

of the enactment of this Act, a report on the trade relations between the United States and Cambodia pursuant to the trade agreement described in section 2(b).

Mr. MCCAIN. Mr. President, I am very pleased that the full Senate will soon approve H.R. 1642, a bill to grant MFN to Cambodia. I would like to thank the chairman of the Finance Committee for his help in seeing it through. He promised to do so last October and has been true to his word. My hope now is that the other body will quickly approve the minor alterations in the findings and send the bill to the President for his signature.

Traditionally, we have only restricted trade with Communist countries, and since 1975, only select Communist countries which prevent the free emigration of their people. The only other countries with restricted access to the American market are proven international aggressors and terrorist nations such as Iran and Iraq. Cambodia is no longer Communist and it does not restrict the free emigration of its people. It is certainly not in the category of rogue nations. I think the committee and the Senate has acted appropriately not to impose restrictions on Cambodia more appropriate for other eras and other nations.

Although it did not change the real substance of the bill, the committee did alter the findings. I would not have done so—not because I do not share Senator ROTH's concerns or the other concerns raised in the findings already approved by the other body. I do share concerns about the development of Cambodian democracy, government corruption, an human rights abuses. I encouraged the committee not to amend the bill principally because I thought it should be sent to the President as quickly as possible.

I should point out to my friends in Cambodia that they would do very well to heed the concerns expressed in the findings of this bill and in the accompanying report. They are the same concerns which led to the adoption in the other body of H. Res. 345. Those who pay close attention to Cambodia have been concerned about the direction of Cambodian politics. It is true that the Cambodian people have a freely elected government, freedom of speech and freedom of association. It is also true, however, that each of these democratic institutions has at one time or another come under attack from the coalition government.

The Senate is today approving unconditional most-favored-nation status for Cambodia. It is only fair that it do so. But the Cambodia Government should be under no illusions. Granting MFN to Cambodia should not be interpreted as disinterest in the course of Cambodian democracy. The United States Senate is committed to helping democracy and human rights to flourish in Cambodia. Our efforts will not end with this vote.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the com-

mittee amendment be agreed to, the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The committee amendment was agreed to.

The bill (H.R. 1642), as amended, was deemed read the third time and passed.

#### SMALL BUSINESS INVESTMENT COMPANY IMPROVEMENT ACT OF 1996

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 455, S. 1784.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1784) to amend the Small Business Investment Act of 1958, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Small Business with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Investment Company Improvement Act of 1996".

#### SEC. 2. DEFINITIONS.

(a) **SMALL BUSINESS CONCERN.**—Section 103(5) of the Small Business Investment Act of 1958 (15 U.S.C. 662(5)) is amended by inserting before the semicolon the following: "; except that, for purposes of this Act, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

"(A) shall not cause a business concern to be deemed not independently owned and operated;

"(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

"(C) shall be disregarded in determining whether a small business concern is a smaller enterprise".

(b) **PRIVATE CAPITAL.**—Section 103(9) of the Small Business Investment Act of 1958 (15 U.S.C. 662(9)) is amended to read as follows:

"(9) the term 'private capital'—

"(A) means the sum of—

"(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

"(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: Provided, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

"(B) does not include any—

"(i) funds borrowed by a licensee from any source;

"(ii) funds obtained through the issuance of leverage; or

"(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

"(I) funds invested by an employee welfare benefit plan or pension plan; and

"(II) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);".

(c) **NEW DEFINITIONS.**—Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended by striking paragraph (10) and inserting the following:

"(10) the term 'leverage' includes—

"(A) debentures purchased or guaranteed by the Administration;

"(B) participating securities purchased or guaranteed by the Administration; and

"(C) preferred securities outstanding as of October 1, 1995;

"(11) the term 'third party debt' means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

"(12) the term 'smaller enterprise' means any small business concern that, together with its affiliates—

"(A) has—

"(i) a net financial worth of not more than \$6,000,000, as of the date on which assistance is provided under this Act to that business concern; and

"(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this Act to that business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses); or

"(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

"(13) the term 'qualified nonprivate funds' means any—

"(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term 'private capital';

"(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term 'private capital'; and

"(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed—

"(i) 33 percent of the private capital of the applicant or licensee, if such funds were committed for investment before the date of enactment of the Small Business Investment Company Improvement Act of 1996; or

"(ii) 20 percent of the private capital of the applicant or licensee, if such funds were committed for investment on or after the date of enactment of the Small Business Investment Company Improvement Act of 1996;

"(14) the terms 'employee welfare benefit plan' and 'pension plan' have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974, and are intended to include—

"(A) public and private pension or retirement plans subject to such Act; and

"(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

"(15) the term 'member' means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company; and

“(16) the term ‘limited liability company’ means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration.”

### SEC. 3. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES.

(a) LIMITED LIABILITY COMPANIES.—Section 301(a) of the Small Business Investment Act of 1958 (15 U.S.C. 681(a)) is amended in the first sentence, by striking “body or” and inserting “body, a limited liability company, or”.

(b) ISSUANCE OF LICENSE.—Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) is amended to read as follows:

“(c) ISSUANCE OF LICENSE.—

“(1) SUBMISSION OF APPLICATION.—Each applicant for a license to operate as a small business investment company under this Act shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

“(2) PROCEDURES.—

“(A) STATUS.—Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

“(B) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

“(i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or

“(ii) disapprove the application and notify the applicant in writing of the disapproval.

“(3) MATTERS CONSIDERED.—In reviewing and processing any application under this subsection, the Administrator—

“(A) shall determine whether—

“(i) the applicant meets the requirements of subsections (a) and (c) of section 302; and

“(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this Act;

“(B) shall take into consideration—

“(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

“(ii) the general business reputation of the owners and management of the applicant; and

“(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

“(C) shall not take into consideration any projected shortage or unavailability of leverage.

