SENATE—*Tuesday, June 16, 1992*

(Legislative day of Thursday, March 26, 1992)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the Honorable HARRIS WOFFORD, a Senator from the State of Pennsylvania.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint.*—Isaiah 40:31.

Eternal God, perfect in love and mercy, we thank You for this wonderful word from Isaiah for those who serve the Lord. Nobody works harder than Senators, for longer hours, under greater pressure. The problems of millions of constituents, cities, counties, States, regions, and multitudes of special interests, not to mention the world, come to focus on the United States Senate. And they are expected to do something about it.

Grant to Your servants a sense of Your presence, Your infinite love, Your inexhaustible sufficiency for all things. For the one who is especially burdened at this time, lift that burden and infuse all with Your peace and Your unlimited grace. Cover this place with Your love, gracious God.

We pray in His name who is Love incarnate, the Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 16, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRIS WOFFORD, a Senator from the State of Pennsylvania, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WOFFORD thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Colorado is recognized to speak for up to 45 minutes.

Mr. BROWN. Mr. President, I yield 5 minutes to the distinguished Senator from Maine.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, I thank my colleague for yielding.

S. 55, THE WORKPLACE FAIRNESS ACT

Mr. COHEN. Mr. President, I rise today in consideration of S. 55 as amended and the question of whether or not workers should have the right to strike without the threat of being permanently replaced.

The current law states that both management and labor must bargain in good faith, and is based on the assumptions that there is a relative balance of economic power held by each side and that each has something important to gain by pursuing a negotiated settlement and something important to lose if negotiations collapse.

I have listened carefully for many months as both sides have debated this controversial topic and considered whether or not this balance has been disrupted.

Labor has proposed that without this legislation the survival of collective bargaining is in doubt. Labor also believes that more and more employers are turning to the threat of early use of permanent replacement workers as a way to force the unions into signing a contract. If this is the case, then the balance that has been maintained for so many years would appear to be in jeopardy. But business argues that the current law poses an equal risk to both sides by allowing workers the right to strike and, under certain circumstances, management's ability to hire permanent replacements. Management also argues that in today's high-technology workplace, it is very difficult to find qualified replacement workers and, therefore, the decision to hire replacements is the employer's last resort.

I am disturbed by this situation and the unwillingness of both sides to find an acceptable alternative to the status quo. This mutual intransigence is unfortunately not a new situation. It is one which, in fact, has left a bitter scar on my own State's town of Jay. Five years ago, after the United Paperworkers International Union and the management of International Paper could not come to a contract agreement, a strike ensued and the company began hiring replacement workers. Of the approximately 1,200 workers who were replaced, only about 300 have been able to return to work as positions have opened up within the mill. Jay is a town whose spirit has been damaged and will remain so for decades to come.

The General Accounting Office's 1991 study on the trends of strikes showed that the number of strikes in the United States declined about 53 percent in the 1980's compared with the 1970's. In the years 1985 and 1989, permanent replacements were hired in 17 percent of all strikes and GAO estimates this amounted to about 4 percent of all striking workers being permanently replaced in each of these years. The impact of these statistics can be viewed from both sides. It can be argued that they indicate that the threat of permanent replacement workers has increasingly forced labor to accept otherwise unacceptable agreements or that management and labor are more willing to compromise due to the economic threat to both sides.

Labor contends that its right to strike is of bedrock importance and will be preserved by the passage of S. 55 as modified. Management sees passage of the bill as undercutting a process that currently provides neutrality.

We are not in the economic times of the past, when labor unions felt strong and confident, and businesses had customers waiting at the door. We are in a time when unemployment is high and union enrollment is decreasing. Businesses are closing their doors due to an increasing influx of foreign products and the inability to compete in overseas markets.

Mr. President, we find ourselves in this debate today because labor and management seem unable to address the long-term consequences of our present system for dealing with disputes. At a time when the country is suffering from deep economic strife, work stoppages like the one in Jay, ME, or the highly publicized Caterpillar strike in Illinois serve only to leave us in this quagmire. We need to work together to pull ourselves out, instead

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

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of placing the wedge deeper in the crevice of this current debate.

I would contend that both sides need to review their positions if we are determined to revive our ability to compete and succeed in an ever evolving world economy.

In view of the intransigence of both sides and the prospect of continued damage to the American people and our economy, I seriously considered offering an amendment to require the use of binding arbitration in certain circumstances.

In my study of this issue, I found that neither labor nor management wants to be forced to come to the table to accept a resolution offered by a third party. Yet, ironically, the Senate stands today as a third party considering the imposition of a solution to a major issue in labor management relations—the use of permanent replacement workers.

The Senator from Oregon has proposed an amendment that seeks to bridge the gap that continues to exist between labor and management, and I believe he deserves our sincere commendation for his efforts.

But the amendment, as I understand it does not quite achieve the neutrality—or the symmetry—that I believe is necessary.

It may be, as the Senator from Utah maintains, that the very existence of a mediation panel would only encourage both parties to adopt extreme positions in their negotiations with the thought that a mediation panel would, in striking a balance, draw an equidistant line that would provide each side with a benefit neither could have achieved at the bargaining table. If this should prove to be the case, then the legislation would not facilitate fair bargaining, but legitimize what would otherwise be labeled unfair tactics.

It seems to me that management, as well as labor, should be allowed to call for the mediation panel to resolve disputes in order to avoid a strike—a modification that the sponsors of this amendment could easily correct.

But there is a further question of symmetry posed by the amendment offered by the Senator from Oregon.

If labor invites the mediation panel to resolve the dispute and then disagrees with the recommendation, it can then resort to a strike—during which time management can hire permanent replacement workers.

Assuming management can, in fact, find permanent workers and begins doing so, labor can at a later time accept the panel's recommendation, and permanent replacements may not be hired from that point forward.

But if business rejects the panel's recommendation in the first instance, it cannot hire permanent replacements under any circumstances.

Labor in my judgment, would then be in a position to seek a mediated solution, strike and call management's hand. If management proceeds to hire replacement workers, then the union could accept the mediator's proposal and return to work. Management on the other hand must take it and not leave it.

I am not prepared to offer a modification to accept the imbalance at this time, but I believe that further consideration must be given to finding a better solution to the challenge of establishing a more cooperative and harmonious relationship between labor and management. This would include allowing either party to initiate a request for a mediation panel and both parties to be bound by the findings and recommendations of that panel.

For the time being, I am not prepared to invoke cloture.

But If I become persuaded that management is indeed resorting to a permanent worker replacement strategy in order to undercut the legitimate collective-bargaining rights of labor, then I will not hesitate to vote to change the law in the future.

I want to emphasize that management should not construe today's vote as a license to engage in unfair practices or take advantage of the law by resorting to permanent replacements as a first resort rather than the last.

At the end of the strike at Caterpillar earlier this year, I was dismayed that the initial reaction on the part of management was that it was not going to rehire many of the workers who had decided to strike. Fortunately, that position was quickly reversed, but it revealed an arrogance that if allowed to go unchecked will ensure the passage of some form of S. 55 in the future.

Mr. BROWN. Mr. President, I yield 2 minutes to the distinguished Senator from Illinois.

The ACTING PRESDIENT pro tempore. The Senator from Illinois is recognized.

CONGRATULATING THE NBA CHAMPION CHICAGO BULLS

Mr. DIXON. Mr. President, I send a resolution to the desk congratulating the NBA champion Chicago Bulls and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 315) to congratulate the Chicago Bulls on winning the 1992 National Basketball Association Champion.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DIXON. Mr. President, when I made this statement last year on the floor of the Senate, a lot of the English teachers in my State dropped me notes to say we are disappointed that a senior U.S. Senator from Illinois could not use better grammar. But I want to say it again, Mr. President: How 'bout them Bulls, Mr. President? How 'bout them Bulls?

For the second consecutive year, I have the distinguished honor of representing the great State of Illinois and the great city of Chicago in expressing our deep sense of pride in the National Basketball Association champions, our own Chicago Bulls.

It is, indeed, a tremendous accomplishment to capture the title of NBA champion in any given year, but capturing a second consecutive championship places the Chicago Bulls among the basketball elite; only three other teams—the Boston Celtics, the Lakers in both Minneapolis and Los Angeles, and the Detroit Pistons—have won back-to-back titles in NBA history.

Michael Jordan was once again named most valuable player both for the regular season and for the playoffs, becoming the first player in NBA history to win both titles in consecutive years. It was fitting, however, that in the final game of the series it was the supporting cast—Stacey King, Bobby Hansen, Scott Williams, and B.J. Armstrong—who came off the bench at the beginning of the fourth quarter and all but erased a 15-point deficit, the largest deficit from which any team had rallied in the final quarter of an NBA finals game.

Consistent play from Scottie Pippen, Horace Grant, Bill Cartwright, John Paxson, and Cliff Levingston thrilled us on the court, and the coaching of Phil Jackson and his entire staff provided a sense of excitement and pride throughout the season.

Mr. President, on behalf of myself, my colleague, Senator SIMON, Chicagoans, Illinoisans, and Bulls fans everywhere, I strongly urge my colleagues to act quickly on this resolution congratulating the Bulls for winning the NBA championship.

Mr. President, with apologies to every grammar teacher in America, I say one more time: How 'bout them Bulls?

THE CHICAGO BULLS ARE WORLD CHAMPIONS, AGAIN

Mr. SIMON. Mr. President, I am pleased to join my colleague, the senior Senator from Illinois [Mr. DIXON] in praising the success of a second consecutive NBA championship for our unparalleled basketball team, the Chicago Bulls. My comments today are not only those of a Senator, but also of a basketball fan.

The Chicago Bulls overcame what appeared to be an insurmountable lead of 17 points at the beginning of the fourth quarter in game six to defeat the Portland Trail Blazers to win their second NBA title.

To be sure, Michael Jordan, at his best, is the most spectacular basketball player in history. He scored 33

points in Sunday's contest to win his second consecutive NBA finals MVP Award.

A key difference about this Bulls team is that it was not just the "king," Michael Jordan, but also his "court" that mustered this dramatic rally to overcome an exceptionally gifted Trail Blazers club. Stacey King, Bobby Hansen, B.J. Armstrong, and others did win, the team way.

Portland has a good team, I say to my friend, the senior Senator from Oregon [Mr. HATFIELD]. The fine play of superstar Clyde Drexler, truly one of the game's premier players, was a highlight of the series. Another highlight was the performance of a former Chicagoan, Trail Blazers center Kevin Duckworth, the former standout for Eastern Illinois University, who was at times dominating with his play under the basket.

But this Chicago Bulls club is truly a great team. Together these 12 athletes will go down as one of the greatest teams of all time. To an exclusive book with chapters headed the Celtics and the Lakers, now is added a new chapter: the Bulls.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 315) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 315

Whereas the Bulls posted a 67–15 record in the regular season, the best in franchise history, and one of the best ever in the NBA;

Whereas Phil Jackson and the entire coaching staff again implemented a quick smothering defense and an explosive triple-post offense to enable the Bulls to successfully defend their 1991 NBA championship;

Whereas, for the second consecutive year, Michael Jordan, showing his tremendous offensive and defensive basketball ability, was named both NBA regular season and playoff most valuable player, an honor that no other NBA player has ever received;

Whereas Scottie Pippen led an aggressive Bulls offense, demonstrating the athleticism and all around basketball skills that led to his being named to the Olympic team;

Whereas the quickness, rebounding and shot blocking skills of Horace Grant often keyed the aggressive play of Chicago's front line;

Whereas the veteran guile of center Bill Cartwright led to frustration for many of the all-star caliber centers that he faced;

Whereas sharp shooting guard John Paxon again displayed the clutch outside touch that has made the Bulls offense so diverse;

Whereas Scott Williams, B.J. Armstrong, Bobby Hansen and Stacey King came off the bench in game six of the NBA finals to aggressively key the crucial fourth quarter rally that enabled the Bulls to overcome a 15 point deficit;

Whereas Cliff Levingston, Will Perdue and Craig Hodges provided valuable contributions throughout the playoffs, both on and off the court, at times providing the spark the Bulls needed to gain control of a particular game; and

Whereas the Bulls once again utilized a total team effort to become only the fourth team in NBA history to win back-to-back NBA championships: Now, therefore, be it

Resolved, That the Senate congratulates the Chicago Bulls for winning the 1992 National Basketball Association championship.

Mr. DIXON. I thank my distinguished colleague for his kindness and consideration in yielding me that time to extol the virtues of a grand basketball club.

Mr. BROWN. Mr. President, I would like at this time to yield 5 minutes to the distinguished Senator from Arizona.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Arizona is recognized.

POW'S IN RUSSIA

Mr. McCAIN. Thank you, Mr. President. I appreciate the courtesy of my friend from Colorado, and I do not think I will take 5 minutes.

I just want to make a brief statement concerning the very startling news this morning concerning the statement by President Yeltsin of Russia that American prisoners may be held still in Russia that were captured during the Vietnam war.

Mr. President, clearly this issue has to be pursued with vigor. If it is, indeed, as I have been assured many times, the top United States national priority, then we really have no choice but to suspend efforts to pass an aid package through this body until every American held captive in Russia is brought home.

I also suggest that any movements toward normalization with Vietnam be suspended until such time as this issue is resolved, because there is no way that American POW's could have been transported from Vietnam to Russia, then the Soviet Union, without the assistance of the Vietnamese Government. Our highest priority is Americans that are still listed as missing in action. Now, after years of denial, the elected President of Russia has stated that there are Americans from the Vietnam war that were held prisoner somewhere in Russia.

Mr. President, those men should be brought home immediately. There should be no action on any aid package to Russia until those men are brought home or this issue is resolved. I do not know the circumstances upon which President Yeltsin made the statement, nor do I know any particular details other than what was carried in the media. If our highest priority is the resolution of the missing in action/prisoner of war issue, we should exercise that highest priority and devote all our energies and efforts to resolving that.

I thank my friend from Colorado for his indulgence and for taking time out from his very important message.

I yield the remainder of the time.

Mr. BROWN. Mr. President, I only wish my distinguished colleague from Illinois would show some enthusiasm in his reaction to the Bulls' achievement. Of course, it pales in comparison to anything the Broncos might do in Denver, but we can understand his approach.

THE DEFICIT

Mr. BROWN. Mr. President, the number one problem facing this Nation is the deficit. It overshadows and swallows up every issue that we debate on this floor.

I must say, this Congress is the most irresponsible Congress in the Nation's history. And the proof, if there was any question about it, is in this simple chart. A gross Federal debt in 1950, which was $256 billion, is estimated to explode to over $4 trillion by the end of this fiscal year.

It almost tripled in the 1970's, more than tripled in the 1980's, and in the 1990's has risen by almost as much as the entire deficit up through the middle part of the 1970's.

The simple facts are these: This Nation is on a course to disaster. National savings have been consumed over these years by much of the national deficit. In the 1960's, only 2 percent of net national savings were consumed by the Government deficit. That rose to 19 percent in the 1970's and exploded to 48 percent in the 1980's. The General Accounting Office [GAO] estimates that it will be 58 percent in the 1990's—58 percent of all the savings in the entire Nation consumed in public debt, leaving almost nothing for reinvestment in our country.

The truth is, that 58 percent, which is an estimate, far underestimates the problem. I believe by the end of the decade you will have more than 100 percent of all private savings in the Nation consumed by Government deficits. The problem is not getting better. Mr. President, the problem is getting much worse.

In net international investments, where the Nation once led the world—we were the greatest creditor in the history of mankind—we are now the greatest debtor. In 1980, we had a $400 billion surplus in net international investments. It is now a $400 billion deficit. The General Accounting Office in its report issued this month, on the long-term damage to the economy, indicates that the deficit could explode to over 20.6 percent of the GNP by the year 2020. Mr. President, I do not believe those figures. If no action is taken, it will be much worse than what the GAO has estimated.

GAO's report also indicates one other thing, and I believe it is on this that the Chamber ought to focus. Every day I hear Senators come to the floor and talk about how there bill, their action, will help this Nation. The facts are

simple. If we do nothing with regard to the budget, that is, if we continue current law—although we have never had a year when we have done that because we have always added to the deficit and added to spending and added to programs if we go without changes in current law to the year 2020, we will have a per capita income of 40 percent less than what we would have had if we would balance the budget by 2001 and have a 2-percent surplus from then on. That is an enormous difference in the per capita income of Americans.

Now, what can we do about it? Six Senators in this Chamber challenged the Presidential candidates to debate the issue, to come forward on national television and take an hour to tell the American people what they will do about the number one issue that faces the entire Nation.

Let me read you the answer that one of them gave. This is Ross Perot from Texas:

Last night six Senators were on television saying we've got to have a balanced budget and that we need to have all three candidates explain how they are going to control the debt and balance the budget. And I think that is wonderful. But I have just one more suggestion. I think we ought to have the House and the Senate get an hour—no, give them two hours, one hour on how they got us into this mess and the next hour on how they are going to get us out.

Mr. President, I accept that challenge. Ross Perot is right to ask the House and the Senate to come forward and explain how we got the Nation into this mess and how we can get it out.

I accept that challenge. That is precisely what I intend to do this morning. I plan to talk about how this Nation, the greatest country in the history of mankind, came to have this kind of irresponsible deficit and also how we can change it. But I also hope that all three Presidential candidates will not dodge from the most important issue that faces our country. I hope that they will, in a straightforward and frank manner, tell the American people what they intend to do about it. And if they intend to do nothing, if they intend to let this Nation slip into a third world economy, let them stand up and answer to the problems with regard to that as well.

How did we get into this mess? I suppose the problem is multifaceted. But one of the starting points I believe is the 1974 Congressional Budget Act, and specifically one of the concepts adopted in that act is called the current services baseline. What it does is allow Congress to misrepresent its budgets. The example which I think illustrates it best is if someone goes into an automobile showroom, looks at a $50,000 Mercedes and decides not to buy it. Under our budget system it might be scored as a $50,000 savings. But the truth is we do not compare apples to apples in the way we do our budgets. We compare what we have done this year with what we might have done, and that is just utter nonsense.

What is the answer? The answer is a zero-based budget, to compare this year with last year, to compare next year with this year, not some hypothetical figures, but the real figures. Lack of honesty in budgeting is the first reason we got into this deficit situation.

Secondly, the 1974 act made it illegal for the President not to spend money. Specifically, this Congress passed a law that made it illegal for a President not to spend money on a project even though it is a waste. Even though it is not needed, the President, by law, is forced to spend that money.

A rescission procedure was established, one that does not work very well, one that does not give a clear vote on waste. But this Nation in 1974 forced the executive branch to spend money that was not needed. It was clearly wasteful.

Thirdly, we got into this mess with phony estimates. There are no clean hands in this, Mr. President. Both Democrats and Republicans are guilty of it. Both the Office of Management and Budget [OMB] and the Congressional Budget Office [CBO] over the years have hoodwinked American taxpayers with phony estimates for the next year. They have held out to taxpayers that we were going to do something about the deficit and wasteful spending when the truth was ridiculous assumptions and estimates that deliberately misstated the problem.

The fourth area I think that got us into this mess is the way we cast votes in this Chamber. There is no substitute for voting against waste. We have these outrageous deficits because the Members of this body, on a regular basis, vote to overspend the budget. Every penny that is spent is spent by the Congress. We are in this mess, we are in a $4-trillion debacle, because the Members of the House and Senate of the United States have voted to put us there.

Fifth, I think we are here because of special interest politics. There is no question that people lobby for their interests. This single-issue voter concept has helped put us in a mess where every voter suffers.

Sixth, Mr. President, I believe the press of the United States has been asleep—not all of them, but most of them. The National Taxpayers Union [NTU] ratings, which indicate how Members vote on spending, largely go unpublished, unnoticed, unreported. The single-most important voting report simply is not covered. The National Taxpayers Union issues this rating every year. Yet very few papers carry it, and often television and radio simply ignore it. But the (NTU) rating reports on how Members vote on spending matters. Unfortunately, the press, which is the vanguard of our liberty, has been asleep as well in my letting the facts get out.

Seventh, innovative budget gimmicks have added to the problem. Reserve funds, delayed obligations are new tools that we have added to the budget in the last few years. They have allowed us to overspend the budget once again. It is a dodge. It is a way around the rules. It is a way to hide deficit spending, and it is part of the irresponsibility that has brought us to this catastrophe.

Recognizing the problem is part of curing it. Those seven factors are part of it, not all of it, but they are a start. Recognizing them and changing them is the key.

How do we get out of this mess? Here is a simple formula, not easy, but straightforward.

First, you reform the budget process. Use honest numbers, go to a zero-based budget, a budget that compares this year's spending with last year's spending. When we talk about increases, talk truthfully. How much are you increasing or decreasing the budget? Sack the current services baseline concept, and go to zero-based budgeting so you have honest numbers.

Second, use honest estimates. In the Senate Budget Committee, I offered an amendment, to the FY 93 Budget Resolution which would change the estimates that were used in the budget document that we adopted this very year. It would use the more cautious realistic numbers. By using the more realistic numbers in every year's budget, we get a clearer idea of what is available for discretionary spending, and a clearer idea of what is going to happen with entitlement programs.

So the second reform is fairly easy. Simply adopt honest estimates. Sounds simple, does'nt it, and yet, it is what this Chamber has failed to do.

Third, do not overspend the budget once it is established. I served a term in the Colorado Legislature. No Democrat, no Republican, voted to overspend the budget. Or, if they did, it was a very unusual year. People understood that once you set up a budget, you stand by it. How would you handle emergencies? You go back through your budget and eliminate those things that are of a lower priority, you take money out of the low-priority programs, and pay for the emergencies.

Disaster assistance for the Los Angeles riots could have been funded by a fiscally responsible and sound Congress that would have done it by cutting money from other programs. What did this Congress do? This Congress simply votes more money. It is the way we got into this mess. So the third cure is to stay with a budget once we adopt it. If we had done that, we would have saved $20 billion on the average, every year for the last decade; $20 billion a year, built into the base, over a decade. We would have taken care of much of the current deficit.

Fourth, we need to change the rescission process. We need to make it clear that rescissions sent up by the President in areas identified as waste, identified as not needing to be spent, are entitled to a quick, responsive vote, and that they become effective unless we vote them down, not only effective if we vote for them as under current law.

Fifth, we need a balanced budget amendment to the Constitution. I know Members of this body have come to the floor and said that we need to leave this in the hands of Congress. Mr. President, that is how we got into this disaster. We left it in the hands of Members of Congress who cannot face up to the problem. We need a balanced budget amendment that puts some responsibility into the process. It works for almost every State in the Nation, and it will work for Congress. Is it tough? You bet it is. But we are not going to save our country from a third world disaster unless we do.

Last, Mr. President, there is one old-fashioned answer. That is, we need to cut waste. There is no substitute for voting against nonsense and waste. We also need to do some tough things that are unpleasant, but must be done if we are going to put our country back on track. I want to go through, just quickly, some specific proposals which amount to approximately $170 billion in savings over 5 years. My hope is that the Presidential candidates will set forth, in precise detail, how they intend to balance the budget.

Proposal number one: I believe we ought to limit the increases in the mandatory programs, except for those that cannot be limited, like interest, and earned retirement programs such as Social Security which should be left alone. They are earned retirements that are our obligations. For other mandatory programs that are not earned, we ought to say there is a limit to how fast they are going to grow. Let them grow at inflation plus growth and 2 percent.

If we do that, we will save $92 billion over the next 5 years. That is not a figure pulled out of the air. That is an estimate from the official budget agencies CBO.

That $92 billion is real. It is a dramatic reduction without penalizing anyone giving full cost of living. You must look at those mandatory spending programs and begin to put some controls on runaway such spending.

Second, eliminate Federal payments to those with an adjusted income above $120,000 a year. This is a net income; it is not a gross income. It does allow the subtraction of business expenses. But it would eliminate Federal subsidies—we are talking subsidies, not earned benefits—to those with incomes above $120,000 a year. We save $53 billion over 5 years.

OK, is that so tough that this Chamber cannot do it? Are we so tied to subsidizing people that we cannot face up to that modest measure, when $53 billion would be saved?

I would like to see us look at some programs. These are simply an example. There are others. But take a look at the rice program, or the honey program, or the cotton program, or the dairy subsidies. I know they are sacred cows, and that is not just a play on words. They are sacred cows because people have PAC's, and because they donate, and because they help people who run for office.

But those programs are nonsense, and everybody in this Chamber knows it. Do Chinese bees work for more than American bees? These programs are an insult. They not only raise the price of products like milk and honey and rice to the American consumer—to the men and women who work to make this country grow—they cost the taxpayers a fortune.

Incidentally, Mr. President, these programs are so absurd that they do not even benefit the producers, in the longrun. I know they lobby for them. I know the associations are convinced they are great programs. But the facts are these: Nonsubsidized agriculture has a higher return on investment than the one-third of agriculture that is subsidized. These programs are examples of programs where everybody associated with them loses. The consumer loses, the taxpayers loses, and ultimately, the producer loses.

If we cannot eliminate nonsense like that, we do not deserve a job in this Chamber. Ending such modest programs alone would save $9 billion over 5 years. My guess is much more than that, with more realistic estimates.

I think we ought to eliminate the Tobacco Loan Program. I know there are Members of this Chamber that think it is appropriate to subsidize the production of tobacco, but it is nonsense. What in the world is this Nation doing loaning $1 billion of Federal money at a subsidized rate to tobacco producers, when at the same time, we have a program to urge people not to use their product? That is $1 billion in savings.

I believe we ought to reduce Congress. This Congress has a staff that is nine times larger than the staff of any country in the world. By simply reducing the cost of Congress by 50 percent, we would save $5 billion over the next 5 years, and we would still have a staff that is 4½ times the size of any other country.

Mr. President, I want to acknowledge the comments of the distinguished Senator from Arizona. He has served his country honorably and well in one of the most outstanding military careers of anyone in Congress. His family is perhaps the single most distinguished military family in the history of our Nation. His own service as a prisoner of war for almost 7 long years in North Vietnam qualifies him to speak on that subject perhaps more than anyone in this Congress. I, for one, am deeply grateful for his leadership in the effort to see that the POW's are not forgotten, and that they do, indeed, return home. I think his call is one that will have the strong backing of every citizen of this country.

I believe that the 50-percent reduction in Congress, which would save $16 billion over 5 years, will not only save this Nation a great deal of money, but will dramatically set the stage for further economies throughout the Federal Government. Using Congress as an example in eliminating unnecessary spending, we will find that the people of this country and the other government agencies will be willing to do their part. It has been this Congress' abuse of the spending privilege that has helped foster a climate that has led to this obscene national debt.

One other area that I think ought to be trimmed is Amtrak subsidies. Amtrak operates well on the east coast. There are many runs where it operates profitably. But that subsidy also goes for many runs of Amtrak where few passengers ride. When the crew outnumbers the passengers, it has to tell you that that run simply does not make much sense.

How do we save money on Amtrak? We ask them to eliminate those runs which pay for less than 40 percent of the cost of running on that track. By simply limiting tracks and runs that have very light usage, Amtrak will be able to concentrate on the portion of its service that is needed and is profitable. That saves $2.5 billion over 5 years and still maintains the runs where people use Amtrak on a significant level.

We could pass the porkbusters bill (S. 2265) which saves $1.5 billion. I introduced the porkbusters bill in February of this year. The measure simply eliminates funding for those items that have not been authorized, had a hearing, and were not awarded on a competitive basis. These 640 projects have not been considered in the established budget process.

Some of these projects appeared when the appropriation conferences got together and is added in things that were not examined according to the budget process. We ought to say no. We ought to ask that all projects adhere to the proper procedure to make sure the public's money is spent properly. That would save $1.5 billion this year, and my guess is additional amounts in the future.

I believe we ought to allow the Corporation for Public Broadcasting to sell advertising on at least half of their programs. If we allow 50 percent of their programing to sell advertising, we will save over $1 billion over the next 5 years. That is not onerous. That is not difficult. It is simply a matter of giving them the opportunity to sell ads

like every other television station and radio and broadcasting facility.

One of the most important things we ought to do is eliminate funding for international organizations which are designed to increase the costs to American consumers. I know that must sound hard to believe, but this Nation pays membership dues and participates in a variety of international organizations whose stated purpose is to increase the price of commodities to American consumers. These are primarily items we import, although not exclusively.

As the distinguished occupant of the chair well knows, Hawaii is a coffee producer, and it is no surprise to him that much of our coffee is imported. The International Coffee Association's stated purpose is to increase the price of coffee to American consumers.

There are a variety of other organizations we belong to, such as the jute organization, the rubber organization, tropical timber organization and others. Eliminating these memberships will save us $16 million over 5 years. But more importantly, it will probably save American consumers tens of billions of dollars.

Those are just domestic proposals. We ought to save money in foreign aid. I think it is no secret to the American people that we not only give a little over $3 billion to $3.75 billion a year to Israel, but $2.5 billion to Egypt.

Mr. President, I hope Israel survives, and I think our efforts to help Israel are appropriate. Others may prefer Egypt and other Arab countries, but I will be doggone if I understand why we ought to finance both sides. Who really believes it makes sense to buy arms for Egypt to counter the arms we bought for Israel, which were bought to counter the arms we bought for Egypt in the first place. It is nonsense to support both sides. We ought to have the courage and the gumption to pick a side. If we just pick a side, we will save a couple of billion dollars. We can do that same thing in a variety of other areas in foreign aid.

We can save money on defense as well. Building the *Seawolf* submarine for a threat that no longer exists is just plain stupid and a waste of money. I daresay that most of the Members of this Chamber, if you talk to them in private, would say, yes, we do not need the *Seawolf* submarine. It is a pork barrel project. And they would say there is a lot more where that came from. I do not mean just in Connecticut. I mean throughout this Nation and throughout the Defense Department. We need to look through the defense budget just as vigorously as we have done with all other domestic spending.

Mr. President, this Nation, if it is going to survive, must have a Congress and a President that care more about the Nation, its good, and its taxpayers than they do about the next election. Frankly, if they care about the taxpayers, the next election will take care of itself.

I hope every person who runs for President, all three Presidential candidates, will answer the following questions before the campaign is over:

One, will you, as President, propose a balanced budget for the next fiscal year? We ought to know whether they intend to do that.

Two, do you favor the Stenholm-Craig balanced budget amendment to the Constitution?

Three, where would you cut the Federal budget? I have outlined specifics where I think the budget ought to be cut. I hope each Presidential candidate will outline specifically where they would cut it.

Four, do you support a constitutional amendment for a line-item veto as 43 of our States have for their Governors?

Five, do you favor a zero-based budget rather than a current services budget? In other words, do you favor honest budgeting and honest comparisons?

Six, will you veto any bill that contains spending in excess of the budget? Mr. President, that would have saved us $20 billion a year every year for the last decade. That is an average figure, but that would amount up to an enormous sum.

Seven, if the law allowed you to do so, would you propose a 25 percent or more cut in the legislative branch of Government? As Members of this Chamber know, it is now illegal for the President to make his own recommendation for the spending by this legislative body. Congress passed that law. Forces the President to mouth the recommendation that legislative leaders propose. I think we deserve to know whether or not the Presidential candidate will propose cuts in spending for Congress.

Eight, do you favor a cut in the White House budget of 25 percent or more? In other words, are willing the presidential candidates to set an example?

Nine, would you support or propose limiting the growth of mandatory programs as I have outlined here?

Ten, do you favor Federal subsidies for those with net incomes above $100,000 a year? We ought to know where candidates stand on that issue.

And, eleven should the U.S. Government subsidize programs that work at cross purposes? Let us be specific here. Do they favor both the federally funded tobacco loan program and a federally funded program to urge people not to use the product? Do they favor buying arms for both Egypt and Israel, or should we pick a side?

Those 11 questions are basic. But I think we have a right to know where the candidates for President stand. One candidate declined our invitation to submit a budget when the budget resolution was being marked up. Another candidate talked about $400 billion in spending cuts without breaking a sweat. And when you look at them, none of them stand the test of authenticity. Another candidate is "on the fence" as to whether or not to be on the program to answer the questions about the budget.

I believe all three of these candidates should step forward, let the American people know where they stand and answer the questions that are so vital. The deficit is the number one question that faces us in this election year.

Mr. President, I close with a quote from the great historian, Gibbon. In discussing the Athenians and the demise of the democracy, here is what Gibbon said:

> In the end, more than they wanted freedom, they wanted security. When the Athenians finally wanted not to give to society, but for society to give to them: when the freedom they wished for most was the freedom from responsibility, then Athens ceased to be free.

Mr. President, unless we the Congress and the President face this problem with the budget and the deficit, this democracy, the greatest Nation on the face of the Earth, will fall, just as others have fallen. I believe the issue for this election is the budget, and our willingness to face up to the problem.

I yield back, Mr. President.

The PRESIDING OFFICER. The Senator from Tennessee is recognized to speak up to 5 minutes.

Mr. GORE. Thank you, Mr. President.

THE EARTH SUMMIT

Mr. GORE. Mr. President, I returned yesterday from the Earth summit in Rio de Janeiro. The delegation which represented the U.S. Senate there was headed, also was vice chaired by Senator JOHN CHAFEE of Rhode Island. Although most of the delegation returned some days earlier, the Senator from Colorado, Senator WIRTH, and I remained until the conclusion of the conference.

I will have, along with Senator CHAFEE and the entire delegation, a formal report to the Senate at a later time following an opportunity for the members of the delegation to reflect on the final documents signed at Rio and following a discussion among ourselves about the language of that report. So this morning, Mr. President, I give only a brief interim and summary report on the status of the agreements that were finalized during the Earth summit.

First of all, the treaty which received the most attention, the Climate Change Convention, was signed by over 150 nations in Rio de Janeiro.

There are no binding commitments in the Climate Convention to actually reduce the CO_2 emissions, but there is a process of reporting on emissions and

a process for developing action plans related to greenhouse gas emissions. And it is likely, because of the initiative of our country, that the first action plans will be prepared and be made publicly available by January 1, 1993.

The first meeting of the conference of parties under the Climate Convention is called for 6 months after the convention comes into effect. But that is in itself an undetermined date because under the provisions of the treaty it will not formally come into effect until 50 countries have duly ratified the treaty pursuant to their respective national laws. Some have estimated that that process could be as long as 4 years. I would hope that that will not be the case, and I am pleased that the administration has indicated its intention to quickly submit this convention to the U.S. Senate for ratification proceedings. I know that Senator PELL, the distinguished chairman of our Foreign Relations Committee, has already had informal discussions with the administration on this matter.

Now, the second treaty that received a good deal of attention was the Biodiversity Treaty. This was, of course, not signed by the United States. It was signed by every other—virtually every other nation in Rio. I believe every other nation, more than 150. It calls for action plans to preserve and protect biodiversity, and also calls for efforts to facilitate technology transfer.

As a brief aside, Mr. President, I personally believe that the two provisions which caused difficulty for President Bush could have been fairly easily resolved if the negotiation atmosphere had not been poisoned by the insistence on the part of the President that the first treaty on climate change not be so watered down as to be deprived of any commitments. Now that the Earth summit is over, I would hope that there will be a lower profile and quieter process by which those two provisions are handled. Having talked off the record with most of the interested parties, it is my personal assessment that it will be possible to resolve those two provisions and enable the Bush administration to sign that treaty. But only if they pay careful attention to it and attend to it quickly.

Third, there was a statement of principles on forests. This statement calls for sustainable forest management practices, but unfortunately it completely fails to define what those practices involve.

Due to opposition led by Malaysia, this document does not call for a convention on forests. And again, Mr. President, the reason in my judgment why it was impossible to reach an agreement that had sustainable practices spelled out and that called for a convention at the end of the process begun here, was that the negotiating atmosphere had been poisoned by the earlier controversy on climate change.

Now, fourth, there was a statement of principles on finances. Three sources of funding for Agenda 21 were identified; overseas development assistance funds; the World Bank's International Development Assistance, or IDA; and Global Environment Facility, which is the joint creation of the World Bank and the United Nations as an environment program and the U.N. Development Program.

With regard to ODA, the language calls for countries to reaffirm their commitment to 0.7 percent of GNP. Because of the world "reaffirm" this technically does not apply to the United States, does not apply to some other countries, Japan, for example, because there was never an initial affirmation which could be reaffirmed.

While the Europeans had no problems with this language, there was controversy as to when the goal should be reached. Developing countries were pushing for the year 2000, the Europeans were pushing for the language such as "as soon as possible."

Now, with regard to IDA, the controversy was over first language calling for the IDA to be replenished in real terms. This would mean essentially that approximately $17.5 billion would be made available worldwide in the IDA account. And the language also called for a so-called Earth increment. Our delegation objected to this language partly on grounds that this is the province of the legislative branch of Government. The resolution was that the IDA would be replenished with special consideration for the recommendations of the President of the World Bank. Preston apparently recommended real term replenishment plus additional increment such as the Earth increment.

With regard to GEF, the Global Environment Facility, there was an agreement that a restructured GEF would be the mechanism for funding global environmental expenditures under the language reached at Rio. I will provide at a later date the final version that was arrived at Rio.

Next, there was a Rio declaration. Many of our colleagues will remember that there was intended to be an Earth charter at Rio. This was not agreed to by the Bush administration and a lower profile declaration was agreed to. Although many countries had reservations to particular provisions, objections were withheld and the declaration was adopted as it was produced in the final preparatory negotiating session in New York. Although I want to note for my colleague that it was agreed to at least in part because it was understood that the document is temporary, and, as suggested by Canadian Prime Minister Mulroney, it should be supplanted by an Earth charter by 1995.

I have already made some reference to Agenda 21, but I would like to elaborate just briefly on this. There were some 115 program agreed to, including items on protection of the atmosphere by combating climate change, ozone depletion, and transboundary air pollution.

There was language on protection of the quality and supply of fresh water resources; protection of the oceans and other seas; protection and management of land resources, including a commitment to combat deforestation, desertification, and drought; provisions relating to environmentally sound waste management; to improvement of the environment of the poor in both urban and rural areas; and protection of human health and improving the quality of life.

None of the provisions of the Agenda 21 are binding, but they were generally regarded by all the nations at the Earth summit as providing a blueprint for the future path of cooperation between north and south in addressing the global environmental problems.

Finally, Mr. President, one provision which I think has probably received too little attention is that the Earth summit agreed to create a sustainable development commission within the United Nations. It will be a subsidiary of and report to the Economic and Social Council, often called ECOSOC. It will oversee implementation of Agenda 21 and make progress toward sustainable development. It has been analogized to the Human Rights Commission, in that this body will, when it is formally established at the fall meeting of the United Nations, be empowered to have hearings, to have public proceedings, and receive evidence about the behavior and policies of countries around the world in order to assess whether and to what extent they are consistent with the agreements reached at in Rio de Janeiro.

Mr. President, in conclusion, let me again say that the delegation will have a formal report at a later time that will go into much greater detail. My own impressions are at this moment that this meeting was a tremendous success for the world community, in that a very powerful learning process took place for people of all nations around the world and their leaders. I believe deeply that the substantive policy and program changes necessary to protect the Earth's environment will come more easily after the Earth summit than before the Earth summit.

There is a danger, however, and that is that people will have the impression that substantive changes were made there when precious few were actually concluded. Most of the success was psychological and symbolic. That is not to discount the importance of what was achieved there. It is rather to underscore the urgent necessity to make use of this success in accelerating the changes in policy now so urgently needed.

Finally, Mr. President, it was a source of some disappointment, I believe, to our country that the approach taken by the Bush administration at the Earth summit was not, in my opinion, consistent with what the American people would like to see when it comes to our Nation's role in providing leadership to the world as we confront the global ecological crisis. Other nations affirmed quite positively their view that this task of saving the Earth's environment is rapidly becoming the central organizing principle in the post-cold-war world. If we intend to lead that environmental revolution we must be willing to act more boldly and with more vision than the Bush administration was willing to put on display at Rio.

Mr. President, I want to congratulate all my colleagues in the delegation for the outstanding participation at the Earth summit and the many meetings and discussions that were held there. Again, I will elaborate on them and on the Earth summit itself in a later, more lengthy and more formal report to the Senate. I yield the floor.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado [Mr. WIRTH] is recognized until up to 11:30.

THE EARTH SUMMIT

Mr. WIRTH. Mr. President, I wish to comment as well on this remarkable gathering of the world's nations and the world's people on the future of the globe that just occurred in Rio de Janeiro—the United Nations Conference on Environment and Development.

But first I want to commend the distinguished Senator from Tennessee, the leader of our delegation, for a job which he did gracefully, carefully, with enormous attention to detail, and represented us in the U.S. Senate very well. We had a good delegation that went for, I believe, 4 days. The Senator from Tennessee and I were fortunate to be able to stay for the following week. But I think that this delegation and the commitment by the Senate to the UNCED is reflected in the commitment of the Senator from Tennessee. I want to thank him for his very good work in chairing our delegation and leading us as carefully and as well as he did.

The new world order has been much discussed, Mr. President. The new world order—what does that mean? I think each of us puts that in his or her personal terms, and let me put it in mine.

Thirty-one years ago I was a private in the U.S. Army. In the summer and fall of 1961, the Berlin Wall went up and we believed that we were close to going to war with the Soviet Union. There was a high level of alert by the forces of NATO and the Warsaw Pact on the other side as the wall went up, and we believed we were going to be shipped off immediately to the inter-German border. That was the formative experience that all of us had growing up in my generation.

Thirty years later in 1991, my children were at a Pink Floyd concert sitting on the top of the Berlin Wall with young people from all over the world who were there celebrating the collapse of the wall, and their own future together. The Earth summit just completed in Rio is in fact the highway coming away from the end of the cold war. It is the road to my children's future, and that of their generation.

We are about to redefine together as nations a new common cause, Mr. President, a new common cause for us as a people in the United States; a new common cause for us as allies with the Europeans and the Japanese, the developed and fortunate countries of this world—a common cause between north and south, a common cause between rich and poor. That common cause is what we are finding on the road from Rio. It is an enormously important turning point for us, a remarkable challenge for us in the United States—a set of issues that can redefine us as a people. It has the opportunity to bring us once again together, it has the opportunity to once again define the leadership of this country as a democracy to whom the rest of the world is looking.

The outlines of this new world order are rapidly becoming familiar. It was remarkable, in Rio de Janeiro, to hear the nations of the Earth talking about things that I know were largely unfamiliar to them and their leadership as recently as 5 years ago and certainly 10 years ago—to have Prime Ministers from Africa talking eloquently about global climate change; to have Presidents of republics in Southeast Asia talking about biodiversity, forestry, and our mutual commitments and our mutual problems in these areas; to have leaders of emerging democracies in South America talk about the need to develop new forms of foreign aid, new kinds of partnerships, and new, exciting and very creative ways with which we can bring business and the environment together. It was remarkable to have the Japanese play a role behind the senses in support of our approach in the United States of America, very much a silent partner but a very important one, recognizing as they do that the world has changed and their national security and ours are not going to be defined anymore as much by military, by B-2 bombers, and by all the rest that has characterized our own history for the bulk of my lifetime.

This was a remarkable time and it will go down, I think, as one of the great watersheds, one of the great times when not only did governments and peoples come together, not only did governments and peoples come to understand these issues, but also in which the press and the public were exposed in enormous intensity, educated, brought up to speed on this set of issues that is going to redefine our history and our future.

As this new era unfolds, the opportunities for us in the United States are legion. We must be reminded, just as we look back at our own personal history in the cold war, we must be reminded of our history in this country and what we did the last time of a great watershed. In that period from 1945 to 1950, we were a country exhausted by war as well. We were a country in which people wanted to bring the troops home. We were a country in which people were saying it is time for us to turn our attention inwardly.

Many were saying: "We have run up a huge debt on the war. We have had a major commitment of American resources. It is now time to bring those commitments home." We could have done that in the period following the Second World War. We could have turned inward selfishly. We could have turned our backs on our responsibilities to the rest of the world and that policy, had we done so, would have been disastrous. It would have been disastrous in terms of the then-emerging confrontation between democracy and communism. It would have been disastrous in terms of confrontation between East and West. It would have been disastrous in terms of our ultimate success of rebuilding Europe, rebuilding Japan, rebuilding the continent, rebuilding Asia.

We did not turn our backs at that point as a country. We came up and faced a challenge that unquestionably was very unpopular. I am sure on this very Senate floor there were many Senators who stood up and said we cannot afford to do this. I am sure there were many Senators who said my constituents do not want to do this; they want to bring our troops home. Our constituents do not want to fund the Marshall plan, they would rather put those resources here at home. I could imagine what those speeches were like and it would be interesting to go back and review that record.

But there were at that time individuals who banded together and understood that we had a broad set of responsibilities in the United States—the John McCloys, the Dean Achesons, the Robert Tuckers, the George Marshalls, the George Kennans, the James Forrestals, the Chip Bohlens, the Henry Stinsons, giants of our time and giants of American history and American commitment and American leadership—pointing out that even at difficult times we in the United States can and must lead.

We have to ask ourselves, I believe, the parallel between then and now—is that parallel valid? Of course it is.

They were leading. They forged their own common cause for the United States and the world after the Second World War, after that one huge watershed.

We are at another major watershed now. The cold war is over and a new world order is out there. The question is, are we going to be able to summon the resources of leadership? Are we going to be able to summon the political will? Are we going to be able to band together with other nations, as we did before, to help to lead this fragile planet and this fragile world? Is this administration going to recognize that the talk of a new world order must become a reality?

Unhappily, so far, we have not seen a particularly brilliant performance. The administration unhappily has not banded together with us in common cause. The administration has not expressed to the American people this enormous challenge that we face for the future on specific issues—from global climate change and the treaty setting targets and timetables on biodiversity, the treaty that everybody else in the world signed at the convention; on forestry and our commitment to do something right here at home; on providing the resources to lead the rest of the world—on all of these issues our leadership, if it was there at all, was timid. I do not believe that history will treat this time and this administration very kindly in the way in which they have responded so far.

In some ways we in the United States in Rio got a bad rap. I discussed that with our leadership from the administration, with the press, and with the rest of the world. In fact we have a 20-year commitment on environmental issues and have a good, solid base from which to depart. Unfortunately, I am afraid this administration did not use that base as the jumping off point as effectively as they could have. Let us hope that Rio catalyzed them and might help bring them to a greater sense of urgency and a greater sense of awareness. There are some hopeful signs out there. We are signing the global climate change convention. The President has changed his discussion and no longer do we hear the rhetoric of the choice between jobs and the environment. It is a much more constructive approach now.

There are signs that there is some change and we all have to work together to push that change and to try to, again, define and find this common cause.

Finally, what are the specific items that we must do? There are many of them and let me tick them off quickly.

First, it is imperative we pass the energy bill. That is now going to conference. It is imperative we pass that in the strongest form we possibly can. We should take the strongest measures from the Senate bill, the strongest measures from the House bill, get them together and put that on the President's desk for signature. He will sign that bill. That is a very important statement of commitment by the United States of America to pursuing new paths for producing and using energy.

Second, we must ratify the climate convention as rapidly as possible and we can do that. I know Senator PELL is going to begin very quickly on hearings. Let us hope that treaty comes to the floor and comes to the floor very quickly.

Third, the G-7 agenda in Munich, in July, must include a high priority for concerns about the environment and the globe and our financial commitment to Agenda 21, the action plan developed in Rio.

Fourth, we must begin preparations for the 1994 U.N. Conference on Population and Development. That was another striking thing about this conference. Even the Holy See, even the Vatican, Mr. President, was talking about population as an issue—not the top of their list, but they were talking about it. Everybody understands that this issue of population must be addressed by us. There is going to be a major 1994 conference on population. We must begin aggressive preparations for that. And along that line I plan to reintroduce—and I hope I will get support from my colleagues—the comprehensive population bill. I am going to reintroduce that and see if we can again get some more momentum going within this body on the population issue.

We must continue the administration's beginning efforts on forestry. They are very, very important ones to do, the beginning of the administration's efforts on forestry. The administration started a couple of years ago challenging us on 10 forests on the issue of below-cost timber sales. It seems to me we ought to challenge back, challenge the rest of the world and eliminate the below-cost timber sales overall and I think we have opportunities to start moving on that agenda this summer.

It is important we begin to understand that we have to internalize costs. We have to understand that we can no longer assume that it is costless for us, that our whole balance sheet can assume absolutely free pollution, can assume the absolute free destruction of our natural resources and not include that destruction on the negative side of the balance sheet; this whole question of internalizing costs and beginning to look at pollution taxes must start now.

It is imperative, Mr. President, we understand how to internalize and that we must internalize these costs and that presents us a challenge as well here, to see if we can start to look at our own base of taxation which is backward in many ways. We in the United States tax productivity. We tax labor. We tax capital. We do not tax consumption. We do not tax pollution. We ought to do that. And we ought to look at the possibility of substituting one for the other.

If we are interested in growth, if we are interested in looking at an economy of the 21st century, what we ought to be doing is reward means of production, and not reward means of pollution and consumption. We are doing the opposite. We ought to turn it around. We ought to be serious about the global environmental facility being set up at the World Bank to follow up on Rio and think imaginatively about different windows for foreign aid. There are a whole variety of ways we can weave together financial incentives and loans to encourage a partnership for sustainable development.

These are some of the challenges that we face and some of the things that we can do in this body.

Senator GORE and I and others will be following up on putting together an agenda, not only a report, but an agenda for follow up in the U.S. Senate.

Let me say a final word if I might, in the short time remaining to me. I want to pay tribute to our negotiators, our career servants in the State Department who had such a good, well-informed, careful and professional approach to these negotiations. The brief that they were carrying was very difficult. They were not given very many cards by the administration, but what they were given they played very well. We should be proud of them.

In addition, Mr. President, we should be proud of the NGO's, the nongovernmental organizations, who did such a good job.

I thank the distinguished Senator from Ohio.

INTRODUCING THE FORT HUACHUCA 50

Mr. DECONCINI. Mr. President, I would like to bring to the attention of my colleagues this afternoon the formation of a group of concerned Arizonans who represent the best in American know-how and perseverance. I am referring to the creation of the Fort Huachuca 50 in Sierra Vista, AZ.

This group has been formed to protect the interests of the Greater Sierra Vista Community, as well as that of the U.S. Army, through preservation of the missions of historic Fort Huachuca. It is modeled upon the successful efforts of a similar organization in Tucson known as the "D-M 50" which supports Davis-Monthan Air Force Base. This is a very wise and realistic move as the defense budget is reduced and our overall force structure is brought down.

Arizonans have considerable pride in the military units based in our State. They serve their country well, and Fort Huachuca units are no exception.

They value the role the military plays in the economy and as a good citizen in our communities.

Sierra Vista and Tucson learned an invaluable, albeit painful, lesson at the expense of the metropolitan Phoenix area when the Williams Air Force Base was closed under the BRAC legislation of 1988 and enough was not done in the community base to stop this, as well as other problems revolving around the jet corridor and other runways planned at the municipal airport in Phoenix

Willie, as it is affectionately known, had been part of the Greater Phoenix community for more than five decades. No one expected that this superb pilot training base—with perfect flying weather—would ever be closed. Had there been such a thing, perhaps we would have been in a much better position, not only as a delegation, but as a community to keep that base from closing. As a result, a proactive defense of the base was never considered necessary.

But now that the base closing process has mandated that every base be reviewed for closure or realignment again in 1993 and in 1995, the concerned citizens of Sierra Vista have refused to become complacent. They realize that while they escaped disaster in 1991, all bets are off from here on out.

The first round of base closings and realignments in 1988 had the information systems command known as ISC, leaving Arizona and consolidating at Fort Devens in Massachusetts and the intelligence school consolidating at Fort Huachuca.

In this effort, however, the Base Closing Commission made some significant errors and this was brought out through an effort by citizens, dedicated community leaders headed by Harold Vangilder, Sierra Vista Mayor Richard Archer, and my dear friend, Marion Bauhs, among others in the community who would not let this happen and brought it to our attention where we had hearings and we went to the Secretary and made a case to reverse that. They spent countless hours poring through many documents and doing the research necessary to disprove the Commission's cost-savings analysis. They spent their own resources to come to Washington and present their findings to the Defense Department and the relevant congressional committees.

To his considerable credit, Army Secretary Michael Stone reviewed these findings and concurred that the realignment did not make good business sense and would end up costing the taxpayers a considerable amount of money. In the next round of base closings in 1991, he convinced Secretary Cheney to maintain the ISC at Fort Huachuca.

While the initial efforts to preserve Fort Huachuca's vital missions in Arizona were the result of a handful of committed individuals, these same individuals now form the core of the Fort Huachuca 50. Working together, these community leaders will educate the local citizenry about the importance of Fort Huachuca to their every day lives, including their economic well-being. At the same time, they will actively promote Sierra Vista to the Army as a great place to live and a great place to grow—for both the fort's current missions and as a home for new missions.

The Huachuca 50 is comprised of local business, education, and other leaders from all aspects of the greater Sierra Vista community who are dedicated to the betterment of Fort Huachuca and Sierra Vista. They have pledged the time, effort, and dollars necessary to achieve their goal—the enhancement of Fort Huachuca for their State and their Nation's military.

I commend my friends and all of the people of Sierra Vista for their commitment to the fort and their community. Their patriotism is an inspiration to all of us in Arizona. I also want to thank the commanders at the fort, the ISC, the intelligence school and the Army garrison for their continued willingness to work with the local officials to improve and strengthen the already strong working relationship between Fort Huachuca and Sierra Vista. They well know how welcome and valued they are in southern Arizona.

TRIBUTE TO DR. CHARLES E. GOLDEN, SPARTA, TN

Mr. SASSER. Mr. President, I rise today to honor and salute Dr. Charles E. Golden of Sparta, TN, who has made a lifelong commitment to elementary, secondary, and higher education in the Upper Cumberland Region of Tennessee.

In addition to earning masters and doctorate degrees from George Peabody College in Nashville and from American University in Washington, Dr. Golden served 9 years as a public school supervisor, principal, and administrator, and 14 years as the superintendent of Sparta City Schools. Under his leadership, Sparta was one of the first school districts in Tennessee to consolidate the city and county school systems, and he oversaw the desegregation of Sparta's public schools.

Dr. Golden also served 23 years at Tennessee Technological University, where he will retire as interim dean for the division of extended services at the end of this month. During his tenure, the division of extended services, which provides off-campus higher education opportunities, has expanded from 12 classes to about 120, and the program now serves 20 counties in the Upper Cumberland Region.

Dr. Golden's feats in the classroom alone warrant significant praise; however, his commitment to education did not stop there. Dr. Golden played an enormous role in education leadership and support. He has coauthored 3 books and has published more than 25 articles on education. He has chaired and directed many leadership and training conferences in this field. Moreover, he served on many statewide and national education policy boards and was named Outstanding Educator of the Year in 1980 by the Tennessee Alliance for Continuing Higher Education.

During his 45-year career as an educator, Dr. Golden has used all the resources available to improve the quality of teaching and school administration, and he has fought vigorously to ensure that public education provides equal opportunities for each and every child, regardless of his or her background.

Mr. President, I join my fellow Tennesseans and all Americans in paying tribute to Dr. Charles E. Golden and in expressing our sincere gratitude for his leadership and undying efforts to enrich the moral fiber of all individuals and to create a better educated citizenry in Sparta and throughout Tennessee.

TRIBUTE TO THE CARPENTERS OF THE CITY AND COUNTY OF PHILADELPHIA

Mr. SPECTER. Mr. President, on Saturday, June 20, 1992, the Carpenters' Company of the city and county of Philadelphia will be celebrating the 216th anniversary of Pennsylvania's statehood at Carpenters' Hall in Independence National Historic Park. The Carpenters' Company, the owner of Carpenters' Hall, is a small group of master builders who have taken the responsibility to keep this historic building open to the public for the past 135 years. Founded in 1724, the Carpenters' Company of the city and county of Philadelphia is the oldest existing trade guild in the United States. Its origins can be traced back to medieval Europe. Since 1976, the company has hosted the Pennsylvania birthday party, an annual celebration of this historical event. Ten years ago, the Pennsylvania State Legislature officially recognized Carpenters' Hall as the birthplace of the Commonwealth of Pennsylvania.

The company is committed to the education and preservation of Carpenters' Hall as a symbol of our Nation's independence and rich historical tradition.

Mr. President, some of our country's famous forefathers, including George Washington and John Adams, are only some of the famous people who have attended meetings at Carpenters' Hall. In 1774, the First Continental Congress met at Carpenters' Hall, where the seeds of America's independence movement were sown.

Carpenters' Hall was also the site of the Provincial Conference which was

held from June 18 to June 25, 1776. The events that transpired during that historical conference enabled Pennsylvanians to sever their ties with Great Britain and support the cause for national independence. It is at Carpenters' Hall that delegates were selected to the Constitutional Convention which would form a new Government to be truly representative of the citizens of our great Nation.

Not only has Carpenters' Hall served as a first home for some of the country's oldest organizations such as Franklin's Library Company but also has provided a meeting place for Philadelphia's business, political, academic, and scientific communities.

Therefore, Mr. President, I think it is fitting for the U.S. Senate to take note of the 216th anniversary of this historical event and I wish every success to the celebration in Philadelphia.

BUSH AND ISRAEL

Mr. DOLE. Mr. President, I want to bring to the Senate's attention an excellent op-ed which appeared in the Washington Post last week. It is an analysis of relations between the Bush administration and Israel, done by one of this country's most astute observers of the Middle East, Prof. Dan Pipes, of the Foreign Policy Research Institute.

Professor Pipes' central thesis is simple and compelling. The atmospherics surround United States-Israeli relations under President Bush are lousy—and that is unfortunate; but the substance is solid—and that is the important thing.

As I and others have done here on the floor of the Senate, Professor Pipes outlines the record of unparalleled accomplishment the Bush administration has achieved in advancing common United States-Israeli interests. It is time, Professor Pipes says, for "Israel's supporters * * * to wean themselves from emotionalism and recognize a positive record for what it is."

The op-ed's title sums up its substance: "This Administration Is Good for Israel." Professor Pipes makes a compelling case for that thesis, and I urge all Senators to read his excellent piece.

Mr. President, I ask unanimous consent that the full text of the op-ed be printed in the RECORD.

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

THIS ADMINISTRATION IS GOOD FOR ISRAEL

(By Daniel Pipes)

Israel's supporters have had it with George Bush. Pointing to a sequence of hostile acts—his awful remarks at a press conference last Sept. 12. Secretary of State Baker's alleged vulgarisms, the sleazy leak about arms transfers to China, the State Department's incredible endorsement of a Palestinian high of return—Americans who care about Israel overwhelmingly agree that Bush is bad for Israel. But a cool assessment of the record shows that they are wrong.

For starters, Bush and Baker closed down the dialogue with the PLO. They expanded the peace process from just Israel and the Palestinians to include no fewer than 11 Arab states.

More: Baker spent months getting the Arabs to accept a peace process on Israeli terms. Its points of reference contain nothing about land for peace or Jerusalem. Palestinians do not comprise a separate delegation. The process excludes the PLO, Palestinian expatriates and Jerusalem residents. Europeans and the United Nations have no real role, nor does the U.S. government get directly involved unless invited by all parties.

The American-sponsored peace process virtually eliminates the prospect of war, at least in the short term. As a result of this and other Bush administration efforts—most notably Operation Desert Storm, which destroyed Iraq's offensive capabilities—Israel faces the smallest threat of war in its 44-year history. Further, Bush achieved what Ronald Reagan never attempted—he got the United Nations to rescind its 1975 "Zionism is racism" resolution. His administration played a critical role in springing Ethiopian and Syrian Jews. However cool the Bush words toward Israel, the acts are warm.

Of course, there's one cool act: the denial of a $10 billion loan guarantee for Israeli housing. But this issue, which so badly riled U.S.-Israel relations, needs to be seen in perspective:

The administration supports an unconditional $3 billion a year in aid to Israel, much the largest per capita aid to any country. Last year it backed a $400 million supplement for housing purposes and $650 million in cash for damages suffered during the gulf war.

Washington did not refuse to make the loan guarantee, but made it conditional on a cessation of new settlement activities in the West Bank; the Shamir government chose to reject these terms. In the end, Israelis rejected American terms, and not the reverse.

Doing without the loan guarantee may serve Israel's long-term interests. The country needs growth, not aid. Dependence on handouts stymies growth by allowing politicians to defer hard decisions. Not getting the loan guarantees compels the Israeli government to get serious about privatization; major corporations—the telephone exchange, chemical manufacturer and shipping line—are on the block.

Making sure Israel survives has always been the central issue in U.S.-Israel relations; from this perspective, loan guarantees appear peripheral. It hardly compares to U.S.-Israel tensions of years past (Eisenhower forcing Israel out of Sinai, Ford denying delivery of fighter planes and Carter ignoring Egyptian treaty violations).

Looked at as a whole, the U.S.-Israel relationship of international politics. American politicians who reiterate their understanding of Israel's plight quickly get known as friends of Israel. Secretary of State George Shultz, for example, clearly established his concern for Israel's long-term security. Most memorably, he once asked a large audience of Israel's supporters if the PLO was qualified to enter negotiations with Israel. "No," it boomed back. Shultz answered: "Hell, no! Let's try that on for size. answered: PLO." "Hell no!" the crowd echoed. Not surprisingly, Shultz won the permanent affection of Israel's supporters.

By way of contrast, James Baker never goes beyond the tight-lipped delivery of pro forma statements about Israel. His demeanor types him as indifferent or hostile to the Jewish state.

Stressing a politician's style so heavily has the strange effect of rendering his actions relatively unimportant. In December 1988 when George Shultz took the step friends of Israel most dreaded—opening official U.S. relations with the PLO—the raised hardly a word of protest. His pro-Israel bona fides, in other words, won him enormous freedom of action. Contrarily, the politician who fails to establish a rapport can do nothing right. Baker's turgid approach to Israel and Bush's tin ear condemn them to a purgatory in which they get credit for nothing they do for Israel—even closing the dialogue with the PLO.

In an unusual acknowledgement of the emotional basis of U.S.-Israel ties, George Bush recently observed: "I have come to believe that the measure of a good relationship is not the ability to agree, but rather the ability to disagree on specifics without placing fundamentals at risk. We do this all the time with Britain; we should manage to do it with Israel," He is right; the time has come to go beyond tone and style and look objectively at facts. If the Bush administration needs to understand the critical role of feelings in U.S.-Israel relations, Israel's supporters need to wean themselves from emotionalism and recognize a positive record for what it is.

WEINBERGER INDICTMENT

Mr. DOLE. Mr. President, for the past 5½ years, Mr. Walsh has wasted a fortune in taxpayer dollars in a desperate attempt to validate his witch hunt.

And what have the American taxpayers received for their money?

Nothing, except a bill from Mr. Walsh for $30 or $50 million.

Yes, Mr. Walsh's crowd browbeat a few people into guilty pleas, threatening to ruin them financially if they did not rollover. But, when it comes to major cases, Mr. Walsh's batting average is zero.

And with the indictment of Mr. Weinberger, his credibility is now at zero percent, as well. Everyone in this town knows that Mr. Weinberger was one of the Reagan administration's most vocal opponents of Iran-Contra, and that he played no role in its advancement.

Still, Mr. Walsh and his highly paid assassins saw Mr. Weinberger as a way to get at their ultimate target—President Reagan. They threatened Mr. Weinberger that unless he testified that President Reagan violated the law, they would see that he was indicted.

To his credit, Mr. Weinberger refused to buckle under to this blackmail.

Mr. President, many States have laws which stipulate that if someone brings a frivolous law suit, then they have to pay the court costs of all parties involved. When it comes to the Walsh investigation, frivolous sounds just about right. So perhaps it's high time for the taxpayers to hand him a bill for a change. It is time to close down, Mr. Walsh.

TODAY'S "BOXSCORE" OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore".

The information is provided to me by the staff of Senator HELMS. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,942,688,708,531.55, as of the close of business on Friday, June 12, 1992.

On a per capita basis, every man, woman and child owes $15,349.62—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

WORKPLACE FAIRNESS ACT

The PRESIDING OFFICER. The Senate will resume consideration of S. 55, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 55) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The hour between now and 12:30 p.m. shall be equally divided and controlled by the Senator from Utah [Mr. HATCH] and the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I would like to take a moment to discuss the administration's response to the Packwood amendment which is now part of the committee substitute, and on which we seek to invoke cloture this afternoon. The Secretary of Labor, in a letter to the minority leader, wrote that if the bill as amended were sent to the President, his senior advisers would recommend that he veto it.

That is the way to go, Mr. President. You have been there all the time, great friend of labor.

The labor movement expressed support for the Packwood amendment, in the spirit of legislative compromise. Its change in position was hailed as a dramatic shift toward a more cooperative, less confrontational system of collective bargaining. The proposal reflects labor's willingness to reexamine old principles in light of a changing world economy.

Did the President say, "This modification addresses my concerns, and I will now sign the bill?" No. Did he say, "This represents a substantial concession on the part of the labor movement and merits careful consideration?" No. Did he make any form of a counterproposal? No. Instead, the President's team renewed its veto threat. Vetoing progressive legislation in the interest of the people of this country is, after all, the President's favorite pastime when he is not traveling abroad.

When Congress passed the minimum wage bill to protect our Nation's poorest workers, a bill that simply made up what the minimum wage had lost due to inflation, he vetoed it.

When Congress tried to help the millions of newly unemployed workers by passing unemployment compensation legislation, he vetoed it, not once but twice. And then he used the procedure to try to come back on board as if he came up with a new idea when we finally passed it the third time it came up.

When a bill that restored civil rights protections won 65 percent support in both Houses of Congress, he vetoed it. What did he care that almost two-thirds of the Members of each body supported it?

When Congress tried to give working families a break by providing even the most minimal family and medical leave protections, George Bush vetoed the bill. And the President opposes legislation to provide women the same remedies as men for intentional employment discrimination. He has also threatened to veto a bill to improve workplace health and safety, and he has vetoed or threatened to veto many other proworker bills besides these.

What kind of a President, what kind of compassion, what goes on in this man's head that causes him to be so hostile to the concerns of the ordinary working people? It is true he comes from a different background, but we have had other Presidents who came from different backgrounds, and maybe the best example is Franklin Delano Roosevelt, who still had great compassion for ordinary people in this country. This President shows no compassion.

So the latest veto threat is really no surprise. We knew it was coming before he ever made it because, at every turn in his administration, the President has joined with big business to obliterate the most basic rights of America's working men and women.

What kind of a man is this? Does he really think the American people want to live in a society where workers have no right to a safe workplace, to a minimum wage, or to take unpaid leave to take care of a sick family member, or to bargain collectively?

It is, of course, possible that the President will change his mind if the bill should reach his desk, and I certainly hope that he does reconsider his position. But regardless of whether the President turns his back yet again on American workers, we in this body cannot; we should not.

Let us keep in mind that the vote that we will next take is simply whether or not we will close off debate on the bill, simply whether or not we will quit talking and go to the substance of the legislation. This bill is of fundamental importance, not just to every working man and woman in this country, but to all of America, because this bill has to do with whether or not there is going to be an organized labor movement in this country.

If you want to bust the American labor movement, go ahead and vote against the cloture motion, because the reality is that if employers can use strike breakers to come in and break up strikes and the employees lose any effective way to do anything in order to fight for their position, then you have effectively broken the American labor movement in this country. And when you do, it will not only be organized workers who will pay, it will be all Americans. Because we can look back on the history of this country and we can see time and time and time again how organized labor came to the Congress of the United States, came to the President of the United States seeking decent legislative proposals that helped bring about a progressive movement throughout America—not just for working people, but for all Americans. I do not care whether it was Social Security or Medicare or Medicaid, whether it was occupational safety legislation, whether it had to do with minimum wage legislation, whether it had to do with a whole host of legislative proposals—had there not been an organized labor movement in this country, the laws would not be on the books today.

So when you vote today on the very simple issue of whether or not we ought to stop talking about this issue and get down to voting on it, you are talking about whether you believe that labor has a right to join together and whether or not there shall be or will be in the future an organized labor movement in this country.

I urge my colleagues to support the cloture motion. More important, I urge them to support the passage of this legislation.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, it is not quite as disastrous as the Senator from Ohio is indicating. We have for 54 years had a very strong labor movement in this country. The reason the labor movement has lost a percentage of the

members of the work force is not because employers have an offsetting right to a strike. That is not the reason. There are a number of reasons for that, some of which are the union's fault, some of which are not; some of which have come as a result of enlightened management that is treating employees better through the years.

So to indicate that unless they can take away the rights of employers to hire permanent replacements, that the union movement is gone and that we are busting the movement and hurting the movement, that flies in the face of 54 years of effective collective bargaining relationships, and 54 years of effective laws, slanted somewhat in favor of the unions, as I agree they should be, that have worked very well for unions.

Whenever a union strikes, that is an awesome weapon. Most unions do not want to strike. But I have to tell you, no business wants to hire permanent replacements. The only time you get into permanent replacements is really when the union strikes and is unreasonable in its demands, intractable, and the only chance to keep the business alive, basically, is to hire permanent replacements.

Now, who, in the interest of fairness and equity, would deny the employer that right except for a handful of people who are really pushing this particular bill? If this were a secret ballot today, this bill would go down. But there are a lot of various forces that come to play in these types of issues.

What is wrong with the Packwood-Metzenbaum amendment? No. 1, the Packwood-Metzenbaum amendment still overturns the Supreme Court's 1938 Mackay doctrine, a 54-year-old law that has worked very well, that keeps the balance of power equal, or at least relatively equal. That is a decision which stands for the proposition that, just as employees can go out on strike, employers can continue to operate by replacing—even permanently, if they will—striking workers. It has very seldom been used in the history of our labor/management relations, but it is a right, that sometimes can result in resolving problems.

Under this longstanding precedent of the Mackay doctrine, the availability of economic weapons on both sides has been an essential element in the collective bargaining process. It has provided the strongest possible inducement for both groups to negotiate in good faith and to resolve their difficulties through compromise. It has been a very effective tool, very seldom used.

But when you have a unreasonable strike and unreasonable demands, then what else can the employer do other than say: I do not want to let my business go down the drain. If you do not come back with these reasonable terms and conditions I have offered you, then I am going to have to hire new people.

It makes sense. Take away that freedom, and you have taken away all of the arsenal of the employer to save his or her business.

No. 2, however, in spite of their desire to overturn this longstanding precedent, the Packwood-Metzenbaum modification does not just overturn the Mackay doctrine, a principle which has stood for more than 50 years, more than a half-century. It would completely overhaul the collective bargaining processes of the United States.

The proposal overturns significant portions of the National Labor Relations Act. It eliminates more than 50 years of legal precedent and Supreme Court decisions, and inserts the Federal Government potentially into every wage-setting decision in the United States.

No. 3, the proposal advocated by the Senator from Ohio would replace collective bargaining as we know it today with a new form of arbitration. This has been described as "quasi-compelled mediation."

Now, what on Earth does that mean? Is this a tried and tested approach, with proven benefits? Certainly not. Does anyone absolutely know how this really works? Not on your life. We are asked to risk economic jobs and our collective baing system on a proposal that has been in public view, as a practical matter, for exactly 2 days—throw the whole system out for something that has never had a day of hearings.

There have been no hearings; this has never had any real, effective consideration by the appropriate committee, the Committee on Labor and Human Resources; this has really not had much debate. And except for the brief colloquyloquy between Senator METZENBAUM and myself yesterday, there has not been much analysis or discussion of this particular committee compromise.

I daresay that there are many more questions that need to be asked, but we clearly will not be able to do so in the few minutes reserved to us today.

No. 4, as I understand it, this proposal basically says that unless the employer first agrees to turn all unresolved issues over to a factfinding panel created under the auspices of the Federal Government, including those issues over which it may currently have no legal bargaining obligation, it loses the right to replace strikers with permanent replacements, no matter what the duration, the cost, or economic consequences of the strike.

No. 5, there are glaring inequities in the entire proposal that essentially leave unions with all of their rights and options under current law, plus a whole new set of alternatives to use at their discretion, plus unprecedented control of the bargaining process.

In contrast, the employer has no control over the process; little to gain and everything to lose.

No. 6, this is not compulsory arbitration, as proponents have been quick to point out. Under compulsory arbitration, both the union and the employer give up something. The something for the union is the right to strike. In this one-sided hybrid called quasi-compelled mediation, no such balance is provided. Unions still retain the power to strike, and they also gain a new power that employers do not have under the new proposal, and that is the power to invoke arbitration or quasi-compelled mediation, whichever you want to call it.

The proposal is completely one-sided in all respects. In arbitration, typically, both sides are bound by the result. That is not the case in this proposal. The union can walk away from this result without losing anything. Moreover, it retains the ability to keep coming back for a second and third, or further tries.

Does management have any of these options? Not on your life. They are not going to be fair and give management these options. Management loses significant rights under the current law if it rejects the result. Can the employer try again, or change its mind, as the union is permitted to do under this proposal? Not on your life. The employer is not given that kind of consideration, but the union is.

Is this quasi-mediation; is this arbitration? One thing it is not is workplace fairness, the title of the bill. This is a very different and a much more complex—and in many ways, much worse—proposal than that which was reported by the Labor and Human Resources Committee almost a year ago.

It is important that we have this extended educational dialog. I would like to return to a point raised by Senator METZENBAUM during yesterday's debate. He pointed out that this bill was being promoted by its sponsors on behalf of 16 million working men and women who are members of labor unions. I can appreciate that, just as I can appreciate the work product and craftsmanship of 16 million American workers.

Let me emphasize for the record that I have never bought into that line about the inferiority and laziness of American workers. That is as patently unfair as it is false.

But let me also point out, Mr. President, that the opponents of this bill are not just thinking about management concerns. As a matter of fact, Mr. President, 85 percent of the American labor force, or about 85 million workers, do not belong to labor unions. That is a very familiar statistic.

But we are not concerned about statistics here. We are concerned, primarily, with the economic opportunity and financial security of all American workers, whether or not they belong to unions.

I think it is time we spent a few minutes discussing how people are really going to be affected by this bill.

I urge my colleagues to listen for a moment to the experience of a man who sent me a copy of a letter he wrote to another of our colleagues:

We don't need any legislation that stifles business initiative and the formation of jobs. It seems like Paul Tsongas is the only Democrat who understands the relationship between jobs and business. In my career I've been a member of three unions and placed on strike once. * * * Most of my friends on the picket line preferred to be at work but the union had coerced us into a strike—for terms we thought were ridiculous from the start. * * * Please reconsider your position and vote for jobs—not strikes. * * *

Have we forgotten that replacement workers are workers too? Have we forgotten that they risked crossing the picket line because they needed the job?

Now, Mr. President, what about the rest of the economy that is affected by a prolonged labor dispute? And, make no mistake, labor disputes will be prolonged under the latest version of S. 55.

For example, companies who supply parts or services to other companies in the midst of a labor dispute cannot depend on consistent orders—perhaps, if there is a strike, there will be no orders at all. That means potential layoffs even in companies not involved in the labor dispute.

Just 3 days ago, the majority leader came to the floor and substituted a committee modification for the text of S. 55 as reported by the Labor and Human Resources Committee.

I simply note again for the record that this so-called committee modification is nothing more than the bill's sponsors' idea of bait and switch. The committee never discussed this modification; and, the minority was never even informed of any committee action on a modification.

Furthermore, this so-called modification should be no one's idea of a compromise—especially if you believe in the collective bargaining process.

The latest version of S. 55—something that should more rightly be called the Packwood-Metzenbaum modification—is actually quite clever. It allows the unwary reader to think that unions give up the right to strike in exchange for the recommendations of a factfinding panel. Not so.

The Packwood-Metzenbaum modification would effectively place employers into a no-win situation. If the employer does not agree to the factfinding procedure or to the decision of the panel, he or she automatically forfeits the right to hire replacements under the Mackay doctrine.

Why would any employer not agree to the procedure or the recommendations? Answer: First, he or she simply cannot afford any wages or benefits over his or her last offer; or second, he or she does not want a federally sanctioned entity to decide the terms of his or her labor contract; or third, all of the above.

In fact, under the Packwood-Metzenbaum modification, the parties would no longer likely bargain with each other. Instead, they would petition the Federal Government. All communications between the parties would be through the Federal Government.

It seems to me, Mr. President, that this stands as a complete repudiation of the principles of collective bargaining.

One cannot help but find it ironic that in order to correct the obvious flaws in S. 55, which addressed one vitally important issue that arises during a strike, the proponents have decided to redo all of collective bargaining. It is a little like saying that in order to catch a fish, you first need to drain the lake. That is ridiculous.

The bottom line here, Mr. President, is that this bill, S. 55 in the original, or S. 55 as modified, throws out over 50 years of labor law without any regard for workers and their families whether they are union members or not.

Mr. President, as I pointed out yesterday, this whole process would be laughable if the consequences were not so serious.

In just a short while, we will be voting to invoke cloture on the grandly mistitled "Workplace Fairness Act."

If you believe that this body should understand the ramifications of this legislation before we impose it on the entire country;

If you believe that the rules and procedures of the Senate ought to mean something;

If you believe that we should not overturn 50 years of Federal statutes, Supreme Court, and other judicial precedent;

If you believe that we should not gamble with peoples' jobs and the economy;

If you believe that we do not have to destroy collective bargaining in order to help unions; then you should join us and vote against cloture because a vote against cloture is a vote for the workers and the opportunity of business to continue to go forward, and I think it is a tremendous vote for the collective bargaining process that has served us so well over the last 54 years.

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

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

Who yields time?

If neither side yields time, time will be charged equally to both sides.

Mr. METZENBAUM. Mr. President, under article I, section 8 of the Constitution, this body is empowered "to make all laws which shall be necessary and proper * * * to provide for * * * the general welfare of the United States." This is our solemn responsibility as Members of this body. It is the reason we were elected by the citizens of our respective States.

Two years ago, I introduced the Workplace Fairness Act to address the increasing problem of permanent replacements. At stake here, as I have said before, is nothing less than the future of the American labor movement. This is an issue of the utmost importance to the welfare of this country.

Over the last 2 years, there have been six hearings—three in the Senate and three in the House of Representatives—to address this terrible problem. The Labor and Human Resources Committee carefully considered the bill and reported it out a year ago. There has been ample time for Senators and their staffs to familiarize themselves with the issue and to consider all views.

Last Tuesday, 7 days ago, the Workplace Fairness Act was called up on the floor for consideration by the full Senate. On Wednesday, Senator PACKWOOD offered his amendment, to provide for an alternative approach to the permanent replacement problem by encouraging peaceful and cooperative labor relations without forcing settlements on unions or employers. It did not provide for mandatory or compulsory arbitration. It provided for mediation and for an independent panel's recommendations, which both parties could accept, or one or the other could accept, or both could reject.

Yes, this was an important modification. But that is the way the legislative process works. Changes on the floor are not heresy. Nor are they the least bit unusual.

And compromise is a key to any successful legislative effort. No one should be attacked for being willing to compromise.

The proposed modification was debated Wednesday, Thursday, Friday, and yesterday, with ample time for Senators to speak on the bill or to offer additional amendments.

In short, no one can argue at this point that we have not considered this bill carefully enough or long enough. It is time that we, as a body, voted on whether the bill should become a law. I am very proud to say, Mr. President, as I stand here at this moment, I believe that a majority of this body would vote for the bill, were they given the opportunity.

But the issue is not whether or not they vote for the bill. The issue is whether or not we will invoke cloture to cut off debate. And that means we need 60 votes instead of a majority of the Senate, which is 51.

I say this to my colleagues who voted against cloture last week: You have made your point. As a majority, you exercised your right to express opposition to the bill by preventing the conclusion of debate. But it is time now to let the Senate do its job. It is time now to let the Senate consider this legislation on the merits and take a vote on the merits.

As I said, I believe the majority of the Senate would vote for the bill. But if the bill were defeated, I would accept

that result. We owe the American people at least an up-or-down vote on the merits of the legislation. We were elected to this body to make laws to provide for the general welfare, and that is our solemn responsibility. If a minority of this body sees fit to continue to prevent us from discharging that responsibility, they have done a grave disservice to all American workers, not just those who are in unions, but all American workers. Yes, they have done a disservice to the Nation as a whole.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no Senator yields time, time will be charged equally between the sides.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. I am wondering if the Senator would yield 7 minutes.

Mr. HARKIN. Mr. President, I yield 7 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have heard over the course of the last several days of debate a relentless drumbeat of opposition to the very notion that there might be something wrong with a labor relations system that allows tens of thousands of workers every year to lose their jobs because they exercise their legal right to strike.

We have all read the headlines and heard the grim figures: 30,000 machinists, pilots, and flight attendants permanently replaced at Eastern Airlines; 9,000 Greyhound workers replaced in a matter of weeks; 2,300 longtime employees of the International Paper suddenly jobless in Jay, ME; 1,200 permanently replaced at Magic Chef in Cleveland, TN—the list goes on and on, in community after community, major cities and rural areas, large firms and small.

We have all heard, too, the wrenching personal stories of replaced workers—workers with 10, 20, 30 years of time on the job who have been discarded like so much disposable waste, who have lost a lifetime of savings, who have seen their family lives disintegrate, who live in communities ripped apart by strife between strikers and replacements.

Yet again and again, opponents of this legislation have taken the floor to insist that there is no problem, that the existing set of legal rules represents a perfect delicate balance between the rights of labor and management that must not be disturbed. Their view seems to be that there is no alternative to a system which allows workers to be used up and thrown away—that the human costs imposed by a system which allows striking workers to be permanently replaced are not only tolerable, but somehow necessary and inevitable.

I reject the notion that fairness in the workplace is incompatible with the demands of a successful, productive economy. That is why I have supported a ban on the permanent replacement of striking workers, and that is why I am prepared today to support the compromise offered by the Senator from Oregon.

At hearings held in the Labor and Human Resources Committee in the last Congress and in this Congress, we heard extensive testimony on the devastating effect that the hiring of permanent replacements can have on workers, their families, and their communities. Eminent experts in labor relations testified to the inherent contradiction between provisions of the Federal labor statutes that protect workers from being fired or disciplined for exercising their right to strike, and the doctrine that holds that employers nevertheless can permanently replace workers who exercise that right.

We heard testimony on studies which have shown that the use of permanent replacements prolongs and escalates strikes.

Following those hearings, the committee reported out a bill to prohibit the use of permanent replacements in economic strikes. The bill was approved with the support of a majority of the committee's members, and I believe that a majority of the Members of this body are also prepared to support such a ban.

We have not, however, been able to get a vote on the bill as reported by the committee. Instead, a minority of Senators has chosen to engage in a filibuster to try to prevent that bill from coming to a vote.

In an effort to address objections raised by opponents of the committee-reported bill, so that we can invoke cloture and get to a vote on this important legislation, the Senator from Oregon has proposed a compromise that would establish a narrower, qualified prohibition on the hiring of permanent replacements that turns on the willingness of the parties to an economic dispute to resolve that dispute peacefully, without resort to economic weapons.

Both sides to this debate have expressed an interest in minimizing the economic disruption that is a necessary part of any strike or lockout, both for workers and employers. This is a sensible compromise that serves that end. It deserves support on both sides of the aisle.

It has been suggested by the Senator from Utah that the willingness of the supporters of the original committee bill to accept and endorse Senator PACKWOOD's compromise is an admission that the original bill—and indeed the entire attempt to limit employers' use of permanent replacement—is flawed. That contention is absurd.

Compromise is an integral part of the legislative process, and every Member of this body has on countless occasions agreed to proposals that entailed some modification of their original positions.

