutely necessary—or we will use a clever, parliamentary maneuver to avoid having to face a problem that is too inconvenient and confounding to fix without political cost.

We have been here before, and we have failed miserably. Why? Because, unfortunately, the most effective legislative solution is also the most politically impracticable. To solve the asbestos crisis, conservatives are being asked to turn a deaf ear to many of our traditional supporters and endorse the very kind of Federal structure against which we battle daily—a cumbersome, unwieldy program that seems to teeter on the brink of obsolescence before it even begins.

And liberals are being asked to say enough is enough to one of their most important and influential constituencies and to set aside the one governmental institution over which they feel they can still exert some control—the courts. It is a legislative formula that seems designed for failure.

And then there is the greed. Oh, yes, the greed. For years, Members from both sides have waxed eloquent condemning the pecuniary gluttony of one side or the other but, in truth, there is so much greed among so many that it has obliterated any chance for an accurate debate of the realities we should be confronting.

What are those realities? Let us be honest. By this time, we all understand that asbestos litigation has swallowed companies whole, driving them into bankruptcy, wiping out jobs, careers, pensions, health care, and hope. All of us know that those who mined asbestos and used it to manufacture products are long gone, demolished in the first wave of lawsuits. All of us appreciate that today, far too many businesses are being targeted more because of their perceived wealth than their presumed culpability.

All of us realize that under the current system, tens of thousands of Americans who are the most sick, the most deserving, have no place to seek compensation. Veterans exposed by their government and hard working men and women left sick by their now bankrupt employers have become the jetsam of this litigation—cast aside by the new potentates of asbestos—a small, infamous gaggle of personal injury lawyers who have manipulated victims, companies, and the courts to divert billions and billions of dollars to their own pockets. Amazingly, not even such a massive transfer of wealth from so many to so few is enough. Even as we speak today, their lobbyists stand literally feet away, pandering advice, counsel, and contributions to those who will prevent their despicable avarice from being stopped.

But the greed can not be laid just at the feet of some lawyers. There are also companies who have grown weary of paying, not just the wrong people, but paying for their real and technical complicity. There are corporations who want to be free of mistakes they made during the merger and acquisition madness of the late 1990's. And there are businesses that believe they can game the current system, relying upon insurance and the inherent lethargy of litigation to delay paying what they owe.

Then there are insurance companies, some of which fear having to make good on the policies they sold. Even after nearly a decade of debate on this issue, no one is certain exactly who is responsible, especially with the tangled web of insurance and reinsurance and domestic insurance and foreign reinsurance.

Of course, all of us know there is also an unacknowledged giant in the room. For nearly half a century, the Federal Government of the United States was one of the biggest consumers and promoters of asbestos. Today, people are dying from mesothelioma, not because of corporate misdeed but because they worked in the boiler room of a naval ship or in a military shipyard or in the furnace room of an Army base. The Government required asbestos to be used in buildings and workplaces, in factories, homes, and schools. Yet today, as we discuss how best to solve the asbestos epidemic, the Government's own responsibility is not to be mentioned.

Finally, all of us know the current tragedy will not abate on its own. Over the last 6 years, we have proven conclusively, beyond any shadow of doubt, that while we have stood frozen, incapable of any, even the slightest remedial act, the avarice of asbestos has become an industry unto itself.

These are the realities we face today. What are our options? Some on my side of the aisle have suggested the adoption of a medical criteria bill, legislation that would make changes in the applicable litigation rules in State courts. I understand their motivation, but they have to appreciate that it falls short with respect to the most compelling players in this tragic tale—veterans and employees of bankrupt companies who have no place to seek relief. It does nothing to address the manipulation of liability and responsibility which has become commonplace at the State court level. Such a solution was inadequate 4 years ago, it is inadequate today, and it will still be inadequate 2 years from now.

Then again, at least it represents an attempt to solve this crisis. For the past decade, there has been a thundering silence from too many on the other side of the aisle. They are quick to criticize what has been suggested, but not once in more than a decade have they proposed their own solution. Not once have they come up with one idea that might possibly help solve this crisis, for a very good reason: their top hard-money contributors happen to be the people who bring these suits.

This year, they have raised the canard of lost days in court. They are like people who, when they find a man dying of thirst in the desert, give him an empty glass. Now, if by some miracle you find water, they proclaim, you can quench your thirst with the dignity and decorum you deserve. As the man slowly dies from dehydration, they marvel at their own benevolence.

They know that a day in court is meaningless to a veteran who cannot sue his government or an employee who cannot sue a bankrupt company. They know a day in court is worthless to those who currently are being paid only pennies for every dollar of their settlements. For nearly a decade, their objections have been endless and their solutions nonexistent.

So, Mr. President, we arrive today at a critical juncture. We have rejected the suggestion of a medical criteria bill. Our choice is simple: We can act or we can hide. We can vote to keep working on the Specter-Leahy legislation, or we can vote for the budget point of order and stop the legislation dead in its tracks. It is a clever tactic, using the mantle of fiscal responsibility as an excuse not to legislate. Of course, leaving the asbestos crisis unresolved is the ultimate act of fiscal irresponsibility. And, since the Specter-Leahy bill does not require 1 cent of Federal money—this budget point of order is a sham. And we all know it.

Or we can hide behind a cloture vote, knowing that without cloture, the bill will be pulled from the floor and the status quo—the ridiculous and irresponsible status quo—will be preserved. In today's world of relentless stalemate and partisanship, it is a vote easy to explain and justify. But each of us also knows these measures are nothing more than procedural subterfuges—some parliamentary arcanum designed to confuse the public about what is really happening. The Senate has failed the country on this issue before. The time really has come to act.

The Specter-Leahy bill before us is by no means without flaws. All of us admit that. All of us understand that the legislation is—like major pieces of legislation at a similar juncture—a work in progress, the inevitable product of a political process that to date has been as dysfunctional as it has been prolonged. Yet even with its shortcomings, the legislation represents the best hope, the most salient chance for an effective legislative solution. And we will not even have a chance to get that far if we do not pass it on the floor of the Senate.

We know this is step one—actually step two in at least a four-act play. The committee passed it out of the committee. If we can succeed in passing it out of the Senate, the House has to pass its bill, and then we have to go to conference, and then the final play will be a vote in both Houses of Congress. In all of those steps, I have seen our chairman and ranking member willing to compromise and resolve problems as they come up, as colleagues have brought them up. They cannot blame the distinguished Senator from Pennsylvania or the distinguished Senator from Vermont in this matter.

I beseech my colleagues, do not let this bill die today. Do not end what could very well be the last chance we have to solve a crisis we all have universally condemned. Let's stop the debilitating games and tactics. For once, let's give to the bill the same energy and creativity that to date have been invested in its downfall and destruction.

There are thousands of veterans throughout our Nation who are watching us today. When the Nation asked for their service, their blood, they gave it willingly, without complaint. They did their part. Now it is time for us to do ours.

There are thousands and thousands of sick working men and women with no place to turn but us. They, too, are watching. They ask for our assistance, not excuses. They have asked for candor, not cold calculation. They ask for compassion, not clever procedural ploys.

If there is any justice, we will be remembered long after we have left elected office, not for the unfulfilled promises we have made or the good intentions we have so readily proclaimed but for the votes like the ones we will soon cast. For, in truth, this vote is about more than asbestos. It may well signal the last chance this body will have to be productive, to break free from our respective orthodoxies and legislate for the public good. Did any of us really seek public office so that in the face of a crisis, we could hide behind a budget point of order or a cloture vote?

The time has come to reveal who we are, who we have become. Can the Senate legislate in an area in which the Supreme Court has said we need legislation—three times? The real frustration with this institution is not a lack of ethics or the unseemly tangle of lobbyists, Members, and campaigns. No. Our real failing is our collective trepidation, our fear of stepping free of the pack to work together to solve real problems without concern for political advantage or personal benefit.

If we cannot find a common will to address something as pernicious as the asbestos litigation crisis, then one has to ask what real purpose this legislature serves. Too often, we find it convenient to act like mice. Today, our country needs lions. Let us not give it mice. Vote against the budget point of order. Vote to invoke cloture. And, for once, let us consider fixing the asbestos crisis with the honesty, candor, and ingenuity the American people deserve.

Mr. President, I compliment the distinguished Senator from Pennsylvania and the ranking member from Vermont. This has been a monumentally difficult bill to bring to the floor. As I say, this is step one in probably a five- or six-act play. We do not have to make it perfect here; we just have to do the best we can. The House then, if we pass this bill, will have to do its work. Then conference committees will have to meet together, and we will have to do the final work on this bill after listening, during all of that time, to complaints, suggestions, good ideas, bad ideas, but at least—at least—we will be doing the people's business, the people's work in helping people who really have no other place to turn.

Above all, we will help our country because we all know what has been going on in asbestos litigation around the country has been horrendously wrong. I would like to see us do what is right today. So I hope we will vote against this budget point of order. And I hope we will vote to invoke cloture, so we can proceed with this bill and hopefully get it into conference. Ultimately, that is where we will continue to work on it and see if we can make it more perfect and resolve some of the conflicts and problems people feel they have with this bill today. I have every confidence in the chairman and ranking member that they will work to do exactly that. They have been doing it every day I have worked with them, and I am very proud of both of them.

Mr. President, 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. CARPER. 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. CARPER. Mr. President, I ask unanimous consent that 10 minutes of Senator LEAHY's time be yielded to me.

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

Mr. CARPER. Mr. President, in the next several hours, I expect we are going to have a critically important vote, a vote with respect to how we are going to proceed or not proceed with respect to the asbestos litigation reform. There is more at stake than a parliamentary squabble. This is a question to say whether we are going to continue to have a system where the people who are sick and dying from asbestos exposure are going to be quickly compensated for the harm that has been done to their bodies. And there is a question as to whether companies will be bankrupted by the dozens, and you continue to see that sort of thing happen. There is a question of whether we are going to continue to see a situation where a majority of the moneys that are paid out for damages end up not in the pockets of those who have been harmed or their families but in the pockets of others.

The status quo, in my judgment, is not acceptable. We have an opportunity today to take an important step toward improving that situation. The legislation before us today has evolved over the time that I have served in the Senate. A question that has been raised again and again, as it should be, is: Is the money that is going to be set aside in a trust fund that we propose to create adequate?

Earlier in our deliberations, the committee of jurisdiction, as they wrestled with this problem, trying to figure out

how much money to ask of the defendant companies, how much to ask of their insurers—initially, I think thought was given that a $90 billion trust fund would be adequate to compensate people whose breathing has been impaired by exposure to asbestos. Over time, we have seen that number raised from $90 billion to $100 billion, to $110 billion, to $120 billion, to $130 billion, and now to $140 billion. Still the question is asked, as it should be: Is even $140 billion adequate?

CBO has been asked to be the arbiter in this debate. They have come and testified a couple of times before the Judiciary Committee, and I guess they have provided letters as recently as yesterday and today to attempt to deal with this issue and this question: What do we do if we run out of money, if the $140 billion is not enough—with the moneys coming in over the next 30, 40 years, if it is not sufficient to meet the demands of the claims that ought to be paid? Concerns have been raised, sort of leading to this budget point of order, that in the end the responsibility may fall back on the taxpayers. It is a question that ought to be raised and a question that ought to be answered.

There is nothing in this bill that is before us today that stipulates that taxpayers should pay for any shortfall that may occur if the legitimate demand on funds exceeds the amount of funds paid into this trust fund that we propose to establish. There is nothing that stipulates that taxpayers would have an obligation or should have an obligation. In fact, the opposite is the case. The legislation clearly stipulates that any obligation to people who are harmed that exceeds the amount of money in the trust fund would not be borne by the taxpayers. CBO is not absolutely sure that $140 billion is the right number or $130 billion or $120 billion or maybe even $150 billion. But in reading the different letters they have submitted, and reading their testimony, they believe $140 billion is in the ballpark.

What if they should be wrong? What if more money needs to be funneled into the trust fund to meet legitimate claims? What does the trust fund do? The only reason this is a budgetary issue at all is because the moneys paid for by insurers and by defendants are going to go into a trust fund established and administered by the Department of Labor. That is why it is considered even remotely a Federal obligation—because of the desire on the part of some, including those representing folks who have been injured, that the Department of Labor, that has been able to do this sort of thing and has experience in dealing with these kinds of issues, should play a role. It is because the Department of Labor is playing a role as a conduit through which moneys are paid from the private sector, through which moneys are paid to those who are harmed, that there is even a question of whether a budget point of order can be raised against the flow of funds or against this bill.

What if the moneys are not enough? What if $140 billion is not enough? What do we do? Some have suggested that we are going to go right into the taxpayers and ask them to pick up the tab. That is not the case. What will we do? First of all, there is a recognition that during the first 5 years of the trust fund, when there is going to be a lot of demand on the funds and moneys are going to be paid in by insurers and defendants, there is going to be a shortfall. That is freely acknowledged, I think, by everyone.

With that expectation, there is an opportunity spelled out in the bill for the fund administrator to go to the Federal Finance Bank to borrow moneys against future revenues of the fund—payments by defendants, payments by insurers—to seek those from the Federal Finance Bank. I might add that the cost of Federal funds probably available through that funding mechanism is probably 5 percent in today's environment, maybe even less than that. Some have said that we are so short, so far off target that we are looking for a shortfall of $150 billion or $200 billion or $300 billion over the life of this fund.

Let's say, in the first 5 years, there is a shortfall, and say it is $10 billion a year. I don't know if that is right; it may be high or low. So if there is a $10 billion shortfall and the fund administrator has to go to the Federal Finance Bank and borrow the money—$10 billion for year one and $10 billion for year two and up through year five, at a rate of 5 percent a year for 5 years; how much money would that amount to with respect to the debt service? Well, 5 percent of $10 billion is about a half-billion dollars through year two. So it is roughly $2.5 billion at the end of the 5-year period. That is not a debt service cost of $50 billion or $100 billion or $150 billion. That is a debt service cost of about $2.5 billion. That is a reasonable amount of money that may be needed to borrow from the Federal Finance Bank.

Who has to pay that back? The folks who are paying into the trust fund have to pay it back. The insurers and the defendants have an obligation to repay the money, through the fund administrator, back to the Federal Finance Bank. They have that responsibility.