“(4) EXCEPTION.—

“(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

“(i) has private capital of not less than \$3,000,000;

“(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 302(a); and

“(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 302(a).

“(B) LEVERAGE.—An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 302(a).”

(c) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)) is repealed.

ness Investment Act of 1958 (15 U.S.C. 681(d)) is repealed.

### SEC. 4. CAPITAL REQUIREMENTS.

(a) INCREASED MINIMUM CAPITAL REQUIREMENTS.—Section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) is amended by striking “(a)” and all that follows through “The Administration shall also determine the ability of the company,” and inserting the following:

“(a) AMOUNT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

“(A) \$5,000,000; or

“(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this Act.

“(2) EXCEPTION.—The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

“(3) ADEQUACY.—In addition to the requirements of paragraph (1), the Administrator shall—

“(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

“(B) determine that the licensee will be able”.

(b) EXEMPTION FOR CERTAIN LICENSEES.—Section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) is amended by adding at the end the following new paragraph:

“(4) EXEMPTION FROM CAPITAL REQUIREMENTS.—The Administrator may, in the discretion of the Administrator, exempt from the capital requirements in paragraph (1) any licensee licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Investment Company Improvement Act of 1996, if—

“(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Investment Company Improvement Act of 1996 will be provided to smaller enterprises; and

“(B) the Administrator determines that—

“(i) the licensee has a record of profitable operations;

“(ii) the licensee has not committed any serious or continuing violation of any applicable provision of Federal or State law or regulation; and

“(iii) such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.”

(c) DIVERSIFICATION OF OWNERSHIP.—Section 302(c) of the Small Business Investment Act of 1958 (15 U.S.C. 682(c)) is amended to read as follows:

“(c) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Investment Company Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.”

### SEC. 5. BORROWING.

(a) DEBENTURES.—Section 303(b) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)) is amended in the first sentence, by striking

ing “(but only)” and all that follows through “(terms)”.

(b) THIRD PARTY DEBT.—Section 303(c) of the Small Business Investment Act of 1958 (15 U.S.C. 683(c)) is amended to read as follows:

“(c) THIRD PARTY DEBT.—The Administrator—

“(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

“(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.”

(c) REQUIREMENT TO FINANCE SMALLER ENTERPRISES.—Section 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

“(d) REQUIREMENT TO FINANCE SMALLER ENTERPRISES.—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises.”

(d) CAPITAL IMPAIRMENT REQUIREMENTS.—Section 303(e) of the Small Business Investment Act of 1958 (15 U.S.C. 683(e)) is amended to read as follows:

“(e) CAPITAL IMPAIRMENT.—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

“(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); and

“(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.”

(e) EQUITY INVESTMENT REQUIREMENT.—Section 303(g)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(4)) is amended by striking “and maintain”.

(f) FEES.—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) in subsection (b), in the fifth sentence, by striking “1 per centum”, and all that follows before the period at the end of the sentence and inserting the following: “1 percent, plus an additional charge of .50 percent per annum which shall be paid to and retained by the Administration”;

(2) in subsection (g)(2), by striking “1 per centum,” and all that follows before the period at the end of the paragraph and inserting the following: “1 percent, plus an additional charge of .50 percent per annum which shall be paid to and retained by the Administration”; and

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

“(i) LEVERAGE FEE.—With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee, payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee.

“(j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act.”

**SEC. 6. LIABILITY OF THE UNITED STATES.**

Section 308(e) of the Small Business Investment Act of 1958 (15 U.S.C. 687(e)) is amended by striking "Nothing" and inserting "Except as expressly provided otherwise in this Act, nothing".

**SEC. 7. EXAMINATIONS; VALUATIONS.**

(a) **EXAMINATIONS.**—Section 310(b) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(b)) is amended in the first sentence by inserting "which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations," after "Investment Division of the Administration,".

(b) **VALUATIONS.**—Section 310(d) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(d)) is amended to read as follows:

"(d) **VALUATIONS.**—

"(i) **FREQUENCY OF VALUATIONS.**—

"(A) **IN GENERAL.**—Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

"(B) **MATERIAL ADVERSE CHANGES.**—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

"(C) **INDEPENDENT CERTIFICATION.**—

"(i) **IN GENERAL.**—Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

"(ii) **AUDIT REQUIREMENTS.**—Each audit conducted under clause (i) shall include—

"(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

"(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

"(2) **VALUATION CRITERIA.**—Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

"(A) be established or approved by the Administrator; and

"(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued."

**SEC. 8. TRUSTEE OR RECEIVERSHIP OVER LICENSEES.**

(a) **FINDING.**—It is the finding of the Congress that increased recoveries on assets in liquidation under the Small Business Investment Act of 1958 are in the best interests of the Federal Government.

(b) **DEFINITIONS.**—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Administration" means the Small Business Administration; and

(3) the term "licensee" has the same meaning as in section 103 of the Small Business Investment Act of 1958.

(c) **LIQUIDATION PLAN.**—

(1) **IN GENERAL.**—Not later than October 15, 1996, the Administrator shall submit to the Committees on Small Business of the Senate and the House of Representatives a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation, including assets of licensees in receivership or in trust held by or under the control of the Administration or its agents.

(2) **CONTENTS.**—The plan submitted under paragraph (1) shall include a timetable for liquidating the liquidation portfolio of small business investment company assets owned by the Administration, and shall contain the Administrator's findings and recommendations on various options providing for the fair and expeditious liquidation of such assets within a reasonable period of time, giving due consideration to the option of entering into one or more contracts with private sector entities having the capability to carry out the orderly liquidation of similar assets.