The basic question is whether employers should continue to have the unilateral right to permanently replace employees who have chosen to go on strike. Both the bill that was reported by the committee and the bill as modified by the Packwood compromise recognize the inherent unfairness of the current legal rule that gives employers that unilateral right.

The Packwood compromise is carefully crafted to address the key concern expressed by opponents of the original bill—the concern that if an absolute ban on the use of permanent replacements is imposed, employers will have no adequate defense in circumstances where a union insists on pressing an unreasonable bargaining demand.

The point has been made many times in this debate that employees do not lightly engage in strikes, that the prospect of going without wages is a serious deterrent to lengthy strikes, and that employees' bargaining demands necessarily tend to be tempered by their interest in the long-term financial health of the company to which they expect to return once their contract dispute is settled. But the Packwood proposal completely disposes of the objection that these factors alone are not sufficient to protect the employer from an intransigent union.

Under the compromise, an employer's ability to hire permanent replacements is limited only in those circumstances where the union is willing to submit all issues in dispute to a separate factfinding panel empowered to conduct a hearing on the issues and make recommendations for voluntary resolution of the dispute. This procedure serves as an effective check on the reasonableness of the union's bargaining demands, and encourages rational bargaining.

Supporters of justice in the workplace have gone the extra mile to achieve a fair result. I urge the Senate as a whole to vote to end the filibuster and pass this legislation. The increasingly aggressive resort by business to the use of permanent replacements in recent years is part and parcel of the take-no-prisoners, law-of-the-jungle ethic that gave the eighties its character as the decade of greed. Let us put that era behind us and deal with this issue responsibly.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. How much time remains?

The PRESIDING OFFICER. The Senator from Iowa has 2 minutes and 40 seconds.

Mr. HARKIN. Mr. President, I yield myself such time as I may consume.

Mr. President, I had not intended to speak again on the issue of S. 55, the striker replacement bill, but cir-

cumstances find me here taking the floor on behalf of Senator METZENBAUM who had to fulfill another obligation. I would like to take this opportunity to bring this down to the human terms. For me this issue is not something that exists in the abstract—as just some kind of a policy question. This is very personal to me, and I am going to take the time of the Senate to reiterate why I feel so strongly about this bill.

It has to do with someone who is very close to me; in it has to do with my brother. I told this story before, but it is a story of such power that it deserves being heard again.

My brother worked for a small manufacturing plant in Des Moines, IA, for 23 years. For the first 10 years he worked there, he did not miss 1 day of work and was not late once. In fact, the owner of the plant, Mr. Delavan, had a Christmas party and gave him a gold watch with his name on it.

In all my brother worked at the plant for 23 years. In 23 years he missed 5 days of work in 23 years, and received all kinds of awards for productivity. During all those years my brother was a member of the United Auto Workers, which had organized the plant. And all those 23 years there was not one strike, not one labor dispute, because the owner of the plant—Mr. Delavan—dealt in good faith with the workers, signed the contracts that they moved ahead together.

But Mr. Delavan got old and sold the plant to a group of investors. They had no connection with the workers, and they determined that the best way that they could increase profits was to get rid of all their workers, the people that worked there and hire new men and women and pay them less.

But first, the new workers had to confront the union at the plant. So they then set about to break the union. Once the investors took over this company, they kept having labor disputes—year after year. Finally, they the workers refused to sign the contract, and went out on strike. In return, the owners brought in the so-called replacement workers, or as I like to call them "scabs." They brought them in and busted the union. In fact, one of the investors bragged, "You want to see how to bust a union? Come to Des Moines, and we will show you how."

Mr. President, I ask unanimous consent that I can have about another 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. I thank the President, and the Senator from Utah.

So they brought in strikebreakers and broke them. I said one investor openly bragged: "You want to see how to break a union? Come to Des Monies, and we will show you how."

They did break the union. People who worked there like my brother, for 20, 25 years, people with families, homes, with kids in college, all of a sudden were thrown out of the company to which they devoted their lives.

I daresay if Mr. Delavan owned the company that situation never would have happened, because it never had happened in 23 years. But these investors came in with no connection with the workers, threw them out hired replacement workers and busted the union.

And I know the Senator from Utah knows about my brother because I have spoken to him before. My brother happens to be disabled. He is totally deaf.

That was a good thing about Mr. Delavan. He hired a lot of disabled people to work in his plant, gave them the pride and dignity to work. Those with disabilities, in fact, turned out to be some of the best workers he ever hired. I remember my brother said to me after this was over: "You know, I feel like a piece of machinery they used up and threw me out on the trash heap."

This treatment did not just affect my brother and his fellow workers. It affected a lot of other people they knew who now asked themselves: Why bust your rear end for a company? Why go to work every day? Why be on time every day? Why never miss work? Why get all kinds of rewards for productivity if after a certain period of time management can come, bust your union, throw you out, and treat you like a piece of machinery?

This treatment destroys the dignity and the worth of individuals and destroys their productivity. That is why I say S. 55 is not just in the best interests of workers or organized labor. It is in the best interests of our whole industrial sector of America. It is in the best interest of our overall economic productivity. I have seen it personally. I saw in my own State, in my own family what this means. I resolved then if I could ever be a part of anything that would change this process I would. That's why I feel so strongly that the Senate must act now, invoke cloture, and pass this bill.

It is time that we return dignity and worth to our working people in this country. That is what this bill is about. A human being is not a piece of machinery. A human being is not someone you can use up and dispose of and throw out on the trash heap of life. That is what they did to my brother. That is what they did to his coworkers, and I tell you they have not been the same since. And it affected a lot of their friends, and it contributes to undermining the ethic of why work so hard, why be so productive, if this is what management can do to you?

I see the strikers replacement bill in very human terms. I see it in terms of what it means for productivity for this country. You get the best productivity and best work out of people who feel they have a stake in it, who feel they are going to be treated fairly and decently and another point, Mr. President, not all strikes are labor fed. The one my brother was involved in certainly was not. As I said, for 23 years the union never had a strike, or any labor dispute.

I will tell you to this very day I have never yet met one labor person who wanted to go on strike. I never met one person that would rather be on strike than at work. For one thing workers on strike do not get paid as much. I never met one person—they all wanted to be working, but they want to be treated decently and fairly and they want to be treated as part of an organization and company that they have a stake in. That is what this bill is about.

So, I hope that with this compromise, which I was not so much in favor of initially, we will get the necessary votes to invoke cloture and pass this bill.

Mr. President, about a month ago I read a little piece in the newspaper that said that the Chinese Communist government passed a new decree outlawing labor unions, saying no labor union can be organized unless it was first cleared with the Communist Party because it wants to be able to control them.

So here is the last vestige of communism in the world, a dictatorial Communist society, saying: No, they do not want free labor unions because they know what will happen if they get free labor unions. Here we are in America going down the same path destroying labor unions all over this country.

But those companies that are on a high wage, high growth, high skilled path like in Germany where their workers make half as much as our workers on average, 144 percent of what we make here in this country, they have organized labor, and they do in France, they do in Italy, they do in England, all over the world, but not here.

Finally, Mr. President, let me just say that what this bill is about is not about organized labor versus business. It is about the worth and dignity of human beings, whether we will treat them as pieces of machinery or whether we will treat them as human beings, and whether we will get the most productivity out of them by recognizing their worth and dignity.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah has 6 minutes remaining.

Mr. HATCH. Mr. President, I appreciate the comments of my good friend and colleague from Iowa. He and I stood side by side together here as we passed the Americans with Disabilities Act to help his brother and my brother-in-law who I carried to the Los Angeles temple, who at the time had polio and was a quadriplegic. I have to say that I understand how he feels.

But this is not about that issue. This is about two very strong competing rights. If you take the right to strike away from the workers, they are dead. I think you would find that management would rise up again and it would hurt this society. But then again, if you take that competing equivalent right to permanently replace to save the management's business, the employer's business, then the employer is dead.

That is why these are two rights that are very, very important. They are coequal rights. I have to say I think the right to strike is a more powerful right and a more powerful weapon. And I will fight to make sure every worker in this country has that right if they want to, through organized labor if they want to. It is a very powerful right.

The right to permanently rehire is a very powerful right, as well. But it is very seldom used. It is only used in a relatively few number of cases and only affects, according to the GAO, the General Accounting Office, between 3 and 4 percent of the workers in any given year, and then probably does not affect them too deleteriously.

So these two rights are very important. It is right to keep labor strong with a right to strike. But it is coequally right to keep the employer with an offsetting strength so that you have that delicate balance so neither side gets one up on the other, and that both have to come to the table because both of them are at risk if they choose one of these rights, choose to utilize them. And when both are at risk, there is more likelihood they will get together and resolve their difficulties through the collective bargaining process that we have developed, the hallmark of the world, over the last 50 years and more.

Now the problem with this is, No. 1, this overturns 54 years of collective bargaining law. It overturns the Mackay doctrine, which has worked very, very well to prevent widespread strikes and widespread hiring of permanent replacements.

No. 2, it overhauls the collective bargaining process. It replaces a lot of it, if not all of it, with new theories that nobody knows anything about, that may or may not work, and certainly will not work in fairness to the employer.

No. 3, it is filled with inequities. It is stacked in favor of organized labor rather than keeping this coequal set of rights.

No. 4, the employer under this approach, under S. 55 as it was, but this approach which is even worse, the employer would have no control over the process, no options whatsoever.

No. 5, it leads to what Senator PACKWOOD referred to as quasi-compelled mediation, something nobody understands, nobody knows anything about, or how it will work.

No. 6, the union at any time can walk away from the process without loss and still has the right to strike. Management, if it rejects that factfinding board's decision, management loses its coequal right. If the union walks away and management does not and management decides to exercise its right to permanently rehire, all the union has to do is immediately come back in and say, "Well, we accept the quasi-compelled mediation board's recommendation." They lose absolutely nothing. There is nothing at risk for the union, and they can come back again and again. Management cannot, the employer, no matter how up against the wall the employer might be.

So the employer does not have anywhere near the right that the unions would have. The union can change its mind. The employer cannot. It is that simple. Replacement workers are also workers, too. Sometimes replacement workers are workers who are union members who are sick of the strike, who want to work, who think their union is holding out too strongly or too much. Let us keep that in mind. Replacement workers are workers too.

I might add, sometimes they are union workers who just disagree with the strike of their union.

Now there are many questions that arise here, a lot of issues that are unresolved. Nobody knows how this quasi-compelled mediation is going to go. Nobody who really understands the collective bargaining process would fail to understand that this completely throws that process out of the window for a new found set of theories that really may or may not work, and that is without any committee hearings on this matter, on this so-called committee substitute, that is without any committee markup, that is without—I ask unanimous consent that I be granted 3 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. What is the request?

Mr. HATCH. That I be granted 3 more minutes.

Mr. BYRD. I have no objection.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. HATCH. So there were no committee hearings, no committee markup, no consideration before we got to the floor. We have only heard about this for 2 days—last Friday and yesterday. Well, I guess 3 days if you count today. We have had an hour on it today.

And by the way, this throws out 54 years or more of collective bargaining rules, regulations, statutory enactments, Supreme Court decisions, and lower court decisions, all of which have worked I think, by and large, pretty well for organized labor and for both sides, because both sides are treated equally.

Mr. President, this is not some inconsequential, itty-bitty change in the labor laws. This is a massive overhaul or revamping of the labor laws.

I hope our colleagues understand this because if they do, they should vote against cloture, because it is the only way to stop this type of legislating from happening and this type of legislation that could cause such a dislocation in our society from occurring.

Mr. President, I may have a few minutes left, but I yield back the remainder of my time. I know the distinguished Senator from West Virginia was supposed to have the floor at 12:30.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia, the President pro tempore, is recognized.

ARE THE DARK AGES RETURNING?

Mr. BYRD. Mr. President, conventional history books date the end of the Western Roman Empire in the year 476 A.D.

In 476, the last bona fide Italian emperor to rule in Rome, Romulus Augustus—or "Augustulus," as he was derisively called—was deposed by the German Odoacer, or Odovacar, who declared himself the ruler of Rome.

At one time, conventional historians likewise dated 476 as the beginning of the popularly styled "Dark Ages" of Western Civilization.

As any observer of sunsets will agree, "darkness" is a relative term, often determined by the eye of the beholder.

In truth, the decline of the Western Roman Empire, the decay of Classical Greek and Roman culture in Western Europe, and the dawn of the Dark Ages in Europe began long before 476. Moreover, perceptive scholars, historians, theologians, and public officials had been decrying the eclipse of civilization and culture in Western Europe for decades before 476.

In short, the "darkness" was so long in developing that few people noticed the difference until it was too late.

Indeed, even as the first shadows of this darkness extended over the Empire, the mighty Roman legions had advanced their eagles from the banks of the Euphrates and the Nile in the east and south to the western ocean in Spain, and from the firths and the mountains of Caledonia to beyond the Rhine and the Danube in the north. Through the misty centuries, there had been some crushing defeats, as at Lake Trasimeno and Cannae by Hannibal in 217 and 216 B.C., respectively.

In A.D. 9, Quintilius Varus and his three Roman legions had been wiped out by Arminius and his Teutonic barbarians in the glens and marshes of Teutoberg Forest, and Augustus would often beat his head against the wall and exclaim, "Quintilius Varus, give me back my legions."

Portentious as the defeat of Teutoberg Forest was, a worse blow was to follow centuries later.

In 378, a barbarian army of Visigoths decisively defeated a massed Roman army in a fixed battle at Adrianople and killed the Roman emperor, Valens.

Vast and admirably organized as the Roman fabric appeared in the provinces and on the frontiers, prior to Adrianople, rottenness attacked the core of Roman society. The free middle classes of Italy had almost wholly disappeared. Adulation was now the chief function of an obsequious Senate. The people were treated to free bread and circuses, and a rustic yeomanry no longer made up the backbone of the Roman legions. Paid barbarians had become the protectors of Rome. Rome's enemies were no longer on the outside; they were within her bosom.

Long before 476, the Roman legions had made their final withdrawal from Britain, never to return.

Long before 476, the Visigoths established a kingdom of their own in Spain, and the Vandals seized the province of Africa.

And long before 476, Attila's Hunnish hordes traveled at will through Rome's frontier provinces and invaded Italy.

Even more telling than these military and political signs of decay were the alarms of scholars and social critics.

Scholars and writers despaired of the barbarization of the Latin language. Furthermore, the old classics of the Ancient Greek and Roman Golden Ages—Virgil, Cicero, Sallust, Ovid, Homer, the Greek tragedians, Horace, Petronius, and the rest—had fallen into disuse. In the chaos of barbarian sack and rising civil disorder in city after city, whole libraries were put to the torch and thousands of books and scrolls were lost to mankind forever.

As disorder grew, patriotism itself waned. Rather than to assume the leadership of their communities, the sons and scions of even the most aristocratic families often fled into the wilderness and mountain vastness in search of peace and to escape the danger of Gothic spear and Hunnish torture.

With passing decades, the great urban centers of Western Europe shrank and fell into rubble as their populations fled before plunderers and rapine hordes from Central Asia.

The mighty works of Roman engineering—the aqueducts, the highways, the bridges, the city walls, the amphitheaters, the public baths, the arenas, the administrative buildings and villas—fell into disrepair, some to become the lairs of wild animals and nests for hawks and crows and bats.

For the most part, the cultural lamps of Western Europe went out and were not relit until the Gothic flowering of the twelfth century and the later Classical Renaissance.

Mr. President, I do not propose here that we today have fallen into a new Dark Age in America.

But I will suggest that we are verging dangerously close to a cultural twilight in our own civilization, and unless men and women of conscience and good will strike back at the impinging shadows evident all around us, a new Dark Age we shall find ourselves in, indeed.

With regard to violence alone, contemplate the murder statistics in just the District of Columbia.

Last year—1991—in the barely 69 square miles—if we include water and land—69 square miles surrounding this Capitol Building, nearly 489 men, women, and children were murdered.

Several other cities have no cause to find comfort.

Last year, homicides accounted for roughly 1,000 deaths in Los Angeles, and more than 2,080 in New York City.

Only a few months ago, a young, bright, accomplished, dedicated Senate staff member was murdered within blocks of the Capitol dome—within steps of his own residence—shot in the head by a killer when the young Senate staff member assumed that he could walk three blocks for a cup of coffee at a convenience store nearby.

Throughout this city and in the surrounding jurisdictions in Virginia and Maryland, thousands of law-abiding, honest, hard-working, and tax-paying men and women are afraid to leave their homes at night for fear that some random, senseless violence will end their lives as it did that young Senate staffer's or the young woman who was shot by a total stranger from a passing automobile last year on I-295 outside town, because as the accused slayer is alleged to have remarked, "he felt like bustin' someone."

Chillingly, the most recent victimization projection of the Justice Department's National Crime Survey estimates that: On the basis of past statistics and current trends, 8 of every 10 Americans over 12 years of age living today can expect to be the target of a violent crime at some point in their lives; 4 of every 10 Americans will be injured in the course of a robbery or an assault; and one of every 12 American women will be a rape victim at some point in their lives.

Unfortunately, such violence is not limited to the streets.

Look at what is happening in our public schools.

At one time, a school was held by many as second only to a church in the reverence and honor due it. At one time, a school was a symbol of all that was best in our culture and society—the altar before which our Nation's sacred principles were learned, and at which the civilizing virtues of centuries of human achievement and struggle nourished new generations of children and youth.

Now, to our bitter remorse, the punks and thugs have invaded even the schools.

Increasingly, thoughtful Americans are alarmed by the rising rate of violence in our schools, and the growing number of gun-related incidents being reported there.

A recent report from the Federal Centers for Disease Control in Atlanta, entitled "1990 Youth Risk Behavior Study," revealed that, at some time during the preceding year, 1 in 20 youths in grades 9-12 carried a firearm—usually a handgun—for self-protection or to use in a fight.

Unfortunately, throughout the country, news reports of disturbed youngsters who use guns at school to take out their grievances against others are becoming more common.

However, as alarming as the violence perpetrated by students on one another is perhaps the dilemma now faced by teachers in our schools.

According to a U.S. Department of Education survey, titled "Teacher Survey on Safe, Disciplined, and Drug-Free Schools," taken during the 1990-91 school year and recently released, 51 percent of the teachers surveyed had been victims of verbal abuse at some time during their teaching careers. Of those surveyed, 19 percent reported verbal abuse at some time during the preceding 4 weeks. Threats of physical injury—including death threats—had been suffered by 16 percent of the surveyed teachers during their careers, with 8 percent reporting such threats in the preceding 12 months, and 7 percent reporting physical attacks by students at some point in their careers.

Finally, 2 percent of the surveyed teachers reported that they had been physically assaulted by students in the prior 12 months.

At one time, formal education was reserved only for the children of the wealthy. Understandably, the extension of schooling by church parishes and congregations to even the poor was greeted as a supreme act of charity to surrounding communities.

In the antebellum South where, in some States, laws had made the education of slaves a criminal offense, the attainment of an education by freed slaves was a primary goal for thousands after emancipation.

Likewise, semi- and totally-illiterate immigrants coming from Europe had sacrificed nearly all that they had in order to ensure that their children had access to an education.

How secure is the future of any society or culture in which countless numbers of its school-aged children hold learning itself in contempt, perform with nonchalant mediocrity on standardized tests, physically and verbally abuse and assault those professional men and women who are in the schools to teach, and vandalize the very property that the community has set aside for the task of educating the young?

Indeed, how far is such a society from the burning of its classic books and the

final abandonment of a widely educated citizenry?

Unfortunately, the violence, philistinism, barbarity, and disintegration that we witness daily in our schools and nightly on the streets of many of our major cities, mirror problems in our wider society.

Since nearly the earliest years of colonial settlement, this country has been a heterogeneous stew. At various times, that mixture of peoples from many lands has coalesced in lesser and greater degrees of harmony. In no small measure, tempering the rate of flow of new immigrants, on the one hand, and a popular consensus that the learning of English and the absorption of minimal quantities of Western European and classic American culture and values, on the other hand, provided the United States with a modicum of overall interethnic stability.

Currently, however, masses of immigrants, legal and illegal, are flooding into our borders. At the same time, strident voices are attacking the foundational premises of our society and culture, labeling all cultural values as relative, and labeling Europe-based culture and society as irredeemably racist and oppressive by nature.

Some even question the inherent value of the use of English, demanding recognition for a cacophony of languages as equally valuable for government, education, and public discourse.

Anyone really wanting a quick insight into the decline of cultured, reasoned discourse in our country today, or wanting to witness the state of culture itself, need only flip from one channel to the next on the television remote control.

With no apology, obscenity and profanity can often be heard in the dialog of prime time television programs.

A glance at the MTV or other rock video channels will turn up performers who have become millionaires many times over by singing suggestive, even lewd, lyrics. Androgynous rock performers tantalize the young listeners with continued invitations to unreserved sexual exploration with no regard to the consequences of such behavior in this area of HIV infections and AIDS.

And how will posterity judge a civilization in which block after block of its largest cities lies in abandoned rubble or stands in vacant-eyed tenement buildings—a civilization whose bridges are crumbling and rusting, whose public schools are defaced with vulgar graffiti, whose curbsides are cluttered with broken beer bottles and fast-food containers, and many of whose neighborhood streets are nightly abandoned to illegal drug sales and purchases while law-abiding men, women, and children cower inside their homes in fear for their lives until the dawn returns?

A Hans Christian Andersen story recounts the scheme of two rogues who sold an emperor a suit of special cloth that would be invisible to anyone not fit for his office or too stupid to see special cloth. Thus, the emperor went about naked with everybody oohing and aahing over his beautiful suit until a small child blurted out what everybody knew but were too timid, too intimidated, or too self-interested to declare: "The emperor has no clothes!"

The time has come in our country to copy that child's courage and to cry out the truth about the moral and physical decay from which this, the democratic leader of the world, is suffering.

Mr. President, the time is long past for clear-thinking, concerned, and decent Americans to take back our streets, our schools, our culture, and our country from those who are bent on the untrammeled pursuit of violence, disregard for law, indiscipline, disorder, and destruction of the very conditions that make civilized life possible. The time is long past for civic-minded and patriotic men and women to enter the lists of local government, of their boards of education, and of civic clubs and committees dedicated to building our country up instead of allowing it to decay from neglect or to be dismantled by forces and interests bent only on destruction or self-aggrandizement and personal fortune with no regard to public well-being and the future. The time is long past for church-going citizens to tell the entertainment industry that enough is enough—that millions of Americans from all backgrounds and groups are tired of the pollution of our airways with profanity, with lewd music, with drugs, while villains who are portrayed as heroes, and with the celebration of evil, violence, lawlessness, and debauchery as the ideals of our society and the norms for human behavior.

We face a spiritual problem—a problem of lost faith in the eternal values on which this country was built; a problem of adult men and women unwilling to solve their own conflicts without resorting to the numbness of drug abuse; a problem of family life disrupted by an unwillingness of parents to rear their children for self-disciplined, constructive lives, and of children more interested in being "cool" and "hip" than in growing up to become responsible adults; a problem of people who think patriotism and civic-mindedness are square and out of date; a problem of too many people of too little moral courage to care about reversing the decline of neighborhoods and whole communities.

"Blessed is the nation whose God is the Lord," saith the Scriptures. Mr. President, at root, America is turning away from the God of our fathers. It is turning to other gods. Junk television and junk movies peddle profanity and violence, sexual promiscuity and adultery, lawlessness, Godlessness, and blasphemy, as the norms. Anything goes, and first amendment freedoms of press and speech are invoked as cover for it all. I think of Abraham Lincoln's lament:

> We have been the recipient of the choicest bounties of heaven. We have been preserved these many years, in peace and prosperity. We have grown in numbers, wealth, and power, as no other nation has ever grown. But we have forgotten God. We have forgotten the gracious hand which preserved us in peace, and multiplied and enriched and strengthened us, and we have vainly imagined, in the deceitfulness of our hearts, that all these blessings were produced by some superior wisdom and virtue of our own. Intoxicated with unbroken success, we have become too self sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us!

Mr. President, what would Lincoln say today?

He would say that America has forgotten God. He has been taken out of our public schools, and he is well on his way out of many of our churches. I have read with astonishment news accounts of debates in certain denominational church groups over whether their ordained ministers should perform a ceremony uniting in marriage two persons of the same sex. I am not a minister or priest. I am not a rabbi. I am not a Biblical scholar. But no one needs a degree from any school of divinity to know that this is impious irreverence toward the institution of holy matrimony. Common sense is enough to tell us that much. If we need further guidance, we need only to go to the first chapter of Genesis wherein we are told that—

> God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, be fruitful, and multiply, and replenish the earth; * * *

A monoclinous, or homophilic, couple cannot be fruitful and multiply.

Mr. President, the decline of America has set in, and its fall will come in due time if the moral and spiritual decline is not arrested and reversed. Materialism is on the throne, and we worship daily at its altar. There must be a recrudescence of the spirit if we are to save the flesh.

Once there was Egypt and Egypt fell.

Once there was Ur and Ur fell.

Once there was Assyria and Assyria fell.

Once there was Babylon and Babylon fell.

Once there was Persia and Persia fell.

Once there was Greece and Greece fell.

Once there was Rome and Rome fell.

Once there was America * * *.

We are in a position to finish that sentence. We will be the authors and poets who conclude that line. God grant to our forefathers and to our posterity that we have the courage to complete that line rightly.

Mr. President, I yield the floor.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 1:07 p.m., recessed until 2:15 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

WORKPLACE FAIRNESS ACT

The Senate continued with the consideration of the bill.

Mr. GORE. Mr. President, the Senate today must break the logjam that has stalled the striker replacement legislation and left American workers vulnerable to the threat that they will lose their jobs if they exercise their right to strike or to negotiate contracts. As a strong supporter and original cosponsor of S. 55, I rise today to state clearly my intention to vote for cloture to allow action on this measure to proceed.

Many people, both inside and outside the Senate, have worked hard to move this bill forward. I want to personally acknowledge the efforts of Senator KENNEDY, the chairman of the Labor and Human Resources Committee; of Senator METZENBAUM, the chairman of the Labor Subcommittee; and of the majority leader, Senator MITCHELL. I am especially grateful for the decision to conduct a second cloture vote this week so that I could cast my vote and again make my strong support of this measure clear. Last week's vote was unexpected when I left to serve as chairman of the Senate delegation to the Earth summit in Brazil, and I regret being unable to cast my vote then, though my intentions to vote for cloture and in support of this bill were made clear to all involved.

Workers in a union shop must be able to negotiate in good faith with their employers without the fear of losing their jobs permanently while they negotiate. For American workers, this legislation represents protection of a basic right and of a sense of fair play; a recognition that workers who exercise their right to negotiate or to strike are doing just that—exercising a right, not anticipating that it will cost them their jobs.

I urge my colleagues to vote with me for cloture to allow this critical legislation to move forward and to send a clear and important message to American workers, who need the critical protection it would provide.

Mr. RIEGLE. Mr. President, I am an original cosponsor of workplace fairness legislation, which is important to the future of and preserving collective bargaining. This legislation is procompetitive and pro-U.S. worker.

S. 55 is an adequate response to the findings of a 1991 General Accounting Office report revealing that since 1985, employers have sued or threatened to use permanent replacements in one out of every three strikes in this country. In addition, this legislation is necessary for putting the U.S. workers on a par with those workers of every other country in the world, including our major trading partners, as far as permanent replacements [PR's] are concerned. The United States is virtually alone in allowing PR's into our work force. Japan, Germany, and France, some our fiercest competitors, do not allow permanent replacements, which dispels accusations about an anticompetitive effect of the legislation.

However, even though S. 55 prevents the hiring of permanent replacements, this legislation still protects the right of employers to hire temporary replacements in the event of a strike. Thus, management is not hindered from continuing business operations during a strike and can utilize temporary replacement workers to assist with such efforts until the strike is over.

The workplace fairness bill will also help maintain fair working conditions and wages for American workers—and reinforce these cornerstones of our Federal labor laws. Although employers may not fire strikers, the Supreme Court, in a 1938 decision, said employers may permanently replace such strikers. In the 1980's when some 12,000 striking air traffic controllers were fired we began to see employers exercising the right to hire permanent replacement workers. We have Ronald Reagan to thank for this Presidential practice, followed by Frank Lorenzo, Greyhound, and more recently Caterpillar and Kroger stores in Michigan.

In my State of Michigan, Kroger has hired 7,000 replacements. In response to this unfortunate situation, the Michigan delegation recently sent a letter to the presidents of United Food and Commercial Workers [UFCW] local unions and the president of Kroger Co. in Michigan urging them to return to the bargaining table to reach settlement and to resolve the strike. Our letter reiterated support for collective bargaining. Accordingly, we hope that some settlement will be reached soon, so that Michigan workers who have seen their future economic security jeopardized by exercising their right to strike can once again be restored to their jobs.

S. 55 is a guarantee for American workers—an assurance that they will not be penalized striking to improve conditions that adversely affect them and their families, while protecting the rights of businesses to continue operating during a strike. Our workers and their families deserve nothing less than the assurances provided under S. 55, the Workplace Fairness Act.

Mr. KOHL. Mr. President, in the short time that I have been in the Senate, few issues have invoked such emotion and obdurate opinion as has the legislation before us.

It is both understandable and unfortunate. Understandable because of the economics for both employer and employee. Unfortunate because of the economics for both employer and employee—and the Nation.

Opponents of S. 55 argue that the inability to permanently replace striking workers will have a devastating impact on business. They claim they won't be able to attract replacement workers without the promise of a permanent job. They say that S. 55 strikes at the very heart of U.S. competitiveness by limiting industry's ability to provide goods and services at affordable prices. They argue that S. 55 reverses 50 years of labor practice and law. And they argue that it tips the balance of management-labor relations.

Proponents of S. 55 argue that the increased use of permanent replacement workers will have a devastating impact on the right to strike. They claim they won't be able to negotiate reasonable wage increases and benefits. They say that S. 55 is vital to protect the rights of organized workers and to maintain a competitive wage and productivity level. They argue that prior to 1980, the use of permanent replacement workers was extremely rare. And they argue that the practice of using permanent replacement workers tips the balance of labor-management relations.

I have listened carefully to the concerns and requests of both sides. Business, for whom I have a natural inclination, strongly urged me to oppose this bill. Labor, with whom I have worked well over the years, strongly urged me to cosponsor the bill. I did not cosponsor the legislation. Substantively, it is difficult to know the precise consequences of this legislation. Politically, it is unlikely that the two sides can be brought together on this issue. It is, paradoxically, a reflection of the all-too-frequent impasse between American management and labor in an increasingly competitive global economy.

In making my decision, I ultimately relied on my substantial experience as a businessman. In my years with Kohl's, I negotiated numerous labor contracts. Regardless of how resistant I may have been to labor's demands, I always understood that the workers were negotiating on behalf of themselves and their families. On some occasions, I stood firm. On other occasions, I reluctantly gave way to demands. On all occasions, I believe, both sides made concessions. We reached an agreement and went back to our business. That was the process.

What struck me with the argument that S. 55 overturned 50 years of labor practice was this: Not once during all of my years of negotiating contracts did I even consider the possibility that our employees wouldn't have their jobs

if they chose to strike. Not once did it occur to me that permanently replacing them was an acceptable option. And yet today, it is an increasingly frequent practice to advertise for permanent replacement workers before the expiration of a labor contract.

The key to collective bargaining, Mr. President is balance and good-faith negotiation. I needed my employees to provide goods and services at competitive prices. And they needed their jobs at Kohl's to provide for their families.

That is the balance, Mr. President, that needs to be restored. In the end, American workers will be paid for what they produce. And employers will profit from both the level and quality of that productivity. What has been missing in too many instances since the PATCO decision is both the balance and the sense of partnership: the understanding that American management and labor are indeed part of the same team in this competitive global market. That each is dependent on the other for gain and profit.

The Packwood amendment is a commendable effort to foster that partnership. It seeks to strengthen the collective bargaining process in this post-PATCO era. It restores the incentive for management and labor to resolve their differences.

Like many of my colleagues, I have hoped for a compromise on this matter. I have hoped that business would stop boycotting this bill, and return to the table to work out differences. I have been told by both labor and business that there is no room for compromise on this matter. Perhaps it has not been agreed to by all sides, but the proposal before us that would utilize a third-party arbitrator is a significant contribution to the debate. I support the Packwood amendment and urge my colleagues to vote for the motion to invoke cloture.

Mr. DURENBERGER. Mr. President, as we reach the end of the Senate's consideration of S. 55 for this year, we are confronted with an unfortunate moment. S 55, like so many pieces of legislation this year, is stalemated. And like so many other urgent national issues, the rights of working people will receive only lip service this year.

Why, we must ask. Because parties on both sides seem more interested in finding an issue than in working out a solution.

Mr. President, the condition of working people in this country is serious. They have been hit with a series of body blows over the last decade. Their jobs have been destabilized by a rash of takeovers, factory closings, and bankruptcies. Their industries have been restructured as a result of deregulation and in some cases reregulation. Their paychecks have been undermined by steadily rising health insurance costs while their health care coverage has been falling. And their job security has been challenged by intensified foreign competition from subsidized products from overseas.

Here are some examples from my own State of Minnesota. Murphy Motor Freight, a long-established Twin Cities company, had 291 Minnesota employees who lost their jobs after motor carrier deregulation in the 1980's. Those workers thought they had stable employment, but their hopes and dreams were shattered after stiff competition forced their company into bankruptcy. Another long-established company, Glendenning Motorways, folded during the eighties as well. That bankruptcy resulted in 325 Minnesota job casualties. And the list goes on and on.

During the recent recession, major Minnesota corporations were forced to lay off workers. For example, I know that Quebecor Printing laid off 224 people last year. My office helped those workers obtain dislocated worker assistance under the Job Training Partnershp Act to help ease the blow, but I know those workers feel shell-shocked.

Mr. President, Minnesotans are feeling the impact of domestic and foreign economic competition, flat wages, and high health care costs. All of these factors together have meant a lower standard of living for working families and have strained the relationship between labor and management. Those are the forces that gave birth to S. 55, and they legitimately call out for solution. And the most unfortunate part of the debate over this bill is that the root causes of S. 55 were never discussed.

As disappointing as it is that we failed to reach a common agreement on solutions to these underlying concerns, it is even more disappointing that we failed to try.

This legislation sailed through the Labor Committee over 10 months ago. For the next 300 days, despite repeated predictions of stalemate and calls for a bipartisan solution, nothing happened. And then in the 11th hour before a cloture vote, a compromise was rolled out, a measure that was nearly as controversial and sweeping as the original bill. Predictably, it was not embraced by moderates of either party, and the Senate failed to invoke cloture yet again. So obviously this bill would not be able to withstand, in either House of Congress, the expected Presidential veto of this bill.

Mr. President, the issue here is what can we do to restore our deteriorating industrial base, the flat or decreasing standard of living, and increasing health care costs. Any changes to our collective bargaining system must be made with an understanding that our declining standard of living is the ultimate problem.

Within that framework, we must make the collective bargaining process work better. Times have changed in the 50 years since the foundations of our current labor law were laid. But the only options available to Senators on this floor were the status quo or a radical change in the collective bargaining system.

Each side of this debate has been able to "wave the bloody shirt," and recite examples of how this employer or that union acted irresponsibly. But no bill can deal with every situation or wipe out all injustices.

If we are going to stick with the collective bargaining process, let us address its worst malfunction: the length of time it requires to adjudicate unfair labor practice claims by the NLRB.

If we are going to replace the collective bargaining process, which in most cases reaches an agreement between workers and employers, let's not try to do so at the 11th hour without benefit of hearings or bipartisan consultation.

For my part, I will continue to work toward a solution to the problems that face our working men and women today. I will continue to work to enact legislation to control health care costs. I will continue to work for sound trade legislation which provide high quality American jobs.

But, Mr. President, as the Senate moves on to its next appointed stalemate, I only wish the seriousness of our resolve to find an answer to the main issue of this bill matched the seriousness of the problem faced by working families.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The bill 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, hereby move to bring to a close the debate on the committee substitute for S. 55, a bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes:

George Mitchell, Howard M. Metzenbaum, Paul Wellstone, Claiborne Pell, Paul Simon, Alan Cranston, Bill Bradley, Harris Wofford, Daniel P. Moynihan, Tom Daschle, Daniel K. Inouye, Barbara A. Mikulski, John F. Kerry, Al Gore, Carl Levin, Max Baucus.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is: Is it the sense of the Senate that debate on the modified amendment in the nature of a substitute for S. 55 to amend the National Labor Re-

lations Act and the Railway Labor Act shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

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

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 121 Leg.]

YEAS—57

Adams	Ford	Mikulski
Akaka	Fowler	Mitchell
Baucus	Glenn	Moynihan
Bentsen	Gore	Nunn
Biden	Graham	Packwood
Bingaman	Harkin	Pell
Bradley	Hatfield	Reid
Breaux	Heflin	Riegle
Bryan	Inouye	Robb
Burdick	Johnston	Rockefeller
Byrd	Kennedy	Sarbanes
Conrad	Kerrey	Sasser
Cranston	Kerry	Shelby
D'Amato	Kohl	Simon
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dixon	Levin	Wellstone
Dodd	Lieberman	Wirth
Exon	Metzenbaum	Wofford

NAYS—42

Bond	Garn	Murkowski
Boren	Gorton	Nickles
Brown	Gramm	Pressler
Bumpers	Grassley	Pryor
Burns	Hatch	Roth
Chafee	Hollings	Rudman
Coats	Jeffords	Sanford
Cochran	Kassebaum	Seymour
Cohen	Kasten	Simpson
Craig	Lott	Smith
Danforth	Lugar	Symms
Dole	Mack	Thurmond
Domenici	McCain	Wallop
Durenberger	McConnell	Warner

NOT VOTING—1

Helms

The PRESIDING OFFICER. On rollcall No. 121, the cloture motion, the yeas are 57, the nays are 42, three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

Mr. EXON. Mr. President, S. 55 obviously, it would appear to this Senator, is dead for at least this session of Congress.

I supported both cloture motions on S. 55 because I, frankly, believe that it is time that we begin to do something about the pendulum that has been swinging to the right and then to the left, and now back to the right, with regard to worker's rights in America. I am not sure that S. 55 was the only way it could have been handled.

I had suggested during the consideration of S. 55 that we try to work out some kind of a compromise because what I saw, Mr. President, was what I have seen all too frequently in the Congress these days, clashes, excellent debate, but in the end nothing getting done.

Once again, even if S. 55 had had cloture invoked, if S. 55 had passed the Congress of the United States thereafter, it was clear the President was going to veto it. Therefore, I must suggest, in all candor, Mr. President, there was much ado about nothing with regard to S. 55; it was doomed from the first time it was introduced. A lot of time, a lot of effort, a lot of talent on both sides of the issue—and there were two sides to this issue—were expended for no good other than the sake of argument and discussion.

All too often we find ourselves today as a Congress in gridlock, gridlock among ourselves, especially in gridlock with the Chief Executive Officer of this land. I suppose that is as it should be because I respect the fact that the President no only has the right to do what he thinks is best but he has a duty to do what he thinks is best for the United States of America. I only lament the fact that once again we seem to be losing the glue that has held us together, and that is the art of compromise. In the final analysis, it came down to S. 55 or nothing.

I also want to salute the two managers of that bill, the distinguished Senator from Ohio and the distinguished Senator from Utah. I thought they did an admirable job. They are two very admirable people who felt very strongly pro and con on the bill.

I only wish, Mr. President, we could learn from our mistakes of the past. Maybe we could return to some kind of compromise or comity in this body when we come up with matters such as S. 55. Certainly, I happen to feel that something should be done in that area. There was a determined effort to now say, because the courts have held as they have, that gives us fairness in the workplace. I do not believe there is fairness in the workplace today, although, I believe most of the businesses, the companies and the corporations, in the United States today fully intend, notwithstanding what we have or have not done, to treat their workers fairly.

There remains the fact, though, that that does not cover all of the workers of the United States. I believe what we should have tried to put into effect was some type of phase-in program to allow the businesses not to hire permanent replacement workers immediately upon the calling of a strike but allowed them over a reasonable period of time to hire a small percentage of replacement workers, if necessary. It seems to me that some procedure such as that could well handle the concerns of both the working people of America, the labor unions of America that represent many of them, and the corporations and business people as well.

What I am saying, Mr. President, is that, once again, unfortunately, the art of compromise left us, vanished from us on a matter which I think should have been addressed. Maybe we will have a chance to look into it again in the new Congress starting next year.

I thank the Chair, and I yield the floor.

Mr. BIDEN. Mr. President, I supported cloture on S. 55 because of the need to establish a more productive relationship between labor and management in this country.

In recent years, the increased threat and use of permanent replacement workers for striking employees has only inflamed the difficult negotiations between workers and management. And more than the workers are losers in these situations—we all lose as our Nation's companies find themselves unable to make the transition to a new world economy.

It is clear that the use of permanent replacement workers has dangerously skewed the balance in labor-management conflicts. None of the companies in our major industrial competitors need the threat of permanent replacements to manage relations with their organized workers, and neither do we. The 1938 Mackay doctrine, cited as the basis of the right to hire permanent replacement workers, is widely regarded as legally and logically insupportable in light of the clear intent of the National Labor Relations Act. It was largely ignored for 4½ decades.

In recent years however, the increased threat of permanent replacement workers has poisoned the atmosphere of legitimate labor relations. The use of the replacement workers has not been used universally, but it has been used enough to get the message across. In fact, according to a study by the General Accounting Office, permanent replacement workers are used or threatened to be used in one out of three strikes.

As even those in the business press have observed, from the Journal of Commerce to Business Week, permanent replacements render useless the legally established right to strike, and unnecessarily deepen and prolong disagreements between management and labor. A study of this approach found that strikes were longer when replacement workers were hired. By restoring the original intent of the Wagner Act, S. 55 restores a measure of trust and good faith to the bargaining process.

And I hope everyone understands that a strike is far from a simple or pleasant option for labor unions. Strikes are economically and emotionally wrenching for union members. I raise this point because so many of the opponents of S. 55 would have us believe that a strike is a painless operation. It would be difficult to be further from the truth. It is only used when all else has been tried but the workers feel they are not being fairly treated.

Too frequently we have lost sight of the shared goals of business and labor—healthy firms and a growing economy that provide good jobs at a decent wage. Passage of S. 55 will benefit both labor and management—removing an illogical and unnecessary impediment to the negotiating process.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, it is now clear that we do not have the necessary 60 votes to invoke cloture and proceed to a vote on the merits of the workplace fairness bill. I accept the fact that we have lost this round in the fight.

And I congratulate my colleague from Utah, Senator HATCH. He has represented his side well. And he has used the Senate rules, which is fair, to prevent a vote on final passage.

But this battle is not over yet. As long as workers continue to lose their jobs because of this unjust and cruel striker replacement rule, we will continue to fight to change the law.

I want to thank the majority leader for bringing this measure to the floor, and for his flexibility in permitting the bill's cosponsors to seek a compromise that might bring us additional votes.

I would also like to thank the chairman of the Committee on Labor and Human Resources, Senator KENNEDY, for his invaluable help in moving the bill through the committee and lending his strong support on the floor.

Senator PACKWOOD also deserves substantial praise for his efforts to bridge the gap between the supporters and the opponents of this measure.

Finally, I would like to thank the many staff, both majority and minority, who worked on this bill. They include Sharon Prost and Chad Westover of Senator HATCH's staff, Chris Miske of Senator PACKWOOD's staff, Sarah Fox of Senator KENNEDY's staff, and Gary Slaiman, Greg Watchman, Jenni Weinreb, and Robin Mahler of my staff.

Last but not least, I would like to thank Jim Brudney, who is leaving the U.S. Senate. He has served on our Labor Subcommittee staff since 1985 and has headed up that staff. His major accomplishments are many.

I wish to compliment him publicly for all that he has done for workers in this country. Without Jim Brudney there probably would not have been a plant-closing law or the Older Workers Benefit Protection Act. He has made substantial contributions on minimum wage, and civil rights, and worker safety, and other labor legislation.

He is, indeed, a committed young man. He has fought hard. He has worked over the weekends. He has worked late at night. He has given of himself. And now, when he soon leaves my staff to take a position as a professor at Ohio State University, I wish him well and thank him for all of his past endeavors and hope that his future endeavors will be equally successful.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. I yield to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I thank the Chair, and I thank the majority leader.

I only want to take perhaps a minute and compliment my good friend from Ohio. He really does believe in what he does on this floor. I admire this. I do too.

I really believe that what has happened here today is the most important thing that has happened in a long time. But I know that he feels otherwise, and I compliment him for it. He is a formidable foe, a formidable Senator, who I think makes a difference in this body.

I have to also say that the staff on the majority side is a very, very good staff. They do a wonderful job within their particular beliefs.

But on my side, I have to compliment Sharon Prost, who is my chief labor counsel, and who I think understands these issues as well, if not better, than anybody who has ever served the U.S. Senate; and Chad Westover, who has worked very hard; as well as other members of my staff. Both of them have done an excellent job and both of them have assisted me to be able to at least explain our side in the best possible manner.

I appreciate the feelings that have been expressed on both sides of this issue. I really believe this is in the best interest of the country. And I really believe that many of my union brothers that I was raised with and union leaders have real skepticism as to whether this was the right way to go. They do not want to throw out years of collective bargaining rules and regulations and statutes and court cases for something that nobody understands and has never been tested before. I believe you will find that they will breathe a sigh of relief as well.

So, again, I compliment my colleague from Ohio and the others who have fought so valiantly.

I thank my fellow colleagues who have voted against cloture, because I think they have done the country a great service.

UNANIMOUS-CONSENT REQUEST—S. 1985

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 458, S. 1985, a bill to establish a commission to review the Bankruptcy Code and to amend the Bankruptcy Code.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. Mr. President, I do not wish to object. We are checking on this side. Until we are completed with that check, I am constrained to object.

The PRESIDING OFFICER. Objection is heard.

Mr. MITCHELL. In light of the objection, it is my intention, as I previously discussed with the Republican leader, to have a brief adjournment to put us in position to move to proceed to the bankruptcy bill, and if we cannot get consent to proceed to it, then we will have to, of course, file cloture on that motion to proceed. And we will do that during the day today, following enough time to determine whether or not we can get consent to go to it.

Mr. DOLE. Will the majority leader yield?

Mr. MITCHELL. Yes, certainly.

Mr. DOLE. We would like to obviate any necessity for cloture being filed. As I indicated to the majority leader, we are checking on it. I was not aware of it until he mentioned it on the floor. We hope to have some report in the next 10 or 15 minutes.

Mr. MITCHELL. Mr. President, I certainly will withhold filing of cloture until that time. I would like to proceed with the process that enables me to make the motion to proceed to the bill, and then we will be on that debatable motion pending further conversation between the Republican leader and myself.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate stand in adjournment for 30 seconds, and that when the Senate reconvenes, the Journal of proceedings be deemed approved to date; the call of the calendar be waived; no motions or resolutions come over under the rule; and the morning hour be deemed to have expired following the second reading of bills and joint resolutions.

Mr. EXON. Reserving the right to object, and I shall not object, I just want a clarification of the matter from the leader. At least this Senator would like to make a statement with regard to the failure to invoke cloture on S. 55.

Would it be possible for the Senator to yield to me for 3 minutes, following the unanimous-consent agreement?

Mr. DECONCINI. I am going to have to object, because I have been waiting to put a statement in the RECORD. So any yielding would have to be mutually worked out.

Mr. MITCHELL. Mr. President, I assure both my colleagues there will be no problem in both of them being accommodated. This process will take no more than a minute and is legislatively necessary to permit me then to move to proceed to the next bill.

The Repubublican leader has indicated he is not yet in a position to give consent to proceed to that. Once I make the motion to proceed, I will then yield the floor, and the Senators can do as they wish. That will be open to debate.

If we can get consent before the end of the day, we will do that and then be on the bankruptcy bill. If we cannot get consent to proceed to it under the rules, I will then file a cloture motion to terminate debate on it, which will ripen under the rules on Thursday.

I renew my request, Mr. President.

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

ADJOURNMENT FOR 30 SECONDS

The PRESIDING OFFICER. The Senate stands in adjournment and will reconvene subject to the unanimous-consent agreement. The Senate will stand adjourned for 30 seconds.

Thereupon, the Senate, at 2:43:36 p.m. on Tuesday, June 16, 1992, adjourned until 2:44 p.m. the same day.

AFTER ADJOURNMENT

TUESDAY, JUNE 16, 1992

The Senate met at 2:44 p.m., pursuant to adjournment, and was called to order by the Presiding Officer [Mr. ADAMS].

BILL READ FOR SECOND TIME AND PLACED ON CALENDAR—H.R. 2039

The PRESIDING OFFICER. Pursuant to rule XIV, the clerk will read the bill, H.R. 2039, for the second time.

The bill clerk read as follows:

A bill (H.R. 2039) to authorize appropriations for the Legal Services Corporation, and for other purposes.

Mr. DOLE. Mr. President, I object to further consideration.

The PRESIDING OFFICER. The bill will be presented and placed on the calendar pursuant to rule XIV.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

MOTION TO PROCEED

Mr. MITCHELL. Mr. President, I move to proceed to Calendar No. 458, S. 1985, a bill to establish a Commission to review the Bankruptcy Code, and to amend the Bankruptcy Code.

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

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

The Senator from Delaware is recognized.

Mr. ROTH. I thank the Chair.

(The remarks of Mr. ROTH pertaining to the introduction S. 2852 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. ROTH. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. ROTH. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. 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. BOND. Mr. President, I ask unanimous consent that I may be permitted to proceed for 5 minutes as if in morning business.

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

REAUTHORIZE HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS THIS YEAR

Mr. BOND. Mr. President, as we discuss enterprise zones and other remedies for the problems facing America's cities, I would like to draw the Senate's attention to an opportunity that we should not let slip by before adjournment. We need to reauthorize housing and community development programs this year, and we should look at this as a chance to take some constructive steps to improve existing housing programs and enact some new initiatives.

Discussions have been held over the past week between the administration and Banking Committee members over the housing bill reauthorization. Few agreements have been reached. Frankly, the negotiations are stalled. We all know how short the legislative year is this year, leaving no time for a protracted partisan battle over the housing bill. If we do not reach bipartisan agreements on major issues, the bill will die this year.

In the wake of the L.A. riots, there has been a lot of talk about the problems facing urban America. If the Congress and the administration want action, we are going to have to work together, find areas of agreement, and make compromises. I believe that is what people expect of us and why they are so frustrated by the gridlock. The Congress and the President have proven that they can block each other's initiatives. It is time now to prove that we can work together and get the job done. On this housing legislation, which will benefit urban areas as well as rural areas, there is a basis for bipartisan agreement.

The administration has put forward some constructive new initiatives such as vouchers for homeownership and safe havens for the homeless. The Banking Committee draft bill includes these plus some committee initiatives such as provisions to reduce lead paint hazards and to solve problems with the mixing of the elderly and disabled in elderly public housing. There is a terrible problem in my State—particularly at the Blumeyer housing project in St. Louis—with elderly residents being threatened by unsafe living conditions and disabled residents having inadequate housing choices. These problems should be addressed this year, and solutions should not be allowed to fade away in a haze of partisan bickering.

There are a few important problems with the committee's housing bill as it currently stands. The bill undoes the agreement we reached in 1990 on the HOME Program which required a different percentage match from States and cities depending on whether the cities and States were using the money for tenant assistance, rehabilitation, or new construction of housing. In 1990, the administration was willing to agree to the HOME Program if there were a higher match for new construction to give local jurisdictions an incentive for rehabilitation and tenant assistance. The match was waived entirely by the 1991 appropriations bill, so jurisdictions have never actually paid the match required by law.

The draft bill before the committee eliminates the tiered match and substitutes a flat 25-percent match. This is a real mistake and jeopardizes any chance to get a housing bill through this year. It is just not right to undo a compromise before it has even had a chance to go into effect. If we had some real life experience that the tiered match was undermining efforts to provide housing assistance through HOME, I would feel differently, but we do not. This provision should be dropped.

Another area in the bill which needs additional work is the public housing reform section. Secretary Kemp's proposal to let residents of troubled public housing choose new management for their development make a lot of sense, as does his proposal to let nonprofits, resident management corporation, or cities and States rehabilitate and takeover public housing which is more than 50 percent vacant. The point of these proposals is to give tenants more choices and to create new structures where old structures have failed. These provisions fit well with the public housing reforms already in the bill which are aimed at revitalizing distressed public housing and improving its management.

I have additional amendments to the bill, but the purpose of this statement

is not to go through every little gripe I have, but rather to outline two of my priorities and to encourage my colleagues to work constructively to improve the bill. We need a housing reauthorization this year, not posturing or gridlock.

One final point. I urge our colleague working on the supplemental appropriations for youth employment to move, and move now. In my State, the city of Kansas City vitally needs funds for summer youth employment. The mayor and other leaders have said that money does no good if it comes in July.

If we are going to provide some meaningful jobs for the youth in our cities, we have to do it now, not next month. I urge my colleagues to move forward and get the vitally needed summer youth funds moving.

I thank the Chair.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I as' unanimous consent that the order for the quorum call be rescinded.

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

Is there further debate on the motion? If not, the question is on agreeing to the motion.

The motion was agreed to.

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1985) to establish a commission to review the bankruptcy code, to amend the bankruptcy code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. FINDINGS.

Congress finds that—

(1) there was a record number of Federal bankruptcy filings for the calendar year of 1991;

(2) the smooth and efficient operation of the bankruptcy system is vital to the continued growth and vitality of our Nation's economy;

(3) debtors that file for bankruptcy are entitled and deserve full and complete information regarding the effects and consequences of filing for bankruptcy;

(4) creditors of a debtor that files for bankruptcy deserve and need full and timely information regarding the circumstances of a debtor's bankruptcy filing; and

(5) individual debtors, creditors, the bankruptcy system, and the national economy may be generally better served by the successful completion of a reorganization of debts under chapter 13 or a liquidation of debts under chapter 7 of the Bankruptcy Code, depending upon the circumstances of each particular case; however, it is vital to the efficient operation of the bankruptcy system that each debtor consider and understand the consequences of both options.

TITLE I—BANKRUPTCY REVIEW COMMISSION

SEC. 101. SHORT TITLE.

This title may be cited as the "National Bankruptcy Review Commission Act".

SEC. 102. ESTABLISHMENT.

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

SEC. 103. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 108; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

SEC. 104. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) Two members of the Senate, 1 from each of the 2 major political parties, appointed by the President pro tempore of the Senate.

(3) Two members of the House of Representatives, 1 from each of the 2 major political parties, appointed by the Speaker of the House of Representatives.

(4) Two members appointed by the Chief Justice.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 90 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was not appointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

SEC. 105. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 106. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 107. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 108. REPORT.

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 109. TERMINATION.

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 108.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 to carry out this title.

TITLE II—COMMERCIAL AND CREDIT MATTERS

SEC. 201. DEFINITION OF PERSON FOR PURPOSES OF SECTION 1102.

Section 101(42) of title 11, United States Code, as redesignated by section 501, is amended to read as follows:

"(42) 'person' includes an individual, a partnership, and a corporation, but does not include a governmental unit, except that a governmental unit is a person for purposes of section 1102 to the extent that it—

"(A) acquires an asset from a person as a result of operation of a loan guarantee agreement;

"(B) is a receiver or liquidating agent of a person;

"(C) is a guarantor of pension benefits of the debtor or an affiliate of the debtor; or

"(D) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986.

SEC. 202. ANTI-ALIENATION.

(a) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 503, is amended—

(1) by striking "or" at the end of paragraph (16);

(2) by adding "or" at the end of paragraph (17); and

(3) by adding at the end the following new paragraph:

"(18) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing such withholding and collection for the benefit of a pension, profit sharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or 457 or a governmental plan under 414(d) of the Internal Revenue Code of 1986, which is sponsored by the employer of the debtor, or an affiliate, successor or predecessor of such employer, to the extent that the amounts withheld and collected are used solely for payments relating to a loan from the plan that satisfies the requirements of section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or, in the case of a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(b) EXCEPTIONS TO DISCHARGE.—Subsection 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(13) owed to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), 408(k) or a governmental plan under 414(d) or 457 of the Internal Revenue Code of 1986 pursuant to a loan permitted under section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or pursuant to a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(c) PROPERTY OF THE ESTATE.—Subsection 541(c) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), assets and benefits accumulated for the benefits of a debtor pursuant to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or a governmental plan under 414(d), or 457 of the Internal Revenue Code of 1986 and any rights of debtor to such assets or benefits shall be excluded from the property of the estate.

"(B) Subparagraph (A) does not apply to plan assets or benefits attributable to contributions of the debtor to the extent that such contributions were in excess of the applicable limits on such contributions under section 401(k), 401(m), or 415 of the Internal Revenue Code of 1986.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) The plan may not materially alter the terms of a loan described in section 362(b)(18).".

(e) PLAN CONFIRMATION.—Section 1325 of title 11, United States Code, is amended—

(1) in subsection (b)(2) by striking "debtor and" and inserting "debtor (not including income that is withheld from the debtor's wages for the purposes stated in section 362(b)(18)) and"; and

(2) in subsection (c) by striking "income to" and inserting "income (except income that is withheld from a debtor's wages for the purposes stated in section 362(b)(18) after confirmation of a plan) to".

SEC. 203. CASH COLLATERAL.

Section 363(a) of title 11, United States Code, is amended by adding at the end the following new sentence: "If the cash collateral includes an interest in rents or leases, in real property, held by a creditor and duly recorded in the public records, such interest shall be deemed perfected for purposes of this title upon the filing of a petition under section 301 or 302, or upon the entry of an order for relief under section 303.".

SEC. 204. PREFERENCES.

Section 550(a)(1) of title 11, United States Code, is amended by striking "; or" and inserting ", if the transfer is avoided as to the initial transferee or other entity from whom the trustee seeks recovery; or".

SEC. 205. SMALL BUSINESS CHAPTER.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 501, is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), and (62) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), and (63); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'small business' means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate liquidated secured and unsecured debts as of the date of the petition do not exceed $1,500,000.".

(b) WHO MAY BE A DEBTOR UNDER CHAPTER 10.—Section 109 is amended by adding at the end the following new subsection:

"(h) Only a small business may be a debtor under chapter 10.".

(c) TEMPORARY CHAPTER APPLICABLE TO SMALL BUSINESSES.—Title 11, United States Code, is amended by inserting after chapter 9 the following new chapter:

"CHAPTER 10—SMALL BUSINESSES

"SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

"Sec.
"1001. Definitions for this chapter.
"1002. Commencement of action.
"1003. Trustee.
"1004. Rights and powers of debtor.
"1005. Removal of debtor as debtor-in-possession.
"1006. Property of the estate.
"1007. Conversion or dismissal.

"SUBCHAPTER II—THE PLAN

"1021. Filing of plan.
"1022. Contents of plan.
"1023. Postpetition disclosure and solicitation.
"1024. Modification of plan before confirmation.
"1025. Confirmation hearing.
"1026. Confirmation of plan.
"1027. Payments.
"1028. Effect of confirmation.
"1029. Modification of plan after confirmation.
"1030. Revocation of order of confirmation.

"Subchapter I—Officers, Administration, and the Estate

"§ 1001. Definitions for this chapter

"In this chapter, 'disposable income' means income that is received by a debtor and that is not reasonably necessary to be expended for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

"§ 1002. Commencement of case

"(a) ELECTION BY DEBTOR.—A person that is eligible to be a small business debtor may commence a case under this chapter by filing a voluntary petition electing to be treated as a small business.

"(b) CONVERSION.—

"(1) CHAPTER 11 TO THIS CHAPTER.—Upon the motion of a party in interest, and after notice and hearing, the court may designate a debtor against whom an order for relief has been entered in a case under chapter 11 as a small business and order that the case be converted to a case under this chapter.

"(2) THIS CHAPTER TO TITLE 11.—Upon the motion of a party in interest, and after notice and a hearing, the court may determine that a person subject to an order for relief electing treatment under this chapter does not qualify as a small business, and that the case shall be converted to a case under chapter 11, 12, or 13.

"§ 1003. Trustee

"(a) PERSON TO SERVE.—If the United States trustee has appointed a person under section 586(b) of title 28 to serve as a standing trustee in cases under this chapter and if that person qualifies as a trustee under section 322, that person shall serve as a trustee in any case filed under this chapter. If such a person has not been appointed, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case.

"(b) DUTIES.—The trustee shall—

"(1) perform the duties described in section 704 (2), (3), (5), (6), (7), and (9);

"(2) perform the duties described in section 1106(a) (3) and (4) if the court, for cause and on

a request of a party in interest, the trustee, or the United States trustee, so orders;

"(3) appear and be heard at any hearing that concerns—

"(A) the value of property subject to a lien;

"(B) the operation of the business activity of the person by the debtor;

"(C) the filing of a plan and the approval of a disclosure statement;

"(D) confirmation of a plan;

"(E) modification of a plan after confirmation; or

"(F) the sale of property of the estate;

"(4) ensure that the debtor timely files a plan and disclosure statement;

"(5) ensure that the debtor commences making timely payments required by a confirmed plan;

"(6) if the debtor ceases to be a debtor-in-possession, perform the duties described in sections 704(8) and 1106(a) (1), (2), (6), and (7); and

"(7) investigate the financial affairs of the debtor.

"§ 1004. Rights and powers of debtor

"Subject to such limitations as the court may prescribe, a debtor-in-possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties described in section 1106(a) (3) and (4), of a trustee serving in a case under this chapter, including operating the debtor's business activities.

"§ 1005. Removal of debtor as debtor-in-possession

"(a) ORDER FOR CAUSE.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor-in-possession if cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, is shown.

"(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor-in-possession.

"§ 1006. Property of the estate

"(a) PROPERTY INCLUDED.—Property of the estate includes, in addition to property described in section 541, all property of the kind specified in that section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, whichever comes first.

"(b) POSSESSION.—Except as provided in section 1007 or in a confirmed plan or order confirming a plan, a debtor shall remain in possession of all property of the estate.

"§ 1007. Conversion or dismissal

"(a) CONVERSION BY DEBTOR.—A debtor may convert a case under this chapter to a case under chapter 7 at any time if the debtor may be a debtor under that chapter. Any waiver of the right to convert under this subsection is unenforceable.

"(b) DISMISSAL BY DEBTOR.—On request of the debtor at any time, if the case has not been converted under section 706 or 1112, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

"(c) CONVERSION OR DISMISSAL AT REQUEST OF PARTY IN INTEREST.—

"(1) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 (if the debtor may be a debtor under this chapter) or may dismiss the case for cause.

"(2) CAUSE.—For purposes of paragraph (1), cause includes—

"(A) unreasonable delay or gross mismanagement by the debtor that is prejudicial to creditors;

"(B) nonpayment of any fees and charges required under chapter 123 of title 28;

"(C) failure to file a plan timely under section 1021;

"(D) failure to file a disclosure statement timely under section 1023;

"(E) failure to commence making timely payments required by a confirmed plan;

"(F) denial of confirmation of a plan under section 1026 or denial of a request made for additional time to filing another plan or a modification of a plan;

"(G) material default by a debtor with respect to a term of a confirmed plan;

"(H) revocation of an order of confirmation under section 1030 or denial of confirmation of a modified plan under section 1029;

"(I) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

"(J) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

"Subchapter II—The Plan

"§ 1021. Filing of plan

"The debtor shall file a plan not later than 90 days after the date of entry of the order for relief under this chapter, except that the court may, for cause shown, and after notice and hearing, shorten or extend that period if such shortening or extension is substantially justified.

"§ 1022. Contents of plan

"(a) REQUIRED CONTENTS.—Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

"(1) designate, subject to section 1122, classes of claims, other than claims of a kind described in section 507(a)(7), and classes of interests;

"(2) specify any class of claims or interests that is not impaired under the plan;

"(3) specify the treatment of any class of claims or interests that is impaired under the plan;

"(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of a particular claim or interest;

"(5) provide adequate means for the plan's implementation, such as—

"(A) retention by the debtor of all or any part of the property of the estate;

"(B) transfer of all or any part of the property of the estate to 1 or more entities, whether organized before or after the confirmation of such plan;

"(C) merger or consolidation of the debtor with 1 or more persons;

"(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among persons having an interest in the property of the estate;

"(E) satisfaction or modification of liens;

"(F) cancellation or modification of indentures and similar instruments;

"(G) curing or waiving of defaults;

"(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

"(I) amendment of the debtor's charter; or

"(J) issuance of securities of the debtor or of an entity described in subparagraph (B) or (C)—

"(i) in exchange for cash, property, existing securities, or claims or interests in property; or

"(ii) for any other appropriate purpose;

"(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of a corporation described in paragraph (5) (B) or (C), of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing the preferred class in the event of default in the payment of dividends; and

"(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to an officer, director, or trustee.

"(b) ADDITIONAL CONTENTS.—Subject to subsection (a), a plan may—

"(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

"(2) subject to section 365, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under that section;

"(3) provide for—

"(A) settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

"(B) retention and enforcement by the debtor, the trustee, or a representative of the estate appointed for such purpose, of any such claim or interest;

"(4) provide for the sale of all or substantially all of the property of the estate and the distribution of the proceeds of the sale among holders of claims or interests; and

"(5) include any other appropriate provision not inconsistent with this title.

"§ 1023. Postpetition disclosure and solicitation

"In a case under this chapter, an acceptance or rejection of a plan may not be solicited after the commencement of the case from a holder of a claim or interest with respect to the claim or interest unless, at the time or before such solicitation, there is transmitted to the holder the plan or a summary of the plan and a written disclosure statement that includes information sufficient to show whether or not the plan meets the requirements of section 1026.

"§ 1024. Modification of plan before confirmation

"(a) IN GENERAL.—A debtor may modify a plan at any time before confirmation but may not modify the plan so that the plan as modified fails to meet the requirements of section 1022.

"(b) EFFECT.—After a debtor files a modification under this section, the plan as modified becomes the plan.

"(c) ACCEPTANCE.—A holder of a secured claim that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless—

"(1) the modification provides for a change in the rights of the holder under the plan before modification; and

"(2) the holder changes the holder's previous acceptance or rejection.

"§ 1025. Confirmation hearing

"(a) HEARING.—After expedited notice, the court shall hold a hearing on confirmation of the plan.

"(b) OBJECTION TO CONFIRMATION.—A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan.

"(c) OBJECTION TO DISCLOSURE OF INFORMATION.—A party in interest, the trustee, or the United States trustee may object to the disclosure of information that is required to be disclosed under section 1023.

"(d) CONCLUSION OF HEARING.—Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

"§ 1026. Confirmation of plan

"(a) CRITERIA.—Except as provided in subsection (b), the court shall confirm a plan if—

"(1) the plan complies with all applicable provisions of this title;

"(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

"(3) the plan has been proposed in good faith and not by any means forbidden by law;

"(4) the value of property to be distributed under the plan on account of each unsecured claim, as of the effective date of the plan, is not less than the amount that would be paid on the claim if the estate of the debtor were to be liquidated under chapter 7 on that date;

"(5) with respect to each allowed secured claim provided for by the plan—

"(A) the holder of the claim has accepted the plan;

"(B)(i) the plan provides that the holder of the claim will retain the lien securing the claim; and

"(ii) the value of property to be distributed by the trustee or the debtor under the plan on account of the claim, as of the effective date of the plan, is not less than the allowed amount of the claim; or

"(C) the debtor surrenders the property securing the claim to the holder;

"(6) the debtor will be able to make all payments under the plan and to comply with the plan;

"(7) except to the extent that the holder of a claim has agreed to a different treatment of the claim, the plan provides that—

"(A) with respect to a claim of a kind described in section 507(a) (1) or (2), on the effective date of the plan, the holder of the claim will receive on account of the claim cash equal to the allowed amount of the claim;

"(B) with respect to a class of claims of a kind described in section 507(a) (3), (4), (5), or (6), each holder of a claim of the class will receive—

"(i) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims; or

"(ii) if the class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claims; and

"(C) with respect to a claim of a kind described in section 507(a)(7), the holder of the claim will receive on account of the claim deferred cash payments, over a period not to exceed 6 years after the date of assessment of the claim, of a value, as of the effective date of the plan, equal to the allowed amount of the claim; and

"(8) confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless liquidation or reorganization is proposed in the plan.

"(b) CONFIRMATION NOTWITHSTANDING NONCONFORMANCE OR OBJECTION.—

"(1) IN GENERAL.—If all of the applicable requirements of subsection (a) other than paragraph (5) are met with respect to the plan, or if an objection to confirmation is filed by any party in interest, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of that paragraph or notwithstanding the objection if the plan does not discriminate unfairly, and is equitable and fair, with respect to each class of claims or interest that is impaired under the plan.

"(2) CRITERIA FOR DETERMINATION.—(A) A plan shall be considered to be equitable and fair with respect to a class of unsecured creditors if the plan provides that all of the debtor's projected disposable income to be received in the 3-year period, or such other period as the court may approve not to exceed 5 years, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.

"(B) Confirmation of a plan shall not be denied solely because the interest of a debtor or class of interests will be preserved under the plan.

"§ 1027. Payments

"(a) RETENTION BY TRUSTEE.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan.

"(b) DISTRIBUTION FOLLOWING CONFIRMATION.—If a plan is confirmed, the trustee shall distribute in accordance with the plan payments and funds retained pursuant to subsection (a).

"(c) RETURN FOLLOWING NONCONFIRMATION.—If a plan is not confirmed, the trustee shall return any payments and funds retained pursuant to subsection (a), after deducting—

"(1) any unpaid claim allowed under section 503(b); and

"(2) if a standing trustee is serving in the case, the percentage fixed for the standing trustee under section 1003.

"(d) PAYMENTS PRECEDING PAYMENTS TO CREDITORS.—Before or at the time of each payment to creditors under the plan, there shall be paid—

"(1) any unpaid claim of a kind described in section 507(a)(1); and

"(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee under section 1003.

"(e) PAYMENTS TO CREDITORS.—Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

"§ 1028. Effect of confirmation

"(a) PERSONS BOUND.—Except as provided in subsection (d) (2) and (3), a confirmed plan binds the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner of the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

"(b) VESTING OF PROPERTY.—Except as otherwise provided in the plan or order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

"(c) FREEDOM OF PROPERTY FROM CLAIMS AND INTERESTS.—Except as provided in subsection (d) (2) and (3), and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and general partners of the debtor.

"(d) DISCHARGE OF DEBTOR.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, in the plan or in the order confirming the plan, the confirmation of a plan—

"(A) discharges the debtor from any debt that arose before the date of confirmation and any debt of a kind described in section 502 (g), (h), or (i), whether or not—

"(i) a proof of claim based on a debt is filed or deemed to be filed under section 501;

"(ii) such claim is allowed under section 502; or

"(iii) the holder of such claim has accepted the plan; and

"(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

"(2) DEBTS EXCEPTED UNDER SECTION 523.—The confirmation of a plan does not discharge a debtor from a debt excepted from discharge under section 523.

"(3) NONDISCHARGE IN CERTAIN CIRCUMSTANCES.—The confirmation of a plan does not discharge a debtor if—

"(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

"(B) the debtor does not engage in business after consummation of the plan; or

"(C) the debtor would be denied a discharge under section 727(a) if the case were a case under chapter 7.

"§ 1029. Modification of plan after confirmation

"(a) IN GENERAL.—At any time after confirmation of a plan but before the completion of payments under the plan, the plan may be modified, on request of the debtor, the trustee, or the holder of any allowed unsecured claim, to—

"(1) increase or reduce the amount of payments of claims of a particular class provided for by the plan;

"(2) extend or reduce the time for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of the claim other than under the plan.

"(b) APPLICABILITY OF REQUIREMENTS.—Sections 1022 (a) and (b) and 1024 and the requirements of section 1025(a) apply to a modification under subsection (a).

"(c) LIMITATION.—A plan modified under subsection (a) may not provide for payments over a period that expires after 3 years after the date on which the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after 5 years after that date.

"§ 1030. Revocation of order of confirmation

"(a) REVOCATION FOR FRAUD.—On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1028, and after notice and a hearing, the court may revoke the order if the order was procured by fraud.

"(b) DISPOSITION OF CASE AFTER REVOCATION.—If the court revokes an order of confirmation under subsection (a), the court shall dispose of the case under section 1007, unless, within a time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1029.".

(d) TECHNICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended in the table of chapters by inserting after the item relating to chapter 9 the following new item:

"10. Small Businesses ..... 1001".

(2) CROSS-REFERENCES IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended—

(A) in section 321(a) by inserting "10," after "7," each place it appears;

(B) in section 322(a) by inserting "1005" after "703,";

(C) in section 326(b)—

(i) by striking "12 or 13" and inserting "10, 12, or 13"; and

(ii) by striking "1202(a) or 1302(a)" and inserting "1005, 1202(a), or 1302(a)";

(D) in section 327—

(i) in subsection (b) by inserting "1005," after "721,"; and

(ii) in subsection (c) by inserting "10," after "7,";

(E) in section 329(b)(1)(B) by inserting "10," after "chapter";

(F) in section 330(c) by striking "12 or 13" and inserting "10, 12, or 13";

(G) in section 346—

(i) in subsection (b) by inserting "10," after "7,";

(ii) in subsection (g)(1)(C) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (i)(1) by inserting "10," after "7,";

(H) in section 347—

(i) in subsection (a)—

(I) by inserting "1027," after "726,"; and

(II) by inserting "10," after "7,"; and

(ii) in subsection (b)—

(I) by inserting "10," after "9,"; and

(II) by inserting "1026," after "943(b),";

(I) in section 348—

(i) in subsections (b), (c), and (e) by inserting "1009," after "706," each place it appears; and

(ii) in subsection (d) by inserting "1009," after "section";

(J) in section 362(c)(2)(C) by inserting "10" after "9,";

(K) in section 363—

(i) in subsection (c)(1) by inserting "1006," after "721,"; and

(ii) in subsection (l) by inserting "10," after "chapter";

(L) in section 364(a) by inserting "1006, 1007," after "721,";

(M) in section 365—

(i) in subsections (d)(2) and (g) (1) and (2) by inserting "10," after "9," each place it appears; and

(ii) in subsection (g)(2) (A) and (B) by inserting "1009," after "section" each place it appears;

(N) in section 502(g) by inserting "10," after "9,";

(O) in section 523(a) by inserting "1028(d)," after "727,";

(P) in section 524—

(i) in subsections (a)(1), (c)(1), and (d) by inserting "1028(d)," after "727," each place it appears; and

(ii) in subsection (a)(3) by inserting "1028(d)," after "523,";

(Q) in section 546(a)(1) by inserting "1005," after "702,";

(R) in section 557(d)(3) by inserting "1005," after "703,";

(S) in section 706—

(i) in subsection (a)—

(I) by inserting "10," before "11,"; and

(II) by inserting "1009," after "section"; and

(ii) in subsection (c) by striking "12 or 13" and inserting "10, 12, or 13";

(T) in section 726(b) by inserting "1009," after "chapter under section";

(U) in section 1106(a)(5) by inserting "10," after "7,";

(V) in section 1306(a) (1) and (2) by inserting "10," after "7," each place it appears; and

(W) in section 1307—

(i) in subsection (b) by inserting "1009," after "706,";

(ii) in subsection (d) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (e) by inserting "10," after "7,".

(3) BANKRUPTCY RULES.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act shall apply to cases filed under chapter 10 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by this Act.

(4) AMENDMENT OF TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended—

(A) in section 157(b)(2)(B) by inserting "10," after "chapter";

(B) in section 586—

(i) in subsection (a)—

(I) in paragraph (1)(C)—

(aa) by striking "12 and 13" and inserting "10, 12, and 13"; and

(bb) by inserting "1025, 1029," after "sections"; and

(II) in paragraph (3) in the matter preceding subparagraph (A), by inserting "10," after "7,"; and

(C) in subsections (b), (d), and (e) by striking "12 or 13" each place it appears and inserting "10, 12, or 13"; and

(D) in section 1930(a)—

(i) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(ii) by inserting after paragraph (2) the following new paragraph:

"(3) For a case commenced under chapter 10 of title 11, $600.".

(5) AMENDMENT OF THE BANKRUPTCY, JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986.—Section 301 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (100 Stat. 3118) is amended in subsections (d) and (e) by inserting "10," after "7," each place it appears.

(e) APPLICATION OF CHAPTER 10 OF TITLE 11.—

(1) SELECTION OF DEMONSTRATION DISTRICTS.—Not later than 90 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall—

(A) select 8 judicial districts in which chapter 10 of title 11, United States Code, shall be effective for a period of 3 years; and

(B) identify those districts by notice in the Federal Register.

(2) EFFECTIVE PERIOD.—Chapter 10 of title 11, United States Code, shall become effective only in the 8 judicial districts selected under paragraph (1), beginning on the date that is 90 days after the date of enactment of this Act and ending on the date that is 3 years after that date.

(3) REPEAL.—(A) Chapter 10 of title 11, United States Code, is repealed on the date that is 3 years after the date that is 90 days after the date of enactment of this Act. All cases commenced or pending under that chapter and all matters and proceedings in or relating to those cases shall be conducted and determined under that chapter as if the chapter had not been repealed. The substantive rights of parties in connection with those cases, matters, and proceedings as if the chapter had not been repealed.

(B) The Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall prepare and report to the Senate and the House of Representatives, respectively, not later than 90 days before the repeal date described in subparagraph (A), legislation proposing such technical amendments as may be necessary or appropriate at that time in view of the repeal made by subparagraph (A).

SEC. 206. SUPPLEMENTAL PERMANENT INJUNCTIONS.

Section 524 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue an injunction to supplement the injunctive effect of a discharge under this section.

"(B) An injunction may be issued under subparagraph (A) to enjoin persons and governmental units from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery of, on, or with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(A)(i), except such legal action as is expressly allowed by the injunction or plan of reorganization.

"(2)(A) If the requirements of subparagraph (B) are met, after entry of an injunction under paragraph (1) any proceeding that involves the validity, application, construction, or modification of the injunction or of this subsection in respect to the injunction may be commenced only in the district court in which the injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

"(B) The requirements of this subparagraph are that—

"(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

"(I) is to be funded in whole or in part by the securities of one or more debtors involved in the plan of reorganization and by the obligation of such debtor or debtors to make future payments;

"(II) is to own, or by the exercise of rights granted under the plan could own, a majority of the voting shares of—

"(aa) each such debtor;

"(bb) the parent corporation of each such debtor; or

"(cc) a subsidiary of each such debtor that is also a debtor; and

"(III) is to use its assets or income to pay claims and demands; and

"(ii) the court finds that—

"(I) the debtor may be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

"(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

"(III) pursuit of such demands outside the procedures prescribed by the plan may threaten the plan's purpose to deal equitably with claims and future demands; and

"(IV) as part of the process of seeking approval of the plan of reorganization, a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan.

"(3)(A) If the requirements of paragraph (2)(B) are met and the order approving the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization proceedings, after the time for appeal of the order that issues or affirms the plan of reorganization—

"(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

"(ii) no entity that is a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against it by reason of its becoming such a transferee or successor; and

"(iii) no entity that makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making such loan, be liable with respect to any claim or demand made against it, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

"(B) Subparagraph (A) is not intended to—

"(i) imply that such an entity would, if this paragraph were not applicable, have liability by reason of any of the acts described in subparagraph (A);

"(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance; or

"(iii) relieve any debtor of its obligation to comply with the terms of the plan of reorganization or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

"(4)(A) Subject to subparagraph (B), an injunction issued under paragraph (1) shall be valid and enforceable against all persons and governmental units that it addresses.

"(B) With respect to a demand that is made subsequent to the confirmation of a plan against any debtor or trust that is the subject of an injunction issued under paragraph (1), the injunction shall be valid and enforceable if, as part of the proceedings leading to its issuance, the court appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert such a demand.

"(5) In this subsection, the term 'demand' means a demand for payment, present or future, that—

"(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

"(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by an injunction issued under paragraph (1); and

"(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B) the payment of which demand, by a trust described in paragraph (2)(A)(i), is provided for by the plan.

"(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

"(7) This subsection governs any injunction of the nature described in paragraph (1)(B) entered before or after the date of enactment of this subsection.

"(8) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of enactment of this subsection.

SEC. 207. EXEMPTION.

Section 109(b)(2) of title 11, United States Code, is amended by inserting after "homestead association" the following: "a small business investment company licensed by the Small Business Administration under section 301 (c) and (d) of the Small Business Investment Act of 1958 (15 U.S.C. 681 (c) and (d)),".

SEC. 208. PRE-MERGER NOTIFICATION.

Section 363(b)(2) of title 11, United States Code, is amended by amending subparagraphs (A) and (B) to read as follows:

"(A) notwithstanding subsection (a) of that section, the notification on behalf of the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b)(1) of that section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of that section; or

"(ii) by the court, after notice and hearing.".

SEC. 209. STATUS CONFERENCE.

Section 1121 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of this section, the court, on its own motion or on the motion of any party in interest, may hold a status conference regarding any case under this chapter, after notice to creditors and other parties in interest. At such a conference or any subsequent status conference set by the court, the court may issue an order prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including orders that—

"(1) set a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(2) set a date by which the debtor, or trustee if one has been appointed, shall confirm a plan;

"(3) set the date by which a party in interest other than a debtor may file a plan;

"(4) fix the notice to be provided regarding the hearing on approval of the disclosure statement;

"(5) provide that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan;

"(6) direct the use of standard-form disclosure statements, plans, or other forms that have been adopted by the court; and

"(7) set the date by which the debtor must accept or reject an executory contract.".

SEC. 210. AIRPORT LEASES.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) Notwithstanding paragraphs (1), (2), and (4), and subject to subparagraphs (B) and (C) of this paragraph, if the trustee in a case under any chapter of this title does not assume or reject an unexpired lease or executory contract with an airport operator under which the debtor has a right to the use of possession of an airport terminal, aircraft gate, or related facility within 60 days after the date of the order for relief, or within such additional time as the court sets under subparagraph (B) during such 60-day period, such lease or executory contract is deemed rejected, and the trustee shall immediately surrender the airport terminal, gate, or related facility to the airport operator.

"(B) The court may enter an order extending beyond 120 days after the date of the order for relief the time for assumption or rejection of an unexpired lease or executory contract described in subparagraph (A) only after finding that such an extension of time does not cause substantial harm to the airport operator or to airline passengers. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of use of airport terminals, gates, or related facilities subject to the unexpired lease or executory contract; the existence of competing demands for the use of the airport terminals, gates, or related facilities; the size and complexity of the case; and air carrier competition at the airport. The burden of proof for establishing cause for an extension under this subparagraph shall be with the trustee. Any order entered under this subparagraph shall be without prejudice to the rights of a party in interest to request, at any time, a shortening or termination of the extension of time granted under this subparagraph.".

(b) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall apply in all proceedings commenced on or after January 1, 1992. In a proceeding commenced on or after January 1, 1992, that is pending on the date of enactment of this Act, the 120-day period provided in section 365(d)(5)(A) of title 11, United States Code, as added by subsection (a), shall commence on the date of enactment of this Act.

SEC. 211. SINGLE ASSET REAL ESTATE.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 205(a), is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), (62), and (63) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), (63), and (64); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'single asset real estate' means real property, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto;".