What if the amount of money that is coming into the trust fund is not repaid—and each year there is an obligation, I think, of $3 billion a year for the defendant companies that had an obligation and have been paying these claims in the past—cumulatively and in the aggregate they have to pay something like $3 billion a year into the fund. What if they are not paying enough and they have an obligation of $90 billion over 30 years? Maybe they are only paying $2.5 billion a year. What can be done about that?

Under this bill, the fund administrator has the discretion to impose a surcharge on the defendant companies to make sure their $3 billion-a-year obligation is being met. What happens, though, if, despite that discretion that might be used and the ability to borrow money for short periods of time from the Federal Finance Bank—what if it becomes clear that there is not enough money coming into this trust fund to pay the claims that are going to be needed? Do we leave people, the victims, the folks who are suffering from an impairment of their breathing who have been exposed to asbestos—do we hang them out to dry? No.

Under the language of the bill—and this is in large part due to the work of Senator DIANNE FEINSTEIN—if it becomes clear that people are not going to have a chance to be made whole by the trust fund because it runs out of money, we revert back to the tort system. And folks who have a claim, if they are not going to get satisfied through the fund itself, will go back into the tort system. They can go back into the State where they live, and they can go back to the tort system in the State where they were harmed or they can go back into Federal Court.

There is no obligation that falls on the taxpayers. I believe the committee has done a good job of trying to make sure that at the end of the day the money needed to pay these benefits is adequate. And if, for some reason, it is not, they provide a number of steps along the way that could be taken to provide the funding that is needed, either in the first 5 years or in the years subsequent to that.

If, in the end, it is recognized that this dog is not going to hunt or this fund we are creating is not up to doing the job of meeting the need to pay the claims, we go back into the tort system, and folks will have the opportunity, in their State and their courts or in the State where they were damaged or in a Federal court, to be made whole. Is this perfect? No, it is not. I will tell you this. From the day we started this bill about 2 years ago, 3 years ago, it has sure gotten a lot better. My guess is that it is going to get better still.

I thank Senators SPECTER and LEAHY for their willingness to listen to us and work with us and develop amendments. If you look at the managers' amendment, they have tried to accommodate the concerns that lot of us have raised. Are there more amendments that could be offered? You bet there are. My hope is to be able to support some of those, and I suspect some of my colleagues will as well.

I will tell you what is not acceptable. A system is not acceptable where we have people who are harmed, where their breathing is impaired and they are sick and dying, and for them not to be able to get the money they deserve and their family deserves quickly. What is not acceptable is a system that exists—and for years it has existed—where people who have been exposed to

asbestos, whose breathing is not impaired, and who may never be impaired, for them to be receiving payments and siphoning off money that ought to be going to people who are sick and, in many cases, dying from asbestos-related illnesses. What is not acceptable is a situation where, in a day and age when we are losing manufacturing jobs not by the tens of thousands or by the hundreds of thousands but by the millions, for us to turn our backs on what is a hard-fought and, I think, well-crafted, much-improved proposal to get us to where we need to go.

With that, Mr. President, I yield back whatever time I have not consumed.

The PRESIDING OFFICER. Who yields time.

The Senator from California is recognized.

Mrs. BOXER. Mr. President, what is the rule? Can I speak for up to 15 minutes or 10 minutes?

The PRESIDING OFFICER. The Senator can take time from one of the two Senators who hold time.

Mrs. BOXER. Mr. President, I ask unanimous consent I be yielded 10 minutes of Senator DURBIN's time with the hope that I can finish in that time. If not, I will ask for another 5 minutes.

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

Mrs. BOXER. Mr. President, I am going to support the budget point of order on S. 852. I want to explain why I am doing this. First, I want to say if anybody has listened to Senator KENT CONRAD talk about what is going to happen in the outyears with this bill, the trust fund, if anyone listened to him, it seems very difficult to me to vote against this budget point of order.

We are on the edge of passing a bill that is masquerading as a solution to a deadly problem, and asbestos victims need to know the truth. Frankly, they were lied to once when companies exposed their workers to asbestos without telling them of the danger, and I don't want to lie to these victims again. The simple truth is there are not sufficient funds in the trust fund to compensate all the current and future asbestos victims. We should not compound the problem of the past by offering false promises and cutting victims off from help.

I know there are many who don't agree with what I have just said, but I think if, again, you listen to Senator CONRAD, and you go back to see what has happened to other trust funds, I think it is very clear there are not enough funds in this trust fund. Some estimates are it is perhaps 50 percent of what it ought to be.

Some say that people will go back to court if there are not enough funds. I know that is a very well meaning part of this bill, but it isn't as easy as all that. It is going to be very difficult for people in the future years. I think we are going to see more companies claim they are bankrupt. There will be a lot of lawsuits.

That is not to say there is no problem for asbestos victims today. Providing them with just compensation is something they deserve. If we were able to increase the size of the fund and include all of the victims who deserve to be compensated, that would be a good solution. I know this is what many honorable and hard-working Senators on both sides have tried to do, but the current legislation doesn't get us there.

Asbestos kills 10,000 Americans every year. Such a large number of deaths is hard to comprehend, so let me tell my colleagues about just a few of the victims in California and why this bill will hurt them, not help them.

Here is a picture of Rebecca Martinez. Rebecca is the wife of Margarito who lived in Baldwin Park, CA, and she is pictured here on the right. Margarito worked as a plasterer and Rebecca would clean his asbestos-covered clothes when he came home, breathing in the dust as she shook them out and did the laundry. They were never warned about the dangers of asbestos.

Rebecca was diagnosed with mesothelioma in 2002, as we all know, a deadly cancer caused only by asbestos. She died 4 months later, leaving behind her husband and three children.

Her husband has spent more than $50,000 on a pending wrongful death suit. However, if this bill is passed, he will never get to go to court and face the people who are responsible for his wife's death. This bill will force him back to square one, and he will face, potentially, years of delay. And here he is, a widower having to raise his kids.

For those who are about to resolve their court cases, I see no reason to force them into a trust fund process. It is wrong. People have invested time in the court system, and this bill will rip them out of the court system just as they are about to get justice.

This is a picture of Georgina Bryson. She lived in Riverside, CA, when she died of mesothelioma. From 1962 until 1980, Georgina lived downtown from two cement companies that used asbestos to manufacture their products. Georgina was also exposed to asbestos when she lived with her dad who worked with gaskets that contained asbestos.

Georgina was only 40 years old when she died from mesothelioma. Her family filed a wrongful death action and, to the credit of the California court system—to the credit of the California court system—the suit settled. The cement plants agreed to pay 90 percent of the award, recognizing that they were primarily responsible for the death.

The problem with the legislation before us is, if Georgina's family didn't have access to the courts, and they filed the claim with the asbestos fund, they could receive possibly no compensation. Because Georgina's asbestos exposure was not work related, she lived downwind from the cement manufacturers, she would not meet the occupational requirements of the bill.

There are many people in California and elsewhere who never worked with asbestos but were exposed to it because they lived near factories, mines, and processing plants with asbestos. This certainly was the case in Libby, MT, and residents of that town are taken care of in the bill. That is a wonderful thing for them. Lord knows there is suffering there. The exposure requirements for anyone who lived or worked for at least 12 months within 20 miles of the mining or milling facility in Libby are waived, so the people in Libby are taken care of, and I am happy for them. But the bill fails to provide the same relief to people in at least 41 other communities across the country who live near a plant that processed vermiculite from Libby. How is that equal justice under the law? It also fails to protect people who lived near other mines or plants that released asbestos into the air.

For example, Santa Ana is one of roughly 23 cities in California that received more than 1 million tons of Libby's vermiculite. Yet this bill would compound the injuries to affected community members by largely barring nonoccupational exposures. As I said, no one can call this justice.

The bill also fails to adequately address another problem important to my State, as well as the Nation—naturally occurring asbestos. I am going to show you a map of California where we show the counties containing naturally occurring asbestos. Forty-four of California's 58 counties are known to have naturally occurring asbestos. The problem, however, is not California specific. Twenty-nine States are known to have naturally occurring asbestos.

This asbestos can threaten public health. This shows in red where the States have this problem with naturally occurring asbestos. In 2005, a University of California-Davis study found that the risk of mesothelioma decreased by 6.4 percent for every 6 miles further away a person lived from a naturally occurring asbestos source.

Under the bill, people who get a terminal illness from naturally occurring asbestos may take their case to the medical exceptions panel, but there are three problems.

First, I want to thank my colleague, Senator FEINSTEIN, for getting that into the bill. At least they can go to this special panel. But there are problems. First, the level of funding established by the bill for the trust fund, as I said before, is insufficient to pay for the claims expected to be filed with the exceptional medical claims panel. It is insufficient. There wouldn't be funding left.

The CBO stated in a letter on February 1 to Senator SPECTER that:

There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

This is, in part, because the CBO explicitly stated that it did not include ''the costs of any exceptional medical claims'' in its estimate. What kind of chance do my people have for being exposed to naturally occurring asbestos

and the people who live in all of these States?

This isn't justice. If we want to do justice, we need a bill that is sufficiently funded through the trust fund to take care of all of our people, not just some of our people.

The Democratic staff of the Budget Committee predicts a shortfall in the trust fund of $150 billion or more. That is $150 billion that taxpayers may have to pay to bail out the trust fund. It is easy to say: Oh, you will just go back to the courts. But that is a time period in which we don't know what the situation will look like, more companies will claim bankruptcy, and people will then have to move from the trust fund over to the courts. It is a giant nightmare.

Second, it is not clear that the companies paying into the fund should be the ones responsible for compensating people who become sick from naturally occurring asbestos. Construction companies disturbing naturally occurring asbestos may expose residents to fibers, but those companies are generally not the ones paying into the fund. So this makes no sense at all for people who live in areas with naturally occurring asbestos. They are different defendants that need to step up and pay compensation.

Third, there is no deadline by which the medical exceptions panel must act on a claim. Given the number of people who may file claims with the panel, it could be years before the panel makes a decision on a particular case. Is this better than the current court system?

Mr. President, I ask unanimous consent for just 2 more minutes.

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

Mrs. BOXER. Mr. President, I don't think it is better than the current court system, certainly not in my State. In California, we have an expedited processing of suits for sick plaintiffs. Roughly 22 States have procedures that ensure mesothelioma victims and those with other very serious cancers have their cases heard in a year or less. In California the courts can hear such cases within 120 days. There are States where the courts work, and they should be allowed to continue their good work without getting taxpayers involved in this trust fund. Where it is working, do no harm. Let it proceed.

Most, if not all, of us could support an asbestos trust fund that is fair to victims, but this proposal is not. I have gone through the ways that it is not. I have shown my colleagues the faces of those who would be harmed or would have been harmed if this trust fund were in place.

We can fix this. We can make the trust fund bigger, that is one solution, or we can say in the 22 States that are dealing with this, let them deal with it. Let's grandfather in the cases that are already in the system.

I am very fearful—very fearful—that a lot of people who are going to depend on this trust fund are going to find out that it isn't what it is cracked up to be. The bill promises the Moon, and I don't even know if it will deliver a sliver of the Moon.

I just want to say to those who are following this debate who are suffering, I honestly believe that everybody thinks, everybody thinks they are working for you, but what I say is this: If the system is already working for you, let it work for you. Let's not promise you the Moon and not be able to deliver it. Let's make sure there is justice for people who live, say, downwind in California from a company that received the product from Libby.

The people in Libby are taken care of. The people in my State and many other States are not taken care of. This isn't fair. What happened to equal justice? What happened to fairness? We can do it. People of goodwill on both sides can do the right thing. This isn't a question of this bill or no bill.

So I honestly think that by supporting this point of order, first of all, we are being honest with the people. We are being honest with the people. We are saying there is not enough money in this trust fund and the taxpayers are going to have to bear the burden and who knows what will happen at that time. With the kind of deficits that are being racked up here, with the kind of national debt that is being racked up here, where is the money going to come from?

Some say: Go back to the court system. That is a very complicated matter. Every State has its own way. In some States it works well, like California. In other States, it doesn't. So I urge my colleagues, yes, to protect asbestos victims who may not be so lucky as the people in Libby. Let's take care of the people in Libby, and let's take care of all of the victims and potential victims and vote against waiving this budget point of order.

A budget point of order lies against this bill. The Parliamentarian has told us; the CBO has told us. Let's do the honest thing. Let's support the budget point of order, go back to the drawing board. Let's take care of these people and do it in the right way.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS. Mr. President, I come to the floor today, and after a discussion over lunch about Libby, MT, and some of the provisions found in this legislation, listening to the distinguished Senator from California, I think we had better answer some of the questions that are being asked about this.

As you know, I am here on the floor again, joining Senator BAUCUS, my colleague, urging our colleagues not to support this budget point of order. We have to deal with this terrible thing. If the point of order on the bill is successful, the bill dies and we will get no bill at all. There will be nothing to go to final passage, nothing to go to the House of Representatives, nothing to be considered in conference. I do not think that serves the interests of the victims of asbestosis or other asbestos-related diseases.

I want to talk about Libby, MT, I guess, because I live there—not in Libby, but in Montana. Many of my great friends live in Libby, MT. Families are watching this together in their living rooms today, watching this broadcast on C–SPAN. Televisions are set up in restaurants and dining rooms and hotel lobbies so people can continue to see what happens here as they go about their day.

I have been in close contact with the community leaders and people directly affected by health problems on a daily basis. For some of my colleagues, this debate is about technical details of a very complicated bill. For people in Libby, of course, it is life or death.

I want to show some pictures that have been sent to us. We want to give you an idea about how important this is.

Behind me—I don't know whether the cameras are picking it up; I assume they are from somewhere—is a picture of a baseball field. This field was built in 1959. You have to remember, this vermiculite mine started in 1924. For many years we didn't know anything about asbestos. We didn't know anything about the problems it caused. But we know if you are exposed, these diseases develop over time, and it takes a long time.

This baseball field was built in 1959, next to the processing plant. For years, the children of Libby played baseball in asbestos-contaminated fields while their siblings played on actual vermiculite piles of asbestos next to the fields. It is unbelievable. The former Governor of Montana was raised in Libby, MT. They thought it was a lot of fun because it was slick and, boy, you could slide a long way. The high school running track and football field were built on tailings from that mine site. For over 25 years, children have been directly exposed to tremolite-laced tailings which were used to line the track and, of course, the football field.