**SEC. 9. BOOK ENTRY REGISTRATION.**

Subsection 321(f) of the Small Business Investment Act of 1958 (15 U.S.C. 687l) is amended by adding at the end the following new paragraph:

"(5) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates."

**SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) **SMALL BUSINESS INVESTMENT ACT OF 1958.**—The Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) is amended—

(1) in section 303—

(A) in subsection (a), by striking "debenture bonds," and inserting "securities,";

(B) by striking subsection (f) and inserting the following:

"(f) **REDEMPTION OR REPURCHASE OF PREFERRED STOCK.**—Notwithstanding any other provision of law—

"(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

"(A) the market value of the stock;

"(B) the value of benefits provided and anticipated to accrue to the issuer;

"(C) the amount of dividends paid, accrued, and anticipated; and

"(D) the Administrator's estimate of any anticipated redemption; and

"(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.";

(C) in subsection (g)(8)—

(i) by striking "partners or shareholders" and inserting "partners, shareholders, or members";

(ii) by striking "partner's or shareholder's" and inserting "partner's, shareholder's, or member's"; and

(iii) by striking "partner or shareholder" and inserting "partner, shareholder, or member";

(2) in section 308(h), by striking "subsection (c) or (d) of section 301" each place that term appears and inserting "section 301";

(3) in section 310(c)(4), by striking "not less than four years in the case of section 301(d) licensees and in all other cases,";

(4) in section 312—

(A) by striking "shareholders or partners" and inserting "shareholders, partners, or members"; and

(B) by striking "shareholder, or partner" each place that term appears and inserting "shareholder, partner, or member";

(5) by striking sections 317 and 318, and redesignating sections 319 through 322 as sections 317 through 320, respectively;

(6) in section 319, as redesignated—

(A) in subsection (a), by striking "including companies operating under the authority of section 301(d)," and

(B) in subsection (f)(2), by inserting "or investments in obligations of the United States" after "accounts";

(7) in section 320, as redesignated, by striking "section 321" and inserting "section 319"; and

(8) in section 509—

(A) in subsection (a)(1), by striking the second sentence; and

(B) in subsection (e)(1)(B), by striking "subsection (c) or (d) of section 301" and inserting "section 301".

(b) **AMENDMENT IN OTHER LAW.**—Section 11(h) of the Federal Home Loan Bank Act (12 U.S.C. 1431(h)) is amended by striking "301(d)" and inserting "301".

**SEC. 11. AMENDMENTS TO THE SMALL BUSINESS ACT.**

(a) **POWERS OF THE ADMINISTRATOR.**—Section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)) is amended by striking the colon and all that follows before the semicolon at the end of the paragraph and inserting the following: "Provided, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation".

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 20(p)(3) of the Small Business Act (15 U.S.C. 631 note) is amended by striking subparagraph (B) and inserting the following:

"(B) \$300,000,000 in guarantees of debentures; and"

**SEC. 12. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

Mr. BOND. Mr. President, I rise today in support of S. 1784, The Small Business Investment Company Improvement Act of 1996. This bill proposes numerous changes to the Small Business Investment Act of 1958 designed to improve, strengthen, and expand the availability of investment capital under the Small Business Administrations' Small Business Investment Company (SBIC) program.

S. 1784 builds on the improvements of the SBIC program contained in the law passed by Congress in 1992 by making the following changes to reduce the risk of SBIC defaults and losses to the Federal government:

1. Increases the level of private capital needed to obtain an SBIC license from SBA.

2. Requires experienced and qualified management for all SBICs.

3. Requires diversification between investors and the management team.

In addition, S. 1784 makes these important changes to the Small Business Investment Act to increase the availability of investment capital to small businesses:

1. Increases fees paid by SBICs which reduces the credit subsidy rate.

2. Eliminates the distinction between SBICs and SSBICs, while grandfathering" successful SSBICs into the new program.

3. Places a greater emphasis on SBIC investments in smaller enterprises or smaller small businesses.

In 1958, Congress first approved the Small Business Investment Act creating Small Business Investment Companies, which are private investment companies licensed by SBA, whose sole activity is to make investments in small businesses. An SBIC raises private capital which is matched by additional funds guaranteed by SBA. The

private capital and SBA-guaranteed funds are invested by SBICs in small businesses.

SBICs fill a void that is not addressed by private venture capital firms, most of which are so large they are usually unwilling to make investments in smaller firms, which generally seek investments in the range of \$500,000 to \$2.5 million each. Since the beginning of the SBIC program, nearly \$12 billion has been invested in approximately 77,000 small businesses. Some SBICs make equity investments in small businesses, while others make long-term loans, which are frequently coupled with rights to purchase an equity interest in the company, sometimes called warrants. The lending-type or debenture SBICs provide long-term financing that is generally not available from banks or private venture capital firms.

Today, there are 185 active regular SBICs and 89 Specialized SBICs (SSBICs) in the SBIC program. SSBICs invest only in minority owned and controlled businesses. Together, these SBICs and SSBICs have raised nearly \$4 billion in private capital and have received \$1.02 billion in SBA-guaranteed funds.

Today's SBIC program has been shaped in large part by the Small Business Equity Enhancement Act of 1992. The genesis of this important legislation resulted from the hard work of SBA's Investment Capital Advisory Council, a public-private working group formed in 1991 to address the problems confronting the SBIC program. The 1992 Act produced the first major change in the SBIC program since its formation in 1958. It created the Participating Security program, which incorporates some of the best practices of the private venture capital industry. The 1992 act came about in response to the persistence of my good friend and colleague from Arkansas, Senator BUMPERS, who as chairman of the Committee on Small Business held a series of hearings focusing attention on the problems under the program. The result of the Act was to strengthen the SBIC program and to correct serious weaknesses that had been exposed by well publicized problems of the past.