(b) AUTOMATIC STAY.—Section 362 of title 11, United States Code, is amended—

(1) in subsection (d)—

(A) in paragraph (1) by striking "or" at the end;

(B) in paragraph (2) by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(3) with respect to a stay of an act against real property under subsection (a), if the property is single asset real estate, and the debtor has not, within 90 days after the filing of a petition under section 301 or section 302 of this title, or the entry of an order for relief under section 303 of this title, filed a plan of reorganization which has a reasonable possibility of being confirmed within a reasonable period of time, or the debtor has commenced payment to the holder of a claim secured by such real property of interest on a monthly basis at a current fair market rate on the value of the creditor's secured interest in such property. The court may extend such 90-day period only for cause and only if an order granting such an extension is entered within such 90-day period,"; and

(2) by adding at the end the following new subsection:

"(i) Upon request of a party in interest in a case under this title in which the property of the estate is single asset real estate, the court, with or without a hearing, shall grant such limited relief from a stay provided under subsections (a)(1), (a)(3), and (a)(4) of this section, as is necessary to allow such party in interest to proceed during the pendency of the case under this title with a foreclosure proceeding, whether judicial or nonjudicial, which had been commenced before a petition was filed under this title, up to but not including the point of sale of such real property.".

SEC. 212. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114(e) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3) Notwithstanding any other provision of this title, if there are not sufficient unencumbered assets available to make a timely payment required by paragraph (1), an order approving the use, sale, or lease of cash collateral or the obtaining of credit or incurring of debt shall require the debtor to use such cash collateral, credit, or incurring of debt to make the payment.".

TITLE III—INDIVIDUAL DEBTORS

SEC. 301. BANKRUPTCY PETITION PREPARERS.

Chapter 1 of title 11, United States Code, is amended by adding at the end the following new section:

"SEC. 110. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

"(a) DEFINITION.—In this section—

"(1) the term 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) the term 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) SIGNING OF DOCUMENTS.—(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(c) FURNISHING OF IDENTIFYING NUMBER.—(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies the individuals who prepared the document.

"(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of

each individual who prepared the document or assisted in its preparation.

"(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(d) FURNISHING OF COPY TO THE DEBTOR.—(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(e) AUTHORIZATION TO EXECUTE DOCUMENTS.—(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor unless—

"(1) the debtor has first given the preparer written authorization to execute the document; or

"(2) the preparer is otherwise authorized by law to execute the document.

"(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).

"(f) PUNITIVE DAMAGES.—If a bankruptcy case or related proceeding is dismissed because of the negligence or intentional disregard of this title or the bankruptcy rules by a bankruptcy petition preparer, the court, on its own motion or on motion of the debtor, shall order the bankruptcy petition preparer to pay to the debtor—

"(1) the greater of—

"(A) $2,000; or

"(B) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

"(2) reasonable attorneys' fees and costs in moving for damages under this subsection.

"(g) CRIMINAL PENALTY.—If a bankruptcy case or related proceeding is dismissed because of a willful attempt by a bankruptcy petition preparer in any manner to disregard this title or the bankruptcy rules, the bankruptcy petition preparer shall be fined $5,000.

"(h) INJUNCTIVE RELIEF.—

"(1) IN GENERAL.—A debtor for whom a bankruptcy petition preparer has prepared as document for filing, the United States trustee in the district in which the bankruptcy petition preparer resides or has a principal place of business, or the United States trustee in the district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

"(2) CONDUCT.—(A) In an action under paragraph (1), if the court finds that—

"(i) a bankruptcy petition preparer has—

"(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

"(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

"(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

"(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

"(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in clause (i) (I), (II), or (III) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

"(3) ATTORNEY'S FEE.—The court shall award to a debtor who brings a successful action under this subsection reasonable attorney's fees and costs of the action.

"(h) UNAUTHORIZED PRACTICE OF LAW.—Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.".

SEC. 302. WHO MAY BE A DEBTOR.

Section 109(e) of title 11, United States Code, is amended to read as follows:

"(e)(1) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of less than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13.

"(2) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of more than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13 if there is no objection raised on the record by any creditor prior to the date that is 10 days after the date on which the meeting of creditors pursuant to section 341 is concluded, and no order of confirmation shall be entered prior to the date by which such an objection is required to be made.".

SEC. 303. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the United States trustee shall orally examine the debtor under oath and make recommendations on a preserved record regarding the debtor's knowledge of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title;

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d);

"(5) the debtor's duties under section 521;

"(6) the potential penalties and fines for committing fraud or other abuses of this title; and

"(7) the consequences of substantial abuse under section 707(b).".

SEC. 304. AUTOMATIC STAY.

Section 362(e) of title 11, United States Code, is amended by adding at the end the following new sentence: "In no event shall the final hearing on a request under subsection (d) be concluded later than 60 days after the filing of the request, except upon a finding of good cause by the court.".

SEC. 305. EXEMPTIONS.

Section 522(a) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (1) and redesignating that paragraph as paragraph (2);

(2) by inserting before paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(1) 'antique', for purposes of subsection (d), means an item that was more than 100 years old at the time it was acquired by the debtor, including such an item that has been repaired or renovated without changing its original form or character;";

(3) by redesignating paragraph (2), as designated prior to the date of enactment of this Act, as paragraph (4); and

(4) by inserting after paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(3) 'household goods', for purposes of subsection (d), means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the debtor and the debtor's dependents, but does not include—

"(A) works of art;

"(B) electronic entertainment equipment (except to the extent of 1 television and 1 radio);

"(C) antiques; and

"(D) jewelry other than wedding rings.".

SEC. 306. EFFECT OF DISCHARGE.

Section 524(d) of title 11, United States Code, is amended—

(1) by striking "(d) In" and inserting "(d)(1) In";

(2) by striking "(1) inform" and inserting "(A) inform";

(3) by striking "(A) that" and inserting "(i) that";

(4) by striking "(B) of" and inserting "(ii) of";

(5) by striking "(i) an" and inserting "(I) an";

(6) by striking "(ii) a" and inserting "(II) a";

(7) by striking "(2) determine" and inserting "(B) determine";

(8) in the third sentence of paragraph (1), as designated by paragraph (1) of this section, by striking "If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then" and inserting "Prior to granting a discharge, if the debtor desires to make an agreement of the kind specified in subsection (c)(6),"; and

(9) by adding at the end the following new paragraph:

"(2) If a debtor fails to attend a hearing under paragraph (1) concerning a reaffirmation agreement—

"(A) the hearing shall be rescheduled;

"(B) the court shall cause the debtor to be given written notice that failure to attend the rescheduled hearing will cause the reaffirmation agreement to be deemed void; and

"(C) if the debtor fails to attend the rescheduled hearing, a discharge shall be granted without further delay.".

SEC. 307. PREFERENCES.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "property" and inserting "property, or with respect to which the creditor has taken all necessary steps to perfect under State law and the failure to perfect within 20 days is due solely to the operations of a governmental unit;".

SEC. 308. SUBSTANTIAL ABUSE.

Section 707 of title 11, United States Code, is amended—

(1) by adding at the end the following new subsection:

"(c)(1) Nothing in this section prohibits a party in interest from providing information concerning the debtor's assets, liabilities, or financial affairs to the United States Trustee.

"(2) The United States trustee shall provide the debtor with—

"(A) notice that a party in interest has provided the United States trustee with information pursuant to subsection (c)(1), including the identities of all sources of information provided;

"(B) a copy of all documents presented to the United States trustee pursuant to subsection (c)(1); and

"(C) an opportunity to respond to the issues raised by a party in interest pursuant to subsection (c)(1).'; and

(2) in subsection (b) by inserting after the first sentence the following new sentence: "The court shall find that a petition constitutes a substantial abuse of this chapter if the petition was

filed in bad faith or if the debtor, without substantial hardship, has the ability to pay the debtor's debts as they become due.".

SEC. 309. CONVERSION OR DISMISSAL.

Section 1307 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g) The clerk of the court shall give notice to all creditors not later than 30 days after the entry of an order of conversion or dismissal.".

SEC. 310. CONTENTS OF PLAN.

Section 1322(b)(2) of title 11, United States Code, is amended by striking "claims;" and inserting "claims, but the plan may not modify a claim pursuant to section 506 of a person holding a primary or a junior security interest in real property or a manufactured home (as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)) that is the debtor's principal residence, except that the plan may modify the claim of a person holding such a junior security interest that was undersecured at the time the interest attached to the extent that the interest remains undersecured;".

SEC. 311. PAYMENTS.

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

SEC. 312. STAY OF ACTION AGAINST CODEBTOR.

Section 1301 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking "or" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(4) the claim is for an amount valued at not greater than $25,000, and such relief is not a substantial impediment to an effective reorganization by the debtor, and unless the codebtor has demonstrated an inability to pay such claim or a substantial portion of such claim."; and

(2) by adding at the end the following new subsection:

"(e) If the relief sought by the creditor pursuant to subsection (c)(4) is granted by the court, the codebtor shall by subrogation have the same rights as the creditor, under this title, against the debtor to the extent of the amount of relief obtained from the codebtor. Pending any delay in obtaining relief from the codebtor, after the court order, payment by the debtor shall continue to be paid to the creditor, but subject to the developing subrogation rights of the codebtor.".

SEC. 313. PLAN CONTENTS.

Section 1322 of title 11, United States Code, as amended by section 202(d), is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding State law and subsection (b)(2), and whether or not a claim is matured or reduced to judgment, a debtor who at the time of filing a petition under this title possesses any legal or equitable interest, including a right of redemption, in real property securing a claim—

"(1) may cure a default and maintain payments on the claim pursuant to subsection (b)(3) or (5); or

"(B) in a case in which the last payment on the original payment schedule for the claim is due before the date on which the final payment under the plan is due, may provide for the payment of the claim pursuant to section 1325(a)(5).".

TITLE IV—MISCELLANEOUS

SEC. 401. DELAY OF REPEAL OF CHAPTER 12 (FAMILY FARMERS).

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note; 100 Stat. 3124) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

SEC. 402. DOLLAR ADJUSTMENTS.

(a) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000"; and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(b) PRIORITIES.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000";

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000"; and

(3) in paragraph (6) by striking "$900" and inserting "$1,800".

(c) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000";

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400";

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400"; and

(B) by striking "$4,000" and inserting "$8,000";

(4) in paragraph (4) by striking "$500" and inserting "$1,000";

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800"; and

(B) by striking "$3,750" and inserting "$7,500";

(6) in paragraph (6) by striking "$750" and inserting "$1,500";

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000"; and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(d) APPOINTMENT OF EXAMINER IN CERTAIN CIRCUMSTANCES.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 403. TRUSTEE COMPENSATION.

Section 326(a) of title 11, United States Code, is amended to read as follows:

"(a) In a case under chapter 7 or chapter 11, the court may allow reasonable compensation under section 330 for the trustee's services, payable after the trustee renders such services, computed as a percentage of all monies disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor for the debtor's exemptions, but including holders of secured claims, as follows:

"(1) In a case in which such moneys do not exceed $1,000,000, reasonable compensation may be 25 percent of the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, and 5 percent of any amount in excess of $50,000.

"(2) In a case in which such moneys exceed $1,000,000, reasonable compensation, in addition to that prescribed in paragraph (1), may be 3 percent of the excess of those moneys over $1,000,000, but the court may allow additional compensation to the trustee for exceptional services not to exceed 25 percent of the compensation otherwise due.".

SEC. 404. TAX PROVISIONS.

(a) SPECIAL TAX PROVISIONS.—Section 346 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(k) A trustee or debtor in possession shall establish and maintain a separate bank account for post-petition taxes that are required to be withheld or collected from third parties, and shall also make deposit of such taxes therein when withheld or collected and remit such taxes to a governmental unit at the time and in the manner required under Federal, State, or local government law, unless ordered by the court to do otherwise.".

(b) AUTOMATIC STAY.—Section 362(b)(9) of title 11, United States Code, is amended to read as follows:

"(9) under subsection (a), of an audit by a governmental unit to determine tax liability, of the issuance to the debtor by a governmental unit of a notice of tax deficiency, of a demand for tax returns, or of an assessment of an uncontested or agreed upon tax liability;".

(c) CONVERSION OR DISMISSAL OF CHAPTER 11 CASE.—Section 1112(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(d) CONFIRMATION OF PLAN.—Section 1129(a)(9)(C) of title 11, United States Code, is amended by striking "such claim, of a value" and inserting "such claim, or, if a claim has not been assessed, after the date of confirmation of the claim, of a value".

(e) CONVERSION OR DISMISSAL OF CHAPTER 12 CASE.—(1) Section 1208(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (8);

(B) by striking a period at the end of paragraph (9) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(10) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by the laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(2) Section 1307(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of order for relief under this chapter.".

SEC. 405. CREDITOR COMMITTEE COMPENSATION.

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a committee representing creditors or equity security holders appointed under section 1102 in the performance of its powers and duties under that section.".

SEC. 406. JUDICIAL CONFERENCE REPORT.

Not later than 180 days after the date of enactment of this Act, the Judicial Conference of the United States shall produce and submit to the appropriate committees of Congress a report containing a description of—

(1) the efforts of the Federal judiciary to automate and computerize the Federal bankruptcy courts;

(2) the types of information that are currently available to Congress and the public regarding the number, size, and types of bankruptcy cases filed in the Federal courts;

(3) the types of additional information that the Federal judiciary believes are necessary and desirable to enhance its ability to manage the affairs of the bankruptcy system; and

(4) the projected timetable for being able to supply those additional types of information to Congress and the public in the future.

SEC. 407. SERVICE OF PROCESS.

Rule 7004(b)(3) of the Bankruptcy Rules is amended—

(1) by inserting ", by certified or registered mail," after "complaint"; and

(2) by inserting ", by certified or registered mail," after "copy".

SEC. 408. PROFESSIONAL FEES.

Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2)(A) In determining an amount of reasonable compensation to be awarded under paragraph (1)(A), the court—

"(i) may, on its motion or on the motion of the United States trustee or any party in interest, award compensation that is less than the amount of compensation that is requested; and

"(ii) shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(I) the time spent on such services;

"(II) the rates charged for such services;

"(III) whether the results achieved through the services were beneficial toward the completion of a case under this title; and

"(IV) the total value of the estate and the amount of funds available for distribution to creditors.

"(B) In calculating the time spent on and the hourly rates for services for the purpose of subparagraph (A)(ii), the court shall consider—

"(i) whether tasks were performed within a reasonable number of hours commensurate with the complexity of the problem addressed; and

"(ii) whether the requested hourly rates are reasonable based on the customary rate charged by experienced practitioners in nonbankruptcy cases.

"(3) The court shall not allow compensation for duplicative services or services that are not reasonably likely to benefit the debtor's estate.

"(4)(A) If the court awarded interim fee compensation pursuant to section 331, the court shall take into account the interim fee compensation in awarding final fee compensation.

"(B) If the court determines that interim fee compensation was awarded in an amount that exceeded the reasonable value of services rendered, the court may order the return of the excess to the trustee or other entity that paid it.

SEC. 409. TRUSTEE DUTIES.

Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural and substantive guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly except when circumstances warrant different treatment), applications for compensation and reimbursement filed under section 330 of title 11; and

"(ii) filing with the court comments with respect to such an application and, when the United States Trustee deems it to be appropriate, objections to any such application.

TITLE V—TECHNICAL CORRECTIONS

SEC. 501. TITLE 11, UNITED STATES CODE.

Title 11, United States Code, is amended—

(1) in the table of chapters by striking the item relating to chapter 15;

(2) in section 101—

(A) by striking paragraph (39);

(B) by redesignating paragraphs (40) through (51) as paragraphs (41) through (52), respectively;

(C) by redesignating paragraphs (36) through (38) as paragraphs (37) through (39), respectively;

(D) by inserting after paragraph (35) the following paragraph:

"(36) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; and

"(F) mask work protected under chapter 9 of title 17, to the extent protected by applicable nonbankruptcy law;";

(E) in paragraph (39) (as redesignated by subparagraph (C)) by striking "and" after the semicolon;

(F) by inserting after paragraph (39) (as redesignated by subparagraph (C)) the following paragraph:

"(40) 'mask work' has the meaning given it in section 901(a)(2) of title 17;";

(G) by redesignating paragraphs (52) and (53) (as designated before the date of enactment of this Act) as paragraphs (54) and (55), respectively;

(H) by inserting after paragraph (52) (as redesignated by subparagraph (B)) the following paragraph:

"(53) 'settlement payment' means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade;"; and

(I) by striking both paragraphs (54), both paragraphs (55), both paragraphs (56), and both paragraphs (57) (as designated before the date of enactment of this Act) and inserting the following:

"(56) 'stockbroker' means a person—

"(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;

"(57) 'swap agreement' means—

"(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

"(B) any combination of the foregoing; or

"(C) a master agreement for any of the foregoing together with all supplements;

"(58) 'swap participant' means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor;

"(59) 'timeshare interest' means that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;

"(60) 'timeshare plan' means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years;

"(61) 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary of involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption; and

"(62) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.";

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302";

(4) in section 346 (a) and (g)(1)(C) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(5) in section 348—

(A) in subsection (b) by striking "728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "728 (a) and (b), 1021, 1028, 1102(a), 1110(a)(1), 1121 (b) and (c), 1141(d)(4), 1146 (a) and (b), 1201(a), 1221, 1228(a), 1301(a), and 1305(a)"; and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307";

(6) in section 349(a) by striking "109(f)" and inserting "109(g)";

(7) in section 362(b)—

(A) by striking "or" at the end of paragraph (10);

(B) in paragraphs (12) and (13) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46, United States Code";

(C) in paragraph (14), as added by section 102 of Public Law 101-311 (104 Stat. 267) at the end of the subsection, by removing it from the end of the subsection, inserting it after paragraph (13), and striking the period at the end and inserting a semicolon; and

(D) by redesignating paragraphs (14), (15), and (16), as added by section 3007(a) of the Student Loan Default Prevention Initiative Act of 1990 (104 Stat. 1388-28), as paragraphs (15), (16), and (17), striking "or" at the end of paragraph (16), as redesignated by this subparagraph, and adding "or" at the end of paragraph (17), as redesignated by this subparagraph;

(8) in section 363(c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(9) in section 364(a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(10) in section 365—

(A) in subsection (g)(2) (A) and (B) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307"; and

(B) in subsection (n)(1)(B) by striking "to to" and inserting "to";

(11) in section 507(d) by striking "(a)(3), (a)(4), (a)(5), or (a)(6)" and inserting "(a) (3), (4), (6), or (7)";

(12) in section 522(d)(10)(E)(iii) by striking "408, or 409 Internal Revenue Code of 1954" and inserting "section 401(b), 403(b), 408, or 409" of the Internal Revenue Code of 1986";

(13) in section 523(a) by striking "1141., 1228(a), 1228(b)," and inserting "1141, 1228 (a) or (b),";

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting "1328(a)(1)";

(B) in subsection (c)(4) by striking "recission" and inserting "rescission"; and

(C) by inserting "and" at the end of subsection (d)(1)(B)(ii);

(15) in section 542(e) by striking "to to" and inserting "to";

(16) in section 543(d)(1) by striking "of equity" and inserting "if equity";

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302";

(18) in section 553—

(A) in subsection (a)—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),";

(19) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307";

(20) in section 724(d) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(21) in section 726(b) by striking "section 1112 1208" and inserting "section 1112, 1208,";

(22) in section 743 by striking "clerk" and all that follows through "Commission" and inserting "clerk shall give the notice required by section 342 to SIPC and to the Commission";

(23) in section 745(c) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(24) in section 1104(c) by striking "then the United States trustee, after consultation with parties in interest shall" and inserting "the United States trustee, after consultation with parties in interest, shall";

(25) in section 1110(a) by striking "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301), or vessels of the United States, as defined in subsection (B)(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))" and inserting "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301), or documented vessels, as defined in section 30101(1) of title 46, United States Code";

(26) in section 1129(a)—

(A) by striking the semicolon at the end of paragraph (4) and inserting a period; and

(B) in paragraph (12) by striking "section 1930," and inserting "section 1930 of title 28,";

(27) in section 1226(b)(2)—

(A) by striking "section 1202(d) of this title" and inserting "section 586(b) of title 28"; and

(B) by striking "section 1202(e) of this title" and inserting "section 586(e) of title 28";

(28) in section 1302(b) by striking "and" at the end of paragraph (3); and

(29) in section 1328(a)(2) by striking "of" and all that follows through the semicolon and inserting "of the kind described in section 523(a) (5), (8), or (9);".

SEC. 502. TITLE 28, UNITED STATES CODE.

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

Mr. HEFLIN. Mr. President, today I rise to discuss with my colleagues legislation which I introduced last November to significantly reform the bankruptcy system. This legislation, S. 1985, is a result of a bipartisan effort with the ranking member of the Subcommittee on Courts and Administrative Practice, Senator CHARLES GRASSLEY of Iowa.

We have worked diligently on this legislation since its introduction to craft a package of amendments to the Bankruptcy Code which we believe are important and necessary.

This Nation is facing a record number of bankruptcy court filings from both individuals and corporations. There were approximately 940,000 filings, almost a million filings during the 1991 calendar year, and the administrative office of courts only expects this number to rise.

I noticed in today's Washington Post the headline "Bankruptcy Filings Up 9.5 Percent." This is an Associated Press article. "Americans filed a record number of applications for bankruptcy protection during the first quarter of the year, the American Bankruptcy Institute said yesterday."

In my home State of Alabama, in the northern district of Alabama, the number of filings have risen from 10,223 in 1986 to approximately 22,000 filings for the current calendar year. Overall, the number of bankruptcy filings has nearly tripled in little over a decade.

This growth in filings is a result of a number of social and economic factors which are unrelated to the code. The purpose of our Nation's bankruptcy laws is to try to put Humpty Dumpty back together again.

This legislation is a measured response which seeks to address issues which have become highlighted in the bankruptcy system over the last several years. The Judiciary Committee has worked in a consensus-building fashion in an effort to enact legislation to respond to the call for reform that has arisen and are highlighted by this significant increase in filings.

This bill was developed out of a series of hearings conducted last spring and summer. During those hearings the subcommittee heard from nearly 40 witnesses over 5 public meetings of the subcommittee and received numerous additional statements and communications from those participating in making suggestions to the subcommittee.

This legislation was introduced and designed to address a number of important bankruptcy issues which were identified during the course of those hearings. Subsequently, the Judiciary Committee improved and modified this bill to address additional substantive issues and to ensure that the bill's provisions are technically correct and workable as a result of the time, attention, and hard work of the committee. I am pleased to note that this bill was favorably reported out of committee by a 14-to-0 vote.

Admittedly, this bill appears to be lengthy and complex, and it is. The bill contains five titles, which cut across the Bankruptcy Code and addresses many important issues.

The first title of the bill establishes a new National Bankruptcy Review Commission. This Commission would be similar to the Burdick Commission of the early 1970's that resulted in the current Bankruptcy Code. It should be noted that this Commission is designed to review and not to rewrite the entire Bankruptcy Code. Its purpose is to allow further thoughtful study of the functions and balances which are currently built into the Bankruptcy Code and to provide Congress with recommendations to address areas in which the Bankruptcy Code may be improved and modernized. For example, areas which need and deserve the review of a Bankruptcy Commission are how environmental liabilities should be treated under the code, how ERISA and the tax reform legislation of 1986 work within the confines of the code, the problems of international insolvency, and whether the judicial process can be improved to speed and clarify the entire bankruptcy process.

Title 2 of the bill addresses commercial and credit issues in bankruptcy. This title contains a number of important proposals.

Section 201, makes clarifications regarding the parties who may sit on creditor committees during a chapter 11 bankruptcy. This section would allow the Pension Benefit Guarantee Corporation and State pension funds to be eligible for membership on these creditor committees. This modification reflects the policy that some governmental entities, but not all, should be allowed to participate on these committees when the interest being protected by such entities is not strictly the Government's interest, but the interests of pensioner's assets.

Section 202 contains amendments designed to enhance the protections given pension plans in bankruptcy and resolve what is known as the antialienation problem. This problem arises when a bankruptcy judge orders an ERISA qualified plan to make a disbursement to an individual who has filed for bankruptcy in order to pay that individual debtor's creditors. Such an involuntary disbursement is in violation of ERISA law and may lead to the disqualification of an ERISA plan. However, if the disbursement is not made, a company risks facing the contempt authority of the bankruptcy court. This section seeks to address this issue by providing stability and protection of pension plans.

Section 203. This section clarifies the status of cash collateral in bankruptcy. In some States, where an interest in rents has been perfected by recording, some court's find this fact satisfactory for perfecting under the Bankruptcy Code. As a result, some creditors who believed they had fully secured interests have been caught short, even when

proper notice has been given through the recording of the interest. It should be noted that this amendment is restricted to the Bankruptcy Code, that no right to or priority in rents or leases is conferred by this section, and that this section in no way preempts State law on these questions regarding perfection of security interests.

Section 204. This section seeks to overturn the Deprizio line of opinions begun in *Levit* v. *Ingersoll—in re V.N. Deprizio Construction Co.*—874 F.2d 1186, 7th cir. 1989. This case turned upon issues involving guarantees and who may be considered an "insider" for purposes of the Bankruptcy Code. The specific language of this section has received a great deal of attention in order to narrowly but clearly overrule this series of opinions. We believe that we have accomplished this task. The specific language contained in the substitute bill which is before the Senate is different from that which was reported by the committee. We believe that we have improved upon that language which is reflected in this bill, and that it accomplishes its task of returning the understanding of the status of the law to that which predated the Deprizio opinion.

Section 205. This section is one of the major features of this legislation and calls for a proposal to aid small business bankruptcies by creating a pilot program in which small businesses could file for a reorganization without having to use the cumbersome features of a chapter 11 bankruptcy. This legislation conceives of the proposed small business bankruptcy chapter to be tested in eight judicial districts for a period of 3 years. I believe that such an approach balances the concerns of substantially rewriting the Bankruptcy Code without enough experience and information, with the need for congressional action to address the problems faced by small businesses when they are forced to face a bankruptcy. I believe that this is a thoughtful, balanced, and measured method of addressing problems found in the Bankruptcy Code.

Section 206. This section has been the subject of considerable attention. The section provides that, under certain circumstances, a court may issue a supplemental permanent injunction barring certain types of claims against a reorganized debtor and channeling those claims to a trust funded by the securities of, and future payments by, the debtor. This section would only be in effect where a super-majority of affected claimants vote to approve a reorganization plan which creates a trust mechanism for future claimants. This section makes clear that the debtor's obligations under the plan or reorganization are in no way diminished. However, it provides certainty that the trust mechanism is irrevocable except upon appeal. This section seeks to parallel that which has occurred in the Manville Corp.'s bankruptcy, and signal congressional approval of such a trust mechanism in some very limited cases.

Section 207. This section would prohibit small business investment companies from being able to file for bankruptcy. These companies often operate similar to small banks who make loans to small businesses, and the current Bankruptcy Code prohibits both banks and insurance companies from filing for bankruptcy because alternative administrative schemes already exists to handle these types of financially troubled institutions. Small business investment companies have full rights under procedures set out by the Small Business Administration to reorganize and liquidate, and therefore, allowing them the ability to file for bankruptcy is duplicative. By taking this very simple step, the Congressional Budget Office believes that there would be a decrease of outlays of $51 million for fiscal year 1992.

Sections 208 and 209. These sections are important clarifications to the Bankruptcy Code in order to signal how the bankruptcy should operate in a chapter 11 case. Section 208 clarifies the relationship between bankruptcy proceedings and the procedures established under section 7a of the Clayton Act for reviewing proposed transactions by Federal antitrust authorities, while section 209 provides the explicit authority for the bankruptcy courts to manage their cases and dockets. While courts may not go beyond the bounds of the Bankruptcy Code, I believe that this section is desirable for giving an explicit expression of authorization which is already being exercised by some courts.

Section 210. This section is designed to expedite the decisions by air carriers who file for bankruptcy to determine whether to accept or reject their airport gate leases. This section strikes a balance between protecting the debtor airline's ability to make a business decision in a timely fashion with protecting individual airports and the flying public by giving them some assurance that airport gates will be utilized to their fullest extent. In the past, some courts have been lax in requiring airlines to make these decisions, and as a result, substantial harm has occurred. By creating a lengthy period in which the airline may make these decisions, and then through shifting the burden of proving that substantial harm is not arising from the continued indecision to accept or reject these leases, I believe the committee has acted properly and thoughtfully in addressing this issue.

Section 211. This section was added on to the committee reported bill at the suggestion of my colleague, Senator GRASSLEY. This section would create a statutory definition of "single-asset real estate" that is limited to the investment property of a debtor who has filed for bankruptcy. In such situations, this section would expedite the relief from automatic stay in cases involving single-asset real estate where realistic plans of reorganization are not forthcoming. This section would further allow foreclosure proceedings, which were commenced prior to the filing for bankruptcy, to continue up to, but not including, the point of sale in order to ensure the prompt sale of property if relief from the automatic stay provisions of the Code are granted by the bankruptcy court.

Section 212. This section is the final section which was added to the bill prior to the full committee consideration. This section was suggested and authorized by Senator METZENBAUM, and makes clear that retiree health benefits generally are to be paid in a manner similar to other administrative expenses during the pendency of a chapter 11 reorganization. It is important to note that this plan does not modify what can be agreed upon pursuant to a plan or reorganization but simply enhances the protection and payment of retiree health benefits.

The third title of this bankruptcy bill addresses the application of the Code when individual debtors are involved in the bankruptcy system. This title seeks to substantially aid the bankruptcy process and its relationship to individual debtors. In my opinion, it is the most important part of this legislation. Rather than following the current trend of going into straight bankruptcies under chapter 7, this title seeks to increase and encourage the use of chapter 13 bankruptcies, in which wage earners reorganize their debts and are given the opportunity overtime to pay creditors the money owed.

The bill provides for important procedures by which debtors who file for straight bankruptcy can learn that they have other alternatives, including filing under chapter 13 of the Bankruptcy Code and their ability to transfer their filing under chapter 7 to a chapter 13 case. In my opinion, this title is drafted with the clear view of encouraging the use of chapter 13 bankruptcies.

During the course of our hearings, it became very apparent that chapter 13 is often the best overall process for debtors, creditors, and the national economy. Numerous bankruptcy judges have indicated that most individuals want to pay their debts in a manner similar to the program offered under chapter 13 of the Code. Unfortunately, the use of this chapter is not widespread throughout the country, and many people are simply not informed that this option is available when they seek the Bankruptcy Codes protection. This title contains many provisions that take into account these concerns.

Section 301. This section makes an important contribution to this bill, and the language contained in the current version is substantially different from that which was in the bill as introduced. However, both the previous language and the more sophisticated current version seek to address the growing problem of bankruptcy preparers who abuse the system in the course of preparing documents for debtors to file in bankruptcy court. This section establishes important procedures to police the wrongdoing by such preparers. This section is substantially patterned after the current law involving tax preparers and their obligations to those whom they aid in filing tax forms. This section provides criminal and injunctive penalties for those violating its provisions. Further, it explicitly recognizes that this section should not be construed to provide authority for conduct which is not otherwise prohibited by law, such as the practice of law.

Section 302. This section raises the threshold dollar limitations for those persons eligible to file for chapter 13 bankruptcies from $350,000 to $1 million. This section also removes the current distinctions involving secured versus unsecured debt. I understand that in many cases persons who would otherwise deserve and desire the ability to file under chapter 13 have been prohibited due to this dollar limitation. In adopting this section, I believe Congress will recognize the desirability of chapter 13 and provide for its greater use by those in the bankruptcy system.

Section 303. This section, I believe, is again a crucial element to this bankruptcy bill. This section seeks to ensure that debtors are fully knowledgeable of the bankruptcy process and some of its most important features. As I previously noted, many debtors desire to pay off their debts; however, some attorneys have simply never fully explained the benefits of this chapter to their clients, and as a result, an uniformed debtor is only left with the option of filing a chapter 7 bankruptcy. By requiring the U.S. trustee or his designee to discern an understanding by the debtors of their options and obligations in bankruptcy, the entire bankruptcy system is better served.

Section 304. This section provides an amendment to the automatic stay provisions currently found in the Bankruptcy Code. This section provides that, except upon a finding of good cause, final hearings on a motion for relief from the automatic stay must take place within 60 days of the filing of the motion. I understand and appreciate the crucial timing issues involved with the orderly administration of a bankruptcy case, however, the prompt action by a bankruptcy court is necessary in order to protect the rights of all parties in bankruptcy, and thereby enhances the entire bankruptcy process. Therefore, I believe this section is important and meritorious.

Section 305. I believe that this section is a modest amendment to the Bankruptcy Code to create a Federal definition, for purposes of the exemptions section of the Bankruptcy Code, that is in line with other Federal law. The definitions of antiques and household goods contained in this section follow a 1985 Federal Trade Commission rule on credit practices, and therefore aid in streamlining credit practices through parallel provisions of Federal law. Finally, it should be noted that this section does not have the force of law in the overwhelming majoring of States who have determined to establish their own exemption provisions.

Section 306. This section is designed to accomplish two tasks by clarifying issues of reaffirmation of a debt by a debtor. First, this section provides that if a debtor is represented by counsel, it is not necessary for that debtor to appear before the court to reaffirm a debt. Second, in cases where a debtor is not represented by counsel, this section assures that the hearing before the Bankruptcy Court takes place prior to the discharge being granted to the debtor. I believe that both of these clarifications are needed and are long overdue.

Section 307. This section is another clarification and modernization of the Bankruptcy Code. This section alters the current 10-day time provision to 20 days for a creditor to perfect a security interest after a debtor has filed for bankruptcy. By extending this time provision, this section simply protects the rights of creditors who may be abiding by State law which provides for a lengthier time to perfect, and thereby prejudicing the rights that the creditor may have in bankruptcy. This section further acknowledges the problem outlined in *in re Tressler*, 771 F.2d 791 (3rd. cir 1985), in which the operations of a governmental unit may prejudice a creditor by failing to take timely action in the perfection of a security interest. I believe this section is a good example of why this bankruptcy legislation is needed in order to improve and modernize our current bankruptcy laws.

Section 308. This is a section over which there has been considerable debate and discussion. This section seeks to first recognize the ability of parties to bring to the attention of the U.S. Trustee Office information about a debtor in bankruptcy. Second, this section seeks to provide congressional guidance regarding questions involving substantial abuse under section 707 of the Bankruptcy Code. I believe that this section simply outlines two noninclusive standards for the Bankruptcy Courts to determine whether substantial abuse has occurred.

Section 309. This section is a minor improvement and codification of current practices in many courts by simply mandating that bankruptcy clerks give notice to all creditors when an order for conversion or dismissal occurs in a chapter 13 bankruptcy.

Section 310. I believe that the section is one of the most important provisions of this bill. This section would protect the mortgage-backed securities market, and address the issue of cramdowns in chapter 13 bankruptcies. In a cramdown, an individual debtor bifurcates a secured claim against real estate into two components or claims: a secured component—measured by the fair market value of the real estate—and an unsecured component—measured by the excess of secured debt over the fair market value of the real estate. This section would completely protect the entire claim in cases of first mortgages on residential real estate that is the debtor's primary residence. The section would generally protect junior security interests except in circumstances where the security interest was undersecured at the time of contracting, and only could be subject to a cramdown to the extent that it remains undersecured at the time of the bankruptcy. By inference, this section does acknowledge a court's ability to bifurcate residential real estate under section 1322 by the operations of section 506 of the Bankruptcy Code. By protecting these important interests, the mortgage marketplace is protected, stability of this marketplace enhanced, and the refore, the consuming public who are currently faced with uncertainty regarding residential real estate is served.

Sections 311, 312 and 313. These sections provide further refinement regarding the operations of chapter 13. Section 311 simply directs courts and trustees to begin making payments to creditor as soon as practicable. Such distributions should be made in a timely fashion, However, each case will be dependent upon the circumstances of an individual case. Section 312 is simply another means provided for under the code to ensure that creditors are able to received moneys legitimately owed to them by parties who can pay. This section provides another avenue of relief from the automatic stay in order for a creditor to be able to go against a comaker or guarantor of a debt. Section 313 clarifies that Federal bankruptcy rights provided in sections 1322 and 1325 preempt conflicting State laws. It's intention is to overturn cases such as *In re Roach*, 824 F.2d 1370 (3rd Cir. 1987) and *In re Perry*, 945 F.2d 61 (3rd Cir. 1991), in order to allow debtors to use their preemptive Federal bankruptcy rights to save their homes from foreclosure.

The fourth title of this bill contains miscellaneous provisions to update the Bankruptcy Code. Included in this title are changes in monetary figures to adjust for inflation, provisions to address compensation questions, provisions to

address service of process questions, and reforms to clarify tax issues in the Bankruptcy Code. This title also extends the life of chapter 12, the family farmer bankruptcy chapter, for 2 years in order to ensure that Congress is able to act in a timely fashion to review the provisions and even the need for this chapter. This chapter also mandates the judicial conference to report to Congress regarding its efforts to modernize and computerize the entire bankruptcy system.

Finally, this title in sections 408 and 409 seeks to add to the body of law regarding attorney fees in bankruptcy. These sections have been adopted at the suggestion of Senator METZENBAUM who has been at the forefront of this question. These sections have been subject to improvements and modifications from the initial sections adopted by the committee in order to meet a number of constructive criticisms by both the public and the Department of Justice.

The final title of this legislation is a technical title which seeks to correct a number of minor problems which have arisen since the Bankruptcy Code was enacted in 1978.

During the course of this speech, I have restricted my comments to many of the provisions contained in the bill that was reported out of the Judiciary Committee on a unanimous vote. I expect that I will have further comments on these and other sections of the bill as debate on this measure continues.

I conclude these remarks by stating the obvious: I believe that this a very good bill. I know that this bill will not be all things for all people. We have done our best to legislate in some important areas of the code, and still be able to craft a piece of legislation that is thoughtful and coherent. Some issues which are not addressed in the current bill will be the subject of further attention. These efforts are designed to ensure equity and fairness in our Nation's bankruptcy laws.

I believe that the bill passed by the committee is a good and thoughtful piece of craftsmanship. I know that it is not a perfect bill, and that if I alone were able to pass legislation, this bill would look different than it does today, however, that is not the world in which we live. Therefore, compromises have been struck, agreements have been reached, and suggestions have been accepted in order to pull together a wide range of interests and put them behind this bill.

I urge my colleagues to join with Senator GRASSLEY and me in supporting this legislation and seeing that this important bankruptcy reform legislation is enacted into law.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa [Mr. GRASSLEY].

Mr. GRASSLEY. Mr. President, I am very pleased to join Senator HELFIN in support of S. 1985, the omnibus bankruptcy reform bill, and I thank him for his leadership while in a very difficult position as chairman of a subcommittee trying to put together a consensus package. It is not very easy to do that. I think that he has tried to accommodate as much as he could and to leave the really difficult things to the study of the blue ribbon task force commission. I do believe we have put together a consensus package here. He is to be complimented for his hard work to do that.

Of course, as the chairman has stated, the need for this bill is urgent. This year, more than one million bankruptcy petitions will be filed.

Just yesterday, as Senator HEFLIN mentioned, the Administrative Office of the U.S. Courts reported that first quarter bankruptcy filings rose 9.5 percent over the same period last year. In some of the most populous States, the increase in filings was staggering: New York filings were up 25 percent, Florida's rose by 21 percent, and California reported a 20-percent increase.

To put this matter in perspective, our Federal courts hear about 250,000 civil cases and about 50,000 criminal cases every year. Thus, of the 1.3 million cases in the Federal courts, about 75 percent are bankruptcy cases. Indeed, one in 10 Americans can now expect to file for bankruptcy at some point in their lives.

That is not a percentage that I am happy to relate. I hope it is a percentage that will decline, not just as a result of the economic improvement of the country, but because an improvement in the ethical and moral situation in this country, would make Americans not as willing, even though legally permissible, to file for bankruptcy.

Additionally, apart from escalating individual petitions, seemingly every day, the popular press reports on another corporation that has filed for bankruptcy.

In this recessionary economy, bankruptcy has assumed a level of importance and prominence that it has never had before. We can regret the fact that economic necessity has brought this result. Nonetheless, we must respond to this reality.

The fact is that no other area of Federal law has so many unresolved fundamental questions as bankruptcy. What is the relationship between the bankruptcy laws and environmental laws? How about the interaction of ERISA and bankruptcy laws? There are even significant constitutional questions about the operation of our bankruptcy system. The increasing globalization of the world economy raises uncertainties about the code as well.

Another concern is the status of local governments in bankruptcy.

For instance, the popular press reported that one of the reasons that Olympia & York, the largest private real estate owner in New York City, might have been considering a bankruptcy filing was the possibility of eliminating its obligation to pay city real estate taxes.

Beside these reasons for revising the Bankruptcy Code, we should bear in mind that the code has not changed much since its implementation.

Numerous proposals have been offered to make the code operate more effectively and fairly. Circumstances require that they be considered.

In a recent speech before the American Bankruptcy Institute, Chief Justice Rehnquist recognized the increasing importance of bankruptcy even in the hallowed halls of the Supreme Court. Two years ago, the Court decided three bankruptcy cases. Last year, it decided five bankruptcy cases.

This year, the Court will decide nine bankruptcy cases. The percentage of the total docket represented by bankruptcy cases has increased from 2 to 8 percent in just 2 years. This development reflects both the increasing number of bankruptcy filings and the many unresolved issues in bankruptcy that require resolution, and require that resolution by the highest court in the land.

The Chief Justice also stressed the need for reform of the Bankruptcy Code.

For instance, it is vital that the costs of all litigation be reduced, but nowhere more so than in bankruptcy. These fees, in Chief Justice Rehnquist's words, "have become a potent subject for controversy when combined with the increasing criticism that lawyers' and experts' fees often swallow up large portions of an estate's assets, leaving little behind for creditors. * * * This is an area of the law in which I think the arguments are strongest for reducing transactional costs if it is humanly possible to do so—an area where transactional costs demonstrably and directly diminish the amount available to pay legitimate claims." Thus, the Chief Justice himself asks us here in the Congress, with assistance from the experts in this field, to undertake efforts to reform the bankruptcy laws.

S. 1985 responds to these concerns in two ways.

First, it establishes a National Bankruptcy Review Commission. This commission, to be composed of bankruptcy experts, will review the operation of the code and report to Congress ways of making our Nation's Bankruptcy Code more effective. I would stress that the Commission is designed to review the code, not overhaul it. We on the Judiciary Committee are generally satisfied with the code and we are not interested in proposals that start from scratch.

What we are interested in is a careful examination of the code and suggestions for how Congress can best exer-

cise its constitutional power under article I, section 8, "to establish * * * uniform laws on the subject of bankruptcies throughout the United States." And that has been a mandate for the Congress since the writing of our Constitution.

Second, recognizing the pressing need for bankruptcy reform, the bill contains several provisions that the committee felt should be enacted now.

These are the consensus provisions I previously referred to that our good chairman has done such a fine job of bringing out of committee to this floor. These represent changes in the code commanding and, at this point in the session, demanding consensus.

There is no need to wait 2 years for the Review Commission to report that these changes should be made. Additionally, there is no need for the Commission to spend its valuable time examining these issues when there are others on which expert opinion will be more valuable.

These consensus changes derive from a series of hearings that the Courts Subcommittee held last spring and summer. As Senator HEFLIN stated, at these hearings, the subcommittee heard from dozens of witnesses on various proposals.

One of the provisions of the bill will extend chapter 12 for 2 additional years. Chapter 12 is a chapter that recognizes the unique status of family farmers in the business of agriculture, who are frequently asset rich and yet income poor. Chapter 12 is currently set to expire next year. Chapter 12 has worked well, and the committee wanted to insure that it had sufficient time to evaluate chapter 12 without fear that it would expire before it could be extended.

Additionally, the bill creates a pilot program for a new small business bankruptcy chapter, chapter 10. The witnesses before the subcommittee supported the notion that chapter 11 often does not work well for small business cases.

This is also somewhat true of our adoption in 1986 of the chapter 12 provision. Simply put, chapter 11 did not always work well for family farmers.

Likewise, chapter 10, which is based on the successful system of handling small business bankruptcies in one judicial district, is a response to these witnesses' comments.

The bill also addresses the concerns raised in the hearings regarding the seventh circuit's decision in *Levit* v. *Ingersoll Rand Financial Corp. (In re V.N. Deprizio Construction Co.)*, 874 F.2d 1186 (7th Cir. 1989). We believe that Deprizio should be overturned by amending section 550 of the code in a narrowly crafted way.

Section 204 of the bill does not change the trustee's preference avoidance power. Rather, it clarifies the trustee's remedies in the event that a transfer is preferential. If a debtor acts in such a way as to affect the Bankruptcy Code's pro rata distribution rule, the trustee will have available a remedy against the party actually preferred, and not against innocent parties.

Although this change is to a fairly technical and complex section of the code, the change provided in section 204 has important practical effects. For instance, a lender may lend money to an interrelated corporate group and be paid back by one of these corporate entities. Under Deprizio, the lender could face a 1-year preference period, even though it lent to a corporate group because of the existence of a guarantee against the other corporate groups. We believe that a lender should not face a conclusive presumption that an outsider is tainted as an insider by virtue of a guarantee. Notwithstanding the existence of a guarantee, the lender should not have to worry about the possibility of a preference period longer than 90 days.

Mr. President, we have come a long way in bankruptcy law over the years. At one time, debtors were imprisoned. Indeed, the first performance of Handel's "Messiah," was a charity benefit for debtors. Today, we recognize that debtors would like to use bankruptcy law to pay back their debts. The bill will encourage debtors to file a chapter 13 petition, rather than a chapter 7 liquidation, in order to enter into wage earner plans.

In shorts, S. 1985 will set forth the framework for bankruptcy reform, a legislative initiative that is vitally needed. It will create a Commission to review the code, as well as making necessary changes that should not wait for Commission action.

This bill will not encourage the filing of bankruptcy petitions. But it will make positive changes in the operation of our bankruptcy laws to deal with the enormous number of petitions that are filed each year. Equally and perhaps more important, it will set the stage for a comprehensive review of the code, from which will hopefully develop important and valuable ideas for future changes to improve the operation of the bankruptcy laws to make the code reflect the realities of the changes in the economy that took place in the 1980's and 1990's. Indeed, the code must reflect the changes that have occurred not only in the domestic economy, but also in the world economy.

I yield the floor.

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

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

Mr. KOHL. Mr. President, I rise to speak to three amendments that have been accepted by the managers of S. 1985, the Omnibus Bankruptcy Reform Act, as part of the modification to the committee substitute.

The first of the three amendments I am offering helps the Nation's air and rail industries access affordable financing for essential equipment. This amendment would resolve ambiguities in the current law and is supported by all sectors of the air and rail equipment financing industries, including airlines, railroads, manufacturers, and financing parties.

Congress enacted sections 1110 and 1168 of the Bankruptcy Code to ensure affordable capital for the transportation industry by protecting those who finance air, shipping, and rail equipment. Recent airline bankruptcies have produced continuing uncertainty as to the availability of sections 1110 and 1168. Lenders and lessors seek assurance that the protection of these sections will apply to their transactions. Because this assurance does not exist, financing costs have increased to compensate for additional risk. These increased costs adversely affect not only the airlines and railroads, but also the manufacturers of air and rail equipment, and ultimately the passengers and businesses that rely on our Nation's airlines and railroads.

The uncertainty surrounding sections 1110 and 1168 has had an immediate and ongoing impact on the air and rail industries at a time when they are in severe need of affordable capital. For example, the airport Noise and Capacity Act of 1990 effectively mandates that airlines fully update their fleets by the turn of the century. At a recent hearing before the Aviation Subcommittee of the House Committee on Commerce, Science and Transportation, a representative of Standard & Poor's testified that the credit ratings for the airline industry has declined significantly and that in order to promote healthy airlines, Congress must clarify the scope and effect of section 1110. Consequently, just as the airlines are being required to make substantial new capital investments in their fleets, the lack of clarity in section 1110 is causing an increase in the cost of capital. Similarly, Standard & Poor's also announced that it has lowered the credit ratings of some of the railroads to reflect the same ambiguities that exist in section 1168. As a result, the cost of capital to railroads has also increased. Everyone agrees that this is a real and immediate problem. And without the clarifications in this amendment, the problem will continue to drive up capital costs for the transportation industry.

The modifications to sections 1110 and 1168 reflect the realities of modern

financing. This amendment would delete the phrase "purchase money equipment" and clarify that the protection of section 1110 and 1168 applies to all forms of security interest financing, regardless of whether obtained at the time the equipment is acquired. This change would apply only to new equipment placed in service after the date of enactment of S. 1985.

Once this rule is fully phased in, the distinction between leases and loans would no longer be relevant for purposes of these sections. During the time before this rule is phased in, this amendment would provide lessors greater assurance that their leases are protected by sections 1110 and 1168 by providing a safe harbor definition of the term "lease" for equipment first placed in service prior to the effective date.

Finally, Mr. President, because of the unique nature of the type of equipment we are discussing—multimillion-dollar aircraft and railroad cars—this amendment also would clarify that costs and expenses attributed to maintenance and return obligations on equipment covered by sections 1110 and 1168 are administrative expenses of the estate under section 503(b)(1)(A) of the Bankruptcy Code.

It should be emphasized again that all parties involved in these industries agree that clarification of sections 1110 and 1168 is urgently needed. Furthermore, all agree that this amendment would resolve many of the ambiguities in the law, yet would not upset the delicate balance of fairness and equity between the air and rail industries, the equipment manufacturers and the parties financing the equipment.

Mr. President, the second of the three amendments that have been accepted concerns the treatment of unexpired equipment leases under section 365 of the Bankruptcy Code. This amendment would require equipment lessees, who find themselves in a chapter 11 bankruptcy, to continue making rental payments during the period between filing the bankruptcy petition and the time when they decide to continue the lease or reject the lease. This amendment does not force the lessee to decide, it simply requires that if they continue use of the equipment while making a decision, they must continue to pay rent.

Equipment leasing represents the second largest source of investment capital for business, industry, and agriculture in the United States. The volume of equipment leasing for 1991 is estimated at $143.7 billion.

Equipment leasing differs from lending and real estate leasing in that equipment leases generally have longer terms, and they generally involve depreciating assets which decline in monetary value during the term of the lease. Depreciation of an asset makes maintenance and repair of the asset during possession by the lessee a key factor in ensuring the value of the equipment at the expiration of the lease period.

Often, prior to the filing of a bankruptcy petition, a nonconsumer equipment lessee will have used the leased equipment for many months without making any rental payments. After the lessor initiates actions to recover the equipment, the lessee files for chapter 11 reorganization and continues to use the equipment.

Under section 365(a) the lessee has the right, subject to court approval, to assume or reject an unexpired lease of equipment. If the lessee assumes the lease, the lessee must *cure* prior defaults and provide adequate assurance of future performance.

The problem is this: under the existing system there is no definite time period fixed for assuming or rejecting an equipment lease. Therefore, the lessee can choose to delay assuming or rejecting a lease while continuing to use the leased equipment rent-free. In contrast, under section 365(d)(4), the landlord of nonresidential real property can seek a court order to have a lease rejected and the property returned if the lessee fails to assume a lease within 60 days after filing a petition, or within such time as the court allows.

The proposed amendment would require payment of rentals during the period between filing of the petition and the point in time when the lessee decides to assume or reject the lease. Additionally, by amending section 365(d)(3), equipment lessees will be required to perform all obligations of the lease, including repair and maintenance of the equipment, which is vital to maintaining the long-term value of the equipment. At the present time nonresidential real property lessees must perform such obligations during the period prior to assumption or rejection under section 365(d)(3).

The third amendment addresses a problem threatening the value of real estate lease agreements. After a recent Third Circuit Court opinion, it is unclear whether or not the sale of a real estate lease by a chapter 11 tenant is permanent or not. This amendment would clarify that a valid, good faith sale of a lease by a tenant in bankruptcy would not be affected by a later court order, unless a party challenging the sale obtains a court order halting the sale during the appeal. This clarification will go a long way in eliminating lease purchasers' fears that their purchase might be revoked long after a bankruptcy court approval, and after they have invested their time and money relying on that approval.

In the 1990 Third Circuit opinion of *In re Joshua Slocum, Ltd.*, 922 F.2d. 1081, the court considered the finality of orders in section 365 lease assignments. In Slocum the court held that a landlord's appeal of a bankruptcy court's order, authorizing a chapter 11 tenant's assignment of a real estate lease to a good faith assignee for value, was not subject to mootness and could be reversed on appeal. This ruling came in spite of the parties having consummated the assignment and the good faith assignee having taken possession of the premises almost 2 years prior to the Third Circuit's opinion, The Third Circuit refused to interpret mootness principles currently embodied in sections 363(m) and 364(e) to reach a similar result in connection with the appeal of consummated lease assignments under section 365.

In order to prevent what could be significant finality problems if other courts adopt the *Slocum* ruling, this amendment amends section 365 to include a provision similar to that contained in sections 363(m) and 364(e).

Mr. President, I would like to discuss one other section of the bill—section 201—which would allow State pension funds and the Pension Benefit Guaranty Corporation [PBGC] to sit on creditor committees in chapter 11 reorganizations. Under present law the U.S. Trustee appoints committees of unsecured claim holders. Ordinarily, the creditor and equity holders committee are composed of persons or institutions holding the seven largest claims of the kind represented by that committee. So, for example, an equity security holders' committee would be composed of those persons holding the seven largest amounts of equity securities. These committees have a broad range of powers to ensure their interests are protected in reorganization.

Under present law, State pension funds and the PBGC are precluded from participating as voting members of these committees. The unique interests of retirement funds, as long-term investors, are not represented by other creditor and equity holder committee members, who may have different goals or shorter investment horizons. These interests are thus put at an unintended fiscal disadvantage. Section 201 would allow State pension funds and the PBGC to serve on these committees, as long as they meet all the other appropriate criteria. It would not give them any special treatment; rather it would simply lift an unintended burden from their shoulders.

Mr. President, I ask unanimous consent that supporting information explaining these provisions in greater detail be printed in the RECORD following my remarks.

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

AMENDMENT

At the appropriate place, insert the following:

SEC. . PROTECTION OF ASSIGNEES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES APPROVED BY COURT ORDER IN CASES REVERSED ON APPEAL.

Section 365(d)(3) of title 11, United States Code, is amended by adding at the end the following new subsection:

"(p) The reversal or modification on appeal of an authorization under this section of an assignment of an executory contract or unexpired lease does not affect the validity of the assignment to an entity that obtained the assignment in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and the assignment were stayed pending appeal.".

FINALITY OF ORDERS IN SECTION 365 LEASE ASSIGNMENTS

(Alan R. Gordon, Jeffrey C. Hampton, Wendy J. Wasserman, Philadelphia, PA)

A potential obstacle to addressing the merits of an appeal authorizing a debtor's or trustee's assumption and assignment of a lease is the doctrine of mootness. At present, it is unclear whether a party obtaining an assignment of a leasehold interest under section 365 of the Bankruptcy Code (the "Code") should rely on such assignment to proceed to occupy the leasehold and incur substantial expenses thereby when, absent a stay, the order authorizing such assignment is subject to appeal by the landlord. Unlike Code sections 363(m) and 364(e), which explicitly deal with the issue of the necessity of obtaining a stay pending appeal, section 365 pertaining to lease assignments does not address the issue. There is a dearth of case law in this area, and the few cases that have decided the mootness question are split.

THE LEADING CASES

In *In re Joshua Slocum, Ltd.*,[1] a shopping center landlord leased space for a period of ten years to Joshua Slocum, Ltd. ("Slocum"), a retailer. The lease contained a percentage rent clause as well as an average sales clause, which provided that either party could terminate the lease if, after six years, Slocum's average yearly sales were below a certain level. Slocum filed a Chapter 11 petition in 1988, and shortly thereafter (and only a few months prior to the expiration of the sixth year of the lease) the chapter 11 trustee sought authority from the bankruptcy court to assume and assign the lease to another retailer pursuant to section 365 of the Code.[2] Because the trustee sought to assign the lease without the average sales clause,[3] the landlord objected to and opposed the assignment.

In 1989, the bankruptcy court entered an order authorizing the trustee to assume and assign the lease without the burdensome average sales clause.[4] Upon approval by the bankruptcy court of the assignment of the lease without the average sales clause, the new tenant began occupancy of the space. The landlord timely appealed the bankruptcy court's order to the District Court for the Eastern District of Pennsylvania, and the trustee filed a motion to dismiss the landlord's appeal on mootness grounds because the landlord failed to obtain a stay pending appeal. The district court, although denying the motion to dismiss, affirmed the bankruptcy court's order without opinion. In 1990, the landlord appealed the district court's order to the Third Circuit Court of Appeals.

Before addressing the merits of the appeal, the Third Circuit considered the threshold issue of whether the court had appellate jurisdiction. The trustee argued that the appeal should be dismissed as moot due to the landlord's failure to obtain a stay pending appeal. The trustee argued that the principles of finality embodied in section 363(m) of the Code should be applied to lease assignments under section 365 and that such assignments, if made to good faith assignees, should not be subject to invalidation on appeal.

The *Slocum* court concluded that the appeal was not moot because the landlord was not obliged to obtain a stay pending appeal. The court stated that only two provisions of the Code, sections 363(m) and 364(e),[5] "specifically require" a party to obtain a stay pending appeal. According to the majority, there is no such requirement in section 365, and section 363(m) does not apply to assignments of leases. The court refused to interpret the mootness principles embodied in sections 363(m) and 364(e) in such a way that would effectively create a third situation in which parties are required to seek a stay. The court then vacated the district court's judgment and reinstated the average sales clause provision of the lease.

The court stated that the scope of review on appeal was limited to determining whether the bankruptcy court had authority to exercise the average sales clause from the lease. According to the court, the assignment of the lease itself was not the action at issue on appeal. However, the court stated that it would probably have agreed with the "well-reasoned analysis" of Judge Sloviter in her dissenting opinion, in which she concluded that the appeal should have been dismissed as moot, if the action from which the landlord appealed was the assignment of the lease.[6]

In a dissenting opinion, Judge Sloviter considered the appeal moot because to hold otherwise would require the court to overturn a transaction "that has long since been consummated involving a non-party, good-faith purchaser."[7] According to Judge Sloviter, the majority's decision "will undermine the finality of bankruptcy lease assignments, which may lower the value of debtors' estates and thereby reduce the amount available to satisfy creditors."[8] Moreover, Judge Sloviter believed that the same policy concerns that apply under section 363(m) to sales or leases of property are equally applicable to lease assignments.[9] Judge Sloviter also expressed the view that under general principles of law, "when a stay is not obtained, the prevailing party may treat the judgment of the district court as final."[10]

This general mootness principle is a longstanding judicial doctrine that developed from the general rule of law that the occurrence of events that prevents an appellate court from granting effective relief renders an appeal moot, and from the particular need for finality in orders regarding stays in bankruptcy. These general principles have been broadly applied to various bankruptcy orders other than asset sales, such as confirmation orders and foreclosure sales, and Judge Sloviter believed that they should apply as well to lease assignments. To do otherwise would produce a chilling effect and would "send a signal to future purchasers of assets from debtors' estates that their purchases may be revoked long after they receive approval by the bankruptcy court and after they have placed substantial reliance on the finality of that approval."[11] The resulting uncertainty would have the effect of lowering the value of debtors' estates.

Other circuits have found that the general mootness principles embodied in section 363(m) asset sales should not be strictly construed to apply only to transactions "falling within a narrow definition of the term 'sale' and not to leases or options of interests in property."[12] The Fifth Circuit has held that the policy of affording the finality to bankruptcy court judgments upon which innocent third parties rely is triggered "not only when property is sold to a third party but also when a lease or option is granted to a third party in reliance on an order of a bankruptcy court."[13]

The First Circuit has held that the policy of encouraging finality in bankruptcy sales by protecting good faith purchasers is "not strictly limited to [section] 363," and the fact that section 365 does not explicitly contain the same finality provision as section 363 did not prevent the court from applying the same principles. In *In re Stadium Management Corp.*,[14] the bankruptcy court approved the trustee's motion to sell the debtor's stadium pursuant to section 363(b) and to assume and assign the debtor's lease for the land beneath the stadium pursuant to section 365. The assumption and assignment of the lease was a condition of the asset sale. The First Circuit held that the appeal from the assignment and assumption of the lease was moot because appellants did not seek a stay pending appeal.[15]

In a recent case, decided after *Slocum*, the District Court of Delaware (a court within the Third Circuit which, presumably, is bound by the *Slocum* decision) held that an appeal from an order authorizing a trustee to assume and assign executory contracts under section 365 was moot in the absence of a stay pending appeal.[16] In *In re Delaware & Hudson Ry.*, the sale of the debtor's rail assets was expressly contingent on the bankruptcy court's authorization of the assumption and assignment of various contracts which the debtor had with the New York Department of Transportation. The court stated that although *Slocum* rejected the First Circuit's approach in *In re Stadium Management Corp.* of stretching section 363(m) to moot an appeal of an assumption and assignment under section 365, *Slocum* indicated that general mootness principles *may* apply to moot the appeal of a section 365 order.[17] The court found that *Slocum* "suggests, although it does not expressly hold, that where . . . a party appeals an assumption and assignment, consummation of the assignment moots the appeal in the absence of a stay."[18] The "well-established rules of justiciability" and the "particular need for finality in bankruptcy" invoked by Judge Sloviter led the Delaware court to conclude that the appeal with respect to the propriety of the assumption and assignment of the contracts was moot.

POLICY ARGUMENTS SUPPORTING FINALITY

Lease assignments under section 365 should be treated in the same manner as the sale of assets under section 363(m). Unless a stay is obtained pending appeal from an order authorizing a lease assignment, such appeal should be dismissed as moot. If an order authorizing a lease assignment can be modified or overturned on appeal, purchasers of assets from the debtor's estate would fear that their purchases could be revoked long after bankruptcy court approval and after substantial reliance on that approval. The resulting unpredictability would have the effect of lowering the value of the debtor's estate because it would chill bidding and result in discounted offers. Such an effect is contrary to the Bankruptcy Code's scheme of rehabilitation and maximization of the value of the debtor's estate. Moreover, in Chapter

Footnotes at end of article.

11 cases, the possibility of modification or reversal on appeal would hinder the debtor's ability to formulate a meaningful plan of reorganization and stall the reorganization process by delaying the debtor's ability to make decisions as to which leases to assume and which to reject.

Another reason for treating asset sales and lease assignments identically is that, in actuality, the assignment of a lease is akin to the sale of an asset. When one assigns a lease to another, one is effectively selling that person a leasehold interest, an asset that oftentimes is reflected at substantial values on balance sheets.

Regardless, however, of the similarity (or dissimilarity) of asset sales and lease assignments, and notwithstanding the absence of a specific Code provision that necessitates a party's obtaining a stay pending appeal to preserve its position, general mootness principles should apply to moot the appeal. For instance, in the context of a post-petition foreclosure sale, once the property has been sold, a court is powerless to rescind the sale on appeal.[19] The policy behind this result is to provide finality to orders of the bankruptcy court and to protect the integrity of the judicial sale procedure upon which good faith purchasers rely.[20] Likewise, in the area of confirmation of reorganization plans, in determining the mootness issue, a court may consider the virtues of finality, the passage of time, whether the plan has been implemented or substantially consummated, whether there has been such a comprehensive change in circumstances as to render it inequitable to consider the merits of the appeal, whether relief granted could implicate or have an adverse effect on non-party creditors, and whether relief will affect the reemergency of the debtor as a revitalized entity.[21] Generally, once the plan has been substantially consummated, courts will dismiss an appeal as moot unless a stay was obtained pending appeal because to hold otherwise would require the undoing of financial transactions involving third parties and would jeopardize the plan.[22]

A simplistic approach to this issue might be to require a landlord to obtain a stay in order to prosecute an appeal. After all, if one fails to obtain a stay, has one in effect waived the right to object to mootness? The practical problem, however, is that courts oftentimes impose bond requirements that are so enormous[23] as to make it impossible for many parties, particularly small and medium-sized landlords, to be able to obtain a stay. Thus, the financial burden imposed by the court from which an appeal is sought to be taken may make it virtually impossible for a landlord to obtain appellate review.

In light of the bankruptcy mootness principle embodied in section 363(m) and the general mootness principles utilized in other cases, *Slocum* may be viewed simply as an aberration. If one takes the majority at its word, however, then general mootness principles will apply to consummated lease *assignments*, but not to the appellate review of lower court orders which rescind or modify certain terms in the assigned lease. The distinction may well be without a difference, however, because by putting the average sales clause back in the lease, the *Slocum* court "will undeniably have the effect of fundamentally changing the terms of the assignment and thereby effectively rescinding it."[24] The excision of the clause was an integral part of the authorization, and the assignee's payment of $77,000 to the trustee for the right to obtain the leasehold interest was expressly predicated on its receiving the right to utilize the store for at least the remaining four years of the lease. The loss of this expectation can only have the effect of discouraging other potential assignees from making bids, thereby depressing the value of estates and inhibiting the rehabilitation process of debtors.

FOOTNOTES

[1] 922 F.2d 1081 (3d Cir. 1990).

[2] 11 U.S.C. §365.

[3] The average sales clause permitted either party to the lease to terminate the lease if, after six years, average annual sales were not at least $711,245. In light of Slocum's poor sales through the date of assignment, the new tenant would have been required to generate approximately $400,000 in sales in a few months in order to avoid the possibility of the landlord terminating the lease. Both parties "agreed that accomplishing such a volume of sales in this time-frame would be a difficult proposition for any new store." *Slocum*, 922 F.2d at 1094 (Sloviter, J., dissenting).

[4] *In re Joshua Slocum, Ltd.*, 99 B.R. 250 (Bankr. E.D. Pa. 1989). In holding the average sales clause unenforceable, the bankruptcy court concluded that the space being leased was not a "shopping center" within the meaning of section 365(b)(3) of the Code and that the average sales clause was a cleverly disguised anti-assignment clause which could be excised under section 365(f) upon assignment.

[5] Section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Section 364(e) provides:

The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

[6] *Slocum*, 922 F.2d at 1086 n.2. In response to the court's assertion that the assignment of the lease was not the action appealed from, Judge Sloviter stated that the excision of the average sales clause was an integral part of the bankruptcy court's authorization of the lease assignment and hence could not be divorced from it. *Id.* at 1094 (Sloviter, J., dissenting).

[7] *Id.* at 1093 (Sloviter, J., dissenting). Judge Sloviter stated that the "majority cites no cases, and I have found none, in which a consummated sale of assignment to a non-party purchaser has been vitiated on appeal." *Id.* at 1095.

[8] *Id.* at 1093.

[9] *Id.* at 1096 (citing cases in other circuits that have used section 363(m) to hold that the appeal from an assignment of a lease will be moot unless the appellant has sought a stay pending appeal). *See In re Stadium Management Corp.*, 895 F.2d 845 (1st Cir. 1990); *In re Exennium*, 715 F.2d 1401 (9th Cir. 1983); *American Grain Ass'n v. Lee-Vac, Ltd.*, 630 F.2d 245 (5th Cir. 1980).

[10] *Slocum*, 922 F.2d at 1095 (Sloviter, J., dissenting) (citing *In re Highway Truck Drivers*, 888 F.2d 293, 298 (3d Cir. 1989) (stating that "in addition to those situations covered under [§§363(m) and 364(e)], a myriad of circumstances can occur that would necessitate the grant of a stay pending appeal in order to preserve a party's position"); *In re Kahihikolo*, 807 F.2d 1540 (11th Cir. 1987); *American Grain Ass'n v. Lee-Vac, Ltd.*, 630 F.2d 245 (5th Cir. 1980)).

[11] *Id.* at 1096.

[12] *American Grain Ass'n v. Lee-Vac, Ltd.*, 630 F.2d 245, 248 (5th Cir. 1980).

[13] *Id.*

[14] 895 F.2d 845, 848-49 (1st Cir. 1990).

[15] In *Slocum*, Judge Sloviter cited *Stadium Management* as support for the proposition that even though section 363(m) does not apply to the assumption of leases, some circuits have used that section to hold that the assignment of a lease pursuant to section 365 is moot as well, absent a stay pending appeal. However, she did not agree with that approach and would not "stretch the language of section 363(m) so far." Rather, general mootness principles should be used to moot the appeal.

[16] *In re Delaware & Hudson Ry.*, 129 B.R. 388 (D. Del. 1991).

[17] *Id.* at 394.

[18] *Id.* at 395. *See supra* note 6 and accompanying text.

[19] *See, e.g., In re Onouli-Kona Land Co.*, 846 F.2d 1170 (9th Cir. 1988); *In re Kahihikolo*, 807 F.2d 1540 (11th Cir. 1987); *Algeran, Inc. v. Advance Ross Corp.*, 759 F.2d 1421 (9th Cir. 1985).

[20] *In re Kahihikolo*, 807 F.2d at 1542.

[21] *See In re Block Shim Dev. Co.*, 939 F.2d 289 (5th Cir. 1991); *Miami Center Ltd. Partnership v. Bank of New York*, 838 F.2d 1547 (11th Cir. 1988); *Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 841 F.2d 92 (4th Cir. 1988); *In re AOV Indus.*, 792 F.2d 1140 (D.C. Cir. 1986); *In re Roberts Farms, Inc.*, 652 F.2d 793 (9th Cir. 1981).

[22] *See, e.g., Block Shim*, 939 F.2d at 291; *Miami Center Ltd. Partnership*, 838 F.2d at 1555-57; *Central States*, 841 F.2d at 96.

[23] *See, e.g., In re Prime Motor Inns, Inc.*, No. 90-16604-BKC-AJC (Bankr. S.D. Fla. Aug. 30, 1991) ($100 million); *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133 (2d Cir. 1986) ($1 billion).

[24] *Slocum*, 922 F.2d at 1094 (Sloviter, J., dissenting).

AMENDMENT

On page 122, between lines 8 and 9, insert the following:

SEC. 207. AIRCRAFT EQUIPMENT, VESSELS AND ROLLING STOCK EQUIPMENT.

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is an air carrier (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)); or

"(B) a documented vessel (as defined in section 30101(1) of title 46, United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment

"(a)(1) The right of a secured party with a security interest in or of a lessor of conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debt that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale conract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term "security interest" means a purchase-money equipment security interest.".

(c) APPLICATION OF AMENDMENTS.—(1) The amendment of section 1110(a) and section 1168(a) of title 11, United States Code, made by subsections (a) and (b) shall not apply to bankruptcy proceedings commenced prior to the date of enactment of this Act.

(2) The amendment of section 1168(a) of title 11, United States Code, made by subsection (b) shall take effect with respect to equipment that is first placed in service after the date of enactment of this Act, including rolling stock equipment that is substantially rebuilt after that date and accessories used on such equipment.

On page 122, line 9, strike "207" and insert "208".

On page 122, line 16, strike "208" and insert "209".

On page 123, line 7, strike "209" and insert "210".

On page 124, line 13, strike "210" and insert "211".

On page 126, line 9, strike "211" and insert "212".

On page 128, line 14, strike "212" and insert "213".

On page 160, line 20 and all that follows through page 161, line 2.

On page 161, line 3 strike "(26)" and insert "(25)".

On page 161, line 8, strike "(27)" and insert "(26)".

On page 161, line 14, strike "(28)" and insert "(27)".

On page 161, line 16, strike "(29)" and insert "(28)".

DESCRIPTION OF THE SECTIONS OF THE AMENDMENT

(1) Deletes the phrase "purchase-money equipment" throughout section 1110. Section 1110 currently provides protection to purchase-money equipment security interests in, as well as leases and conditional sales of, aircraft equipment and vessels. Under the current language of section 1110, the only protected security interest are those obtained at the time the equipment is acquired. This application, however, is confusing in view of the fact that both acquisition and post acquisition leases are protected. The amendment deletes the phase "purchase-money equipment" throughout section 1110. This deletion would guarantee that all modes of debt financings and lease financings that involve a security interest, not only security interests obtained at the time the equipment is acquired, would receive section 1110 protection. This change would be phased-in so that only new equipment first placed in service after the date of enactment of the Act would be affected by the proposed amendment.

(2) Deletes the "purchase-money" requirement in section 1168 and restores historic equipment trust protection. Section 1168 provides parallel treatment to purchase-money equipment security interests in, and leases and conditional sales of, railroad equipment. The proposed amendment changes the phrase "purchase-money equipment security interest," which appears in three places in the existing section 1168, by deleting "purchase-money equipment" in the first two appearances of the section, but deleting only "purchase-money" the third time the phrase appears. The deletion of the phrase "purchase-money equipment" in the first two instances will enable the railroad industry to utilize a variety of financing vehicles and will continue to protect financing arrangements currently employed by the railroads. For example, a finance lease, which historically has been an integral part of a railroad equipment trust protected by section 1168 and section 77(j) of the Bankruptcy Act (section 1168's statutory predecessor), would continue to be covered by section 1168. In addition, the deletion of only the phrase "purchase-money" the third time the phrase appears is intended to emphasize that section 1168 is meant to cover financing of equipment and is not intended to extend to a general mortgage on all of the carrier's assets. Further, the deletion of the phrase "purchase-money equipment" in section 1168(a) continues the application of section 1168 to Philadelphia plan equipment trusts.

These changes to section 1168 would be phased-in to apply only to new equipment first placed in service, and equipment that is substantially rebuilt, after the date of enactment of the Act. Railroad equipment would be considered substantially rebuilt (i) when costs of rebuilding could be capitalized pursuant to the regulations and practices imposed by the Interstate Commerce Commission ("ICC") on all carriers by rail, (ii) such rebuilding would substantially extent the service life of the equipment under such regulations and practices, (iii) after such rebuilding the equipment would be recognized as rebuilt pursuant to applicable rules and regulations of the Association of American Railroads ("AAR") and, (iv) after such rebuilding, the equipment would conform to applicable rules and regulations of the Federal Railroad Association. Rebuilding would be distinguished from repairs, routine maintenance and major overhaul. The AAR has extensive rules and regulations regarding the scope and quality of work required for rebuilt equipment to be used in interchange service on any railroad within the United States. To the extent that equipment is covered by AAR rules and regulations, such rules and regulations, in conjunction with ICC requirements, would govern the standard of work and materials required to constitute rebuilding. Such rebuilding would have to be substantially in excess of the original manufacturer's recommended maintenance procedures to ensure normal service life.

(3) Clarifies that costs and expenses attributable to maintenance and return obligations are §503 expenses of the estate. Most financing agreements contain covenants requiring the borrower or the lessee, as the case may be, to maintain and return equipment in appropriate condition. If these covenants are breached, the financing party's residual interest in the equipment can be significantly impaired. The proposed amendment adds a new subsection to the end of

sections 1110 and 1168 to clarify that if an airline or railroad makes an agreement of the type specified in sections 1110(a)(1) or 1168(a)(1), administrative priority would be given to all expenses attributable to maintenance and return obligations under section 503.

(4) Provides a safe harbor definition of the term "lease". A substantial amount of litigation has focused on the nature and type of lease agreements that may be within the scope of sections 1110 and 1168. The result of this legislation has been to cloud the rights to such aircraft and railroad equipment for months while a court resolves the issue, thereby effectively nullifying the purpose of these sections. The proposed amendment adds a new subsection to the end of sections 1110 and 1168 to provide a safe harbor definition of the term "lease" for equipment first placed in service prior to the date of enactment. Under the amendment, a lease would receive section 1110 or section 1168 protection if the lessor and the debtor, as lessee, have expressed in the lease agreement, or a substantially contemporaneous writing, that such agreement is to be treated as a lease for Federal income tax purposes.

This definition would be nonexclusive in nature, and other agreements that would qualify as true leases for Federal income tax purposes (and subleases, under such true leases, to debtors) would also be covered under section 1110. The safe harbor definition is designed to provide certainty for those parties seeking assurance that their transaction falls within the scope of this section, and thus minimize needless litigation. The definition of "lease" and the distinction between section 1110's coverage of leases and secured loans would be inapplicable under the amendment with respect to equipment first placed in service after the effective date. In addition, to further minimize such litigation, an agreement which would otherwise be treated as a lease under this subsection would not fail to qualify for the benefits of this section because the agreement contains provisions: (1) permitting the debtor to subject the equipment to interchange agreements and pooling or other similar arrangements customary in the industry; or (2) permitting or requiring the debtor to return the equipment with substitute components, or substitute equivalent equipment in the event of a casualty or loss.

(5) Updates and modifies certain citations and references in section 1110. Section 1110's citation to the Ship Mortgage Act and reference to the Civil Aeronautics Board are outdated. The Ship Mortgage Act has been amended and recodified, and the Department of Transportation has assumed the Board's role as certifying authority for air carriers. The amendment updates the language of section 1110 to reflect these changes.

(6) Application of the Amendment. The amendment of sections 1110(a) and 1168(a) shall not apply to bankruptcy proceedings commenced prior to the date of enactment of the Act.

[From Air Transport World, December 1991]

SECTION 1110 UNCERTAINTIES HURT MARKET

(By Perry Flint)

THE INDUSTRY SUFFERS

All Continental Airlines and Pan American World Airways wanted was a rent holiday on their leased aircraft while they reorganized under Chapter 11 of the U.S. bankruptcy code. But the way each went about getting one has reduced the entire U.S. airline industry's access to capital.

Today, a coalition that includes airlines, manufacturers, equipment lessors and financial institutions is lobbying the U.S. Congress to close loopholes in the bankruptcy code that allowed the two airlines to wriggle out of their obligations to their aircraft lessors. Without swift legislative action, warns AMR Corp. Treasurer Dan Garton, the industry could find itself paying hundreds of millions of dollars in higher finance charges, as lenders raise their rates to offset the higher risk that they see in certain lending transactions that previously had been considered relatively risk-free.

What Continental and Pan Am did was challenge, in court, the applicability to some aircraft financings of Section 1110 of the U.S. bankruptcy code (see accompanying article). In substance, Section 1110 eliminates the two major risks that aircraft lessors otherwise would face in an airline bankruptcy: Loss of control of their aircraft during the reorganization period and loss of the aircraft rental stream. It does this by giving airlines that are entering bankruptcy 60 days to return their leased aircraft to the lessor(s), or cure all pre- and post-bankruptcy defaults on the aircraft and continue to meet their lease obligations.

It would be difficult to underestimate the importance of Section 1110 in attracting new capital to the airline industry. Absent such protection, few lenders would have been as eager to enter into the sorts of complex secured aircraft financings that became popular toward the middle of the 1980s. At the same time, however, the industry's generally weak financial position throughout the past 10 years probably would have discouraged unsecured corporate lending on a scale sufficient to meet the industry's re-equipment needs. The same factor would have kept equity investment away. New capital simply would have dried up and the industry's ability to acquire new aircraft would have been reduced significantly.

Furthermore, the "safety net" afforded by Section 1110 translated into a lower overall cost of financing, making leasing highly competitive with traditional forms of airline financing.

Section 1110 also made it possible for airlines that were considered poor credit risks—Pan Am and Continental, for example—to acquire new aircraft through asset-based financing techniques. In asset-based financing, creditors look to the value of the asset being financed as primary security. Should an airline default on its aircraft payments, lenders rely on their ability to remarket the aircraft quickly as additional security. Section 1110's relatively fast return provisions provided the legal underpinning for an asset-based lending strategy.

Or at least, it used to. Now, after the recent series of partly successful court challenges, lessors are not so sure and as a result, they are less willing to go forward with secured financing in general. Said AMR's Garton before Congress: "There is continuing uncertainty in the marketplace as to whether section 1110 provides the protections intended; over the last several months, this uncertainty has raised the cost of financing for the equipment we have begun to acquire for the decade ahead and it does not appear that these increased costs will diminish in the foreseeable future."

VAGUE, INCONSISTENT STATUTE

The problem, as Garton and others see it, is that the statute is vague and inconsistent, thus leading itself to the sorts of legal tactics used by Continental and Pan Am. The solution proposed by the coalition involves persuading Congress to reword the statute so that it is clear that Section 1110 "is intended to protect all lease-financing agreements and all debt financing that involve a security interest [in the asset]," according to the coalition.

Furthermore, the coalition wants Congress to make clear that the statute applies to all aspects of an aircraft-lease agreement, not simply with those sections dealing with aircraft rent. "Most financing agreements contain maintenance and return covenants designed to ensure that the equipment will be maintained and returned in appropriate condition," the coalition noted, adding: "Recent experience indicates Section 1110 * * * do[es] not fully protect the financing party when returned equipment requires significant expenditures to be put in resale condition."

The coalition has appealed to the Senate Judiciary Committee to make the appropriate changes to Section 1110 at the first opportunity and is hopeful that the corrections can be made this year, according to Guy L. Clough, director-federal legislation for the Air Transport Association.

Nevertheless, Richard C. Giles, a lawyer currently involved in Section 1110 litigation, points out that the changes are "prospective," meaning that although they definitely will apply to future financing, what is not at all clearly is whether the changes will apply to the hundreds of aircraft financed and refinanced under the existing statute. Giles also points out that making the rule immune from legal challenge probably is impossible. "There are quite a few good, talented lawyers in this country," who will be able to find new loopholes in a rewritten statute. "I don't think we've heard the last of Section 1110," he told ATW.

Nor, says Giles, can new legislation resolve what he and others see as the biggest problem that lessors and secured lenders face in a Chapter 11 reorganization. That is the tendency of the bankruptcy court to take a pro-debtor stance against the interests of the creditors, even to the point of re-interpreting statutes such as Section 1110. This tendency will have to change in order to put teeth back into Section 1110 protection.

In the meantime, however, the industry as a whole is paying for the actions of a few. At a time when credit already is tight owing to a host of factors, many unrelated to the health of commercial aviation, the Section 1110 problem hurts even the most financially secure airlines, such as American, says Garton.

"At the bottom line, this uncertainty, this added risk factor, has done only one thing: To raise the cost of financing. Uncertainty is a risk and risk is a cost. Transactions are being priced higher because of this uncertainty. While the price adjustment may be perceived to be minor, a quarter to half a percentage point for every $1 billion of financing represents an additional $50-100 million cost over the lives of the equipment. Furthermore, for less-credit-worthy borrowers, it can mean the difference between deal and no deal." Garton told Congress.

To a legislature anxious to preserve competition by keeping plenty of airlines around, that sounds like the clarion call to action. The industry certainly hopes so.

[From Air Transport World, December 1991]

SECTION 1110 UNCERTAINTIES HURT MARKET

(By Perry Flint)

WHILE LESSORS FUME

Imagine that you are an aircraft lessor with two airplanes—let's call them 727s—on

lease to a major U.S. airline that goes Chapter 11, a not-infrequent occurrence over the last two years. Relax. As a lessor, you are protected. Under Section 1110 of the U.S. Bankruptcy Code, your client has just 60 days to return your jets or honor his obligations and continue to operate them. At the worst, he returns the jets after 60 days and you are out two months' rent, right?

Now imagine, if you will, that nine months after the bankruptcy filing—months spent battling your client's efforts to have your rights under Section 1110 invalidated and his obligations to you lumped in with all the other unsecured bankruptcy claims—the airline tells you to come get your aircraft. You arrive to find that each of your 727s is missing two engines. Of the other two, one is disassembled and in cartons. The airplanes are neither flyable nor remarketable.

Sound impossible? A clear violation of the lease agreement? Get a lawyer, buddy, and get in line. Because that's how the game is being played at more than one U.S. airline. The 727 situation is only one example of what Jordan Greene of Avmark Services has called "hardball." In a case of different airline, two 737s were returned minus all four engines.