Maybe I can consider myself lucky; I never had to referee a football game up there and I had some 20 years refereeing that game in that State.

The saddest of all is it is all now coming home. It is now being identified. This is the photo of 250 crosses at Libby, MT, memorializing those residents who have died from asbestos-related diseases. Mr. President, 250 is 10 percent of the entire population of the town. Gayla Benefield told my office recently about how much this matter affected her life:

> Slow suffocation from tremolite asbestos is a terrible way to die but worse yet, watching our parents die and then, watching the looks on their grandchildren's faces when we tell them we have the disease is worse than dying.
>
> To watch one person die from the effects of our fiber is horrific. But to know that your own fate is no better, and that you cannot

even protect your children or assure them that help will be there is even worse.

Earlier this week I read a letter I received from Jim Davidson who has been diagnosed with mesothelioma. He is one of many cases in the small town of Libby. His pleas were to get this legislation passed and to do the right thing—get something to conference and get something to the House, because a lot of these folks will not live long enough to ever hear their case pleaded in court.

Jim has been watching these debates with his family. Yesterday, Jim's son, Dr. Steve Davidson, wrote me a letter about some of the statements that have been made here on the floor. He said:

As a past board member of our local hospital and as a past board member of our federally funded community health center, I have seen firsthand the impact of asbestos exposure on my hometown. As a health care provider, I am reminded daily of the price that has to be paid by my community. And as a son who is helping his father cope with mesothelioma, I must watch him struggle with his mortality. My father worked at the Grace facility for several months in the 1950s.

This is way back in the 1950s. Now, later, this terrible disease surfaces.

We rely on Congress to do the will of the people. Since the Grace bankruptcy was ignored by Congress, we must now seek a reasonable remedy.

There exists no empirical medical data to support the assertion on the Senate floor that ''Libby is like East Hampton. . . .''

I and my community would appreciate access to any facts to support such a statement. In their absence, we would appreciate an apology from the Senate floor. These remarks seek to minimize the humanity of the crisis in Libby and my Father's struggle.

It is something when it touches your life.

We are uncertain if your remarks were made from ignorance or malice. Please help us to understand your position.

He is asking the Senate to clarify some of the statements that were made that seem unfair to some of the folks who are victims of the situation around Libby.

This is a photograph of Vernon Riley putting flowers on his wife's grave. Darlene Riley never worked at the mine or had anything to do with it. She died of the most severe type of asbestosis in 1995.

The fact is, no other asbestos location in the United States created as widespread a catastrophe as is in Libby, MT. To suggest that enclosed asbestos treatment facilities are the same as an open-pit mine that blew dust and the winds took it for miles and miles into the air since 1924, and it rained down on a town—to say that is not different than any other situation in this country is not true.

I think it is important that we pass a bill. That is why I urge my colleagues not to support this point of order because it will kill this piece of legislation. How many hours have all of us put in, trying to pass something that would give justice to people who right now stand to collect nothing for their injuries?

I urge my colleagues to support the motion to waive the budget point of order. It is necessary that we get a bill out of this Senate, send it to the House of Representatives. Let them deliberate. Let them carry on this argument. Let's get to conference and let's do what is right for the people who have been impacted by asbestos and asbestosis and the diseases related to it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Montana for his impassioned advocacy for the people of Montana. I want to make sure he has completed his remarks. I have plenty of time to wait if he has not.

Mr. BURNS. I completed. I yield to the Senator from Tennessee.

Mr. ALEXANDER. I wish to add to those remarks. This morning I met with a number of Tennesseans here in an event we call Tennessee Tuesday. It is a meeting we have every Tuesday. Senator FRIST and I host it for Tennesseans who are visiting Washington, and it is a chance to let them know what we are working on.

I talked with them about asbestos. One of my friends on the other side of the aisle began this debate, which should have started earlier, by saying: Why are we talking about asbestos when we have a war, when we have deficits out of control, when jobs are going overseas, when kids are not learning in schools, when Medicaid costs are rising and prescription drug benefits are not being delivered as efficiently as we would like? Why are we talking about asbestos?

I think we have an obligation to say to the American people, and to ourselves, we know exactly why we are talking about asbestos. We are talking about asbestos because it has to do with tens of thousands, maybe hundreds of thousands of American jobs. We are talking about asbestos because it has to do with whether we are going to retain our preeminence as the leader in the world in competitiveness, whether we are going to be able to lead the world in terms of the standard of living we have. We are talking about asbestos because we have thousands of Americans who have been hurt and who deserve compensation and who cannot be compensated.

Asbestos is right where it ought to be. It is at the top of our agenda. We have Democrats and Republicans working together to solve the problem because it is about jobs, it is about America's role in the world, and it is about Americans who have been hurt and who have no way to be compensated unless we decide to help them.

Let's take the first point. The FAIR Act, as we call it—and that is a good name for it—is about jobs because since the 1980s, more than 70 companies have gone bankrupt as a result of asbestos lawsuits. These lawsuits have occurred because people were working for those companies and they were exposed to asbestos and many of them died or were seriously ill. More than 60,000 workers lost their jobs since the 1980s because 70 companies have gone bankrupt over asbestos lawsuits.

If we picked up the paper and read in the morning that 60,000 jobs had gone to China, there would be speeches made all across this Senate floor about whose fault it was. It will be our fault if we do not solve the asbestos problem and 60,000 more jobs are lost. Those are real, good-paying, manufacturing jobs that will be lost if we do not solve the asbestos problem.

My State of Tennessee has its share of those jobs. The auto industry, as an example, has one-third of the manufacturing jobs in Tennessee. We are glad that Saturn and Nissan have come to our state, and that we have gone from a handful of suppliers to nearly a thousand. But those companies, those suppliers, those jobs are at risk if we do not solve the asbestos problems.

The FAIR Act is about America's role in the world. It's about our competitiveness. The President talked about that in his State of the Union Address. He talked about it in Nashville. He is now talking about it wherever he goes. We are confident in our ability to lead the world. We know we are only 5 percent of the people and that last year we produced 30 percent of the wealth. We know the rest of the world is eyeing that statistic and saying, If American brainpower and economic conditions produced a growth economy that gives Americans 30 percent of the wealth for 5 percent of the people, we want to emulate that. So we have to work hard every day to make sure we create an environment in this country in which American businesses can grow the largest number of new American jobs. The last thing we want to do is lose American jobs.

How do we do that? We keep costs down. We stop runaway lawsuits. We solve the health care problem. We invest in science and technology because 85 or 90 percent of our new jobs since World War II have come from advances in science and technology. That is why we have introduced the Protecting America's Competitive Edge or PACE Act in this Senate, where we have 31 Democrats and 31 Republicans who have signed onto legislation recommended by the National Academies that would invest 9 billion new dollars this year in keeping our advantage in science and technology. We want to stay competitive.

According to a report from NERA Economic Consulting, ''Asbestos litigation has damaged U.S. competitiveness.'' For example, if you are worried about asbestos lawsuits, you want to put your plant somewhere overseas and your jobs somewhere overseas, and we lose out.

Productivity growth in the United States, according to that report, in asbestos-affected manufacturing sectors

has lagged behind growth in their counterparts in other countries by half a percent.

We Tennesseans worry about that because we like manufacturing jobs. As I said, one-third of them are auto jobs, and many of them are chemical jobs. We don't like lagging behind. We like our standard of living. That report says we lose $51 billion annually, with a total loss of $303 billion. The dollars are hard to comprehend. But jobs and competitiveness are what we are talking about here.

Finally, the FAIR Act is about compensation to Americans who have been hurt. We say the words ''compensation to victims,'' but that doesn't really say it as plainly as ''Americans have been hurt.''

Here is a fact that got my attention. This is one reason I am speaking about this issue. This is the reason I am a cosponsor of the bill offered by Senator SPECTER and Senator LEAHY. Seventy billion dollars has been spent on asbestos litigation through 2002. Asbestos litigation is litigation to help people who have been hurt, who are going to die, in many cases, from asbestos. Nearly 60 percent of that $70 billion was spent on attorney's fees and other transaction costs. In other words, the people who are hurt got 40 percent of the $70 billion. That is not right.

In addition, it is taking up to 3 years for victims to collect their compensation as a result of complex litigation. Some businesses have gone bankrupt, so you don't collect from them. Some people have died, so they are in no position to collect. The legal process has taken too long for them, and 60 percent of the money that is collected is going to the lawyers.

This is not about plaintiffs' lawyers. Half the money goes to defense lawyers and half to the plaintiffs' lawyers. Whose fault is that? I don't know whose fault it has been, but I will tell you whose fault it will be if we allow this to continue. Former Chief Justice Rehnquist and Justice Ginsburg both said it to us. They said: We can't fix this problem in the judiciary; the Congress needs to do it. In one case, the Supreme Court said:

> The elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.

That is us. That is what we are here for. That is why we get the big bucks. That is why we have the salaries. This is a big problem. We are supposed to solve it, and we ought to solve it. We have been trying to solve it. For the last 10 years, some of the best Members of this body on both sides of the aisle have been working on it. I could not begin to name them. I have heard Senator SPECTER say that Senator Gary Hart, more than 20 years ago, came to see him about it. Senator SPECTER and Senator LEAHY have worked hard, as have Senator HATCH and many other Members. Some of them don't agree about the eventual result, but many of the best Senators are working hard because they see this as a problem of jobs and competitiveness and Americans who have been hurt.

Where do we come at this point today? We have a budget point of order against the bill. If the point of order succeeds, the bill fails. Those of us who believe it is our job to solve the asbestos problem won't get to take the next step to actually debate the bill and see if we can bridge our differences and save jobs, improve competitiveness, and help Americans who have been hurt. I urge my colleagues not to let this point of order kill the asbestos legislation because we in Congress are the only ones who can solve this problem properly.

I respect the fact that the point of order is being made. But a point of order, as the Senator from New Mexico, the former chairman of the Budget Committee for so long, has said, doesn't automatically kill a bill; it just says to us: Stop and think; consider the point of order. And when we consider the point of order, which is designed for the purpose of making sure we don't slip in the legislation provisions which will cause big expenses in future years, we find this doesn't cause big, unanticipated expenses in future years. In fact, a February 13, 2006 letter from the Congressional Budget Office concludes that ''this legislation would be deficit neutral over the life of the fund.'' So the point of order deserves respect, but this bill does not deserve to be killed by a point of order.

I implore my colleagues. We have a job to do. This is a tough piece of legislation. We are divided on our side. We have some who like the trust fund, but we have other Members who like another approach. There are some Democrats who like the trust fund and some who prefer another approach. I believe it is our responsibility to the people who put us here to solve this big problem. It will save tens of thousands of jobs, it can help tens of thousands of Americans who have been hurt, and it will help to assure America's preeminence 10, 15, 20 years from now.

I urge my colleagues, don't let the point of order kill the bill and kill our opportunity to solve this problem.

I thank the Chair. I yield the floor.

Mr. DORGAN. Mr. President, we are voting on a motion to waive the Budget Act in order that the bill creating an asbestos trust fund can continue to be considered on the floor of the Senate.

For the past couple of years, I have encouraged the creation of some kind of a trust fund to settle the many asbestos claims that are clogging our court system.

The current tort system does not work at all, in my judgment, with respect to asbestos-related claims.

According to the RAND study, lawyers on both sides of the issue are getting 58 cents of every dollar spent on asbestos litigation, which means that the victims are only getting 42 cents of every dollar expended. In addition, there are some very sick people who are getting no help while some people who will never get sick are getting awards. Frankly, that isn't fair or equitable.

So I have been sympathetic to the creation of some kind of a trust fund, and I know that the chairman and ranking member of the Judiciary Committee have worked very hard to develop the trust fund proposal now being considered.

I also know that the motion to waive the Budget Act is considered by some a technical issue. But some recent studies, including one done by my colleague Senator CONRAD, the ranking member on the Senate Budget Committee, suggest that the potential budget exposure to the United States Government is substantial.

The Conrad study indicates that this trust fund could fall short by more than $150 billion, which in the out years will put powerful pressure on the Congress to fund the shortfall.

This country has a Federal budget that is increasing its indebtedness by $704 billion in this fiscal year alone. We also have a trade deficit of $720 billion this year, for a combined $1.4 trillion debt problem. Our country's economic future is threatened by this massive debt, and I am reluctant to put in place anything that might substantially add to that burden.

The prospect that this trust fund could fall far short of that which is necessary to reimburse asbestos victims makes it a very real possibility that the Federal Government would be forced to add to its debt by covering the extra liability for those asbestos victims.

Until or unless those issues are resolved, I feel that the best course is to support the point of order in the hope that the authors of the legislation can resolve these differences and offer us greater confidence that this legislation will not add to the crushing debt that America already faces.

Therefore, while I will support the point of order, I will continue to work with my colleagues to find a solution that addresses this important issue.

Mr. GREGG. Mr. President, section 307 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, permits the chairman of the Senate Budget Committee to make adjustments to the allocations and aggregates provided certain conditions are met relating to Asbestos Injury Trust Fund legislation.

Pursuant to sections 307, I hereby submit the following revisions to H. Con. Res. 95. I ask unanimous consent they be printed in the RECORD.

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

	($ in millions)
Current Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,528
FY 2006–2010 Budget Authority	32,071
FY 2006–2010 Outlays	31,766
Adjustments:	
FY 2006 Budget Authority	0

	($ in millions)
FY 2006 Outlays	0
FY 2006–2010 Budget Authority	48,200
FY 2006–2010 Outlays	32,900
Revised Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,526
FY 2006–2010 Budget Authority	80,271
FY 2006–2010 Outlays	64,666
Original Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,580
FY 2011–2015	274,999
Adjustment:	
FY 2006	0
FY 2006–2010	400
FY 2011–2015	6,600
Revised Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,980
FY 2011–2015	281,599

Mr. GREGG. Mr. President, as we worked through the Budget last year, one of the main dilemmas confronting us as a government was clearly the unsustainably high levels of entitlement spending now and in the future. This spending in the not too distant future will crowd out the Government's ability to do much more than merely pay the costs of the entitlement programs themselves. Eventually, it will rob us of the ability to fund most essential discretionary Federal programs. So layering on new payments and programs, which claimants in time will come to expect as another entitlement from the Federal Government rather than the private sector, will threaten the Nation's economy with even more damage from too much Government borrowing and high tax burdens.