Since the 1992 Act became law, more than 30 new participating security SBICs with nearly \$500 million in private capital have been licensed by SBA, and 17 new SBICs with over \$200 million of private capital have been licensed as debenture SBICs.

There is a significant difference between the SBICs licensed before the 1992 Act and the SBICs licensed under the more strict guidelines set forth under the 1992 Act. While the 1992 Act increased the minimum private capital threshold for licensing to \$2.5 million for each debenture SBIC and \$5 million for each new participating security SBIC, SBA has imposed even more strict standards in its regulations. Under the SBA rules, debenture SBICs must have a minimum of \$5 million in

private capital and participating security SBICs must have \$10 million in private capital.

Since the 1992 Act has created two distinct types of SBICs, it allows for investments to be tailored to meet the needs of small businesses. For example, when a small business needs a loan and can meet projected interest payments, the traditional lending-type or debenture SBICs are available to make debt investments. For small businesses that need non-interest bearing investment capital, the participating security SBICs can offer an equity-type investment which anticipates an extended period of time, such as two to three years, before the small business is expected to begin repayment of this investment. In this latter case, interest payments are deferred until the investments begin to generate a positive return. Under the Participating Security program, the Federal government's return is not limited to repayment of principal and interest—it can also share in the profits of the SBIC.

During this Congress, I have chaired three hearings investigating the success and problems associated with the SBIC program. Testimony before the Senate Committee on Small Business has been supportive and positive. Numerous small business entrepreneurs have testified about their inability to obtain investment capital from banks and other traditional investment sources, and SBICs are frequently their only source of investment capital. Last year, Jerry Johnson, the Chief Executive Officer of Williams Brothers Lumber Co. located near Atlanta, testified that not one bank in the Atlanta area would speak with him about asset-based lending. After a lengthy search, he and his partner turned to Allied Capital Corp., a Washington, D.C.-based SBIC. Within 60 days of their first contact with Allied Capital Corp., Mr. Johnson was able to conclude his financing arrangement. Being able to clear this financing hurdle with the help of an SBIC, Mr. Johnson's company has grown significantly, adding many new employees and increasing its tax base.

Often, we hear about major success stories like Federal Express and the Callaway golf club co. that received SBIC funding at critical times in their early growth stages. It is, however, far more likely that businesses like the Williams Brothers Lumber Co. will be the typical beneficiaries of the SBIC program. These are "Main Street" enterprises located across America who have looked to traditional money sources and been turned away. The SBIC program is filling this niche—a large niche to say the least—that picks up where banks fear to tread and Wall Street is not interested because the investment size is too small. There are thousands of companies like Williams Brothers Lumber Company across the country that need investment financing to support growth and new jobs and have nowhere to turn but to the SBIC

program to meet their demand for capital.

During the past year, the Committee on Small Business has received a great deal of information about the need to strengthen the SBIC program. In July 1995, Patricia Cioherty, Chair of SBA's private sector SBIC Reinvention Council, testified on the Council's recommendations to strengthen and expand the program. In addition, last summer the National Association of Investment Companies forwarded to the Committee on Small Business a copy of their recommendations to improve the SSBIC program, which was also submitted to SBA's SSBIC Advisory Council.

The involvement of the private sector in analyzing the performance of the SBIC program and the insight provided by these recommendations are commendable - and very helpful to this Committee. In 1995, the SBIC Reinvention Council recommended that new fees be imposed to lower the credit subsidy rate so that the program can provide a significant increase in leverage to licensed SBICs. It also recommended certain administrative changes to improve the management and operations of the SBIC program.

The National Association of Investment Companies (NAIC), which represents SSBICs, also recommended in 1995 that all statutory and regulatory distinctions between SBICs and SSBICs be eliminated, including the deletion of all references to social or economic disadvantage from the Small Business Investment Act. NAIC proposed creating a single, combined SBIC program that would retain an important focus on investments in small business at the smaller end of the eligible size standards. They recommended sensible improvements to make more investment capital available to more small businesses and proposed to remove the current restrictions that prohibit Specialized SBICs from investing in companies not owned by socially or economically disadvantaged persons. S. 1784 includes many of their recommendations.

#### NEW FEES FOR SBICS

The President's FY 1997 budget request included a recommendation that fees paid by SBICs be increased to finance a significant reduction in the credit subsidy rate. The Office of Management and Budget, recognizing the positive effect of some of the regulatory changes already implemented by SBA, now is using a lower projected default rate, thereby reducing the credit subsidy rate for debenture and participating security licensees under the SBIC program.

The Administration's recommendation to lower the credit subsidy rate by increasing fees is similar to one made last year in their amended FY 1996 budget request for the 7(a) Guaranteed Business Loan Program. Accompanying their request for a fee increase were statements by SBA about how well the 7(a) program was performing.

What happened following SBA's positive predictions for the 7(a) program

has been alarming. Based in part on SBA's glowing report card on the 7(a) program, Congress passed legislation to raise fees and lower the subsidy rates of the program. The changes became law in October 1995, which is about the same time SBA and OMB were beginning to work on their most recent budget request which raises the 7(a) credit subsidy rate by 150% and the cost of the program by \$180 million. This higher cost is the direct result of greater losses from loan defaults and lower recoveries from liquidations.