Of course, it is no secret that bankrupt airlines have used the collapse of the used-jet market to wring huge concessions our of lessors, who would rather accepts a substantially reduced rental stream than try to remarket their jets in today's environment. These carries even have gotten lessors to pitch in new cabin interiors, paint jobs and avionics. That is because today is a buyer's market and if lessors want to play, they have to pay.

But certain bankrupt carriers also have taken advantage of vagaries in Section 1110 to ignore maintenance requirements, "borrow" engines for other airplanes and generally make life miserable for lessors who refuse to accept rent holidays and reductions, or whose aircraft simply no longer are wanted.

Lessors argue that Section 1110 is supposed to cover contractual obligations such as maintenance and return obligations, and by and large, the airline industry agrees. But it is not working out that way. Courts are allowing bankrupt airlines wide latitude to interpret Section 1110 to apply only to rent.

In numerous instances, airlines in Chapter 11 have "run out" the aircraft and engines—in violation of lease agreements—so that they are in need of thousands and perhaps hundreds of thousands of dollars in repairs when they are returned, according to Greene and others with whom ATW talked.

Commenting on a case in which he was involved, Greene told ATW: "The aircraft were supposed to be returned in half-live condition. They were returned in a basket."

To add insult to injury, some airlines have imposed "storage charges" on lessors, who, finding that their aircraft are legally and mechanically unflyable, have no choice but to park them with the airline until necessary maintenance can be done.

Said one involved in retrieving aircraft from a bankrupt airline: "When you know right from wrong * * * it is extremely frustrating."

Perhaps the lessors should consider themselves lucky. Had Continental and Pan Am had their way, few of them would have any Section 1110 protection. Both carriers unleashed a barrage of court challenges in hopes of a ruling that Section 1110 did not apply to a number of their leased and secured aircraft. In each case, the challenge took advantage of vagueness in the statute and the dearth of court decisions covering 1110.

For example, they argued that in cases in which they had created special financing subsidiaries to lease aircraft through to the airline, Section 1110 did not apply to the head lease agreement between the lessor and the special financing subsidiary, since Section 1110 was intended to help airlines finance new equipment and clearly, special financing subsidiaries are not airlines. This must have been especially galling to lessors, since one purpose of the special finance subsidiaries was to insulate the aircraft from an airline bankruptcy.

To rub salt into the wound, Pan Am convinced the court that having challenged its lease agreements and lost, it should not have to pay legal costs of the lessor, nor penalties, nor even interest on missed rent payments during the period of the challenge in order to comply with Section 1110. Such costs, Pan Am's lawyers argued successfully, could be settled only as unsecured claims against the estate through the bankruptcy court. Thus, there is a real incentive to challenge every lease agreement: Win and you don't have to pay rent; lose and you are simply back where you were before the challenge.

They also hammered at sale/leasebacks that did not involve new aircraft. Of course, the entire industry reaped huge profits through the sale/leaseback of airplanes and it was a key way in which financially troubled airlines stayed alive through much of the turbulent past decade. But Pan Am and Continental argued that since they owned the aircraft prior to the sale/leaseback, the aircraft did not deserve 1110 protection, which, they argued, was intended only to encourage acquisition of new aircraft. Both airlines eventually lost on this challenge but hit pay dirt on a related issue, one concerning so-called "true leases."

While refusing to accept the carriers' arguments that sale/leasebacks of existing equipment did not qualify for 1110 protection, the courts agreed that in order to qualify, the transaction must qualify as a "true lease." The problem is that no one really agrees on the definition of a "true lease." Thus, equipment lessors now face a situation in which they first must prove in court that they have a "true lease" before they can even begin the 60-day countdown period leading to the return of their aircraft or the resumption of lease payments.

Of course, lessors can seize their planes after the 60-day grace period expires if the airline defaults on its lease. But they had better hope that the court agrees that theirs was a "true lease" and subject to 1110. If they assume incorrectly, they leave themselves open to legal action on the part of the "wronged" airline.

The entire bankruptcy experience has been a real eye opener for a lot of equipment lessors and financial institutions that used to believe they were in partnership with the airline industry.

"I think that what has come out of this is perhaps a greater realization that dealing with an airline is like dealing with any other business. The feeling that you might have a little more trust dealing with an airline, you don't have that anymore," said a person involved with the recent Section 1110 challenges.

European financiers have been especially shaken by the pro-debtor position taken by U.S. bankruptcy courts, according to the same source. "My clients are much more troubled by the U.S. legal system," the person said. "They are more wary of doing business with airlines."

For Continental and Pan Am, the big question is whether their financiers will be willing to forgive and forget, should they emerge from Chapter 11 and come looking for new airplanes. The consensus so far: Don't bet on it.

COMPANIES AND ASSOCIATIONS SUPPORTING CLARIFICATION OF SECTIONS 1110 AND 1168 OF THE BANKRUPTCY CODE

AIR TRANSPORT ASSOCIATION

Members:
Alaska Airlines
Aloha Airlines
American Airlines
American Trans Air
Continental Airlines
Delta Air Lines
DHL Airways
Eastern Air Lines
Evergreen Air Lines
Federal Express
Hawaiian Airlines
Midway Airlines
Northwest Airlines
Pan American World Airways
Southwest Airlines
Trans World Airlines
Trump Shuttle
United Airlines
United Parcel Service
USAir
Associate Members:
Air Canada
Canadian Airlines International
American Express Bank, LTD

ASSOCIATION OF AMERICAN RAILROADS

Members:
Alton & Southern Railway
Amtrak
Atchison & Topeka & Santa Fe Railway Company
Bangor & Aroostook Railroad Company
Belt Railway Company of Chicago
Bessemer & Lake Erie Railroad Company
Birmingham Southern RR Company
The Lake Terminal RR Company
McKeesport Connecting Railway Company
Burlington Northern Railway Company
Cambria & Indiana RR Company
Canadian National
Canadian Pacific
Chicago & Illinois Midland Railway Company
CSX Transportation
Consolidated Rail Corporation
Denver & Rio Grande Western Railroad
Detroit & Mackinac Railway Company
Duluth, Missabe & Iron Range Railway Company
Elgin, Joliet & Eastern Railway
Fox River Valley Railroad
Grand Trunk Western Railroad
Green Bay & Western RR Company
Illinois Central Railroad
Kansas City Southern Railway
McCloud River RR Company
Manufacturers Railway Company
Norfolk Southern Corporation
Pittsburgh & Lake Erie RR Company
Peoria & Pekin Union Railway
Prescott & Northwestern RR Company
Richmond, Fredericksburg & Potomac RR Company
Soo Line Railroad Company
Texas Mexican Railway Company
Union Pacific Railroad Company
Union Railroad Company
Vermont Railway Inc.
Bank of Tokyo Financial Corporation
The Boeing Company

McDonnell Douglas Corporation
PLM International
Potomac Capital Investment Corporation
Progress Credit Corporation
Public Services Resources Corporation
United Technologies Corporation.

TESTIMONY OF PHILIP BAGGALEY, SENIOR VICE PRESIDENT, CORPORATE FINANCE, STANDARD & POOR'S RATINGS GROUP

(Before the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation, Washington, DC, September 11, 1991)

Thank you, Mr. Chairman and members of the Committee, for the opportunity to speak to you. I am Philip Baggaley, a Senior Vice President at Standard & Poor's Ratings Group. My primary responsibility is the analysis of airline creditworthiness.

Before I discuss the airline industry, I would like to highlight some key issues with regard to debt ratings. Standard & Poor's currently maintains debt ratings on some 10,000 companies, municipalities, and financial institutions in thirty countries, including all major U.S. airlines and several foreign airlines. My comments today focus on airlines we rate and our knowledge of the air transportation industry.

A Standard & Poor's rating expresses our opinion of an issuer's credit quality in the form of letter symbols. Ratings of 'AAA' through 'BBB-' are considered "investment grade," while those 'BB+' and below are regarded as "speculative grade." Standard & Poor's regularly publishes criteria and methodology showing our approach for each industry, including the airline industry. In addition, once a rating determination is made, Standard & Poor's publishes the rating and a rationale describing major factors leading to our conclusions.

At present, the average rating of U.S. airlines rated by Standard & Poor's is only 'B+', middle speculative grade. This has declined from 'BB', high speculative grade, five years ago. Six of the 14 rated U.S. airlines are in bankruptcy or otherwise in default on their debt.

We publish an annual review of the airline industry's credit quality. The most recent was published in June 1991, and I have included it with this testimony.

The most important trends in the airline industry today and over the next several years are:

1. Economic recovery should allow significant increases in revenues and profits by 1992, or 1993 at the latest;

2. Huge capital needs for fleet replacement and expansion will keep debt leverage relatively high for even the healthiest airlines; and

3. Continued consolidation will result from damage caused by the Persian Gulf war and recession, coupled with competitive advantages strong airlines enjoy.

The immediate causes of airline losses over the past year—high fuel prices, recession, and fear of terrorism—are abating. Unfortunately, the economic recovery is gradual at best. Price discounting to "jump start" traffic has persisted through the normally strong summer season, depressing revenue. This means that 1991, like 1990, will be a very poor year for airlines.

Nonetheless, when the economy does improve, surviving airlines will benefit substantially. In addition to the normal, cyclical upturn in traffic, certain airlines will gain passengers diverted from failing competitors. In the 1980s, airlines that merged or failed typically transferred aircraft and facilities to new owners. Today, both healthy and failing carriers actually are grounding some older capacity. This is not necessarily a bad thing in an industry which typically fills only 60% of its seats and has a fleet which averages eleven to twelve years old.

Increased revenues are necessary, because this industry has high and rising costs, and has never been particularly profitable. Most attention has been on fuel costs over the past year, but that is only part of the story. Although fuel prices rose sharply during 1990, their level was by no means unprecedented. Indeed, last year's average fuel prices of about 80 cents a gallon was no higher than in 1985, a profitable year for the industry, and was below prices of 1980–1984.

The sharp decline in oil prices during the late 1980s, plus a favorable economic climate, let airlines report healthy earnings and obscured an ominous rise in non-fuel operating and ownership costs. After a period of labor concessions during the mid-1980s, unions recaptured some lost ground in subsequent years. Pilots' contracts signed by Delta Air Lines, American Airlines, and United Air Lines in 1990 and 1991 boosted pay to a new plateau, despite the industry's heavy losses. United, for example, expects its new contract to add $775 million to labor expense over the next four years.

Travel agency commissions, landing fees, and maintenance costs also have risen rapidly. However, the most serious costs increase, in terms of the industry's financial wellbeing, is that of capital costs. This problem has three related aspects:

1. Airlines have less access to credit than in the past;

2. Capital expenditure funding requirements far exceed internal cash flow; and

3. The rapid addition of debt and lease financing to cover that funding gap will place a drag on credit quality, even if earnings improve.

For these reasons, Standard & Poor's downgraded even strong airlines like American and Delta, which are expected to survive the industry downturn and emerge with increased market share.

Easy access to liquidity—a key characteristic of the airline industry during the 1980s—has abruptly ended. Because the reasons are both cyclical and structural, an economic recovery that boosts profits will ease—but not undo—the tightening of credit. The cyclical causes are airlines' poor financial condition and a reduced appetite for tax shelter by equity investors in aircraft leases. Economic recovery should ease both of these constraints. However, long-term structural trends such as weakening aircraft prices, particularly for older narrowbodies, tighter bank capital requirements, and a general reevaluation of the airline industry's creditworthiness will continue to impede access to credit.

Legal challenges to Section 1110 of the Federal Bankruptcy Code, which give providers of aircraft financing special status, has put a chill on that market. Although appeals courts eventually ruled in favor of creditors on most points in the Continental Airlines Holdings and Pan Am bankruptcies, some legal uncertainties remain. Clarification of Section 1110 would help both creditors and airlines know where they stand. Indeed, the airlines hardest hit by the uncertainty are smaller or more highly leveraged carriers with no access to unsecured funding.

Even if airlines did not face tighter credit, the sheer scale of their demand for capital would strain existing sources. Standard & Poor's estimates that major U.S. airlines will generate internal cash flow of $20–30 billion over the 1991–1994 period if their collective net margin equals the 1986–1989 average of 2.0% (excluding Eastern Air Lines, now being liquidated). Note that this covers a period of relative industry prosperity and does not include last year's heavy loss.

Even so, internal cash flow falls well short of expected capital expenditures of $60–80 billion during the upcoming period. Equity issues cannot be expected to cover more than a small fraction of that amount, given the industry's earnings track record. Therefore, even the stronger airlines, accounting for the lion's share of forecast expenditures, face large debt and lease needs. Yet, the airlines are already highly leveraged. Figure 3 shows debt as a percentage of capital, adjusted for off-balance sheet leases, of Delta, American, and United. Leverage for comparably rates industrial companies is shown for comparison.

The likely outcome is that borrowing rates will not return to historically lower levels for investment grade airlines, and access to funding will remain a serious issue for weaker companies. This widens the competitive advantage of stronger airlines, but places a large absolute burden on all carriers.

The result of these trends—higher revenues and heavy capital needs—will be an airline industry that is more consolidated and profitable, but also more highly leveraged. The ongoing move toward consolidation raises the question of whether competition is being undermined and what impact fewer airlines will have on ticket prices. Although Standard & Poors' expects that prices will rise, three basic economic forces will work to limit the increase. First, several major airlines with national route networks will compete in all large markets. Second, discounts will be needed to attract price-sensitive vacation travelers, particularly when the economy is weak.

Finally the airlines' basic product, a seat on a particular flight, is perishable. Once the flight leaves, it's gone forever. Furthermore, the cost of serving that last passenger on board a particular flight is minimal. That creates tremendous temptation to find some way to lure more passengers on board through low fares, frequent flyer miles, toaster ovens, or whatever.

In any case, some ticket price increase is necessary to cover rising costs and capital needs. U.S. airlines cannot fund growth, improve fuel efficiency, and meet federally mandated noise requirements unless they earn higher returns. Neither American nor foreign investors are likely to put money into companies with weak earnings prospects.

The most serious danger to competition is not consolidation, but inadequate infrastructure. Planes can be moved around to meet demand; gates and runways cannot. Reregulation will not solve this problem. Indeed, the half of the air transportation system that is still regulated—airports and air traffic control—is where the bottleneck lies. Likewise, the worst uncompetitive pricing occurs on international routes, where capacity is limited by bilateral treaties.

Therefore, Standard & Poor's believes that the following would help promote healthy competition and healthy airlines:

1. Increased investment in air transportation infrastructure. This is a matter of economic development and international competitiveness, not just convenience.

2. Airlines need to earn sufficient returns to support growth and modernization. Again, this is increasingly a matter of developing

world class competitors in a global market. It is not inconsistent with proper antitrust policies and promoting competition. The United States is a big enough market to support many vigorous competitors.

3. Clarification of Section 1110 of the Bankruptcy Code, governing treatment of aircraft financing in Chapter 11, so that all parties know where they stand.

4. Continued push for greater liberalization in international air transportation. This can include cabotage in the future if the new opportunities granted are equivalent for both parties.

These measures recognize that the framework for an efficient air transportation system is in place. However, achieving that goal will require further investment.

Thank you for the opportunity to be here today. I will be happy to answer any questions.

AMENDMENT

At the appropriate place, insert the following:

SEC. . UNEXPIRED LEASES OF PERSONAL PROPERTY IN CHAPTER 11 CASES.

Section 365(d)(3) of title 11, United States Code, is amended in the first sentence by inserting after "real property" the following: "and, in a case under chapter 11, under an unexpired lease of personal property".

EXCERPTS FROM STATEMENT OF ALLAN G. SWEIG, ATTORNEY, ALTHEIMER & GRAY, CHICAGO, IL, ON BEHALF OF THE AMERICAN ASSOCIATION OF EQUIPMENT LESSORS ON COMMERCIAL BANKRUPTCY ISSUES RELATING TO EQUIPMENT LEASING

(Before the Subcommittee on Courts and Administrative Practice, Senate Judiciary Committee, July 30, 1991)

Mr. Chairman and Members of the Subcommittee:

My name is Allan Sweig. I am a partner in the Chicago law firm of Altheimer & Gray, and I concentrate in the fields of bankruptcy, lending and leasing. I am a contributing editor to Collier's Bankruptcy Practice Guide. I also have taught in this field, as an adjunct professor at the Northwestern University Law School. I am a member of the Lawyers Committee of the American Association of Equipment Lessors (AAEL) and I have been asked by Mr. Michael Fleming, the President of AAEL, to present to this Subcommittee the AAEL's views concerning unfair and harmful burdens confronted by lessors primarily under Chapter 11 of the Bankruptcy Code.

By way of background, equipment leasing represents the second largest source of investment capital for business, industry and agriculture in the United States. According to the Department of Commerce, the volume of equipment leasing in this country was $132.9 billion in 1990, and is projected to be $143.7 billion in 1991. AAEL estimates that its members account for two-thirds of this volume. Equipment leasing is utilized by, and helps to fuel the economic growth and productivity of, virtually every segment of our society. Low cost item such as postage meters and personal computers, medium priced goods such as heavy tractors, trailers and printing presses, and very costly machinery such as specialized manufacturing equipment, aircraft, vessels, rail rolling stock and entire manufacturing, processing and distributing plants—these are all regularly provided through equipment leasing. Equipment leasing is one of the major methods by which American businesses and farmers acquire capital equipment and financing needed to succeed in today's highly competitive domestic and international markets.

AAEL is the major national trade association in this multi-billion dollar industry. AAEL has over 850 member companies, located in the United States and abroad, engaged in every aspect of equipment leasing. From its national perspective, we believe that AAEL is in a position to help the Subcommittee assess the serious adverse impacts of some of the present provisions of Chapter 11 of the Bankruptcy Code on the equipment leasing industry, lessees and the economy.

Equipment leasing differs from lending and from real estate leasing in important respects. Although lease transactions take many different forms, equipment leases generally have a longer term than loans or other credit transactions. And, unlike real estate, equipment leases generally involve depreciating assets which decline in monetary value during the term of the lease. At the conclusion of the equipment lease, the lessor is entitled to a return of the leased equipment for sale or re-lease by the lessor. The consummation of that sale or re-lease of the equipment is usually necessary for the lessor to realize a profit on the transaction. If the equipment is not properly maintained during the lease term, or if there are delays in returning the equipment to the lessor, then the residual value of the equipment, as well as the lessor's entire profit from the transaction, may be dissipated. Accordingly, the prompt payment of rentals, the prompt repair and maintenance of the leased equipment, and the prompt return of the equipment to the lessor at the conclusion of the lease term—there are all important matters for a leasing company. Since any significant delay as to these basic matters may be extremely hurtful, it is essential that equipment lessors receive timely determinations of their rights in a bankruptcy proceeding. Delays in these critical areas adversely impact both the cost and the availability of equipment leasing, thereby harming not only lessors but also the economy in general.

AAEL's concerns focus on the problems associated with lessors' inability to recover, or to be compensated fairly for, leased equipment that the lessee/debtor continues to use during reorganization under Chapter 11 of the Bankruptcy Code.

1. LESSOR'S INABILITY TO RECEIVE FAIR COMPENSATION OR RECOVER LEASED EQUIPMENT

A true lease is not a credit sale or a loan. True equipment leases do not transfer any ownership interest in the equipment to the lessees, whether by title or by financial interest. Equipment lessors expect and rely upon receiving regular, periodic rental payments from the lessee, and upon the lessor's ability to recover possession of the equipment promptly and inexpensively at the expiration of the lease term or if the lessee defaults. These understandable, minimal expectations and needs are regularly frustrated when equipment lessees seek protection from creditors under Chapter 11 of the Bankruptcy Code.

Often, prior to filing for bankruptcy relief, the nonconsumer, business equipment lessee may have used the leased equipment for many months without making any rental payments. After the lessor begins appropriate actions to recover its equipment, the lessee typically files a Chapter 11 reorganization petition seeking relief in bankruptcy and continues to use the lessor's equipment. Under the Bankruptcy Code, the lessee has the right, subject to the court's approval, to assume or reject an unexpired lease of equipment. 11 U.S.C. §365(a). If the lessee decides to assume the lease, the lessee must cure all prior defaults and provide adequate assurance of future performance under the lease, including payment of the rentals specified in the lease. 11 U.S.C. §365(b)(1).

The very serious problems under Chapter 11 begin with the fact that no definite time is fixed by present law during which the lessee (or the trustee if there is a trustee) must either assume or reject the equipment lease. 11 U.S.C. §365(d)(2). This is in sharp contrast to the situation of the landlord owner of non-residential real property, who will have its lease deemed rejected and the real property returned if the lessee fails to assume the lease within sixty days after filing the bankruptcy petition, or within such further time as the bankruptcy court may allow for cause shown. 11 U.S.C. §365(d)(4).

Moreover, no provision of the Bankruptcy Code requires the lessee to make timely rental payments to the lessor as a condition to the lessee's further retention and use of the leased equipment prior to the lessee's assumption or rejection of the lease. By contrast, a debtor may not use a secured lender's cash collateral without the lender's consent or a court order entered after due notice and hearing. 11 U.S.C. §3639(c)(2). If the secured lender's collateral is equipment, the secured lender is entitled to adequate protection payments to protect its interest in the equipment as a condition to the debtor's retention and use thereof. 11 U.S.C. §363(e). Similarly, the landlord of non-residential real property is entitled to be paid rent while the debtor decides whether to assume or to reject the lease of non-residential real property. 11 U.S.C. §365(d)(3).

No rule specifies whether the lessor shall be paid the rent specified in the lease, or a lower amount, or anything at all, for the lessee's use of the equipment during the period before the assumption or rejection of the lease.[1] Another unfortunate consequence of this situation is that the lessor may remain unpaid for substantial periods of time while the parties litigate what the amount of the rental payments should be.

No provision of the Bankruptcy Code expressly requires the lessee to repair and maintain the equipment in accordance with the lease contract, while the lessee decides whether to assume or to reject the lease. By contrast, a non-residential real property lessee must perform such obligations during the period prior to assumption or rejection. 11 U.S.C. §365(d)(3). Equipment lessors should get equal treatment on this matter. Most equipment leases provide that the lessee is responsible for the maintenance and repair of the leased equipment. At the expiration or termination of a lease, the lessor is entitled to a return of the leased equipment for sale or re-lease by the lessor, and leases generally provide that the equipment will be returned to the lessor in the same condition as received by the lessee, normal wear and tear excepted. For this reason, among others, the lessor has a vital interest in the proper maintenance and repair of the equipment in accordance with the lease contract so that the expected residual value of the equipment will not be dissipated during the bankruptcy case.

Finally, the equipment lessor has no clearly stated and unequivocal right to recover

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[1] See, for example, the difficulties reflected in decisions such as In re Mid Region Petroleum, Inc., 111 B.R. 968 (Bkrtcy. N.D. Okl. 1990); Matter of Thayn Farms, Inc., 117 B.R. 510 (Bkrtcy. D. Neb. 1988); Kinnan & Kinnan Partnership v. Agristor Leasing, 116 B.R. 162 (D. Neb. 1990); and In re ICS Cybernetics, Inc., 111 B.R. 32 (Bkrtcy. N.D. N.Y. 1989).

promptly its equipment from the debtor-lessee at the expiration of the lease, even where the lease expired before the lessee filed its bankruptcy case. By contrast, non-residential real property subject to an expired lease will not become part of the bankruptcy estate and the landlord will not be stayed from evicting the tenant after the bankruptcy filing. 11 U.S.C. §541(b)(2) and §362(b)(10). It is even possible that the equipment lessee might be able to go so far as to assume and assign an equipment lease which was terminated prior to the lessee's bankruptcy. By contrast, it is clear that the debtor cannot assume or assign a non-residential real property lease which was effectively terminated prior to bankruptcy. 11 U.S.C. §365(c)(3). However, Section 365(c)(3) applies only to non-residential real property leases, which might leave the unfortunate implication that the opposite result may pertain in respect of equipment leases.

Because the rules guiding the bankruptcy courts in respect of equipment leases are so unclear and ambiguous, the equipment lessor is often left in limbo during reorganization cases. For a prolonged period of time, the lessor is both unpaid and unable to reclaim its equipment while the lessee uses the equipment. Often lessors suffer a substantial decline in the equipment's value as a result of the lessee's failure to repair and maintain the equipment during this period. This kind of decline in value arising out of failure to maintain can cause serious losses in addition to the losses caused by normal depreciation or even technological obsolescence of the equipment. Frequently, possibly because of a desire to promote business rehabilitation, the bankruptcy court fails for an extended period of time to enter any order directing the debtor-lessee either to pay for the use of the equipment or to return it to the lessor.

Such experiences in bankruptcy court frustrate equipment lessors and discredit the bankruptcy system and the federal courts. Worse, they raise the cost of equipment leases and inhibit capital growth.

To eliminate these problems, AAEL recommends that the Bankruptcy Code be amended to include express language to accomplish the following results:

(a) that the equipment lessee/debtor be required to pay rent at the lease rate, and to maintain and repair the leased equipment in accordance with the lease contract, and otherwise to perform the lessee's obligations after bankruptcy until the equipment lease is assumed or rejected;

CONCLUSION

In conclusion, AAEL believes that these proposals will make the Bankruptcy Code fairer and will reduce confusion and uncertainty in the commercial equipment leasing industry. As a result, equipment leasing ultimately would cost less and be more widely available, benefiting lessees as well as lessors and strengthening the economy in general.

There may be other problems of the Bankruptcy Code where it would be helpful if uncertainty or ambiguity were resolved by legislative clarification. But we have felt that it would be more useful to the Subcommittee if we concentrated on those areas which, on the basis of our industry experience, most clearly demand attention. Nevertheless, as other issues are raised in the course of the Subcommittee's deliberations, AAEL will be glad to address them and to be of such additional help to the Subcommittee as we can.

EXCERPTS FROM RESPONSE OF THE AMERICAN ASSOCIATION OF EQUIPMENT LESSORS TO THE SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE, TO TWO FOLLOW-UP QUESTIONS TO AAEL'S TESTIMONY ON COMMERCIAL BANKRUPTCY ISSUES ON JULY 30, 1991

Question 1

The current Bankruptcy Code is silent on time limits imposed in Chapter 11 for the recovery of leased equipment. What are some of the problems which your membership has with this silence, and why do you advocate the necessity for a fixed time period for a debtor to accept or reject a lease?

AAEL's response to question 1

AAEL does not advocate an amendment to the Bankruptcy Code that would fix absolutely the time period for a debtor to accept or reject a lease. AAEL does propose that the bankrupt debtor be given a reasonable time within which to assume or reject its equipment leases and, if the debtor wants further time, it should demonstrate to the Bankruptcy Court that cause exists for such additional time.

It is the experience of our membership that prolonged and harmful delays have often occurred before the debtor ultimately decided to assume or reject a lease. It must be emphasized that the leased property is the property of the lessor, and, unlike other creditors who can insist on COD payments for new merchandise, the debtor can use the leased property and not pay for its post-petition use, simultaneously depriving the lessor of the opportunity to release or sell its property.

We offer a few examples provided by some of our members which indicate the type of problems of concern to equipment lessors and to which our proposed amendments are addressed:

1. California, 1990. The debtor was the lessee of approximately $800,000 in computer equipment. The lessor moved the Bankruptcy Court to compel the debtor to assume or reject the lease and to compel payment of administrative rent. The court refused to compel the payment of any administrative rent to the lessor, but, instead, ordered the debtor to assume or reject the lease within approximately two months. On the last day of this extended period available for the lessee to elect whether to assume or reject the lease, the lessee filed as motion to assume the lease. The lessor opposed the motion on the ground that the lessee did not have the resources to assume the lease. The lessee then rejected the lease. When the lessor obtained possession of the equipment, a number of parts were missing. In short, the lessor did not receive rental payments for about five months, and the equipment was not fully maintained while the lessee possessed the equipment. The lessor still has a $200,000 administrative claim against the debtor for unpaid rent.

2. Arizona, 1990. The debtor, a retail sales chain that leased computerized cash register equipment for its outlets, is in the fifteenth month of its bankruptcy. Although a motion to compel assumption or rejection of the lease has been filed, the lessee has not yet been required to assume or reject the lease. In the meantime, the lessor has had to pay $75,000 in prepetition property taxes because the debtor did not have the resources to make the tax payments as required by the lease. Yet, the lessor cannot repossess the property and resell or release it in order to offset its property tax expenses.

3. Texas, 1989. In another situation involving computer equipment, the debtor-lessee did not reject the lease until the seventh month after filing for bankruptcy protection. According to the lessor, the lessee was unwilling to reject the lease until then because it needed to use the equipment. At the time the lease was rejected the lessee owed about $500,000 in delinquent rental payments. The lessor received only $125,000 of this amount. Furthermore, the lessee did not maintain the equipment up to specifications, thereby reducing its residual value. Ironically, the lessor had found a willing buyer for the equipment soon after the beginning of the bankruptcy. Had the lease been terminated promptly, and the equipment returned, the lessor could have sold the equipment sooner, at an increased price, thereby mitigating the debtor's debt and reducing the lessor's losses with respect to the lease transaction.

4. Illinois, 1991. The debtor used the lessor's packaging equipment, valued at over $2 million, for more than three months without paying any post-petition rent or assuming or rejecting the lease. While acknowledging the unfairness of this to the lessor, the Bankruptcy Court, over the repeated objections of the lessor, authorized immediate payment of retainers to attorneys and accountants of the debtor and the unsecured creditors' committee and payment of prepetition wages and union dues, and has granted secured creditors super-priority administrative expense liens and claims superior to the unpaid administrative claims of the equipment lessor. The court refused to order the equipment leases rejected, despite the debtor's failure to honor its repeated promises to pay administrative rent.

5. California, 1989. In a situation involving the lease of a $60,000 printing press, the lessee avoided assuming or rejecting the lease for six months after commencement of the bankruptcy case. The lessee then announced that the equipment was missing.

6. New Hampshire, 1990. A lessee agreed to rent construction equipment for $18,000 a month. Despite the lessor's prompt filing for adequate protection and for assumption or rejection of the lease, the Bankruptcy Court did not rule on the motion until nine months after commencement of the bankruptcy case. The court awarded the lessor payments of $3,700 a month, only about one-fifth of the amount to be paid under the lease agreement. There was no ruling on the motion to compel assumption or rejection.

7. Florida, 1990. A lessee of hotel furniture and other equipment filed for bankruptcy. Despite a prompt filing for adequate protection and assumption or rejection of the lease, no ruling was issued on the claim until about five months later.

8. Michigan, 1990. In a bankruptcy involving the lease of automobile repair equipment, the Bankruptcy Court took one year to rule on a motion to compel payment of administrative rent.

9. One of our members, who leases "small ticket" items such as photocopy equipment, reports on its experiences with fourteen lessees who have filed for bankruptcy in the 2½ years between December 1988 and May 1991. All but three of the lessees have not yet decided to assume or reject the lease. Of the three which did decide, each rejected its lease. In these three instances where the lease was rejected, the shortest length of time between commencement of the bankruptcy and the rejection was six months. The other two took, respectively, 18 months and 22 months.

As these examples show, during this period before the lessee assumes or rejects a lease,

it is critical that the lessee (i) pay the contract rent, (ii) perform proper maintenance in accord with the lease contract, and (iii) otherwise conform with the contract. The Bankruptcy Code now provides these basic rights for non-residential real property lessors, and equipment lessors are entitled to have the same rights.

Moreover, unlike real estate, equipment generally depreciates rapidly. If not maintained properly by the trustee or the debtor during the bankruptcy case, the value of the equipment will be reduced. In fact, a substantial part of that loss in value may be attributable to the lessee's use of the lessor's property after the filing of the bankruptcy case. In other words, during the bankruptcy case itself the lessor's property is being used in the lessee's business for the benefit of the lessee and the lessee's other creditors and at the expense of the lessor. As a matter of simple justice, the lessee should maintain the property in accordance with the lease,and should pay the lessor the contract rentals until the lessee decides whether it wishes to assume or reject the lease.

Also, as explained in our July 30 testimony, the prompt payment of contract rentals is very important to lessors. Yet the Bankruptcy Code does not even specify whether the lessee shall pay the full contract rent, some smaller amount, or anything at all prior to the assumption or rejection of the lease. As noted in the above examples, despite their requests for relief from the Bankruptcy Court, equipment lessors may not get paid anything for an extended period of time, or may not receive payment at a fair and reasonable amount.

Of course, lessors may make motions to compel the trustee in bankruptcy to decide whether to assume or reject the lease, and they also may make motions to compel the trustee to pay rentals and to maintain the property. But it takes a substantial amount of time to litigate and decide these motions, and they are expensive and burdensome to the lessor, to the bankruptcy estate, to the courts, and to the administration of the bankruptcy system. During the course of this litigation, the equipment continues to depreciate from use by the lessee. And, as the examples show, the lessor often receives less than fair rental compensation, if any rent is paid at all, for use of the equipment. This is in sharp contrast to real estate lessors, who are generally entitled to contract rentals during the administrative period.

The delays that equipment lessors experience, the lack of payment of fair rental value, and the depreciation of the property, defeat the Congressional purpose as evidenced through the plain meaning of the Bankruptcy Code. The Code allows a lessee to assume or reject an unexpired lease. But, in all too many cases, neither prompt assumption nor prompt rejection occurs. Instead, the equipment lessee uses property for a prolonged period, without assuming the lease and without paying contract rentals and without maintaining the equipment. In practical effect, the lessee is receiving all of the rights involved with an assumption of the lease but is not respecting any of the responsibilities provided in the Code for an assumption.

We therefore urge the Subcommittee to recommend enactment of our proposed amendments to preserve the integrity of the Code and of the underlying Congressional purpose and policy to prevent instances of unnecessary and unjust burdens on the lessor. The policy underlying the proposed amendment is sound and it is fair and it is advantageous to the nation. Lessees and the economy as a whole will benefit through reduced rentals and greater availability of equipment.

Mr. METZENBAUM. Mr. President, I rise to ask the Senator from Wisconsin to clarify several points of concern relating to his amendment. It is my understanding that this amendment clarifies sections 1110 and 1168 of the Bankruptcy Code and as such it applies to the financing of certain airline and railroad equipment. Is it correct that the references in this amendment to leases or agreements in no way weakens or abrogates collective bargaining agreements between the workers and management?

Mr. KOHL. The Senator from Ohio is correct. The language of the statutes clearly states that these provisions apply to financing agreements relating to specific machinery and equipment, and in no way weakens or abrogates collective bargaining agreements between the workers and management.

Mr. METZENBAUM. I would also like to ask the Senator from Wisconsin about a provision in his amendment pertaining to the bankruptcy trustee's obligations to maintain certain equipment covered under sections 1110 and 1168. I want to ensure that this provision does not create a new group of creditors who could deplete the cash reserves or otherwise curtail the ability to continue the day-to-day operations of a rail or air company that is reorganizing under our bankruptcy laws.

Mr. KOHL. Let me assure the Senator from Ohio this amendment comports fully with the generally accepted interpretation of current law. This amendment would simply clarify that if a trustee retains the use of the equipment under sections 1110 and 1168, the trustee has the obligation to maintain that equipment according to the terms of the contract. This is the intent of current law.

In addition, I would also like to emphasize that ensuring the proper maintenance of equipment that is going to be operated in the public domain during the restructuring period is of vital importance to the safety of that equipment and all who use it.

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

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

Mr. REID. Mr. President, what is the status of the Senate proceedings?

The PRESIDING OFFICER. The Senate is presently considering S. 1985.

Mr. REID. Mr. President, prior to coming to the Congress of the United States, I was an attorney practicing law. And during the practice, I had the opportunity to do some bankruptcy work. It was with interest that I recognized the work that has been done by the Judiciary Committee in bankruptcy these past many months. I not only practiced law and had some familiarity with the Bankruptcy Act, but also in my personal business dealings have had experience with the Bankruptcy Act and understand how it can be abused.

I would like to commend the Judiciary Committee and especially Senator HEFLIN who is the chairman of the subcommittee that has done such a responsible job in dealing with this excellent work in bankruptcy reform.

Mr. President, I would like to take a few minutes to explain a small section of the committee substitute having to do with single asset real estate.

The definition of single asset real estate has been revised to clarify that this asset is property constituting a single property or project. We commonly think of a single asset case as one of a debtor with a single apartment house or condo complex or a single piece of real estate.

However, this could include a debtor with many real estate properties, such as a real estate investment trust with 10 projects in many different States. The committee has clarified this language to avoid including a multiproject debtor with substantial amounts of unsecured debt that would more likely benefit from reorganization and thus need more time to file their plan. The committee has determined that unlike the single asset case in which a debtor should ordinarily be able to propose a plan within 90 days, they would follow the outline I just set forth.

Mr. President, further, the definition has been revised to clarify that the business conducted on this single asset real estate must be of a substantial nature to except it from this section.

This guards against a real estate developer who, for example, puts in a lawn mower repair shop in an apartment complex just before filing bankruptcy.

The automatic stay provision within the bill has been modified with respect to a single asset real estate purely for clarification.

Subsection 3 has been broke up into parts a and b. This presents the requirements for a lifting of the automatic stay on a single asset real estate in a clear and I believe more affirmative manner.

The last clarifying amendment to section 211 amends a provision that allows a foreclosure proceeding to ensure on a single asset real estate property while the debtor is in bankruptcy. The problem that generally occurs here is the debtor files for bankruptcy and an automatic stay goes into effect, affect-

ing even a foreclosure action already pending at the time of filing for bankruptcy.

Mr. President, I might add that I received significant input and have had personal experience where people are foreclosing a piece of real estate and the foreclosure proceeding is going along according to law and somebody files a petition of bankruptcy and they get an automatic stay. The only purpose of that stay, the filing of that bankruptcy petition, is to stall, to stop a foreclosure from going forward. This amendment I am talking about relating to section 211 makes it more workable, make it so people are playing on a more equal playing field.

This amendment, in effect, will allow, upon the request of a secured creditor, a limited relief from the stay to continue the foreclosure procedure, but only up to the point of the sale. The result is that if the case fails and is dismissed, the lender will be able to complete the foreclosure process promptly.

For example, if a limited partnership owning an apartment house files for chapter 11 after the lender has commenced foreclosure, the court will routinely and promptly lift the automatic stay to permit the foreclosure to continue. If the debtor proposes and confirms a plan, all is well.

If not, and the case is dismissed, then the lender will be able to proceed promptly to complete the foreclosure. The debtor would not be able to hold up the foreclosure proceeding by forcing a hearing on the limited lifting of the stay, except, Mr. President, for a very good reason, or reasons.

This amendment, this change in the law, mandates that the order to continue the foreclosure proceeding shall not issue before 30 days have passed after the filing for bankruptcy to allow time for the debtor's benefit to prepare defenses to the foreclosure proceeding.

Further, the requirement that the creditor have more than a de minimis value protects debtors from abuse by a junior lienholder whose liens on the property may be valueless.

Mr. President, I again would like to express my appreciation to Senator HEFLIN and the majority and minority staffs for allowing me to have some input in this Judiciary Committee bill. I recognize that I am not a member of the committee, but the committee has been most open in its accepting those things that I have proposed that have been, in their estimation, good, and have been just as forthright in suggesting some of the proposals I made were not as good.

I believe that this legislation is good. I think the committee should move forward on it rapidly. I believe these suggestions that I have made and are encompassed within the bill provide both protections for the debtor procedurally while clarifying the rights of lenders as well.

I urge my colleagues to support this important legislation.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Alabama is recognized.

Mr. HEFLIN. Mr. President, previously during the debate on this bill, I discussed major portions of this legislation and why I believe so strongly that this legislation should be passed. At this time, I want to spend a moment to comment on the differences which may be found between what was reported out by the Senate Judiciary Committee and what is being considered by the full Senate today since we intend shortly to offer a manager's substitute for the bill. These changes can be found in both changes to existing sections of the bill, and in additional sections added to the bill which will be brought to the attention of the Senate.

During the course of the committee hearings and through the committee's consideration of this bill, a few of ongoing issues continue to reoccur which deserve consideration by the Senate. These issues can be found in the form of new sections to the bill which can be found in the committee substitute. Specifically, found in the committee substitute are five new sections of the bill.

The first three new sections have been worked on for a considerable period of time, and a great deal of time, attention, and credit go to Senator KOHL and his staff for aiding the managers in putting together these proposals. The first new section, section 213, is a proposal which was first made during the course of the committee hearings and involves the leasing of airplanes and railroad equipment. Generally, this section would modernize the current versions of sections 1110 and 1168 of the Bankruptcy Code. These sections provide for special treatment of certain types of leases involving airplanes, shipping vessels, and railroad rolling stock. This amendment would take effect over time as new equipment is placed in service to eliminate the distinction between purchase money security interests and other types of security interests. This section would also provide a clearer working definition of the term "lease" for purposes of these sections, and would clarify a trustee's obligations for maintenance and return of equipment. This proposal has gone through a considerable work and consideration by a wide range of interested parties. I am especially pleased that the compromise reflected in this proposal has been worked out, and am happy to have this section as part of this bill.

The next new section of the bill is section 214. This section was also part of the subcommittee's hearings last summer. This amendment is a clarification of current law regarding how equipment leases should be treated during the pendency of a chapter 11 bankruptcy proceeding. Currently, when a debtor files for bankruptcy, leases on personal property can either be accepted or rejected as part of the plan or reorganization. Current law provides that there are no time limits in which this decision to assume or reject must take place, however, before the decision does occur the bankruptcy debtor has the ability to use the leased equipment. This amendment simply clarifies the Bankruptcy Code to ensure that postpetition lease payments should be made on this equipment and that debtors are required to maintain equipment pursuant to any contractual obligation. This clarification is extremely important given the size and importance of the leasing industry in the United States. Again, I am pleased that the technical aspects of this proposal, which was previously before the committee, have been worked out and included in this substitute.

A final amendment has the support of Senator KOHL, and again falls into the issue of clarifying how leases should be treated under the Bankruptcy Code. The new section 215 would overrule the third circuit opinion of *In re Joshua Slocum, Ltd.*, 922 F2d. 1081 (1990). This opinion failed to take into consideration the issue of mootness and the assignment of leases in bankruptcy. If leases of a debtor are assigned to a third party outside of bankruptcy, mootness principles should apply to that assignment. Specifically, this section would ensure that the mootness principles embodies in sections 363(m) and 364(e), related to the sale and leasing of property and the ability to incur debt, are also applied to the assignment of leases under section 365 of the Bankruptcy Code. This clarification of the law will aid the business community by providing some certainty in the assignment of leases. I support this amendment and believe that it aids in the clarification of issues related to leases which have been before this committee since the hearings which took place last summer.

Another issue which was first brought to the committee prior to the committee's consideration of this bill, but was not included in the committee's final version relates to the issue of reclamation in bankruptcy. This issue has been highlighted and brought to my attention through the efforts of Senator LAUTENBERG, and I appreciate his interests and concerns in this area. This issue is found at section 216 of the substitute bill. This section conforms the Bankruptcy Code to what is already current practice in many courts.

This section allows for the consensual return of goods, which are in the possession of the debtor, to the seller-creditor. This section would allow the value of such returned goods to be offset against the value of any prepetition claim of such a creditor. This section

provides for court approval for such an action, and further provides that such an action may only take place when it is in the best interests of the reorganizing company. This offset procedure will relieve the bankruptcy estate of the burden of keeping unwanted or unsalable goods, and relieve the estate of unnecessary liabilities. This return will be particularly valuable when the goods are of greater value to the seller of the goods than to the debtor-purchaser.

Although courts have allowed such return procedures, the Bankruptcy Code does not explicitly deal with this issue. Allowing the consensual return of goods would permit more efficient reorganizations of bankruptcy debtors, and other creditor's interests will be protected by requiring notice and hearing before a reclamation could take place. This section simply recognizes a business reality and is a section which I support.

The final new section of the substitute which was not in the committee reported bill is section 217. Again, this section was one of many issues which were before the subcommittee during hearings last summer, but which needed further refinement. This section deals with the issue of reimbursement of indenture trustees who participate in a bankruptcy proceeding. This amendment would improve current law by assuring indenture trustees, whose work benefits broad classes of debtholders, receive adequate compensation for their necessary expenses incurred during a bankruptcy.

Indenture trustees are required under section 315(c) of the Trust Indenture Act of 1939 to act in a fiduciary capacity on behalf of public bondholders in the event of a default such as occurs in a chapter 11 bankruptcy proceeding. Therefore, these trustees have a high statutory obligation to represent certain interests during the pendency of a bankruptcy. However, some courts have found since indenture trustees are acting on behalf of a defined class of debtholders rather than on behalf of the entire estate, they may be eligible for reimbursement, if at all, for only a small fraction of their expenses from the bankrupt estate.

I believe that indenture trustees are entitled to receive adequate compensation given their unique role in complex bankruptcies. Unlike other official participants who act on behalf of their own interests, indenture trustees must represent the interests of widely scattered public debtholders. Further, I, believe that the full and active participation of these trustees promotes reorganization and the debtor's ability to pay its debts.

This section ensures that trustees act economically and efficiently by requiring that they receive reasonable compensation only for necessary services. The use of the term "necessary" is intended to place limitations of the kinds of services that may be compensated by the estate as administrative expenses. This standard would exclude services that duplicate those of the official creditors' committee or any other official committee that is adequately representing the interest of bondholders. These duplication concerns were highlighted in the communications which I had with the Securities and Exchange Commission regarding this issue. It should be noted that the SEC supports this proposal, in its limited form, and I ask unanimous consent that the communications between myself and the Chairman of the SEC Richard Breeden, be printed in the RECORD.

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

U.S. SENATE
Washington, DC, April 16, 1992.

Hon. RICHARD C. BREEDEN,
Chairman, Securities and Exchange Commission, Washington, DC.

DEAR CHAIRMAN BREEDEN: As you are aware, the Senate Judiciary Committee recently completed its mark-up of S. 1985, bankruptcy reform legislation. This bill, I believe, will provide much needed changes in current bankruptcy law and practice where there is consensus for immediate statutory change, and also creates a two-year National Bankruptcy Commission to consider more controversial matters as well as broad policy questions.

Over the past few weeks, I have been made aware by constituent banks of the difficulties faced by indenture trustees seeking fair compensation for the services they must perform in representing the interests of debt security holders during bankruptcy proceedings. As the Securities and Exchange Commission (SEC) is aware, indenture trustees are required under the Trust Indenture Act of 1939 to represent the interests of indenture security holders as a fiduciary during bankruptcy proceedings. I have been advised, however, that in recent years indenture trustees have been denied the ability to recoup their necessary fees and expenses incurred in connection with performing this investor protection function due to a technical problem in the wording of the Bankruptcy Code.

Some members of the Senate are sympathetic to rectifying this situation and may be considering the merits of amending S. 1985, when it is considered by the full Senate, to eliminate the requirement now contained in Section 503 of the Bankruptcy Code that indenture trustee must demonstrate a "substantial contribution" to the proceedings in order to receive reimbursement of fees and expenses incurred in protecting debt security holder interests. Advocates of such an amendment argue that it would serve both to assure full protection of the interests of debt security holders, and to allow indenture trustees to receive fair compensation for services performed in protecting those interests. S. 1985 already contains a similar technical charge in Section 405 to assure adequate compensation for participants in a Chapter 11 Creditor Committee.

Because the SEC is charged with protecting investors, I am interested in learning its views in regard to this matter. As S. 1985 may be considered by the full Senate in the near future, I would appreciate receiving a response to this inquiry as soon as possible.

Your prompt attention to this matter is greatly appreciated. Should your office wish to discuss this issue with my staff, please do not hesitate to contact Mr. Stephen Raby, my Administrative Assistant, who can be reached at 224-4124.

Sincerely,

HOWELL HEFLIN.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 8, 1992.

Re proposed bankruptcy reform legislation (S. 1985).

Hon. HOWELL HEFLIN,
U.S. Senate, Washington, DC.

DEAR SENATOR HEFLIN: This letter is in response to your request of April 16 for the views of the Securities and Exchange Commission on the standard of compensation for an indenture trustee in Chapter 11 reorganization cases.

The Commission endorses the amendment to Section 503(b) of the Bankruptcy Code, proposed by representatives of the American Bankers Association and other interested parties, revising the standard for determining when an indenture trustee is entitled to compensation as an administrative expense from the bankruptcy estate. As you know, Section 503(b) requires an indenture trustee to demonstrate that it has made a "substantial contribution" in a reorganization case before it can be awarded compensation as an administrative expense from the bankruptcy estate. The proposed amendment would eliminate the "substantial contribution" requirement of current law, and would provide that indenture trustees receive reasonable compensation for "necessary" services rendered during a Chapter 11 reorganization. Copies of the proposed amendment that the Commission endorses and an insert for the legislative history, which the Commission staff assisted in drafting, are enclosed with this letter.

The Commission staff has worked closely with representatives of the American Bankers Association and other interested parties in connection with the proposed amendment. In the Commission's view, the proposed amendment, if enacted in its present form, would provide an effective solution to the problems raised concerning the compensation of indenture trustees in bankruptcy proceedings.

An amendment to current law is appropriate in light of several concerns. First, many bankruptcy courts have denied or substantially reduced the requests of indenture trustees for compensation as an administrative expense from the estate. These courts have read restrictively the statutory language requiring that an indenture trustee make a substantial contribution in order to preserve the assets of the estate.

Second, indenture trustees may not be fairly and reasonably compensated when they fail to recover their fees and expenses as an administrative expense from the bankruptcy estate. Indenture trustees are typically contractually entitled to compensation from the issuer for their reasonable fees and expenses in the event of a default. However, this right to compensation represents only a general unsecured claim against a Chapter 11 debtor—a claim that is often paid at substantially below par. In addition, although many trust indentures entitle trustees to a lien on distributions made to debenture holders to the extent of their reasonable fees, there may not be sufficient distributions to compensate fully the trustee.

Third, indenture trustees must represent the interests of the underlying bondholders

in Chapter 11 proceedings, notwithstanding potential difficulties in obtaining compensation. Indenture trustees are required by Section 315(c) of the Trust Indenture Act of 1939 to act as fiduciaries for public bondholders in the event of a default.

Moreover, in the Commission's view, it is often particularly important in a bankruptcy proceeding that indenture trustee be actively involved. Unlike other unofficial participants such as individual shareholders and creditors, who act only to protect their own interests, indenture trustees represent the interests of widely scattered public debt holders. While the Bankruptcy Code contemplates that the official creditors' committee will protect the interests of all creditors, as practical matter official committees are typically controlled by bank and trade creditors, whose interests may differ from the interests of holders of public debt issued under indentures. Active participation by the indenture trustee on the official committee may be necessary to assure that the interests of public debt holders are represented in the reorganization process. To the extent the publicly held debt is subordinated, there is an even greater need for representation on the creditors' committee by an indenture trustee, since the committee ordinarily consists of the seven largest unsecured senior creditors, and bankruptcy courts are generally reluctant to appoint a separate official committee to represent subordinated debt.

In response to these concerns, the Commission proposed in a brief filed four years ago in the bankruptcy proceedings of the Baldwin-United Corporation that the district court adopt a broad reading of the term "substantial contribution" when determining whether an indenture trustee was entitled to compensation for its services under Section 503(b). A memorandum setting forth the Commission's proposal and analysis is also enclosed with this letter. The Commission urged that a broad reading was consistent with prior law and was appropriate given the important role indenture trustees play representing the interests of indenture security holders during bankruptcy proceedings. After the Commission filed its brief, the matter was settled and no decision was rendered by the district court.

The proposed amendment to Section 503(b), in the Commission's view, appropriately satisfies the concerns underlying the Commission's position in the Baldwin-United proceeding. As indicated, the proposal would eliminate the "substantial contribution" requirement of current law as the necessary predicate to indenture trustees' receiving compensation for their services. That standard has proven unworkable for indenture trustees given its imprecision and susceptibility to more than one interpretation. The proposal also meets the Commission's concern that indenture trustees act economically and efficiently by providing that indenture trustees receive reasonable compensation for "necessary" services rendered.

The use of the term "necessary" (added to the initial proposal at the Commission staff's request) is intended to place a limitation on the kinds of services that are compensable by the estate as an administrative expense. This proposed standard would exclude services that duplicate those of the official mandatory creditors' committee or other official committee that is adequately representing the interests of bondholders. It would include, however, compensation for monitoring bankruptcy proceedings and communicating with indenture security holders. Lastly, the amendment would apply the same interest for reimbursement of expenses.

The Commission supports the passage of this important legislation. If you or your staff have any questions concerning this letter, or would like a briefing on its contents, please contact me or Peter Kiernan, Legislative Counsel, at 202-272-2500.

Sincerely yours,

RICHARD C. BREEDEN,
Chairman.

Mr. HEFLIN. Mr. President, I believe that this section is an important addition to this bill, and am pleased that a successful resolution to the exact wording of the language has been achieved since the action of the full Judiciary Committee.

In addition, to the sections of the substitute bill which I have been describing, a number of additional changes to existing sections may be found in this proposal pending before the Senate. In addition to technical corrections, substantive concerns have been raised regarding various parts of this bill.

A key concern of many persons has been the workability of the small business chapter contained in section 205 of the bill. We have sought and received a wide range of comments regarding this proposal, and have sought to address constructive comments in making this proposal more functional. I would like to take a moment to highlight some of the changes to section 205 that are contained in the substitute.

First, the substitute raises the debt ceiling for eligibility for this section $1 to $2.5 million. This change was made to encompass a wide range of small businesses, and to increase the baseline information which may be gleaned from the operations of the pilot districts during the course of the 3-year program. A greater base of knowledge will aid Congress in evaluating this program and the conclusion of the 3-year period.

Second, the substitute gives more authority and larger responsibilities to the trustees who would be appointed to oversee chapter 10 proceedings. I believe that in order for this program to work, the trustees who will be appointed must be strong and active participants in the reorganization process.

Third, this substitute also clears up issues regarding compensation, and protects trustees who may be appointed to ensure that the court may award appropriate compensation for the amount of work that might be done in a particular case.

Fourth, a very important improvement of this proposal is the streamlining of the contents of plan and discharge of debtor sections. These sections have been reworked in order to make them substantially similar to the current provisions found in chapter 12 of the Bankruptcy Code. This should clarify many interpretation questions since a body of caselaw already exists regarding how various sections of chapter 12 should be interpreted. Further, possibly the most important feature of this streamlining is the change which takes place regarding when a discharge would occur. The previous proposal would allow for a discharge early during the bankruptcy proceeding. However, the proposal before the Senate alters this approach to protect creditors and does not allow discharges of debtors to take place until after the successful completion of the plan of reorganization.

Fifth, a final important modification found in the substitute provides that the trustee must deliver annual reports regarding the financial condition of the debtor to all the creditors. This report should aid creditor's ability to follow the debtor's reorganization and to enhance the creditors knowledge regarding the debtor's disposable income and protecting the creditors rights to that income under this chapter.

I believe that these constructive improvements go a long way towards making this proposed chapter an even more functional tool for small businesses to reorganize.

A final criticism has been leveled at this proposal by its critics in arguing that the proposed chapter may be unconstitutional. I want to state for the record that I disagree with that assessment and briefly describe why I argued against such a notion. First, recent history and current law argue against the notion that the bankruptcy laws must be uniform for all persons and all situations. For example, currently the Code allows for each of the 50 States to develop their own individual exemption provisions for debtors who file for personal bankruptcy. In addition, it should be noted that the U.S. Bankruptcy Trustee Program was begun as a pilot program before it was greatly expanded. However, that program still does not have nationwide uniformity since my State of Alabama and the State of North Carolina are still exempted from the oversight of the U.S. Trustee Program. In interpreting the uniformity issue the Supreme Court has ruled, "[T]he laws passed on the subject must, however, be uniform throughout the United States, but that uniformity is geographical and not personal, and we do not think that the provision of the act of 1898 as to exemptions is incompatible with the rule." *Hanover National Bank* v. *Moyses*, 186 U.S. 181, 188 (1902). This interpretation of the uniformity clause found in the Constitution, as it relates to bankruptcy, has clearly been found to center on issues of geographical uniformity. I believe that the proposed pilot programs can meet this test through its proper application, and therefore I believe that this proposed small business chapter is constitutional.

In addition to the alterations found in the small business chapter, section

205, changes to the committee bill can be found in other sections. A key section which has been altered is section 204 relating to the committee's attempts to overrule the DiPrizio line of opinions. This issue has consumed many hours of labor and study for Senator GRASSLEY and his staff and the new section found in the substitute bill is a clear and artful means to achieve this result. I applaud their efforts, and appreciate the hard work and dedication which have gone into the latest version of this section.

Additional improvements can be found in the substitute which is pending before the Senate. Improvements can be found in the drafting of section 301 of the bill regarding bankruptcy preparer penalties. This language has been worked upon by Senator METZENBAUM'S staff and the Justice Department to more clearly outline the circumstances and penalties associated with this section. Another improvement in this substitute can be found in the language of section 210 regarding airport gate leases. These improvements clarify the meaning of this section and lengthen the time from 120 to 180 days in which a bankrupt airline debtor does not have to make assumptions or rejections of airport gate leases, without the burden shifting to the bankrupt debtor to show that substantial harm is not arising from the ongoing tendency of such decisions. I believe that the compromise which was reached regarding this section is both wise and workable, and I especially appreciate the work done by Senators DANFORTH, HATCH, and SIMON on this section.

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

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

AMENDMENT NO. 2424

Mr. HEFLIN. Mr. President, I send the new substitute amendment to the desk and ask unanimous consent that it be agreed to and that the committee substitute, as amended, will still be open to amendments in both the first and second degree.

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

(The amendment (No. 2424) was agreed to and appears in today's RECORD under "Amendments Submitted.")

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

The PRESIDING OFFICER. The amendment has been agreed to by consent and is now amendable further.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 2425

(Purpose: To clarify the treatment of pension plan contributions)

Mr. GRAHAM. Mr. President, it is my intention to shortly send to the desk an amendment to the committee substitute.

Mr. President, the amendment which I am offering with Senator PACKWOOD of Oregon, relates to employee-sponsored pension plans which are assuming an increasingly important role in providing retirement income security.

In 1990, private pension benefit payments totaled $141 billion, or 30.9 percent of all retirement benefit payments made to retired workers and their families in America.

Clearly, corporate pension promises are critical in the retirement plans of many Americans.

Unfortunately, there has been a dramatic increase in the gap between the retirement promises corporations have made to their employees and the actual assets available for pension payments.

Furthermore, recent court decisions seek to undermine the law designed to ensure pension payments by allowing companies to use the bankruptcy process to dump pension liabilities on the Federal Government.

The courts' action may prove to be costly to the Federal Government and ultimately the individuals who depend on the Government to guarantee their pensions.

Recognizing the importance of pensions to individuals' retirement security, Congress passed the Employment Retirement Income Security Act in 1974 [ERISA].

This act set standards for employee pension plans and established an insurance program for qualifying plans under the auspices of the Pension Benefit Guaranty Corporation.

PBGC provides for the payment of basic benefits to plan retirees in the event of a plan's financial insolvency.

In some cases, PBGC forces the termination of a plan it believes will ultimately be seriously underfunded and which poses the risk of becoming a significant long-term liability for the Government.

In other cases, the PBGC receives responsibility to take over a plan because the courts have ruled that the corporation is free to stop making payments into the plan in order to avoid further financial losses during a period of reorganization.

It is this last instance to which our amendment addresses itself.

When a financially distressed company files for bankruptcy under chapter 13, it is protected from prepetition debts and must only make court-approved administrative costs while it develops and implements a plan for reorganization.

In a September decision, a New York Federal court ruled in favor of the LTV Corp. which aruged that pension contributions are prepetition obligations and, therefore, part of the body of debt from which they should be shielded from paying while in bankruptcy.

Although both the Tax Code and Employee Retirement Income Security Act assert that pension contributions should continue during a reorganization, the bankruptcy code does not.

That is why Senator PACKWOOD and I offered this clarifying amendment.

The Graham-Packwood amendment requires that contributions to certain employee pension benefit plans which become due during a period of reorganization must be paid unless—and this is an important exception—the court rules that such payment is not in the best interest of the estate.

Simply put, if a company has the resources to continue making contributions to its pension payment, it must do so.

If the company or its creditors can demonstrate that such payments will negatively effect the company's ability to reorganize, then the court can allow a delay in the payments until the company is back on its feet.

Should the company fail to reorganize, the plan would be terminated and responsibility turned over to PBGC.

The result of not making this clarification will be a continuing incentive for plan-sponsors to stop making payments as soon as they file for bankruptcy.

Nonpayments to plans can lead to underfunded plans which can lead to increased liability for the PBGC and, if not controlled, an underfunded Federal insurance program.

This was not Congress' intent when it created a pension insurance program.

The law was intended to ensure sound funding of pension plans, not encourage termination of pension plans.

Considerable debate currently surrounds the question of the PBGC's long-term solvency.

The short-term picture is good.

PBGC reports that single-employer defined benefit plans have $1.3 trillion in assets to back $900 billion in liabilities.

Approximately 85 percent of pension plans are currently fully funded on a termination basis.

However, there is the threat that a few seriously underfunded pension plans could add significantly to the PBGC's liability and jeopardize the fund's future solvency.

In the past fiscal year, two of the largest underfunded plan terminations in the PBGC's history occurred.

In October 1990, seven Eastern Air Lines' pension plans, which were un-

derfunded by $700 million, were terminated.

In July and December of 1991, three of Pan American World Airway's plans were terminated with about $900 million in underfunding, creating further liability for PBGC.

While the balance sheets look good today at the PBGC, it is not in the best interest of retirees who depend on those pensions—or the Federal Government which has insured them—to continue on an uncertain course.

Mr. President, I am a cosponsor of legislation offered by Senator GRASSLEY of Iowa which makes much broader and more substantive changes in the law to ensure PBGC's ability to recoup funds for underfunded plans it inherits as a result of a liquidation.

That legislation, S. 2014, has several much needed provisions worthy of consideration in the Senate, and I am hopeful that the Judiciary Committee will review our proposal.

In the meantime, this clarification amendment is more narrowly focused so as to avoid the controverisal elements of the larger legislative proposal.

It is not my intention to bog down the bill before the Senate today which has broad bipartisan support.

But the Senate must take this opportunity to clarify Congress' intent with regard to contributions which become due to pension plans during reorganization.

I am hopeful the managers of the bill will accept this amendment, which I now send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] (for himself, Mr. PACKWOOD, and Mr. METZENBAUM) proposes an amendment numbered 2425.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . PENSION PLAN CONTRIBUTIONS.

(a) TREATMENT AS ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by section 405, is amended—

(1) by striking "and" at the end of paragraph (b);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) minimum funding contributions to an employee pension benefit plan for which the debtor is liable, which accrue on or after the date of commencement of the case, (regardless of the time such contribution comes due) under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).".

(b) PAYMENT OR POSTPONEMENT OF MINIMUM FUNDING CONTRIBUTIONS DUE PENSION PLANS.—(1) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following new section:

"§ 1115. Contributions to certain employee pension benefit plans

"(a) TIMELY PAYMENT OF CONTRIBUTIONS.—Except as provided in subsection (b), the debtor in possession, or the trustee if one has been appointed, shall make any minimum funding contributions for which the debtor is liable, which accrue on or after the date of commencement of the case, under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).

"(POSTPONEMENT OF CONTRIBUTIONS).—(1)(A) Subject to paragraph (2), the court may, on motion of any party and after notice and hearing, determine that the making of all or part of a minimum funding contribution required to be made by a debtor to a pension plan may be postponed until a date that is not later than—

"(i) the effective date of a plan of reorganization confirmed under section 1129; or

"(ii) if the case is converted to a case under chapter 7, the date on which a distribution of property is made under section 726.

"(B) In making a determination under subparagraph (A), the court shall take into account the requirements of the estate.

"(C) Interest shall accrue on the amount of a contribution that is postponed from the date on which the contribution became due to the date of payment at the rate specified in section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(e)).

"(2)(A) Before permitting payment of all or part of a contribution to be postponed, the court shall grant security to the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, for the amount of a contribution that is postponed, affording adequate protection in accordance with section 364(d)(1)(B).

"(B) If the debtor in possession or trustee fails to make a postponed contribution on the date on which it is to be made under an order issued under paragraph (1), the pension plan shall be permitted to foreclose on the security provided under subparagraph (A).

"(c) NOTICE.—The administrator of the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, shall be given notice of and may participate in any hearing seeking postponement of a contribution or foreclosure under this section.".

(2) The chapter analysis for chapter 11 of title 11, United States Code, is amended by inserting after the item for section 1114 the following new item:

"1115. Contributions to certain employee pension benefit plans."

"(c) CLARIFICATION OF EXISTING LAW.—The amendment of section 550 of title 11. United States Code, made by section 204 shall apply with respect to a transfer to a pension plan that is subject to the minimum funding requirements of section 412 of the Internal Revenue code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082) only if the transfer is the subject of a motion or proceeding seeking avoidance of the transfer that is filed on or after the date of passage of this Act in the Senate.

(2)(A) In making the amendments made by subsection (a) and (b), it is the purpose of Congress to clarify the meaning of the provisions that are amended as they existed prior to the date of enactment of this Act.

(B) The amendments made by subsections (a) and (b) shall not be applied so as to supersede or alter any agreement or understanding (or modifications thereto before or after enactment) regarding a debtor's minimum funding contributions entered into among a debtor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation prior to the date of enactment of this Act.

Mr. PACKWOOD. Mr. President, the amendment I am offering today is the first step in plugging holes in our private pension system. Overall, our private pension plan system is relatively healthy with $1.3 trillion in assets backing up $900 billion in benefit promises.

However, there are a large number of private pension plans that are underfunded. These are plans having pension promises that exceed the money set aside to pay them.

The Pension Benefit Guaranty Corporation—or PBGC—is the safety net for our private retirement system. Currently, the PBGC guarantees defined benefit pensions for 40 million employees and retirees. In recent years, the PBGC's liability for underfunded pensions has increased at an alarming rate. Today, the PBGC is paying pension benefits for almost 2,000 underfunded pension plans—creating a PBGC deficit of $2.5 billion. The PBGC estimates that its losses will continue to increase with a potential worse case scenario of $40 billion in losses.

If we learned anything from the savings and loan crisis, it is that we must make the tough decisions to limit the cost to the taxpayers of Government guarantees before they get out of hand. Employers should not make pension promises to their employees and then stick the Federal Government with the payment of those benefits.

The amendment that Senators GRAHAM and METZENBAUM and I are offering will be a good step toward preventing this from happening. Our amendment does the following:

First, requires employers, after they have filed for bankruptcy, to continue to contribute the minimum annual contribution required by the Internal Revenue Code and ERISA to fund their pension promises;

Second, gives post-petition minimum pension contributions the same priority status as wages and retiree health claims; and

Third, permits employers to delay making the minimum contributions until they emerge from bankruptcy if the employer guarantees to the bankruptcy court that the post-petition minimum funding contributions will be paid.

The last provision is designed to be prodebtor and procreditor because it

permits a financially troubled company to get its financial house in order before requiring actual cash contributions to be paid to the pension plan.

It is important to note that these reforms, along with reforms already in the committee bill, are targeted to stop one of the biggest abuses of our private guaranty system—use of bankruptcy laws to evade current pension obligations and push them off on the Federal Government.

This amendment is needed because the PBGC, unlike other lenders, faces an unlimited credit risk—it cannot protect itself like other creditors by assessing the credit risk, charging a higher rate of interest, or refusing to lend. The PBGC has no ability to limit its liability, it is at the mercy of decisions made by the employer.

A financially weak Federal guaranty system harms not only the current employee and retirees of a financially troubled company, it also harms every working American who relies on the Federal promise that they will be paid at least the basic pension promised by their employer.

I urge my colleagues to accept this amendment.

Mr. GRAHAM. Mr. President, I ask unanimous consent that Senator GRASSLEY be added as an original cosponsor of the amendment.

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

Mr. HEFLIN. Mr. President, I ask unanimous consent that that amendment be temporarily set aside in order that Senator DANFORTH might offer a sense-of-the-Senate resolution, and then we will return to the Graham amendment. In the meantime, perhaps we can talk about it and agree to accept that.

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

AMENDMENT NO. 2426

Mr. DANFORTH. Mr. President, on behalf of myself, Senators GRAHAM, BOND, COHEN, CONRAD, DECONCINI, LEVIN, ROBB, and RUDMAN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] (for himself, Mr. GRAHAM, Mr. BOND, Mr. COHEN, Mr. CONRAD, Mr. DECONCINI, Mr. LEVIN, Mr. ROBB, and Mr. RUDMAN) proposes an amendment numbered 2426.

At the appropriate place, add the following:

The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans; and

(3) national interest in controlling the deficit takes precedence over partisan advantage;

The Senate finds that—

(1) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country are to be effectively and honestly addressed; and

(2) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice; and

The Senate finds that—

(1) the frequency and level of public comment on this issue by public officers and candidates, including those who hold and seek the office of the President, are so insignificant as to constitute irresponsibility;

(2) by and large, the candidates, Congress, and the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse;

(3) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high;

(4) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(5) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(6) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people:

It is the sense of the Senate that—

(1) public officials and candidates for public office to make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President to agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office to affirm their support for this statement of principles and to resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit if elected.

Mr. DANFORTH. Mr. President, first, I ask that Senator DURENBERGER be added as a cosponsor.

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

Mr. DANFORTH. Mr. President, let me first alert the Senate that it is the intention of the cosponsors of this amendment to ask for a rollcall vote. Therefore, we will be voting on it either today or tomorrow, depending on the desire of the managers and the majority leader.

I want to give the Senate some background as to the thrust of this amendment. Two weeks ago, six Senators—three Republicans and three Democrats—appeared on the television program "Nightline," hosted by Ted Koppel. The Senators were Senator GRAHAM, Senator LEVIN, Senator NUNN representing the Democrats, and Senators BROWN, DOMENICI, and myself representing the Republicans.

On that television program, we issued a challenge to the Presidential candidates. The challenge was that the three Presidential candidates subject themselves each to 1 hour on network television for the purpose of discussing the Federal budget deficit, and only the Federal budget deficit; that it not be a debate format, but that it be individual Presidential candidates being questioned for 1 hour on the subject of the budget deficit by two current Members of the Senate, who have announced their retirement from this body on the basis that we have not done a successful job of dealing with the budget deficit. Those Senators are Senator RUDMAN, a Republican, and Senator CONRAD, a Democrat, both on the Budget Committee, both very conversant with the budget issue.

The point of that program was that the budget deficit is the number one issue before our country now; that the way it is being handled by Congress and by the executive branch is totally irresponsible, and that the time has come to tell the American people the truth about the budget deficit.

Further, it was believed that none of the Presidential candidates are talking about it. We now have three likely nominees for the Presidency, and none of them are talking in any serious fashion about the budget deficit.

We believe that it is necessary for the American people to focus on the issue, and for the American people to be told the truth, so that when they go to the polls next November, they will be able to express, by their votes, their view on what we are supposed to do next. The 20-second sound bite is not going to do the job. The 30-second television commercial is not going to do the job. Nor is the standard debate format going to do the job. Any politician can dodge any issue for 2 or 3 minutes during a debate question, and then the questioner goes on to the next subject.

That is the way debates have been run, and that is why debates are not very informative, really, to the American public. The 20-second commercial is not going to do it. The short answer to a debate question is not going to do it. What we need is sustained questions by knowledgeable questioners, directed to each of the candidates for at least 1 hour. And ABC, on the spot, during that program, said, "We will offer 3 hours on ABC for the Presidential candidates if they accept this offer."

One of them accepted: Governor Clinton. I am told, although I have not seen the response of Mr. Perot, that there has been some form of response, but is has been described to me as "not comprehensible" as to exactly what it was. I do not think that the President has definitively answered the invitation as yet.

The following day in the Senate press gallery, another group of Senators, with some overlap, held a press conference, and we issued the text of this sense-of-the-Senate resolution as our manifesto about the problem of the

budget deficit and about how it now stands and how it should stand in the Presidential campaign.

That group of Senators had been organized by Senator BOB GRAHAM, and it, too, consisted of Democrats and Republicans, and those Senators who were part of that press conference and who authored that declaration are the cosponsors of the resolution that is now before us.

Mr. President, one thing that we lack in public discourse in this country is sustained discussion on any subject at all. Issues tend to be boutique issues. They are here for a moment. They are temporary fads.

If we allow the budget deficit to be a mere boutique issue, then the candidates will do what they so desperately want to do, and that is dance around the budget deficit for yet another election.

It is because of that fear that some of us, Republicans and Democrats in the Senate, have taken it upon ourselves to be pains in the neck for the next 5 months, to keep on the question of the budget deficit until the candidates for the Presidency are shamed into talking about it and, furthermore, to hound this issue, harp on this issue, to the point where the media is shamed into covering it, because, just as candidates do not want to talk about the budget deficit, the media does not want to cover it. It is boring. The ratings go down. And I raised this issue with a couple of well-known media people before I raised it with Ted Koppel. They said, oh, nobody would watch such a program.

Whether people watch it or not, it is the media's obligation to cover it, not just to cover the latest scandal, not just to tell America what is happening within the British royal family, but to focus attention on the most serious issue that is before our country today, namely a $4 trillion national debt, a legacy of bankruptcy, which our generation is leaving for the generations that follow.

The point of this particular resolution is, frankly, to keep the issue alive, to indicate yet again what we indicated 2 weeks ago, and what we will be talking about over and over again for the next 5 months: the budget deficit, and the need to discuss the problem with the American people.

I do not know whether 100 Senators will end up voting for this on the theory that it is just a sense-of-the-Senate resolution. But I want to point out to the Senate that it is not intended to be just another sense-of-the-Senate resolution because of the color words and because of some of the conclusions that have been inserted in the amendment that is now before us. And I want to review these provisions with the Senate.

We say in this resolution that "it is the responsibility of candidates for President and for Congress to discuss the deficit." We say that "the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice."

We believe in the American people and we believe that if they are not flimflammed for yet another election they will decide what is right for their country and what is right for their children.

We say in this sense-of-the-Senate resolution that "the frequency and level of public comment on this issue by public officers and candidates, including those who hold and seek the office of the President, are"—and these are the words we use—"so insignificant as to constitute irresponsibility."

Now, that is a serious thing to vote on. That is a serious charge to make, and it is meant seriously. And we are going to vote on it because we claim that those who hold and seek the Office of President have made the issue of the budget deficit so insignificant as to constitute irresponsibility.

We say that "by and large, the candidates, Congress, and the media have"—and these are the words we use—"ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse."

This is what we are going to vote on. Granted, it is only language, it is only the sense of the Senate, but we are all going to make a record on whether or not we agree on this because there are people who run for public office, including people who run for the Presidency of the United States, who say to the American people that the problem with the budget is that there is waste in the budget and if we use businesslike practices and if we root out the waste in the budget then we will solve the budget problem; we will do it without anybody making any kind of real sacrifice because, as everybody knows, there is a pile of waste there somewhere or maybe a few piles of waste and if we have computers that work and we sit down with the right advisers, we can find all the waste, like the Grace Commission was supposed to do, and get rid of that, and we do not have to take any serious votes around here or make any serious decisions as a country, just get rid of the waste. And we say that approach ignores and trivializes the issue, that to suggest the budget deficit can be cured by solving the problem of waste ignores and trivializes the issue of the budget deficit.

Do you agree with that, I ask my colleagues, or do you not agree with that? Because if you believe that waste is the problem, if you believe that the golden fleece award is the solution, if you believe that all we have to do is to fix the problem of waste, then you should really vote against this resolution because you do not agree with it.

Then we say "the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending."

Now, I want to underscore that because this is a tough statement, and maybe everybody does not want to vote on this. Everybody who does vote on it, their opponents in the next election should be alerted: This is political dynamite; this is a statement that can be taken and put in the next 30-second commercial in the next campaign.

We say that "the existing reckless Federal fiscal policy cannot be addressed in any meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending."

It cannot be done, we say, without considering entitlements and taxes.

Now, Mr. President, I want to make this as clear as I can possibly make it. It is the position of the resolution that we are going to vote on that there is no possible way of dealing with the budget deficit in a responsible fashion without including consideration of entitlements and taxes.

It could be possible, I suppose, to deal with the budget deficit only by considering entitlements or only by considering taxes. But these are the big popular issues. This is what no candidate wants to talk about—entitlements and taxes.

And we say, in this resolution, you cannot do it without entitlements and taxes being part of the mix; without them being considered, it cannot be done.

So people say: Well, wait. We can fix waste; that will solve it. We say, no, it will not. People say: Well, the peace dividend, that will be enough. We say, no, it will not. As a matter of fact, any conceivable peace dividend that any halfway responsible person is considering will be used up twice over by the increased cost of health care to the Federal Government over the next 5 years.

If we are facing reality, we are either going to have to control entitlements—cap them somehow—or increase taxes, or some combination of the two. We are not going to get the job done without being either.

I would advise my colleagues to look at paragraph 5 in the findings of this resolution, because I say that it is the seeds of great political peril for anybody facing election.

Then we say: "To suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception. * * *" That is a pretty strong word to be voting on, to say that people who are just talking about waste or just talking about peace dividends or just talking about some way to resolve the budget deficit

that does not call for some kind of sacrifice are enaged in deception; strong words. We mean it. We are going to be voting on it.

Then the resolution calls on: "public officials and candidates for public office to make proposals and engage in extensive and substantive discussion on reducing the deficit; the candidates for President to agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and it calls on "all candidates for office to affirm their support for this statement of principles and to resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit, if elected."

Mr. President, what is the solution to the present problem? We have the solution. This country is not doomed. This country does not have to go down the tubes. We are not doomed. We can fix this problem. And the people who are going to have to fix it are the American public at large, because we have certainly demonstrated around here that we are not going to volunteer for any solutions.

So it is time for the American public to be told the truth, so that at least they have the opportunity to vote on it. And the acid test question which will have to be asked of the three Presidential candidates, and which should be answered by them, is: Do you believe that we can deal responsibly with the Federal budget deficit without either capping entitlements or raising taxes, or a combination of the two? That is the question that has to be put repeatedly to the candidates. And then they answer the question, hopefully. And then the American people go to the polls and vote.

Now, how will they vote? I do not know. I know that I have confidence in the American people. I really believe they will do the right thing. I believe that they will follow a leader who tells the truth. I believe that they will follow a leader who says that we do have to make sacrifices; that it is not all going to be cutting waste; that it is not all going to be passing a balanced budget amendment to the Constitution; that there are real choices to be made, real sacrifices to be made; and that those sacrifices must include either entitlements or taxes or, I would suggest, a combination of the two.

I believe that is how the American people will resolve the issue. But I could be wrong. It may be that what has made us so timid around here proves to be the case: It may be that the American people will decide that any sacrifice is too great. It may be that the public will say any candidate who suggests controlling entitlements or raising taxes will be defeated. That may be the answer of the American people.

If so, at least it is an answer. At least it is not some false hope that has been extracted by deception from the public. It is a real answer that we do not want to make any sacrifices; that we want to pass the buck on to future generations.

If that is the answer, then our country will continue to decline. If that is the answer, we will become weaker and weaker and weaker. If that is the answer, our children and our grandchildren and generations to come will suffer the consequences of that decision. We will decide that we want to think for ourselves and of ourselves, and forget about America and forget about our kids. That may be at least a choice we make.

And if we make it, and people who have taken the opposite position lose the election, well, at least they go down with their flags flying; at least there is a little bit of pride in holding public office for a change. Maybe that is what we need—a little bit of pride.

I yield the floor.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I want to take this opportunity to commend my colleague from Missouri. Back in 1979, the first year that I entered the Senate, I participated in a group of weekly sessions called The Wednesday Group.

The Senator from Missouri has since that time participated each week with a group of us—20, 25 Senators—on the Republican side who get together each week to discuss matters on our minds. And it may range from the personal to the political, or indeed professional.

I recall one of those who made the greatest impression on me at that time was the Senator from Missouri. I recall him standing up at one time—we usually sit down to take the meals—but I recall him standing up, and with great passion announcing that the trouble with the Senate was that our lives were being consumed with detail, trivial detail.

Perhaps unbeknownst to him, he was paraphrasing Thoreau, who said:

> Our lives are, in fact, cluttered with detail. We must simplify, simplify.

But what the Senator said was that, rather than drawing bold strokes across the canvas of this country's agenda, we were something akin to a pointillist artist, putting every single dot on that canvas, filling it up, until finally some sort of pattern emerged; and that if we really wanted to measure up to the responsibilities that this job entails, we have to simplify our lives in the Senate and deal with bold issues, big issues, and not simply become ombudsmen or Willy Lomans, stuffing our bags every day and night and weekend, catching a plane to go home and coming back and beginning the process all over again, without having to accomplish very much, other than to make more work for ourselves, which will then repeat itself in an unending process.

Those words stayed with me. I wrote them down, in fact, printed them in a Journal that I kept that year. Here we are in 1992, and the Senator from Missouri, who has really taken the center stage on a number of major issues, is, once again, ringing the fire bells, alerting all of us as to the danger that we face.

I was interested to hear him say that Ted Koppel did not believe that anyone would have any interest in a program devoted to Presidential candidates discussing the deficit. Perhaps if they labeled it "Child Abuse," and called the program "An Hour Devoted to the Discussion of Child Abuse," perhaps we would have quite a viewing audience, because what we have been engaged in is nothing short of fiscal child abuse. What the Senator from Missouri has suggested is that we are abusing our children. We are beating them into the ground in the future, so that their futures will be bruised and battered and they will not enjoy the quality of life that we currently enjoy or have enjoyed in years past.

So, perhaps we ought to label this discussion an informational guide into the processes, the thoughts, the programs, the policies that the Presidential candidates will offer to the American people in dealing with what Senator DANFORTH rightly calls the most pressing issue in the country.

With respect to his suggestion that this is going to be difficult, I call my colleagues' attention to an article that appears in this week's time magazine. It is written by Stanley Cloud for Time. It has in bold print the caption "The Federal Deficit—Everybody knows how to stop the Niagara of red ink, but most politicians lack the courage to do it, including Bush, Clinton, and Perot."

One of the quotes indicates: "Bush hopes to deal with the deficit by blaming Congress, Clinton has yet to offer a persuasive plan, and Perot doesn't seem to have a clue, beyond comparing the deficit to 'a crazy aunt that we won't take out of the basement.'" Again, pretty harsh words coming from Mr. Cloud.

But the fact of the matter is that we have to start a debate not only at the Presidential level—and that is why I joined with Senator GRAHAM, of Florida, and Senator DANFORTH, of Missouri, and others to include Members of Congress as well. The Senator from Florida, during our press conference, talked about the need for the beginning of political honesty.

At that time I suggested it was also, hopefully, an end to political hypocrisy on our part as well. This is something that we tend to avoid time after time. Each year the President of the United States submits a budget, he makes a

State of the Union presentation, we all rush out into the arms of the press corps who say, What do you think? And invariably we will say, The President proposes but Congress disposes. We will decide exactly how to allocate the resources of this country. We are the ones who do the appropriations.

So now the time has come for us to stand up also, as well as the Presidential candidates, during an extended—not debate, not sound bite, not even call-in programs would be sufficient—but an extended opportunity to respond to, hopefully, penetrating questions, incisive and insightful questions posed by two of our colleagues or someone, perhaps, of comparable ability. We have an obligation to stand on the floor during the rest of this 5-month period and also explain to the American people what we would do.

Senator DANFORTH indicated that people may lose. Last week a moderate Republican who was running for a congressional seat in Maine announced that he would support something in the nature of what the Senator from Missouri and the Senator from Florida have offered—namely, everything being on the table, restrictions in the growth of entitlements, even higher taxes might be included. And he was defeated. He was defeated by another challenger in the primary.