I, too, am concerned about the immense hardship that the asbestos litigation explosion has imposed on our economy for more than a decade now. The immense volume of litigation from occupational exposure to asbestos has already bankrupted numerous companies, large and small. The greatest harm from the litigation is that genuinely and critically sick individuals cannot get their day in court—and the financial help they desperately need—because the court system is overwhelmed by asbestos claims from tens of thousands of individuals who are not even sick yet, and may never be sick. Moreover, a disproportionate amount of victim compensation is being siphoned off in attorney fees.

Congress needs to address this crisis so that those who are truly sick from asbestos exposure are quickly and fully compensated. Yet our national economy also needs to be protected from further damage due to these thousands of protracted, unnecessary, and unfounded asbestos claims in our courts. But as part of that effort, we also need to ensure that the costs of compensating asbestos victims are not shifted off of the companies that would be legally liable in court and onto America's taxpayers.

I therefore hope the Senator, who is one of the authors of the bill, will allow me to ask him a few questions to clarify the legislative intent behind the bill we have before us and the degree of confidence he has that the trust fund established by the FAIR Act will be funded from nontaxpayer sources for the life of the fund, as required by the budget resolution for fiscal year 2006.

This past August CBO estimated that paying claims as provided for under this legislation would cost between $120 and $150 billion. CBO also estimated that the trust fund would incur an additional $10 billion in administrative and interest costs. CBO's total estimate for the bill then was that it would cost between $130 billion and $160 billion in order to meet the obligations of the trust fund over its 50-year life.

Then in a letter on December 19 to the Senator as chairman of Judiciary Committee, CBO elaborated on its earlier estimate for S. 852 and its ability to stay within the $140 billion provided for under the bill by stating:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty [over 50 years].

Given the uncertainty of this statement, I have been concerned that the fund could rapidly run up a deficit and that the taxpayers would then be asked to bail the asbestos trust fund out.

The clear track record of Government administered compensation programs designed to mandate a ''no-fault'' solution for liability claimants as in this case—has been that Congress ends up bailing out such funds' exploding costs with tax dollars. The Government Accountability Office, GAO, released a report just this past November that found that four victim compensation programs—the Black Lung Program, the Vaccine Injury Compensation Program, the Energy Employees Occupational Illness Compensation Program, and the Radiation Exposure Compensation Program—all expanded significantly over time after their creation to include additional categories of victims, to cover more medical conditions, or to provide significant additional benefits. GAO also found that those new and added costs ended up being paid by the taxpayers even if the victim compensation programs started out as privately funded.

So, again, while I strongly agree—as most everyone does—that the asbestos litigation crisis needs to be solved, it is unfair to do it by making hard working American taxpayers pay the tens of billions of dollars in additional compensation instead of the private companies responsible for the problem.

So, I would ask the senior Senator from Pennsylvania and the manager of the bill, what assurances can he provide—beyond the uncertain and not entirely inspiring CBO estimate regarding this bill—that the taxpayers will not end up footing the bill for this program, and that the new asbestos trust fund will not increase the Federal Government's budget deficit over the 2006–2056 period, as required by section 307 of the budget resolution for fiscal year 2006, the so-called reserve fund.

Mr. SPECTER. First, I want to commend my colleague for raising this important issue; that is, the potential impact to the American taxpayer of the asbestos trust fund. In response to my colleague's inquiry, I have been working very diligently to make every effort to tailor the trust fund so it remains solvent and to ensure that the American taxpayer will never be required to spend money to bail out the fund.

As you know, the measure would create a $140 billion trust fund, financed by companies facing lawsuits and their insurers, to compensate victims of asbestos exposure. This amount of funding was a difficult issue to resolve and took a long time to negotiate.

However, the bill contains several provisions that express our intent for the fund to remain funded by private, nontaxpayer sources for its full life. First off, the bill should not cause the deficit to go up because the FAIR Act requires a commensurate amount of revenues to come in from the private sector as is paid out in claims and program costs.

Second, the bill explicitly states that the American taxpayer should never bear the burden to pay for asbestos claims should the fund become insolvent. Indeed, section 406(b) of the bill expressly provides that the legislation would not obligate the Federal Government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. In addition, the ranking member and I added a finding to the managers' amendment to underscore our intent that the taxpayer should not have any obligation whatsoever under the proposed trust fund.

Admittedly, we as a Congress now cannot tie the hands of a future Congress, but our expectation is that future Congresses will honor our commitment in this regard.

The FAIR Act also provides the trust fund administrator with the ability to sunset the fund if he or she finds that it ''will not have sufficient resources to pay 100 percent of all resolved claims while also meeting all other obligations of the fund under this act. . . .'' After such a determination, the trust fund is supposed to terminate.

In the event a sunset does occur, all pending and future claims will revert back to the tort system. Some claimants would then have to litigate their claims in court and would not have a predetermined award. Many companies would also be thrown back into the tort system—even as they and their insurers have to continue payments into the trust fund to pay off any outstanding debt incurred by the fund.

While that will hopefully not occur, we also fully expect that future Congresses will not step in and try to take over the asbestos trust fund's obligations using taxpayer funds.

Mr. GREGG. I appreciate my colleague's willingness to clarify this important point. I would note the Congressional Budget Office yesterday released an estimate of the chairman's substitute on the asbestos trust fund bill, consistent with what the chairman just said, which states:

> . . . so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So given Chairman SPECTER's assurances and this conclusion by CBO; it is my intention to adjust the Judiciary Committee's 302(a) allocation to the extent that such legislation would not increase the deficit for the life of the fund—which brings me to my second concern. There is no argument that the genesis of this crisis was fueled primarily by the aggressive and abusive tactics of trial lawyers. I think you will agree that those same trial lawyers should not now gain a windfall from this legislation. However, they should be compensated fairly and adequately for their work on any claim on behalf of injured victims.

Under this bill, an attorney may not receive more than 5 percent of a final award made under the trust fund. This is more than generous compensation for filing a claim under a no-fault compensation system where no litigation cost will be incurred and which for the most part will only involve filling out forms for clients.

Under the tiered compensation scheme using set medical criteria and awards for multiple levels of asbestos-related injury, awards to claimants will range from $25,000 for level II claimants, with a so-called ''mixed disease with impairment'', to $1.1 million for mesothelioma victims in level IX. At a 5 percent fee, attorneys who merely prepare forms in order to file a claim on behalf of a client can receive between $1,250 and $55,000. This is very generous compensation for merely filling out paperwork.

Does the Senator foresee any circumstances under which the 5 percent limit on attorney fees could be increased?

Mr. SPECTER. I agree with my colleague's assessment that a 5 percent cap on attorney's fees will ensure that victims and not attorneys are the ones that actually receive the lion's share of the compensation that they are entitled to. That is one of the primary goals of this litigation reform bill. The bill makes no provision anywhere that would allow the 5 percent cap to be exceeded for filing a claim with the fund; however, in the case of appeals of an award under the fund, attorneys are permitted to receive reasonable hourly rates for their services rendered.

Mr. FEINGOLD. Mr. President, I wish to speak about S. 852, the so-called Fairness in Asbestos Injury Resolution Act of 2005. Because this legislation does not provide fairness for asbestos victims or small businesses, I oppose it. We need to take more time to address the problems with this bill and work to produce a result that is fair to all parties involved.

At the outset, I commend my colleagues on both sides of the aisle who have been working for years to develop a bill that addresses this issue appropriately. There is no doubt that this is one of the most difficult and complicated issues that the Judiciary Committee and the Senate have dealt with in recent years. Both last year, and in 2003, the Judiciary Committee spent weeks and weeks marking up legislation. In both cases, the end result was not satisfactory. But this was not because of lack of effort on the part of the Senators who want to find a solution.

Unfortunately, the solution this bill provides is badly flawed. This bill simply is not ready for floor consideration. That, if nothing else, is evident from the managers' package or substitute that will include over 40 significant changes to the bill. When the managers of a bill are still working on a managers' package with that many changes, before many amendments have even been offered, the only conclusion to be drawn is that the bill is not ready for the floor.

Asbestos victims around the nation deserve just and fair compensation for the exposure and resulting injuries they have suffered. My own State of Wisconsin ranks 16th in the Nation in asbestos-related deaths, and I know many Wisconsinites are following this debate closely because the outcome could have a substantial effect on their pending legal claims and their right to fair and just compensation.

Many Wisconsinites who were employed at mills and factories around my state were exposed to asbestos. Some of these workers even unknowingly brought asbestos material home on their clothes. A number of these asbestos victims, or their survivors, have pending claims in court. Under this legislation, their claims would be extinguished and they would have to start over to seek compensation from the trust fund. These are real people who have endured horrible disease and loss. Some had a loved one cut down in the prime of life, just months after getting a diagnosis. We need to find a solution that compensates these victims in both a fair and timely way and ensures they are protected after we force them to give up their rights to pursue their claims in court.

I support the concept of a national trust fund to compensate victims of asbestos-related diseases and address the strain that these asbestos cases have placed on our legal system and our economy. But I will only support a bill that in my judgment is fair to all parties involved, including, most especially, the victims of asbestos disease. That means, not only do the medical criteria and claims values have to be fair, but the design and funding of the system has to be adequate to pay the victims properly and completely.

There are, in my mind, enough conflicting reports regarding the adequacy of the fund that this bill creates to warrant opposition to the legislation. During this debate, many of my colleagues have referenced the CBO study that was completed last fall. Supporters of this bill cite the CBO report and its estimate that valid claims submitted to the asbestos fund over the next 50 years could be between $120 billion and $150 billion as justification for the $140 billion asbestos fund pricetag.

But as CBO itself points out, the pricetag could run higher than $150 billion for a variety of reasons. As the Senate Budget Committee minority staff pointed out in its analysis, CBO said the legislation is designed to produce incoming revenue of $140 billion. It did not conclude that the fund will in fact be able to collect $140 billion. According to CBO, it is possible that defendant companies could go bankrupt and therefore would not be able to pay into the asbestos fund, thereby raising the possibility that the fund could not raise $140 billion.

In addition, the pricetag could run significantly higher than $140 billion because according to CBO, it is very likely the administrator is going to have to borrow money from the Treasury Department at the outset of this process. Numerous studies and experts have predicted that there will be more claims filed than revenue collected in the initial years of the fund. That borrowed money will have to be repaid with interest, adding considerably to the cost of the fund. More important, having a large portion of the trust fund dedicated to interest payments means less money for asbestos victims. There is more than a little doubt that $140 billion is an adequate amount to keep the fund solvent and functioning. Until Congress can be virtually certain that the amounts to be raised by the fund will cover all victims' claims, I do not believe we can fairly ask asbestos victims in Wisconsin and around the nation to give up their legal rights and take a gamble with this fund.

And so a budget point of order was raised against this measure. Supporters of the bill have asserted that the point of order and other budget points of order that also potentially lie against the legislation are purely technical in nature. Their arguments suggest that it is only through some unintended fluke of the Budget Act that supporters must find 60 votes to waive the budget points of order so they can proceed with the proposal.

In fact, while some may view the points of order as technical in nature, the budget issues raised by this bill are significant. Indeed, the risk to taxpayers created by this bill would be

considerable even were the nation not already in the most dire of fiscal straits. The budget policies of the White House and Congress for the past 5 years have been nothing short of reckless, and the last thing we should be doing is to add to our budget problems by roping taxpayers with a massive new underfunded commitment.

The analysis presented by the Senator from North Dakota, Mr. CONRAD, the ranking member of the Budget Committee, a few days ago is telling. Based on conservative estimates, a review by professional staff of the Senate Budget Committee projects that over time the trust fund established by this legislation to compensate people made sick by asbestos will fall $150 billion short of the funds it needs. Moreover, the analysis shows that the shortfall may amount to $300 billion under even reasonable assumptions.

Lest some argue that these figures aren't meaningful, $300 billion is more than we spent last year on the Departments of Agriculture, Commerce, Education, Energy, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency, combined.

This bill presents a potentially massive new burden for taxpayers on top of the record government debt with which they have been saddled. And because they face that burden, taxpayers are entitled to the full protection of the Budget Act, no matter how technical such protection may be in the eyes of the bill's supporters. Taxpayers deserve the safeguard of a 60-vote budget point of order. I will not vote to waive the Budget Act.

There is no doubt that this bill will require a significant number of asbestos victims to give up their legal rights and, in many cases, pending claims in court. Under the language of this bill, unless a claimant is already presenting evidence before a judge or jury or the final verdict has been issued, the claimant's case is stayed and the claimant is redirected to the asbestos trust fund. We are all aware that there will be victims who have invested a significant amount of their time and resources into pursuing legal claims, but for whatever reason, their cases have not yet reached the evidentiary stage. As any legal observer knows, cases can take years to reach the evidentiary stage. Is it fair to ask asbestos victims who have invested years of their lives and extensive resources to give up their legal rights and instead file claims with a fund that may not have enough money to pay out all the claims? I do not think it is fair or reasonable and I had hoped we would take more time to ensure the fund will remain solvent before moving forward with this legislation.

I am also concerned about the ability of victims to reenter the legal system in the event the asbestos fund is declared insolvent. This issue involves fundamental questions of fairness for victims, but also for the businesses and insurers that are paying into this fund. Again, I want to reiterate that I support the concept of a trust fund to compensate victims of asbestos disease and I understand that if correctly created and administered, the fund could guarantee certainty to both victims and defendant companies. This legislation, however, does not give that certainty to either party. If the fund's ability to pay claims declines, asbestos victims could find themselves at the mercy of Congress. Last week, Senator SPECTER voiced a willingness to make modifications to medical standards or criteria if it looks like the fund might exceed $140 billion. This is anything but fair to asbestos victims. To change the medical standards or criteria midstream introduces great uncertainty for these victims, which I find unacceptable. If we are going to ask victims to forgo their legal rights and enter this system, the least we can do is assure them that they will receive just compensation.