As Chairman of the Committee on Small Business, I believe it is prudent for Congress to take steps so that we do not allow a repeat of the 7(a) problem with the SBIC program. Based on our experience last year, Congress should not approve any decrease in the credit subsidy rate through the increase of fees without taking some corresponding steps to strengthen the safety and soundness of the SBIC program.

#### SBICS IN LIQUIDATION

In addition, evidence before the Committee on Small Business about the failure of SBA to maximize its recoveries from failed SBICs is alarming. SBA acknowledges there are assets with a value of approximately \$500 million tied up with SBICs in liquidation. To make this situation even more alarming, many of these failed SBICs have been in liquidation for over ten years, including one that was transferred into liquidation on January 5, 1967.

S. 1784 directs SBA to submit to the Senate and House Committees on Small Business, no later than October 15, 1996, a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation. This plan should include a timetable for liquidating the liquidation portfolio of assets owned by SBA.

In addition, SBA needs to take a hard look at how it manages failed SBICs that are in receivership. It is not a sufficient explanation for SBA to claim it is at the mercy of the court system in winding up the affairs of SBICs in receivership. In each case, the court acts in response to SBA's petition, has named SBA the receiver, and SBA has retained independent contractors to act as principal agents for the receivership. These principal agents are paid hourly and appear to have little or no incentive to wind up the affairs of an SBIC. In fact, the opposite is true, and the real incentive appears to be to drag out the receivership as long as possible. Based on SBA replies to requests for information from the Committee on Small Business, we have learned that these principal receivers agents bill significant hours each year. In FY 1995, one principal agent billed over 3,200 hours for one year, the equivalent of over 8 hours per day for 365 days. Other principal agents billed over 2,500 hours each for FY 1995.

At the time of the Committee's inquiry into these billing practices, SBA gave no indication that it felt they

were unusual. It is clear to me that without incentives to complete action on these SBICs in receivership, the current system used by SBA will allow these abuses to continue. Although the Committee did not reach a consensus on my proposal to create an incentive based system to improve recoveries from SBICs in receivership, we will continue to monitor SBA's performance closely in this area.

For several months starting late last year, the Committee worked on draft legislation to strengthen and enhance the SBIC program. S. 1784, the Small Business Investment Company Improvement Act of 1996, is the result. It incorporates recommendations from SBA's SBIC Reinvention Council, the National Association of Investment Companies, the National Association of Small Business Investment Companies, and the President's FY 1997 budget request.

S. 1784 was approved by the Senate Committee on Small Business by a unanimous 18-0 vote. It makes substantial progress toward our goal of strengthening the SBIC program, while allowing the program to expand, providing more investment capital to small businesses as the cost and risk to the government declines. It was only after nearly 18 months of study and investigation that we were able to produce such a bill. S. 1784 is sound legislation that improves the safety and soundness of the SBIC program and makes more investment capital available to small businesses. And it accomplishes all of these goals while reducing the risk of loss to the government. It is for these reasons that I recommend to my colleagues that they vote in favor of S. 1784.

Mr. President, I ask unanimous consent that a section-by-section analysis of this bill be printed in the RECORD.

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

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE

This Act may be cited as the "Small Business Investment Company Improvement Act of 1996".

##### SECTION 2. DEFINITIONS

The definition of "small business concern" is amended to make clear that investments from venture capital firms or pension plans in small businesses do not affect the small business' size standard as set forth under the Small Business Act.

A new term, "smaller enterprise" is included in the Act. A smaller enterprise is a business with net financial worth no greater than \$6 million and an average net income of no more than \$2 million.

"Qualified non-private funds" are defined as funds invested by state or local governments in SSBIC's. The bill limits the amount of qualified private, non-private funds that can be included in the private capital of an SBIC. No more than 20% of private capital can be qualified non-private funds invested on or after June 30, 1996. 33% of private capital can be from these funds if invested prior to June 30, 1996.

For the first time, the Small Business Investment Act is amended to include "limited

liability company" as the one of the business entities that can qualify to be an SBIC. Current statute allows corporations and partnerships to be SBICs. The "limited liability company" is a relatively new business entity that is being organized for raising venture capital.

#### SECTION 3. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

This bill includes provisions to speed up the processing of applications from business entities who want to be licensed by SBA as an SBIC. It requires SBA to provide the applicant with a written report detailing status of the application within 90 days of receipt of the application. In addition it states that no application can be denied because Congress has not appropriated sufficient funds to meet leverage demands.

This bill also permits SBA to approve a new license applicant which has not less than \$3 million in private capital so long as the applicant meets all other licensing requirements. Once approved as a licensee, however, the SBIC would not be eligible for leverage until its private capital reaches \$5 million.

Section 301(d) of the Small Business Investment Company Act of 1958 is repealed.

#### SECTION 4. CAPITAL REQUIREMENTS

Under this bill, the minimum capital requirements for new license applicants is increased. To be a debenture licensee, new applicants must have \$5 million in private capital. To be a participating security licensee, new applicants must have \$10 million in private capital; however, SBA is given the discretion to approve a participating security applicant if it has less than \$10 million but more than \$5 million so long as SBA determines that approval of that applicant would not create or otherwise contribute to an unreasonable risk of default or loss to the federal government.

This bill also grandfathers existing licensees in the program and includes provisions under which they will be exempt from the increased capital requirement. Licensees with a record of regulatory compliance and profitable operations will continue to be eligible for leverage, based upon the exercise of SBA discretion. Any licensee which continues to receive leverage under this exemption must certify that 50% of its aggregate dollar investments are going to smaller enterprises.