It was interesting to see the reaction, because all of the political pundits, as such, the armchair analysts sitting at their computers, ridiculed the political gaff that he had made. How could he be so foolish, so stupid to have talked about entitlements at a time when he is in a political race? So they pointed to that as his fatal flaw—or one of his fatal flaws, there may have been others. So the press seems to focus upon the weakness rather than the strength of what he was trying to display.

Mr. President, I think undoubtedly a number of people in this Chamber who support this resolution and who, in fact, vote to sustain the contents of the resolution, not just by passing empty resolutions but by votes consistent with the resolution, are going to lose their seats. And that is, perhaps, as it should be. If the only goal of the captain were to save his ship, he would never leave port. We have to take some risks in this country and in this Congress and, particularly, right here in the Senate. Those of us who are joining in support of the resolution are going to be held accountable. And if our constituents feel they do not want to support us in the future, so be it, because too much of our time has been consumed with simply staying in office, going through whatever has to be done in order to reaffirm our positions, to make new friends, sustain old friends, make fewer enemies. And then the bill keeps going on and on.

I see the Senator from South Carolina is here. He has spoken on many occasions on this issue and offered a number of proposals that have not always been supported by many of his colleagues.

I see there is some anxiety on the part of my colleagues to want to conclude this debate. Perhaps others want to participate in it.

But I want to quote again from the Time Magazine article.

The article points out:

> The real question is whether Americans want their Federal Government to work better or, in effect, to go out of business. If they choose the former, those overdue bills from the eighties must be paid. If they favor the latter, they should stay on the present course.

Mr. President, if we stay on the present course, we are destined to bankrupt this country. We are destined to create a crisis that will afflict us for years to come. We have the opportunity and the obligation not only to point fingers at the Presidential candidates but to point fingers at ourselves and accept a coequal measure of the responsibility for resolving the deficit problem, not only by passing balanced budget amendments, but by actually voting to achieve the kind of reductions that are going to be necessary to rescue this country from fiscal bankruptcy.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, let me in a peripheral way join in the discussion. I was instigated to do so when I heard my distinguished colleague from Missouri who was concluding his remarks as I walked back into the office. The Senator from Missouri was talking about a lack of pride. I know the Senator from Missouri. I know he is dead serious. I wanted to join in those comments.

Now that I get to the floor, I understand there is a resolution urging the President and the candidates to all come and say what they are supposed to do about the deficit.

Let me not comment on that for a second. Let me make clear the pride I have brought to my service in public office and the dismay and the disdain and the disgust I have felt for the past 12 years. I want to go back for a minute. I could see this 12 years ago when we started with what President Bush called voodoo economics. I recognized where we were headed and on the floor some 10 years ago I recommended a budget freeze, and did it for each of the next 4 years. When that did not work, then I went with Gramm-Rudman-Hollings to cut across the board.

In the 1990 summit, four of the six sponsors of this resolution voted to repeal what they now ask for—namely a plan to eliminate the deficit, namely another Gramm-Rudman-Hollings. They agreed to abolish Gramm-Rudman-Hollings. They disabled it with that summit agreement. The summit agreement of year before last, 1990, did away with the meat of the coconut. I remember my friend Fritz Mondale said, "Where's the beef?" The beef was in the Gramm-Rudman-Hollings targets, and once you did away with the targets, and there were no cuts across the board, there were no sequesters for not meeting the targets. Instead, they talked about nebulous savings. Of course, you know the old joke about the woman who comes home with a new dress and her husband says, "That is a beautiful dress, how much was that?" "$149?" He says, "$149?" She said, "Yes, it was on the rack for $449. I saved 300 bucks."

We have been through that and now we have that going on in Government. We had a plan that was effective, was working until they veritably repealed it, and now they all run around in a circle asking for a plan.

Let us go to the distinguished Senator from Missouri saying, let us get real and let us start right here and not wait for candidates. I am not interested in waiting for the candidates to say what they are going to do—we have the responsibility. Like the distinguished former Senator from Connecticut, now Governor, said, it is just like the football team running up into the grandstand, saying we want a touchdown, we want a touchdown and all they have to do is get back down on the field and score the blooming thing.

Who is kidding whom? That is our problem in the U.S. Government. They talk about the anger and frustration. I have been angry and frustrated. That is why I joined in the constitutional amendment for a balanced budget because, as Jefferson said, a sound economy is first and foremost among our values, and public debt is the greatest danger of all. And paraphrasing President Roosevelt, the greatest thing we have to fear is fear itself; the greatest thing we have to fear is a lack of fear of deficits in this Government of ours.

We have been buying the vote with deficits. Everybody is talking about campaign financing. They say they oppose public financing of the campaigns, but that is all we have been doing. Those same people are for every program and then when it comes to pay for it, they say the Devil take the hindmost, let's just put it off budget. I've led the fight on that, too. What we need is an honest budget.

I have proposed freezes, I have supported rescissions, and I was an author of Gramm-Rudman-Hollings. What we really need is leadership from the President, not the statement he made in the State of the Union that we are going in the right direction.

I have been a Governor. I know good and well I would never have gotten our triple A credit rating by saying I am waiting for the legislature, in this case

the Congress, to lead the way. It is not an easy stand but it is a stand to be taken by the Chief Executive. How in the world can we get anything going when the Chief Executive says it is not needed?

Just ahead of this time last year the President of the United States stood before the American public at a joint session of Congress and said, "We are headed in the right direction; we are reducing the deficit $500 billion in 5 years."

On the contrary, we are headed in the wrong direction, increasing the deficit $500 billion this year.

Sound fiscal policy is not a spectator sport. The President has to make up his mind. On that particular point 4 years ago, I had a session with the distinguished Director of the Office of Management and Budget, because I have an affection for him. I knew his father. I said to Dick Darman, the Director, Dick, we have to get ahold of ourselves and the President has to do it. He said, yes, the President says read my lips. I said we have to work our way out of that, and a good way to do that is to come to the Congress and say, look, I have the responsibility but you folks over there have to give me the authority. I need a line-item veto. We have to quit playing games and sending over an ultimatum in the form of a continuing resolution and saying sign it or shut down the Government.

So Mr. Darman talked to the President, and I have a good, pleasant note of thanks from President Bush, but he determined not to do it. I said at the time, this thing is going to get worse and worse. If you do not bite the bullet at the beginning of your term, by 1992 you will really need the Secret Service. Now we are in that kind of soup and it is like tying two cats by the tails and throwing them over the clothesline, everybody is clawing each other.

Why are we worried about what the Presidential candidates should do? I am worried like the Senator from Missouri about my responsibility in the Government. I asked to serve, they gave me the chance. Last November is when Representative NEWT GINGRICH was saying why wait until February to get a plan from the President. I agreed with him. I put a plan in the RECORD. I have one now. It proposes cuts in some places and freezes in others. And it stimulates the economy, both the private and the public sectors, without increasing taxes and without increasing the deficit.

But we have not been able to get President Bush's leadership on it, and you are not going to be able to get Congress together when the President is saying we do not need it.

But if the Senator from Missouri and others want to get real, and I think they do, I will join in and we will go to work. There is no use in starting like they did at the beginning of the year about entitlements. This is an election year and these entitlements—you can go right on down the list—are not going to be cut. There is no use in wasting each other's time. But if we can use an approach of spending cuts across the board of the bureaucracy, President Bush's defense cuts, freezing spending otherwise and take the billions saved and put them to work stimulating the economy, then we can get this country moving so that we can lay the foundation for moving to a balanced budget.

The best plan for industry in this country is to tackle the deficit head on. You can put in 15 bills around here trying to give industry a chance—jobs, jobs, jobs, and put in jobs bills. But there is no better tonic, no better way to create jobs than to get this economy back on the right track.

Back 2 years ago with the summit agreement—that was our undoing. It repealed the only plan that has worked—Gramm-Rudman-Hollings. It was working, it was requiring tough decisions.

But they did not want to admit to it. They did not want to conform with it. When they came and put in the mushy concept of savings and eliminated the hard targets, they did away with the plan. I am tired of hearing that expression, Gramm-Rudman-Hollings did not work. Nonsense. They know it was working. It was no sweetheart deal. On the contrary it was a real plan and that is why they got to gather and repealed it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

Mr. President, there is no guarantee that because a nation has lived a history of greatness, as has ours, such greatness is assured for the future.

At the beginning of this century, there was a country with tremendous assets. It was a country which had some of the most fertile land in the word. It was rich in natural resources. It has a growing, cultured, and educated population. It was a nation which at that point had one of the largest per capita gross national products in the world. It was a nation which many people thought would be a contender for world leadership in the 20th century.

Mr. President, it is a nation today which has fallen into the middle numbers of the nations of the world in terms of its per capita gross national product. It is a nation which has been through extreme economic trauma. It is a nation which has squandered much of its potential. It is a nation which today is attempting to regain the opportunities which were seen for it 100 years ago. That nation is Argentina.

I find in the experience of that nation a very instructive lesson for the United States of America, that just because we have experienced greatness and today stand as the unrivaled military power in the world and the world's largest economy is no assurance our grandchildren will live in a similar America.

Mr. President, I would like to share a family's history of what we have done to this Nation.

My father was born in 1885. To that year, having fought a great Civil War, having fought wars of independence, starting the process of developing the great empire of this continent, we had developed in almost 100 years of nationhood a national debt of $1.6 billion.

I was born in 1936. In that intervening 51 years we fought a world war. We were in the midst of our Nation's greatest economic depression. In 1936, the national debt of the United States was $33.6 billion.

In 1963, my first child was born. When Gwen came into this world, we had fought the Second World War. We were at the beginning of our great efforts at the exploration of space. America had become a world superpower, and we had developed a national debt of $310.3 billion.

In 1990, my first grandchild was born Sarah Logan. When Sarah came into this world, the national debt was $3.2 trillion. Let me contrast it. When her mother was born, it was $310 billion. When Sarah was born, it was $3.2 trillion.

When Sarah's first cousin, my second grandchild, was born in January of this year, the national debt was $4 trillion. That is what has happened to this Nation over four generations of one American family.

Mr. President, I believe those statistics are a path to Argentina. I also believe there is a way to divert from that path, and it is not a new, it is not an innovative, it is not a novel solution. It is a solution as old as the Founders of this country. It is a solution which has been restated by the great leaders of our country.

One of those great leaders was a citizen of Senator DANFORTH'S State, Harry Truman. Harry Truman believed in the philosophy that if you tell the American people the truth, they will make the right decision.

I believe we are at that point today; that we need to tell the American people the truth, and that they will make the right decision—1992 is a year that should be thought of as a referendum for the people of America of our collective national future; that it should be the time national political candidates, the Congress, the Senate, and particularly the President of the United States, deal with the American people with honesty, with a statement of the clear alternatives which are available to us, with a call for a fair, shared sacrifice in terms of dealing with the national budget deficit. I believe that if they do so, Mr. President, they will receive from the American people a mandate for responsible action.

Mr. President, I believe part of that honesty is going to be that there will be no simple answers, no painless solutions. In the resolution which I strongly support today, Mr. President, this statement appears:

The existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes as well as reducing defense and domestic spending.

Mr. President, there are those who would lead us to believe there may be simple solutions. I was on a radio talk show in Tampa, FL, recently and a caller asked: "Could we not solve the Federal budget deficit by eliminating foreign aid, striking that from our expenditures?"

Were it true. Mr. President, the fact is that foreign aid represents about 1 percent of our total Federal expenditures. If we were to strike it in totality, we would still have a budget deficit in excess of $380 billion. That is the extent of the problem we face.

But this is not all just pain and suffering. The American people understand that there are some very rewarding benefits of dealing in a constructive, shared-sacrificed manner with the Federal budget deficit. If we can bring this deficit under control, we will get the benefits of a stronger and more sustained economy, the jobs that will be created by the increased confidence that we will have, the ability as a Nation to do some of the great things in our generation which have characterized the growth of America over the past 200 years.

Those are all of the opportunities which lie on the other side of dealing with this fundamental domestic priority of restraining the Federal budget deficit's growth and moving as rapidly as possible toward a balanced Federal budget.

Mr. President, I for one believe that there are some very simple elements in this complex plan. Those are the reduction of Federal spending, defense and domestic, increasing revenues, controlling health care cost—when we talk about entitlements, the fundamental factor driving the increase in entitlement costs to the Federal Government is the increasing cost of health care—and, finally, strategies which will encourage strong economic growth.

Those are, I believe, the elements which should be presented to the American people in specific detail by candidates for office at all levels.

I am particularly pleased that the American Broadcasting Corp. has agreed to provide 1 hour for each of the Presidential candidates on this single subject of what their leadership would be on reducing the Federal budget deficit. I am pleased that two of our colleagues, Senator RUDMAN and Senator CONRAD, will be the questioners, will be those probing behind the cliches for the in-depth analysis and options the American people are seeking.

I realize this is risky. It is always a risk to place your faith in the American people. They may choose, as Senator DANFORTH suggested, to continue the current policy. It has certainly been a joyful period as we have taken out our credit card, have enjoyed the feast, and said: "Let our grandchildren pay for it."

Maybe that is what the American people would like to do for the indefinite future or at least until such time as finally we face that ultimate collapse. I do not believe that we are on the road to Argentina, Mr. President. I believe that this generation of Americans, as our parents and grandparents, are prepared to adopt a program of fair shared sacrifice in order to meet our generation's responsibilities.

This resolution will give them that opportunity. It will call upon the candidate for the President of the United States to state what their proposals will be to lead this Nation and then to give the American people the chance to make an informed, definitive choice. I believe that our Government of, by, and for the people will be ready in this generation as it has in the past to meet its obligations and to prepare us for a future of responsibility and continued expansion of opportunities and prosperity.

Thank you, Mr. President.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 2426, AS MODIFIED

Mr. DANFORTH. Mr. President, because there were some minor flaws in the amendment that was sent to the desk, really dealing with the flow of the amendment, and not with anything of substance at all, I send a modification of the amendment to the desk. I ask that it be considered in lieu of the——

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

At the appropriate place, add the following:

The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans;

(3) the national interest in controlling the deficit takes precedence over partisan advantage;

(4) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country are to be effectively and honestly addressed;

(5) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice;

(6) the frequency and level of public comment on this issue by public officers and candidates, including those who hold and seek the office of the President, are so insignificant as to constitute irresponsibility;

(7) by and large, the candidates, Congress, and the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse;

(8) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high;

(9) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(10) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(11) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people:

It is the sense of the Senate that—

(1) public officials and candidates for public office should make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President should agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office should affirm their support for this statement of principles and should resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively address the Federal budget deficit if elected.

Mr. DANFORTH. Mr. President, it is my understanding that leadership has taken the position that this is an issue that will be voted on tomorrow, probably tomorrow afternoon, because of Mr. Yeltsin's presence. I think that is good because it will then be printed in the RECORD and all Senators will have ample time to consider it.

They will have opportunities to offer amendments to this resolution, or to vote against it or to figure out reasons why they should vote for it or against it in the intervening hours.

So I welcome the opportunity to put this over. I would simply say to Members of the Senate that if you do not want to criticize the likely Presidential nominee of your party, I would suggest voting against this amendment because the amendment is very sharply critical and is intended to be very critical of the three likely nominees on how they have handled or failed to handle the issue of the budget deficit.

I would say to Members of the Senate that if you believe that the way to address the budget deficit is by cutting out waste, fraud, and abuse, that is your answer to your constituents, and you think that is a sufficient answer, then you really should give very serious consideration between now and tomorrow afternoon as to how to handle this because this amendment flatly says that the budget deficit is not going to be addressed in any satisfactory way by cutting out waste, fraud, and abuse.

If you do not accept the premise that we are either going to have to increase taxes or control entitlement programs in order to deal with the budget deficit, then you should vote against this amendment.

I believe that many candidates for public office have been going to their constituents saying all we have to do is pass the balanced budget amendment, and I have supported that concept myself. I believe that people have gone to their constituents and said all we have to do is cut out waste, fraud, and abuse and everybody is for cutting out waste, fraud, and abuse. But I think people have said that that is all we have to do.

What this resolution says—and will put Senators on record as saying—is that we are not going to get the job done without including either or, taxes or control of entitlement programs. It is just not going to be possible, mathematically not possible, unless we do one of those two things or a combination of the two.

So I welcome the postponement of this vote, and the modification has been sent to the desk, and all Senators are on notice. It will be printed in the RECORD. All the interest groups are welcome to look at it. All the organizations that say do not cut my group, all of them will have the opportunity to look at this, and then to weigh-in tomorrow. Maybe they will.

Then we will vote on it tomorrow and decide where we go from here.

I would simply say in closing that this is not the first time that this issue has been raised on the floor of the Senate, and it sure is not the last time because between now and the election there are going to be Senators on both sides of this aisle who are going to continue to harass the Presidential nominees on the question of the budget deficit, and say to the Presidential nominees why do you not tell it to us straight? Maybe if we do enough harassment and enough hounding, they will do just that.

Mr. LEVIN. Mr. President, I am wondering if the Senator from Missouri understands there would be an additional period of debate on our resolution before the vote tomorrow? Has that been worked out?

Mr. DANFORTH. Yes. That is my understanding. I do not know how many Senators will want to use it, and maybe no Senator will want to use that period tomorrow. But I do want there to be an opportunity for people to think about it and to address it, and if they want to change it, if people want to come to the floor and say we do not have to deal with entitlements or we do not have to deal with taxes, let them offer their amendments. And if they do not want to offer their amendments, then vote for it one way or another.

Mr. LEVIN. I hope if we are not voting on this tonight—that is the decision of leadership—that there not be a vote on this resolution tonight, that prior to the vote on it tomorrow afternoon, that there be an opportunity for us to debate it because I happen to agree with my friend from Missouri.

This represents a commitment, not only on our part. We are asking the Presidential candidates to commit themselves to seriously address an issue, and it is not going to stop with the adoption of this resolution. This resolution will be thrust in front of the Presidential candidates regularly in this campaign until they agree to address in a serious and formal way the issues of this deficit.

My friend from Missouri has put his finger on a very important point. The language of this resolution is tough. Let no one vote for it misunderstanding what it says. It says that the existing reckless Federal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending.

So we have a very straightforward, tough agenda that we have committed ourselves to on a bipartisan basis. The adoption of this resolution tomorrow hopefully will force this issue in a Presidential campaign because without Presidential leadership, without this being an issue in the campaign, and without there being a mandate from the public to do this, it is not going to get done.

So I thank my friend from Missouri and our colleague from Florida.

APPROPRIATED FUNDS FOR THE MISSISSIPPI SIOUX INDIANS—VETO MESSAGE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the veto message on S. 2342 be considered as having been read and that it be printed in the RECORD and spread in full upon the Journal and laid aside, and that the majority leader, after consultation with the Republican leader, may turn to its consideration at any time.

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

The message of the President is as follows:

To the Senate of the United States:

I am returning herewith without my approval S. 2342. This bill would waive the 6-year statute of limitations, allowing three Sioux Indian tribes—the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe, and the Sisseton-Wahpeton Council of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation—to bring an otherwise time-barred challenge to the 1972 Mississippi Sioux Indian Judgment Fund Act.

The 1972 Act apportioned to each of the three Tribes, and to a then-undetermined class of Sioux Indians who are not members of those Tribes, a percentage share of the proceeds from a 1967 judgment against the United States. The judgment rested on a finding that the United States had not paid adequate compensation to the Tribes in the 1860's for lands ceded to the United States. The nonmember Indians are persons who are not now eligible for membership in any of the three Tribes, but who can trace their lineal ancestry to someone who was once a tribal member.

The Tribes were active participants in the administrative and legislative process leading to the 1972 Act, and they endorsed the Act and its distribution of the judgment. Nonetheless, in 1987, 15 years after enactment and 9 years after the statute of limitations had run, the Tribes sued the United States, challenging the Act's distribution to the nonmembers. The U.S. Court of Appeals for the Ninth Circuit affirmed a lower court's decision to dismiss the case, finding no excuse—legal, equitable, or otherwise—for the Tribes' failure to challenge the 1972 Act in a timely fashion, and the U.S. Supreme Court declined to review the Ninth Circuit's decision. *Sisseton-Wahpeton Sioux Tribe, et al.* v. *United States*, 895 F.2d 588 (9th Cir. 1990), *cert. denied*, —— U.S. ——, 11 S. Ct. 75 (1990).

I find no extraordinary circumstances or equities to justify an exception to the long-standing policy of the executive branch, which my Administration fully embraces, against *ad hoc* statute of limitations waivers and similar special relief bills. Also, there must be some definite, limited time during which the Government must be prepared to defend itself, and some finality to the pronouncements of the courts, the Congress, and the agencies.

Moreover, a waiver for the Tribes in this case would mean the waste of the considerable judicial and litigation resources that were expended in bringing the case to final resolution, and would require additional litigation that would otherwise be avoided. Thus, enactment of this bill would be inconsistent with Executive Order No. 12778 of October 23, 1991, which embodies my resolve to eliminate unnecessary, wasteful litigation.

In addition, I am concerned that enactment of this bill would be unfair to other tribes, and would serve as a highly undesirable and potentially expensive precedent. Many other tribes were the recipients of settlement fund distributions, and many distributions, like the one challenged by the Tribes here, included payments to nonmember Indians. Some of those tribes doubtless are dissatisfied with the terms of their distribution, but they are barred from a challenge by the statute of limitations. Numerous other Indian claims, totaling hundreds of millions of dol-

lars, have been dismissed on statute of limitations or other jurisdictional grounds. In both categories of cases, tribes could rightfully claim that for purposes of fair treatment, they, too, should be allowed by the Congress to litigate the merits of their claims.

I note that S. 2342 received little, if any, consideration by the House of Representatives prior to its passage by that body. Instead, the bill was discharged from committee without hearings and brought immediately to the House floor. Had there been a full review of this proposal, I am confident that the outcome would have been different.

For these reasons, I cannot approve S. 2342.

GEORGE BUSH.

THE WHITE HOUSE, *June 16, 1992.*

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

The Senate continued with the consideration of the bill.

Mr. MITCHELL. Mr. President, I see that the Republican leader is on the floor. I heard the comment of the Senator from Michigan saying that if we are going to vote on this amendment this evening—which I assume is based upon a statement by the Senator from Missouri that we are not going to vote on this amendment this evening; that is the first I heard of it. I do not know why we cannot vote on this amendment this evening.

Mr. DANFORTH. Mr. President, I was asked by our Cloakroom—in fact, I was told by our Cloakroom there was a problem on this side in voting on it tonight, and I was asked whether I would agree to putting it off until tomorrow afternoon, and my response was, yes, I would agree to that; and then, on reflection, it seems to me that it is a good idea to vote on it tomorrow, to give Senators a chance to reflect on it. This is a serious matter—the budget deficit.

Obviously, the Presidential candidates do not want to talk about it. This is tough language in this particular resolution, and I think that Senators are going to be on the spot if they vote for it. They are going to be criticized by opponents in the election, because this talks about entitlements and about raising taxes.

So when I was asked by our Cloakroom whether I would agree to put it off until tomorrow, I said, sure, not only to accommodate the Senator who was not able to be here, but also for the sake of giving Senators the opportunity to reflect on it, so that they could not claim that somehow they were blindsided by something that they considered to be a minor matter.

Mr. MITCHELL. Well, Mr. President, I appreciate the Senator's consideration of the request of his Cloakroom. But I have the responsibility for managing the affairs of the Senate, and we cannot have 100 Senators deciding when a vote may or may not occur. I appreciate the importance of this Senator's amendment. He recognizes that it has nothing to do with the bill, and we are trying to pass this bill. Any Senator can offer an amendment at any time he or she wants, and any Senator can delay proceedings so as to make it not possible to get to a vote. But I request of the Senator the courtesy, henceforth, before making public announcements of when votes may or may not occur, and to at least do me the courtesy of notifying me or giving me some notice so that I have some awareness of what is occurring.

Mr. DANFORTH. Mr. President, may I ask the majority leader, does he believe that the Senator from Missouri was in any way discourteous to him?

Mr. MITCHELL. Not at all.

Mr. DANFORTH. What announcement does the majority leader think the Senator from Missouri made?

Mr. MITCHELL. The Senator from Missouri just indicated that he announced that the vote on his amendment would occur tomorrow.

Mr. DANFORTH. I did not say any such thing. I said the inquiry was made to me by my Cloakroom, would I agree that the vote take place tomorrow, not today, and my response to that was, yes, I would agree to that. It is not the business of the Senator from Missouri to take over the majority leader's vote, and I have never intended to do that. And the Senator from Missouri is hardly a Senator who stands on the floor of the Senate and tries to obstruct business, or tries to impede the work of the Senate, or of the majority leader.

When I am asked a question as to what my preference is for a vote and I say I am perfectly happy to accommodate anybody, and then further say if that is the position of the Senate, that we are going to be voting tomorrow afternoon, that was not my decision. But what I did say was I think that is a splendid idea if that is the view of the Senate, if people want to put off the vote. My understanding is that that was the leadership's view.

Mr. MITCHELL. Mr. President, I will say that I am the majority leader, and it was not my view. The first I heard about it was after the Senator from Missouri had stated it.

Mr. DANFORTH. Mr. President, I did not state that. I did not state that. I stated exactly what I have represented in the Senate.

Mr. MITCHELL. The record will speak for itself.

Mr. DANFORTH. I was approached by the Republican Cloakroom and asked what my view was about the scheduling of the vote. I said I did not have any problem with putting the vote off until tomorrow. That is my view.

Mr. COATS addressed the Chair.

Mr. MITCHELL. The record will speak for itself, Mr. President. I yield to the Senator from Indiana.

Mr. COATS. Mr. President, perhaps I can shed a little light on this. I, earlier today—actually yesterday, I contacted the Republican Cloakroom, indicating that the Indiana State Republican Convention was tomorrow, and I was designated to be the keynote speaker for that convention tomorrow morning. I indicated to the Cloakroom that if it was possible not to have votes until 3 o'clock, I would appreciate it. That is when I scheduled the very first plane back that I could.

I did not ask that the Senate adjust its schedule simply to accommodate this Senator from Indiana. I will be traveling to Indiana early tomorrow morning, and I will be back as soon as possible. I made a request that Senators from time to time make, that, if it is possible, a vote be scheduled after a certain reasonable time; and frequently we do not vote here until late in the afternoon or early evening, and that I would appreciate that if that could be accommodated. I appreciate the Senator from Missouri taking up that request and simply indicating that it would be his preference that the vote on this matter be after 3 o'clock.

Having said that, I simply want to say that I think whenever the will of the body is that the votes be scheduled, they ought to be scheduled. I have been one of those who complain that we do nothing all day and sit around at night and postpone all of our votes. I do not think the Senate should be held up to accommodate this Senator. I had to make a decision about my travel plans. If the vote fell after a certain time, fine; if it did not, I would accept the consequences.

Having said that, however, the Senator from Missouri has raised a very important amendment, and I, for one, as a Senator, do not feel this is something that I should, with no time to examine the amendment, to reflect on the amendment, rush down here and vote on the amendment, which has enormous consequences, both political and from a policy standpoint, without some adequate time to debate this.

I assume that many other Senators feel very much the same way. So if we are going to go forward with this amendment that has been offered, this Senator, for one, would like to speak on that amendment. I will stay here as late as necessary this evening to do it. Obviously, I cannot during the day tomorrow.

But I think the amendment the Senator has offered is a very, very significant amendment, and I think it would be wrong for us to simply rush this to a vote. Most Senators probably are not even aware at this particular point that this amendment is on the floor. If they are, they certainly are not aware of the details of the amendment.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. MITCHELL. Mr. President, I yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, I am prepared to vote right now on the amendment. It seems the Senator from Indiana wants time to focus on it.

I think the record will reflect that we tried to accommodate the majority leader today. We did get all the holds off the bill, to get it on the floor and move very quickly.

It was my hope we might have disposed of the entire bill by this time. There are a number of us who are supposed to be somewhere else in about 30 minutes.

In any event, as I understand, the majority leader would like to ask consent that we dispose of certain amendments that have been agreed to and that this vote occur at 10 o'clock in the morning. Is that my understanding?

Mr. MITCHELL. That was to be my request.

Originally, I had been advised that the staff and managers had reached an agreement, or were close to an agreement, on limiting and identifying the amendments to the bill in a way that would permit us to complete action on the bill. I do not know whether that is now going to be possible.

I understood that perhaps some objection had come up to that later, and if we can get an agreement to debate this bill and the Senator from Indiana would like to stay, I will stay in session here until midnight for anybody who wants to debate this bill.

Then I would like to have a vote on it, if we could, in the morning, and hopefully try to get this agreement to wrap up action on this bill tomorrow. I do not want to inconvenience the Senator from Indiana, or any other Senator.

Here is the situation: We had no votes on Monday; no votes prior to 2:15 on Tuesday. We were requested to have no votes after 6:30 on Tuesday; no votes until 3 o'clock on Wednesday; and then, of course, nobody wants to vote on Friday. And about 1 o'clock Thursday afternoon, we will get a large number of those who say there will be no votes after that time.

With 100 Senators, of course, it is impossible to accommodate everybody's requests and get anything done. So I tried to proceed in a way that will enable us to get this done, and I am grateful to the Republican leader for working it out so we can complete action on this bill. It is a bill that really should not require a lengthy period of time for the Senate's consideration.

I agree on the gravity of the subject matter of the amendment now pending. Obviously, that amendment could be offered to any bill at any time, with any amount of debate on it.

There just is not any way for the Senate to conduct any business and accommodate the schedules of every single Senator. And there is only one way that the schedule can be set, and that is by the majority leader in consultation with the Republican leader.

Mr. President, I yield the floor, and I will now see if we can work this out in a manner that is agreeable. I invite those Senators who want to debate this amendment to proceed to do so.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HEFLIN. Mr. President, 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. DANFORTH. 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. DANFORTH. Mr. President, a few minutes ago I had a colloquy with the majority leader on the subject of what, if anything, I had said that could be taken as an interference with the prerogatives of the majority leader. I now have a transcript of the RECORD, and I will simply read it in its relevant parts.

Mr. DANFORTH. Mr. President, it is my understanding that leadership has taken the position that this is an issue that will be voted on tomorrow, probably tomorrow afternoon, because of Mr. Yeltsin's presence. I think that is good because it will then be printed in the RECORD and all Senators will have ample time to consider it.

They will have opportunities to offer amendments to this resolution, or to vote against it or to figure out reasons why they should vote for it or against it in the intervening hours.

So I welcome the opportunity to put this over.

Then I go on to talk more generally about the amendment. And then I further say:

So I welcome the postponement of this vote, and the modification has been sent to the desk, and all Senators are on notice. It will be printed in the RECORD. All the interest groups are welcome to look at it. All the organizations that say do not cut my group, all of them will have the opportunity to look at this, and then to weigh-in tomorrow. Maybe they will.

Then we will vote on it tomorrow and decide where we go from here.

And then Senator LEVIN was on the floor and the transcript continues:

Mr. LEVIN. Mr. President, I am wondering if the Senator from Missouri understands there would be an additional period of debate on our resolution before the vote tomorrow? Has that been worked out?

Mr. DANFORTH. Yes. That is my understanding. I do not know how many Senators will want to use it, and maybe no Senator will want to use that period tomorrow. But I do want there to be an opportunity for people to think about it and to address it, and if they want to change it, if people want to come to the floor and say we do not have to deal with entitlements or we do not have to deal with taxes, let them offer their amendments. And if they do not want to offer their amendments, then vote for it one way or another.

Mr. LEVIN. I hope if we are not voting on this tonight—that is the decision of leadership—that there not be a vote on this resolution tonight, that prior to the vote on it tomorrow afternoon, that there be an opportunity for us to debate it because I happen to agree with my friend from Missouri.

This represents a commitment, not only on our part.

I think, Mr. president, that that is a reading of the relevant portions of the RECORD and, as the majority leader pointed out, the RECORD speaks for itself.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 60 minutes remaining for debate on the bill and committee substitute, inclusive, with the time divided as follows: 20 minutes each for Senators HEFLIN, GRASSLEY, and METZENBAUM; that the pending Danforth amendment be temporarily laid aside; that the only amendments remaining in order to this bill be the following and considered in the order listed: A Graham-Packwood amendment, No. 2425, to which Senator GRAHAM will offer a modification, with 10 minutes equally divided; a Sanford amendment regarding section 206, with 40 minutes equally divided; a Sanford amendment regarding section 205, with 40 minutes equally divided; a Sanford amendment regarding chapter 11, with 40 minutes equally divided; and a Sanford amendment regarding section 1121 and section 1125 with 40 minutes equally divided; that all of the Sanford amendments be subject to relevant second-degree amendments, and Heflin amendments to strike section 206(g)(9) and to make a technical correction with 10 minutes equally divided; that upon disposition of these amendments, the Senate return to consideration of the Danforth amendment; that there be 1 hour for debate remaining on the amendment with the time equally divided and controlled between Senators DANFORTH and HEFLIN; that the Danforth amendment be subject to relevant second-degree amendments with the same time limitation on the second degree; that upon the conclusion or yielding back of time on the Danforth amendment and the second-degree amendment, if offered, the Senate proceed to vote on the amendment as amended, if amended; vote on the committee substitute amendment as amended, read the bill for the third

time, and vote on final passage of the bill, with all of the above occurring without any intervening action or debate; that no motion to recommit be in order and that all time be controlled in the usual form; and further, that upon disposition of S. 1985, the Senate then proceed to the consideration of Calendar No. 464, S. 2733, the GSE bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Without objection, the unanimous-consent request as propounded by the majority leader is agreed to.

Mr. MITCHELL. Mr. President, I ask that the agreement just approved be modified so that my reference to the fourth Sanford amendment, which read "regarding section 1121 and section 1125" be changed to now read "regarding chapter 11."

The PRESIDING OFFICER. Without objection, the unanimous-consent agreement heretofore agreed to will be modified as outlined by the majority leader.

Mr. MITCHELL. Mr. President, for the information of Senators, in an effort to proceed on this matter and to accommodate the many conflicting schedule demands on Senators, it is now my intention that the Senate will return to consideration of this bill at 9:15 a.m.; that if the Senate is able to dispose of all of the amendments that are related to the bill—those are all amendments other than the Danforth amendment—prior to 10:40 a.m., at which time the Senate will be assembling to go to the House Chamber to participate in a joint meeting to hear an address by President Yeltsin. If that occurs, and that would obviously require that the managers would be able to work out with Senator SANFORD disposition of one or more of his amendments, but if that does occur and those amendments are completed, it is my intention that I would then ask consent to stack those votes to occur not earlier than 3:15 and to proceed to the debate on the Danforth amendment beginning at 2 p.m. and ending at either 3 or 4 should a second-degree amendment be offered and the additional hour be utilized.

Under the agreement as now obtained, the debate on the Danforth amendment would not occur until after the disposition of the other amendments. That may still be the case if we do not complete action on the other amendments in the morning. But if we do complete action on the other amendments in the morning, what I will then seek to do will be to have the debate on the Danforth amendment begin at 2 and end at 3 and then stack the votes on all of the other amendments and on that amendment to commence not earlier than 3:15. It may be later if some of these other amendments are not worked out in less time than provided in the agreement. But the votes will occur not earlier than 3:15 tomorrow, which will accommodate the schedule of the Senator from Indiana and other Senators.

Mr. GRAHAM addressed the Chair.

Mr. MITCHELL. Mr. President, will the Senator yield for a moment?

Mr. GRAHAM. Yes.

Mr. MITCHELL. I would also like to modify the agreement to make clear that any second-degree amendments to any Sanford amendment should have the same amount of time as the first-degree amendment involved.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

The modification outlined by the majority leader to the unanimous-consent agreement is approved.

Mr. MITCHELL. Mr. President, this order provides that the amendments will be considered in the order listed, which means it is necessary that the Senators who wish to offer an amendment be present to offer their amendments. Otherwise, of course, the Senate will be unable to proceed with consideration of other matters.

I notice that the Senator from Florida is here. I will yield to him on that point.

Mr. GRAHAM. Mr. President, it is my hope that we can complete action on the amendment which I offered early this afternoon this evening. I would be offering a modification. I believe there is now the willingness to accept the amendment on both sides of the aisle and there would not be a vote.

Mr. MITCHELL. That is certainly agreeable to me, and I think that would be desirable and would permit us then, if that does occur, more likely to be able to proceed as I have just stated with respect to the schedule tomorrow.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Will the Senator yield so I can comment on the Senator's point of modification?

I have been informed that Senator HATCH has some interest in the amendment and modification thereof, and that should we agree to that modification, then he might lose the opportunity to be involved. I do not know exactly where Senator HATCH is or what the situation is, but I want to make sure that I accommodate him. I am the only one here who can do that at this point.

Mr. MITCHELL. Mr. President, might I inquire, if Senator HATCH has an interest in the amendment, if it is possible to ask him to come to the Senate floor and deal with it.

Mr. President, I will yield the floor now. That will be a matter for the managers.

The PRESIDING OFFICER. Who yields time? The majority leader is recognized.

Mr. MITCHELL. Mr. President, I am now advised that Senator SANFORD is agreeable to deleting one of his four amendments. As last modified, the agreement provides for two amendments regarding chapter 11, and Senator SANFORD is agreeable to deleting one of those amendments. So I would ask that the fourth listed amendment which is redundant with respect to the third be deleted.

The PRESIDING OFFICER. Without objection—the Chair hears none—the modification is agreed to.

The text of the agreement, as modified, is as follows:

Ordered, That at 9:15 a.m. on Wednesday, June 17, 1992, the Senate resume consideration of S. 1985, the Omnibus Bankruptcy Reform Bill, and that there be 60 minutes remaining for debate on the bill and committee substitute inclusive, with the time divided as follows: 20 minutes each for Senators Heflin, Grassley, and Metzenbaum.

Ordered further, That the pending Danforth amendment be temporarily laid aside.

Ordered further, That the only amendments remaining in order to this bill be the following and considered in the order listed:

Sanford amendment regarding Sec. 206, with 40 minutes, equally divided;

Sanford amendment regarding Sec. 205, with 40 minutes, equally divided;

Sanford amendment regarding Chapter 11, with 40 minutes, equally divided; and

Heflin amendments to strike sec. 206(g)(9), and to make a technical correction, with 10 minutes, equally divided.

Ordered further, That all of the Sanford amendments be subject to relevant second degree amendments, and limited to the same amount of time as the first degree amendment.

Ordered further, That upon the disposition of these amendments, the Senate return to the consideration of the Danforth amendment, with 1 hour for debate remaining on the amendment, to be equally divided and controlled between Senators Danforth and Heflin.

Ordered further, That the Danforth amendment be subject to relevant second degree amendments, with the same time limitation on the second degree.

Ordered further, That upon the conclusion or yielding back of time on the Danforth amendment and the second degree amendment, if offered, the Senate proceed to vote on the amendment, as amended, if amended, vote on the committee substitute amendment, as amended, read the bill for the third time, and vote on final passage of the bill, with all of the above occurring without any intervening action or debate.

Ordered further, That no motion to recommit be in order.

Ordered further, That the agreement be in the usual form.

Ordered further, That any votes ordered with respect to the bill be stacked to occur at a time to be determined by the Majority Leader, after consultation with the Republican Leader.

Mr. MITCHELL. Then, Mr. President, if the Senators are able to proceed and dispose of one of the amendments this evening, it makes more possible the result which I described earlier.

So I hope that Senators will be available at 9:15 a.m. to begin considering and perhaps complete all of the amendments that are germane to the bill, other than the Danforth amendment,

which I hope we will then debate between 2 and 3 tomorrow; and, if there is a second-degree amendment, between 3 and 4 tomorrow.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

MODIFICATION TO AMENDMENT NO. 2425

Mr. GRAHAM. Mr. President, I send a modification to the desk. Mr. President, I ask unanimous consent that the amendment which I have offered, which was temporarily laid aside for the purposes of consideration of Senator DANFORTH's amendment, now be the business of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered. The Graham amendment is the pending question.

Mr. GRAHAM. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

Insert at the end:

If any agreement or understanding referenced in the preceding sentence is set aside or not implemented because of the act or omission of the Pension Board and Guaranty Corporation, the law applicable to all matters in that proceeding shall be determined without regard to subsections (a) or (b).

Page 2, line 24 after the word "case" insert: "(regardless of the time such contribution comes due)".

Page 2, line 7, strike the word "become".

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, I yield to myself such time as is required.

Mr. President, the modification which I have submitted modifies the amendment as previously discussed in this regard. It states that if there were any agreement or understanding which had been entered into prior to the adoption of this modification of the law, that previously entered into agreement or understanding will be controlled; that is, that the effect of the amendment to the bankruptcy law which is being proposed in the Graham-Packwood amendment would be prospective application and would not alter agreements or understanding which have been entered into prior to the effective date of this law.

I believe that with that modification the amendment is agreeable on both sides of the aisle. If that is the case, Mr. President, I would ask for the disposition of this amendment.

The PRESIDING OFFICER. There are 10 minutes equally divided. The Chair inquires if the Senators yield back their time.

Mr. GRAHAM. Mr. President, I would be prepared to yield back my time.

The PRESIDING OFFICER. The Senator from Florida indicated he has yielded back his time on the amendment.

Mr. GRASSLEY. Mr. President, we will yield back time on this side.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Florida [Mr. GRAHAM] as modified.

The amendment (No. 2425) as modified, was agreed to.

Mr. DANFORTH. Mr. President, section 210 of this legislation contains a provision dealing with the treatment of airport gate and related facilities leases held by carriers in bankruptcy. Under this legislation, bankrupt carriers must make a decision whether to affirm or reject such leases within 180 days. This provision prohibits bankruptcy courts giving endless lease extensions to carriers, to the detriment of air service to a community.

This problem first came to my attention at Kansas City in the summer of 1990, during the second Braniff bankruptcy. Braniff had declared bankruptcy in September 1989 and ceased operations in November 1989, leaving vacant 29 gates—about half the total number available—at Kansas City International Airport. For the next 8 months the gates remained unused, tied up in bankruptcy proceedings. Kansas City was unable to offer the gates to any other carrier and was frustrated in its attempts to attract another hub carrier.

If the situation in Kansas City was bad, the effect of TWA's bankruptcy on the gates at St. Louis's Lambert International Airport is a potential nightmare. Currently, TWA controls 80 percent of the leases at Lambert, held under long-term lease until the year 2005. If the Kansas City situation occurred in St. Louis, the city would literally be without air service.

The Missouri experience is not unique. In the Eastern bankruptcy, a bankruptcy court allowed gate lease extensions for nearly 2 years, affecting airports in Atlanta, New York, and Miami. Under section 210, both the Braniff and Eastern cases could not be repeated.

Some say that section 210 is too tough on a bankrupt airline, and that its passage would prevent an airline from being able to reorganize while under bankruptcy protection. Section 210, as currently drafted, clearly provides adequate protection for debtor airlines.

Last year I introduced the provision now in section 210 as part of S. 1628, the Airline Competition Enhancement Act of 1991. That bill required that carriers make a decision on gate leases within 60 days, period. In the pending measure, carriers now have up to 180 days to make a decision. Furthermore, if the bankruptcy court finds that there is no loss of air service to a community, the court may extend the period for leasing decisions.

In other words, if TWA is using its gates at St. Louis, this provision will not adversely affect the decisions it must make in the bankruptcy process. On the other hand, if TWA is hanging onto unused gates and related facilities, and the community and its airline passengers are suffering, TWA must either make good on its commitments to the leases or reject them. This certainty will allow St. Louis to plan for a replacement hub carrier, should TWA shut down or significantly reduce operations.

Finally, I note that TWA entered into bankruptcy on January 31, 1992. This legislation, at the earliest, is not likely to be enacted until October of this year. Under section 210, the 180 day clock for TWA does not begin until the date of enactment. This language gives TWA until the spring of 1993, well over a year after it entered bankruptcy, to make its decisions on airport-related leases.

Section 210 is an exception to the general principles guiding bankruptcy law. It is an exception, however, based on an overwhelming public interest in the use of scarce aviation resources. Air service to communities like St. Louis should not be held hostage to the vagaries of the bankruptcy process. This legislation restores a balance between this public interest and the needs of bankrupt airlines to reorganize.

My obvious preference is that there will be no need to make use of this provision. In the case of TWA, I hope that the airline will successfully reorganize and that air service in St. Louis will not be affected. St. Louis remains an attractive site for TWA's hubbing operations. Over 11 million passengers start or end their trips at Lambert each year and the community is actively seeking a Lambert expansion to increase capacity and reduce delays.

I would like to thank Senators HATCH, SIMON, BIDEN, and HEFLIN for their assistance and cooperation during negotiations on this language.

PROFESSIONAL FEES

Mr. DOLE. Mr. President, I wanted to emphasize my support for section 408 of this legislation as reported by the committee and as modified by the managers' amendment.

The committee hearing held on the issue of professional fees in bankruptcy cases indicated that there is a lot of abuse out there. Cases were found which showed forum shopping to locate cases in jurisdictions where fees are less carefully scrutinized by the court. If no nexus to such a jurisdiction existed, attempts would be made to artificially create a legally sufficient nexus to land in the desired courtroom before the desired judge. Not surprising, cases of overstaffing and overbilling were also found—and unfortunately, I suspect that all this is just the tip of the iceberg.

While there is no question that bankruptcy cases are some of the most com-

plicated and litigious, the current state of affairs nonetheless leads many creditors caught up in the bankruptcy system to legitimately wonder who the system is working for. Indeed, what is the point of a bankruptcy system that enriches the professionals and leaves the creditors holding the bag.

Section 408 addresses this very important problem. Under existing law, there are few meaningful standards as to appropriate compensation. The latitude taken on this issue is great with some courts taking their responsibility very seriously and others rubber stamping the bill.

What this legislation does is to spell out in detail just what is meant by reasonable compensation and what standards a court must look at before it awards compensation for services.

Specifically, the bill will require the court, in considering the nature, extent and value of the services, to specifically evaluate the time spent, rates, necessity of work, and the value of the estate and the amount of funds available for distribution to all creditors. If the court finds that the tasks were not performed within a reasonable amount of time, if the court determines that the rate of compensation exceeds what is customary in the industry, or if the court finds that the work was duplicative or unnecessary in connection with the administration of the case, the compensation must be cut to an appropriate level.

The point of this section is that not only are courts being given a wakeup call that they need to watch the fees being charged in bankruptcy suits, but they are being given explicit statutory guidance as to what a reasonable level of compensation is.

While I am not so optimistic that this will eliminate all abuse, I am hopeful that it will mitigate most of the exploitation of the system that is going on. You can be sure that if the foregoing legislation does not do the trick, Congress will be back to make sure that fees for services are awarded fairly so that the bankruptcy professionals receive what they are reasonably entitled to and no more.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the calling of the quorum be equally divided.

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

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

The PRESIDING OFFICER. The clerk will call the roll, with the qualification of the Senator heretofore noted. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEFLIN. 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. HEFLIN. Mr. President, I ask unanimous consent that the time involved with the calling of any quorum this evening not count against any of the time previously agreed to on any side and to any Senator.

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

MORNING BUSINESS

Mr. HEFLIN. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

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

EXECUTIVE SESSION

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations reported today by the Committee on Commerce, Science, and Transportation: Gregory F. Chapados, to be Assistant Secretary of Commerce for Communications, and Information; Walter B. McCormick, Jr., to be general counsel of the Department of Transportation.

I further ask unanimous consent that the Senate proceed to their immediate consideration, that the nominees be confirmed en bloc, that any statement appear in the RECORD as if read, and that the motions to reconsider be laid on the table en bloc; further, that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF COMMERCE

Gregory F. Chapados, to be Assistant Secretary of Commerce for Communications and Information.

DEPARTMENT OF TRANSPORTATION

Walter B. McCormick, Jr., to be general counsel of the Department of Transportation.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

HELSINKI HUMAN RIGHTS DAY

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 310, designating "Helsinki Human Rights Day," and that the Senate proceed to its immediate consideration; that the joint resolution be deemed considered read three times, passed, and that the motion to reconsider be laid upon the table; that the preamble be agreed to; and any statements regarding the joint resolution be placed in the RECORD at an appropriate place.

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

The joint resolution (S.J. Res. 310), was deemed read the third time and passed.

The preamble was agreed to.

The joint resolution with its preamble is as follows:

S.J. RES. 310

Whereas August 1, 1992, is the seventeenth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (CSCE) (hereafter in this preamble referred to as the "Helsinki accords");

Whereas the Helsinki accords were agreed to by the Governments of Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Byelarus, Canada, Croatia, Cyprus, Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America, Uzbekistan, and Yugoslavia;

Whereas the Helsinki accords express the commitment of the participating States to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion";

Whereas the participating States have committed themselves to "ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration of Principles and other CSCE commitments";

Whereas the participating States have committed themselves to "respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States";

Whereas the participating States have affirmed that the "ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right to free-

ly express, preserve and develop that identity without any discrimination and in full equality before the law";

Whereas the participating States have recognized that the free will of the individual, exercised in democracy and protected by the rule of law, forms the necessary basis for successful economic and social development;

Whereas the participating States have committed themselves to respect fully the right of everyone to leave any country, including their own, and to return to their country;

Whereas the participating States recognize that "democratic government is based on the will of the people, expressed regularly through free and fair elections; and democracy has as its foundation respect for the person and the rule of law; and democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person";

Whereas on November 21, 1990, the heads of State or government from the signatory States signed the Charter of Paris for a New Europe, a document which has added clarity and precision to the obligations undertaken by the participating States;

Whereas the Conference on Security and Cooperation in Europe has made major contributions to the positive developments in Europe, including greater respect for the human rights and fundamental freedoms of individuals and groups;

Whereas the Conference on Security and Cooperation in Europe provides an excellent framework for the further development of genuine security and cooperation among the participating States; and

Whereas, despite significant improvements, all participating States have not yet fully implemented their obligations under the Helsinki accords: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) August 1, 1992, the seventeenth anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe (hereinafter referred to as the "Helsinki accords") is designated as "Helsinki Human Rights Day";

(2) the President is authorized and requested to issue a proclamation reasserting the American commitment to full implementation of the human rights and humanitarian provisions of the Helsinki accords, urging all signatory States to abide by their obligations under the Helsinki accords, and encouraging the people of the United States to join the President and Congress in observance of Helsinki Human Rights Day with appropriate programs, ceremonies, and activities;

(3) the President is further requested to continue his efforts to achieve full implementation of the human rights and humanitarian provisions of the Helsinki accords by raising the issue of noncompliance on the part of any signatory State which may be in violation;

(4) the President is further requested to convey to all signatories of the Helsinki accords that respect for human rights and fundamental freedoms continues to be a vital element of further progress in the ongoing Helsinki process; and

(5) the President is further requested, in view of the considerable progress made to date, to develop new proposals to advance the human rights objectives of the Helsinki process, and in so doing to address the major problems that remain.

SEC. 2. The Secretary of State is directed to transmit copies of this joint resolution to the Ambassadors or representatives to the United States of the other fifty-one Helsinki signatory States.

APPOINTMENT BY THE PRESIDENT OF THE SENATE

Mr. HEFLIN. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with the like committee on the part of the House of Representatives to escort His Excellency, Boris Yeltsin, President of the Russian Federation, into the House Chamber for the joint meeting tomorrow.

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

MEASURE PLACED ON THE CALENDAR—H.R. 4548

Mr. HEFLIN. Mr. President, I ask unanimous consent that H.R. 4548, the International Peacekeeping Act of 1992, just received from the House, be placed on the calendar.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT ON ENERGY EFFICIENCY STANDARDS RELATIVE TO CERTAIN BUILDINGS—MESSAGE FROM THE PRESIDENT—PM 250

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

I transmit herewith the annual report describing the activities of the Federal Government for fiscal year 1991 required by subtitle H, title V of the Energy Security Act (Public Law 96-264; 42 U.S.C. 8286, *et seq.*). These activities include the development of energy conservation and efficiency standards for new commercial and multifamily high-rise buildings and for new residential buildings.

GEORGE BUSH.

THE WHITE HOUSE, *June 16, 1992.*

VETO MESSAGE ON S. 2342—MESSAGE FROM THE PRESIDENT—PM 251

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was ordered printed as a Senate document:

To the Senate of the United States:

I am returning herewith without my approval S. 2342. This bill would waive the 6-year statute of limitations, allowing three Sioux Indian tribes—the Sisseton-Wahpeton Sioux Tribe, the Devils Lake Sioux Tribe, and the Sisseton-Wahpeton Council of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation—to bring an otherwise time-barred challenge to the 1972 Mississippi Sioux Indian Judgment Fund Act.

The 1972 Act apportioned to each of the three Tribes, and to a then-undetermined class of Sioux Indians who are not members of those Tribes, a percentage share of the proceeds from a 1967 judgment against the United States. The judgment rested on a finding that the United States had not paid adequate compensation to the Tribes in the 1860's for lands ceded to the United States. The nonmember Indians are persons who are not now eligible for membership in any of the three Tribes, but who can trace their lineal ancestry to someone who was once a tribal member.

The Tribes were active participants in the administrative and legislative process leading to the 1972 Act, and they endorsed the Act and its distribution of the judgment. Nonetheless, in 1987, 15 years after enactment and 9 years after the statute of limitations had run, the Tribes sued the United States, challenging the Act's distribution to the nonmembers. The U.S. Court of Appeals for the Ninth Circuit affirmed a lower court's decision to dismiss the case, finding no excuse—legal, equitable, or otherwise—for the Tribes' failure to challenge the 1972 Act in a timely fashion, and the U.S. Supreme Court declined to review the Ninth Circuit's decision. *Sisseton-Wahpeton Sioux Tribe, et al.* v. *United States*, 895 F.2d 588 (9th Cir. 1990), *cert. denied*, ——— U.S. ———, 11 S. Ct. 75 (1990).

I find no extraordinary circumstances or equities to justify an exception to the long-standing policy of the executive branch, which my Administration fully embraces, against *ad hoc* statute of limitations waivers and similar special relief bills. Also, there must be some definite, limited time during which the Government must be prepared to defend itself, and some finality to the pronouncements of the courts, the Congress, and the agencies.

Moreover, a waiver for the Tribes in this case would mean the waste of the considerable judicial and litigation resources that were expended in bringing the case to final resolution, and would require additional litigation that would otherwise be avoided. Thus, enactment of this bill would be inconsistent with Executive Order No. 12778 of October 23, 1991, which embodies my resolve to eliminate unnecessary, wasteful litigation.

In addition, I am concerned that enactment of this bill would be unfair to other tribes, and would serve as a highly undesirable and potentially expensive precedent. Many other tribes were the recipients of settlement fund distributions, and many distributions, like the one challenged by the Tribes here, included payments to nonmember Indians. Some of those tribes doubtless are dissatisfied with the terms of their distribution, but they are barred from a challenge by the statute of limitations. Numerous other Indian claims, totaling hundreds of millions of dollars, have been dismissed on statute of limitations or other jurisdictional grounds. In both categories of cases, tribes could rightfully claim that for purposes of fair treatment, they, too, should be allowed by the Congress to litigate the merits of their claims.

I note that S. 2342 received little, if any, consideration by the House of Representatives prior to its passage by that body. Instead, the bill was discharged from committee without hearings and brought immediately to the House floor. Had there been a full review of this proposal, I am confident that the outcome would have been different.

For these reasons, I cannot approve S. 2342.

GEORGE BUSH.

THE WHITE HOUSE, *June 16, 1992*.

MESSAGES FROM THE HOUSE

At 2:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4548. An act to authorize contributions to United Nations peacekeeping activities; and

H.R. 4999. An act to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House.

The message also announced that pursuant to section 403(A)(3) of Public Law 100-533, the Speaker appoints the following members, from private life, to the National Women's Business Council on the part of the House: Ms. Pastora San Juan Cafferty of Chicago, IL and Ms. Barbara L. Laughlin of Buffalo, NY.

The message further announced that pursuant to the provisions of section 8104 of Public Law 101-511, the Speaker appoints the following members, from private life, to the National Commission on Defense and National Security on the part of the House: Mr. Harold Brown of Washington, DC, Vice Chairman, Mr. William James Perry of Los Altos, CA, and Mr. Calvin A.H. Waller of Colorado Springs, CO.

ENROLLED BILL SIGNED

At 6:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2507. An act to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4999. An act to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

H.R. 2039. An act to authorize appropriations for the Legal Services Corporation, and for other purposes.

The following bill was read the first and second time by unanimous consent and placed on the calendar:

H.R. 4548. An act to authorize contributions to United Nations peacekeeping activities.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, June 16, 1992, he had presented to the President of the United States the following enrolled bill:

S. 756. An act to amend title 17, United States Code, the copyright renewal provisions, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3431. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a certification on amounts authorized for the Board for International Broadcasting for grants to Radio Free Europe/Radio Liberty, Inc.; to the Committee on Appropriations.

EC-3432. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving United States exports to Algeria; to the Committee on Banking, Housing, and Urban Affairs.

EC-3433. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the Department of the Treasury's 1992 report on intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC-3434. A communication from the Acting Commandant of the United States Coast Guard, transmitting, pursuant to law, notice of the proposed time for submission of a report on infestation of waters of the United States, including the Great Lakes, by exotic species from the ballast water of vessels; to the Committee on Commerce, Science, and Transportation.

EC-3435. A communication from the Secretary of Energy, transmitting, pursuant to law, the Strategic Petroleum Reserve Quarterly Report for the period January 1 through March 31, 1992; to the Committee on Energy and Natural Resources.

EC-3436. A communication from the Director of the National Ocean Pollution Program, Department of Commerce, transmitting, pursuant to law, a report entitled "Review of Fiscal Year 1993 Agency Requests for Appropriations to Support Ocean Pollution Research, Development, and Monitoring Programs"; to the Committee on Environment and Public Works.

EC-3437. A communication from the Chairman of the Physician Payment Review Commission, transmitting, pursuant to law, a report entitled "Fee Update and Medicare Volume Performance Standards for 1993"; to the Committee on Finance.

EC-3438. A communication from the President of the United States, transmitting, pursuant to law, notice of his intention to suspend Syria indefinitely as a designated beneficiary developing country for purposes of the Generalized System of Preferences; to the Committee on Finance.

EC-3439. A communication from the President of the United States, transmitting, pursuant to law, a proclamation that extends nondiscriminatory treatment to the products of Albania; to the Committee on Finance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation:

Karl A. Erb, of Virginia, to be an Associate Director of the Office of Science and Technology Policy;

Carl W. Vogt, of Maryland, to be a member of the National Transportation Safety Board for the term expiring December 31, 1996;

Carl W. Vogt, of Maryland, to be Chairman of the National Transportation Safety Board for a term of 2 years;

Gregory F. Chapados, of Alaska, to be Assistant Secretary of Commerce for Communications and Information;

Walter B. McCormick, Jr., of Missouri, to be General Counsel of the Department of Transportation;

The following officers of the U.S. Coast Guard Reserve for promotion to the grade of rear admiral:

Fred S. Golove.

George R. Merrilees.

The following officer of the U.S. Coast Guard Reserve for appointment to the grade of rear admiral (lower half):

Robert E. Sloncen.

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral:

Gregory A. Penington.

Paul E. Versaw.

William C. Donnell.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. HOLLINGS. Mr. President, for the Committee on Commerce, Science, and Transportation, I also report favorably two nomination lists in the Coast Guard, which were printed in full in the CONGRESSIONAL RECORDS of March 12 and April 1, 1992, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. LIEBERMAN (for himself, Mr. STEVENS, Mr. RUDMAN, and Mr. DODD):

S. 2850. A bill to establish the Small Business Capital Access Program to enhance the availability of financing for small business concerns; to the Committee on Small Business.

By Mr. JOHNSTON (for himself, Mr. WALLOP, Mr. HEFLIN, Mr. HATFIELD, Mr. LIEBERMAN, Mr. PACKWOOD, Mr. BUMPERS, Mr. SEYMOUR, Mr. BINGAMAN, Mr. GORTON, Mr. CONRAD, Mr. MURKOWSKI, Mr. DOMENICI, Mr. BURNS, Mr. CRAIG, Mr. LAUTENBERG, Mr. AKAKA, and Mr. LUGAR):

S. 2851. A bill to provide for the management of Pacific yew on public lands, and on national forest lands reserved or withdrawn from the public domain, to ensure a steady supply of taxol for the treatment of cancer and to ensure the long-term conservation of the Pacific yew, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROTH (for himself and Mr. BIDEN):

S. 2852. A bill to establish the Professional Boxing Corporation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEVIN (for himself and Mr. COHEN):

S. 2853. A bill to authorize appropriations for the United States Office of Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 2854. A bill to extend the existing suspension of duty on methyl and ethyl parathion and dimethoate; to the Committee on Finance.

S. 2855. A bill to suspend until January 1, 1995, the duty on Malathion; to the Committee on Finance.

By Mr. D'AMATO (for himself, Mr. KASTEN, Mr. ROCKEFELLER, Mr. GLENN, and Mr. RIEGLE):

S. 2856. A bill to amend the provisions of the Omnibus Trade and Competitiveness Act of 1988 with respect to the enforcement of machine tool import arrangements; to the Committee on Finance.

By Mr. MACK:

S. 2857. A bill to amend the Internal Revenue Code of 1986 to extend the period of time to acquire a new residence for purposes of nonrecognition of gain on the sale of an old residence for members of the Armed Forces of the United States; to the Committee on Finance.

By Mr. HEFLIN:

S.J. Res. 313. A joint resolution to designate the period beginning February 1, 1993, and ending February 5, 1993, as "National Shoplifting Prevention Week"; to the Committee on the Judiciary.

By Mr. BURNS:

S.J. Res. 314. A joint resolution to designate the period beginning on August 16, 1992 and ending on August 22, 1992, as "National Convenience Store Appreciation Week"; to the Committee on the Judiciary.

By Mr. SEYMOUR (for himself and Mr. DODD):

S.J. Res. 315. A joint resolution to designate September 16, 1992, as "National Occupational Therapy Day"; to the Committee on the Judiciary.

By Mr. SIMON:

S.J. Res. 316. A joint resolution to designate the week of November 30 through December 6, 1992 as "National Education First Week"; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself and Mr. DOLE) (by request):

S.J. Res. 317. A joint resolution approving the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of the Republic of Albania; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DIXON (for himself and Mr. SIMON):

S. Res. 315. A resolution to congratulate the Chicago Bulls on winning the 1992 National Basketball Association Championship; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LIEBERMAN (for himself, Mr. STEVENS, Mr. RUDMAN, and Mr. DODD):

S. 2850. A bill to establish the Small Business Capital Access Program to enhance the availability of financing for small business concerns; to the Committee on Small Business.

SMALL BUSINESS ACCESS PROGRAM

• Mr. LIEBERMAN. Mr. President, I rise today to introduce the Small Business Capital Access Program, a bill designed to bridge the credit gap and make bank financing available to the countless number of small businesses and entrepreneurs presently unable to secure financing with conventional lending institutions. I am very pleased to be joined in this effort by Senators STEVENS, DODD, and RUDMAN.

Mr. President, small business capital accessibility has been an issue of rising concern for a number of years. The deregulation of the financial services industry in the early 1980's and, more recently, increasing concerns over the safety and soundness of banks and thrifts, in combination with the inherent risks associated with small business lending, has resulted in a crisis in available commercial credit for small firms. Furthermore, movement over the past number of years toward variable interest rates, shorter term financing, fees, and points has made the aggregate cost of small business financing greater and more unpredictable.

Alternative sources of funding such as public markets, venture capital firms, or institutional investors provide little relief to the small business. New securities or initial public offerings [IPO's], particularly for smaller and riskier issues, have had and will continue to have difficulty attracting investors, particularly in the present economic climate. On the other hand, venture capital firms remain focused on high-tech companies that offer prospects of relatively higher and faster returns on investment. This is complicated by the fact that venture capital—whether equity or debt—has been falling off significantly in recent years. Finally, institutional investors such as insurance companies or pension funds can provide financing to smaller firms, but because of complex capital and fiduciary obligations have never focused on developing the systems for evaluating credit risks or growth potential of individual smaller enterprises. Thus, the relative unavailability of both long term debt and equity capital has left many small businesses in a so-called "credit gap"—the unavailability of financing at any cost, or at costs or terms beyond a small firms ability to service.

There are a number of factors which have contributed to the present "credit gap." First, price deregulation, which removed ceilings from savings accounts and enabled financial institutions to pay market rates of interest, effectively raised returns to depositors and costs to borrowers. This result has dramatically increased the cost of money to smaller firms.

Second, smaller and newer businesses, by definition, provide a greater degree of risk for financial institutions. Banks routinely assess and cover against different degrees of risk in a variety of ways—by charging fees, increasing interest rates, or through portfolio diversification. This, in combination with recent concerns over "safety and soundness" stemming from bank and savings and loan failures, and the devaluation of collateral has re-

sulted in small businesses increasingly finding themselves either unable to secure financing at any cost, or priced out of the market by high interest rates, short terms, and excessive demands for collateral.

As a result, capital accessibility has become increasingly problematic. Small firms are realizing that previously "bankable" loans, or loans which were considered "on the margin" are less and less likely to be approved by commercial financial institutions, particularly in the current banking environment. This is particularly alarming in light of recent surveys which show that commercial banks have been and remain the most important supplier of debt capital and financial services to the small business sector in the United States.

It is also important to note the new "risk-based" capital regulatory requirements, which are presently being phased in. These standards, which stem from a 1987 international agreement to standardize bank capital requirements, will require banks to maintain a minimum capital level of 8 percent of a bank's assets, adjusted for risk. In other words, small commercial and industrial loans will require a full 8 percent capital; assets secured by a first residential mortgage will require 4 percent capital; and government securities will not require any capital at all. Stated simply, these new standards will favor bank investments in government securities and home mortgages over commercial and small business lending. These standards will surely push the aggregate cost of small business lending upward, particularly in the current capital constrained banking environment.

Since small firms remain the primary creator of new jobs and new innovations in the United States, and since small firms remain the primary place for employee training, this credit crisis has profound implications over time for the economy, productivity growth, employment, personal income, and eventually our standard of living.

The U.S. Small Business Administration addresses part of this problem through the 7(a) loan guarantee program by providing guarantees of up to 90 percent of loans made to qualified small businesses by private lenders. While the loan-by-loan guarantee approach is generally regarded as very successful, and has proven to be an invaluable tool for lenders and borrowers alike, it is also clear that it has not filled the "credit gap" created by events of the past decade. The Small Business Capital Access Program described below is intended to augment, not replace, the S.B.A. 7(A) guarantee program or any other loan program administered by the government.

The Small Business Capital Access Program is a new and innovative market-based approach to small business lending. It will enable banks to extend credit to firms which have previously been unable to obtain commercial financing. It will do so with a minimum of regulatory oversight and without sacrificing safety, soundness, or conventional credit analysis. It will focus on small loans from a diverse assortment of companies. And, the program will accomplish all this with a negligible amount of government resources and with no hidden governmental liability.

The Small Business Capital Access Program is based on a portfolio insurance concept rather than the traditional loan-by-loan guarantee process. In other words, as opposed to current programs where government provides a guarantee for each individual loan, this program provides a reserve or guarantee on a portfolio of loans. This will enable banks to evaluate risk on a pooled or shared basis and apply an actuarial approach to small business credit analysis. The result will be banks making far more small business loans with far fewer Federal dollars.

In 1986, the State of Michigan implemented a similar program which has provided loans to approximately 950 firms, for a total of $48.5 million in financing, and has resulted in a leverage ratio—that is total government obligation to total lending—of more than 20:1.

The U.S. Small Business Administration would have oversight responsibility for the program, but specific programmatic implementation would be left to State government. This would enable participating States to tailor the program in response to particular credit needs and financial climates.

Here's how it works:

For each bank participating in the program, a special reserve fund would be established to cover future losses from a portfolio of loans which the bank makes under the program. The reserve fund would be owned and controlled by State government, but earmarked in each participant bank's name. Thus, each bank participating in the program would have its own separate earmarked loss reserve.

Payments would be made into a bank's earmarked reserve each time the bank makes a loan under the program. The borrower would make a premium payment of between 1½ to 3½ percent of the loan amount and the financial institution would match the payment. The Federal and State government would then, either directly or through a guarantee agreement, match the payment. Under this four part matching system, a bank could have anywhere from a 6-percent (1½ percent to 4) to a 14-percent (3½ percent to 4) loan loss reserve on the portfolio.

The bank would be allowed to recover the cost of its payment from the borrower through the pricing of the loan. Any up-front premiums or fees, in connection with the Capital Access Program, could be financed as part of the loan.

If a bank makes a portfolio of loans under the program, it might have a reserve equal to, for example, 10 percent of the total amount of that portfolio. In such a situation, the bank could sustain a loss rate of up to 10 percent on that portfolio and still be completely covered against loss. This gives the bank the ability to absorb a higher loss rate (perhaps 5, 6, or 7 percent) than it could tolerate on its conventional loans (usually 1 or 2 percent). Since this arrangement offers the bank a higher degree of coverage against loss than normally available, the institution may be able to offer more favorable interest rates and terms to small businesses.

The bank, however, must still be prudent in making loans under this program since it is completely at risk for any losses that exceed the coverage provided by the reserve. Because of this incentive for prudence, there will be little need for strict regulatory supervision. The bank would decide whether or not and under what terms and conditions to make a loan.

The limited need for regulatory oversight is a critical component in the implementation of this program. Unlike other government loan programs which require strict oversight due to the government's large "hidden liability" which is inherent in any guarantee program, the Capital Access Program has a limited government liability—at most, 3½ percent of a loan or a portfolio of loans.

Also worth noting is the program's built-in bias for small loans. Because this concept is based in insuring a portfolio of loans as opposed to one loan, there is a built-in incentive to build a large portfolio of diverse and smaller loans.

Thus, through this arrangement of shared or pooled risk, the Small Business Capital Access Program would enable banks that have been cutting back on commercial lending to extend credit to those small firms most affected by the credit gap. In other words, firms that are considered almost bankable but could not obtain financing because they are new, or due to insufficient collateral, debt level, sales level, or the like.

The Small Business Capital Access Program is a new and innovative market-based approach to small business lending. The program will add significant new lending to small businesses—America's main job-creating engine. It will do so with a minimum of regulatory oversight and at a fraction of the cost of other Federal programs. I want to thank Senator STEVENS for his partnership in preparing this proposal, and I hope we can pass this program prior to the end of this Congress.

Mr. President, I ask unanimous consent that a summary of the Small

Business Capital Access Program appear in the RECORD immediately following my remarks, as well as the text of the bill.

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

S. 2850

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Capital Access Program".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) small business concerns remain a thriving and vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;

(2) adequate access to capital is a critical component of small business formation and success;

(3) small business concerns, which in many cases represent inherently higher degrees of risk in financial markets than do large businesses, are having an increasingly difficult time securing sufficient long-term debt financing;

(4) recent concerns over the "safety and soundness" of commercial financial institutions and changing capital standards have lead to a more conservative review of loan applications, particularly those from small business concerns;

(5) the start-up cycle for a small business concern is typically 5 to 7 years, yet only 12 percent of recent commercial loans were made for terms of 7 years or longer;

(6) price deregulation, which removed ceilings from savings accounts and enabled financial institutions to pay market rates of interest, effectively raised returns to depositors and costs to borrowers, resulting in increased costs of debt capital for smaller businesses;

(7) commercial banks are the most important supplier of debt capital and financial services to small business concerns in the United States, and according to surveys of small business financing, nearly all small business concerns use some financial services from commercial banks;

(8) the new risk-based capital requirements will have an unclear impact on the availability of capital financing for small business concerns;

(9) other sources of small business financing such as venture capital markets, public markets, or institutional investors (pension funds or insurance companies) are not viable alternatives for many small business concerns; and

(10) innovative developmental finance and small business lending programs at the State level have proven to be particularly effective in promoting the growth and development of small business concerns.

(b) PURPOSE.—It is the purpose of this Act to promote economic growth, create jobs, and spur innovation by enhancing the availability of financing for small business concerns, that might otherwise not be available.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the terms "Administration" and "Administrator" mean the Small Business Administration and the Administrator of the Small Business Administration, respectively;

(2) the term "appropriate Federal banking agency" shall have the same meaning as in section 3 of the Federal Deposit Insurance Act;

(3) the term "Board" means the Small Business Capital Access Board established under section 4;

(4) the term "early loan" means a loan enrolled at a time when the aggregate dollar amount of previously enrolled loans in a particular reserve fund is less than $5,000,000;

(5) the term "enrolled loan" means a loan made to a small business concern by a participating financial institution located in a participating State and subsequently enrolled in the Program in accordance with section 7;

(6) the term "participating financial institution" means any Federal- or State-chartered commercial bank, savings association, mutual savings bank, or credit union that—

(A) has met all applicable requirements of the Administration and a participating State for participation in the Program;

(B) is actually participating in the Program; and

(C) has or is in the process of establishing a reserve fund in accordance with this Act;

(7) the term "participating State" means any State that has met the requirements of this Act and is designated for participation in the Program established under this Act;

(8) the term "passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term "Program" means the Small Business Capital Access Program established under this Act;

(10) the term "reserve fund" means a fund, established by a participating State, in the name of a participating financial institution, for the purpose of—

(A) depositing all required premium charges, paid by the participating financial institution and the borrower;

(B) depositing contributions made by participating States and the Administration; and

(C) covering losses on enrolled loans by disbursing funds accumulated in the reserve fund in accordance with section 10; and

(11) the term "small business concern" has the same meaning as in section 3 of the Small Business Act.

SEC. 4. SMALL BUSINESS CAPITAL ACCESS BOARD.

(a) ESTABLISHMENT.—There is established within the Administration, a Small Business Capital Access Board which shall be chaired by the Administrator and shall consist of the following additional members, to be appointed by the Administrator:

(1) SMALL BUSINESS REPRESENTATIVES.—Two members shall be appointed from the private sector representing small business concerns.

(2) FINANCIAL SERVICES REPRESENTATIVES.—Two members shall be appointed from the private sector representing the financial services industry.

(3) STATE GOVERNMENT REPRESENTATIVES.—Two members representing State government shall be appointed.

(b) DUTIES.—The Board shall—

(1) designate States to participate in the Program, as provided in section 5; and

(2) prepare annual reports to the Congress that shall include—

(A) data on the number, types, amounts, and average amounts of loans made pursuant to the Program;

(B) an analysis of the types of firms financed as part of the Program;

(C) an analysis of the terms, fees, and interest rates of Program loans;

(D) the types and sizes of financial institutions participating in the Program; and

(E) an accounting of active reserve funds established as part of the Program in participating States, including the amounts and the number of covered loans.

(c) TERMS AND COMPENSATION.—

(1) IN GENERAL.—Each member of the Board referred to in subsection (a) shall be appointed for the life of the Board.

(2) VACANCIES.—Vacancies on the Board shall be filled in the same manner in which the original appointment was made.

(3) COMPENSATION AND EXPENSES.—Each member of the Board referred to in paragraphs (1) and (2) of subsection (a) shall be paid at a daily rate of basic pay payable for GS-18 of the General Schedule for each day during which such member is engaged in the duties of the Board. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

SEC. 5. DESIGNATION OF STATES FOR PARTICIPATION.

(a) IN GENERAL.—The Board shall designate States to participate in the Program in accordance with this Act.

(b) STATE COMMITMENT REQUIRED.—A State that has fulfilled, or is in the process of fulfilling, the State commitments required under section 6 may be designated for participation in the Program.

SEC. 6. PROGRAM SPECIFICATIONS.

(a) FEDERAL CONTRIBUTIONS.—The Administration is authorized to contribute, on an immediate or deferred basis, not more than $8,000,000 for fiscal years 1993 through 1998 to each participating State, to be credited to the reserve funds established in connection with loans made to small business concerns by participating financial institutions under the Program.

(b) PARTICIPATION LIMITS.—In agreements to contribute to reserve funds made in accordance with the terms of the Program, such contributions by the Administration—

(1) shall be not less than 1.5 percent nor more than 3.5 percent of the amount of the loan; and

(2) shall match on a one-to-one basis the amounts contributed by the participating State.

(c) STATE COMMITMENTS.—

(1) STATUTORY AUTHORITY AND APPROPRIATIONS.—Not more than 12 months after the date on which a State is designated for participation in the Program under section 5(c), such State shall—

(A) establish all necessary statutory authority to carry out the Program;

(B) appropriate all necessary funds to cover immediate or deferred premiums required by the State on enrolled loans; and

(C) establish an administrative mechanism to carry out—

(i) the establishment, management, and accounting of reserve funds;

(ii) the enrollment of loans in accordance with section 7(c);

(iii) the payment of claims under this Act; and

(iv) the designation of participating financial institutions under this Act.

(2) TERMINATION OF PARTICIPATION.—A State that fails to meet the requirements of paragraph (1) within the 12-month period referred to in that paragraph shall forego participation in the Program, except that the Board may extend the 12-month period referred to in that paragraph by a majority vote for not more than 12 months, upon request of the State.

(3) REAPPLICATION FOR PARTICIPATION.—A State for which participation in the Program has been terminated under paragraph (2) may reapply to the Board for participation in the program at any time after the requirements of paragraph (1) have been met by the State.

(d) ESTABLISHMENT OF RESERVE FUNDS.—Each participating State shall establish reserve funds in the name of each participating financial institution for the purposes of—

(1) depositing all required premium charges to be paid by the participating financial institution and the borrower and accounting for immediate or deferred contributions made by participating States and the Administration; and

(2) disbursing funds accumulated in accordance with this Program to cover losses sustained by the participating financial institution in connection with loans made under the Program.

(e) ADDITIONAL REQUIREMENTS.—

(1) BORROWERS.—The Administration may only make contributions under this Act in connection with a loan made to a borrower—

(A) that is—

(i) a small business concern; and

(ii) a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity, whether such entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the participating State; and

(B) that has its primary business location within the boundaries of a participating State.

(2) LOAN USE RESTRICTION.—A loan made under this Act may not be used to finance passive real estate ownership.

(3) WRITTEN ASSURANCES.—Prior to receiving a loan under this Act, each borrower shall sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the reserve fund established by a participating State.

SEC. 7. LOAN TERMS AND CONDITIONS.

(a) DESIGNATION OF FINANCIAL INSTITUTIONS.—A financial institution located in a participating State shall be considered a participating financial institution and may enroll loans in accordance with this Act if—

(1) the institution has agreed to all terms and conditions set forth in this Act and any terms and conditions set forth by the participating State;

(2) the appropriate Federal banking agency for the financial institution has approved the institution for participation in the Program, after consideration of the safety and soundness, the applicable capitalization requirements, and the overall financial health of the institution; and

(3) the participating State has agreed to establish, or has established, a reserve fund in the name of the institution.

(b) NEGOTIATED LOAN TERMS.—Loans made under the Program may be made with such interest rates, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower.

(c) ENROLLMENT OF LOANS.—

(1) PROCESS.—A participating financial institution shall file each loan made under the Program for enrollment—

(A) by notifying the Administration and the State administrative agency or office responsible for the reserve funds of—

(i) the disbursement of the loan;

(ii) the dollar amount of the loan enrolled;

(iii) the interest rate applicable to and the term of the loan; and

(iv) the amount of the agreed upon premium; and

(B) by transmitting the nonrefundable premium charges of the participating financial institution and the borrower as provided in section 8.

(2) SPECIFICATION OF PROGRAM COVERAGE AMOUNT.—When filing a loan for enrollment under this section, the participating financial institution may specify an amount to be covered under the Program that is less than the total amount of the loan.

(3) LINES OF CREDIT.—A loan may be made under this Act in the form of a line of credit, in which case the amount of the loan enrolled shall be considered to be the maximum amount that can be drawn against the line of credit.

(4) TIME LIMITATION.—The participating financial institution shall file the loan for enrollment not later than 10 days after the loan is made.

SEC. 8. REQUIRED PAYMENTS AND TRANSFERS TO THE RESERVE FUND.

(a) BORROWER AND LENDER PREMIUM PAYMENTS.—

(1) BORROWER PAYMENTS.—The premium charges payable to the reserve fund under this Act by the participating financial institution and the borrower in connection with a loan made under the Program shall be prescribed by the institution. The premium amount paid by the borrower shall be not less than 1.5 percent nor more than 3.5 percent of the amount of the loan, as agreed upon by the institution and the borrower.

(2) LENDER PAYMENTS.—The premium amount paid by the participating financial institution in connection with a loan made under the Program shall be equal to the premium amount paid by the borrower.

(3) RECOVERY OF COSTS.—The participating financial institution may recover from the borrower the cost of its payments to the fund through the financing of the loan upon the agreement of the institution and the borrower.

(b) REQUIRED FEDERAL AND STATE CONTRIBUTIONS.—The Administration and each participating State shall each deposit into the reserve fund, on an immediate or deferred basis, one-half of—

(1) an amount equal to 150 percent of the combined amounts paid into the reserve fund by the borrower and the participating financial institution for each enrolled loan, if the amount of any loan, plus the amount of loans previously enrolled under the Program from a participating financial institution is less than $2,000,000;

(2) an amount equal to the combined amounts paid into the reserve fund by the borrower and the participating financial institution for each enrolled loan if, prior to the enrollment of the loan, the amount of loans previously enrolled under the Program is not less than $2,000,000; or

(3) an amount equal to a percentage of the combined amount paid by the participating financial institution and the borrower, determined—

(A) by multiplying by 150 that portion of the loan which when added to the amount of all previously enrolled loans equals $2,000,000;

(B) by multiplying the balance of the loan by 100; and

(C) by adding together the products of such computations and dividing the sum by the total amount of the loan, if the amount of loans previously enrolled under the Program is less than $2,000,000 but the enrollment of a loan will cause the aggregate amount of all enrolled loans to exceed $2,000,000.

(c) MAXIMUM PAYMENT.—The combined amount to be deposited by the participating financial institution into any individual reserve fund over the 3-year period in connection with any single borrower or any group of borrowers among which a common enterprise exists, shall be not more than $150,000.

SEC. 9. OWNERSHIP, CONTROL, AND INVESTMENT OF RESERVE FUND.

(a) OWNERSHIP.—All payments to the reserve fund in a participating State shall be the exclusive property of and solely controlled by that State.

(b) WITHDRAWAL RESTRICTION.—The participating State may not withdraw amounts from the reserve fund except as specifically provided for in this Act.

(c) INVESTMENT AUTHORITY.—In the case of reserve fund payments that are not deposited by the participating State in an account held by the participating financial institution, such payments shall be invested or reinvested by the participating State—

(1) in direct obligations of the Federal Government or the participating State; or

(2) in obligations the principal and interest of which are unconditionally guaranteed by the Federal Government or the participating State.

(d) INCOME OF THE FUND.—

(1) IN GENERAL.—Interest or income earned on the funds credited to the reserve fund shall be deemed to be part of the reserve fund.

(2) WITHDRAWAL OF FUND INCOME.—A participating State may withdraw at any time from the reserve fund not more than 50 percent of all interest or other income that has been credited to the reserve fund, except that subsequent to the first such withdrawal, the participating State may not withdraw more than 50 percent of all interest or other income that has been credited to the reserve fund since the time of the last such withdrawal. Any withdrawal made under this paragraph may be made prior to paying any claim under section 8, and shall be used for the sole purposes of offsetting administrative costs associated with carrying out this Act.