There are two things we absolutely have to do in any asbestos legislation. First, we have to be sure that there is adequate money right away to pay the large number of claims that we know will be filed almost immediately. I think this debate has shown that there is not enough money to pay out the initial claims and substantial disagreement as to whether there is even enough total money in the fund to pay out claims over the life of the fund.

The other thing we must do is make sure there is a strong sunset provision that will allow victims to file suit in the future if this trust fund isn't able to pay their claims. Under this bill's language, asbestos victims have to wait until the administrator has declared that the fund can no longer pay claims and has followed procedures before they can file their cases in court again. Moreover, the bill states that the termination of the fund takes effect 180 days after the date that the administrator determines that the fund will not have sufficient resources to pay all of its obligations. So, even though the administrator has declared that the fund does not have enough revenue to meets its obligations, asbestos victims would have to wait until the fund formally terminates 180 days later to file their claims in court. For some victims, 180 days of waiting seems a lot to ask, after they were forced to give up their legal rights to enter this fund in the first place. I would hope that we can legislate a more prompt and certain sunset provision before asking asbestos victims to give up their legal rights.

I have also heard concerns from small business owners that this bill will unfairly impact their businesses, in some cases even driving them out of business. There are a number of small and medium-sized businesses around the nation that have purchased insurance in the past to cover their asbestos liability. Under this legislation, that coverage would not be taken into account. Small businesses will have to pay into the trust fund at levels comparable to their past asbestos liability, even if that liability had been covered by insurance. In effect, small businesses will be punished for responsibly ensuring their liability. A number of these smaller businesses have said these mandatory payments would drive them into bankruptcy. Meanwhile, larger businesses that also have asbestos liability would benefit from paying into this trust fund because of the way the mandatory payments are structured. Under the bill, many of these larger businesses would pay far less than they currently pay to resolve these claims. I cannot support legislation that unnecessarily hurts smaller businesses while allowing more culpable and larger businesses the chance to evade their full responsibility to asbestos victims.

In addition, like many of my colleagues, I have concerns about the impact that this legislation will have on the Federal budget. Supporters of the bill assert that no taxpayer money will ever be used to keep this trust fund solvent. But what happens if the fund does become insolvent? I agree with my colleagues who say that if we pass this bill, Congress will find it very difficult to let the trust fund expire. Senator SPECTER is on record as saying medical standards and criteria could be altered, which I already noted is incredibly unfair to victims. Others in this chamber have voiced concerns that the obligation for the fund could be shifted to taxpayers and I share those concerns also. I know Senator SPECTER and Senator LEAHY, two colleagues whom I deeply respect and who have worked tirelessly on this issue, say that taxpayer money will not be used for this fund. But there is no way to say that with absolute certainty. If the fund runs out, one possibility is that taxpayer money will have to be used to continue to pay claims. This option is no more desirable than changing the medical standards under the bill or forcing claimants and companies back into the legal system. The potential budgetary impact is one more reason that this legislation should be studied further so that we can ensure the trust fund will provide fair compensation to asbestos victims.

We can do better by both the victims and business interests looking to us for a solution to this problem. I believe that if we take more time to ensure the solvency of the fund, to ensure that victims' legal rights are adequately protected, and to ensure that taxpayer money will not have to finance the fund, we can reach a solution that truly can be called fair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. DURBIN. I ask unanimous consent I be given an additional 5 minutes to speak to compensate for the 5 minutes requested by the Senator from Tennessee.

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

Mr. DURBIN. Mr. President, the issue before the Senate today could not have more importance for hundreds of thousands of American peoples. Unbeknownst to many, in their workplace environment, in their homes, places they have visited during the course of their lives, innocent people have been exposed to asbestos fibers. The fibers are inhaled into the lungs and sit like tiny detonation devices that someday may explode. If they do, they could cause asbestosis which reduces the efficiency of the lungs or, even worse, mesothelioma, a fatal condition similar to lung cancer which claims the life of the innocent victim.

As I have said repeatedly, I don't know of a single worker or person afflicted with this disease who willingly put themselves in this circumstance. But for many thousands of people, they find themselves infected and dying.

Conversely, we know that many companies that made products with asbestos over the years knew for decades that it was a dangerous substance, a substance which was shortening the lives of their employees and a danger to their customers. They said nothing. As a result, when these little detonation devices or timebombs went off in the lungs of Americans, thousands and hundreds of thousands and millions of Americans, it created a wave of lawsuits against the companies that made products containing asbestos.

That has been going on for decades. Those who estimated the number of afflicted victims have been way off. The Johns Manville trust fund said there would be 200,000 victims. It turned out there were 2.1 million. So it has been a test of our legal system to give fair compensation to the people who have been hurt. Many people have gone through the system and received compensation.

Of course, there have been some who have abused the system on both sides. There have been some filing lawsuits for people who were not sick. There have been businesses, which were clearly liable, that did everything they could to avoid paying victims. Those things happen in courts of justice across America every single day.

Now comes the bill before the Senate, this so-called Fairness in Asbestos Injury Resolution Act, which says that we should basically deny to hundreds of thousands of Americans their day in court, their due process, their chance to stand before a judge and jury to have their fate decided, their chance to say that we believe the person on the other side of this lawsuit is responsible for the illness and death in our families. This bill is designed to close down that opportunity, to shut the courthouse doors and to replace them.

As I said before, it is quite a bold undertaking to replace the court system in America with something new. That something is this trust fund. And in a few moments, we will have a vote on in this Senate. The vote is critically important. It is a budget point of order. It goes to the heart of this trust fund and as to whether we can trust that $140 billion in the trust fund will do the job. It asks the most basic question: Are we, in fact, not creating a private-funded trust fund but, rather, an obligation of the American Government, the Government, to pay in years to come for these victims? Are we replacing a court system, where the businesses which have some exposure, some liability, pay up in court, with a system where the taxpayers take care of the victims?

If you believe that the companies that are most liable are paying into this trust fund the amounts they otherwise would pay in court—we know that is not true. Three weeks ago, U.S. Gypsum, a major company, announced if they were to pay off all the asbestos claims against their company they would be paying out somewhere in the range of $4 billion. However, under this bill, U.S. Gypsum will pay into the trust fund somewhere in the range of $800 million, maybe $900 million at the most. So for this company, this is a windfall. They will escape some $3.1 billion in exposure and liability and others will step in to pay the difference. Companies will step in to make up the difference and ultimately, it is my belief, when the trust fund fails, as it is likely to fail, then it will fall on the shoulders of the American taxpayers to make up the difference.

If this bill passes, you can expect the stock of many of these companies that are on the line for asbestos claims to go up dramatically, declare dividends, pay more to their CEOs, make sure that their profits are larger and shared by more. But when it comes to the stock of the American people, it will go down because we will be accepting responsibility not for just this generation but generations to come.

The budget point of order before the Senate raises this fundamental question. It is one that, on its face, few would argue with; that ultimately, the American taxpayers are going to be holding the bill, making up for these corporations which will be off the hook.

This afternoon, Senator CONRAD, the ranking member on the Committee on Budget, received a letter from the Congressional Budget Office, signed by Donald Marron, the Acting Director. The letter clarifies a letter that has been talked about in the Senate a lot. I will not read the entirety of the letter but it says, to clarify an earlier letter:

> As CBO has noted in previous assessments of asbestos legislation, there is an enormous amount of uncertainty about the potential costs under the proposed amendment. Operating the Asbestos Injury Claims Resolution Fund would be an entirely new government task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation. No one can be certain, because of the limited data that are available, as to how many claimants there would be and how much would have to be paid to them. The revenues under the amendment would be, at most, $140 billion, but could be significantly less.

He goes on to say:

> CBO concluded, in its February 13 letters to Senators Gregg and Specter, that the proposed amendment would be ''deficit-neutral over the life of the fund.'' That conclusion is based on the fact that the sunset provisions of the legislation would limit spending for claims compensation, debt service, and administrative costs to an amount no greater than the budgetary resources that would be available to the fund from assessments on liable firms, assets of existing bankruptcy trust funds, any interest earnings. Thus, if valid claims and other costs of the funds were to exceed its resources, the administrator would not have the authority to spend amounts in excess of those resources.

Senator SPECTER admitted it. He came to the Senate last week and was asked: What happens if this fund runs out of money? What if our guess that it is going to cost $150 billion is wrong? He gave an honest answer: We will just cut the compensation to victims and give them less money.

I think that is right. That is the only place to turn because the alternative is to turn back to the U.S. Treasury. That is what this budget point of order is all about.

Members of Congress in the Senate and House who are mindful of the budget deficit we face together understand that we are not only plunging into the darkness with this trust fund, into something that has never been tested or tried at this magnitude but, more importantly, we are putting at risk the lives and fortunes of families across America, innocent victims of asbestos exposure, who simply want justice so that before their loved one dies, before the suffering continues from asbestos exposure, that, in fact, they will have a chance for fair compensation. With this trust fund they will not. Their lawsuit will stop the minute this bill is signed into law, if it reaches that point. Their day in court is over. They will wait to see if this trust fund, as promised, will make them whole.

I reserve the remainder of my time. I see the Senator from Delaware. How much time is remaining on our side?

The PRESIDING OFFICER. There is 15½ minutes.

Mr. DURBIN. I yield to the Senator from Delaware 5 minutes.

Mr. BIDEN. Mr. President, I have refrained from speaking on this bill up until now because, quite frankly, my colleague, our leader, Senator DURBIN, and our ranking Member of the Committee on the Budget and others have spoken with eloquence and precision, I believe, about this point of order.

I have a number of amendments if this point of order fails. But before the

time closes on this vote, I did want to ask the indulgence of my colleagues to make a few very brief points.

No. 1, this is a Herculean attempt by one of my best friends in the Senate—one of my best friends, period, Senator SPECTER—to try to deal with the real problem. The real problem is that there are a lot of people out there suffering from the effects of asbestos. There are not a lot of companies out there with the money to pay all of these claims. There is the concern that some of the very companies we have to go to, to recover from, may very well declare bankruptcy. So I understand the motivation. It is a decent, honorable motivation.

But the bottom line is, what we are asking an awful lot of people to do is to give up a right in tort that has existed in common law for hundreds and hundreds of years prior to our Nation's history but throughout our Nation's history. The deal was it would be in return for a guarantee. They would take less, they would get in line, people who had claims they could pursue now would not be able to pursue them immediately until the medical effects occurred. All kinds of limitations were prepared to be put on individuals' rights and claims in return for a deal.

What was the deal? The deal was that they—the victim—having met the criteria of the bill, would be guaranteed a payment and guaranteed a payment within a time certain and that everyone would know the rules.

When I was a young Senator my first year here, I was No. 100 in seniority. I sat in the back corner. Russell Long was in the Senate with the finance bill. Senator Schweiker of Pennsylvania and Senator Case from New Jersey and I worked out an agreement related to a compact relating to the Delaware River area. I walked up to the Senator from Louisiana, Mr. Long, and I said: Senator, I hope you can support this. We have worked this out. He said: Yes, I will be with you. I will be with you.

I had a staffer who had a lot more experience than I. I had only been here months, maybe a year. This staffer worked here before and was seasoned and said: By the way, ask for a rollcall vote. I asked for a rollcall vote. And in the process, when the vote came, it got to Long and Long voted ''no.'' I said: He just told me ''yes.''

Well, he told me, yes, he would vote for it, if it were not a rollcall vote. I didn't know he said that, but he meant that only if it was a voice vote he would vote for it—meaning he could drop it in conference. I walked up to him and I said: Senator, we had a deal. And I was referring to my colleagues from Pennsylvania and New Jersey and Delaware. And he put his arm around me, as only he could do, he pulled me in close like he used to do to everyone: JOE, as my Uncle Earl used to say: I ain't for no deal I ain't in on.

Guess what. The victims are not in on this bill. They are not in on this bill. Because if my colleagues are right—and I believe they are—about how short this fund is going to come and how quickly it is going to reach that point, and how underfunded right from the very beginning this is likely to be, guess what happens. At some point, the administrator of this whole outfit can look down the road and say: By the way, we are going to run out of money, and he can recommend a couple of things. He can recommend that the criteria to qualify change. He can recommend that the amount of money recovered change or he can recommend the fund sunset and people go back, in part, to what they had before.

What would happen if I had said to the business community: There is one other thing he could do. He could go back and change the contributions and what category each of the businesses fall in. He has the discretion to do that. He can go to a company that had more money than another company, even though not as much responsibility, and kick them up into a higher category. I wonder how many of my friends would be saying: Wait, wait, wait a minute. That is not fair. Businesses have to plan. Businesses have to have certainty. You have to make sure that what you tell them in here is going to happen.

Guess what, folks. That is what we are doing to the victim. That is what we are doing to you, the person who gave up your right that only the Congress can take away from you. Give up your right.

There is much more to say. I hope I will not have to say it because I hope this point of order is sustained. But if it is not, there are a number of amendments I have.

Mr. DURBIN. Mr. President, I yield the Senator 2 additional minutes.

Mr. BIDEN. Mr. President, I thank the Senator very much.

The bottom line is, I do not, for a moment—and, again, because he is on the floor and he is my friend—I do not question the motivation, the intention, the desire, the intensity with which my friend from Pennsylvania feels about this issue. I believe he believes if this passes we are going to be doing the victims of asbestosis—and all other aspects of the exposure to asbestos—we are going to be doing them more good than harm.

But I disagree. If the money were here, if the money were guaranteed, under no circumstances could it fall short, then, in fact, that would be the case. But the last piece I will mention here is, I heard my good friend from California talk about Goldman Sachs has a list. Isn't this amazing? We are about to vote on a bill that by some measure will cost at least $140 billion to somebody—I think a lot more—and there is a list that Goldman Sachs has. And we don't? I ain't for no deal I ain't in on. I ain't in on this deal. I am not for it. I am not for it.

I thank the Chair and thank my colleague.

Mr. DURBIN. Mr. President, I thank the Senator from Delaware.

I wish to add, we brought up this whole issue of this secret list last week, and Senator SPECTER came to the floor and he said he believes for a variety of reasons he cannot tell us, cannot disclose to the public, the contributors, the businesses that will contribute to this fund and how much they are going to be asked to give. So we are dealing with an amount, $140 billion, that many people question. Serious groups have analyzed it and said it is not nearly enough. And when it comes to the contributions from businesses to create the fund, we are dealing with a secret list.