The bill directs SBA to ensure that each licensee licensed after enactment of this bill maintains diversification between the management and ownership of the licensee. This is a safety and soundness measure design to maintain independence and objectivity in the financial management and oversight of the investment and operations of the SBIC.

#### SECTION 5. BORROWING

This provision requires SBA to regulate SBICs closely to ensure that they do not incur excessive third party debt which would create or contribute to an unreasonable risk of default or loss to federal government. In addition, this provision requires that each SBIC, regardless of its size, invest at least 20% of its aggregate dollar investments in smaller enterprises.

This section also requires SBA to ensure that no SBIC receives leverage when it is under capital impairment. This will be a judgment call by SBA which will take in to consideration the nature of assets of the SBIC and the amount and terms of any third party debt owed by the SBIC.

This section also includes two increases in fees to be paid by SBICs to SBA. First, SBICs would pay an annual charge of 50 basis point on the value of all outstanding leverage granted after the effective date. In addition, the non-refundable up-front fee which is currently 2% would be increased to 3% of new leverage amounts.

## SECTION 6. LIABILITY OF THE UNITED STATES

This section restates and clarifies the limits of liability on SBA under this program.

## SECTION 7. EXAMINATIONS; VALUATIONS

This is a section designed to improve the examination and oversight function of SBA to enhance the safety and soundness of the program. It requires each SBIC to adopt valuation criteria set forth by SBA to be used for establishing the values of loans and investments of each SBIC. This section requires that an independent certified accountant approved by SBA review these valuations at least once a year to ensure that these requirements are being met.

## SECTION 8. TRUSTEE OR RECEIVERSHIP OVER LICENSEES

This section states that it is the finding of the Congress that increased recoveries of assets in liquidation under the SBIC program are in the best interest of the Federal Government. Not later than October 15, 1996, SBA is directed to submit to the Senate and House Committees on Small Business a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation. This plan is to include a timetable for liquidating the liquidation portfolio of assets owned by SBA.

## SECTION 9. BOOK ENTRY REGISTRATION

This section permits the use of electronic means for registration of trust certificates.

## SECTION 10. TECHNICAL AND CONFORMING AMENDMENTS

An SBIC preferred stock buy back program was authorized by Congress effective November 1, 1989. This bill directs that any monies received by SBA under this repurchase program shall be used solely to guarantee debenture leverage for SBICs that maintain an investment portfolio with 50% of its investments in smaller enterprises.

## SECTION 11. AUTHORIZATION OF APPROPRIATIONS

This section increases the authorization for debenture leverage from \$200 million to \$300 million for FY 1997.

## SECTION 12. EFFECTIVE DATE

This Act and any amendments will become effective on the date of enactment.

## SECTION 13. EXTENSION OF SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

This section provides for a one year extension of the Small Business Competitiveness Demonstration Program Act, which would otherwise expire on September 30, 1996.

## AMENDMENT NO. 5090

Mr. MURKOWSKI. Mr. President, I understand there is an amendment at the desk offered by Senators BOND and BUMPERS. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for Mr. BOND, for himself, and Mr. BUMPERS, proposes an amendment numbered 5090.

On page 49, line 4, add the following new section:

**SEC 13. EXTENSION OF SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM**

Section 711(c) of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended by striking "September 30, 1996" and inserting "September 30, 1997".

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the amendment be agreed to.

The amendment (No. 5090) was agreed to.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the committee substitute, as amended, be agreed to, the bill be deemed read a third time, passed, and the motion to reconsider be laid upon the table, and any statement relating to the bill be placed at the appropriate place in the RECORD.

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

The committee amendment was agreed to.

The bill (S. 1784), as amended, was deemed read the third time and passed, as follows:

## S. 1784

*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 Investment Company Improvement Act of 1996".

**SEC. 2. DEFINITIONS.**

(a) **SMALL BUSINESS CONCERN.**—Section 103(5) of the Small Business Investment Act of 1958 (15 U.S.C. 662(5)) is amended by inserting before the semicolon the following: ", except that, for purposes of this Act, an investment by a venture capital firm, investment company (including a small business investment company) employee welfare benefit plan or pension plan, or trust, foundation, or endowment that is exempt from Federal income taxation—

"(A) shall not cause a business concern to be deemed not independently owned and operated;

"(B) shall be disregarded in determining whether a business concern satisfies size standards established pursuant to section 3(a)(2) of the Small Business Act; and

"(C) shall be disregarded in determining whether a small business concern is a smaller enterprise".

(b) **PRIVATE CAPITAL.**—Section 103(9) of the Small Business Investment Act of 1958 (15 U.S.C. 662(9)) is amended to read as follows:

"(9) the term 'private capital'—

"(A) means the sum of—

"(i) the paid-in capital and paid-in surplus of a corporate licensee, the contributed capital of the partners of a partnership licensee, or the equity investment of the members of a limited liability company licensee; and

"(ii) unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee: *Provided*, That such unfunded commitments may be counted as private capital for purposes of approval by the Administrator of any request for leverage, but leverage shall not be funded based on such commitments; and

"(B) does not include any—

"(i) funds borrowed by a licensee from any source;

"(ii) funds obtained through the issuance of leverage; or

"(iii) funds obtained directly or indirectly from any Federal, State, or local government, or any government agency or instrumentality, except for—

"(I) funds invested by an employee welfare benefit plan or pension plan; and

"(II) any qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee);".