SEC. 10. CLAIMS, DISBURSEMENTS, RECOVERY, AND SUBROGATION.

(a) CLAIMS.—

(1) IN GENERAL.—A participating financial institution that charges off all or part of an enrolled loan to the reserve fund may file a claim with the participating State—

(A) if the claim occurs contemporaneously with the action of the institution to charge off all or part of the loan; and

(B) if the charge off on an enrolled loan is made in a manner that is consistent with the institution's usual method for making such determinations on business loans that are not enrolled loans.

(2) CLAIM AMOUNTS.—The participating financial institution's claim may include, in addition to the amount of principal charged off plus accrued interest, an amount that represents its reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, but only if proper documentation of such expenses if presented at the time of the claim.

(3) MULTIPLE CLAIMS.—If a participating financial institution files 2 or more claims

contemporaneously, and there are insufficient funds in the reserve fund at that time to cover the entire amount of such claims, the institution may designate the order of priority in which the claims shall be paid.

(b) DISBURSEMENTS.—

(1) IN GENERAL.—Each participating State shall disburse funds from the reserve fund in connection with claims made in accordance with this section.

(2) PARTIAL PAYMENT OF CLAIMS.—If there are insufficient funds in the reserve fund to cover the entire amount of a participating financial institution's claim, the participating State shall pay to the institution an amount equal to the current balance in the reserve fund, and—

(A) if the enrolled loan for which the claim has been filed is not an early loan, such payment shall be deemed to fully satisfy the claim and the institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) if the loan is an early loan, such partial payment shall not be deemed to satisfy the institution's claim, and at such time as the remaining balance of the claim is not greater than 75 percent of the balance in the reserve fund at that time, the participating State shall, upon the request of the institution, pay any remaining balance of the claim.

(c) RECOVERY.—If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any reasonable out-of-pocket expenses incurred in collection of such amount.

(d) ASSIGNMENT OF RIGHTS.—In any case in which the payment of a claim under this section has fully covered a participating financial institution's loss on an enrolled loan, the participating financial institution shall assign to the participating State and the Administration any right, title, or interest to any collateral, security, or other right of recovery in connection with a loan made under the Program.

SEC. 11. REGULATIONS.

The Administrator in consultation with the Board shall promulgate appropriate regulations to implement this Act.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administration such sums as may be necessary to carry out this Act.

SUMMARY OF THE SMALL BUSINESS CAPITAL ACCESS PROGRAM

OVERVIEW

Small Business capital accessibility has been an issue of rising concern for a number of years. The deregulation of the financial services industry in the early 1980's and, more recently, increasing concerns over the "safety and soundness" of banks and thrifts, in combination with the inherent risks associated with small business lending, has resulted in a crisis in available commercial credit for small firms. Furthermore, movement over the past number of years towards variable interest rates, shorter term financing, fees, and points has made the aggregate cost of small business financing greater and more unpredictable.

Alternative sources of funding such as public markets, venture capital firms, or institutional investors provide little relief to the small business. New securities or initial public offerings (IPO's), particularly for smaller and riskier issues, have had and will continue to have difficulty attracting investors, particularly in the present economic climate. On the other hand, venture capital firms remain focused on high-tech companies that offer prospects of relatively higher and faster returns on investment. Finally, institutional investors such as insurance companies or pension funds can provide financing to smaller firms, but lack the systems for evaluating credit risks or growth potential of individual smaller enterprises. Thus, the relative unavailability of both long term debt and equity capital has left many small businesses in a so-called "credit gap"—the unavailability of financing at any cost, or at costs or terms beyond a small firm's ability to service.

There are a number of factors which have contributed to the present "credit gap." First, price deregulation, which removed ceilings from savings accounts and enabled financial institutions to pay market rates of interest, effectively raised returns to depositors and costs to borrowers. This result has dramatically increased the cost of money to smaller firms.

Second, smaller and newer businesses, by definition, provide a greater degree of risk for financial institutions. Banks routinely assess and cover against different degrees of risk in a variety of ways—by charging fees, increasing interest rates, or through portfolio diversification. This, in combination with recent concerns over "safety and soundness" and devaluation of collateral, has resulted in small businesses increasingly finding themselves either unable to secure financing at any cost, or priced out of the market by high interest rates, short terms, and excessive demands for collateral.

As a result, capital accessibility has increasingly become problematic. Small firms are realizing that previously "bankable" loans, or loans which were considered "on the margin" are less and less likely to be approved by commercial financial institutions, particularly in the current banking environment. This is particularly alarming in light of recent surveys which show that commercial banks have been and remain the most important supplier of debt capital and financial services to the small business sector in the United States.

It is also important to note that the new "risk based capital requirements", which will require banks to have a minimum capitalization of 8 percent of risk-weighted assets, will surely have an effect on small business lending. These regulations are scheduled to come into effect this year.

Since small firms remain the primary creator of new jobs in the United States, and since small firms remain the primary place for employee training, this crisis has profound implications for the economy, productivity growth, employment, personal income, and our standard of living.

The U.S. Small Business Administration addresses this problem by providing guarantees of up to 90 percent of loans made to qualified small businesses by private lenders. While the loan-by-loan guarantee approach is generally regarded as very successful, it is also clear that it has not filled the "credit gap" created by events of the past decade. The Small Business Capital Access Program described below is intended to augment, not replace, the S.B.A. 7(A) guarantee program or any other loan program administered by the government.

SMALL BUSINESS CAPITAL ACCESS PROGRAM DESCRIPTION

The Small Business Capital Access Program is based on a portfolio insurance concept rather than the traditional S.B.A. loan-by-loan guarantee process. In 1986, the State of Michigan implemented a similar program which has provided loans to approximately 950 firms, for a total of $48.5 million in financing, and has resulted in a leverage ratio of almost 20:1.

The U.S. Small Business Administration would have oversight responsibility for the program, but specific programmatic implementation would be left to state government. This would enable participating states to tailor the program in response to particular credit needs and financial climates.

For each bank participating in the program, a special reserve fund would be established to cover future losses from a portfolio of loans which the bank makes under the program. The reserve fund would be owned and controlled by State government, but earmarked in each participant bank's name. Thus each bank participating in the program would have its own separate earmarked loss reserve.

Payments would be made into a bank's earmarked reserve each time the bank makes a loan under the program. The borrower would make a premium payment of between 1½% to 3½% of the loan amount and the financial institution would match the payment. The federal and state government would then, either directly or through a guarantee agreement, match the payment. Under this four part matching system, a bank could have anywhere from a 6 percent (1½% * 4) to a 14 percent (3½% * 4) loan loss reserve on the portfolio.

The bank would be allowed to recover the cost of its payment from the borrower through the pricing of the loan such as by increasing the interest rate or charging a fee. Any up-front premiums or fees, in connection with the Capital Access Program, could be financed as part of the loan.

If a bank makes a portfolio of loans under the program, it might have a reserve equal to, for example, 10% of the total amount of that portfolio. In such a situation, the bank could sustain a loss rate of up to 10% on that portfolio and still be completely covered against loss. This gives the bank the ability to absorb a higher loss rate (perhaps 4, 5, or 6%) than it could tolerate on its conventional loans (usually 1%). Since this arrangement offers the bank a higher degree of coverage against loss than normally available, the institution would be able to offer more favorable interest rates and terms.

The bank, however, must still be prudent in making loans under this program since it is completely at risk for any losses that exceed the coverage provided by the reserve. Because of this incentive for prudence, there will be little need for strict regulatory supervision. The bank would decide whether or not and under what terms and conditions to make a loan.

The limited need for regulatory oversight is a critical component in the implementation of this program. Unlike the S.B.A. 7(a) program which requires strict oversight due to the government's large "hidden liability" which is inherent in any guarantee program, the Capital Access Program has a limited government liability—at most, 3½ percent of a loan or a portfolio of loans.

Also worth noting is the programs built in bias for small loans. Because this concept is based on insuring a portfolio of loans as opposed to one loan, there is a built in incen-

tive to build a large portfolio of diverse and smaller loans.

Thus, through this arrangement of shared or pooled risk, the Small Business Capital Access Program would enable banks to extend credit to those small firms most affected by the "credit gap." In other words, firms that are considered "almost bankable" but could not obtain financing due to time of operation, insufficient collateral, excessive debt, decreasing sales or the like.

For further information, please contact Ken Glueck (Sen. Lieberman 4-9846) or Mark Mackie (Sen. Stevens 4-3004).•

• Mr. STEVENS. Mr. President, today I join Senator LIEBERMAN in introducing a bill to inject significant private capital into our Nation's small businesses.

Small business growth is critical to America's growth. Small businesses are America's main job-creation engine. Far more jobs have been created in the past decade by small businesses than by any other economic entity.

Unfortunately, small businesses don't always have the access to the capital they need. For example, small businesses generally cannot take advantage of equity or long-term debt market. Furthermore, many of them have trouble qualifying for conventional loans.

The Small Business Capital Access Act will encourage new private lending to small businesses. It will do so while reducing the costs, regulations, and governmental liability exposure which characterizes traditional Federal lending programs.

The Small Business Capital Access Program would permit financial institutions across the Nation to establish reserve funds to induce new small business lending. These reserve funds would enable lenders to extend more credit to small business than conventional lending now provides.

The proposal contemplates modest Federal and State contributions to these reserve funds. The Federal contributions would be limited to between 1.5 and 3.5 percent of any loan to cover possible losses.

These Federal contributions should be contrasted with current Federal small business lending programs which obligate the Federal Government to pay between 75 and 90 percent for every default.

This program will need far less Federal Government oversight, not only because the Federal liability exposure will be greatly reduced but also because States will be the primary regulators. Although the Small Business Administration would oversee the program, the bill allows a participating State to tailor a program to its particular small business credit needs.

This bill is based on a successful Michigan program started in 1986. Under it, the State spent $2 million to generate $48.5 million in financing for about 950 small businesses. This means that for every governmental dollar that was put into the program, small businesses were able to borrow $24. The Michigan program's default rate, estimated at 7.6 percent, is well below the Federal Governments guaranteed loan experience.

This bill is needed now. The areas in Los Angeles destroyed by the recent violence require new private capital. Other troubled inner cities desperately need the same thing. Such capital is important to rebuild blighted areas and provide jobs and experience to scores of underprivileged citizens.

The funding mechanism in this bill is an attractive way to accomplish this. With it, far less Government funds will generate far more small business financing than conventional Federal lending assistance.

I want to stress, however, that while this program is well suited to expand capital to the troubled inner cities, nothing in the bill limits it to such areas. It will also expand small business lending in rural and suburban areas.

I hope my colleagues will join Senator LIEBERMAN and me on this important proposal.•

• Mr. DODD. Mr. President, I am pleased to join with Senators LIEBERMAN, STEVENS, and RUDMAN as an original cosponsor of the Small Business Capital Access Program.

Small businesses are the engines of job creation and economic growth in our Nation, and bank credit is their life blood. Small businesses do not finance their operations through junk bonds; they rely on local banks to provide them with the money they need to survive and prosper.

Unfortunately, various factors have combined to create a credit crunch that far too many small businesses now face. For one, there are new requirements that banks beef up the amount of capital they hold in reserve to guard against losses, and this makes small business lending less attractive.

Added to that is the weakened condition of banks in many sections of the country. Small business people in Connecticut come face to face with the hard realities of the credit crunch every day, as they learn that their banks have no money to lend. For many small businesses, that is literally the kiss of death.

For more than 2 years now, Senator LIEBERMAN and I and many of our colleagues from New England have been working to find ways to address the credit crunch. We supported interstate banking as a way to bring in more banks with money to lend. We proposed open bank assistance and the Small Business Recovery Act as ways to strengthen small banks and enable them to reopen their credit windows. We have supported ways of making broader and more creative use of the Small Business Administration's Loan Guarantee Program.

There is still time to move on some of those initiatives. The administration has the authority under existing law to use open bank assistance to strengthen banks, and I would encourage it to use that power. I also hope we will move forward with the emergency supplemental appropriations bill, which includes money to fund $1 billion in additional SBA loan guarantees.

The legislation being introduced today is an important complement to those initiatives, however. It is an innovative and significant way of addressing one aspect of the credit crunch.

Under the Small Business Capital Access Program, borrowers, lenders, and State and Federal governments will each contribute equally to establish loan-loss reserves at banks. The reserves in turn will allow banks to make loans to borrowers who would not otherwise qualify for a loan.

The program is based upon a similar initiative begun in Michigan in 1986. Over the past 6 years, Michigan has made $48.5 million in loans to 950 companies under this program, which in turn has meant the creation of thousands of jobs.

I am confident that the program will have a similar record of success at the Federal level, and I know it would be a boon to local economies all across the country. I encourage my colleagues to join with me in supporting this bill and working for its enactment.•

By Mr. JOHNSTON (for himself, Mr. WALLOP, Mr. HEFLIN, Mr. HATFIELD, Mr. LIEBERMAN, Mr. PACKWOOD, Mr. BUMPERS, Mr. SEYMOUR, Mr. BINGAMAN, Mr. GORTON, Mr. CONRAD, Mr. MURKOWSKI, Mr. DOMENICI, Mr. BURNS, Mr. CRAIG, Mr. LAUTENBERG, Mr. AKAKA, and Mr. LUGAR):

S. 2851. A bill to provide for the management of Pacific yew on public lands, and on national forest lands reserved or withdrawn from the public domain, to ensure a steady supply of taxol for the treatment of cancer and to ensure the long-term conservation of the Pacific yew, and for other purposes; to the Committee on Energy and Natural Resources.

PACIFIC YEW ACT

• Mr. JOHNSTON. Mr. President, I am pleased to introduce legislation today which will improve the management of the Pacific yew—taxus brevifolia—which grows wild as a tree or shrub in some of the forests of the Western United States from central north California, north to the southeastern tip of Alaska. It is most abundant in the moist areas of Oregon, and has also been found in some areas of Idaho and Montana. The bark of this tree is the source of one of the most promising drugs used to treat ovarian cancer, taxol.

Ovarian cancer is the fourth most frequent cause of cancer mortality in women. About 1 in every 70 women will develop cancer of the ovary and 1 in 100 will die from this disease. An estimated 20,700 cases of ovarian cancer were diagnosed in 1991, and approximately 12,500 deaths were attributed to it last year.

Right now, there is no diagnostic method accurate enough to be used for routine screening in women who experience no symptoms. Because most women have no symptoms in the early stages of this form of cancer, most women have widespread disease by the time it is diagnosed. Only 39 percent of women diagnosed with ovarian cancer survive 5 years.

Taxol was first subject to clinical trials in 1993, and the results are very encouraging. Previously treated ovarian cancer patients have experienced a remission rate of about 30 to 35 percent. Indeed, many believe taxol may be effective in treating a number of other cancers including breast, lung, and colon cancer as well as childhood leukemias. Initial studies in women with advanced breast cancer, for example, have shown a response rate of about 50 percent. No one has been cured, but it is fair to say that many experts believe taxol may be one of the most important anticancer agents discovered in the last decade.

One of the major problems in taxol development is the difficulty faced in obtaining sufficient quantities of the drug. The sole current source of taxol for human use is the bark of the Pacific yew. Collecting the bark is a labor-intensive, time-consuming process. The slow-growing yew reaches a height of about 30 feet and a diameter of 8 to 10 inches and most commonly is found in old growth forests, scattered among the Douglas fir and other giants, in shady moist areas. Although not considered rare, except in a few locations the yew is also not a dominant species and can therefore be difficult to locate. It is believed that there are approximately 23 million yew dispersed across some 11.5 million acres of National Forest System lands and some 6.5 million yew scattered across 2.1 million acres of Bureau of Land Management lands. Once found, current harvesting technique requires that the tree be cut and the bark stripped from the tree. There is no clearcutting of the yew, given the scattered nature of its distribution, and the remaining stump often resprouts and produces another tree.

Progress is being made in increasing the number of yew available for use in the production and development of taxol. Significant efforts are now underway to propagate Pacific yew from branch-tip cuttings in nursery-like settings at the Coeur d'Alene, ID, Carson, WA, and Chico, CA Forest Service facilities as well as BLM's Horning Tree and Seed Orchard at Colton, OR. The long-term success of these efforts however has yet to be demonstrated. In addition, Bristol-Meyers-Squibb under contract with Weyerhauser has planted over 4 million yew trees with plans to plant an additional 10 million trees this year on various privately owned lands under nursery-like conditions. It is expected that these seedlings will grow into a 2- or 3-foot tree within 2 to 3 years, and will be available for processing into taxol at that time. Important research efforts are also being undertaken to try to extract taxol from other parts of the yew—such as yew needles and from other varieties of yew found outside the Pacific Northwest—and to produce taxol through cell cultures. I would also note that great strides have been made in trying to develop a synthetic version of taxol, a process which is very difficult because of the complexity of the molecule.

We all hope that the efforts underway to find alternate and renewable sources of taxol will have positive results very soon, but for the next 2 to 3 years according to the National Cancer Institute the only source we are likely to have is the bark of the Pacific yew. Moreover, because a product produced from needles or synthetically must meet good manufacturing practices to be approved for human use and an infrastructure for production and distribution put into place in the case of a synthetic, it is expected that we will continue to need bark from the Pacific yew for the next 4 or 5 years.

I would also point out that the demand for taxol is expected to increase significantly if the new drug application [NDA] that we anticipate, perhaps as soon as early next year. Therefore it is necessary that we make every effort to improve forestry management and assure that we do not waste this lifesaving resource.

This legislation will make sure that Pacific yew trees are fully harvested before commercial loggers enter Federal lands. Steps have been taken administratively to improve harvesting practices but more remains to be done. Since about 50 percent of the bark used to extract taxol comes from trees on Federal lands, this legislation is particularly important.

In addition, once the NDA is approved and taxol becomes available commercially, the bark must be sold. Currently, the bark is provided to the manufacturer—which was selected by a competitive process—through a cooperative research and development agreement [CRADA] as authorized by the Federal Technology Transfer Act. This bill will allow it to be sold, consistent with current requirements for commercial applications.

This bill also contains important provisions to help conserve the yew. It takes the bark of approximately three mature trees to supply enough taxol for one patient for 1 year, and we must make sure that we conserve this resource for future patients until alternative sources are available. Therefore, section 4 requires an inventory of the Pacific yew on Federal lands and section 5 requires research to be undertaken on the ecology of the yew, utilizing other parts of the tree to extract taxol, research on other yew species, and also provides for a propagation program in both agricultural and commercial settings.

I believe this bill will help us use this resource wisely by maximizing the availability of the yew bark while making sure that sufficient numbers of yew remain available for the future. It is critical that we do so if we are to meet the demands for taxol from many who have no other hope over the next 5 years.

I hope we can act very quickly on this measure, and I intend to do all that I can to see that we do.•

• Mr. WALLOP. Mr. President, I rise today with my colleague, Senator JOHNSTON, to introduce legislation that will provide for the management of an important tree species, the Pacific yew, where it occurs on Federal lands in order to ensure a steady supply of the cancer fighting chemical taxol, and to ensure the long-term conservation of the Pacific yew. Taxol is a drug found in the bark of the Pacific yew which has been used successfully in treating ovarian cancer in clinical trials and shows promise for the treatment of breast cancer as well as other types of cancer.

Over 12,000 women die from ovarian cancer and 44,500 from breast cancer each year. One of every nine women in the United States is expected to fall victim to breast cancer. Taxol is a hope for women the world over, yet very few are currently able to obtain the drug because of the cost and low extraction rate.

Yew is found in old growth forests along the Pacific coast, from southern Alaska to central California, and in the Rockies, from southeastern British Columbia to central Idaho and western Montana. In the past, the tree was thought to be trash and was often burned in slash piles after timber operations. The tree is extremely slow-growing, taking at least 10 to 15 years to grow to 1 inch in diameter.

The production of small quantities of taxol currently requires the bark from large numbers of Pacific yew. Up to 30 pounds of Pacific yew bark are needed to produce a gram of taxol. Each mature yew tree yields roughly 20 pounds of bark. On the average, treatment requires three mature trees per patient.

The discovery of taxol has precipitated a rash of poaching on Federal lands in the Pacific Northwest. Recent numbers show that more bark is stolen than is legally harvested from Bureau of Land Management forests

and National Forest Service areas. Five Oregon men were indicted after being caught on Federal lands near two tons of illegally stripped yew bark. Federal patrol teams have been installed, but the problem is escalating and becoming uncontrollable. The poachers sell the bark for exorbitant prices making the subsequent sale of taxol extremely costly for the cancer patients.

This is precisely why conservation and enforced management of the yew is so desperately needed. Remaining yew resources must be carefully managed before the trees become endangered and supplies of the precious taxol are wasted.

Mr. President, the Pacific Yew Act will provide for efficient collection and utilization of those parts of the Pacific yew that can be used in the manufacture of taxol for the treatment of cancer. The act will provide for the sale of yew for the commercial production and subsequent sale of taxol at a reasonable cost to the victims of cancer. Further, the legislation ensures the long-term conservation of the Pacific yew. This is an interim measure that will prevent the wasting of the valuable resource while successful and affordable alternative methods of manufacturing the anticancer drug are being developed.

Mr. President, to those cancer patients who are waiting to try the drug taxol, to those who are hoping that this new cancer fighting chemical will save their lives, to those people and their families, this legislation is crucial. Senator JOHNSTON and I along with Senators HATFIELD, PACKWOOD, GORTON, SEYMOUR, BURNS, CRAIG, and MURKOWSKI strongly urge our colleagues to support this vital legislation. We will willingly work together with both sides of the aisle to see that it moves quickly through Congress.●

● Mr. PACKWOOD. Mr. President, I am pleased today to join with my colleagues in introducing the Pacific Yew Act, legislation to prescribe special management activities for both long-term conservation of the Pacific yew tree and a sustainable harvest for making taxol, the chemical compound derived from the yew bark. Taxol has shown great promise in treating ovarian cancer and also has potential for treating breast and lung cancers.

Taxol may be used next year on 10,000 to 12,000 women. Each year 12,000 women die of ovarian cancer and 44,500 women die of breast cancer in this country. Taxol signifies hope to thousands of women. The problem, Mr. President, is that taxol, found in the bark and needles of the Pacific yew tree. takes a lot of time to extract and is very expensive to collect. In fact, it takes the bark of three yew trees to make enough taxol to save one patient.

The bill we are introducing today would ensure that the yew trees located on National Forest and Bureau of Land Management lands are managed to provide for adequate quantities of taxol for cancer research and treatment. The act would also ensure the sale of yew from Federal lands and subsequent sale of taxol at a reasonable cost to cancer patients. Furthermore, the Pacific Yew Act would provide for the long-term conservation of the Pacific yew and prevent the wasting of yew resources. It strikes a balance between the careful and environmentally sound management of the Pacific yew species and its surrounding habitat and the availability of this resource for the production of taxol.

The Pacific Yew Act is noteworthy in a number of respects. I particularly applaud the requirement that whenever yew trees are harvested, they are cut using methods designed to allow for resprouting from the stump and replanted where necessary to maintain the species in the ecosystem. I have always supported efforts to help in the reforestation of Oregon forests. Given the high demand for the yew, we should also do everything we can to help in its regeneration. Another significant aspect of this bill is the requirement that the Secretaries of Agriculture and Interior reinitiate consultation should jeopardy be found. That is, if the Secretary foresees the need to harvest the yew in an area where a commercial timber sale is likely to jeopardize endangered or threatened species, the Secretary shall immediately reinitiate consultation to determine the effect harvesting the yew would have on those species. This means, Mr. President, that we may still be able to go in and harvest the yew in areas that are closed down because of the Endangered Species Act.

My top priority is to amend the Endangered Species Act to save jobs in Oregon. In the meantime, there are a lot of lifesaving Pacific yews that need to be free for use. While we are in the process of working on a resolution to Oregon's timber crisis, we must continue to keep the yew available to save lives.

We have all heard the evidence. The Pacific yew, which has been known to many over the years as a worthless tree, could not be more worthwhile to women around this country. The yew tree could save thousands of lives. Some are now calling it the tree of hope. Developing taxol from this tree of hope is a high priority right now for our medical researchers. We need to do what we can in Oregon to make sure they keep getting the precious bark and needles they need. For the thousands of women around this country suffering from cancer each year, what could be more important than that?

Mr. President, this bill represents the very best of public/private cooperation. It is a great example of government and industry working together for the benefit of the American public. I hope that the Senate will move quickly to adopt this bill so that many more will benefit from what is likely to be one of the most promising anticancer agents discovered in the last decade.●

● Mr. GORTON. Mr. President, the debate over old growth forests in the Pacific Northwest continues. Congress has yet to find a balanced solution. One issue, however, has emerged upon which most can agree: The Pacific yew tree is a valuable weapon in the fight against cancer and an abundant supply of its bark must be made available for the production of the cancer-fighting drug taxol.

Some have argued that the discovery of the important properties of taxol and the Pacific yew tree add urgency to the demand to lock up the forests of the Pacific Northwest. This argument lacks logic. When an important natural resource is discovered and its value to human beings is incalculable, the solution is not to lock up the source of that resource, throw away the key and walk away. The answer is management, careful and sensitive management that ensures a steady supply of the raw material. The discovery of the Pacific yew does not mandate preservation. It mandates wise management.

Taxol from the Pacific yew tree could be used to treat the 12,500 patients who die annually with ovarian cancer. Ask those women whether they would like to see the drug locked away forever in our forests.

In the early 1960's, the bark of the Pacific yew was collected, along with many other species, in an effort by the U.S. Department of Agriculture and the National Cancer Institute to test hundreds of thousands of species for their ability to fight cancer cells and tumors. In 1971, researchers isolated the active ingredient in the bark of the tree and labeled it taxol. In the late 1970's, the properties of taxol were studied in the lab where they illustrated the power of the drug in paralyzing the internal structure of cancer cells.

Clinical trials with taxol began in the 1980's. Of 40 women involved in the trial, 11 saw their tumors shrink by more than 50 percent. One patient saw her tumor disappear completely. This response rate of 30 percent was an unexpected success.

For years, the Pacific yew has been referred to as the "weed of the forest". In the process of harvesting Douglas fir and other softwood species of the Pacific Northwest, the Pacific yew was most commonly discarded and burned as slash. No one knew the Pacific yew had such promise in the medical world. Despite this. last year the U.S. Fish and Wildlife Service found that the Pacific yew is not at risk of becoming endangered at some time in the future and is not, therefore, a threatened species under the Endangered Species Act.

The petitioners had attempted to establish that the Pacific yew was in short supply, when in reality its supply is abundant. We simply needed a wake up call to realize the benefits for which the Pacific yew was worth managing.

The potential uses of taxol are obvious. Then why all the fuss?

The Pacific yew is a slow-growing tree that appears predominantly in old growth forests. In order to produce 1 pound of taxol, it takes a bit more than 5,000 yew trees. Fifty-five pounds of taxol is necessary to treat the 12,500 women who die annually of ovarian cancer. This means that 275,000 Pacific yew trees must be harvested annually in order to keep up with the clinical demand.

Obviously, the problem is not protecting and preserving the Pacific yew tree. The problem is ensuring an adequate supply of taxol and, therefore, of the Pacific yew tree. Unfortunately, the process of extracting taxol from the bark of trees is time consuming. Only 35 of the 55 pounds necessary to treat the ovarian cancer patients will be processed this year. The supplies must be increased.

"Biodiversity" is a popular buzzword used today. Its definition is not widely understood. I interpret biodiversity to mean the existence of a wide variety of genetic material in living organisms around the world. Advocates of biodiversity rarely explain the inherent value in this diversity of genetic material. My assessment is that this is because much of the value placed on biodiversity is esthetic; that is, humans simply desire to know that there exists a lot of species out there in the world.

Biodiversity also holds a certain potential direct value to human beings and their own survival and the Pacific yew tree illustrates this value. It is truly miraculous that this once discarded weed of the forest can have such potential for treating one of mankind's greatest medical enemies. And who knows how many other species hold the key to important medical secrets.

Unfortunately, the reaction among many is to call for the preservation of these valuable natural resources. Preservation will not ensure that the 12,500 dying ovarian cancer patients will get their treatment. Only through careful management and harvesting of this important resource can its full potential be realized. I fully expect that this call for preservation will be heard each time a naturally occurring drug is discovered and its only source is an inaccessible species of one kind or another. If the goal of biodiversity is to provide some benefit to mankind, the call for preservation must shift to a call for management.

The Pacific yew tree is not unlike any other important natural resource. True, it has the potential to save lives and for that reason, it should be managed even more intensively. But, in many respects, the Pacific yew tree is not unlike our national forests, our flowing rivers, or our mineral deposits. Those resources are critical for our housing needs, our power requirements and our needs for minerals. Just as in the case of the Pacific yew, when these natural resources are recognized as critical to our survival, we must manage them and harness their power. When a resource is important, it makes no sense to lock it up purely for our aesthetic enjoyment. We can gain that enjoyment while at the same time taking advantage of the benefits they provide.

Congress should take action now to ensure a steady supply of Pacific yew bark and of taxol to treat the thousands of suffering cancer patients who die each year. It must manage for both the planting and harvesting of the Pacific yew. Congress should also take action to ensure that we do not lock away precious resources in our national forests, on our powerful rivers and on our treasured public lands. I continue to believe that we can manage these resources in an ecologically sound manner, while serving the needs of human beings.

Today, I cosponsor the Pacific Yew Act. This legislation will ensure a steady supply of bark from the Pacific yew. It will ensure that our zeal to protect other endangered or threatened species does not lock away this powerful medical tool. I encourage my colleagues to support this legislation with the hope that the 12,500 patients with ovarian cancer might be successfully treated.●

● Mr. MURKOWSKI. Mr. President. I join in cosponsorship of this legislation which, if enacted, would provide for the sustainable harvest and long-term conservation of the Pacific yew tree. The potential benefits of this legislation to the people of our country cannot be measured. If we can, through this legislation, assure an ongoing supply at a reasonable cost of lifesaving drug taxol, we have the potential to save thousands of lives now lost to cancer.

We do not know the real potential of this drug at this time. We do know from clinical trials that taxol has been used successfully to treat ovarian cancer and that it shows promise in the treatment of other types of cancer, including breast cancer.

The story of the discovery and extraction of the naturally occurring medicine taxol found in the bark of an ordinary tree from the forests of southeastern Alaska and the Northwestern states is not lost on me. Among the natural treasures managed by our land management agencies, we have discovered this lifesaving chemical. Through sustained-yield harvest, and ongoing management we should be able to provide the world supply until science can provide synthetic material that does the same job. Our national forests will provide the buffer we need until privately managed lands can produce a steady supply from plantings specifically managed for taxol production.

Sustained-yield harvest and management would not be possible unless the forests were managed under multiple-use criteria. Locking up the only supply of this material in museum-like reserves is not our goal here. I for one want to see our national forests put to the highest possible use. Appropriate management guidelines must be implemented promptly in order to prevent any wasting of Pacific yew in current and future timber sales on Federal lands.

Mr. President, I want to congratulate Senator WALLOP and Senator JOHNSTON for their wisdom and humanity in introducing this bill. If through this action to ensure a steady supply of taxol we can help save even a single woman from death due to ovarian cancer, or if we can find a new way to treat breast and other cancers, the Senators' foresight will be rewarded. I hope this important legislation will gain a long, bipartisan list of cosponsors. I view it as a small ray of hope for the thousands who suffer the ravages of cancer. I urge prompt action on this measure.●

● Mr. CRAIG. Mr. President, I am very pleased to cosponsor the Pacific Yew Act being introduced today by Senators JOHNSTON and WALLOP. It is of utmost importance that we provide for the orderly development of this most important resource. Bark from the Pacific yew tree is used in the production of taxol which has been described as one of the most promising anticancer agents of the last decade.

Idaho shares a prominent role in this drama since the Pacific yew grows naturally in the forests of northern Idaho. Until recently the yew was little-used and attracted scant attention. Now, it is the subject of intense inventory and research. A thorough search for the yew is currently being conducted on the Idaho panhandle, Nez Perce and Clearwater National Forests in Idaho. By the end of summer, scientists will have defined the geographic range of the yew, and the amount of yew bark which can be made available will be known.

Some facts about Pacific yew are already known. It is not an endangered species. Yew regenerates readily from both stump and root sprouts in the wild. Geneticists at the Forest Service's Coeur D'Alene nursery have successfully regenerated yew seedlings and have plans to begin outplantings in the yew's natural environment.

The Nez Perce National Forest recently provided bark for clinical trials in the development of cancer treatments. The tests are being conducted by Bristol-Myers Squibb Co. through sponsorship of the National Cancer Institute.

I am proud that Idaho is participating in this all-out effort to find effec-

tive cancer treatments. The bill being introduced today will assure that Pacific yew will be made available in an orderly and efficient manner. It will require that the yew be given the highest priority in the planning and accomplishment of timber sales on Federal lands.

I strongly support the careful and coordinated approach to management of the critical Pacific yew resource which this bill will provide.●

● Mr. LAUTENBERG. Mr. President, I join today in introducing the Pacific Yew Act. This legislation which would increase the availability of taxol, a promising anticancer drug, by protecting its source, the Pacific yew tree.

Cancer is a disease which touches us all. We may be lucky enough to avoid getting cancer ourselves, but nearly every one of us has a loved one, a friend, or a colleague who has had to deal with battling this debilitating disease. Every year nearly 1 million Americans learn they have cancer. All of a sudden their lives are reduced to hope, percentages, and uncertainty.

I've faced cancer in my own family and know from personal experience the deep and lasting pain it can leave when it steals our loved ones from us. My State of New Jersey ranks fourth in cancer deaths nationwide. And the incidence of cancer is 13 percent greater in New Jersey than the national average. What a terrible waste of human potential. We must respond aggressively to this pressing public health concern.

Scientists say that taxol is the most promising cancer-fighting drug to be developed in the last 15 years. The story of taxol is an interesting one. In 1960, the National Cancer Institute created a natural products program and sought assistance from the U.S. Department of Agriculture to test everything and anything which might provide a cure for cancer.

Things were tested as potential cures that most of us ignore or take for granted: twigs, insects, moss, and fungi. Thousands of samples were collected and screened. Thousands. And only one proved to be a promising cure for cancer in human beings. One.

The promise is called taxol, an extract from the Pacific yew tree which grows in the old growth forests in the Pacific Northwest. The bark of the Pacific yew tree is the only known source of taxol. Yet, until recently, the yew tree was viewed as a mere nuisance in the way of harvesting valuable lumber. Now the yew is the "tree of hope" for cancer victims of today and tomorrow, many of whom would count hope as their most valuable possession.

The National Cancer Institute has been testing taxol on women who have refractory ovarian cancer for which no other treatment has proven effective. And the results of NCI's clinical trials are very encouraging. NCI has initiated studies on other types of cancer as well and reports that it appears likely that taxol may play a significant role in fighting breast and other types of cancer.

But the major problem with taxol is that there isn't enough of it. The only current source of taxol for clinical trials is the bark of the Pacific yew. It is difficult and time consuming to procure adequate quantities of the drug. To place this in perspective, Mr. President, 750,000 pounds of dried yew bark is required to get enough taxol for about 12,000 patients.

To help ensure rapid development, testing, and approval of taxol, the National Cancer Institute signed a cooperative research and development agreement with Bristol-Myers-Squibb Co. which is responsible, under the agreement, to develop and provide an adequate supply of the taxol to NCI for clinical trials. An important component of that agreement calls for Bristol-Myers-Squibb to research alternative sources for the drug. The company has invested considerable resources in developing alternative sources for the drug including extract from yew needles, plant tissue culture, genetic engineering, tree planting and total chemical synthesis. NCI estimates that within 5 years it will no longer be necessary to rely on yew bark as a source for taxol.

Mr. President, we need this legislation to ensure that Pacific yew trees on Federal lands are managed to allow for the collection of raw ingredients needed to manufacture taxol. I have read accounts of yew trees being left to rot and burn after a logging operation. We must treat these trees like the precious resource that they are. We cannot afford to let any more time elapse without increasing the protection of these trees of hope.

I hope this legislation moves quickly and easily toward final passage. I urge my colleagues to support this important legislation.●

By Mr. ROTH (for himself and Mr. BIDEN):

S. 2825. A bill to establish the Professional Boxing Corporation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PROFESSIONAL BOXING CORPORATION ACT

● Mr. ROTH. Mr. President, today I am introducing on behalf of myself and Senator BIDEN the Professional Boxing Corporation Act of 1992—legislation which is long overdue. For too long, professional boxers have been denied effective protection of their health and safety. For too long, the millions of Americans who are loyal boxing fans have seen the sport beset with allegations of corruption and unfairness. For too long, professional boxing has been controlled by sanctioning bodies and promoters operating on a national and international basis, beyond the reach of existing State regulators. Despite all of these problems, for too long, professional boxing has not taken any meaningful steps to get its own house in order. The time has come for something to be done to protect the boxers and the fans. This legislation marks the first step along what I hope will be a brighter and safer road for the sport of boxing.

The need for this legislation was demonstrated to me recently in the case of a middleweight title fight involving Delaware's Dave Tiberi. Tiberi was an unknown underdog entering the fight, given little chance to dethrone champion James Toney. But, in a case of life imitating art, like something out of "Rocky," Tiberi rose to the occasion and appeared to many, including the announcers of this nationally televised bout, to pull off a dramatic upset. However, in a shocking split decision, Toney was declared the winner.

Responding to the calls and letters my office received from all around the country, I directed my staff to investigate this matter. We found that neither the State boxing authority nor the sanctioning body involved chose to investigate this match. Further, we found that regulations designed to protect the boxers and ensure fairness were not enforced in the Toney-Tiberi bout, thereby providing a good example of the need for Federal legislation.

This legislation establishes a nonprofit Government corporation to be known as the Professional Boxing Corporation. Except for an initial start-up loan, the PBC will be completely self-funding. It will cost the taxpayer nothing. This Corporation will not replace existing State boxing authorities—rather, it will work with them to develop and enforce uniform minimum standards for professional boxing to protect the boxers' safety and reduce corruption and unfairness.

Boxing is different than other sports—it does not have a central regulatory authority like the commissioner of baseball, nor is there any likelihood that such a body will ever be established in the absence of Federal legislation. Professional boxing has been governed by a patchwork system of local, State, and international groups with no unifying authority. This legislation provides that unifying authority.

I want to make it clear that the PBC will not micromanage professional boxing—that will be left to boxing itself, as it should be. For example, this legislation specifically prohibits the Corporation from ranking boxers or promoting fights.

However, the PBC will ensure that the boxing ring is square—to ensure that all participants play by the same rules or they don't play at all. The PBC will accomplish that goal by functioning primarily as a coordinating body, working with the State authorities to improve the sport.

I believe this legislation represents the best means by which we can restore fairness and balance to professional boxing and knockout many of the problems currently facing the sport. I urge my colleagues to join with me in passing this bill to protect the individual boxers and improve the credibility of the sport as a whole. Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD immediately following my remarks.

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

S. 2852

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Professional Boxing Corporation Act of 1992".

SEC. 2. FINDINGS.

The Congress finds that—

(1) professional boxing is beset with wide-ranging problems which are beyond the scope of the current system of State regulation to protect against;

(2) the rules governing professional boxing and the enforcement of such rules varies widely among States;

(3) boxing, unlike other professional sports, does not have an entity by which the sport can be successfully regulated, nor is there a prospect of meaningful self-regulation;

(4) the problems currently facing professional boxing can be characterized as exploitation of boxers, conflicts of interest, questionable judging, and corruption, including organized crime influence; and

(5) such problems endanger the health, safety and welfare of boxers and undermine the sport's credibility with the public.

SEC. 3. PURPOSE.

The purpose of this Act is to establish a national organization which shall work with State boxing authorities to establish and enforce uniform rules and regulations for professional boxing in order to protect the health and safety of boxers and to ensure fairness in the sport.

SEC. 4. DEFINITIONS.

For purposes of this Act the term—

(1) "Board" means the Professional Boxing Advisory Board established under section 7;

(2) "boxing match" means a professional boxing match, or any part thereof, which is held within the United States and does not include an amateur boxing match;

(3) "Corporation" means the Professional Boxing Corporation established under section 5;

(4) "Executive Director" means the Executive Director of the Corporation;

(5) "Fund" means the Professional Boxing Corporation Trust Fund established under section 12;

(6) "promoter" means any person or business organization licensed under this Act to hold, give, or otherwise conduct any boxing match, program, or exhibition;

(7) "Secretary" means the Secretary of the Treasury;

(8) "State" means any State of the United States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(9) "State boxing authority" means a State agency with authority to regulate professional boxing.

SEC. 5. ESTABLISHMENT OF PROFESSIONAL BOXING CORPORATION.

There is established the Professional Boxing Corporation which shall be a Government corporation as defined under section 103 of title 5, United States Code. The Corporation shall maintain its principal office in Washington, District of Columbia.

SEC. 6. EXECUTIVE DIRECTOR OF THE CORPORATION.

(a) EXECUTIVE DIRECTOR.—The Corporation shall be administered by an Executive Director who shall be appointed by the President by and with the advice and consent of the Senate.

(b) EXECUTIVE SCHEDULE LEVEL III POSITION.—Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Executive Director of the Professional Boxing Corporation.".

SEC. 7. PROFESSIONAL BOXING ADVISORY BOARD.

(a) ESTABLISHMENT.—There is established a Professional Boxing Advisory Board. The members of the Board shall be appointed by the Executive Director. The Board shall consist of 5 members, of whom—

(1) one shall be an acting State athletic or boxing commissioner;

(2) one shall be a physician certified in neurosurgery;

(3) one shall be a representative of the United States Amateur Boxing Association; and

(4) two shall be persons with an interest in and knowledge of the sport of boxing.

(b) QUALIFICATIONS.—(1) Each member of the Board shall be a citizen of the United States and shall not, during his service as a member of the Board, be engaged as a professional boxer, boxing promoter, agent, fight manager, matchmaker, referee, judge, or in any other capacity in the conduct of the business of professional boxing or have any pecuniary interest in the earnings of any boxer or the proceeds or outcome of any boxing match.

(2) Each member of the Board shall be an individual who, by reason of his business, professional, or other background, training, experience, or activities outside the business of professional boxing and its related activities, has a broad understanding of the relationship between professional boxing, both as a sport and as a business, and the public interest.

(c) CHAIRMAN.—The Executive Director shall appoint one of the members to serve as Chairman of the Board.

(d) PURPOSE AND FUNCTION.—

(1) The Board shall make recommendations to the Corporation to most effectively and efficiently carry out the provisions of this Act.

(2) The Board and the Executive Director shall contact each State boxing authority and request the establishment of a Congress of State Boxing Administrators who shall—

(A) advise the Board and the Corporation in all matters relating to the operation and administration of professional boxing;

(B) meet at least annually and be composed of one voting member from each State or local agency responsible for regulating professional boxing in such State or locality;

(C) establish from within the membership of the Congress of State Boxing Administrators—

(i) a committee relating to—

(I) rules;

(II) health and safety;

(III) appeals;

(IV) certification and licensing; and

(V) life insurance and health insurance benefits; and

(ii) any other committees considered necessary by such Congress;

(D) approve or disapprove recommendations to the full Congress made by such committees; and

(E) transmit approved recommendations of such Congress to the Board and the Corporation.

(e) INITIAL APPOINTMENTS.—Initial appointments under subsection (a) shall be made within 60 days after the effective date of this Act.

(f) TERMS.—Members of the Board shall be appointed to 5-year terms.

(g) COMPENSATION OF MEMBERS.—Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(h) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(i) STAFF AND SERVICES.—The Corporation shall provide all necessary staff and support services for the Board.

(j) SUCCESSORS.—If any member of the Board is unable to serve his full term of office or becomes unqualified to serve in such position, a new member shall be appointed to serve the remainder of such term of office in the same manner in which the original appointment was made.

(k) QUORUM.—Three members of the Board shall constitute a quorum.

(l) INITIAL MEETING.—The initial meeting of the Board shall be held within 90 days after the effective date of this Act.

SEC. 8. FUNCTIONS OF THE CORPORATION.

(a) ESTABLISHMENT OF NATIONAL REGISTRY AND LICENSING.—(1) The Corporation shall provide a unified national computer source for the collection, storage, and retrieval of information, which may include—

(A) a list of professional boxers;

(B) the medical records, won-loss records, size, weight, and business associates of such boxers; and

(C) information pertinent to the sport of boxing on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other personnel determined by the Corporation to have a professional role in boxing.

(2) The Corporation shall issue a license, either through State boxing authorities or through the manner determined most appropriate by the Corporation, on an annual renewable basis, to each boxer, boxing judge, and referee who meets Corporation minimum standards, and shall issue for licensed boxers an accurate record of their medical history, biographical information, and won-loss boxing record.

(3) The Corporation shall issue a certificate of registration, either through State

boxing authorities or through the manner determined most appropriate by the Corporation, at least every 3 years, to each boxing promoter, boxing matchmaker, boxing manager, trainer, physician, cut man, and other person determined by the Corporation to have a professional role in boxing, who meets Corporation minimum standards.

(b) LICENSE AND REGISTRATION FEES.—The Corporation may set and charge licensing and registration fees for all persons regulated under this Act. Fees paid by promoters may be derived from gross receipts from boxing matches. Such fees may be collected through State boxing authorities or through the manner determined most appropriate by the Corporation. All such fees shall be deposited in the General Treasury of the United States.

(c) ADDITIONAL FUNCTIONS.—In addition to the functions described under subsections (a) and (b), the Corporation shall—

(1) prescribe regulations requiring a copy of any contract for a boxing match to be filed with the Corporation not later than 30 days before such match for review by the Corporation;

(2) prescribe regulations of the sport of professional boxing to ensure the safety of participants;

(3) establish minimum standards and procedures for physical and mental examinations to be given boxers;

(4) establish minimum standards for the availability of medical services at professional boxing matches;

(5) encourage a life, accident, and health insurance fund for professional boxers and other members of the professional boxing community;

(6) research and establish minimum standards for the manufacturing and use of boxing equipment;

(7) conduct discussions and enter into agreements with foreign boxing entities on methods for applying minimum health and safety standards to foreign boxing events and foreign boxers, trainers, cut men, referees, judges, ringside physicians, and other professional boxing assistants;

(8) review State boxing authority regulations for professional boxing and provide assistance to such authorities in meeting the Corporation minimum standards and requirements;

(9) prescribe regulations for establishing standards for the making of contracts, agreements, arrangements, and understandings relating to boxing matches between boxers and promoters; and

(10) prescribe regulations prohibiting conflicts of interest relating to boxing matches.

(d) SUSPENSION AND REVOCATION OF LICENSE OR REGISTRATION.—(1) The Corporation may suspend or revoke any license or registration made under this Act if the Corporation finds—

(A) such suspension or revocation is in the public interest; and

(B) there is reasonable grounds for belief that standards prescribed by the Corporation under this section are not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have been used in connection with such licensing or registration.

(2) Any suspension of a license or registration under this section shall be for a period of not less than 6 months.

(e) PROHIBITORY ORDERS.—(1) The Corporation may, after appropriate notice and opportunity for hearing, by order prohibit the holding of any proposed boxing match if it finds such prohibition is in the public interest and that—

(A) any contract, arrangement, or agreement with respect to such match does not conform to the regulations of the Corporation;

(B) such match, or any participant in such match, is not licensed or registered as provided under this Act; or

(C) there is reasonable grounds for belief that such match may be affected by bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, intimidation or violence.

(2)(A) At or after the time that notice of any proceeding under paragraph (1) is sent or ordered by the Corporation to be published, regardless of whether or not any person to be affected by such proceeding has received such notice, the Corporation may by order without notice or hearing summarily prohibit the holding of the boxing match in question pending final disposition of the proceeding by the Corporation, or for such shorter period as the Corporation considers appropriate. The Corporation shall make such an order if in its judgment such action is in the public interest and necessary to carry out the purposes of this Act.

(B) No liability shall attach to any person by virtue of a summary order issued under this subsection unless such person has actual notice thereof.

(f) INVESTIGATIONS AND INJUNCTIONS.—(1) The Corporation may, in its discretion, make such investigations as it considers necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Corporation may, in its discretion, publish information concerning any such violations, and investigate any facts, conditions, practices, or matters which it may determine necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations under this Act, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(2) For the purpose of any such investigation, or any other proceeding under this Act, any officer designated by the Corporation is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Corporation considers relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Corporation may file an action in any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, to enforce the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records. Such court may issue an order requiring such person to appear before the Corporation to produce records, if so ordered, or to give testimony concerning the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or in which he may be found. Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memorandums, and other records, if in his power so to do, in obedience to the subpoena of the Corporation, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than 1 year, or both.

(4) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Corporation, or in obedience to the subpoena of the Corporation, or in any cause or proceeding instituted by the Corporation, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(5) If the Corporation determines that any person is engaged or about to engage in any acts or practices which constitute or shall constitute a violation of any provision of this Act, or of any rule or regulation thereunder, it may bring an action in the appropriate district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(6) Upon application of the Corporation the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States, shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any order of the Corporation.

(g) HEARINGS BY CORPORATION.—Hearings may be public and may be held before any officer of the Corporation and appropriate records thereof shall be kept.

SEC. 9. POWERS OF THE CORPORATION.

(a) IN GENERAL.—The Corporation may—

(1) serve as the coordinating body for all efforts in the United States to establish and maintain uniform minimum health and safety standards for professional boxing;

(2) appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Corporation, and shall appoint such officers and employees in accordance with the civil service laws and fix such compensation in accordance with the provisions of title 5, United States Code;

(3) enter into contracts for temporary and intermittent services to carry out any function of the Corporation;

(4) publish a newspaper, magazine, or other publication consistent with corporate purposes;

(5) pay the travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, of the members of the Congress of State Boxing Administrators established under section 7(d)(2) while such members are away from their homes or regular places of business in performance of services for such Congress; and

(6) take any necessary and proper action to accomplish the purposes of this Act consistent with the provisions of this Act.

(b) PROHIBITIONS.—The Corporation may not—

(1) promote boxing events or rank professional boxers; or

(2) provide technical assistance to, or authorize the use of the name of the Corporation by, States which do not comply with requirements of the Corporation.

(c) USE OF NAME.—The Corporation shall have the exclusive right to use the name "Professional Boxing Corporation" and the acronyms "P.B.C." and "PBC", and any person who, without the permission of the Corporation, uses such name or any other exclusive name, trademark, emblem, symbol, or insignia of the Corporation for the purpose of inducing the sale of any goods or services, or to promote any exhibition, performance, or sporting event, shall be subject to suit in a civil action by the Corporation for the remedies provided in the Act of July 5, 1946 (60 Stat. 427; 15 U.S.C. 1051 et seq., popularly known as the Trademark Act of 1946).

SEC. 10. NONINTERFERENCE WITH STATE BOXING AUTHORITIES.

(a) NONINTERFERENCE.—Nothing in this Act shall prohibit any agency established by or pursuant to the law of any State or political subdivision of any State from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing or boxing matches to the extent not inconsistent with the provisions of this Act.

(b) MINIMUM STANDARDS.—Nothing in this Act shall prohibit any State boxing authority from enforcing State standards or requirements which exceed the minimum standards or requirements promulgated by regulation of the Corporation.

SEC. 11. ASSISTANCE FROM OTHER AGENCIES.

(a) IN GENERAL.—(1) Notwithstanding section 552a of title 5, United States Code, or any other provision of law, the Corporation may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality any information, suggestions, estimates, and statistics which shall assist the Corporation in carrying out the purposes of this Act, and each such department, agency, bureau, board, commission, office, independent establishment, or instrumentality shall furnish such information, suggestions, estimates, and statistics directly to the Corporation, upon request made by the Executive Director.

(2) Any information, including suggestions, estimates, and statistics, secured by the Corporation which, but for paragraph (1) of this subsection, could not be secured by the Corporation by reason of section 552a of title 5, United States Code, or any other provision of law shall be treated by the Corporation as confidential information.

(3) Except as provided in paragraph (4) of this subsection, no officer or employee of the Corporation may disclose to any person other than an officer or employee of the Corporation any information referred to in paragraph (2) of this subsection. Nothing in this subsection shall be construed to authorize the Corporation to withhold information from the Congress.

(4)(A) Any information referred to in paragraph (2) of this subsection may be disclosed in accordance with the prior written consent of the person with respect to whom such information is maintained, but only to such extent, under such circumstances, and for such other purposes as may be allowed under regulations which shall be prescribed by the Corporation.

(B) Whether or not the person, with respect to whom any information referred to in paragraph (2) of this subsection is maintained, gives his consent, such information may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against any prejudice to the person together with the effective administration and enforcement of the provisions of this Act. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any information is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(5)(A) Whoever violates any provision of this subsection may be assessed a civil penalty of not to exceed $1,000 for each violation. Such penalty shall be assessed by the court in a civil action brought by the Attorney General of the United States.

(B) The Corporation shall refer to the Attorney General the name of any person it has reasonable cause to believe has violated any provision of this subsection.

(b) DETAILS.—Any employee of any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality may be detailed to the Corporation, upon the request of the Executive Director, on a reimbursable or nonreimbursable basis, with the consent of the appropriate authority having jurisdiction over such employee. While so detailed, such employee shall continue to receive the compensation provided pursuant to law for his regular employment and shall retain, without interruption, the rights and privileges of such employment.

SEC. 12. PROFESSIONAL BOXING CORPORATION TRUST FUND.

(a) ESTABLISHMENT.—There is established the Professional Boxing Corporation Trust Fund in the Treasury of the United States, consisting of such amounts as are transferred to the Fund under subsection (b) of this section and any interest earned on investment of amounts in the Fund under subsection (e)(2) of this section.

(b) TRANSFER OF AMOUNTS EQUIVALENT TO CERTAIN FEES.—(1) The Secretary shall transfer to the Fund an amount equal to the sum of the fees received in the Treasury under section 8 after the effective date of this Act.

(2) The amounts required to be transferred to the Fund under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary. Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) EXPENDITURE FROM FUND.—Amounts in the Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out the purposes of this Act.

(d) AUTHORITY TO BORROW.—(1) There are authorized to be appropriated to the Fund, as repayable advances, such sums as may be necessary to carry out the purposes of the Fund.

(2)(A) Advances made to the Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Fund.

(B) No advance shall be made to the Fund after the date occurring 5 years after the effective date of this Act, and all advances to such Fund shall be repaid on or before such date.

(C) Interest on advances made to the Fund shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(e) INVESTMENT OF FUND.—(1) It shall be the duty of the Secretary to invest such portion of the Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price, or

(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, of the United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(2) Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(3) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(f) OBLIGATIONS FROM FUND.—The Corporation is authorized to obligate such sums as are available in the Fund (including any amounts not obligated in previous fiscal years) for—

(1) the functions of the Corporation under section 6; and

(2) properly allocable administrative costs of the Federal Government for the activities related to such functions.

(g) REPORT TO CONGRESS.—It shall be the duty of the Secretary to hold the Fund, and

(after consultation with the Corporation) to report to the Congress each year on the financial condition and the results of the operations of the Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

SEC. 13. AUDIT AND REPORT.

(a) AUDIT.—The Comptroller General shall conduct an annual audit of the finances of the Corporation, to be completed in time for inclusion in the report required by subsection (b).

(b) REPORT.—The Corporation shall submit a report to the Congress within 1 year after the effective date of this Act and annually thereafter. Such report shall detail the activities of the Corporation for the preceding year and shall include—

(1) a description of the State boxing authority in each State; and

(2) the results of the audit required under subsection (a).

SEC. 14. PETITION TO REPEAL BEFORE EFFECTIVE DATE.

(a) PETITION TO CONGRESS.—During the 1-year period preceding the effective date of this Act, a majority of the State boxing authorities from all States may submit a petition as described under subsection (b) to the Senate Governmental Affairs Committee and the House of Representatives Government Operations Committee. Such committees shall take all necessary actions to respond to such petition before the effective date of this Act.

(b) CONTENTS.—The petition submitted under subsection (a) shall include—

(1) a statement with supporting evidence that the provisions of this Act are unnecessary because the State authorities have established an organization to effectively carry out the purposes of this Act; and

(2) a request for the Congress to enact legislation to delay the effective date of this Act or repeal this Act.

SEC. 15. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act (except for section 14 which shall take effect on the date of enactment) shall be effective on and after 1 year after the date of the enactment of this Act.●

By Mr. LEVIN (for himself and Mr. COHEN):

S. 2853. A bill to authorize appropriations for the U.S. Office of Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

U.S. OFFICE OF SPECIAL COUNSEL AUTHORIZATION ACT

● Mr. LEVIN. Mr. President, today I am introducing a bill to reauthorize for an additional 2 years the Office of Special Counsel—the Government agency charged with protecting Federal employee whistle blowers. I am pleased that Senator COHEN, a long-time stalwart in the battle to protect whistleblower rights, has agreed to join me as an original cosponsor of this measure.

We all know that Federal employee whistleblowers save taxpayer dollars every day by helping to identify potential problems and wrongdoing at an early stage. These brave individuals deserve our respect and our thanks, but all too often they are threatened instead with on-the-job harassment, negative job ratings, unfavorable transfers, denial of promotions, and even dismissal.

Three years ago, Congress sought to address this problem by unanimously enacting the Whistleblower Protection Act of 1989, a landmark piece of legislation which offered whistleblowers substantial new job protections that were not previously available. I wrote and sponsored that legislation because of the compelling evidence that the existing system wasn't serving the interest of whistleblowers.

It is not enough, however, for Congress to enact new legislation. If whistleblowers are to be fully protected, the law must be faithfully implemented in the spirit in which it was written. Unfortunately, there is evidence that this has yet to be done. Although the record shows that the Office of Special Counsel has obtained corrective action for some 70 whistleblowers over the last 2 years, many more have been considerably less fortunate.

Just last month, for example, I received a letter from a whistleblower who was denied assistance by the Office of Special Counsel. The whistleblower then hired a private lawyer to bring his case to the Merit Systems Protection Board and prevailed on the merits. While this case shows the importance of the individual right of action created by the Whistleblower Protection Act, it also shows the failure of the Office of Special Counsel to act as an aggressive advocate of the interests of whistleblowers.

Overall, OSC obtained some form of corrective action in 68 of the 959 whistleblower cases brought to it in fiscal year 1990 and fiscal year 1991, but it has yet to litigate a single corrective action case on behalf of a whistleblower before the Merit Systems Protection Board. In fact, OSC recently informed us that it has only once made a formal determination under the statute that there were reasonable grounds to believe that a prohibited personnel practice had taken place. Numerous OSC investigations have remained open for more than a year without any such determination being made.

Mr. President, the congressional authorization of the Office of Special Counsel is scheduled to expire at the end of this fiscal year, and the administration has requested that we extend it for an additional 5 years. In light of the OSC's history, I believe that such a blanket reauthorization would be unwise. However, we do have a new Special Counsel, Kathleen Koch, who took office less than a year ago. Ms. Koch has indicated a strong personal commitment to the protection of whistleblowers and should be given a full opportunity to follow through on that commitment.

For this reason, the bill that we are introducing today would extend the authorization of the Office of Special Counsel, but only for 2 years. This reauthorization gives the Office of Special Counsel an opportunity to improve its operations and become more aggressive in its efforts to protect whistleblowers. At the same time, the short period of the reauthorization should keep the office on a short leash and put it on notice that improvements are expected. If OSC fails to become more aggressive in its efforts to protect whistleblowers, we will have to consider more significant changes to the statute 2 years from now.

In addition to reauthorizing the Office of Special Counsel, the bill would clarify several provisions of the Whistleblower Protection Act, to address issues raised at the hearing and ensure that the statute operates as intended. In particular, the bill would:

First, clarify the rules governing OSC disclosure of information about whistleblowers;

Second, require OSC to debrief, upon request, whistleblowers whose cases have been terminated;

Third, establish a fixed time limit for OSC to take action on whistleblower cases; and

Fourth, make several other minor changes to the act.

On the first point, section 1212(g) of the statute already prohibits the Office of Special Counsel from releasing any information about a whistleblower's case, except in accordance with the Privacy Act.

Despite this provision, however, many whistleblowers believe that OSC routinely releases information about whistleblowers to their employing agencies. While OSC denies any improper release of information, it also insists that section 1212(g) does not in any way restrict its ability to use information about whistleblowers during the course of an investigation in any way it pleases.

The Office of Special Counsel obviously needs to use information during investigations, and in some cases, use necessarily requires disclosure. In other cases, however, disclosure may be seriously detrimental to the interest of a whistleblower. OSC's insistence on absolute discretion to use information in any way it pleases has undermined confidence in the office, and may even subject some whistleblowers to needless harassment.

The draft bill would address this problem by clarifying the existing statutory provision on the release of information and requiring OSC to develop a policy addressing types of information that may, and may not, be disclosed to agency officials without the consent of the whistleblower. This approach would address the problem of OSC releasing confidential information without limiting the office's ability to conduct investigations.

On the second point, the statute currently requires OSC to provide a close-

out letter to whistleblowers whose cases are terminated. Each such letter is statutorily required to include a summary of the relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the whistleblower's allegations.

However, many whistleblowers complain that OSC's close-out letters are perfunctory, and give little information about OSC's investigation or the facts of the case. Some have sought to remedy this problem by gaining access to the OSC's investigative files.

Giving whistleblowers a right of access to OSC investigative files may not be appropriate, because such files might contain confidential information about persons other than the whistleblower. Also, witnesses might be less candid with OSC investigators if they knew that OSC files would be open to the whistleblower. On the other hand, OSC is statutorily required to assist whistleblowers, and should not treat them the same way as any Federal agency would treat a routine FOIA request.

The draft bill would address this problem by requiring OSC to brief a whistleblower about the case, on the request of the whistleblower, after it terminates an investigation. The briefing would address whom OSC talked to and what OSC learned about the case. OSC would also be required to respond to reasonable questions about the case. This change would give whistleblowers greater access to OSC information without going to the extreme of opening OSC investigative files to individual whistleblowers.

On the third point, section 1214(b)(2)(A) of the statute states that if OSC finds reasonable grounds to believe that a prohibited personnel practice has occurred, it must notify the agency and give it an opportunity to correct the problem. Section 1214(b)(2)(B) then provides that if, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

However, OSC has informed us that only one determination has ever been made under 1214(b)(2)(A). Instead of utilizing the statutory mechanism, OSC has chosen to pursue open-ended negotiations with the agency, leaving the whistleblower hanging. For this reason, OSC currently has 21 pending whistleblower investigations that have been open for an average of about a year and a half, but OSC has not made a reasonable grounds determination in a single case.

The draft bill would address this issue by establishing a fixed schedule for OSC to take action. In particular, OSC would be given 240 days to make a determination whether or not there was a reasonable basis to believe that a prohibited personnel practice has taken place. This period should be reasonable, in light of Ms. Koch's testimony that "120 days is * * * a reasonable amount of time to do a lengthy, very complicated investigation in a matter * * * outside of Washington requiring travel, requiring trips back and forth because we have to keep having to verify further information."

If OSC determined that there was a reasonable basis to believe that a prohibited personnel practice had taken place, the bill would give the agency 45 days to correct the problem before OSC initiated a case before the MSPB. Under this approach, individual whistleblowers would not be left hanging for months, or even years, while the agency is given more time to negotiate.

The other changes made by the bill would: First, conform the discovery standard in whistleblower cases to the standard in the Federal Rules of Civil Procedure; second, clarify that a prevailing whistleblower is entitled to attorneys' fees and any other reasonable costs incurred directly or indirectly by the whistleblower; third, clarify that an agency decision to ordering psychiatric testing or examination of employees is a personnel action, subject to review in a whistleblower case; and fourth, allow a Special Counsel to serve beyond the 5-year term, if necessary to prevent a vacancy in the office.

Mr. President, the successful operation of the Whistleblower Protection Act is dependent in large part on the agency primarily charged with enforcing that act—the Office of Special Counsel. This bill sends a message to the new Special Counsel and to the office as a whole that we take the protection of whistleblowers seriously, and that we expect and intend them to be aggressive in pursuing the vindication of whistleblower rights. I hope that my colleagues will join me in supporting this measure.

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

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

S. 2853

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

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note; Public Law 101-12; 103 Stat. 34) is amended by striking out "1989, 1990, 1991, and 1992," and inserting in lieu thereof "1993 and 1994".

SEC. 2. OFFICE OF SPECIAL COUNSEL.

Chapter 12 of title 5, United States Code, is amended—

(1) in section 1211(b) by inserting after the first sentence "The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection.";

(2) in section 1212(g)(1) by striking out "provide" and inserting in lieu thereof "disclose";

(3) in section 1214(a)(2), by adding at the end thereof the following new subparagraph:

"(C) Upon the request of the person on whose allegation the investigation was initiated, the Special Counsel shall provide an oral briefing on the results of the investigation. Such oral briefing shall include—

"(i) a description of the investigation conducted by the Special Counsel;

"(ii) a discussion of the relevant facts ascertained by the Special Counsel;

"(iii) an explanation of the law applicable to the allegations; and

"(iv) the Special Counsel's response to any reasonable question of the person regarding any matter relating to such briefing, description, discussion, or explanation.";

(4) in section 1214(b)(2)—

(A) by redesignating subparagraphs (A), (B) and (C) as subparagraphs (B), (C) and (D), respectively;

(B) by inserting before subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) the following:

"(A) No later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken."; and

(C) by amending subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) to read as follows:

"(C) If, within 45 days after receiving a report of the Special Counsel under subparagraph (B), the agency has not acted to correct the prohibited personnel practice, the Special Counsel shall petition the Board for corrective action.";

(5) in section 1221(d), by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence."; and

(6) in section 1221(g)—

(A) in paragraph (1), by striking out "and any other reasonable costs incurred" and inserting in lieu thereof "and any other reasonable costs incurred directly or indirectly by the employee, former employee, or applicant."; and

(B) in paragraph (2), by striking out "and any other reasonable costs incurred," and inserting in lieu thereof "and any other reasonable costs incurred directly or indirectly by the employee, former employee, or applicant,".

SEC. 3. PROHIBITED PERSONNEL PRACTICES.

Section 2302(a)(1)(A) of title 5, United States Code, is amended—

(1) in clause (ix) by striking out "and" after the semicolon; and

(2) by redesignating clause (x) as clause (xi) and inserting before such clause the following:

"(x) a decision to order psychiatric testing or examination; and".

SEC. 4. IMPLEMENTATION.

No later than 6 months after the date of enactment of this Act, the Special Counsel shall implement section 1212(g) of title 5, United States Code, by issuing detailed guidelines regarding the disclosure of information during the course of Special Counsel investigations of alleged prohibited personnel practices described under section 2302(b)(8) of such title. Such guidelines shall, at a minimum, specify—

(1) categories of information that may not be disclosed to agency officials without the consent of the person alleging the prohibited personnel practice; and

(2) categories of information that may be disclosed to agency officials for the purpose of conducting an investigation, and the circumstances under which such information is likely to be disclosed.

SEC. 5. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall be effective on and after October 1, 1992.•

• Mr. COHEN. Mr. President, I am pleased to join with Senator LEVIN in introducing legislation to address serious concerns that we have with the Office of Special Counsel.

An important factor in our ability to discover waste, fraud and abuse in the Federal Government is the willingness of Federal employees to come forward to expose abuse, mismanagement and corruption. However, these dedicated employees often do so at substantial professional and personal risk. Just as experience has taught us that problems in Government programs often come to light only when Federal employees come forward to report it, experience has also taught us that too many times, workers who have blown the whistle have lost their jobs, had promising careers derailed, forfeited promotions, and paid other personal prices for exposing wasteful Government spending, illegal practices, or hazardous conditions.

In 1989, we offered these people a deal. We told them that in exchange for exposing waste and mismanagement in Federal agencies, the Federal Government would protect them from reprisals and harassment. We charged the Office of Special Counsel with the responsibility of protecting these individuals.

The mandate of the Office of Special Counsel is to act as an independent investigative and prosecutorial agency to protect employees, former employees, and applicants for employment from prohibited personnel practices, especially reprisal for whistleblowing. Regrettably, the Office of Special Counsel has not adequately met its responsibilities.

In too many cases, the Office of Special Counsel has compromised the trust of whistleblowers, kept whistleblowers in the dark regarding the status of their cases, and failed to reach timely determinations as to whether or not prohibited personnel practices took place. One case involving a constituent of mine has dragged on for 2½ years, and the Office of Special Counsel has yet to make a determination.

After receiving a complaint, the Office of Special Counsel will conduct an initial review and, in most cases, decide not to refer the case for investigation. Last year the office received 455 complaints alleging reprisal for whistleblowing and saw fit to investigate only 86 of these allegations. Equally disturbing is that in 1991, not a single case went before the Merit Systems Protection Board.

The failure of the office to further investigate cases of potential whistleblower reprisals and the low number of cases litigated before the Merit System Protection Board sends a clear message to potential whistleblowers. If they report waste, fraud, abuse or mismanagement, they are on their own. The statistics also send a dangerous message to those who try to silence whistleblowers—the odds are that you will get away with reprisals.

The Office of Special Counsel has testified that one of its objectives is to avoid costly litigation before the Merit Systems Protection Board. I shudder to think what the failure of the Office of Special Counsel to provide adequate protection to whistleblowers is potentially costing the Government and the public. Not only are Federal dollars at risk, but people are being placed at risk. If substandard inspections of nuclear facilities go undetected or if faulty tank engines are accepted by the military because employees are afraid to come forward for fear of reprisal, civilians and soldiers alike may be injured or killed.

The legislation we are introducing today is designed to make the Office of Special Counsel more responsive to whistleblowers. For example, the bill requires the office to establish clear guidelines as to what type of information it may and may not disclose to an agency without the consent of the whistleblower. In addition, the bill requires the Office of Special Counsel to conduct debriefings at the request of the whistleblower after it terminates an investigation, and will allow whistleblowers to recover costs they incur if they represent themselves.

Perhaps most importantly, the legislation will establish a timeframe of 240 days for the Office of Special Counsel to make a determination of whether or not there is a reasonable basis to conclude that a prohibited personnel practice has occurred. No such time limit has been imposed in the past, in large part, because of a concern that the office have sufficient time to conduct thorough investigations and, when appropriate, prepare cases to be prosecuted before the Merit Systems Protection Board. However, it is evident from the record that the Office of Special Counsel has failed to make timely decisions to pursue cases and needs to be compelled to expedite its review and investigation process.

In addition, this legislation will address one of the most disturbing aspects of whistleblower retaliation. It is not unheard of for an agency to attempt to undermine a whistleblower's credibility by ordering the individual to undergo psychiatric testing. This sounds like a horror story out of the former Soviet Union. Most of these alleged incidents have occurred within the U.S. military. The legislation will expand the definition of prohibited personnel practices to include a decision to order psychiatric testing.

This measure makes a number of very worthy reforms but it alone will not cure the problems with the Office of Special Counsel's handling of whistleblower cases. Many of the problems must be solved internally. The Office of Special Counsel must reaffirm its commitment to protecting the many dedicated Federal employees who make the very difficult decision of coming forward to reveal illegalities or abuse. In order to ensure continued oversight of the office, the legislation provides only a 2-year reauthorization, rather than the requested 5-year reauthorization.

In my view, this legislation will help to achieve two important goals. First, the bill will make needed reforms to better protect the efforts of good faith whistleblowers. Second, the legislation should prompt the Office of Special Counsel to reexamine its policies and practices. It is critical that whistleblowers feel they can come forward to expose cases of waste, fraud, abuse and mismanagement in Federal agencies knowing that, if there is retribution, their government will protect them and that justice will be done.•

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 2854. A bill to extend the existing suspension of duty on methyl and ethyl parathion and dimethoate; to the Committee on Finance.

S. 2855. A bill to suspend until January 1, 1995, the duty on Malathion; to the Committee on Finance.

SUSPENSION OF DUTY ON CERTAIN ITEMS

• Mr. BRADLEY. Mr. President, I rise to introduce two pieces of legislation, one that will extend the duties on ethyl and methyl parathion and dimethoate and the other that will suspend the tariff duty on Malathion on behalf of Cheminova, Inc., a company of Wayne, NJ. Joining me is my friend and colleague Senator LAUTENBERG. Identical legislation has been introduced on the House side as H.R. 4402 and H.R. 4780, by Representative GUARINI and by Representative DORGAN.

Cheminova imports a diverse line of chemicals that are primarily tailored for crop protection. Dimethoate, ethyl and methyl parathion, and malathion are frequently utilized as part of a mixture containing other pesticides, making it possible for the continued use or expanding use of other pesticide ingredients. Importing these chemicals creates numerous American jobs for small

pesticide manufacturers, formulators, and distributors.

According to the International Trade Commission, no domestic producers have registered objections to the proposed suspension. The legislation enables Cheminova to import the chemicals at reasonable prices making its products more affordable for consumers in the domestic market.

Mr. President, I ask unanimous consent that these bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2854

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

SECTION 1. EXTENSION OF EXISTING SUSPENSION OF DUTY.

(a) IN GENERAL.—Heading 9902.29.89 of the Harmonized Tariff Schedule of the United States (relating to methyl and ethyl parathion and dimethoate) is amended by striking "12/31/92" and inserting "12/31/94".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

S. 2855

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

SECTION 1. MALATHION.

(A) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new subheading:

"9902.31.12	0,0, Dimethylphosphorodithoate of diethyl mercaptosuccinate (Malathion) (provided for in subheading 2930.90.40)	Free	No change	No change	On on before 12/31/94".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.•

By Mr. D'AMATO (for himself, Mr. KASTEN, Mr. ROCKEFELLER, Mr. GLENN, and Mr. RIEGLE):

S. 2856. A bill to amend the provisions of the Omnibus Trade and Competitiveness Act of 1988 with respect to the enforcement of machine tool import arrangements; to the Committee on Finance.

ENFORCEMENT OF MACHINE TOOL IMPORT ARRANGEMENTS

• Mr. D'AMATO. Mr. President, today I am introducing legislation which I hope our friends from Taiwan will take seriously. I am joined by my colleagues Senator KASTEN, Senator ROCKEFELLER, Senator GLENN, and Senator RIEGLE. This legislation unilaterally restricts the import of machine tools for the next 2 years based on the President's December 1991 decision.

This is certainly not the first time we have stated or taken action in support of the machine tool extension and I can assure you it won't be the last. The extension of the machine tool VRA is not only a national security issue but it is also a jobs issue to thousands of American workers.

We will continue to move this and other legislation forward until Taiwan signs a final machine tool agreement with the United States. It is my hope that this legislation becomes moot, but only Taiwan can make that happen.

For the first time, it appears that Taiwan is taking the United States machine tool negotiations seriously. I encourage them to stay in town, at the table, with the United States Trade Representative, until an agreement is reached. Only then can we all move forward and work together on other important matters.•

By Mr. MACK:

S. 2857. A bill to amend the Internal Revenue Code of 1986 to extend the period of time to acquire a new residence for purposes of nonrecognition of gain on the sale of an old residence for members of the Armed Forces of the United States; to the Committee on Finance.

TAX TREATMENT OF GAIN OF SALE OF RESIDENCE FOR MEMBERS OF THE ARMED FORCES

• Mr. MACK. Mr. President, some time ago, I was contacted by a member of our armed services who brought to my attention a peculiar oddity in the Tax Code. The Government, recognizing the sacrifices made by the men and women who serve in uniform, has provided a period for the nonrecognition of a gain on the sale of a residence. However, there are certain members of our armed services whose assignments effectively prohibit them from purchasing a residence within the time period allowed.

The current law provides an extension of time to acquire a replacement residence. This extension is either 4 years or 8 years for those returning from overseas or otherwise required to reside on base quarters at a remote base site.

While the intent of the law is clear, the application falls short of covering all members. The legislation I bring to the floor today corrects this oversight. My proposal allows for the nonrecognition of gain for 2 years from that time when the service member is no longer stationed outside of the United States or required to reside on base housing.

While only a small number of service men and women are unable to take advantage of the current nonrecognition period, it is nevertheless important to extend this nonrecognition period to all members of our Armed Forces. As they are prepared to make the ultimate sacrifice in the service of their country, we, the Congress, should ensure they are not adversely affected by loosely worded legislation.•

By Mr. BURNS:

S.J. Res. 314. Joint resolution to designate the period beginning on August 16, 1992, and ending on August 22, 1992, as "National Convenience Store Appreciation Week"; to the Committee on the Judiciary.

NATIONAL CONVENIENCE STORE APPRECIATION WEEK

• Mr. BURNS. Mr. President, I rise today to send to the desk a joint resolution which will designate the week of August 16, 1992, as "National Convenience Store Appreciation Week."

Mr. President, I don't think I need to tell you the impact convenience stores have had on our society and our economy, but let me give you some numbers to illustrate just how important they have become over the last 3 decades.

There are 71,000 convenience stores throughout the United States each with an average investment of approximately $800,000 per store. They are an integral part of these communities whether they are located in small towns and suburbs or the inner cities of America.

They provide employment to nearly half a million people from all walks of life—senior citizens, disabled individuals, ethnic and racial minorities, and students. Not only do they enable the public to quickly purchase a wide array of products but they are service-oriented as well. The industry channels at least $45 million each year to a host of charities to improve the quality of life for those who need assistance.

I think it is only fitting, at a time when the industry's representative, the National Association of Convenience Stores, is celebrating their 31st anniversary, that we give recognition to an industry which epitomizes the entrepreneurial spirit we have seen motivating small business throughout our Nation's history.

I would like to urge my colleagues to join me in recognizing these unique businessmen and women and cosponsor "National Convenience Store Appreciation Week."•

By Mr. SEYMOUR (for himself and Mr. DODD):

S.J. Res. 315. Joint resolution to designate September 16, 1992, as "National Occupational Therapy Day"; to the Committee on the Judiciary.

NATIONAL OCCUPATIONAL THERAPY DAY

• Mr. SEYMOUR. Mr. President, I rise today with my colleague from Connecticut, Senator DODD to introduce a joint resolution to recognize September 16, 1992 as "National Occupational Therapy Day."

During the 19th century, health professionals sought occupation, or physical activity as a treatment for patients with mental disorders. As a result, those patients given daily tasks

to perform recovered at a more rapid pace than those patients who were not physically active. Due to its success, a group of health professionals gathered in Clifton Springs, NY in 1917 to form the Society for the Preservation of Occupational Therapy, which was to become as we know today, the American Occupational Therapy Association.

However, only a year after its inception, this professional association received its trial by fire, as the United States entered the First World War. As servicemen returned from the war with extensive mental exhaustion and physical injuries, the first occupational therapists were sent to rehabilitate these men as reconstruction aides who provided both mental and physical therapy services.

At the end of the Second World War, these reconstruction aides provided a range of professional services—assisting amputees with artificial limbs, and developing programs to help individuals with the lasting affects of arthritis, burns and severe nerve injuries. Without the dedication, encouragement, and understanding of these occupational therapists, those who experienced traumatic mental and physical injury would not lead healthy, productive futures.

By 1945, the Occupational Therapy Association had grown to over 3,000 active members with the support of 26 accredited schools throughout the Nation. Subsequently, the opportunity to combine science and medicine arose during the early 1960's with the development of prosthetics and the continuing development of rehabilitative services for those patients with severe spinal injuries and neurological disorders.

Today, occupational therapy practitioners treat more than 7.5 million children and adults annually in a variety of settings including hospitals, nursing facilities, outpatient rehabilitation facilities, psychiatric facilities, and community mental health centers across the Nation. These 45,000 dedicated members devote an enormous amount of time, energy, and caring to those in need of mental and physical assistance each year.

Mr. President, we stand in support of these individuals and commend them for their continued commitment. Recognizing "National Occupational Therapy Day" will help us acknowledge the National Occupational Therapy Association's 75th anniversary and the vital services they provide millions of Americans each year. Please join us in recognizing the efforts of occupational therapists across the country.●

By Mr. SIMON:

S.J. Res. 316. A joint resolution to designate the week of November 30 through December 6 as "National Education First Week": to the Committee on the Judiciary.

NATIONAL EDUCATION FIRST WEEK

Mr. SIMON. Mr. President, I rise today to introduce a joint resolution to designate the week beginning November 30 through December 6 as National Education First Week. This resolution recognizes the importance of utilizing the media to raise public awareness of education. Such awareness is necessary in creating an atmosphere where education is valued as a top priority.

The economic success and democratic vitality of the United States depends on the Nation's ability to provide a world class education for all students. Unfortunately, the United States faces an unprecedented education crisis. Nearly one-third of all students in the United States today do not graduate from high school. Twenty-six million adults in the United States are functionally illiterate. The tragedy of inadequate education places great strains on the Nation's economic and social fabric as evidenced by data indicating that less than 70 percent of high school dropouts are in the labor force, 80 percent of the people in prison are high school dropouts, and four out of five high school dropouts use drugs on a regular basis.

Only a coordinated effort by all sectors of the country including business, government, media, labor, educators, and parents can adequately address the challenge. The media is a powerful tool to influence and arouse the public to a better understanding of the scope and severity of the education crisis. It can also stimulate students' interest in their own education. A media campaign, involving television, motion pictures, and music, can also raise awareness of possible grassroots and legislative solutions to the crisis.

The decision of the entertainment industry to promote Education First Week represents an important commitment to address a national problem. I am pleased to sponsor this joint resolution and I urge my colleagues to support it.

ADDITIONAL COSPONSORS

S. 68

At the request of Mr. THURMOND, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 68, a bill to amend title 10, United States Code, to authorize the appointment of chiropractors as commissioned officers in the Armed Forces to provide chiropractic care, and to amend title 37, United States Code, to provide special pay for chiropractic officers in the Armed Forces.

S. 405

At the request of Mr. MITCHELL, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 405, a bill to amend the Harmonized Tariff Schedule of the United States to exclude certain footwear assembled in beneficiary countries from duty-free treatment.

S. 781

At the request of Mr. SARBANES, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1451

At the request of Mr. BIDEN, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 1451, a bill to provide for the minting of coins in commemoration of Benjamin Franklin and to enact a fire service bill of rights.

S. 1578

At the request of Mr. THURMOND, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1578, a bill to recognize and grant a Federal charter to the Military Order of World Wars.

S. 2027

At the request of Mr. CHAFEE, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 2027, a bill to amend title XVIII of the Social Security Act to eliminate the annual cap on the amount of payment for outpatient physical therapy and occupational therapy services under part B of the Medicare program.

S. 2064

At the request of Mr. HATFIELD, the names of the Senator from Oklahoma [Mr. BOREN] the Senator from West Virginia [Mr. ROCKEFELLER] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 2064, a bill to impose a one-year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period.

S. 2116

At the request of Mr. RIEGLE, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 2116, a bill to improve the health of children by increasing access to childhood immunizations, and for other purposes.

S. 2230

At the request of Mr. BREAUX, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2230, a bill to amend title XVIII of the Social Security Act to provide coverage of outpatient education services under part B of the Medicare program for individuals with diabetes.

S. 2239

At the request of Mr. PRYOR, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 2239, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 2489

At the request of Mr. DOMENICI, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 2489, a bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 to establish the National Quality Commitment Award with the objective of encouraging American universities to teach total quality management, to emphasize the importance of process manufacturing, and for other purposes.

S. 2560

At the request of Mr. SIMON, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 2560, a bill to reclassify the cost of international peacekeeping activities from international affairs to national defense.

S. 2644

At the request of Mrs. KASSEBAUM, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2644, a bill to require the Secretary of Transportation to require passenger and freight trains to install and use certain lights for purposes of safety.

S. 2656

At the request of Mr. FORD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 2656, a bill to amend the Petroleum Marketing Practices Act.