This may be the first time in the history of the Senate we have spoken on the floor openly about how things are determined. Apparently this one company that has been mentioned on the floor created a list of businesses and decided how much, under the criteria, they would be paying in.

Mr. SPECTER. Will the Senator from Illinois yield for a question?

Mr. DURBIN. On your time I would be happy to yield.

Mr. SPECTER. I have no time.

The PRESIDING OFFICER. The Senator from Pennsylvania has no time.

Mr. DURBIN. How much time do I have remaining?

The PRESIDING OFFICER. Seven and one-half minutes.

Mr. DURBIN. I yield for a question, if it is pointed.

Mr. SPECTER. When you refer to the so-called secret list, as I pointed out to you on several occasions over the past several days, isn't it true you have seen the list?

Mr. DURBIN. No, I have not. And I thank the Senator for raising that point.

Mr. SPECTER. Isn't it true the list has been made available to you to see?

Mr. DURBIN. I would say to the Senator the same thing I said last week when we engaged in this conversation: For some reason, the Senator—whom I respect very much, and I have said this publicly, and it is not to be construed otherwise—has decided this list is confidential. So the list is made accessible to staff members and Members of the Senate to view but not to take notes or copies. Now, that is fact.

Mr. SPECTER. Mr. President, will the Senator yield——

Mr. DURBIN. And when I asked the Senator from Pennsylvania if he would make this list part of the RECORD, so we could see it right here in the CONGRESSIONAL RECORD, published for America to see, he said he would take it under advisement. He came back the next day and said for a variety of reasons, he could not do it. The fact remains——

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

Mr. DURBIN. Not until I complete my thought. The fact remains that this list is secret to the public. If this is a public forum, if we are considering legislation that will impact the public, why, then, is the most fundamental

question about who will pay into this trust fund being kept confidential and secret?

It strikes me as straining credulity that this process is so open and transparent that we cannot tell the businesses of America how much they have to pay in or the victims of America how much they can expect to receive into this trust fund for their own payments. That is a fact. And because staff members or Senators can go to the hearing room and look through the report—not make a note, not make a copy—does not create a lot of confidence.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, will the Senator from Illinois at this point yield for a question?

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Five and one-half minutes.

Mr. DURBIN. I believe the Senator from New Jersey is coming to the floor and asked to speak. With only 5½ minutes remaining, I reserve the remainder of my time.

Mr. SPECTER. Will the Senator yield for 30 seconds?

Mr. DURBIN. To show the Senator from Pennsylvania how much I respect him, yes.

Mr. SPECTER. Would the Senator from Illinois be willing to accept, in open court, the list?

Mr. DURBIN. If I am allowed to put it in the RECORD.

Mr. SPECTER. The Senator from Illinois would be bound by the denomination on the list, which is law and Senate rules. It is not something ARLEN SPECTER has made up. But this is a list which you can have in your hand. It is not a secret list, but there are rules of confidentiality established by law and by Senate rule.

Mr. DURBIN. I would say to the Senator——

Mr. SPECTER. And if the Senator from Illinois declines, that is fine with me.

Mr. DURBIN. I would say to the Senator from Pennsylvania, I think he has constructed a situation here that isn't fair to this process. To think that we would be dealing with the lives and fortunes of so many hundreds of thousands of families, and that we are saying we cannot share with them the most fundamental information about how this trust fund is created, I think we could do better, we should do better in the Senate.

Mr. SPECTER. Would the Senator from Illinois accept my characterization of his position as ridiculous?

Mr. DURBIN. No. I would accept my characterization as challenging the Senator from Pennsylvania to accept the obvious. If this list has been created by some private company and cannot be shared with the people of America in the midst of the debate on this important bill, there is a serious flaw in this legislation, a flaw that cannot be overcome, even with the good feelings I have for the chairman of this committee.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I want to speak. We are debating a budget point of order. People in America are thinking this is some kind of a technical jargon that Senators are using. What does it mean?

A budget point of order is a parliamentary rule that can be used to make sure that the Senate carefully weighs whether we are putting undue burdens and obligations on future Congresses, which obviously means to future generations of Americans.

We are raising—and I have raised—this budget point of order today. I will be the first one to admit, it is a very technical budget point of order. But let me explain the reasons I believe it is a real budget point of order in its effect, stopping huge obligations by this Government in the future.

In the wisdom, I believe, of the Senate in last year's budget, we put in a budget point of order that would say beyond 10 years, if there is spending of more than $5 billion obligated, a bill would be subject to a budget point of order. It is because it had become practice around here to make things kind of ramp up, and, then, in the future spend the money so it did not look as though we were spending money now. It looked as though things were either budget neutral or had very little impact on the budget.

I said the other day on this very floor, talking about what is going to happen with Medicare, Medicaid, and Social Security, as the baby boomers retire in this country, it is a serious problem we are facing. If there is a problem with this trust fund—which many people believe there will be a huge problem with this trust fund, that it will be grossly underfunded—if the problem ends up coming back to the taxpayer, it will happen at a time when the baby boomers are starting to retire.

I know the Presiding Officer from South Carolina is one of the most fiscally responsible people in this body. I have followed his short record in the Senate and know how passionate he is about our entitlement programs. I feel the same way he does. But with that looming problem of the baby boomers coming up, the last thing we can afford to do is to enact a bill that potentially could have a major impact—literally, maybe with a number in the hundreds of billions of dollars—that could have a drain on our Government.

The Senator from Pennsylvania says there are no Federal revenues at stake here, the trust fund does not allow for that. Here is why I think it is a real budget point of order. I have been around this place long enough—I have only been here in the Senate 5 years, and in the House before that 4 years, but that is long enough to see how this town works. The Congress is creating this trust fund. If this trust fund runs out of money and there are still victims around, the people in this very body will stand up and say: Congress created the problem, Congress needs to fix the problem. Everybody will join in because there will be victims and people will have posters of victims out there. And there are real victims, people who are suffering, people who are not getting the help they need today. That is why I believe this is a real budget point of order because I think the Congress will act and will give the money to supplement the trust fund. It will not be their money; it will be the taxpayers' money. But they will give the money.

Now, I have heard a lot of people come down here and say why there is a problem. The fact is, we have a broken legal system that needs to be fixed. The trial lawyers in this country have discovered these class action lawsuits: Bring your Rolodex in and we will see who we can sue. And so many people who are not victims are clogging up the courts, who I believe are led there by unscrupulous lawyers. It is blocking real victims from receiving compensation.

It has been said that many businesses have gone out of business. The chairman of the Judiciary Committee has argued one of the reasons we need the trust fund is because a lot of businesses have gone out of business so there is nobody left to sue. Why did they go out of business in the first place? It is because of frivolous lawsuits, having to spend millions and millions of dollars defending themselves. In a lot of these cases, the businesses had nothing to do with asbestos.

I remember this one company that came in to visit me. They were an insurance company thinking of getting into insuring folks in the asbestos field. So they did a study. They came to the conclusion it was too risky, and they decided not to go into that business. I forget the exact figure, but I know since that time they have paid hundreds of millions of dollars out defending themselves because they did not release the study.

This was their own internal document they used to decide whether they were going to go into a certain business. But because they did not release the study, trial lawyers brought them in to the courts and sued them. In many cases, it is cheaper to settle than it is to defend yourself in court. So they paid out umpteen millions of dollars.

The problem with that is insurance companies are a passthrough. Americans are paying the bills. They are just a company that takes in premiums and pays out claims. They are there to make a profit. And if they have to pay things out, they have to raise the premiums, which we all pay.

So we know there is a serious problem. We know it has been caused because of a bad system, and we need to fix the system. I am the first one who wants to stand up here to fix the system. The alliance that has been formed here to try to support this budget point of order is a little strange. There are some fiscal conservatives. There are some people who support the trial lawyers. I have never been exactly claimed by the trial lawyers as being one of their friends, and I feel a little uncomfortable to be in this position, to be honest with you. But I am standing up for this budget point of order because I believe this bill is fiscally irresponsible to the taxpayers into the future.

Now, I want to address one other portion or one other thought no one has addressed on the floor of the Senate. I was in the House of Representatives for 4 years, and there I served on the Ways and Means Committee. The Constitution of the United States says something very clear. It is a very simple writing. That is the beauty of the Constitution, how simple the writing is. Section 7 of article I of the Constitution states:

All Bills for raising Revenue shall originate in the House of Representatives. . . .

That is a very simple statement. In the letter to the budget chairman, the Congressional Budget Office says:

CBO expects those sums—

Talking about the sums for the trust fund—

would be treated in the budget as Federal revenues.

Section 7:

All bills for raising revenue shall originate in the House of Representatives.

Any Member of the House of Representatives can raise this constitutional question. I cannot remember a time when somebody raised this constitutional question when the House of Representatives did not support it. It is called a blue slip. I raised one when I was there. It was on the nuclear waste bill that was up. I raised that budget point of order, and that was at a time when the vast majority of House Members supported the nuclear waste bill. Yet they supported me on that blue slip, that constitutional question, because they wanted to protect their rights as a body.

Well, beyond the budget point of order, we may be spinning our wheels because this trust fund raises revenues, and it is the prerogative of the House of Representatives to start a bill like that. So even beyond the budget point of order, we may be wasting our time with this bill because of the trust fund that has been set up.

So I encourage my colleagues, let's sustain this budget point of order and start over. Let's get a good medical criteria bill, work in a bipartisan fashion, get together and limit it.

Let's make sure that victims of asbestosis and mesothelioma are compensated. Let's get rid of all of the phony claims. It will quit clogging up our court system. We won't have all these lawyers getting rich over all these class action lawsuits. We will actually get the victims their just compensation.

If we join together and get something done and quit making partisan political points, I believe the actual victims will be better off, but so will those businesses that are threatened to go out of existence even as we speak.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Mr. President, I think I have been yielded time. I would like to check with the people at the desk to see whether that is the case. I heard the Senator from Illinois say I was expected on the floor. Is that noted in the RECORD in any way?

The PRESIDING OFFICER. We have no record of the Senator from Illinois yielding time.

Mr. LAUTENBERG. Mr. President, since I am on the floor and there is nobody else here on the Democratic side, I ask unanimous consent that I be permitted to speak for not more than 5 minutes or so.

Mr. ENSIGN. Whose time is that coming off of, Mr. President?

Mr. LAUTENBERG. I believe it is our time.

The PRESIDING OFFICER. There would be an additional 5 minutes, unless someone else yields time.

Mr. LEAHY. Mr. President, parliamentary inquiry: The opponents of the position of the Senator from Nevada, how much time do they have?

The PRESIDING OFFICER. The Senator from Nevada has 23 minutes. The Senator from Illinois has 3 minutes 22 seconds.

The Senator from Vermont has 15 minutes.

Mr. LEAHY. This is in opposition to the position. I will reserve my 15 minutes for the Senator from Pennsylvania and myself.

Mr. ENSIGN. Mr. President, before the Senator from New Jersey speaks, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from New Jersey made a unanimous consent request for 5 minutes. Is there objection to that?

Mr. LAUTENBERG. Mr. President, I would like to use Senator DURBIN's time. He has 3 minutes left. I ask unanimous consent that I be permitted to use Senator DURBIN's time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, since time is limited, I am going to get down to the nuts and bolts. I come from a State in which asbestos was prominent in manufacturing in many places. As a matter of fact, early in the 1950s, a doctor named Irving Selikoff, who was a researcher as well as a physician, discovered the lethality of asbestos. He is the one who raised the alarm about the dangers of that product.

He saw mesothelioma and asbestosis.

In my office in New Jersey, I had a man and his wife and his mature son, who was about 30 years old, come in to see me because they all had mesothelioma, but only the father worked in the manufacturing facility, the mill. His wife and child, his son, were made ill as a result of the mother washing her husband's clothes. That is how lethal, how dangerous asbestos is.

This bill is an abstract exercise. There are real people involved, people who are going to die as a result of the exposure. I have seen it up front and personal. A friend of mine who was a lawyer, after practicing 20 years, got a call from a member of a union one day that had asbestos workers, and he was told to get a chest x ray. He did. After 20 years of no illness, nothing, suddenly they found that he had a spot on his lung, and it turned into mesothelioma and he was dead soon thereafter.

I recently had a World War II vet—I am one as well—come into my office, sick from mesothelioma, from work he did 40 years ago. We have seen so many cases where the gestation period is so long, so that to suddenly close this out and say that is going to be enough money, $140 billion—it sounds like a lot, but it is not a lot when it comes to individuals who need help and who need to be able to continue to conduct their lives and do whatever they can to make life comfortable.

The Congressional Budget Office has stated that the fund will need $10 billion more. Other analysts put the figure as high as $300 billion. So it is fairly obvious that I am going to oppose this bill and support the point of order. I urge my colleagues to do the same because what we are doing is dismissing the suffering of people who have been exposed to this, even though the companies knew how dangerous the material was they were working with. They permitted people to work with it and did not do anything about it, except ultimately, in many cases, they went bankrupt as a result of their behavior.

I yield the floor, and I hope my colleagues will oppose this bill and support the point of order.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, first, I want to acknowledge the extraordinary amount of work that the chairman of the committee and the ranking member have put into this bill, and how much I admire the diligence they have brought to the task.

I rise today on the question of a budget point of order that has been raised by the Senator from Nevada. That budget point of order is clearly well taken. A number of months ago, my technical staff on the Budget Committee came to me and said they had

been reviewing this legislation and they wanted to alert me that they believed this legislation was underwater, that it was underfunded, that it would lead to severe consequences not only for taxpayers but also for those who were the victims; it might also lead to severe consequences to companies that thought they were escaping the court system.

Why is that? Well, it is true because the analysis that has been done demonstrates it is much more likely this fund will go insolvent than not. Why?

First, because claims and administrative expenses are likely to exceed the contributions to the asbestos trust fund.

Second, upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts, and that borrowing will come from the Federal Treasury, increasing the ultimate cost.

Third, small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund.

Finally, it is very unrealistic to assume that the trust fund, once initiated, will ever terminate.