(c) **NEW DEFINITIONS.**—Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended by striking paragraph (10) and inserting the following:

"(10) the term 'leverage' includes—

"(A) debentures purchased or guaranteed by the Administration;

"(B) participating securities purchased or guaranteed by the Administration; and

"(C) preferred securities outstanding as of October 1, 1995;

"(11) the term 'third party debt' means any indebtedness for borrowed money, other than indebtedness owed to the Administration;

"(12) the term 'smaller enterprise' means any small business concern that, together with its affiliates—

"(A) has—

"(i) a net financial worth of not more than \$6,000,000, as of the date on which assistance is provided under this Act to that business concern; and

"(ii) an average net income for the 2-year period preceding the date on which assistance is provided under this Act to that business concern, of not more than \$2,000,000, after Federal income taxes (excluding any carryover losses); or

"(B) satisfies the standard industrial classification size standards established by the Administration for the industry in which the small business concern is primarily engaged;

"(13) the term 'qualified nonprivate funds' means any—

"(A) funds directly or indirectly invested in any applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law explicitly mandating the inclusion of those funds in the definition of the term 'private capital';

"(B) funds directly or indirectly invested in any applicant or licensee by any Federal agency under a provision of law enacted after September 4, 1992, explicitly mandating the inclusion of those funds in the definition of the term 'private capital'; and

"(C) funds invested in any applicant or licensee by one or more State or local government entities (including any guarantee extended by those entities) in an aggregate amount that does not exceed—

"(i) 33 percent of the private capital of the applicant or licensee, if such funds were committed for investment before the date of enactment of the Small Business Investment Company Improvement Act of 1996; or

"(ii) 20 percent of the private capital of the applicant or licensee, if such funds were committed for investment on or after the date of enactment of the Small Business Investment Company Improvement Act of 1996;

"(14) the terms 'employee welfare benefit plan' and 'pension plan' have the same meanings as in section 3 of the Employee Retirement Income Security Act of 1974, and are intended to include—

"(A) public and private pension or retirement plans subject to such Act; and

"(B) similar plans not covered by such Act that have been established and that are maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees;

"(15) the term 'member' means, with respect to a licensee that is a limited liability company, a holder of an ownership interest or a person otherwise admitted to membership in the limited liability company; and

"(16) the term 'limited liability company' means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administration.".

**SEC. 3. ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES.**

(a) **LIMITED LIABILITY COMPANIES.**—Section 301(a) of the Small Business Investment Act of 1958 (15 U.S.C. 681(a)) is amended in the



first sentence, by striking "body or" and inserting "body, a limited liability company, or".

(b) **ISSUANCE OF LICENSE.**—Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) is amended to read as follows:

"(c) **ISSUANCE OF LICENSE.**—

"(1) **SUBMISSION OF APPLICATION.**—Each applicant for a license to operate as a small business investment company under this Act shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

"(2) **PROCEDURES.**—

"(A) **STATUS.**—Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

"(B) **APPROVAL OR DISAPPROVAL.**—Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

"(i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or

"(ii) disapprove the application and notify the applicant in writing of the disapproval.

"(3) **MATTERS CONSIDERED.**—In reviewing and processing any application under this subsection, the Administrator—

"(A) shall determine whether—

"(i) the applicant meets the requirements of subsections (a) and (c) of section 302; and

"(ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this Act;

"(B) shall take into consideration—

"(i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

"(ii) the general business reputation of the owners and management of the applicant; and

"(iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

"(C) shall not take into consideration any projected shortage or unavailability of leverage.

"(4) **EXCEPTION.**—

"(A) **IN GENERAL.**—Notwithstanding any other provision of this Act, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, approve an application and issue a license under this subsection with respect to any applicant that—

"(i) has private capital of not less than \$3,000,000;

"(ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 302(a); and

"(iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 302(a).

"(B) **LEVERAGE.**—An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 302(a)."

(c) **SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.**—Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)) is repealed.

#### SEC. 4. CAPITAL REQUIREMENTS.

(a) **INCREASED MINIMUM CAPITAL REQUIREMENTS.**—Section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) is amended by striking "(a)" and all that follows through "The Administration shall also determine the ability of the company," and inserting the following:

"(a) **AMOUNT.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

"(A) \$5,000,000; or

"(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this Act.

"(2) **EXCEPTION.**—The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

"(3) **ADEQUACY.**—In addition to the requirements of paragraph (1), the Administrator shall—

"(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

"(B) determine that the licensee will be able".

(b) **EXEMPTION FOR CERTAIN LICENSEES.**—Section 302(a) of the Small Business Investment Act of 1958 (15 U.S.C. 682(a)) is amended by adding at the end the following new paragraph:

"(4) **EXEMPTION FROM CAPITAL REQUIREMENTS.**—The Administrator may, in the discretion of the Administrator, exempt from the capital requirements in paragraph (1) any licensee licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Investment Company Improvement Act of 1996, if—

"(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Investment Company Improvement Act of 1996 will be provided to smaller enterprises; and

"(B) the Administrator determines that—

"(i) the licensee has a record of profitable operations;

"(ii) the licensee has not committed any serious or continuing violation of any applicable provision of Federal or State law or regulation; and

"(iii) such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government."

(c) **DIVERSIFICATION OF OWNERSHIP.**—Section 302(c) of the Small Business Investment Act of 1958 (15 U.S.C. 682(c)) is amended to read as follows:

"(c) **DIVERSIFICATION OF OWNERSHIP.**—The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Investment Company Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee."

#### SEC. 5. BORROWING.

(a) **DEBENTURES.**—Section 303(b) of the Small Business Investment Act of 1958 (15

U.S.C. 683(b)) is amended in the first sentence, by striking "(but only" and all that follows through "terms)".

(b) **THIRD PARTY DEBT.**—Section 303(c) of the Small Business Investment Act of 1958 (15 U.S.C. 683(c)) is amended to read as follows:

"(c) **THIRD PARTY DEBT.**—The Administrator—

"(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

"(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise."