S. 2667

At the request of Mr. HEFLIN, the names of the Senator from Indiana [Mr. COATS] and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 2667, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the act with respect to alternate uses of new animal drugs and new drugs intended for human use.

S. 2682

At the request of Mr. BUMPERS, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from New Jersey [Mr. BRADLEY], the Senator from Wisconsin [Mr. KOHL], the Senator from Alaska [Mr. STEVENS], the Senator from Georgia [Mr. NUNN], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of S. 2682, a bill to direct the Secretary of the Treasury to mint coins in commemoration of the 100th anniversary of the beginning of the protection of Civil War battlefields, and for other purposes.

S. 2702

At the request of Mr. HOLLINGS, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 2702, a bill to authorize appropriations for fiscal year 1993 for the Coast Guard, and for other purposes.

S. 2794

At the request of Mr. DOLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2794, a bill to relieve the regulatory burden on depository institutions, particularly on small depository institutions, and for other purposes.

S. 2804

At the request of Mrs. KASSEBAUM, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 2804, a bill to establish a program to provide technical assistance to employers and labor unions, in order to assist in preparing the workplace to employ women in apprenticeable occupations and other nontraditional occupations, and for other purposes.

S. 2832

At the request of Mr. BOND, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2832, a bill to require that all Federal printing be performed using cost-competitive inks whose pigment vehicles are made entirely from soybean oil, and for other purposes.

SENATE JOINT RESOLUTION 238

At the request of Mr. RIEGLE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of Senate Joint Resolution 238, a joint resolution designating the week beginning September 21, 1992, as "National Senior Softball Week."

SENATE JOINT RESOLUTION 262

At the request of Mr. KASTEN, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of Senate Joint Resolution 262, a joint resolution designating July 4, 1992, as "Buy American Day."

SENATE JOINT RESOLUTION 288

At the request of Mr. LIEBERMAN, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of Senate Joint Resolution 288, a joint resolution designating the week beginning July 26, 1992, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 295

At the request of Mr. DECONCINI, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Joint Resolution 295, a joint resolution designating September 10, 1992, as "National D.A.R.E. Day."

SENATE JOINT RESOLUTION 312

At the request of Mr. GORTON, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of Senate Joint Resolution 312, a joint resolution proposing an amendment to the Constitution to provide for a runoff election for the offices of the President and Vice President of the United States if no candidate receives a majority of the electoral college.

SENATE RESOLUTION 314

At the request of Mr. DECONCINI, the names of the Senator from Kansas [Mr. DOLE] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Resolution 314, a resolution concerning the provision of humanitarian aid to civilian populations in and around Sarajevo.

SENATE RESOLUTION 315—CONGRATULATING THE CHICAGO BULLS ON WINNING THE NATIONAL BASKETBALL ASSOCIATION CHAMPIONSHIP

Mr. DIXON (for himself and Mr. SIMON) submitted the following resolution; which was considered and agreed to:

S. RES. 315

Whereas the Bulls posted a 67–15 record in the regular season, the best in franchise history, and one of the best ever in the NBA;

Whereas Phil Jackson and the entire coaching staff again implemented a quick, smothering defense and an explosive triple-post offense to enable the Bulls to successfully defend their 1991 NBA championship;

Whereas, for the second consecutive year, Michael Jordan, showing his tremendous offensive and defensive basketball ability, was named both NBA regular season and playoff most valuable player, an honor that no other NBA player has ever received;

Whereas Scottie Pippen led an aggressive Bulls offense, demonstrating the athleticism and all around basketball skills that led to his being named to the Olympic team;

Whereas the quickness, rebounding and shot blocking skills of Horace Grant often keyed the aggressive play of Chicago's front line;

Whereas the veteran guile of center Bill Cartwright led to frustration for many of the all-star caliber centers that he faced;

Whereas sharp shooting guard John Paxon again displayed the clutch outside touch that has made the Bulls offense so diverse;

Whereas Scott Williams, B.J. Armstrong, Bobby Hansen and Stacey King came off the bench in game six of the NBA finals to aggressively key the crucial fourth quarter rally that enabled the Bulls to overcome a 15 point deficit;

Whereas Cliff Levingston, Will Perdue and Craig Hodges provided valuable contributions throughout the playoffs, both on and off the court, at times providing the spark the Bulls needed to gain control of a particular game; and

Whereas the Bulls once again utilized a total team effort to become only the fourth team in NBA history to win back-to-back NBA championships: Now, therefore, be it

Resolved, That the Senate congratulates the Chicago Bulls for winning the 1992 National Basketball Association championship.

AMENDMENTS SUBMITTED

WORKPLACE FAIRNESS ACT

GRAMM AMENDMENT NO. 2411

Mr. GRAMM submitted an amendment intended to be proposed by him to an amendment to the bill (S. 55) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, as follows:

(The text of amendment No. 2411 is identical to the text of amendment No. 1992 proposed by Mr. GRAMM and printed in the RECORD on June 10, 1992, on pages S 7812 through S 7875.)

HATCH AMENDMENTS NOS. 2412 THROUGH 2423

(Ordered to lie on the table.)

Mr. HATCH submitted 12 amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2412

On page 2 of the amendment, strike the words "or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized".

AMENDMENT NO. 2413

At the appropriate place add the following: "The provisions of section (i) and (ii) shall not apply and a strike by a labor organization shall become illegal if the strike disrupts essential supplies and services."

AMENDMENT NO. 2414

Beginning on page 4 with the words "organization, at least seven calendar days before engaging in any strike" strike all through the words "employer receives the labor organization's last offer." on page 7 and insert in lieu thereof the following:

organization or the employer, at least seven calendar days before engaging in any such strike and after the employer and the labor organization have bargained in good faith but have bargained to an impasse, and any existing collective bargaining agreement between the employer and the labor organization has expired, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of section (i) and (ii) shall apply for the duration of the labor dispute. If the labor organization does not accept the employer's offer to submit the unresolved issues to factfinding, the provisions of section (i) and (ii) shall not apply for the duration of the labor dispute and the labor organization may not strike for the duration of the labor dispute. It the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in Section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report, provided that if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer; provided further, that if neither the labor organization nor the employer serves such written notice during the seven-day period and the employer thereafter serves such written notice upon the labor organization, the provisions of subsections (i) and (ii) shall not apply with respect to any actions taken by the employer on or after the date the labor organization receives the employer's offer and the labor organization may not strike for the duration of the labor dispute.

SEC. . Notwithstanding any other provision of this Act, the provisions of subsection (i) and (ii) shall not apply to any strike by a labor organization unless said labor organization has been certified as the exclusive bargaining representative of the employees in a secret ballot election.

AMENDMENT NO. 2415

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply if the labor organization involved has been convicted of violating any criminal laws of the United States, or State, district or territory, or has committed within the prior six-month period an act of violence or threatened to commit an act of violence against the employer, against any of the employer's agents or employees, or against property."

AMENDMENT NO. 2416

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply in the case of a labor organization that has engaged in acts of violence, threats of violence, harassment, or intimidation in connection with the labor dispute involved against the employer, against any of the employer's agents of employees, or against their property."

AMENDMENT NO. 2417

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply to a labor dispute that costs the state, city, county, or other political subdivision of the state in which the labor dispute occurs more than $100,000 in additional wages and overtime expenses for law enforcement or other employees of that state, city, county, or political subdivision. The labor organization involved shall be liable for any such expenses."

AMENDMENT NO. 2418

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply to any employee who, under the terms of the employer's last contract offer, would be paid wages and benefits in an amount that exceeds 150 percent of the per capita personal income of persons within the state in which that employee is employed."

AMENDMENT NO. 2419

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply if the labor organization involved has, prior to the commencement of the labor dispute, threatened to prohibit an employer from continuing to operate during a labor dispute or has engaged in conduct, other than authorizing striking employees to withhold their services, that is aimed at interfering with an employer's ability to continue to operate during a labor dispute."

AMENDMENT NO. 2420

At the appropriate place, insert the following new section:

SEC. . EFFECTIVE DATE.

Notwithstanding any other provision of law, the amendments made by this act shall become effective on the date on which the House of Representatives and the Senate adopt a Concurrent Resolution that provides employees of such House and Senate with same rights to organize, bargain collectively and strike as employees in the private sector have under the National Labor Relations Act, except that the appropriate United States district courts, rather than the National Labor Relations Board, shall be the applicable forum for adjudicating unfair

labor practice cases and representation proceedings.".

AMENDMENT NO. 2421

At the appropriate place, insert the following new section:

"SEC. . APPLICATION OF DEMONSTRATION.

"(a) The provisions of this Act shall apply only to labor disputes occurring in the following states: Alabama, Connecticut, Georgia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, and West Virginia.

"(b) Not later than three years after the effective date of this Act, the Secretary of Labor shall convene a task force to study the impact of extending the applicability of this Act to employees covered by the National Labor Relations Act in all states.

"(c) The Secretary shall ensure balanced representation on the task force among representatives of organized labor, employers or employer organizations, and employees. The Secretary shall also include experts from relevant academic disciplines and professions.

"(d) The Secretary shall report to Congress no later than four years after the effective date of this Act.".

AMENDMENT NO. 2422

At the appropriate place, insert the following new section:

"SEC. . LEGISLATIVE TASK FORCE STUDY.

(a) The provisions of this Act shall apply only after the provisions of this section have been met.

(b) LEADERSHIP TASK FORCE.—The Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives shall establish a leadership task force to examine the feasibility of applying this Act to employees covered under the National Labor Relations Act in all the States. The task force shall be composed of—

(1) three members of the Senate, of which—

(A) one member shall be appointed by the President Pro Tempore of the Senate;

(B) one member shall be appointed by the Majority Leader of the Senate; and

(C) one member shall be appointed by the Minority Leader of the Senate; and

(2) three members of the House of Representatives, of which—

(A) one member shall be appointed by the Speaker of the House of Representatives;

(B) one member shall be appointed by the Majority Leader of the House of Representatives; and

(C) one member shall be appointed by the Minority Leader of the House of Representatives.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the leadership task force established under subsection (b) shall prepare and submit to the Congress a report concerning the examination conducted under such subsection. Such a report shall contain the results of such examination and a determination by the leadership task force.

(d) EFFECT OF DETERMINATION.—If in the report submitted under subsection (c) the leadership task force determines that it is feasible to apply this Act to all States, the Congress shall take all appropriate action to implement such determination.

(e) RELATION TO OTHER PROVISIONS.—Notwithstanding any other provisions of this Act, the requirements of this section shall supersede any other requirements in this Act with respect to the date on which the provisions of this Act become effective, and this Act shall only become effective in selected states listed above on the date of enactment until such time as the other provisions of this section have been satisfied.

AMENDMENT NO. 2423

At the appropriate place, insert the following new section:

"SEC. . The provisions of this Act shall not apply (1) in the case of a labor organization that has engaged in acts of violence, threats of violence, harassment or intimidation in connection with the labor dispute involved, against the employer, against any of its agents, against any employees, or against an employer's or an employee's property; or (2) to a labor dispute that costs the state, city, county, or other political subdivision of the state in which such subdivision incurs more than $100,000 in additional wage and overtime expenses for law enforcement or other employees of that state, city, county, or political subdivision, and the labor organization involved shall be liable for such expenses; or (3) in the case that any employee who, under the terms of the employer's last contract offer, would be paid in wages and benefits an amount that exceeds 150 percent of the per capita personal income of persons within the state in which that employee is employed.".

NATIONAL BANKRUPTCY REVIEW COMMISSION ACT

HEFLIN AMENDMENT NO. 2424

Mr. HEFLIN proposed an amendment to the bill (S. 1985) to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes, as follows:

Strike the matter proposed to be inserted and insert the follow:

SECTION 1. FINDINGS.

Congress finds that—

(1) there was a record number of Federal bankruptcy filings for the calendar year of 1991;

(2) the smooth and efficient operation of the bankruptcy system is vital to the continued growth and vitality of our Nation's economy;

(3) debtors that file for bankruptcy are entitled and deserve full and complete information regarding the effects and consequences of filing for bankruptcy;

(4) creditors of a debtor that files for bankruptcy deserve and need full and timely information regarding the circumstances of a debtor's bankruptcy filing; and

(5) individual debtors, creditors, the bankruptcy system, and the national economy may be generally better served by the successful completion of a reorganization of debts under chapter 13 or a liquidation of debts under chapter 7 of the Bankruptcy Code, depending upon the circumstances of each particular case; however, it is vital to the efficient operation of the bankruptcy system that each debtor consider and understand the consequences of both options.

TITLE I—BANKRUPTCY REVIEW COMMISSION

SEC. 101. SHORT TITLE.

This title may be cited as the "National Bankruptcy Review Commission Act".

SEC. 102. ESTABLISHMENT.

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

SEC. 103. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 108; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

SEC. 104. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) Two members of the Senate, 1 from each of the 2 major political parties, appointed by the President pro tempore of the Senate.

(3) Two members of the House of Representatives, 1 from each of the 2 major political parties, appointed by the Speaker of the House of Representatives.

(4) Two members appointed by the Chief Justice.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 90 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was not appointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

SEC. 105. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay

payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 106. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 107. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 108. REPORT.

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 109. TERMINATION.

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 108.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 to carry out this title.

TITLE II—COMMERCIAL AND CREDIT MATTERS

SEC. 201. DEFINITION OF PERSON FOR PURPOSES OF SECTION 1102.

Section 101(42) of title 11, United States Code, as redesignated by section 501(7), is amended to read as follows:

"(42) 'person' includes an individual, a partnership, and a corporation, but does not include a governmental unit, except that a governmental unit is a person for purposes of section 1102 to the extent that it—

"(A) acquires an asset from a person as a result of operation of a loan guarantee agreement;

"(B) is a receiver or liquidating agent of a person;

"(C) is a guarantor of pension benefits of the debtor or an affiliate of the debtor; or

"(D) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986."

SEC. 202. ANTI-ALIENATION.

(a) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 501(7), is amended—

(1) by striking "or" at the end of paragraph (16);

(2) by adding "or" at the end of paragraph (17); and

(3) by adding at the end the following new paragraph:

"(18) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing such withholding and collection for the benefit of a pension, profit sharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or 457 or a governmental plan under 414(d) of the Internal Revenue Code of 1986, which is sponsored by the employer of the debtor, or an affiliate, successor or predecessor of such employer, to the extent that the amounts withheld and collected are used solely for payments relating to a loan from the plan that satisfies the requirements of section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or, in the case of a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(b) EXCEPTIONS TO DISCHARGE.—Subsection 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(13) owed to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), 408(k) or a governmental plan under 414(d) or 457 of the Internal Revenue Code of 1986 pursuant to a loan permitted under section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)) or pursuant to a loan from the Thrift Savings Plan described in subchapter III of title 5, United States Code, that satisfies the requirements of section 8433(i) of that title.".

(c) PROPERTY OF THE ESTATE.—Subsection 541(c) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), assets and benefits accumulated for the benefits of a debtor pursuant to a pension, profitsharing, stock bonus, or other plan qualified under section 401(a), 403(a), 403(b), or 408(k), or a governmental plan under 414(d), or 457 of the Internal Revenue Code of 1986 and any rights of debtor to such assets or benefits shall be excluded from the property of the estate.

"(B) Subparagraph (A) does not apply to plan assets or benefits attributable to contributions of the debtor to the extent that such contributions were in excess of the applicable limits on such contributions under section 401(k), 401(m), or 415 of the Internal Revenue Code of 1986.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) The plan may not materially alter the terms of a loan described in section 362(b)(18).".

(e) PLAN CONFIRMATION.—Section 1325 of title 11, United States Code, is amended—

(1) in subsection (b)(2) by striking "debtor and" and inserting "debtor (not including income that is withheld from the debtor's wages for the purposes stated in section 362(b)(18)) and"; and

(2) in subsection (c) by striking "income to" and inserting "income (except income that is withheld from a debtor's wages for the purposes stated in section 362(b)(18) after confirmation of a plan) to".

SEC. 203. CASH COLLATERAL.

Section 363(a) of title 11, United States Code, is amended by adding at the end the following new sentence: "If the cash collateral includes an interest in rents or leases, in real property, held by a creditor and duly recorded in the public records, such interest shall be deemed perfected for purposes of this title upon the filing of a petition under section 301 or 302, or upon the entry of an order for relief under section 303.".

SEC. 204. PREFERENCES.

Section 550 of title 11, United States Code, is amended—

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

(2) by inserting after subsection (a) the following new subsection:

"(b) The trustee may recover under subsection (a) a transfer avoided under section 547(b) from a first transferee or an immediate or mediate transferee of a first transferee only to the extent that—

"(1) all the elements of section 547(b) are satisfied as to the first transferee; and

"(2) the exceptions in section 547(c) do not protect the first transferee.".

SEC. 205. SMALL BUSINESS CHAPTER.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 501, is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), and (62) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), and (63); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'small business' means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate liquidated secured and unsecured debts as of the date of the petition do not exceed $2,500,000.".

(b) WHO MAY BE A DEBTOR UNDER CHAPTER 10.—Section 109 is amended by adding at the end the following new subsection:

"(h) Only a small business may be a debtor under chapter 10.".

(c) TEMPORARY CHAPTER APPLICABLE TO SMALL BUSINESSES.—Title 11, United States Code, is amended by inserting after chapter 9 the following new chapter:

"CHAPTER 10—SMALL BUSINESSES

"SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

"Sec.
"1001. Definitions for this chapter.
"1002. Commencement of action.
"1003. Trustee.
"1004. Rights and powers of debtor.
"1005. Removal of debtor as debtor-in-possession.
"1006. Property of the estate.
"1007. Conversion or dismissal.

"SUBCHAPTER II—THE PLAN

"1021. Filing of plan.
"1022. Contents of plan.
"1023. Postpetition disclosure and solicitation.
"1024. Modification of plan before confirmation.
"1025. Confirmation hearing.
"1026. Confirmation of plan.
"1027. Payments.
"1028. Effect of confirmation.
"1029. Modification of plan after confirmation.
"1030. Revocation of order of confirmation.

"Subchapter I—Officers, Administration, and the Estate

"§ 1001. Definitions for this chapter

"In this chapter, 'disposable income' means income that is received by a debtor and that is not reasonably necessary to be expended for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

"§ 1002. Commencement of case

"(a) ELECTION BY DEBTOR.—A person that is eligible to be a small business debtor may commence a case under this chapter by filing a voluntary petition electing to be treated as a small business.

"(b) CONVERSION.—

"(1) CHAPTER 11 TO THIS CHAPTER.—Upon the motion of a party in interest, and after notice and hearing, the court may designate a debtor against whom an order for relief has been entered in a case under chapter 11 as a small business and order that the case be converted to a case under this chapter.

"(2) THIS CHAPTER TO CHAPTER 11.—Upon the motion of a party in interest, and after notice and a hearing, the court may determine that a person subject to an order for relief electing treatment under this chapter does not qualify as a small business, and that the case shall be converted to a case under chapter 11, 12, or 13.

"(3) COMPENSATION OF TRUSTEE.—Prior to the court's conversion of a case under this section, the court shall charge upon and require to be paid from the estate such compensation as the court finds reasonable under the circumstances to compensate the trustee appointed and serving under section 1003.

"§ 1003. Trustee

"(a) PERSON TO SERVE.—If the United States trustee has appointed a person under section 586(b) of title 28 to serve as a standing trustee in cases under this chapter and if that person qualifies as a trustee under section 322, that person shall serve as a trustee in any case filed under this chapter. If such a person has not been appointed, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case.

"(b) DUTIES.—The trustee shall—

"(1) perform the duties described in section 704 (2), (3), (5), (6), (7), and (9);

"(2) perform the duties described in section 1106(a) (3) and (4) if the court, for cause and on a request of a party in interest, the trustee, or the United States trustee, so orders;

"(3) appear and be heard at any hearing that concerns—

"(A) the value of property subject to a lien;

"(B) the operation of the business activity of the person by the debtor;

"(C) the filing of a plan and the approval of a disclosure statement;

"(D) confirmation of a plan;

"(E) modification of a plan after confirmation; or

"(F) the sale of property of the estate;

"(4) ensure that the debtor timely files a plan and disclosure statement;

"(5) ensure that the debtor commences making timely payments required by a confirmed plan;

"(6) if the debtor ceases to be a debtor-in-possession, perform the duties described in sections 704(8) and 1106(a) (1), (2), (6), and (7);

"(7) investigate the financial affairs of the debtor;

"(8) file and serve the report required by section 1029(d); and

"(9) file such motions as are appropriate under section 1029.

"§ 1004. Rights and powers of debtor

"Subject to such limitations as the court may prescribe, a debtor-in-possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties described in section 1106(a) (3) and (4), of a trustee serving in a case under this chapter, including operating the debtor's business activities.

"§ 1005. Removal of debtor as debtor-in-possession

"(a) ORDER FOR CAUSE.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor-in-possession if cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, is shown.

"(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor-in-possession.

"§ 1006. Property of the estate

"(a) PROPERTY INCLUDED.—Property of the estate includes, in addition to property described in section 541, all property of the kind specified in that section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, whichever comes first.

"(b) POSSESSION.—Except as provided in section 1005 or in a confirmed plan or order confirming a plan, a debtor shall remain in possession of all property of the estate.

"§ 1007. Conversion or dismissal

"(a) CONVERSION BY DEBTOR.—A debtor may convert a case under this chapter to a case under chapter 7 at any time if the debtor may be a debtor under that chapter. Any waiver of the right to convert under this subsection is unenforceable.

"(b) DISMISSAL BY DEBTOR.—On request of the debtor at any time, if the case has not been converted under section 706 or 1112, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

"(c) CONVERSION OR DISMISSAL AT REQUEST OF PARTY IN INTEREST.—

"(1) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 (if the debtor may be a debtor under this chapter) or may dismiss the case for cause.

"(2) CAUSE.—For purposes of paragraph (1), cause includes—

"(A) unreasonable delay or gross mismanagement by the debtor that is prejudicial to creditors;

"(B) nonpayment of any fees and charges required under chapter 123 of title 28;

"(C) failure to file a plan timely under section 1021;

"(D) failure to file a disclosure statement timely under section 1023;

"(E) failure to commence making timely payments required by a confirmed plan;

"(F) denial of confirmation of a plan under section 1026 or denial of a request made for additional time to filing another plan or a modification of a plan;

"(G) material default by a debtor with respect to a term of a confirmed plan;

"(H) revocation of an order of confirmation under section 1030 or denial of confirmation of a modified plan under section 1029;

"(I) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

"(J) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

"(d) COMPENSATION OF TRUSTEE.—Prior to the court's conversion or dismissal of a case under this section, the court shall charge upon and require to be paid from the estate such compensation as the court finds reasonable under the circumstances to compensate the trustee appointed and serving under section 1003.

"Subchapter II—The Plan

"§ 1021. Filing of plan

"The debtor shall file a plan not later than 90 days after the date of entry of the order for relief under this chapter, except that the court may, for cause shown, and after notice and hearing, shorten or extend that period if such shortening or extension is substantially justified.

"§ 1022. Contents of plan

"(a) REQUIRED CONTENTS.—The plan shall—

"(1) provide for the submission of all or such portion future earnings or other future

income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; and

"(2) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment.

"(b) ADDITIONAL CONTENTS.—Subject to subsections (a) and (c), the plan may—

"(1) designate a class or classes of unsecured claims, as provided in section 1122, but may not discriminate unfairly against any class so designated; however, the plan may treat claims for a consumer debt differently from other unsecured claims if another individual is liable on the consumer debt with the debtor;

"(2) modify the rights of holders of secured claims or holders of unsecured claims, or leave unaffected the rights of holders of any class of claims, but the plan may not modify a claim pursuant to section 506 of a person holding a primary or junior security interest in real property or a manufactured home (as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)) that is the debtor's principal residence, except that the plan may modify the claim of a person holding such a junior security interest that was undersecured at the time the interest attached to the extent that the interest remains undersecured;

"(3) provide for the curing or waiving of any default;

"(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

"(5) notwithstanding paragraph (2), provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

"(6) subject to section 365, provide for the assumption, rejection, or assignment of any executory contract or expired lease of the debtor not previously rejected under that section;

"(7) provide for the payment of all or part of a claim against the debtor from the property of the estate or property of the debtor;

"(8) provide for the sale of all or any part of the property of the estate among those having an interest in such property;

"(9) provide for payment of allowed secured claims, consistent with section 1026(a)(5), over a period exceeding the period permitted under section 1022(c);

"(10) provide for the vesting of property of the estate on confirmation of the plan or at a later time, in the debtor of any other entity; and

"(11) include any other appropriate provision not inconsistent with this title.

"(c) LIMITATION.—Except as provided in subsection (b)(5) and (9), the plan may not provide for payments over a period that is longer than 3 years unless the court for cause approves a longer period, but the court may not approve a period that is longer than 5 years.

"§ 1023. Postpetition disclosure and solicitation

"(a) PLAN AND DISCLOSURE STATEMENT.—In a case under this chapter, an acceptance or rejection of a plan may not be solicited after the commencement of the case from a holder of a claim or interest with respect to the claim or interest unless, at the time or before such solicitation, there is transmitted to the holder the plan or a summary of the plan and a written disclosure statement that includes information sufficient to show whether or not the plan meets the requirements of section 1026.

"(b) FORM.—The court may require that the summary of the plan and the disclosure statement employ a standard form approved by the court.

"§ 1024. Modification of plan before confirmation

"(a) IN GENERAL.—A debtor may modify a plan at any time before confirmation but may not modify the plan so that the plan as modified fails to meet the requirements of section 1022.

"(b) EFFECT.—After a debtor files a modification under this section, the plan as modified becomes the plan.

"(c) ACCEPTANCE.—A holder of a secured claim that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless—

"(1) the modification provides for a change in the rights of the holder under the plan before modification; and

"(2) the holder changes the holder's previous acceptance or rejection.

"§ 1025. Confirmation hearing

"(a) HEARING.—After expedited notice, the court shall hold a hearing on confirmation of the plan.

"(b) OBJECTION TO CONFIRMATION.—A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan.

"(c) OBJECTION TO DISCLOSURE OF INFORMATION.—A party in interest, the trustee, or the United States trustee may object to the disclosure of information that is required to be disclosed under section 1023.

"(d) CONCLUSION OF HEARING.—Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

"§ 1026. Confirmation of plan

"(a) CRITERIA.—Except as provided in subsection (b), the court shall confirm a plan if—

"(1) the plan complies with all applicable provisions of this title;

"(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

"(3) the plan has been proposed in good faith and not by any means forbidden by law;

"(4) the value of property to be distributed under the plan on account of each unsecured claim, as of the effective date of the plan, is not less than the amount that would be paid on the claim if the estate of the debtor were to be liquidated under chapter 7 on that date;

"(5) with respect to each allowed secured claim provided for by the plan—

"(A) the holder of the claim has accepted the plan;

"(B)(i) the plan provides that the holder of the claim will retain the lien securing the claim; and

"(ii) the value of property to be distributed by the trustee or the debtor under the plan on account of the claim, as of the effective date of the plan, is not less than the allowed amount of the claim; or

"(C) the debtor surrenders the property securing the claim to the holder;

"(6) the debtor will be able to make all payments under the plan and to comply with the plan;

"(7) except to the extent that the holder of a claim has agreed to a different treatment of the claim, the plan provides that—

"(A) with respect to a claim of a kind described in section 507(a) (1) or (2), on the effective date of the plan, the holder of the claim will receive on account of the claim cash equal to the allowed amount of the claim;

"(B) with respect to a class of claims of a kind described in section 507(a) (3), (4), (5), or (6), each holder of a claim of the class will receive—

"(i) if the class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claims; or

"(ii) if the class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claims; and

"(C) with respect to a claim of a kind described in section 507(a)(7), the holder of the claim will receive on account of the claim deferred cash payments, over a period ending on the later of—

"(i) the date of termination of the plan; or

"(ii) the date that is 6 years after the date of assessment of the claim,

of a value, as of the effective date of the plan, equal to the allowed amount of the claim; and

"(8) confirmation of the plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless liquidation or reorganization is proposed in the plan.

"(b) CONFIRMATION NOTWITHSTANDING NONCONFORMANCE OR OBJECTION.—If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, the court may not approve the plan unless, as of the effective date of the plan—

"(1) the value of the property to be distributed under the plan on account of the claim is not less than the amount of the claim; or

"(2) the plan provides that all of the debtor's projected disposable income to be received in the 3-year period, or such longer period as the court may approve under section 1022(c), beginning on the date on which the first payment is due under the plan, will be applied to make payments under the plan.

"§ 1027. Payments

"(a) RETENTION BY TRUSTEE.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan.

"(b) DISTRIBUTION FOLLOWING CONFIRMATION.—If a plan is confirmed, the trustee shall distribute in accordance with the plan payments and funds retained pursuant to subsection (a).

"(c) RETURN FOLLOWING NONCONFIRMATION.—If a plan is not confirmed, the trustee shall return any payments and funds retained pursuant to subsection (a), after deducting—

"(1) any unpaid claim allowed under section 503(b); and

"(2) if a standing trustee is serving in the case, the percentage fixed for the standing trustee under section 1003.

"(d) PAYMENTS PRECEDING PAYMENTS TO CREDITORS.—Before or at the time of each payment to creditors under the plan, there shall be paid—

"(1) any unpaid claim of a kind described in section 507(a)(1); and

"(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee under section 1003.

"(e) PAYMENTS TO CREDITORS.—Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

"§ 1028. Effect of confirmation

"(a) PERSONS BOUND.—Except as provided in subsection (d) (2) and (3), a confirmed plan binds the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner of the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

"(b) VESTING OF PROPERTY.—Except as otherwise provided in the plan or order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

"(c) FREEDOM OF PROPERTY FROM CLAIMS AND INTERESTS.—Except as provided in subsection (d) (2) and (3), and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and general partners of the debtor.

"(d) DISCHARGE OF DEBTOR.—

"(1) ON COMPLETION OF PAYMENTS.—As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1022(b) (5) or (9), unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 or disallowed under section 502, except any debt—

"(A) provided for under section 1022(b) (5) or (9); or

"(B) of the kind specified in section 523(a).

"(2) WHEN PAYMENTS ARE NOT COMPLETED.—At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan if—

"(A) the debtor's failure to complete such payments is due to circumstances for which the debtor should not be justly held accountable;

"(B) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed secured claim is not less than the amount that would have been paid on the claim if the estate of the debtor had been liquidated under chapter 7 on that date; and

"(C) modification of the plan under section 1029 is not practicable.

"(3) EFFECT.—A discharge granted under paragraph (2) discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502, except any debt—

"(A) provided for under section 1022(b)(5) or (9); or

"(B) of a kind specified in section 523(a).

"(4) REVOCATION.—On request of a party in interest made before the date that is 1 year after the date on which a discharge under this section is granted, and after notice and hearing, the court may revoke the discharge if—

"(A) the discharge was obtained by the debtor through fraud; and

"(B) the requesting party did not know of the fraud until after the discharge was granted.

"(e) TERMINATION OF SERVICES OF TRUSTEE.—After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

"§ 1029. Modification of plan after confirmation

"(a) IN GENERAL.—At any time after confirmation of a plan but before the completion of payments under the plan, the plan may be modified, on request of the debtor, the trustee, or the holder of any allowed unsecured claim, to—

"(1) increase or reduce the amount of payments of claims of a particular class provided for by the plan;

"(2) extend or reduce the time for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of the claim other than under the plan.

"(b) APPLICABILITY OF REQUIREMENTS.—Sections 1022 (a) and (b) and 1024 and the requirements of section 1025(a) apply to a modification under subsection (a).

"(c) LIMITATION.—A plan modified under subsection (a) may not provide for payments over a period that expires after 3 years after the date on which the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after 5 years after that date.

"(d) REPORT.—Not later than 60 days after each anniversary of the confirmation of the plan, the trustee shall file a report with the court, and serve a copy on all creditors requesting service of a copy of the report, setting forth—

"(1) the amount of distributions made to creditors during the preceding year;

"(2) a description of the debtor's compliance with the provisions of the plan during the preceding year;

"(3) a description of the debtor's disposable income in relation to the continued ability to comply with the terms of the confirmed plan; and

"(4) any modifications to the plan that are necessary to ensure the reorganization of the debtor and the payment to creditors of all disposal income.

"§ 1030. Revocation of order of confirmation

"(a) REVOCATION FOR FRAUD.—On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1028, and after notice and a hearing, the court may revoke the order if the order was procured by fraud.

"(b) DISPOSITION OF CASE AFTER REVOCATION.—If the court revokes an order of confirmation under subsection (a), the court shall dispose of the case under section 1007, unless, within a time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1029.".

(d) TECHNICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended in the table of chapters by inserting after the item relating to chapter 9 the following new item:

"10. Small Businesses ..... 1001".

(2) CROSS-REFERENCES IN TITLE 11, UNITED STATES CODE.—Title 11, United States Code, is amended—

(A) in section 321(a) by inserting "10," after "7," each place it appears;

(B) in section 322(a) by inserting "1005" after "703,";

(C) in section 326(b)—

(i) by striking "12 or 13" and inserting "10, 12, or 13"; and

(ii) by striking "1202(a) or 1302(a)" and inserting "1005, 1202(a), or 1302(a)";

(D) in section 327—

(i) in subsection (b) by inserting "1005," after "721,"; and

(ii) in subsection (c) by inserting "10," after "7,";

(E) in section 329(b)(1)(B) by inserting "10," after "chapter";

(F) in section 330(c) by striking "12 or 13" and inserting "10, 12, or 13";

(G) in section 346—

(i) in subsection (b) by inserting "10," after "7,";

(ii) in subsection (g)(1)(C) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (i)(1) by inserting "10," after "7,";

(H) in section 347—

(i) in subsection (a)—

(I) by inserting "1027," after "726,"; and

(II) by inserting "10," after "7,"; and

(ii) in subsection (b)—

(I) by inserting "10," after "9,"; and

(II) by inserting "1026," after "943(b),";

(I) in section 348—

(i) in subsections (b), (c), and (e) by inserting "1009," after "706," each place it appears; and

(ii) in subsection (d) by inserting "1009," after "section";

(J) in section 362(c)(2)(C) by inserting "10" after "9,";

(K) in section 363—

(i) in subsection (c)(1) by inserting "1006," after "721,"; and

(ii) in subsection (l) by inserting "10," after "chapter";

(L) in section 364(a) by inserting "1006, 1007," after "721,";

(M) in section 365—

(i) in subsections (d)(2) and (g) (1) and (2) by inserting "10," after "9," each place it appears; and

(ii) in subsection (g)(2) (A) and (B) by inserting "1009," after "section" each place it appears;

(N) in section 502(g) by inserting "10," after "9,";

(O) in section 523(a) by inserting "1028(d)," after "727,";

(P) in section 524—

(i) in subsections (a)(1), (c)(1), and (d) by inserting "1028(d)," after "727," each place it appears; and

(ii) in subsection (a)(3) by inserting "1028(d)," after "523,";

(Q) in section 546(a)(1) by inserting "1005," after "702,";

(R) in section 557(d)(3) by inserting "1005," after "703,";

(S) in section 706—

(i) in subsection (a)—

(I) by inserting "10," before "11,"; and

(II) by inserting "1009," after "section"; and

(ii) in subsection (c) by striking "12 or 13" and inserting "10, 12, or 13";

(T) in section 726(b) by inserting "1009," after "chapter under section";

(U) in section 1106(a)(5) by inserting "10," after "7,";

(V) in section 1306(a) (1) and (2) by inserting "10," after "7," each place it appears; and

(W) in section 1307—

(i) in subsection (b) by inserting "1009," after "706,";

(ii) in subsection (d) by striking "11 or 12" and inserting "10, 11, or 12"; and

(iii) in subsection (e) by inserting "10," after "7,".

(3) BANKRUPTCY RULES.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act shall apply to cases

filed under chapter 10 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by this Act.

(4) AMENDMENT OF TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended—

(A) in section 157(b)(2)(B) by inserting "10," after "chapter";

(B) in section 586—

(i) in subsection (a)—

(I) in paragraph (1)(C)—

(aa) by striking "12 and 13" and inserting "10, 12, and 13"; and

(bb) by inserting "1025, 1029," after "sections"; and

(II) in paragraph (3) in the matter preceding subparagraph (A), by inserting "10," after "7,"; and

(C) in subsections (b), (d), and (e) by striking "12 or 13" each place it appears and inserting "10, 12, or 13"; and

(D) in section 1930(a)—

(i) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and

(ii) by inserting after paragraph (2) the following new paragraph:

"(3) For a case commenced under chapter 10 of title 11, $600.".

(5) AMENDMENT OF THE BANKRUPTCY, JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986.—Section 301 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (100 Stat. 3118) is amended in subsections (d) and (e) by inserting "10," after "7," each place it appears.

(e) APPLICATION OF CHAPTER 10 OF TITLE 11.—

(1) SELECTION OF DEMONSTRATION DISTRICTS.—Not later than 90 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall—

(A) select 8 judicial districts in which chapter 10 of title 11, United States Code, shall be effective for a period of 3 years; and

(B) identify those districts by notice in the Federal Register.

(2) EFFECTIVE PERIOD.—Chapter 10 of title 11, United States Code, shall become effective only in the 8 judicial districts selected under paragraph (1), beginning on the date that is 90 days after the date of enactment of this Act and ending on the date that is 3 years after that date.

(3) REPEAL.—(A) Chapter 10 of title 11, United States Code, is repealed on the date that is 3 years after the date that is 90 days after the date of enactment of this Act. All cases commenced or pending under that chapter and all matters and proceedings in or relating to those cases shall be conducted and determined under that chapter as if the chapter had not been repealed. The substantive rights of parties in connection with those cases, matters, and proceedings as if the chapter had not been repealed.

(B) The Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall prepare and report to the Senate and the House of Representatives, respectively, not later than 90 days before the repeal date described in subparagraph (A), legislation proposing such technical amendments as may be necessary or appropriate at that time in view of the repeal made by subparagraph (A).

SEC. 206. SUPPLEMENTAL PERMANENT INJUNCTIONS.

Section 524 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue an injunction to supplement the injunctive effect of a discharge under this section.

"(B) An injunction may be issued under subparagraph (A) to enjoin persons and governmental units from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery of, on, or with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal action as is expressly allowed by the injunction or plan of reorganization.

"(2)(A) If the requirements of subparagraph (B) are met, after entry of an injunction under paragraph (1) any proceeding that involves the validity, application, construction, or modification of the injunction or of this subsection with respect to the injunction may be commenced only in the district court in which the injunction was entered, and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

"(B) The requirements of this subparagraph are that—

"(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

"(I) is to be funded in whole or in part by the securities of one or more debtors involved in the plan of reorganization and by the obligation of such debtor or debtors to make future payments;

"(II) is to own, or by the exercise of rights granted under the plan could own, a majority of the voting shares of—

"(aa) each such debtor;

"(bb) the parent corporation of each such debtor; or

"(cc) a subsidiary of each such debtor that is also a debtor; and

"(III) is to use its assets or income to pay claims and demands; and

"(ii) the court finds that—

"(I) the debtor may be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

"(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

"(III) pursuit of such demands outside the procedures prescribed by the plan may threaten the plan's purpose to deal equitably with claims and future demands; and

"(IV) as part of the process of seeking approval of the plan of reorganization, a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan.

"(3)(A) If the requirements of paragraph (2)(B) are met and the order approving the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization proceedings, then after the time for appeal of the order that issues or affirms the plan of reorganization—

"(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

"(ii) no entity that is a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against it by reason of its becoming such a transferee or successor; and

"(iii) no entity that makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making such loan, be liable with respect to any claim or demand made against it, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

"(B) Subparagraph (A) is not intended to—

"(i) imply that such an entity would, if this paragraph were not applicable, have liability by reason of any of the acts described in subparagraph (A);

"(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance; or

"(iii) relieve any debtor of its obligation to comply with the terms of the plan of reorganization or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

"(4)(A) Subject to subparagraph (B), an injunction issued under paragraph (1) shall be valid and enforceable against all persons and governmental units that it addresses.

"(B) With respect to a demand that is made subsequent to the confirmation of a plan against any debtor or trust that is the subject of an injunction issued under paragraph (1), the injunction shall be valid and enforceable if, as part of the proceedings leading to its issuance, the court appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert such a demand.

"(5) In this subsection, the term 'demand' means a demand for payment, present or future, that—

"(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

"(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by an injunction issued under paragraph (1); and

"(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

"(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

"(7) This subsection governs any injunction of the nature described in paragraph (1)(B) entered before or after the date of enactment of this subsection.

"(8) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of enactment of this subsection.

"(9)(A) In the event a claimant has obtained a judgment against other defendants in any action arising out of the same conduct or events that gave rise to the injunction issued under paragraph (1), such other defendants will be entitled to a setoff in accordance with appropriate setoff procedures in the amount of any full or partial payment to that claimant by a trust that is the subject of the injunction issued under paragraph (1).

"(B) In the event a claimant has obtained a judgment against other defendants in such actions but has not received any payment from a trust that is the subject of the injunction issued under paragraph (1), upon satisfaction of the judgment such other defendants shall be subrogated to the rights of the claimant with respect to any actual payment by the trust.

"(C) If the claimant is entitled to receive additional payments from such trust, after a

previous partial payment has been made, such other defendants in any action described in subparagraph (A) shall—

"(i) after the claimant receives such payment be entitled to an additional setoff to the extent appropriate setoff procedures would allow in the amount of such payment; and

"(ii) upon satisfaction of the judgment, be subrogated to the rights of the claimant with respect to any future payment by the trust.

"(D) The court which confirms the plan of reorganization which gives rise to the injunction issued under paragraph (1) shall take all actions necessary to ensure that any claimant does not recover damages greater than the amount of the judgment against such other defendants.".

SEC. 207. EXEMPTION.

Section 109(b)(2) of title 11, United States Code, is amended by inserting after "homestead association" the following: "a small business investment company licensed by the Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958 (15 U.S.C. 681 (c) and (d)),".

SEC. 208. PRE-MERGER NOTIFICATION.

Section 363(b)(2) of title 11, United States Code, is amended by amending subparagraphs (A) and (B) to read as follows:

"(A) notwithstanding subsection (a) of that section, the notification on behalf of the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b)(1) of that section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of that section; or

"(ii) by the court, after notice and hearing.".

SEC. 209. STATUS CONFERENCE.

Section 1121 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of this section, the court, on its own motion or on the motion of any party in interest, may hold a status conference regarding any case under this chapter, after notice to creditors and other parties in interest. At such a conference or any subsequent status conference set by the court, the court may issue an order, consistent with this title, prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including orders that—

"(1) set a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(2) set a date by which the debtor, or trustee if one has been appointed, shall confirm a plan;

"(3) set the date by which a party in interest other than a debtor may file a plan;

"(4) fix the notice to be provided regarding the hearing on approval of the disclosure statement;

"(5) provide that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan;

"(6) direct the use of standard-form disclosure statements, plans, or other forms that have been adopted by the court; and

"(7) set the date by which the debtor must accept or reject an executory contract.".

SEC. 210. AIRPORT LEASES.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) Notwithstanding paragraphs (1), (2), and (4), and subject to subparagraphs (B) and (C) of this paragraph, if the trustee in a case under any chapter of this title does not assume or reject an unexpired lease or executory contract with an airport operator under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility within 180 days after the date of the order for relief, or within such additional time as the court sets under subparagraph (B) during such 180-day period, such lease or executory contract is deemed rejected, and the trustee shall immediately surrender the airport terminal, gate, or related facility to the airport operator.

"(B)(i) The court may enter an order extending beyond 180 days after the date of the order for relief the time for assumption or rejection of an unexpired lease or executory contract described in subparagraph (A) only after finding that such an extension of time does not cause substantial harm to the airport operator or to airline passengers.

"(ii) In making the determination of substantial harm, the court shall consider, among other relevant factors—

"(I) the level of use of airport terminals, gates, or related facilities subject to the unexpired lease or executory contract;

"(II) the existence of competing demands for the use of the airport terminals, gates, or related facilities;

"(III) the size and complexity of the case; and

"(IV) air carrier competition at the airport.

"(iii) The burden of proof for establishing cause for an extension of time under this subparagraph shall be on the trustee.

"(iv) An order entered under this subparagraph shall be without prejudice to the right of a party in interest to request, at any time, a shortening or termination of the extension of time granted under this subparagraph.".

(b) APPLICATION OF AMENDMENT.—The amendment made by subsection (a) shall apply in all proceedings commenced on or after January 1, 1992. In a proceeding commenced on or after January 1, 1992, that is pending on the date of enactment of this Act, the 120-day period provided in section 365(d)(5)(A) of title 11, United States Code, as added by subsection (a), shall commence on the date of enactment of this Act.

SEC. 211. SINGLE ASSET REAL ESTATE.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by section 205(a), is amended—

(1) by redesignating paragraphs (54), (55), (56), (57), (58), (59), (60), (61), (62), and (63) as paragraphs (55), (56), (57), (58), (59), (60), (61), (62), (63), and (64); and

(2) by inserting after paragraph (53) the following new paragraph:

"(54) 'single asset real estate' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto;".

(b) AUTOMATIC STAY.—Section 362 of title 11, United States Code, is amended—

(1) in subsection (d)—

(A) in paragraph (1) by striking "or" at the end;

(B) in paragraph (2) by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)—

"(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

"(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate, which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate."; and

(2) by adding at the end the following new subsection:

"(i)(1) Upon request of a creditor whose claim is secured by an interest in single asset real estate, if the interest has more than de minimis value, the court shall issue an order granting limited relief from the stay provided under subsection (a) to permit the creditor to continue a foreclosure proceeding commenced before the commencement of the case up to, but not including, the point of sale.

"(2) An order under paragraph (1) shall not issue before the date that is 30 days after the date of entry of the order for relief, but thereafter shall issue promptly after such a request.

"(3) A hearing shall not be required for the granting of relief under paragraph (1) unless the debtor files an objection to the request and shows the court unusual circumstances requiring such a hearing.".

SEC. 212. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114(e) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(3) Notwithstanding any other provision of this title, if there are not sufficient unencumbered assets available to make a timely payment required by paragraph (1), an order approving the use, sale, or lease of cash collateral or the obtaining of credit or incurring of debt shall require the debtor to use such cash collateral, credit, or incurring of debt to make the payment.".

SEC. 213. AIRCRAFT EQUIPMENT, VESSELS AND ROLLING STOCK EQUIPMENT.

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is an air carrier (as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)); or

"(B) a documented vessel (as defined in section 30101(1) of title 46, United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) If the trustee makes an agreement of the kind described in subsection (a)(1)(A) with respect to a security agreement, lease, or conditional sale contract, any costs and expenses incurred by the secured party, lessor, or conditional vendor to remedy the failure of the trustee to perform the obligations of the estate to maintain or return equipment in accordance with the security agreement, lease, or conditional sale contract constitute administrative expenses under section 503(b)(1)(A).

"(d) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(c) APPLICATION OF AMENDMENTS.—(1) The amendment of section 1110(a) and section 1168(a) of title 11, United States Code, made by subsections (a) and (b) shall not apply to bankruptcy proceedings commenced prior to the date of enactment of this Act.

(2) The amendment of section 1168(a) of title 11, United States Code, made by subsection (b) shall take effect with respect to equipment that is first placed in service after the date of enactment of this Act, including rolling stock equipment that is substantially rebuilt after that date and accessories used on such equipment.

SEC. 214. UNEXPIRED LEASES OF PERSONAL PROPERTY IN CHAPTER 11 CASES.

Section 365(d)(3) of title 11, United States Code, is amended in the first sentence by inserting after "real property" the following: "and, in a case under chapter 11, under an unexpired lease of personal property".

SEC. 215. PROTECTION OF ASSIGNEES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES APPROVED BY COURT ORDER IN CASES REVERSED ON APPEAL.

Section 365(d)(3) of title 11, United States Code, is amended by adding at the end the following new subsection:

"(p) The reversal or modification on appeal of an authorization under this section of an assignment of an executory contract or unexpired lease does not affect the validity of the assignment to an entity that obtained the assignment in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and the assignment were stayed pending appeal.".

SEC. 216. RETURN OF GOODS.

(a) LIMITATION ON AVOIDING POWERS.—Section 546 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines, after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the value of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

(b) SETOFF.—Section 553(b)(1) is amended by inserting "546(h)," after "365(h)(2),".

SEC. 217. INDENTURE TRUSTEE COMPENSATION.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

(B) by inserting after subparagraph (C) the following new subparagraph;

"(D) an indenture trustee;"; and

(C) in subparagraph (E), as redesignated by subparagraph (A), by striking "an indenture trustee,"; and

(2) in paragraph (5) by striking "for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title" and inserting "for necessary services".

SEC. 218. PROCEEDS OF MONEY ORDER AGREEMENTS.

Section 541(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(4) any interest in cash or cash equivalents (within the meaning of section 363(a)) that constitute proceeds of a sale by the debtor of a money order that is made—

"(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

"(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor).".

TITLE III—INDIVIDUAL DEBTORS

SEC. 301. BANKRUPTCY PETITION PREPARERS.

(a) AMENDMENT OF CHAPTER 1.—(1) Chapter 1 of title 11, United States Code, is amended by adding at the end the following new section:

"SEC. 110. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

"(a) DEFINITION.—In this section—

"(1) the term 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) the term 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) SIGNING OF DOCUMENTS.—(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(c) FURNISHING OF IDENTIFYING NUMBER.—(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies the individuals who prepared the document.

"(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

"(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(d) FURNISHING OF COPY TO THE DEBTOR.—(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

"(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

"(e) AUTHORIZATION TO EXECUTE DOCUMENTS.—(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor unless—

"(A) the debtor has first given the preparer written authorization to execute the document; and

"(B) the preparer is otherwise authorized by law to execute the document.

"(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).

"(f) DAMAGES.—If a bankruptcy case or related proceeding is dismissed because of the negligence or intentional disregard of this title or the bankruptcy rules by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

"(1) the debtor's actual damages;

"(2) the greater of—

"(A) $2,000; or

"(B) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

"(3) reasonable attorneys' fees and costs in moving for damages under this subsection.

"(g) INJUNCTIVE RELIEF.—

"(1) IN GENERAL.—A debtor for whom a bankruptcy petition preparer has prepared as document for filing, the United States trustee in the district in which the bankruptcy petition preparer resides or has a principal place of business, or the United States trustee in the district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

"(2) CONDUCT.—(A) In an action under paragraph (1), if the court finds that—

"(i) a bankruptcy petition preparer has—

"(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

"(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

"(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

"(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

"(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in clause (i) (I), (II), or (III) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

"(3) ATTORNEY'S FEE.—The court shall award to a debtor who brings a successful action under this subsection reasonable attorney's fees and costs of the action.

"(i) UNAUTHORIZED PRACTICE OF LAW.—Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.".

(2) The chapter analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following new item:

"110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.".

(b) AMENDMENT OF TITLE 18, UNITED STATES CODE.—(1) Chapter 9 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 156. Willful disregard of bankruptcy law or rule.

"(a) DEFINITIONS.—In this section—

"(1) the term 'bankruptcy petition preparer' means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

"(2) the term 'document for filing' means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

"(b) OFFENSE.—If a bankruptcy case or related proceeding is dismissed because of a willful attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Bankruptcy Rules, the bankruptcy petition preparer shall be fined $5,000.".

(2) The chapter analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following new item:

"156. Willful disregard of bankruptcy law or rule.".

(c) Section 152 of title 18, United States Code, is amended by—

(1) designating each of the presently unnumbered paragraphs as "(a)" through "(J)" respectively;

(2) inserting in the newly designated paragraph (a) "or the United States Trustee" after the words "or from creditors", and

(3) inserting in the newly designated paragraph (i) "or the United States Trustee" after the words "or other officer of the court".

(d) Section 153 of title 18, United States Code is amended by deleting the words "which came into his charge as trustee, custodian, marshal, or other officer of the court,", and by amending the catch line and the item in the table of sections to read

"§ 153. Embezzlement against estate".

(e) Section 154 of title 18, United States Code, is amended by—

(1) designating each of the presently unnumbered paragraphs as "(a)" through "(c)" respectively; and

(2) deleting the hyphen at the end of newly designated paragraph (b) and inserting in lieu thereof "; or"

(3) inserting a new paragraph (c) and redesignating paragraph (c) as paragraph (d):

"(c) Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by the United States trustee—"

(4) deleting in subsection (d) "$500" and inserting in lieu thereof "$5,000".

SEC. 302. WHO MAY BE A DEBTOR.

Section 109(e) of title 11, United States Code, is amended to read as follows:

"(e)(1) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of less than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13.

"(2) An individual with regular income that owes, on the date of filing the petition, noncontingent, liquidated debts of more than $1,000,000, or an individual with regular income and such individual's spouse, except a stock broker or commodity broker, may be a debtor under chapter 13 if there is no objection raised on the record by any creditor prior to the date that is 10 days after the date on which the meeting of creditors pursuant to section 341 is concluded, and no order of confirmation shall be entered prior to the date by which such an objection is required to be made.".

SEC. 303. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the United States trustee shall orally examine the debtor under oath and make recommendations on a preserved record regarding the debtor's knowledge of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title;

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d);

"(5) the debtor's duties under section 521;

"(6) the potential penalties and fines for committing fraud or other abuses of this title; and

"(7) the consequences of substantial abuse under section 707(b).".

SEC. 304. AUTOMATIC STAY.

Section 362(e) of title 11, United States Code, is amended by adding at the end the following new sentence: "In no event shall the final hearing on a request under subsection (d) be concluded later than 60 days after the filing of the request, except upon a finding of good cause by the court.".

SEC. 305. EXEMPTIONS.

Section 522(a) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (1) and redesignating that paragraph as paragraph (2);

(2) by inserting before paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(1) 'antique', for purposes of subsection (d), means an item that was more than 100 years old at the time it was acquired by the debtor, including such an item that has been repaired or renovated without changing its original form or character;";

(3) by redesignating paragraph (2), as designated prior to the date of enactment of this Act, as paragraph (4); and

(4) by inserting after paragraph (2), as redesignated by paragraph (1), the following new paragraph:

"(3) 'household goods', for purposes of subsection (d), means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the debtor and the debtor's dependents, but does not include—

"(A) works of art;

"(B) electronic entertainment equipment (except to the extent of 1 television and 1 radio);

"(C) antiques; and

"(D) jewelry other than wedding rings.".

SEC. 306. EFFECT OF DISCHARGE.

Section 524(d) of title 11, United States Code, is amended—

(1) by striking "(d) In" and inserting "(d)(1) In";

(2) by striking "(1) inform" and inserting "(A) inform";

(3) by striking "(A) that" and inserting "(i) that";

(4) by striking "(B) of" and inserting "(ii) of";

(5) by striking "(i) an" and inserting "(I) an";

(6) by striking "(ii) a" and inserting "(II) a";

(7) by striking "(2) determine" and inserting "(B) determine";

(8) in the third sentence of paragraph (1), as designated by paragraph (1) of this section, by striking "If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then" and inserting "Prior to granting a discharge, if the debtor desires to make an agreement of the kind specified in subsection (c)(6),"; and

(9) by adding at the end the following new paragraph:

"(2) If a debtor fails to attend a hearing under paragraph (1) concerning a reaffirmation agreement—

"(A) the hearing shall be rescheduled;

"(B) the court shall cause the debtor to be given written notice that failure to attend the rescheduled hearing will cause the reaffirmation agreement to be deemed void; and

"(C) if the debtor fails to attend the rescheduled hearing, a discharge shall be granted without further delay.".

SEC. 307. PREFERENCES.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "property" and inserting "property, or with respect to which the creditor has taken all necessary steps to perfect under State law and the failure to perfect within 20 days is due solely to the operations of a governmental unit;".

SEC. 308. SUBSTANTIAL ABUSE.

Section 707 of title 11, United States Code, is amended—

(1) by adding at the end the following new subsection:

"(c)(1) Nothing in this section prohibits a party in interest from providing information concerning the debtor's assets, liabilities, or financial affairs to the United States Trustee.

"(2) The United States trustee shall provide the debtor with—

"(A) notice that a party in interest has provided the United States trustee with information pursuant to subsection (c)(1), including the identities of all sources of information provided;

"(B) a copy of all documents presented to the United States trustee pursuant to subsection (c)(1); and

"(C) an opportunity to respond to the issues raised by a party in interest pursuant to subsection (c)(1).."; and

(2) in subsection (b) by inserting after the first sentence the following new sentence: "The court shall find that a petition constitutes a substantial abuse of this chapter if the petition was filed in bad faith or if the debtor, without substantial hardship, has the ability to pay the debtor's debts as they become due.".

SEC. 309. CONVERSION OR DISMISSAL.

Section 1307 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(g) The clerk of the court shall give notice to all creditors not later than 30 days after the entry of an order of conversion or dismissal.".

SEC. 310. CONTENTS OF PLAN.

Section 1322(b)(2) of title 11, United States Code, is amended by striking "claims;" and inserting "claims, but the plan may not modify a claim pursuant to section 506 of a person holding a primary or a junior security interest in real property or a manufactured home (as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6)) that is the debtor's principal residence, except that the plan may modify the claim of a person holding such a junior security interest that was undersecured at the time the interest attached to the extent that the interest remains undersecured;".

SEC. 311. PAYMENTS.

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

SEC. 312. STAY OF ACTION AGAINST CODEBTOR.

Section 1301 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking "or" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(4) the claim is for an amount valued at not greater than $25,000, and such relief is not a substantial impediment to an effective reorganization by the debtor, and unless the codebtor has demonstrated an inability to pay such claim or a substantial portion of such claim."; and

(2) by adding at the end the following new subsection:

"(e) If the relief sought by the creditor pursuant to subsection (c)(4) is granted by the court, the codebtor shall by subrogation have the same rights as the creditor, under this title, against the debtor to the extent of the amount of relief obtained from the codebtor. Pending any delay in obtaining relief from the codebtor, after the court order, payment by the debtor shall continue to be paid to the creditor, but subject to the developing subrogation rights of the codebtor.".

SEC. 313. PLAN CONTENTS.

Section 1322 of title 11, United States Code, as amended by section 202(d), is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e); and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding State law and subsection (b)(2), and whether or not a claim is matured or reduced to judgment, a debtor who at the time of filing a petition under this title possesses any legal or equitable interest, including a right of redemption, in real property securing a claim—

"(1) may cure a default and maintain payments on the claim pursuant to subsection (b) (3) or (5); or

"(B) in a case in which the last payment on the original payment schedule for the claim is due before the date on which the final payment under the plan is due, may provide for the payment of the claim pursuant to section 1325(a)(5).".

TITLE IV—MISCELLANEOUS

SEC. 401. DELAY OF REPEAL OF CHAPTER 12 (FAMILY FARMERS).

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note; 100 Stat. 3124) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

SEC. 402. DOLLAR ADJUSTMENTS.

(a) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000"; and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(b) PRIORITIES.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000";

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000"; and

(3) in paragraph (6) by striking "$900" and inserting "$1,800".

(c) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000";

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400";

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400"; and

(B) by striking "$4,000" and inserting "$8,000";

(4) in paragraph (4) by striking "$500" and inserting "$1,000";

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800"; and

(B) by striking "$3,750" and inserting "$7,500";

(6) in paragraph (6) by striking "$750" and inserting "$1,500";

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000"; and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(d) APPOINTMENT OF EXAMINER IN CERTAIN CIRCUMSTANCES.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 403. TRUSTEE COMPENSATION.

Section 326(a) of title 11, United States Code, is amended to read as follows:

"(a) In a case under chapter 7 or chapter 11, the court may allow reasonable compensation under section 330 for the trustee's services, payable after the trustee renders such services, computed as a percentage of all monies disbursed or turned over in the case

by the trustee to parties in interest, excluding the debtor for the debtor's exemptions, but including holders of secured claims, as follows:

"(1) In a case in which such moneys do not exceed $1,000,000, reasonable compensation may be 25 percent of the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, and 5 percent of any amount in excess of $50,000.

"(2) In a case in which such moneys exceed $1,000,000, reasonable compensation, in addition to that prescribed in paragraph (1), may be 3 percent of the excess of those moneys over $1,000,000, but the court may allow additional compensation to the trustee for exceptional services not to exceed 25 percent of the compensation otherwise due.".

SEC. 404. TAX PROVISIONS.

(a) SPECIAL TAX PROVISIONS.—Section 346 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(k) A trustee or debtor in possession shall establish and maintain a separate bank account for post-petition taxes that are required to be withheld or collected from third parties, and shall also make deposit of such taxes therein when withheld or collected and remit such taxes to a governmental unit at the time and in the manner required under Federal, State, or local government law, unless ordered by the court to do otherwise.".

(b) AUTOMATIC STAY.—Section 362(b)(9) of title 11, United States Code, is amended to read as follows:

"(9) under subsection (a), of an audit by a governmental unit to determine tax liability, of the issuance to the debtor by a governmental unit of a notice of tax deficiency, of a demand for tax returns, or of an assessment of an uncontested or agreed upon tax liability;".

(c) CONVERSION OR DISMISSAL OF CHAPTER 11 CASE.—Section 1112(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(d) CONFIRMATION OF PLAN.—Section 1129(a)(9)(C) of title 11, United States Code, is amended by striking "such claim, of a value" and inserting "such claim, or, if a claim has not been assessed, after the date of confirmation of the claim, of a value".

(e) CONVERSION OR DISMISSAL OF CHAPTER 12 CASE.—(1) Section 1208(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (8);

(B) by striking a period at the end of paragraph (9) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(10) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by the laws applicable to such taxes subsequent to the date of the order for relief under this chapter.".

(2) Section 1307(c) of title 11, United States Code, is amended—

(A) by striking "or" at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(11) failure to file tax returns or pay taxes due to be paid to a governmental unit within the time and in the manner required by laws applicable to such taxes subsequent to the date of order for relief under this chapter.".

SEC. 405. CREDITOR COMMITTEE COMPENSATION.

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a committee representing creditors or equity security holders appointed under section 1102 in the performance of its powers and duties under that section.".

SEC. 406. JUDICIAL CONFERENCE REPORT.

Not later than 180 days after the date of enactment of this Act, the Judicial Conference of the United States shall produce and submit to the appropriate committees of Congress a report containing a description of—

(1) the efforts of the Federal judiciary to automate and computerize the Federal bankruptcy courts;

(2) the types of information that are currently available to Congress and the public regarding the number, size, and types of bankruptcy cases filed in the Federal courts;

(3) the types of additional information that the Federal judiciary believes are necessary and desirable to enhance its ability to manage the affairs of the bankruptcy system; and

(4) the projected timetable for being able to supply those additional types of information to Congress and the public in the future.

SEC. 407. SERVICE OF PROCESS.

Rule 7004(b)(3) of the Bankruptcy Rules is amended—

(1) by inserting ", by certified or registered mail," after "complaint"; and

(2) by inserting ", by certified or registered mail," after "copy".

SEC. 408. PROFESSIONAL FEES.

Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2)(A) In determining an amount of reasonable compensation to be awarded under paragraph (1)(A), the court—

"(i) may, on its motion or on the motion of the United States trustee or any party in interest, award compensation that is less than the amount of compensation that is requested; and

"(ii) shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(I) the time spent on such services;

"(II) the rates charged for such services;

"(III) whether the services were necessary in the administration of or beneficial toward the completion of a case under this title; and

"(IV) the total value of the estate and the amount of funds or other property available for distribution to all creditors both secured and unsecured.

"(B) In calculating compensation for services for the purpose of subparagraph (A)(ii), the court shall consider—

"(i) whether tasks were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed; and

"(ii) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in nonbankruptcy cases.

"(3) The court shall not allow compensation for duplication of services or for services that are not either reasonably likely to benefit the debtor's estate or necessary in the administration of the case.

"(4)(A) The court shall take into account the amount and timing of interim compensation, if any awarded and paid, in awarding final compensation.

"(B) If interim compensation was awarded and paid in an amount that exceeds the amount the court awards as final compensation, the court may order the return of the excess to the trustee or other entity that paid it.

(5) In determining the amount to be awarded for the preparation of fee applications, the court shall recognize the difference between the cost of professional services and services for the preparation of fee applications. The costs awarded for the preparation of fee applications, shall be reasonable and based on the level of skill required.

SEC. 409. TRUSTEE DUTIES.

Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural and substantive guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly except when circumstances warrant different treatment), applications for compensation and reimbursement filed under section 330 of title 11; and

"(ii) filing with the court comments with respect to such an application and, when the United States Trustee deems it to be appropriate, objections to any such application.

SEC. 410. SEVERABILITY.

If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

SEC. 411. EFFECTIVE DATE.

Except as provided in sections 205(e)(2) and 210(b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

TITLE V—TECHNICAL CORRECTIONS

SEC. 501. TITLE 11, UNITED STATES CODE.

Title 11, United States Code, is amended—

(1) in the table of chapters by striking the item relating to chapter 15;

(2) in section 101—

(A) by striking paragraph (39);

(B) by redesignating paragraphs (40) through (51) as paragraphs (41) through (52), respectively;

(C) by redesignating paragraphs (36) through (38) as paragraphs (37) through (39), respectively;

(D) by inserting after paragraph (35) the following paragraph:

"(36) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; and

"(F) mask work protected under chapter 9 of title 17, to the extent protected by applicable nonbankruptcy law;";

(E) in paragraph (39) (as redesignated by subparagraph (C)) by striking "and" after the semicolon;

(F) by inserting after paragraph (39) (as redesignated by subparagraph (C)) the following paragraph:

"(40) 'mask work' has the meaning given it in section 901(a)(2) of title 17;";

(G) by redesignating paragraphs (52) and (53) (as designated before the date of enactment of this Act) as paragraphs (54) and (55), respectively;

(H) by inserting after paragraph (52) (as redesignated by subparagraph (B)) the following paragraph:

"(53) 'settlement payment' means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade;"; and

(I) by striking both paragraphs (54), both paragraphs (55), both paragraphs (56), and both paragraphs (57) (as designated before the date of enactment of this Act) and inserting the following:

"(56) 'stockbroker' means a person—

"(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;

"(57) 'swap agreement' means—

"(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

"(B) any combination of the foregoing; or

"(C) a master agreement for any of the foregoing together with all supplements;

"(58) 'swap participant' means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor;

"(59) 'timeshare interest' means that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;

"(60) 'timeshare plan' means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years;

"(61) 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary of involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption; and

"(62) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.";

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302";

(4) in section 346 (a) and (g)(1)(C) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(5) in section 348—

(A) in subsection (b) by striking "728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "728 (a) and (b), 1021, 1028, 1102(a), 1110(a)(1), 1121 (b) and (c), 1141(d)(4), 1146 (a) and (b), 1201(a), 1221, 1228(a), 1301(a), and 1305(a)"; and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307";

(6) in section 349(a) by striking "109(f)" and inserting "109(g)";

(7) in section 362(b)—

(A) by striking "or" at the end of paragraph (10);

(B) in paragraphs (12) and (13) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46, United States Code";

(C) in paragraph (14), as added by section 102 of Public Law 101-311 (104 Stat. 267) at the end of the subsection, by removing it from the end of the subsection, inserting it after paragraph (13), and striking the period at the end and inserting a semicolon; and

(D) by redesignating paragraphs (14), (15), and (16), as added by section 3007(a) of the Student Loan Default Prevention Initiative Act of 1990 (104 Stat. 1388-28), as paragraphs (15), (16), and (17), striking "or" at the end of paragraph (16), as redesignated by this subparagraph, and adding "or" at the end of paragraph (17), as redesignated by this subparagraph;

(8) in section 363(c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(9) in section 364(a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304";

(10) in section 365—

(A) in subsection (g)(2) (A) and (B) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307"; and

(B) in subsection (n)(1)(B) by striking "to to" and inserting "to";

(11) in section 507(d) by striking "(a)(3), (a)(4), (a)(5), or (a)(6)" and inserting "(a) (3), (4), (6), or (7)";

(12) in section 522(d)(10)(E)(iii) by striking "408, or 409 Internal Revenue Code of 1954" and inserting "section 401(b), 403(b), 408, or 409" of the Internal Revenue Code of 1986";

(13) in section 523(a) by striking "1141., 1228(a), 1228(b)," and inserting "1141, 1228 (a) or (b),";

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting "1328(a)(1)";

(B) in subsection (c)(4) by striking "recission" and inserting "rescission"; and

(C) by inserting "and" at the end of subsection (d)(1)(B)(ii);

(15) in section 542(e) by striking "to to" and inserting "to";

(16) in section 543(d)(1) by striking "of equity" and inserting "if equity";

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302";

(18) in section 553—

(A) in subsection (a)—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),";

(19) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307";

(20) in section 724(d) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(21) in section 726(b) by striking "section 1112 1208" and inserting "section 1112, 1208,";

(22) in section 743 by striking "clerk" and all that follows through "Commission" and inserting "clerk shall give the notice required by section 342 to SIPC and to the Commission";

(23) in section 745(c) by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986";

(24) in section 1104(c) by striking "then the United States trustee, after consultation with parties in interest shall" and inserting "the United States trustee, after consultation with parties in interest, shall";

(25) in section 1129(a)—

(A) by striking the semicolon at the end of paragraph (4) and inserting a period; and

(B) in paragraph (12) by striking "section 1930," and inserting "section 1930 of title 28,";

(26) in section 1226(b)(2)—

(A) by striking "section 1202(d) of this title" and inserting "section 586(b) of title 28"; and

(B) by striking "section 1202(e) of this title" and inserting "section 586(e) of title 28";

(27) in section 1302(b) by striking "and" at the end of paragraph (3); and

(28) in section 1328(a)(2) by striking "of" and all that follows through the semicolon and inserting "of the kind described in section 523(a) (5), (8), or (9);".

SEC. 502. TITLE 28, UNITED STATES CODE.

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

GRAHAM (AND OTHERS) AMENDMENT NO. 2425

Mr. GRAHAM (for himself, Mr. PACKWOOD, Mr. METZENBAUM, and Mr. GRASSLEY) proposed an amendment to the bill S. 1985, supra, as follows:

At the appropriate place, insert the following:

SEC. . PENSION PLAN CONTRIBUTIONS.

(a) TREATMENT AS ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by section 405, is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) minimum funding contributions to an employee pension benefit plan for which the debtor is liable, which accrue on or after the date of commencement of the case, (regardless of the time such contribution comes

due) under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).".

(b) PAYMENT OR POSTPONEMENT OF MINIMUM FUNDING CONTRIBUTIONS DUE PENSION PLANS.—(1) Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following new section:

"§ 1115. Contributions to certain employee pension benefit plans

"(a) TIMELY PAYMENT OF CONTRIBUTIONS.—Except as provided in subsection (b), the debtor in possession, or the trustee if one has been appointed, shall make any minimum funding contributions for which the debtor is liable, which accrue on or after the date of commencement of the case, under section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082).

"(b) POSTPONEMENT OF CONTRIBUTIONS.—(1)(A) Subject to paragraph (2), the court may, on motion of any party and after notice and hearing, determine that the making of all or part of a minimum funding contribution required to be made by a debtor to a pension plan may be postponed until a date that is not later than—

"(i) the effective date of a plan of reorganization confirmed under section 1129; or

"(ii) if the case is converted to a case under chapter 7, the date on which a distribution of property is made under section 726.

"(B) In making a determination under subparagraph (A), the court shall take into account the requirements of the estate.

"(C) Interest shall accrue on the amount of a contribution that is postponed from the date on which the contribution became due to the date of payment at the rate specified in section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(e)).

"(2)(A) Before permitting payment of all or part of a contribution to be postponed, the court shall grant security to the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, for the amount of a contribution that is postponed, affording adequate protection in accordance with section 364(d)(1)(B).

"(B) If the debtor in possession or trustee fails to make a postponed contribution on the date on which it is to be made under an order issued under paragraph (1), the pension plan shall be permitted to foreclose on the security provided under subparagraph (A).

"(c) NOTICE.—The administrator of the pension plan and, in the case of a plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321), the Pension Benefit Guaranty Corporation, shall be given notice of and may participate in any hearing seeking postponement of a contribution or foreclosure under this section.".

(2) The chapter analysis for chapter 11 of title 11, United States Code, is amended by inserting after the item for section 1114 the following new item:

"1115. Contributions to certain employee pension benefit plans.".

(c) CLARIFICATION OF EXISTING LAW.—(1) The amendment of section 550 of title 11, United States Code, made by section 204 shall apply with respect to a transfer to a pension plan that is subject to the minimum funding requirements of section 412 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082) only if the transfer is the subject of a motion or proceeding seeking avoidance of the transfer that is filed on or after the date of passage of this Act in the Senate.

(2)(A) In making the amendments made by subsections (a) and (b), it is the purpose of Congress to clarify the meaning of the provisions that are amended as they existed prior to the date of enactment of this Act.

(B) The amendments made by subsections (a) and (b) shall not be applied so as to supersede or alter any agreement or understanding (or modifications thereto before or after enactment) regarding a debtor's minimum funding contributions entered into among a debtor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation prior to the date of enactment of this Act.

DANFORTH (AND OTHERS) AMENDMENT NO. 2426

Mr. DANFORTH (for himself, Mr. GRAHAM, Mr. BOND, Mr. COHEN, Mr. CONRAD, Mr. DECONCINI, Mr. LEVIN, Mr. ROBB, Mr. RUDMAN, and Mr. DURENBERGER) proposed an amendment to the bill S. 1985, supra, as follows:

At the appropriate place, add the following:

The Senate finds that—

(1) the growing national debt is a legacy of bankruptcy which will make America's economy steadily weaker and more vulnerable than it is today;

(2) to amass a national debt of $4,000,000,000,000 and an annual deficit of $400,000,000,000 is to breach trust with present and future Americans; and

(3) national interest in controlling the deficit takes precedence over partisan advantage;

The Senate finds that—

(1) it is the responsibility of candidates for President and for Congress to discuss the deficit, if the priority issues facing our country are to be effectively and honestly addressed; and

(2) the American people will provide a mandate for governmental action, if given information and serious choices for deficit reduction that calls for shared sacrifice; and

The Senate finds that—

(1) the frequency and level of public comment on this issue by public officers and candidates, including those who hold and seek the office of the President, are so insignificant as to constitute irresponsibility;

(2) by and large, the candidates, Congress, and the media have ignored or trivialized this issue by suggestions such as that meaningful deficit reduction can be accomplished merely by attacking waste, fraud, and abuse;

(3) entitlement and interest spending are the fastest growing components of the Federal budget and are at an all-time high;

(4) other than taxes devoted to Social Security pensions, the level of taxation relative to the United States economy has been lower in the last decade than it was in any year between 1962 and 1982;

(5) the existing reckless Federal fiscal policy cannot be addressed in a meaningful way without including consideration of restraining entitlements and increasing taxes, as well as reducing defense and domestic spending; and

(6) to suggest that meaningful deficit reduction can be accomplished without shared sacrifice constitutes deception of the American people: It is the sense of the Senate that—

(1) public officials and candidates for public office to make proposals and engage in extensive and substantive discussion on reducing the deficit;

(2) the candidates for President to agree to a formal discussion that focuses entirely on the Federal budget deficit, its implications and solutions; and

(3) all candidates for office to affirm their support for this statement of principles and to resolve, in the course of their campaigns, to seek a mandate from the electorate with which they can effectively addresses the Federal budget deficit if elected.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, June 24, 1992, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on S. 2851, a bill to provide for the management of Pacific yew on public lands, and on national forest lands reserved or withdrawn from the public domain, to ensure a steady supply of taxol for the treatment of cancer and to ensure that long-term conservation of the Pacific yew, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Tom Williams of the subcommittee staff at (202) 224-7145.

SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. KERRY. Mr. President, the Select Committee on POW/MIA Affairs, pursuant to our discussions in previous organizational meetings, is scheduling hearings on June 24 and 25 to focus on the accounting process of the Department of Defense in regard to Americans missing in Southeast Asia. The hearings will begin at 9:30 a.m., and will take place in room 216 of the Senate Hart Office Building. For additional information, please call 224-2306.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on June 16, 1992, beginning at 2:30 p.m., in 485 Russell Senate Office Building, to consider for report to the Senate S. 2481, the Indian Health Care Amendments Act; S. 1752, the Tribal Courts Act of 1992; S. 2684, the Jicarilla Apache Tribe Water Rights Settlement Act; S. 2507, the Ak-Chin Water Use Amendments Act of 1992, and for other purposes.

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

SUBCOMMITTEE ON CONVENTIONAL FORCES AND ALLIANCE DEFENSE

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Subcommittee on Conventional Forces and Alliance Defense of the Committee on Armed Services be authorized to meet on Tuesday, June 16, 1992, at 9:30 a.m., in open session, to receive testimony on the procedures for coordination and cooperation among the military services in meeting the equipment requirements of future conventional forces, in review of S. 2629, the Department of Defense authorization bill for fiscal year 1993.

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

COMMITTEE ON ARMED SERVICES

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, June 16, 1992, at 2:30 p.m., in open session, to receive testimony on security issues in the European, Atlantic, and Pacific regions; and to consider the nominations of Adm. Paul D. Miller, USN, to be reappointed to the grade of admiral, and to be commander in chief, U.S. Atlantic Command; Lt. Gen. John M. Shalikashvili, USA, to be general, and to be commander in chief, U.S. European Command; Lt. Gen. Henry C. Stackpole III, USMC, to be reappointed to the grade of lieutenant general, and to be commanding general, Fleet Marine Force Pacific; and Maj. Gen. Barry R. McCaffrey, USA, to be lieutenant general, and to be Assistant to the Chairman of the Joint Chiefs of Staff.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., June 16, 1992, to receive testimony on the safety of Soviet-designed nuclear powerplants and on the technical and financial assistance being offered by Western nations to help improve the safety of these plants.

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

SUBCOMMITTEE ON PATENTS, COPYRIGHTS AND TRADEMARKS

Mr. HEFLIN. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, June 16, 1992, at 10 a.m. on S. 1805, a bill to amend title 17, United States Code, to clarify news reporting monitoring as a fair use exception to the exclusive rights of a copyright owner.

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

ADDITIONAL STATEMENTS

MRS. HILDEGARDE WEISS, 1992 LUTHERAN IMMIGRATION AND REFUGEE SERVICE'S AWARD WINNER

• Mr. SIMON. Mr. President, I rise to acknowledge the achievements of Mrs. Hildegarde Weiss, a constituent of mine from Berkeley, IL. I had the opportunity to meet Mrs. Weiss recently when she received the Salt of the Earth Award from the Lutheran Immigration and Refugee Service [LIRS] at its recent Washington, DC, conference. This award, also bestowed upon three others, was designed to recognize her for "exceptional commitment and countless deeds of love in ministry with uprooted people."

Mr. President, even before my service on the Subcommittee on Immigration and Refugee Affairs, I came to know and respect the important efforts and accomplishments of the Lutheran Immigration and Refugee Service. It is a cooperative agency of the Evangelical Lutheran Church in America, Latvian Evangelical Lutheran Church in America, and Lutheran Church-Missouri Synod. LIRS has provided invaluable assistance to refugees, asylumseekers, undocumented persons, and immigrants since 1939. Its work is of critical importance today. If our Nation is to continue to meet its historic commitment to aid those fleeing persecution, we need the resolve and forthrightness of the LIRS and other religious and voluntary organizations that aid refugees. LIRS' services include advocacy, resettlement in communities across the United States, placement of unaccompanied refugee children in foster homes, assistance with local asylum projects, and counseling in immigration. It is one of many very important volunteer organizations in this country helping refugees to settle quickly in local communities and to begin supporting themselves and their families.

Mrs. Weiss has worked with LIRS in Illinois for 17 years and has assisted in the resettlement of over 300 refugee families in our State. I commend her years of service and ask that the LIRS Bulletin statement recognizing Mrs. Weiss' achievements be included in the RECORD immediately following my remarks.

The bulletin reads:

LIRS RECOGNIZES EXCEPTIONAL SERVICE TO UPROOTED PEOPLE

HILDEGARDE WEISS

Offering care, love and ongoing friendship in abundance to approximately 300 resettled refugees is the task to which Hildegarde Weiss of Berkeley, Ill., has given herself without reservation since 1975. She reportedly never says no.

The same four helpers have shared in the task from the beginning: Weiss's sisters Renata and Alinda, with whom she lives; and a couple. Ray and Lucy Schilling of Maywood, Ill. All members of St. Paul Lutheran Church in Melrose Park, Ill., they initially handled the resettlement ministry under the congregation's Care Corps before setting out on their own.

"To God be the glory, great things he has done," says Hildegarde. "He has moved people from halfway around the world to come to the United States so that Americans can be compassionate and welcome strangers in their land. When we work for others, our efforts return to bless us."

Weiss and her associates are currently preparing a "big welcome" for the father, Maj. Tri Chanh Tran, in the very first Vietnamese family they helped resettle in Melrose Park. In January 1992 he was released from 17 years as a political prisoner. One of his daughters, Doris, is now studying to be a family practice doctor at Rush Medical School, Chicago; and another daughter, Alice is a nursing student at Triton College, River Grove, Ill. He also now has two grandsons.

Almost all the resettled refugees in Weiss' growing "extended family" remain in the area. They come together each year for a July picnic held in a nearby forest preserve and for a Christmas party at St. Paul Lutheran Church. Hildegarde's 75th birthday was July 28, 1991, and following the annual picnic the refugees surprised her with a party at a Chinese restaurant operated by one of the families.

Weiss graduated from Proviso Township High School, Maywood, in 1934 and worked as a secretary until her retirement in December 1991. Her employers included LIRS regional consultants with Lutheran Child and Family Services of Illinois; Concordia University, River Forest, Ill.; and Compassion International, a child-care sponsorship program.•

AUTHORIZATION OF THE ESTABLISHMENT OF A MEMORIAL TO MAHATMA GANDHI IN THE DISTRICT OF COLUMBIA

• Mr. D'AMATO. Mr. President, I rise today to cosponsor S. 781, which authorizes the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

Mahatma Gandhi's life was a vast and varicolored mix of service, spirituality, indealism, politics, and nonviolent force. He saw no hope in military solutions to conflicts among governments and believed only in love and service as the way to peace in the community and in the heart. This lasting tribute will inspire all of those who

view it to follow the philosophy of this great man.

I commend the efforts of the Indian American Forum and the Indian American community at large for their significant contributions to our society. This memorial is long overdue and I urge my colleagues to support this measure.•

PRICE INVERSIONS

• Mr. SIMON. Mr. President, I rise today to report on price inversions in the retail gasoline market. A price inversion occurs when a refiner charges wholesale customers more for gasoline or diesel fuel than they charge retail motorists at the pump. These price inversions are driving independent motor fuel marketers out of business.

Almost as injurious to small business marketers is the ongoing refiner practice of pricing fuel to consumers or retailers only a fraction of a cent above that charged wholesalers. Obviously, if the differential is not enough to cover the cost of the various functions necessarily performed by the wholesaler, then the wholesaler cannot survive. The same is also true regarding the necessity of an adequate differential between the price to dealers as compared to that charged consumers at refiner operated stations. These small businesses must also have some livable level of profit. We must do something to put a stop to these unfair practices.

I continue to hear from marketers about these problems. An Illinois constituent recently sent me a news story from Oil Express. This story reported that in Indian River Beach, FL, Coastal has been selling gasoline at a retail price of $1.049. However, the rack price to wholesalers was $1.064. This rack price includes taxes.