Mr. President, CBO said in a letter today:

> CBO cannot estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation.

What are those features? Here are a number of things that CBO said they could not estimate. They said they made no provision for dormant claims. Dormant claims are cases that were brought previously but for which there is nobody to pay under the current system. No. 2, we also know there are trusts that are only paying cents on the dollar. Those dormant claims could come back against this fund.

Second, exceptional medical claims: Exceptional medical claims are claims that don't fit neatly into one of the nine categories provided for in this bill. CBO said they could not make an estimate for those.

Third, CBO made no estimates for family members' claims; that is, family members who have been affected because a loved one comes home with asbestos on their work clothes. I had a family come to me where both the mother and the daughter became ill because the husband brought asbestos home on his work clothes and that made them ill. They will have claims.

Then there was no provision for CT scans, which were omitted; that is, costs associated with using CT scans for plural abnormalities as evidence of asbestosis.

It also omitted the cost of compensating victims at other Libby-like sites. Libby is an unusual circumstance, but it is not the only one where an entire community has been badly hurt. That will increase the cost.

We have only found one area where there might be potential savings, and that is the medical studies area. That is a circumstance where there could preclude some tier VI cancer claims, and that could reduce costs. But it will affect fewer than 1 percent of claims.

There are additional areas of uncertainty in the CBO analysis: the number of future cancer claims. CBO estimated 78,000 new cancer claims. The Tilling-Hast study, financed by Johns Manville—so it is not financed by the trial bar or by labor unions, not financed by companies who are against this legislation. Instead, it was financed by the Johns Manville trust. The Tilling-Hast study did 14 different scenarios. They concluded, on average, there would be 133,000 new cancer claims, not the 78,000 provided for in the CBO analysis. If they are right, this bill is $295 billion underwater instead of the $150 billion we have assumed, based on increasing the cancer claims from the 78,000 in the CBO study to 90,000.

The percent of nonmalignant claims is another area we believe will increase costs. CBO says only 15 percent of the people will fall into tier II and tier III. Tier II gets $25,000 cash reimbursement. Tier III gets $100,000. They say only 15 percent of the claims will fall there. Other objective experts say it is more like 10 to 40 percent. We took the midrange of that estimate, 25 percent. We think that is a more prudent estimate of the amount of financing costs on fund borrowing.

We have heard over and over that this will only cost $120 billion to $140 billion or $120 billion to $150 billion, depending on the estimates, and that CBO has said there is an assumption that the claims will cost in that range: $120 billion to $150 billion. That leaves out something. That leaves out something pretty important. That leaves out the financing costs because everyone acknowledges that the early claims will be far in excess of the early revenue. The result is an enormous mismatch between funds going out and funds coming in. That borrowing is going to be made from the Federal Treasury. The interest cost on that money has not been calculated in the work of CBO. They acknowledge that. That is the biggest single difference we have identified. You have to include financing cost.

In addition to that, the amount of revenue in the trust fund may well reduce revenue. In fact, CBO notes that revenues will be, at most, $140 billion, and that revenues could be significantly less.

When we put all of these factors together, our analysis, using very conservative assumptions, including the asbestos trust fund, faces a shortfall of at least $150 billion over its lifetime or $50 billion in net present value.

Using what I believe is a more realistic estimate of future cancer claims, the 133,000 average in the Tillinghast study, the shortfall would grow to nearly $300 billion. That really shouldn't be a surprise because if we look at what has happened with other funds like this, what we have found is that very often the initial estimates are entirely wrong.

If we look at the original range of the Manville claims, this estimate was done back in the late 1980s, and they estimated there would be 50,000 to 200,000 claims. Already, there have been 690,000 claims. They now estimate there will be 1.4 million, for a final total of over 2.1 million claims. When they initially started, they said there would be 50,000 to 200,000. They were wrong by a country mile.

We looked at the black lung fund. Back in the late 1960s when it was initiated, they said the total cost would be $3 billion. We are at $41 billion today and counting.

The hard reality is that CBO has reaffirmed there is a significant likelihood that the asbestos funding is inadequate. Here is what they said in a letter today:

> CBO's analysis indicates that the proposed trust fund under Senate amendment 2746 might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

Let there be no doubt. This is what it says.

In the point of order which has been brought by the Senator from Nevada, it shall not be in order to consider any bill, joint resolution, amendment, motion, or conference report which would cause a net increase in direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 through 2055.

S. 852 creates an entitlement. The language could not be more clear. It says in section 131:

> An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under section (b).

Are these all just words? Are all these just numbers on a page? Or does this have some real-world consequence?

We can look to the Johns Manville trust for the answer to that question. Because they estimated incorrectly, because they dramatically underestimated the number of claims, claimants today are getting 5 cents on the dollar. Five cents on the dollar. That could happen to victims. The other possibility, of course, is that people will come to Congress and say: Look, you designed this fund. You said it was going to produce. You said it was going to work. Now it has failed. You have to pony up. You have to pay. What do my colleagues think is the most likely outcome in the years ahead?

CBO has also confirmed that the long-term spending point of order exists against this legislation. Here is what they said, and this was on February 13, yesterday:

> Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95, CBO estimates that enacting the bill as amended

would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

CBO also reaffirmed that the fund is governmental:

Operating the Asbestos Injury Claims Resolution Fund would be an entirely new governmental task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation.

CBO's estimate shows that the asbestos bill will worsen the Federal deficit by $7 billion over the first 10 years. We believe that is very conservative. We believe the amount of increase to the deficit will be far in excess of that when we adjust for the dormant claims, when we adjust for the debt service, when we adjust for the other expenses that have been left out.

There have been some who have said: Well, these really aren't Federal funds. Oh, yes, they are. These are Federal funds because the money, just as it is in all of these instances of trust funds, is considered Federal—in the airport and airway trust fund, in the black lung disability fund, in the hazardous substance Superfund, in the highway trust fund, and in the unemployment insurance fund. It doesn't matter that, yes, there are private funds here; without question, that is part of the picture, but it is not the whole picture. In every one of these cases where we have private funds being mixed with Government funds, the final result is considered governmental payments. The above trust funds receive ''private'' receipts that are designated for specific purposes. Spending from these trust funds is treated as Federal.

At the end of the day, we have to make a judgment. Some have said: The Federal Government's exposure is limited, it is restricted, because after $40 billion, it shuts down. I think we have to ask ourselves: Is that likely? Is that really likely to occur? Can we imagine the companies being told they owe $40 billion back to the Federal Treasury and they are exposed to going back to court? If we want a march on Washington, enact this legislation, because it will go insolvent in the second 10-year period, according to our estimates, and we will have a run on Washington unlike anything we have seen in the modern age.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, how much time is remaining to the various parties?

The PRESIDING OFFICER. The Senator from Vermont has 15 minutes, and the Senator from Nevada has 8 minutes. That is all the remaining time.

Mr. LEAHY. Mr. President, I am prepared to yield the remainder of my time to the Senator from Pennsylvania, but I would like to make just a couple of points, if he doesn't mind, before I do that.

Mr. President, with all of the talk, let us not lose sight of a couple of things. This bill does not violate 407(b), no matter what anybody says, because we specifically say the taxpayer funds will not be spent to compensate victims of asbestos exposure. That has been our position from day one, and that is what the bill says today: not a single dollar is spent. In fact, the CBO states that over the life of the fund, whether or not it sunsets, we would not expect the legislation to add to the aggregate Federal debt. It just doesn't add to debt. The Federal Government is involved only because it acts as a conduit for the private funding of $140 billion. All the parties said they wanted that in the Department of Labor because they had the experience and the infrastructure necessary to set up a quick start for the victims.

We have heard the figures about projection of interest rates. If we follow those projections, the interest rates would have to be at 25 percent. Twenty-five percent. Even with the recent increases by the Federal Reserve Board, we are still way in the low single digits.

The CBO considered all the estimates. They met with dozens of financial experts, economists, auditors, everybody. They say payments were raised from $120 billion to $150 billion, at most. They said $140 billion will cover all claims, payments, administrative costs, and borrowing costs. That is why we have the financial institutions, we have our veterans, we have labor. As this chart shows, labor organizations are strongly for it.

Then we ought to keep in mind that these are the people who are not going to recover unless this bill goes through, and 26 veterans organizations have come out to say they oppose this budget point of order. Twenty-six veterans organizations oppose it because they know they need this bill.

Mr. President, I yield the remainder of my time to the distinguished Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I would like to comment briefly on the disagreement I had with the Senator from Illinois, Mr. DURBIN. He has made the false representation that there is a secret list of who is going to provide the money. It is not a secret list. It has been made available, and I offered it to him on the floor. But under the law, when it contains confidential information, it is available for the Senators and their staffs and those preparing the legislation, but it is not available for the general public on trade secrets. When the bill is certified, then it goes into the public record and the public domain. But to say that it is a secret list is the purest form of demagoguery and a specious argument.

On to the essential point of this budget point of order, it does not have any substantive merit because there is no Federal money involved. The Federal Government is implicated only because the Department of Labor is a conduit. That is the only reason the Federal Government is involved.

The Congressional Budget Office has said flatly in the letter to me dated yesterday:

CBO concludes that the legislation would be deficit-neutral over the life of the fund.

CBO, in their letter today to Senator CONRAD, repeated:

CBO concluded in its February 13 letter to Senators Gregg and Specter that the proposed amendment would be deficit-neutral over the life of the fund.

So there is no Federal money involved, pure and simple, and there is no basis to say that the budget would be impacted, so that on the merits, there is no basis for this point of order.

The practical application is that if this point of order is sustained, this bill will die. This is an issue which has been before the Judiciary Committee for the better part of three decades, and it has been before the committee in the past 3 years on a very intense basis. The majority leader has set aside 2 weeks for the consideration of this bill. If this point of order is overruled, we will proceed to a cloture vote tomorrow, and we will proceed to take up amendments, and we have a realistic chance of concluding this bill yet this week. It is backed up against a recess period, and we have a chance to finish this bill.

If this point of order is sustained, then the work which Judge Becker has done in presiding over some 36 meetings, attended by 20 to 50 to 60 representatives, countless meetings, will be in vain. If the point of order is upheld, the bill is gone. If it is rejected, there will be ample opportunity for amendments to be presented and for the bill to be improved.

There are those who wish to offer an alternative of a medical criteria bill. I do not think a medical criteria bill is as good as the current bill because the medical criteria bill would not cover employees whose companies are bankrupt or veterans who have no one to sue. But at least that would be an alternative which would be preferable to the current system. I believe it is fair to say that the Presiding Officer might be attracted to a medical criteria bill, and certainly many who oppose the trust fund would prefer to have something such as a medical criteria bill rather than have nothing.

If the point of order is upheld and the bill is dropped, you can't do anything. There is a question as to whether it is germane, but that is a matter for the Parliamentarian and that is a matter for ingenuity and that may be worked out. If you do not go to a medical criteria bill, there are germane amendments which could be offered to change the medical criteria.

Here again, I am opposed to the modifications, but they could be made and the bill could be altered. The whole beauty about the Senate is that—when we have these complex issues and we have the synergism of 100 Senators and our staffs—with our experience, with our analysis of what we have done, we have a chance to establish public policy in the interests of Americans.

Everybody agrees. Not one person who has taken the floor has disagreed with the enormity of the problem. Everybody agrees that it is horrible that people are dying of deadly diseases from exposure to asbestos and have no one from whom to collect.

There is disagreement about how to handle it. There is no disagreement about the tremendous amount of work which has been done in this bill. On a strictly personal level, the committee, the staffs, and I have put in countless hours that ought not to go down the drain on a technicality. If we have this bill on the floor for 3 more days this week and if at the end of that time, or whatever time the bill is on the floor, there is a decision made that no bill is better than the bill we come to, then so be it. It is rejected. But to have it rejected on a technicality is a terrible waste of so much time and effort which has gone into bringing this bill to this position.

I have made a statement which I believe to be true—although I can't prove it—that there has never been a bill subjected to more analysis and scrutiny than this bill. Or in the alternative of accepting that assertion—I know it is a grandiose assertion—can anybody point to any bill which has had more analysis or more scrutiny? What a waste it would be to have it dismissed on a technicality when the consequences are that thousands of victims of asbestos will continue to die without compensation, the 77 companies now in bankruptcy will be multiplied, and the economy will withstand a $300 billion loss.

Let us take 3 more days, as we have taken the past 3 years, to see if we can produce a bill which will satisfy the critics of the present measure.

We have done a count as to how the Senators are going to vote. It is impossible to say with certainty exactly what is going to happen. There are too many people who are still undecided. So as I talk to my 99 colleagues, I ask you to weigh very heavily this vote because this is a measure, as many are, which might be decided by a single vote. Why let it all go down the drain on a technicality when we might be able, in the course of 3 more days, to produce something which would be satisfactory to a majority of this body?

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator has 3 minutes 15 seconds.

Mr. SPECTER. I am willing to yield back the remaining time if the Senator from Nevada is.

Mr. ENSIGN. Yes.

Mr. SPECTER. Mr. President, parliamentary inquiry: The pending motion is my motion to waive?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, 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.

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

The PRESIDING OFFICER. No response having been made to the roll-call, the quorum call is in order.

The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I will use leader time, in that all time has expired.

Mr. President, I urge my colleagues to vote ''no'' on the motion to waive the valid budget point of order raised by my colleague, Senator JOHN ENSIGN. This is not a technicality, it is the absolute foundation of this flawed program, this trust fund. A vote on the budget point of order is the key vote on this bill.

Cloture was filed last night by the majority leader on both the bill and the Specter substitute amendment. The first cloture motion will ripen tomorrow morning. The effect of that action will be to ensure there will be no meaningful opportunity to amend this bill.

The chairman of the committee says we should not defeat the bill on a budget point of order and should instead attempt to improve the bill by amendment. Mr. President, please, that is not very sensible. The majority leader's decision to file cloture last night completely undercuts that argument. There is no serious chance this bill will be improved through amendment.

Why do I say that? After cloture is invoked on the substitute, only germane amendments will be in order, and after the substitute is adopted, no amendments at all will be in order. Many of the most important amendments to the bill are highly relevant but nongermane. There are lots of them.