These kinds of situations continue to occur in Illinois as well. In Crystal Lake, IL, on June 9, 1992, a refiner was selling unleaded regular gasoline at $1.089 to refiner direct-operated outlets. The wholesale price, including taxes and freight, was $1.0891.

I intend to continue to report on these unfair practices until the House and Senate take action to correct these price inversions.•

HELPING PARENTS MAKE THE GRADE

• Mr. HATFIELD. Mr. President, recently some interesting results on a survey of high school students came to my attention and I am compelled to share them with my colleagues. Almost 1,400 11th and 12th-grade students were polled on the question of parental involvement with the study practices of today's youth. According to the Voices from the Classroom survey, most students value greatly parental involvement with their studies. Nine out of ten students surveyed considered it important that parents help their children with homework assignments. Eight out of ten believed that parents should set study rules for their children. Many students believed that, overall, parents should be much more involved with local schools.

Professionals in the field of education have long emphasized the importance of parental participation in the education of elementary and secondary school students. How refreshing it is to hear that students themselves appreciate parental involvement, that they appreciate it when parents emphasize the importance of studying and when parents take an interest in the accomplishments of their children at school.

It was with this understanding of the role of parents as coeducators that I sponsored Senate Concurrent Resolution 68 earlier this year to encourage parents to attend regularly the parent-teacher conferences held at schools. These conferences offer a chance for parents to hear directly from teachers the achievements of their child in school, and to hear from teachers the areas in which their child is demonstrating his or her own unique capabilities and accomplishments. It is also a time for parents to hear of areas in which their child might be experiencing difficulties. Conferences offer a chance for parents and teachers to work together with students to nip potential problems in the bud before they have seriously hindered the ability of a child to excel in school.

Clearly, Mr. President, attending conferences is not the responsibility of one parent alone. Part of my reasoning behind offering Senate Concurrent Resolution 68 was to encourage both parents to arrange their schedules in such a way as to allow time to attend school conferences. I believe that both parents should be familiar with their child's standing in school, should know the person who teaches their child math, should know what the classrooms, the cafeteria, and the library at school look like. Nothing encourages a child more than knowing that both parents care about his or her success in school. For parents, there are few better ways to demonstrate that interest than to participate in parent-teacher conferences.

In my office, we have a place a policy of allowing parents to arrange their schedules not only to attend the regularly scheduled conferences but also to set up additional conferences whenever they deem it necessary. Both the parents in my office and the teachers at their children's schools appreciate these efforts to make it easy for parents to become involved. Judging from the views expressed by students in the Voices from the Classroom poll, however, it seems that it is the students who appreciate this commitment most of all.•

TRYING TO FIGHT RACIAL PREJUDICE

• Mr. SIMON. Mr. President, over the past several months, I have been speaking out about hate crimes in the Senate RECORD. This week, I wish to direct your attention to a racially motivated attack on a family in my home State of Illinois.

Just months after buying a home in the almost all-white community of Berwyn, Clifton and Dolcy Campbell and their three children have packed up and moved out. The very day after they moved into their new home, someone hurled an egg-sized rock through a window on the back porch. Two nights later, someone doused the front porch with gasoline, set it on fire, and shattered the glass front door. The family received threatening phone calls and hate mail. Dolcy Campbell was even followed on her way to work.

Several Berwyn residents criticized the Campbells for moving into the neighborhood, saying that the family should have expected trouble in the town of 43,426 where there are only 51 blacks. These residents said that a black family should not realistically expect to be welcome in a town that in 1975, saw the suspension of the licenses of 17 real estate brokers and salespeople for allegedly steering blacks away—a town that in 1986, received explicit instructions from the U.S. Justice Department to recruit more black citizens for city jobs.

Mr. President, we can take pride in many positive things that are happening in our Nation, but when faced with situations such as this, we must ask ourselves: "What is wrong with America? How can we do better?"

In this case, in Berwyn, IL, thankfully there are people who are asking these questions. The Campbells were overwhelmed by the outpouring of support from Berwyn community residents who were outraged at these blatant acts of racial intolerance. Many Berwyn residents visited the Campbells, or sent flowers and messages of support. One 4-year-old girl sent smiley face stickers to the Campbell's children. A minister took in the children for a weekend. A neighbor invited the family to use his swimming pool. Others offered to contribute money. A psychotherapist offered her services for free. A concerned resident sent a note which simply said: "We care."

Unfortunately, despite these acts of generosity and kindness, the Campbells could not tolerate the hatred of a small minority of their neighbors. When Paul Campbell told his father that the constant pressure and the fishbowl atmosphere made him want to kill himself, the family decided it was necessary to move away from Berwyn.

Mr. President, it is obvious that the fight to desegregate housing is far from over. Last Friday, the Campbells were among a group of six people honored by

the Leadership Council for Metropolitan Open Communities, a nonprofit Chicago group that supports fair housing. I would like to share with my colleagues the comments of Mr. Kale Williams, executive director of the leadership council, about the situation in Chicago:

Ninety days ago, fire and hatred threatened the Campbell family in Berwyn," he said. "We in Chicago must decide whether we are awake enough to respond," he said, "or whether we, as a people, will reach sleepily for the snooze bar and slumber until the next disturbance stirs us briefly again.•

TRIBUTE TO CYNTHIANA

• Mr. McCONNELL. Mr. President, I rise today to recognize Cynthiana, a small town hidden in the hilly farmland of northern Kentucky.

Cynthiana is a little off the beaten path, but well worth the extra effort it takes to get there. It is a short distance from two metropolitan cities, Cincinnati and Lexington. In Cynthiana, you are rewarded by the hospitality of the people who live there. They take great pride in welcoming guests to what they call "the best kept secret in the Bluegrass".

Despite the fact that Cynthiana is somewhat remote, it still enjoys healthy industrial businesses. Minnesota Mining & Manufacturing, or 3M, has based its entire Post-It note production for North America in Cynthiana. Cynthiana is also a regional center for burley tobacco and cattle production.

The people of Cynthiana live quiet lives, away from the problems of the city, but close enough to enjoy the benefits. They are content with their town the way it is. These Kentuckians represent America at its best, and for this reason I would like to recognize their wonderful town.

Mr. President, I would like the following article from the Louisville Courier-Journal to be printed in the CONGRESSIONAL RECORD.

The article follows:

CYNTHIANA

(By Jay Blanton)

For Harrison County's 175th anniversary in 1969, a time capsule was buried in Cynthiana. In 1976, another capsule containing a history of families, places and businesses was buried to celebrate the nation's 200th birthday.

Both will be opened sometime next century. But chances are people in historic Cynthiana won't have much trouble recognizing artifacts from the town's past. Things just won't have changed much. It's a fact that doesn't seem to bother anyone at all.

"I'd like for them to open it up and pull out a picture of Cynthiana in 1880 and find out that downtown is exactly the same," said Nancy Farmer, executive director of the Cynthiana-Harrison County Chamber of Commerce.

The historical ceremonies are but one sign of this town's love of history. Cynthiana is a Central Kentucky community with obvious pride in its past. You can see it in the historical markers that dot the town or in how old buildings that line Main Street and its environs have been maintained.

Oddly enough, though, few people know about Cynthiana. Part of the reason for the relative anonymity is that Cynthiana is hard to find.

The town is only 30 miles from Lexington and about 60 miles from Cincinnati. In that sense, Cynthiana is ideally located. A Cincinnati Reds game or University of Kentucky basketball game at Rupp Arena, symphonies and arts are within driving distance.

Cynthiana, Farmer says, is "the best kept secret in the Bluegrass. It's absolutely incredible."

That may be true. But to get to Cynthiana, you have to want to get there. No one just happens upon the Harrison County seat.

"It's not on the interstate, so people don't pass through it," she said. "It has to be a destination, actually."

In fact, there is no easy way to get to Cynthiana. Interstates 64 and 75, which provide easy access to much of Central Kentucky, come nowhere near Cynthiana—despite what some maps may suggest.

U.S. 62, normally the easiest way to get to Cynthiana from Lexington, is being rebuilt. What is normally a 15-mile drive from Georgetown, the Scott County seat, to Cynthiana is a winding, two-lane journey through hilly farmland on Ky. 32. It's a beautiful drive but hardly quick.

Those road repairs, though, will eventually put Cynthiana within six miles of Toyota's plant in Scott County. Unlike other Central Kentucky towns, Cynthiana has yet to receive any spinoff from the automaker, said Harrison County Judge-Executive Charles Swinford.

Despite its poor access to the interstate, Cynthiana has acquired a surprisingly diverse industrial base in recent years. For much of its history, Cynthiana's economic base has been agricultural. Today, there are 1,450 farms in the county, averaging 145 acres each. The town is still a regional center for burley production and sales. Cattle production also is important. The county is the eighth largest beef-producing county in the state.

Tobacco is an even larger crop. County Agriculture Extension Agent Gary Carter said the county produces 10 to 12 million pounds a year, bringing in between $18 to $20 million into the economy. Just as important are the five warehouse companies in Harrison County. The warehouses get tobacco from Pendleton, Grant, Robertson, Nicholas and Bourbon counties, as well as Harrison. About 24 million pounds was sold from those markets last year.

Carter said the biggest challenge facing agriculture in Harrison County is in the tobacco industry. "When you talk about the abolishment or elimination of the tobacco industry, you would be talking about (a) considerable amount of income." If something does happen to tobacco, Carter said, farmers will have to find an alternative.

Farmers are already having to find alternatives. Carter said that in recent years 70 to 80 percent of the farmers have had some kind of income from outside the farm.

"Either the wife has gone to work or the husband has taken a second job in the factory," he said.

In the last several years the economy has become more balanced; as much money now comes from industry as from agriculture, Swinford said.

"It's just a good blend, good mix," he said. "Many of our young people don't have to leave this area to go to other areas to find employment."

The town's unemployment is among the lowest in the state at 6.7 percent, according to February figures. And Cynthiana has grown into a regional business and health center for much of north-central Kentucky, with a 99-bed hospital and large shopping area south of town.

Russell Whalen, owner of Whalen Jewelers, said the town now has a 50- or 60-acre industrial park to bring in more industry. A Hampton Inn and golf course also are being planned for the south side of town, he said.

But the town has had its industrial setbacks, Jockey International, which makes men's knit underwear, announced recently that it would close its plant there by the end of the year. About 200 workers will be laid off.

Like many other Kentucky towns its size, Cynthiana also has a serious landfill problem, which means Cynthiana has a serious garbage problem. The state is closing the town's landfill at the end of June.

Another problem that plagued the town was its water supply. For years, the town had only one water line, from the South Licking River. The recent addition of a new line to the main Licking River should alleviate water problems and reassure any industry considering a Cynthiana location.

In at least one way, Cynthiana goes beyond being a regional center. Take time to look at the note stuck on your refrigerator or bulletin board. Chances are, it's from Cynthiana.

Minnesota Mining & Manufacturing, better known as 3M, makes all of its Post-It notes for North America at its plant in Cynthiana.

You might not recognize the name Post-It. But you'd know it when you see one. The small strips of paper with the adhesive on the back have become essential to people who need a way to leave a quick, easy-to-find message.

The company located a plant in Cynthiana in 1969, said Gary Whitenack, the plant manager. The Post-It note was introduced in the early 1980s, and in 1985 when the company decided to consolidate its manufacture, all of the Post-It work for North America was consolidated in Cynthiana.

Whitenack said Cynthiana is a central location for 3M's businesses, and the workers are excellent. There was a cooperative "team effort" among the workers in Cynthiana, he said.

That spirit of cooperation is often cited among people in Cynthiana.

Becky Barnes, news editor of The Cynthiana Democrat, said last year the people of the town wanted to get together to support the Desert Storm operation. A group put on a "Fabulous Fourth" program. Local talent, music and speakers gathered to entertain and support a cause people believed in.

"It just seems like anytime there's a good cause . . . someone is there to spearhead" it, Barnes said.

Bill Morris, president of First Federal Bank, said fund-raising has begun in the last year to house outreach programs for senior citizens, the mentally retarded and Head Start. "We're working on so many different things to better the community," he said.

But Morris says the real challenge facing Cynthiana is the complacency that can come when people are content with what they have.

"We've sorta been spoiled," Morris said. "We feel we've got the garden spot in the world right here in this community."

While Morris is one of those who believes that Cynthiana is a garden spot, he also contends that the town's economy hangs in a delicate balance.

"If we lost one or two factories," he said, the town "would be in dire economic straits."

Still, Morris said, "there's no way that you would ever get me out of Cynthiana . . . it's just a good community."

Whalen, the local jeweler, put it another way. In Cynthiana, he said, "you won't make a heck of a lot of money, but you can live a pretty good life."

It is certainly a slower life, Ky. 32, the alternate route that makes a trip to Cynthiana an adventure, is a good symbol. You have to drive slowly. It almost makes you take the time to take in the beauty around you.

It's a road that fairly well represents why people like it here.

People are willing to drive distances to Lexington, Winchester, Frankfort and Mount Sterling for work, said Swinford, the judge executive. "And they like to come back here to their quiet living."

Population (1990): Cynthiana, 6,497; Harrison County, 16,248.

Per capita income (1988): $11,769, or $1,061 below the state average.

Jobs (1989): Total Employment, 6,960; manufacturing, 2,000; wholesale and retail trade, 1,072; service, 716; state/local government, 537; contract construction, 137.

Big employers: Minnesota Mining & Manufacturing, adhesive-backed note paper, box sealing tape, 525; Grade Perm Cast Inc., gray iron castings, 260; Bundy Tubing, refrigeration coils, steel tubing, 236; Ladish Co., Kentucky division, forged steel fittings, stainless steel valves, 201.

Media: Newspaper—Cynthiana Democrat (weekly), Radio—WCYN-AM 1400, country; WCYN-FM 102.3, country.

Transportation: Road—Cynthiana is served by U.S. 27 and 62, and Ky. 36. Interstate 75 is 19 miles southwest of Cynthiana via U.S. 62. The junction of I-64 and the Mountain Parkway is 31 miles south via U.S. 27 and Ky. 627. Air—The Cynthiana-Harrison County Airport is 1.5 miles south of Cynthiana. Lexington's Bluegrass Airport is 38 miles southwest of Cynthiana, Rail—CSX Transportation provides main-line service.

Education: Harrison County Schools, 3,129; two nonpublic schools, St. Edwards Elementary and Faith Baptist Church Fundamental, have 82 students each.

Topography: Cynthiana, with its hilly farmland, is at the northern end of the Bluegrass.

FAMOUS FACTS AND FIGURES

Harrison County was named in honor of Benjamin Harrison, a state legislator from Bourbon County. The town of Cynthiana was established on land owned by Robert Harrison, who named the town in honor of daughters Cynthia and Anna.

Believe it or not, there was life for Kentucky basketball before Rick Pitino, and Cynthiana was a big part of it. Former University of Kentucky basketball coach Joe B. Hall is from Cynthiana. Hall led the Wildcats to the last of their five NCAA championships in 1978.

Depending on how you look at it, Cynthiana has done its part for television comedy. The family of Gary Sandy, who played the program director on the television sitcom, "WKRP in Cincinnati," is from Cynthiana. Lawrence Pressman, who plays a doctor on "Doogie Howser M.D.," also is from Cynthiana.

The old log court house directly behind the Harrison County Courthouse is the oldest house in Cynthiana. Built in 1790, the house is where a young Henry Clay practiced law in 1806. The house also was home to the first city newspaper in 1817, The Guardian of Liberty. The paper had at least two notable people working for it: H.H. Kavanaugh later became a noted bishop, and Dudley Mann became a diplomat to France.

The Battle of Cynthiana was fought July 18, 1862. The Confederate raider John Hunt Morgan defeated Union troops and captured the town.•

WHAT IS BEST IN INDIANA AND AMERICA

• Mr. COATS. Mr. President, recently I received a number of letters from Miss Jennifer Hermann's first-grade class at Washington Township School in Valparaiso, IN. The letters dealt with the use of landfill space and the need to recycle reusable products.

These young Hoosiers reminded me both of the reassuring promise of thoughtful children and the urgency of giving States such as Indiana the authority to say "no" to out-of-State shipments of solid waste.

These enterprising children, under the guidance of their teacher, created their own landfill using an apple core, some lettuce, a glass jar, a paper napkin, and a styrofoam cup. They wrote me following the unearthing of these objects, which disclosed to them that while the manmade objects remained, the apple core and lettuce had decomposed into the Earth.

This object lesson was not lost on Miss Hermann's students. They wrote me to share with me some of the concerns this example of the need for recycling had given them.

"We dug up the trash we buried. We learned we should recycle, reuse, and reduce. The glass jar, the napkin, and styrofoam cup stayed the same," wrote a girl named Christi. Stephen L. said he was "surprised when I saw the apple core and lettuce were not there. Would you help our Earth, too?" "We learned that the glass jar, the styrofoam cup, and the paper napkin don't help the Earth," Matthew M. told me, and Brandon promised, "I will be good to our Earth."

The need to recycle is increasingly apparent as our landfill capacity lessens, particularly to those of us in Indiana who are tired of seeing other people's garbage pour across our borders. Last year alone, Indiana took in over 520 pounds of out-of-State trash for every man, woman, and child in the State.

Hoosiers are tired of seeing their State used as an interstate dumping ground, and that is why I have introduced legislation that would give States and communities the authority to refuse trash from other States. It is my hope that States like Indiana will have this authority soon.

Miss Herman and her colleagues Barbara Geiss and Lori Cox deserve praise for teaching their pupils about the value of our Earth and the importance of recycling early on. This kind of memorable learning experience is part of a true education, and the delightful children in Washington Township School illustrate vividly what is best in Indiana and America.•

A REVIEW OF THE F/A-18E/F PROGRAM

• Mr. D'AMATO. Mr. President, an audit of the F/A-18E/F Defense Acquisition Board [DAB] review by the Department of Defense Inspector General has revealed another episode of the cowboy policies of Pentagon lynching the acquisition process. The same people who drove the A-12, P-7, and T-45 to market, the Navy, the Office of Program Analysis and Evaluation, and the Office of the Under Secretary of Defense, Acquisition, have ridden roughshod over congressional language and DOD relation by buffaloing the F/A-18E/F through the DAB without the necessary documentation.

Was the DAB rigged? Central to the DAB's ability to make a meaningful judgment about alternative options to any procurement is the cost and operational effectiveness analysis. Contrary to requirements and practice, a COEA was not done for the F/A-18E/F review. Side-by-side comparisons of the F/A-18E/F and the AX, F-14D Quick Strike, Rafale, and other variants of the F/A-18 were squashed. Instead, the Navy used trade studies limited to a comparison of the F/A-18C/D and F/A-18E/F. It goes without saying that these trade studies were done by McDonnell Douglas, an author with no small interest in the outcome.

Cost data in another document, the integrated program summary, was badly flawed. Operations and support costs were grossly understated. The cost of extensive preplanned product improvements were ignored altogether. The result of this book cooking exercise is that we have no idea what the lifecycle costs of the F/A-18E/F really are. In turn, it is impossible to know if the F/A-18E/F is the most cost-effective option of those available.

The IG was also clear on a point I have long asserted: the significant and comprehensive changes envisioned for the F/A-18E/F qualify it as a new production, not a modification program as has long been alleged by the Navy.

Why the fuss? Because if the IG's timely report had not come out, Congress would have known nothing of this. For the last month, I have sought without success to lay claim to the documents associated with the F/A-18E/F DAB review. I understand the GAO and the committees have done no better. Apparently, Congress does not merit access to the materials justify-

ing a program conservatively estimated at $85 billion. As the keeper of the public Treasury, we are just supposed to hold our noses and sign the check.

What is the coverup? If a program cannot withstand the most intense public scrutiny, then it does not deserve a nickel of taxpayer's funds. The F/A-18E/F has not weathered even the most cursory review. The DAB has been stampeded; Congress corralled. One can only wonder at what the Pentagon is hiding. Let me say this here and now, there is a new sheriff in town. Before we spend another penny on this program, I intend to ensure a complete and thorough review of the facts, all of the facts, associated with the F/A-18E/F. We are not talking a cost cap anymore, we are talking a program freeze.

Mr. President, I ask that the IG's report be printed in the RECORD.

The report follows:

[Audit Report, Office of the Inspector General, Department of Defense, June 5, 1992]

F/A-18 E/F PROGRAM AS A PART OF THE AUDIT OF THE EFFECTIVENESS OF THE DEFENSE ACQUISITION BOARD REVIEW PROCESS—FY 1992

The following acronyms are used in this report:

ASD (PA&E)—Assistant Secretary of Defense (Program Analysis and Evaluation).

ASN (RD&A)—Assistant Secretary of the Navy (Research, Development and Acquisition).

COEA—Cost and Operational Effectiveness Analysis.

DAB—Defense Acquisition Board.

DIA—Defense Intelligence Agency.

IPS—Integrated Program Summary.

O&S—Operations and Support.

RDT&E—Research, Development, Test, and Evaluation.

STAR—Systems Threat Analysis Report.

USD(A)—Under Secretary of Defense for Acquisition.

INSPECTOR GENERAL,
DEPARTMENT OF DEFENSE,
Arlington, VA, June 5, 1992.

Memorandum for: Under Secretary of Defense for Acquisition; Assistant Secretary of the Navy (Financial Management).

Subject: Audit Report on the F/A-18 E/F Program as a Part of the Audit of the Effectiveness of the Defense Acquisition Board Review Process—FY 1992 (Report No. 92-097).

We are providing this final report for your information and use. Formal comments on a draft of this report were not received from the Under Secretary of Defense for Acquisition. However, comments were received from the Assistant Secretary of the Navy (Research, Development and Acquisition) and were considered in preparing the final report. DoD Directive 7650.3 requires that all audit recommendations be resolved promptly. Therefore, all addressees must provide final comments on the unresolved recommendation by August 5, 1992. See the "Status of Recommendation" section at the end of the finding for the recommendation you must comment on and the specific requirements for your comments. The recommendation is subject to resolution in accordance with DoD Directive 7650.3 in the event of nonconcurrence or failure to comment. We also ask that your comments indicate concurrence or nonconcurrence with the material internal control weakness highlighted in Part I.

We appreciate the courtesies extended to the audit staff. If you have any questions on this audit, please contact Mr. Russell A. Rau, Program Director, at (703) 693-0655 (DSN 223-0655) or Mr. Michael Welborn, Project Manager, at (703) 614-3459 (DSN 224-3459). The planned distribution of this report is listed in Appendix D.

ROBERT J. LIEBERMAN,
Assistant Inspector General for Auditing.

[Office of the Inspector General, June 5, 1992]

F/A-18 E/F PROGRAM AS A PART OF THE AUDIT OF THE EFFECTIVENESS OF THE DEFENSE ACQUISITION BOARD REVIEW PROCESS—FY 1992

EXECUTIVE SUMMARY

Introduction. In 1987, the Navy initiated a study of alternative variations of the F/A-18 to continue its strike-fighter role into the late 1990's and beyond. The F/A-18 E/F Program was designed to upgrade the F/A-18 C/D Night Attack aircraft with increased mission range, payload flexibility, and aircraft carrier operational suitability. As of February 28, 1992, the Navy planned to acquire 1,000 E/F aircraft for about $5 billion in Research, Development, Test, and Evaluation funding, and about $49 billion in procurement funding (FY 1990 dollars) through FY 2015. On May 6, 1992, a Defense Acquisition Board (DAB) Milestone IV/II Review was held, allowing the F/A-18 E/F Program to enter into Engineering and Manufacturing Development.

Objective. The overall audit objective was to evaluate the DAB review process for the acquisition of F/A-18 E/F aircraft. Specifically, we assessed the adequacy of the information the Military Departments and the Defense agencies provided to the DAB in support of the major milestone and program reviews and assessed compliance with DoD acquisition policy and compliance with the intent of congressional direction.

Audit Results. The Navy had not performed a Cost and Operational Effectiveness Analysis (COEA) supporting the Milestone IV/II review to enter the Engineering and Manufacturing Development phase of the acquisition cycle. Without a COEA, viable alternatives to this new development program may not be adequately assessed with regard to their relative cost and operational effectiveness. The lack of a COEA supporting the Engineering and Manufacturing Development decision is contrary to the intent of congressional direction on the F/A-18 E/F Program and DoD regulations.

Internal Controls. The audit identified a material internal control weakness in that controls were not implemented to ensure that the Under Secretary of Defense for Acquisition [USD(A)] made a Milestone IV/II decision based on a formal and up-to-date COEA, in addition to other Defense Acquisition Board required documents. The internal control weakness is further discussed in Part I of the report.

Potential Benefits of Audit. Potential monetary benefits are not readily quantifiable (Appendix B).

Summary of Recommendation. We recommended that a formal COEA of the F/A-18 E/F and alternative programs be prepared and program cost estimates and affordability assessments be updated.

Management Comments. The USD(A) did not formally respond to the draft report; however, the Assistant Secretary of the Navy (Research, Development and Acquisition) [ASN(RD&A)] responded but did not concur with our finding and recommendation. The complete text of ASN (RD&A)'s comments are in Part IV of the report. We request that USD(A) provide comments and that ASN(RD&A) reconsider his position and provide additional comments to the final report by August 5, 1992.

PART I—INTRODUCTION

Background

In 1987, the Navy initiated a study of alternative variations of the F/A-18 to continue its strike-fighter role into the late 1990's and beyond. The F/A-18 E/F Program was designed to upgrade the F/A-18 C/D Night Attack aircraft with increased mission range, payload flexibility, and aircraft carrier operational suitability. The E version (like the A and C) will be a single seat aircraft, and the F version (like the B and D) will be a dual seat aircraft. As of February 28, 1992, the Navy planned to acquire 1,000 F/F aircraft for about $5 billion in Research, Development, Test, and Evaluation (RDT&E) funding and about $49 billion in procurement funding (FY 1990 dollars) through FY 2015. The total cost of the aircraft is unknown because of the planned incorporation of preplanned product improvements, which will be defined in the future.

The Navy plans to award sole source, cost-plus-incentive-fee/award fee contracts to McDonnell Aircraft Company and General Electric Aircraft Engine Company for the aircraft and engine respectively. The aircraft engine is a derivative of the terminated Navy A-12 aircraft engine. The Navy plans to award the contracts in the fourth quarter of FY 1992 as the result of a May 6, 1992, Defense Acquisition Board (DAB) Milestone IV/II Review that approved the Program entering into the Engineering and Manufacturing Development phase of the acquisition cycle. In FY 1992, Congress appropriated $250 million in RDT&E funds for the F/A-18 E/F Program. The Navy projected additional RDT&E funding of $4.4 billion for FYs 1993 through 1997 and $224 million for FYs 1998 through 2001 to develop the airframe and engine. OSD added $130 million to the projected Navy F/A-18 E/F RDT&E funding for FYs 1992 through 1997 in the President's Budget for FY 1993.

The Navy plans to use the F/A-18 E/F aircraft in the fleet air defense and light attack mission areas, while relying on a new aircraft designated as the AX Program for medium attack capability currently provided by A-6 aircraft.

Objective

The overall audit objective was to evaluate the DAB review process for the acquisition of F/A-18 E/F aircraft. Specifically, we assessed the adequacy of the information the Military Departments and the Defense agencies provided to the DAB in support of the Milestone IV/II Review of the F/A-18 E/F Program and assessed compliance with DoD acquisition policy. In addition, we evaluated the F/A-18 E/F Program's compliance with the intent of congressional direction provided in Senate Report No. 102-154, on the Department of Defense Appropriation Bill, 1992, September 20, 1991. We also reviewed applicable internal controls.

Scope

We performed this program audit in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD, and accordingly included such tests of internal controls as were deemed necessary. We performed the audit from De-

cember 2, 1991, through May 21, 1992, and reviewed Trade Studies, DAB-required documents, and other data dated from June 15, 1988, to May 12, 1992. We discussed issues related to the DAB review with OSD, Defense Intelligence Agency (DIA), and Navy personnel responsible for the preparation and/or review of DAB-required documents. A list of activities visited or contacted is in Appendix C.

Internal Controls

The audit identified a material internal control weakness as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. The audit concluded that existing internal controls, if properly implemented, were adequate to prevent or detect the deficiency identified in this report. However, controls were not implemented to ensure that the Under Secretary of Defense for Acquisition [USD(A)] made a Milestone IV/II decision based on a formal and up-to-date Cost and Operational Effectiveness Analysis (COEA), in addition to other DAB-required documents. Further, the Navy did not comply with DoD policies and procedures for preparing a COEA. Implementation of the recommendation will correct this weakness.

Copies of the final report will be provided to the senior officials responsible for internal controls within OSD and the Department of the Navy.

Prior Audits and Other Reviews

There has been no prior audit coverage on the F/A-18 E/F aircraft relating to the DAB review process.

Other Matters of Interest

The Navy's January 8, 1992, F/A-18 Integrated Program Summary (IPS) stated that a formal COEA was not needed for the F/A-18 E/F Program. The Navy made this statement even though OSD had not decided whether to waive the requirement for a COEA. In addition, this statement directly conflicts with congressional direction. The Senate Appropriations Committee, as part of Report No. 102-154, questioned the need for the F/A-18 E/F Program based on its cost and utility. Specifically, the Committee considered it "prudent to moderate the proposed pace of the F/A-18 E/F Program to prevent premature commitment to a costly program which may not be necessary, and which may not deliver as advertised." The Committee directed OSD to provide the following information by April 15, 1992.

"An updated cost estimate for the program, including a full listing of all the upgrades contemplated for the F/A-E/F, the total cost, and costs between fiscal years 1992 and 1998 to develop, procure, and install each upgrade, the timetable for such acquisition and installation, and whether each upgrade project is fully funded in these years.

"An updated projection by the U.S. intelligence community validating in detail, by region, scenario, and potential adversary, and most likely and realistic air-to-air and surface-to-air threats the F/A-18 E/F would face in the years 1998-2010, and the specific validated threat capabilities which each particular F/A-18 E/F upgrade project is intended to counter.

"An independent assessment of the capabilities of each F/A-18 E/F upgrade to counter each specific threat.

"A new cost and operational effectiveness analysis by an independent organization in no way connected with the Navy, assessing the cost and operational effectiveness of the E/F with the F/A-18 C/D's configured as they are programmed to be by fiscal year 1996, and with the emerging designs for the AX.

"An independent assessment by the Air Force's civilian and military experts of the proposed survivability features of the E/F and their likely effectiveness against the expected threats and their resistance to countermeasures."

PART II—FINDING AND RECOMMENDATION

COST AND OPERATIONAL EFFECTIVENESS ANALYSIS

The Navy had not performed a COEA for the F/A-18 E/F and alternative programs in support of entry into Engineering and Manufacturing Development, as required by DoD regulations and congressional guidance. The Navy requested that the COEA requirement be waived because of the need to proceed promptly with the F/A-18 E/F Program and the extensive industry trade studies performed on the F/A-18 E/F aircraft. The Navy concluded that the F/A-18 is the best alternative for enhancing the fleet air capabilities until a follow-on program is fielded. Without a COEA, viable alternatives to this new development program, including the Navy AX program, may not be adequately assessed with regard to their relative cost and operational effectiveness before the F/A-18 E/F Program is developed.

DISCUSSION OF DETAILS

Background

A COEA evaluates the costs and benefits of alternative courses of action to meet recognized Defense needs and determines the total life-cycle costs and operational effectiveness of alternative programs and the associated program for acquiring each alternative. DoD Instruction 5000.2, "Defense Acquisition Management Policies and Procedures," part 4, section E, February 23, 1991, discusses the policies and procedures for developing COEAs to support milestone decision reviews.

Policies. DoD Instruction 5000.2 states that COEAs are intended to aid decisionmaking, facilitate communications, and document acquisition decisions by highlighting the advantages and disadvantages of the alternatives being considered. The COEAs also show the sensitivity of each alternative to possible changes in key assumptions (such as threat) or changes including selected performance capabilities. Further, a COEA provides early identification and discussion of reasonable alternatives among decisionmakers and all staff levels. Disagreements on key assumptions and variables must be explicitly identified. Additionally, a COEA must have thresholds that are the maximum cost or the minimum acceptable performance that can be tolerated in a program before other alternatives become more cost-effective.

Procedures. A COEA includes an analysis of the mission needs, threat, U.S. capabilities, interrelationships of systems, contribution of multirole systems, measures of effectiveness, cost of alternatives, and cost-effectiveness comparisons. The DoD Component Head responsible for the mission area in which a deficiency or opportunity is identified determines the independent analysis activity that will prepare the COEA. The Joint Staff should ensure that the full range of alternatives is considered, organizational and operational plans are developed, and joint Service issues are addressed.

The Assistant Secretary of Defense (Program Analysis and Evaluation) [ASD(PA&E)] assesses the adequacy of COEAs submitted in support of DAB reviews. The ASD(PA&E) will provide, as necessary, guidance tailored to the program under review to be included in the DAB review procedures memorandum from USD(A). In the DAB process, the COEA is required at Milestone I, Concept Demonstration Approval; Milestone II, Development Approval; Milestone III, Production Approval; and Milestone IV, Major Modification Approval. At Milestone IV, the analysis is an update to the previous analysis, if it is available. The elements of the updated analysis for the Milestone IV review will be specified by the milestone decision authority as part of the premilestone planning process.

Performance of a Cost and Operational Effectiveness Analysis

At the July 11, 1991, DAB planning meeting for the F/A-18 E/F, 10 Milestone II documents, one of which was a COEA, were requested to form the basis for a Milestone IV decision. In an August 30, 1991, memorandum, the Assistant Secretary of the Navy (Research, Development and Acquisition) [ASN(RD&A)] requested that the COEA be waived because a COEA was not required for a Milestone IV review and because the Secretary of Defense had already committed to the development and procurement of the F/A-18 E/F aircraft. This memorandum also recommended limiting the scope of the COEA to cost-effectiveness comparisons of the F/A-18 E/F aircraft to the F/A-18 C/D aircraft in Navy and Marine Corps roles. On September 27, 1991, the Chairman of the Conventional Systems Committee responded to the Navy, stating that a formal COEA might not be required. This response was made after the September 20, 1991, Senate report, which directed that a COEA be performed. The Chairman requested that the Navy submit to OSD the Trade Studies that had been done to justify the proposed modification. The ASD(PA&E) personnel reviewed the Trade Studies and, in a memorandum dated October 22, 1991, requested additional information concerning the cost and operational effectiveness of the F/A-18 E/F. The Navy responded to the request for additional information in several briefings that concluded on February 6, 1992.

The Navy's proposed substitution of the Trade Studies for the COEA will not adequately examine the cost and operational effectiveness issues of the proposed F/A-18 E/F Program. Specifically, the Trade Studies do not adequately cover threat, alternatives, cost, and relation to baseline cost estimates.

Threat. DoD 5000.2-M, part 8, section 2.b(2), states that a threat analysis determines those elements against which a given system might be used and the forces that could be used against the system. The threat should be analyzed to identify the condition that might exist when the new system is employed. Although the Trade Studies are not threat assessments, the threat that the system will face forms the basis for the proposed operational specifications in the Studies. The Trade Studies proposed by the Navy as a substitute for the COEA were developed between September 1987 and June 1988 by the Naval Air Systems Command, McDonnell Douglas Corporation, and the Center for Naval Analysis. The basis for the F/A-18 E/F Trade Studies was the Soviet Union at the height of the Cold War; however, the Trade Studies do not reflect the current world situation. For example, the Studies do not consider the impact of the disestablishment of the Soviet Union or the potential reductions of aircraft carrier battle groups. The DIA rejected the initial F/A-18 E/F System Threat Assessment Report (STAR) in October 1991 because the discussion of Soviet military organization, operation, and procurement did not reflect recent events. Subsequently, DIA made approximately 165 substantive changes

to the STAR, reflecting the current world situation. Such changes may have a significant impact on the F/A-18 E/F operational requirements that have not been covered in the Trade Studies.

Alternatives. DoD 5000.2-M, part 8, paragraph 12, states that the scope of a COEA depends upon the acquisition stage to which the system has advanced, the milestone decision to be made, and the systems's dollar value. For example, a Milestone II decision includes total life-cycle costs expressed in both constant and current dollars. Additionally, life-cycle estimates can provide for all alternative design approaches. A Milestone IV decision should consider the costs and consequences of all alternatives including the current program. In either a Milestone II or a Milestone IV decision, alternatives must be examined in the COEA; however, from the beginning of the DAB process, all alternatives were not considered.

At the COEA meeting convened by the ASD(PA&E) on July 16, 1991, the ASD(PA&E) principal stated that there would be no side by side comparison of the F/A 18-E/F, F-14D, and AX. He also said that there was no readily competitive alternatives to an F/A-18 upgrade other than a new start or a foreign carrier aircraft. This statement conflicts with DoD 5000.2-M, part 8, which states that even for a Milestone IV decision, the COEA should consider the costs and consequences of all alternatives, including maintaining the current program. Additionally, such initial decision adversely affect the objectivity of the DAB process and may lead to inappropriate decisions. On August 30, 1991, the ASN (RD&A) requested a waiver from the requirements to provide a COEA for the F/A-18 E/F Program. The ASN(RD&A)'s rationale was that the F/A-18 E/F is an upgrade of an existing aircraft and that the Secretary of Defense had already committed to developing and procuring this aircraft. It is true that the F/A-18 E/F is an upgrade of the F/A-18 C/D model; however, the F/A-18 E/F will not be a modification of existing aircraft but rather new production. Additionally, the changes are significant and comprehensive. Significant changes to the F/A-18 E/F airframe are listed below.

The fuselage was increased by 4 feet and the wing area by 25 percent. These changes will enable the F/A-18 E to carry at least 3,600 pounds of additional internal fuel over the current F/A-18 C model in the strike-fighter role.

The fuselage structure, landing gear, and other structural and mechanical components will be modified to accommodate the increased gross weight. These modifications will also enable preplanned product improvement growth into the next century.

Two additional wing weapon stations will be added.

Flight control computers will be modified to incorporate new flight control laws and engine control functions.

The F/A-18 E/F will also have a new engine, which is a derivative of the current F/A-18 aircraft engine. Although the core of the new engine was partially developed under the Navy's A-12 Program, the new engine will still undergo a complete development and test program during the Engineering and Manufacturing phase of the F/A-18 E/F Program. Such significant changes essentially make the F/A-18 E/F a new aircraft. Although the Secretary of Defense may be committed to the development and procurement of the aircraft, it is the responsibility of the DAB process to validate the need for, and cost-effectiveness of, the Program.

Further, the ASN(RD&A), in his August 30, 1991, memorandum to the ASD(PA&E), made the following observations if the decision was made to require a COEA.

"If, however, we are going to do a F/A-18 E/F COEA and since there will be significant overlap in capability for many missions, it is essential that the AX COEA and analysis conducted in support of the F/A-18 E/F be consistent. Accordingly, additional alternatives such as the F-14D quickstrike and a Naval version of the Rafale should not be included in the F/A-18 E/F COEA. The F/A-18 E/F COEA should be limited only to cost effectiveness comparisons to the current baseline F/A-18 C/D in Navy and Marine Corps roles."

Limiting the COEA to the F/A-18 C/D baseline defeats the purpose of performing the COEA. The fact that many missions for the proposed AX and the F/A-18 E/F will overlap makes it essential that the AX and F/A-18 E/F be compared. Additionally, as reported in Senate Report No. 102-154, the Secretary of Defense stated that the AX is expected to possess a significant air-to-air and air-to-ground capability for offensive and defensive purposes. Based on the Secretary of Defense's statement and the designs expected to be proposed by some of the industry teams, the Senate Committee concluded that the AX could fulfill some of the air-to-air missions of the F/A-18 E/F.

In response to the September 27, 1991, memorandum from the Chairman of the Conventional Systems Committee, the Navy provided the requested Trade Studies. Our examination of the ASD(PA&E) request for additional information on the Trade Studies, dated October 22, 1991, indicated that there were 13 topics that the Trade Studies did not adequately address. Two of the thirteen topics dealt with alternatives. Specifically, the ASD(PA&E) wanted an examination of the French Rafale's potential to meet minimum requirements and a summary of "Carrier Airwing Study-2010" alternatives with an explanation for dropping the F-14D Quick Strike aircraft from further consideration.

Our examination of the Navy's presentation to the ASD(PA&E) revealed no mention of alternatives to the F/A-18 E/F. Specifically, the Navy did not consider the French Rafale or discuss the F-14D Quick Strike aircraft in its presentation.

Cost. A major factor in a COEA is the cost estimates for the program under consideration. By the Milestone II decision point, there is generally sufficient information to narrow cost estimate intervals to a point estimate to develop total life-cycle costs. Point estimates are bounded in the COEA by an uncertainty range derived by a cost uncertainty analysis. Additionally, the cost sensitivity of changes in certain parameters is determined through cost sensitivity analysis, which must be documented and reflected in the COEA.

Cost uncertainty analysis. DoD 5000.2-M, part 8, section 2.b(11)(d), states that cost uncertainty is inherent in cost estimates, particularly in the early stages of development, and requires that the estimates be prepared to offer a more realistic range of the true cost of a program using either statistical analysis or subjective expert opinion. Navy cost estimates failed to allow for potential unplanned system changes, technical problems, schedule shifts, and estimating errors. The core of the E/F Program is to provide the fuselage space and improved engine power to permit upgrades shortly after the basic configuration is fielded. The cost of developing and procuring these additional capabilities is not included in the estimates of $5 billion in RDT&E funding and the $49 billion in procurement funding. Therefore, the total cost of the E/F Program has not been presented by the Navy.

Cost sensitivity analysis. DoD 5000.2-M, part 8, section 2.b(11)(e), defines cost sensitivity as the degree to which changes in certain parameters cause changes in the system's cost. Each potential change should be tested independently, and each sensitivity analysis must be documented. The cost of preplanned improvements to the F/A-18 E/F after it is fielded have not been fully estimated. These improvements will be incorporated into the F/A-18 E/F as preplanned product improvements during the Production and Deployment phase. As of the time of the audit, these preplanned product improvements have not been defined, and the cost sensitivity impact will not be developed until some time in the future.

Congress is also questioning the cost sensitivity of the F/A-18 E/F aircraft as evidenced by the language in Senate Report No. 102-154, which states that the need for the E/F upgrade is hypothetical based on the Defense Secretary's projection and expected contract designs. Additionally, the report states that the more the AX is capable of air-to-air combat and supersonic speeds, the more F/A-18 C/Ds should be produced as an affordable alternative to the E/F.

Relation to baseline cost estimate. DoD 5000.2-M, part 8, section 2(11)(f), states that COEA costs must be based on a valid baseline cost estimate. The baseline cost estimate serves as the life-cycle cost estimate for the initial case in the analysis. If the baseline cost estimate is incomplete (or has not been validated) and time is a factor, the analysis may contain unvalidated estimates. However, this could result in last minute changes that would have to be accommodated later. The Navy has not estimated total life-cycle costs for the F/A-18 E/F Program, rather an incomplete estimate was provided in the IPS. Specifically, the Navy did not estimate total operations and support (O&S) cost requirements for the Program. The life-cycle cost presentation of O&S costs, estimated at $7.7 billion, is curtailed in FY 2015, which is the last year a production contract is proposed to be awarded but not the last year of O&S costs for the Program. However, the Navy Baseline Independent Cost Estimate shows estimated O&S costs of $30.7 billion through FY 2040. Therefore, the total life-cycle cost estimate of $61.6 billion (FY 1990 dollars) is understated by $23 billion ($30.7 billion minus $7.7 billion) in the IPS. Further, the Navy did not estimate O&S cost in then-year dollars in any of the DAB documents reviewed, thereby showing a lower projection for life-cycle costs. A footnote in the IPS stated that O&S costs were not in then-year dollars in order "To avoid miscalculation of O&S costs . . ." The revised O&S cost estimates provided in the final IPS do not comply with DoD 5000.2-M, part 4, section C, which states that O&S funding should be identified through the end of the system life-cycle and in both constant and then-year dollars.

In the draft of this report, we indicated that the draft IPS showed a constant level of O&S costs at $2.3 billion starting in FY 2011 although an additional 281 aircraft were planned for delivery in FYs 2011 through 2013. Also, O&S costs were not estimated beyond FY 2013, although an additional $26.7 billion (FY 1990 constant dollars) was estimated to be required to operate and support the program through FY 2030. The final IPS provided to the DAB contained similar deficiencies with regard to total O&S costs as

discussed above and annual O&S costs as discussed below. Specifically, O&S costs were not shown in FY 1999 for the delivery of 12 aircraft; however, the draft IPS showed about $105.8 million (FY 1990 constant dollars) for the support of 12 aircraft delivered in FY 1999. The final IPS also showed that O&S costs remained fixed at about $82.4 million (FY 1990 constant dollars) from FYs 2000 through 2003, which would indicate that annual costs stabilized at that amount based on a constant level of 12 operational aircraft with no additional deliveries. However, the IPS shows that an additional 108 aircraft will be delivered in FYs 2000 through 2003 with no increase in the associated military personnel and operations and maintenance costs. It is not reasonable to assume that O&S costs will remain fixed when the aircraft inventory increases by 108 aircraft above the initial 12 deliveries. We therefore consider the Navy's use of the $61.6 billion (FY 1990 constant dollars) as the total life-cycle requirements to be understated because of the omission of O&S costs in FY 1999 and the potential understatement of O&S costs in FYs 2000 through 2003.

Another interrelated critical element of a COEA is the projected production rate. Generally, higher production rates result in lower total and per unit procurement costs because of such factors as production efficiency. The Navy proposes procurement of 12 aircraft per year starting in FY 1997 and ending in FY 2015 with peak production at 72 aircraft per year. Total production is 1,000 aircraft. These procurement quantities will require over $3.5 billion annually (FY 1990 constant dollars). However, the affordability assessment provided in the draft IPS did not compare these funding requirements to topline Defense Planning Guidance and long-range modernization and investment plans, as required in DoD 5000.2-M, part 4, section G. The comparison focused on the F/A-18 Program relative to the F/A-18 E/F Program, which does not answer the question of whether the Program is affordable. The final IPS presented for the May 6, 1992, DAB Milestone IV/II Review showed that the F/A-18 E/F Program would result in the Navy exceeding fiscal constraints on total available funding, and the USD(A) included provisions in the Acquisition Decision Memorandum (Appendix A) for the Navy to demonstrate full funding of the Program in the Navy 94-99 Program Objective Memorandum prior to awarding the Engineering and Manufacturing Development contracts. Therefore, we consider the affordability of these production rates and the impact of alternative production rates to be direct parts of the COEA and a matter that must be addressed by the Navy before the Engineering and Manufacturing Development contracts are awarded.

Cause for Not Performing a Cost and Operational Effectiveness Analysis

With the termination of the Navy A-12 and F-14D aircraft programs, the Navy has concluded that the F/A-18 is the best alternative for enhancing the fleet air capabilities until the fielding of follow-on programs. This conclusion has been reached without benefit of a COEA. However, a COEA performed by using the command is essential to assess alternative variations of the F/A-18 and the quantity of F/A-18 E/F aircraft required to fulfill mission requirements, in addition to alternative platforms and the baseline of existing fleet aircraft. Certain fundamental information concerning, for example, updated threat assessments and the number of aircraft carrier battle groups also directly affect the cost and operational effectiveness of various alternatives.

The Navy has concluded that a COEA is not required because the F/A-18 E/F is an upgrade of an existing program, rather than a new development program; and the Secretary of Defense had agreed to support the development and procurement of the F/A-18 E/F. A COEA focusing on the Navy attack mission areas that provides for a logical determination of the future composition of Naval airwings is considered essential before commencing either the F/A-18 E/F or AX Programs.

Effect of Not Performing a Cost and Operational Effectiveness Analysis

In our opinion, a COEA is required in support of the F/A-18 E/F Program entering Engineering and Manufacturing Development by Senate Report No. 102-154, DoD regulations, and sound program management. The objective of a COEA is focused on fulfilling mission needs, rather than supporting procurement of a particular systems platform. Therefore, performing a COEA of the composition of future carrier airwings before awarding major development contracts is an essential part of effective program management. We recognize that acquisition regulations provide the latitude to the milestone decision authority, in this capacity USD(A), to establish specific documentation requirements for each milestone or program review. However, we believe such authority should be used to provide the acquisition decisionmaker with the flexibility to execute programs when these unusual circumstances exist, rather than to bypass otherwise valid requirements for information and analyses necessary to make sound decisions. The F/A-18 E/F Program is a major new program start, entering Engineering and Manufacturing Development, and as such should be revised to comply with all of the associated rigors of the acquisition process. A complete assessment of alternatives has not been done, because no COEA has been prepared and the Navy Trade Studies were not intended to provide the level, quality, or extent of information contained in a COEA. In addition, the Trade Studies are dated and lack, as a minimum, the appearance of independence due to the substantial contractor participation and exclusion of alternatives that are not based on the F/A-18 aircraft. Also, the Trade Studies are deficient in that they do not address the current threat or the ability of all alternatives to counter it. A COEA is required in support of the alternative selected, as well as to establish the thresholds for the program as it proceeds through Engineering and Manufacturing Development. Cost estimates and affordability assessments supporting the performance of a COEA should be reaccomplished so as to comply with DoD regulations concerning their preparation.

RECOMMENDATION FOR CORRECTIVE ACTION

We recommend that the Under Secretary of Defense for Acquisition require a formal Cost and Operational Effectiveness Analysis on the F/A-18 E/F and alternative programs, before entering into an Engineering and Manufacturing Development contract, and revise supporting cost estimates and affordability assessments to comply with DoD 5000.2-M, part 4.

MANAGEMENT COMMENTS

We did not receive written comments to the draft report from USD(A). The Deputy Inspector General met with the USD(A) to discuss the audit results on May 4, 1992, prior to the May 6, 1992, DAB Milestone IV/II Review. Based on additional information provided at that meeting and subsequent to the meeting, we performed additional audit work to assess management actions associated with our audit finding and recommendation. Specifically, we evaluated the updated DAB documentation generated after our draft report was issued and we assessed the Acquisition Decision Memorandum, dated May 12, 1992, (Appendix A) resulting from the May 6, 1992, DAB as it relates to our audit finding and recommendation. We received comments from the ASN(RD&A), who nonconcurred with the recommendation and provided clarifying information and comments on the finding. Complete comments by the ASN(RD&A) are in Part IV of this report.

Regarding the recommendation, the ASN(RD&A) stated that the approach taken to fulfill COEA requirements was consistent with DoD Instruction 5000.2 for Milestone IV and OSD direction. Specifically, the ASN(RD&A) stated that all cost analyses required by DoD Instruction 5000.2 were furnished to OSD and that final cost estimate documentation was submitted on February 28, 1992. The ASN(RD&A) further noted that the report did not state that the program manager's estimate, the Navy Center for Cost Analysis' Independent Cost Estimate, and the OSD Cost Analysis Improvement Group's cost estimate are within 1 percent of each other. Finally, the ASN(RD&A) stated that the audit was conducted using draft documentation before the Navy responded to all OSD requests for information and before the acquisition review process had been completed. Of particular importance was the Navy's updated affordability assessments and the May 4, 1992, memorandum by the ASN(RD&A) to USD(A) addressing the cost-effectiveness of various alternatives to the F/A-18 E/F Program.

AUDIT RESPONSE TO MANAGEMENT COMMENTS

Comments by the ASN(RD&A) are not considered responsive because:

The Navy's position is not based on a valid COEA, as defined in DoD Instruction 5000.2, part 4, section E, but based instead on a literal interpretation of one segment of DoD Instruction 5000.2, part 4, section E, while ignoring the full scope of the Instruction as it relates to the performance of a COEA. The Navy states that a COEA may be required for Milestone IV; however, the program was slated for a combined Milestone IV/II review. The Navy chose to omit the COEA requirements of Milestone II which are more stringent than those of Milestone IV even though OSD called for such documentation. The resulting delay in performance of a COEA during deliberations on the need for the analysis precluded its completion prior to the scheduled DAB review. The USD(A) memorandum of September 27, 1991, states that for the F/A-18 E/F Milestone IV/II DAB review, the Conventional Systems Committee will review all of the topics routinely considered in preparation for a Milestone IV review, including Milestone II documentation, in accordance with DoD Instruction 5000 series documents and the Committee's standard operating procedures.

Milestone II documentation requirements include a COEA that establishes performance floor and ceiling cost objectives or acceptable bands for possible combinations of cost and performance; specifies cost and performance thresholds beyond which the validity of the COEA conclusions must be reaffirmed; shows the tradeoffs used to arrive at the objectives for Phase II, Engineering and Manufacturing Development; and examines the impact of program termination. Additionally, DoD Instruction 5000.2, part 3, states that a Milestone IV review should carefully

consider the availability of other alternatives to address the deficiency, which includes the option of entering Phase 0, Concept Exploration and Definition.

The Navy's decision to request a waiver rather than to fulfill COEA requirements was not reasonable given the dollar magnitude of the Program and the ongoing controversy over the future of Naval aviation. Milestone II COEA requirements are applicable at the stage at which milestone decision authorities must rigorously assess the cost and operational effectiveness as well as the affordability of an Engineering and Manufacturing Development program, and establish a Development Baseline, whereas Milestone IV is Modification Approval, where the intent is to ensure that all reasonable alternatives are examined prior to committing to a major modification or upgrade of a system that is still being produced. Documentation requirements for Milestone IV decisions have more flexibility than for Milestone II decisions because upgrades or modifications do not necessarily result in new major Defense acquisition programs. However, if the Milestone IV does result in a new major Defense acquisition program, then the more complete documentation requirements are logical. The prudent approach would be to exercise the milestone with the more comprehensive requirements that would cover both milestones because Milestone II provides more information and also encompasses requirements of Milestone IV. The preceding rationale makes good business sense due to the considerable funding required to develop and procure the F/A-18 E/F, the mission it is to satisfy during its useful life, and the growing scarcity of Defense funding.

Our report did not question whether the cost estimates were in agreement but, rather, the appropriateness of not performing a COEA on a program that is entering development and will cost $4.9 billion and $49.1 billion, in FY 1990 dollars, for development and procurement, respectively. Additionally, by the time the program reaches a Milestone III decision point where a COEA is clearly required, it will have expended substantially all development funding without the benefit of an assessment of cost and operational effectiveness, and 42 aircraft will be on contract. While the cost estimates are close; the presentation in the IPS is still incomplete and can be misleading. Specifically, O&S costs are curtailed in FY 2015; therefore, the total FY 1990 dollar life-cycle requirement is understated by approximately $23 billion (FY 1990 dollars), which represents an additional 25 years of O&S costs through FY 2040. Also, O&S costs are not presented in then-year dollars; therefore, the total then-year dollar life-cycle requirement through FY 2015 is understated by an unspecified amount.

We used the latest information provided by OSD at the time to arrive at the finding. Final documentation lowers the procurement quantity from 1,456 to 1,000, extends procurement through FY 2015, and increases per average unit cost by approximately $5 million, but does not lessen the need for a COEA on the $54 billion program. The conditions at the date of the draft report remain the same except for those noted above. The Navy concludes that the F/A-18 E/F is the best alternative but has summarily dismissed all viable alternatives, including the Navy AX, by contending that no other alternatives exist. Given the cost of the program and the importance of the mission, it would be prudent for the Navy to perform a COEA. A COEA would ensure that all alternatives have been addressed so that the public and Government perceive the Navy as prudently expending acquisition funds based on the most comprehensive information available based on DoD Instruction 5000.2 rather than lesser studies not complying with the Instruction. A COEA at this point in the Program is also beneficial in that it provides the milestone decision authority the information with which to make a decision and approve or adjust the thresholds to be used to oversee program progress to the Milestone III Production and Development decision.

My request clarification of the USD(A) position in comments to the final audit report. In the F/A-18 E/F Acquisition Decision Memorandum, dated May 12, 1992, the USD(A) stated that he will review the letter contracts for Engineering and Manufacturing Development of the airframe and engines before their award. His approval decision for the letter contract award must be further supported by initial data in the comprehensive Navy AX COEA. This AX COEA will also address the F/A-18 C/D and F/A-18 E/F alternatives. The formal Navy AX COEA will be submitted for USD(A) review at least 30 days before definitization of the letter contracts. The USD(A)'s review of the Navy AX COEA prior to this approval of the Engineering and Manufacturing Development contracts may fulfill the intent of our recommendations concerning a COEA for the F/A-18 E/F, depending on the scope of the COEA performed. Specifically, if the AX COEA meets all the requirements established in the applicable acquisition instruction and manual, and establishes objectives, acceptable bands, and thresholds for the cost and performance of the F/A-18 E/F Program, then the intent of our recommendation in this area would be satisfied. However, the Acquisition Decision Memorandum goes on to state that a COEA is not required for a Milestone IV decision and sufficient information was available in the context of this decision to proceed with the Program. This point appears to contradict earlier decisions in the decision memorandum concerning the review of the AX COEA. Additionally, we do not contend that the acquisition directives provide the flexibility to waive COEA requirements at a Milestone IV review, but clearly require a COEA at Milestone II that supports a decision to proceed through Engineering and Manufacturing Development to a Milestone III Production and Deployment decision.

We also consider the Acquisition Decision Memorandum to potentially be responsive to our audit finding concerning cost estimates and affordability assessments because USD(A) directed the Navy to submit a fully funded F/A-18 E/F Program in the Navy Program Objectives Memorandum by June 1, 1992. Therefore, a resource allocation decision will be completed and the affordability of the Program assessed prior to entry into Engineering and Manufacturing Development. It is important to note that the revised affordability assessment in the updated IPS presented at the May 6, 1992, DAB showed that the cost of the F/A-18 E/F Program caused the Navy to exceed projected funding levels.

Our more detailed response to management comments by ASN(RD&A) on the factual content of the draft report is in Part IV of this report.

Status of recommendation

Number	1
Addressee	USD(A)
Response should cover:	
Concur/nonconcur	X
Proposed action	X
Completion date	X
Related issues[1]	IC

[1] IC equals material internal control weaknesses.

PART III—ADDITIONAL INFORMATION

Appendix A—F/A-18 E/F Acquisition Decision Memorandum.

Appendix B—Summary of Potential Benefits Resulting from Audit.

Appendix C—Activities Visited or Contacted.

Appendix D—Report Distribution.

APPENDIX A: F/A-18 E/F ACQUISITION DECISION MEMORANDUM

THE UNDER SECRETARY OF DEFENSE,
Washington, DC, May 12, 1992.

Memorandum for: Secretary of the Navy.

Subject: F/A-18 E/F Acquisition Decision Memorandum.

On May 6, 1992, the Defense Acquisition Board (DAB) conducted a Milestone IV review of the F/A-18 E/F program. The Joint Requirements Oversight Council validated the performance section of the Acquisition Program Baseline (APB) and noted a need to field the F/A-18 E/F new capability in range and recovery payload as soon as prudently possible. The Conventional Systems Committee recommended: entry of the F/A-18 E/F into Engineering and Manufacturing Development (EMD); release of the Request for Proposal (RFP); and approval of the Navy's acquisition strategy, the APB (as modified), and the proposed exit criteria.

I approve Milestone IV for F/A-18 E/F and authorize entry into EMD subject to submission of a fully funded F/A-18 E/F program on or before June 1, 1992, in the Navy Program Objectives Memorandum (as was agreed to by the Navy Acquisition Executive at the DAB). The F/A-18 E/F Acquisition Strategy Report is approved and the RFPs may be released. I intend to review the letter contracts for EMD of the airframe and engines before award. My approval decision for the letter contract award must be further supported by initial data in the comprehensive A-X COEA to be submitted by the Navy which also addresses the F/A-18 C/D and F/A-18 E/F alternatives. Undue delays in definitization are not desirable. The letter contracts submitted for my review should include limitations on cost reimbursement that are more stringent than normal if timely definitization does not occur. The Navy will submit for review the formal A-X COEA, at least 30 days before definitization of the letter contracts. I approve the exit criteria for the EMD phase at TAB A.

I will require a DAB Milestone IIIA prior to the approval of low rate initial production (LRIP), tentatively scheduled for 1Q FY97, for the following LRIP quantities:

LRIP1 in FY97—quantity of 12 aircraft and 34 engines.

LRIP2 in FY98—quantity of 12 aircraft and 31 engines.

LRIP3 in FY99—quantity of 18 aircraft and 46 engines.

I have waived the requirements for live fire testing prescribed by 10 U.S.C. §2366, and submitted to Congress the requisite certification and report under that section. A COEA is not required in this case either by law or DoD Directive 5000.1/Instruction 5000.2. I have considered whether a COEA should nevertheless be prepared as a matter of policy in light of the financial magnitude of this development effort, but concluded that a COEA need not be prepared. Sufficient information in the context of this decision is already available to me. The Navy shall submit the revised, signed APB incorporating the changes agreed upon in preparation for the DAB within one week of the date of this

memorandum. The Navy shall also provide a plan to address missile approach warning within 90 days of the date of this memorandum.

DON YOCKEY.

TAB A

Proposed long lead for first lrip lot exit criteria (1st qtr FY96)

(Validated by Engine Test and Engine/Aircraft Design Analysis)

Exit criteria area:

Release AAC funding for LRIP-1.

Specific exit criteria (IPS page 11):

Fighter escort radius, (2) AIM-9+(2)AIM-120+fuel, ≥390 nm.

Interdiction radius, (2) 480 gal fuel tanks + C_L pylon+4 Mk83+2 AIM-9+FLIR/TINS, ≥380 nm, (3) 480 gal fuel tanks + C_L pylon+4 Mk83+2 AIM-9+FLIR/TINS ≥420 nm.

P.: 0.9M/10,000ft/1g, ≥600 fps.

Recovery WOD, (0)AIM-9+(2)480 gal tanks + FLIR/TINS + fuel for CLDGW, ≤19 kts.

Approach speed, (0)AIM-9+(2)480 gal tanks + FLIR/TINS + fuel for CLDGW, ≤154 kts.

E-1 aircraft empty weight, ≤31,950 lbs.

Demonstrate parts flow, system availability, major assembly, and actual schedule support E&MD aircraft delivery schedules.

Proposed MS III exit criteria

Exit criteria area:

MSIII approval.

Specific exit criteria (IPS page 10):

Delivery and acceptance of 12 LRIP-1 aircraft.

MFHBF 1.7 hrs (validated by analysis).

MMHFH 15 hrs (validated by analysis).

Demonstrate parts flow, system availability, major assembly and actual schedules support LRIP-II production schedule.

The following to be demonstrated in techeval:

Fighter escort radius (2)AIM-9+(2)AIM-120+fuel, ≥410 nm.

Interdiction radius (2) 480 gal tanks + C_L pylon+4 Mk83+2 AIM-9+FLIR/TIN + full gun, ≥390 nm, (3) 480 gal tanks+4 Mk83+2 AIM-9+FLIR/TINS + full gun, ≥430 nm.

P.: 0.9M/10,000ft/1g, ≥600 fps

Recovery WOD (0)AIM-9+(2) 480 gal tanks + FLIR/TINS + fuel to CLDGW, ≤15 kts.

Approach speed (0)AIM-9+(2) 480 gal tanks + FLIR/TINS + fuel to CLDGW, ≤150 kts.

Proposed NPR-IV exit criteria (1st qtr FY99)

Exit criteria area:

AAC funding for FRP and LRIP-3 full funding.

Specific exit criteria:

Complete first lifetime fatigue test.

Complete engine FPQ which includes ASMET simulating 2000 hr hot section life.

Demonstrate carrier suitability, launch WOD ≤33 kts, Approach speed ≤153 kts, Recovery WOD ≤18 kts.

Proposed MSIIIA (LRIP lot 1) exit criteria (1st qtr FY97)

Exit criteria area:

AAC funding for LRIP-2 and full funding for LRIP-1.

Specific exit criteria:

Demonstration of first flight of E-1, E-2, F-1, E-4 and E-5 test aircraft.

Proposed NPR-III exit criteria (1st qtr FY98)

Exit criteria area:

AAC funding for LRIP-3 and full funding for LRIP-2.

Specific exit criteria:

Deliver seven (7) flight test and three (3) ground test aircraft.

Demonstrate first major assembly of center and aft fuselage in LRIP-1 aircraft.

Completion of engine LPQ which includes ASMET simulation of 1000 hour hot section life.

APPENDIX B: SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT

Recommendation Reference: 1.

Description of Benefit: Economy and Efficiency. Prepare a formal COEA on the F/A-18 E/F and alternative programs before entering into an engineering and manufacturing development contract in accordance with DoD Instruction 5000.2, part 4, section E; and update supporting cost estimates and affordability assessments.

Type of Benefit: Undeterminable.

APPENDIX C: ACTIVITIES VISITED OR CONTACTED

OFFICE OF THE SECRETARY OF DEFENSE

Under Secretary of Defense for Acquisition, Washington, DC.

Assistant Secretary of Defense (Program Analysis and Evaluation), Washington, DC.

Comptroller of the Department of Defense, Washington, DC.

Deputy Director, Tactical Warfare Programs, Office of the Director, Defense Research and Engineering, Washington, DC.

DEPARTMENT OF THE NAVY

Assistant Secretary of the Navy (Research, Development and Acquisition), Washington, DC.

Assistant Secretary of the Navy (Financial Management), Washington, DC.

F/A-18 Program Office, Naval Air Systems Command, Arlington, VA.

DEFENSE AGENCIES

Defense Intelligence Agency, Washington, DC.

APPENDIX D: REPORT DISTRIBUTION

OFFICE OF THE SECRETARY OF DEFENSE

Deputy Secretary of Defense.

Under Secretary of Defense for Acquisition.

Director, Defense Research and Engineering.

Assistant Secretary of Defense (Production and Logistics).

Assistant Secretary of Defense (Program Analysis and Evaluation).

Assistant Secretary of Defense (Public Affairs).

Director of Defense Procurement.

Comptroller of the Department of Defense.

Director, Operational Test and Evaluation.

DEPARTMENT OF THE NAVY

Secretary of the Navy.

Assistant Secretary of the Navy (Financial Management).

Assistant Secretary of the Navy (Research, Development and Acquisition).

Comptroller of the Navy.

Auditor General, Naval Audit Service.

DEFENSE AGENCY

Director, Defense Intelligence Agency.

NON-DOD FEDERAL ORGANIZATIONS

Office of Management and Budget.

U.S. General Accounting Office, NSIAD Technical Information Center.

CONGRESSIONAL COMMITTEES

Senate Subcommittee on Defense, Committee on Appropriations.

Senate Committee on Armed Services.

Senate Committee on Governmental Affairs.

Ranking Minority Member, Senate Committee on Armed Services.

House Committee on Appropriations.

House Subcommittee on Defense, Committee on Appropriations.

Ranking Minority Member, House Committee on Appropriations.

House Committee on Armed Services.

House Committee on Government Operations.

House Subcommittee on Legislation and National Security, Committee on Government Operations.

PART IV—MANAGEMENT COMMENTS

Assistant Secretary of the Navy (Research, Development and Acquisition) Comments.

Audit Response to Assistant Secretary of the Navy (Research, Development and Acquisition) Comments.

ASSISTANT SECRETARY OF THE NAVY MANAGEMENT COMMENTS

THE ASSISTANT SECRETARY OF THE NAVY, RESEARCH, DEVELOPMENT AND ACQUISITION,

Washington, DC, April 17, 1992.

Memorandum for: The Department of Defense Assistant Inspector General for Auditing.

Subj: AIG(A) Draft Audit Report on the F/A-18 Program as a Part of the Audit of the Effectiveness of the Defense Acquisition Board Review Process—FY 1992 (Project No. 1AE-0036.03)

Encl: (1) Department of the Navy (DON) comments

In response to your memorandum of 12 March 1992, we have reviewed the subject report. Detailed comments on the finding and recommendation are forwarded as enclosure (1).

The Navy does not concur with the recommendation.

GERALD A. CANN.

DEPARTMENT OF THE NAVY RESPONSE

I. Finding A—cost and operational effectiveness analysis

A. Summary of the Finding:

The Navy had not performed a COEA for the F/A-18 E/F and alternative programs in support of entry into Engineering and Manufacturing Development, as required by DOD regulations and congressional guidance. The Navy requested that the COEA requirement be waived because the need to proceed promptly with the F/A-18E/F aircraft. The Navy concluded that the F/A-18 is the best alternative for enhancing fleet air capabilities until a follow-on program is fielded. Without a COEA, viable alternatives to this new development program, including the Navy AX program, may not be adequately assessed with regard to their relative cost and operational effectiveness before the F/A-18E/F Program is developed.

II. Navy comments on the finding

A. General Comments:

During the period from September 1990 to January 1991 a number of key decisions were made affecting naval aviation. The A-12 program was canceled; the NATF program was terminated as was the F-14 production and/or remanufacturing program. For affordability reasons the Navy plans to "neckdown" to the F/A-18E/F and the AX as the aircraft that will ultimately replace the F/A-18C/D, the A-6, and the F-14. The President's FY 1992/1993 budget, therefore, included funds for development of the F/A-18E/F.

The F/A-18E/F is a logical continuation of an upgrade strategy for the Navy's multirole strike fighter that began in 1982. The F/A-18F/F will capitalize on ten years of investment in F/A-18 upgrades and maintain ninety percent of the F/A-18 C/D night attack avionics and software. Maintenance, training and support infrastructure already

in place provides a solid basis for deployment and operation of the F/A-18E/F. As a result the Navy can avoid many of the development and recurring costs that would otherwise be associated with a new development. The upgrade strategy allows the development to proceed on an incremental basis from a firm foundation. Since no technical leaps are required the overall risk is assessed as low to moderate. The aircraft can be developed, fully tested with very little concurrency, and be operational in time to offset declining inventories brought about by retirement of older aircraft. The growth capacity being designed into the F/A-18E/F will provide the Navy with a multi-role platform which can be upgraded in the future as threat and requirements dictate.

During preparation for the Defense Acquisition Board review, the Navy fully complied with DODI 5000.2, and OSD guidance. OSD agreed that the F/A-18 program would be reviewed at Milestone IV (Major Modification Approval) with plans to enter Phase II Engineering and Manufacturing Development.

In response to the COEA requirement Navy submitted engineering trade studies, effectiveness and cost analyses that were conducted from July 1987 to March 1992. These studies and analyses comply with the requirements of 5000.2, 5000.2M, and DOD guidance. The fact that F-14, NATF, and A-12 program decisions had already been made, narrowed the field of options to be considered to F/A-18 derivatives.

Because this audit was conducted in the middle of the DAB preparation process, the auditors reviewed draft documentation that did not reflect the complete review process, the incorporation of OSD recommendations, or the open exchange of ideas and comments between the Navy and OSD review officials. To accurately assess that effectiveness of the Defense Acquisition Board review process, which was the stated objective of this audit, the audit should consider the process from beginning to end. Reviewing only a partial process can result in incomplete, inaccurate, and misleading conclusions. For this reason the Navy recommends that this audit report not be published.

B. Specific comments:

Page 1, paragraph 1; page 17, paragraphs 1 and 2. "The total cost of the aircraft is unknown because . . ." "The cost of developing and procuring . . . is not included . . .", and "The cost of preplanned product improvements have not been fully estimated."

The report faults the Navy for not having included in its estimate the cost of preplanned product improvements (P^3I). However, while it is correct that the F/A-18E/F is being designed to allow for future growth should emergent requirements be defined, there are no unfulfilled requirements necessitating a P^3I program at this time. The F/A-18E/F configuration as currently defined, and without P^3I, fully meets the stated operational requirements. The Navy cost estimates reflect the complete cost to develop and procure the F/A-18E/F.

The allowance for growth is merely a prudent feature to include in an aircraft that will be in service beyond 2030. This will allow the Navy to take advantage of future technological improvements and/or to respond to future threats. The affordability of such improvements will have to be addressed as each one is defined/proposed.

Page 9, paragraph 2—DODI 5000.2 requirements for COEA misquoted.

The draft audit report does not accurately reflect the contents of DOD instruction 5000.2 concerning the requirements for a COEA to support a milestone IV review. In fact, DOD instruction 5000.2 provides flexibility concerning whether or not a COEA is required for a Milestone IV review and if one is done, what form it should take. The following is quoted directly from page 4-E-7 of DOD instruction 5000.2:

"At Milestone IV, Major Modification Approval, the milestone decision authority may elect to require a cost and operational effectiveness analysis. The essential elements of this analysis will be specified by the milestone decision authority as part of the premilestone planning process." (emphasis added).

It was with this flexibility in mind that the Navy, in ASN (RD&A) memorandum of 30 August 1991, recommended that a COEA not be required. That memorandum also included Navy recommendations as to content of a COEA if one were required.

The Navy's rationale for recommending that a COEA not be required was that all viable alternatives has been eliminated by decisions that led up to the President's FY 1992/1993 budget. The NATF progress has been terminated as had F-14D new production and/or remanufacture. For affordability reasons the Navy plans to "neckdown" to the F/A-18E/F and the AX as the aircraft that will ultimately replace the F/A-18C/D, the A-6, and the F-14.

Given that this was the case the Navy concluded that information presented to the DAB should focus on establishing the most cost effective configuration for the F/A-18E/F. OSD agreed with this approach as reflected in the major issues guidance memorandum of 27 September 1991. The Navy has provided to OSD the results of the configuration studies that have led to the current F/A-18E/F definition and has been fully responsive to the requests for additional information. The Navy has provided data in eight volumes and twenty-six briefings that represented studies, analysis, scale model testing and flight testing. A 6 March 1992 memorandum from deputy ASD (PA&E) to the Chairman of the Conventional Systems Committee (CSC) concluded "that the trade studies constitute sufficient rationale to support definition of the F/A-18E/F for Milestone IV." No issues/concerns relating to this subject were cited in the Subsequent CSC minutes of 8 April 1992.

Page 11, paragraph 2—Threat. The configuration selected is fully responsive to JROC validated requirements. The criticism in the DOD IG report appears to be that too much capability may have been designed into the F/A-18 E/F in the light of a clearly reduced threat, and that a proportionally smaller number of aircraft carriers might not require additional aircraft with improved capabilities.

A careful review of both the Hornet 2000 Report (the Navy study published in 1988) and System Threat Assessment Report (NAVMIC TA #037-92 January 1992) would reveal that both documents address almost identical threats, and that none of the capabilities currently designed into the F/A-18E/F baseline are based on projected adversary developments that collapsed with the former Soviet Union.

Page 13, paragraph 1. The program was purposely structured as an upgrade to the F/A-18 airframe to incorporate additional fuel for increased range, increased aircraft carrier recovery payload, increased weapon carriage flexibility, improved survivability and vulnerability. Avionics systems and software are about ninety percent common with the F/A-18 C/D night attack weapon system. Maintenance and support infrastructure, training, and concept of operations, are largely common with the 1066 F/A-18 aircraft delivered to US and foreign customers to date. The development cost is significantly less than a new start.

Page 19, paragraphs 1 and 2 ". . . life-cycle cost presentation . . ." The audit was conducted during the review process on draft documentation. On 28 February 1992 the Navy provided to OSD cost documentation that fully meets DODI 5000.2 requirements.

Page 20, paragraph 2 ". . . projected production rate." The audit was conducted during the review process on draft documentation. Navy has since provided to OSD cost documentation that fully meets DODI 5000.2 requirements and shows a peak production rate of seventy-two aircraft per year and a total procurement quantity of 1000 aircraft. The final documentation also presented an affordability analysis that compares the F/A-18E/F funding requirements to the overall Navy budget and long range modernization and investment plans.

III. OAIG (A) recommendation on the finding

1. OAIG(A) recommended that the Under Secretary of Defense for Acquisition require a formal Cost and Operational Effectiveness Analysis on the F/A-18E/F and alternate programs before entering into an engineering and manufacturing development contract in accordance with Senate report No. 102-154 and DODI 5000.2 part 4 section E. Revise supporting cost estimates and affordability estimates to comply with DOD Manual 5000.2M, part 4.

Navy comments.

Do not concur. The approach taken to fulfill COEA requirements for the F/A-18E/F Milestone IV review is consistent with the requirements of DOD instruction 5000.2 for Milestone IV and the direction Navy received from OSD. The Navy provided to OSD the results of configuration trade studies and cost analysis that spans the period from July 1987 to March 1992. Navy responded fully to OSD requests for information and data and provided briefings as requested.

The Navy has provided to OSD all cost analysis required by DODI 5000.2. Final cost estimate documentation was submitted to OSD on 28 February 1992. Because the draft findings were published before the review process was complete, the draft audit report does not contain the fact that the Program Manager's estimate, the Navy Center for Cost Analysis Independent Cost Estimate, and the OSD Cost Analysis Improvement Group cost estimate are within one percent of each other, and that the cost documentation provided to OSD meets DOD requirements.

The audit was conducted using draft documentation, before the Navy had responded to all OSD requests for information, and before the acquisition review process had been completed. The final documentation submitted to OSD on 28 February 1992, provides the affordability assessment required by DOD instruction 5000.2.

AUDIT RESPONSE TO ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT AND ACQUISITION) COMMENTS

In the following paragraphs, we are responding to management comments by ASN(RD&A) on the factual content of the report.

NAVY COMMENTS ON THE FINDING

General comments.—The Navy stated that during preparation for the DAB review, it fully complied with DoD Instruction 5000.2 and OSD guidance. Further, the Navy indi-

cated that OSD agreed that the F/A-18 Program would be reviewed at the Milestone IV with plans to enter Phase II. This is not accurate. OSD stated that it would have Milestone IV/II with Milestone II documentation for a Milestone IV review.

The Navy further stated that in response to COEA requirements, it submitted engineering trade studies and effectiveness and cost analyses. We do not agree that these document represent a COEA. On May 4, 1992, ASN(RD&A) submitted a memorandum to USD(A) summarizing the F/A-18 E/F cost effectiveness studies as conducted by the Navy. An ASD(PA&E) memorandum, dated May 5, 1992, which was a cover sheet to the ASN(RD&A) memorandum, stated that the purpose of ASN(RD&A) summary was to provide "cost-effectiveness rationale for the F/A-18 E/F that is consistent with that normally provided by a formal COEA." However, the memorandum indicated that these studies did not represent a formal COEA. Further, these documents did not comply with the congressional requirement for a COEA.

On May 6, 1992, a DAB Milestone IV/II review was conducted for the F/A-18 E/F. We reviewed the final documentation for the Independent Cost Estimate, the Program Life-Cycle Cost Estimate, the IPS, and the Acquisition Program Baseline, which were documents included in the DAB review to determine if these documents contained or referenced a formal COEA. None of the documents indicated that a COEA was performed to determine the total life-cycle costs and operational effectiveness of the F/A-18 E/F or alternative programs.

Specific comments.—Our response is structured to correspond with the main focus of the Navy's paragraphs.

Preplanned product improvement. The Navy stated that the report faults the Navy for not having included in its estimate the cost of preplanned product improvement. We believe that by not including an estimate of preplanned product improvement costs in the cost of the aircraft program, decisionmakers are not provided a valid estimate on which to base their decisions. As mentioned in our report, the Navy is planning aircraft upgrades shortly after the basic configuration is fielded, which could require significant additional funding. The need to include preplanned product improvement cost is even more relevant. Since the completion of our audit fieldwork, the unit cost of the aircraft increased even without the addition of preplanned product improvements. On February 28, 1992, the Acquisition Program Baseline document decreased the number of aircraft to be procured from 1,456 to 1,000, thereby increasing the unit cost of the aircraft from $44.3 million to $49.1 million (FY 1990 dollars).

Cost and Operational Effectiveness Analysis requirements. The Navy stated that the report does not accurately reflect the contents of DOD Instruction 5000.2 concerning the requirements for a COEA to support a Milestone IV review. Our comments to this statement are included in the "Audit Response to Management Comments" section on page 14 of this report.

Threat. The Navy states that a review of both the Navy Trade Study and the STAR would reveal that both documents addressed almost identical threats and that none of the capabilities currently designed into the F/A-18 E/F baseline are based on threats prior to the collapse of the former Soviet Union. Our review of the threat sections of the Navy Trade Studies and the STAR showed that these sections address the threat prior to the collapse of the former Soviet Union. The DIA made approximately 165 substantive changes to the STAR because it did not reflect current events. The Trade Studies were not examined by the DIA; therefore, no assurance is offered that the Studies reflect operational requirements to meet the specified threat. The report makes no contention that too much capability is designed into the system, rather that the system requirements should reflect the expected threat through its useful life based on assessments by the proper body.

Program structure. The Navy stated that the Program was purposely structured as an upgrade to the F/A-18 airframe and that development cost was significantly less than a new start. Our report noted the upgrade to the airframe; however, the proper means to show that the F/A-18 E/F development costs are less than a new start would be to include estimated preplanned product improvement costs. Additionally, a COEA should be prepared to assess program alternatives coupled with an affordability assessment of development and production costs, inclusive of production rates.

Life-cycle cost presentation. The Navy stated that the audit was conducted during the review process on draft documentation concerning life-cycle costs. Subsequent to the draft report, we reviewed final documentation and found that the final IPS presentation on life-cycle cost is still misleading. The document excludes up to 25 years of additional O&S costs and provides a total life-cycle cost figure that does not include O&S costs in then-year dollars. The inclusion of total O&S costs in the Navy's Independent Cost Estimate does not compensate for the faulty presentation or misinformed conclusions that could be reached by reviewing the IPS.

Projected production rate. The Navy again stated that the audit was conducted during the review process on draft documentation and subsequent documentation was provided to OSD. We reviewed the Acquisition Program Baseline, dated February 28, 1992, and the IPS, dated February 26, 1992, and made changes to the report updating the status of the program. Our report reflects that the procurement quantity reduction to 1,000 aircraft and a peak production of 72 aircraft per year could cost a much as $3.5 billion per year, based on increased average unit cost of $49.1 million per aircraft.

AUDIT TEAM MEMBERS

Donald E. Reed, Director, Acquisition Management Directorate, Russell A. Rau, Program Director, Michael Welborn, Project Manager, Patrick McHale, Team Leader, James Cochrane, Auditor, and Eric Lewis, Auditor.

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

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

ORDERS FOR TOMORROW

Mr. HEFLIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, June 17; that following the prayer, the Journal of the proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day, and that there be a period for morning business not to extend beyond 9:15 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator PRYOR recognized for up to 10 minutes; and that at 9:15 a.m., the Senate then resume consideration of S. 1985 until 10:40 a.m., at which time the Senate then assemble as a body to proceed to the House of Representatives to hear an address by President Boris Yeltsin; and that the Senate then stand in recess until 2 p.m.; and further, that any votes ordered to occur relative to S. 1985 be stacked to occur at a time determined by the majority leader following consultation with the Republican leader.

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

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. HEFLIN. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:52 p.m., recessed until Wednesday, June 17, 1992, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 16, 1992:

DEPARTMENT OF STATE

RUTH A. DAVIS, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BENIN.

CHARLES B. SALMON, JR., OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE LAO PEOPLE'S DEMOCRATIC REPUBLIC.

JON M. HUNTSMAN, JR., OF UTAH, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SINGAPORE.

NICOLAS MIKLOS SALGO, OF FLORIDA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWEDEN.

IRVIN HICKS, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA IN THE SECURITY COUNCIL OF THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 16, 1992:

DEPARTMENT OF COMMERCE

GREGORY F. CHAPADOS, OF ALASKA, TO BE ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION.

DEPARTMENT OF TRANSPORTATION

WALTER B. MCCORMICK, JR., OF MISSOURI, TO BE GENERAL COUNSEL FOR THE DEPARTMENT OF TRANSPORTATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.