How about the amendment of Senator LINDSEY GRAHAM to deal with environmental exposure to asbestos across the country? Senator GRAHAM's amendment, which he has talked about for months now, dealing with asbestos exposure around the rest of the country would not be in order. That is hard to accept. There are many other amendments of comparable significance to that of Lindsey Graham. Any Senator with concerns about the bill should vote to sustain the point of order because the only meaningful way to improve the legislation is by committing it back to the Judiciary Committee.

I have said that Senator DURBIN and I will work with Senator CORNYN and others to find an alternative approach along the lines of the Texas and Illinois State statutes. The pending bill may be well-intentioned, but it is ill-conceived. It would deprive asbestos victims of their right to obtain compensation for their injuries in court and throw them into an administrative system that is doomed to fail. It is doomed to fail.

If someone doesn't like the entitlement programs in this country, then you should hate this bill before us because it is another entitlement program, and it will make the black lung program look insignificant.

This program started at $3 billion; it is now $41 billion and on the rise still.

The trust fund is undercapitalized and structured in a way that will deprive seriously injured victims of fair treatment.

The bill is opposed by every major asbestos victims group, as well as numerous scientists and doctors and experts on asbestos-caused diseases, and nearly every labor union.

In addition, virtually the entire insurance industry and a large number of small- and medium-sized businesses oppose this bill. It is death to too many companies.

People stand on the floor of the Senate and talk about cases where they have had to file bankruptcy. When those companies went into bankruptcy, they did just fine. Victims did not get their money but others did. A lot of the companies have come out of bankruptcy.

Yesterday, Senator FRIST and I received a letter signed by more than 350 individual veterans and their families, representatives of large numbers of people around this country.

Among other things in this letter, they state:

> We are aware of the repeated claims by proponents of S. 852 that this legislation is good for veterans. We are also aware that several veterans' organization officials have endorsed the legislation. We, as individual veterans and families, want to make it clear that these officials and organizations do not represent the position, nor the complete position, of the veterans' community. We strongly oppose this legislation. We believe that a system as envisioned by S. 852 would exacerbate, not relieve, the suffering of veterans with asbestos-related diseases.

The budget point of order before us is significant and goes to the heart of the bill. In addition to being unfair to victims, the bill is unfair to the Federal taxpayer.

I repeat: I have received calls in recent days from Karl Rove saying: What are we going to do about entitlement programs in this country?

He, of course, is concerned.

We have a debt ceiling vote that is going to be coming up in the next several weeks. That is why he called me on behalf of the President.

If he is concerned about the entitlement programs that are now in existence, they should really be frightened about this one. This is open ended. Some have said it will be as much as $600 billion underwater.

The budget point of order raised by Senator ENSIGN is clearly valid. Yesterday, responding to an inquiry from

Chairman GREGG of the Senate Budget Committee, the Congressional Budget Office reaffirmed its conclusion from last August that the bill violates section 407 of the Budget Act. You can manipulate, twist, and try to say it doesn't say what it says, but they say it violates section 407 of the Budget Act. CBO estimates that enacting the bill as amended would cause an increase in net direct spending.

In the same letter, the Congressional Budget Office predicted that in the years 2006 through 2015, the cost of the fund will exceed industry contributions to it by at least $6 billion. The only way to make up that difference is to borrow it. Who do you borrow it from? From the Federal Treasury.

In a letter to Senator CONRAD today, the Congressional Budget Office highlighted the extraordinary uncertainties associated with the cost of this bill.

Senator CONRAD read parts of this into the RECORD today, as have others.

Senator CONRAD, of all people in this body, of all people in this body, is seen as a fair man. His main concern about what is going on in Government today is spending.

I remind everyone that when Senator CONRAD was elected in 1986, he took a vow. He said: If the budget is not reduced by the time I stand for reelection, I will not run for reelection. He fulfilled that commitment because the budget deficit had not gone down. He is a man of his word.

Unfortunately, the sitting Senator, Mr. Burdick, died, and as a result Senator CONRAD is back with us. But he gave up his Senate seat because he believed the deficit was not right.

I think those of you on the other side of the aisle who have worked with Senator CONRAD would have to acknowledge that when he deals with matters of fiscal responsibility of this country, he is fair. His own individual analysis indicates that this will be at least $150 billion and maybe as much as $290 billion in the red.

I remind my colleagues that this bill effectively creates an entitlement for asbestos victims and obligates the Federal Government to provide compensation to those victims. Throughout the fund's existence, the Federal Government is obligated to pay regardless of the actual amount raised by the fund through company contributions; thus this obligation remains so long as the fund is operational. Experts conclude that the amount of payouts will outpace the contributions to the fund not just in the near term but in the long term as well.

I say to my friends, Democrats and Republicans, read the Wall Street Journal of today. If there is ever a publication that is concerned about what is happening to the financial situation in this country, we all have to acknowledge it is the Wall Street Journal. I don't like a lot of their political editorials. But whenever they talk about money, I read and listen.

In an editorial this morning, that newspaper pointed out, for example, repeating what I said, that the black lung program ''which was initially supposed to cost $3 billion and was later supposed to be financed by the coal industry, it has since paid out more than $41 billion, borrowing some $9 billion from the Treasury.''

They acknowledge that the bill before us is bad.

There are alternatives to solving this difficult problem. My friend, the distinguished junior Senator from Texas, is on the Senate floor. I pledge to work with him on his proposal to establish a medical criteria system that will assure a more orderly resolution of the asbestos claims. That is the way it is going to be no matter what the outcome of this. The current bill is not the answer.

I urge my colleagues to establish a medical criteria system that will do what we think should be done.

I very much appreciate the work of Senator LEAHY and Senator SPECTER. I think these two Senators have done a wonderful job and are doing the best they can.

If my friend, Senator SPECTER, is on the floor, I would be happy to ask unanimous consent that he be allowed to speak to respond to anything I have said, if he believes that is appropriate.

No one on our side will object. I have finished using my leader time. I would be happy, if he feels so inclined, to ask unanimous consent that he be given whatever time he wants to respond to what I said.

Mr. SPECTER. Mr. President, I thank the Democratic leader for that. I shall accept it.

Mr. REID. How much time does the Senator need or want?

Mr. SPECTER. I didn't know there was a limitation on how much I want.

Mr. REID. As minority leader, I was entitled to 10 minutes. I think anything over that would be out of the ordinary.

Mr. SPECTER. I will take less than 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that Senator SPECTER be allowed to speak for up to 6 minutes.

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

Mr. SPECTER. Mr. President, whatever arguments are advanced by skillful advocates and skillful Senators, the underlying question of this budget point of order is whether the budget will be impacted and hurt. The fact is, there is no Federal money. So there is no substantive merit to the point of order. The Federal Government is implicated only because the Department of Labor is involved as a conduit.

That is fact No. 1.

Fact No. 2 is if this budget point of order is upheld, this bill is killed after 3 intense years of work, with hundreds of meetings, with numerous conferences, and 36 meetings presided over by Judge Becker and myself. And there will be no opportunity to have amendments to improve it.

We may yet be able to pass a bill which will satisfy the critics.

So let us have 3 more days as we have worked 3 years. It has been a process by the committee for three decades. But let us have 3 more days with all the work that has been done to bring it to this point. Everyone agrees with the need for a bill.

Everyone agrees there are tens of thousands of asbestos victims who are dying without compensation because their companies are bankrupt, or because they are veterans who sustained their injuries in the service and have no one to sue. Everyone agrees it has a tremendous impact on the economy.

So let us take 3 more days. This vote is razor thin. Nobody knows how it is going to come out. It may well be decided by a single vote, as so many votes are in this body.

I ask each of my colleagues to ponder carefully—there are many, as last reported, undecided—and give us the benefit of the doubt. Give me the benefit of the doubt as chairman of the committee who has brought this forward. Give the Judiciary Committee the benefit of the doubt, and give the benefit of the doubt to substantially more than 50 Senators. We are at least in the high fifties—maybe higher. But give us the benefit of the doubt with 3 more days of the time of the Senate.

I thank the Chair. I thank the Senator from Nevada for yielding.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The yeas and nays resulted—yeas 58, nays 41, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—58

Alexander	Dodd	Lugar
Allard	Dole	Martinez
Allen	Domenici	McConnell
Baucus	Enzi	Murkowski
Bayh	Feinstein	Roberts
Bennett	Grassley	Santorum
Bond	Hagel	Sessions
Brownback	Harkin	Shelby
Burns	Hatch	Smith
Burr	Hutchison	Snowe
Carper	Isakson	Specter
Chafee	Jeffords	Stabenow
Chambliss	Kohl	Stevens
Coburn	Kyl	Talent
Cochran	Landrieu	Thomas
Coleman	Leahy	Vitter
Collins	Levin	Voinovich
Cornyn	Lieberman	Warner
Craig	Lincoln	
DeWine	Lott	

NAYS—41

Akaka	Conrad	Frist
Biden	Crapo	Graham
Bingaman	Dayton	Gregg
Boxer	DeMint	Inhofe
Bunning	Dorgan	Johnson
Byrd	Durbin	Kennedy
Cantwell	Ensign	Kerry
Clinton	Feingold	Lautenberg

McCain	Obama	Sarbanes
Menendez	Pryor	Schumer
Mikulski	Reed	Sununu
Murray	Reid	Thune
Nelson (FL)	Rockefeller	Wyden
Nelson (NE)	Salazar	

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the last vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. FRIST. Mr. President, I switched my vote from a ''yes'' to a ''no'' vote. Without my switching the vote, it would have been 59 to 40. We have one absentee tonight, and that may well have determined which way this particular vote had gone. Thus, I switched my vote from a yea to a nay, thus the vote was 58 to 41. That allows us to, at some point in the future, have the option to reconsider the motion. We will make a decision on that at some point in the future.

The PRESIDING OFFICER. The point of order against the bill is sustained. Pursuant to section 312(f) of the Budget Act, the bill is recommitted to the Judiciary Committee.

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

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, in a few moments I will have a very brief statement about what went on with the vote on the asbestos bill, but for our colleagues, I wish to outline where we are going tonight and over the next several days.

Calendar No. 360, S. 2271, is the USA PATRIOT Act Additional Reauthorizing Amendments Act. This bill addresses some of the concerns of Members on both sides of the aisle as it relates to the PATRIOT Act. I believe that we strongly support it and we are prepared to consider this measure next.

Therefore, I now ask unanimous consent that the Senate proceed to the consideration of S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, on behalf of Senator FEINGOLD, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I had hoped we would at least be able to proceed to that bill tonight. As our colleagues know, this bill is ready to go. It is an important bill. It is important for the safety and security of the American people. It is a bill we have worked on for a long period of time, and we believe there is overwhelming support for this bill. The consent I asked for was for the Senate to begin consideration of that legislation. We had the objection from the other side of the aisle that was expressed.

I now move to proceed to S. 2271. The motion to proceed is now pending and is debatable. We have been told that there will be an effort to filibuster the motion to proceed. Therefore, I now send a cloture motion to the desk and ask for its consideration.

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 motion to proceed to S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, James Inhofe, Richard Burr, Christopher Bond, Chuck Hagel, Saxby Chambliss, John E. Sununu, Wayne Allard, Johnny Isakson, John Cornyn, Jim DeMint, Craig Thomas, Larry Craig, Ted Stevens, Lindsey Graham, Norm Coleman.

Mr. FRIST. Mr. President, again, the motion is pending, and if the Senators desire to debate the motion they should be prepared to do so. The Chair is obligated to put the question. I put Members on notice that they should remain on the floor if they feel the need to hold up this important legislation; otherwise, we will be proceeding to the underlying bill.

Mr. FRIST. Mr. President, with respect to the vote we took minutes ago on the asbestos legislation, it does mean that legislation is, in essence, off the floor now, and that we are proceeding with the consideration of the PATRIOT Act, although we have an obstruction underway and we have a threatened filibuster underway, and we will address that in the coming days.

The vote on the motion to waive the point of order on the asbestos bill was 59 to 40. In order to have the option to keep a heartbeat at least in this piece of legislation, because it is so important to victims, to our economy, to jobs, what I did, as an advocate for the Specter-Leahy bill, is I switched my vote from yes to no. From a procedural standpoint, what that allows me to do as leader is to bring that back to the floor at some appropriate time if there is indication to do so in the future.

We did have one absentee vote tonight that could have made the difference, and with that I switched my vote. I do want to make it very clear, because there is always misunderstanding in terms of when a Senator switches his vote, I strongly support the Specter-Leahy bill, and I switched my vote for procedural reasons.

So this vote did reflect 59 to 40 on the floor, although the actual vote is depicted as 58 to 41.

Let me also add, and I think I speak for the majority of my colleagues, that I am disappointed in the fact we are not able to proceed with this asbestos litigation bill. The consequence of this vote tonight is that victims who are in need are not going to receive fair and just compensation. They deserve it. They need it. The problem has been clearly spelled out on the floor of this body.

We have made progress over the last couple of weeks in that people recognize this is a serious problem that has gone on for too long, yet has to be addressed in a legislative way, that it denies justice to victims, that it hurts and punishes our economy and, unless it is addressed, will continue to destroy jobs in this country.

Unfortunately, by refusing to move forward on this bipartisan bill, a bipartisan bill, the Senate chose to protect special interest groups rather than the interests of those innocent victims who deserve more. The cost to our society will be felt unless it is addressed sometime in the future.

I do thank all of those who acknowledge there is a real and serious problem that Congress should debate, and it must be resolved at some point in the future.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to address the issue that was just considered before the Senate and say that I hope, now, that we can work together on a bipartisan basis to find some accommodation—not to create a trust fund, in an amount that has never been established, with contributions that have never been disclosed publicly but, rather, something that is much more open and transparent.

The starting point is obvious. Some States have already addressed this issue with significant changes in the existing tort system that make it more fair and quicker for victims to get compensation. I think that is the way to address this, and I hope that now we can have an effort by Members from both sides of the aisle on a bipartisan basis to establish this.

I do quarrel with the leader's conclusion that special interests defeated this legislation. Let's be very honest with the American people. This bill was a clash of the special-interest titans on both sides. Senator BENNETT of Utah, on the other side of the aisle, whom I respect very much, came to the floor