(c) **REQUIREMENT TO FINANCE SMALLER ENTERPRISES.**—Section 303(d) of the Small Business Investment Act of 1958 (15 U.S.C. 683(d)) is amended to read as follows:

"(d) **REQUIREMENT TO FINANCE SMALLER ENTERPRISES.**—The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises."

(d) **CAPITAL IMPAIRMENT REQUIREMENTS.**—Section 303(e) of the Small Business Investment Act of 1958 (15 U.S.C. 683(e)) is amended to read as follows:

"(e) **CAPITAL IMPAIRMENT.**—Before approving any application for leverage submitted by a licensee under this Act, the Administrator—

"(1) shall determine that the private capital of the licensee meets the requirements of section 302(a); and

"(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government."

(e) **EQUITY INVESTMENT REQUIREMENT.**—Section 303(g)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)(4)) is amended by striking "and maintain".

(f) **FEEES.**—Section 303 of the Small Business Investment Act of 1958 (15 U.S.C. 683) is amended—

(1) in subsection (b), in the fifth sentence, by striking "1 per centum", and all that follows before the period at the end of the sentence and inserting the following: "1 percent, plus an additional charge of .50 percent per annum which shall be paid to and retained by the Administration";

(2) in subsection (g)(2), by striking "1 per centum," and all that follows before the period at the end of the paragraph and inserting the following: "1 percent, plus an additional charge of .50 percent per annum which shall be paid to and retained by the Administration"; and

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

"(i) **LEVERAGE FEE.**—With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee, payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee.

"(j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing debentures and participating securities under this Act."

#### SEC. 6. LIABILITY OF THE UNITED STATES.

Section 308(e) of the Small Business Investment Act of 1958 (15 U.S.C. 687(e)) is amended by striking "Nothing" and inserting "Except as expressly provided otherwise in this Act, nothing".

#### SEC. 7. EXAMINATIONS; VALUATIONS.

(a) EXAMINATIONS.—Section 310(b) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(b)) is amended in the first sentence by inserting "which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations," after "Investment Division of the Administration,".

(b) VALUATIONS.—Section 310(d) of the Small Business Investment Act of 1958 (15 U.S.C. 687b(d)) is amended to read as follows:

"(d) VALUATIONS.—

"(1) FREQUENCY OF VALUATIONS.—

"(A) IN GENERAL.—Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

"(B) MATERIAL ADVERSE CHANGES.—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

"(C) INDEPENDENT CERTIFICATION.—

"(i) IN GENERAL.—Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

"(ii) AUDIT REQUIREMENTS.—Each audit conducted under clause (i) shall include—

"(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

"(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

"(2) VALUATION CRITERIA.—Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

"(A) be established or approved by the Administrator; and

"(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued."

#### SEC. 8. TRUSTEE OR RECEIVERSHIP OVER LICENSEES.

(a) FINDING.—It is the finding of the Congress that increased recoveries on assets in liquidation under the Small Business Investment Act of 1958 are in the best interests of the Federal Government.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Administration" means the Small Business Administration; and

(3) the term "licensee" has the same meaning as in section 103 of the Small Business Investment Act of 1958.

#### (c) LIQUIDATION PLAN.—

(1) IN GENERAL.—Not later than October 15, 1996, the Administrator shall submit to the Committees on Small Business of the Senate and the House of Representatives a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation, including assets of licensees in receivership or in trust held by or under the control of the Administration or its agents.

(2) CONTENTS.—The plan submitted under paragraph (1) shall include a timetable for liquidating the liquidation portfolio of small business investment company assets owned by the Administration, and shall contain the Administrator's findings and recommendations on various options providing for the fair and expeditious liquidation of such assets within a reasonable period of time, giving due consideration to the option of entering into one or more contracts with private sector entities having the capability to carry out the orderly liquidation of similar assets.

#### SEC. 9. BOOK ENTRY REGISTRATION.

Subsection 321(f) of the Small Business Investment Act of 1958 (15 U.S.C. 687f) is amended by adding at the end the following new paragraph:

"(5) Nothing in this subsection shall prohibit the utilization of a book entry or other electronic form of registration for trust certificates."

#### SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SMALL BUSINESS INVESTMENT ACT OF 1958.—The Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) is amended—

(1) in section 303—

(A) in subsection (a), by striking "debenture bonds," and inserting "securities,";

(B) by striking subsection (f) and inserting the following:

"(f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwithstanding any other provision of law—

"(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

"(A) the market value of the stock;

"(B) the value of benefits provided and anticipated to accrue to the issuer;

"(C) the amount of dividends paid, accrued, and anticipated; and

"(D) the Administrator's estimate of any anticipated redemption; and

"(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.";

(C) in subsection (g)(8)—

(i) by striking "partners or shareholders" and inserting "partners, shareholders, or members";

(ii) by striking "partner's or shareholder's" and inserting "partner's, shareholder's, or member's"; and

(iii) by striking "partner or shareholder" and inserting "partner, shareholder, or member";

(2) in section 308(h), by striking "subsection (c) or (d) of section 301" each place that term appears and inserting "section 301";

(3) in section 310(c)(4), by striking "not less than four years in the case of section 301(d) licensees and in all other cases,";

(4) in section 312—

(A) by striking "shareholders or partners" and inserting "shareholders, partners, or members"; and

(B) by striking "shareholder, or partner" each place that term appears and inserting "shareholder, partner, or member";

(5) by striking sections 317 and 318, and redesignating sections 319 through 322 as sections 317 through 320, respectively;

(6) in section 319, as redesignated—

(A) in subsection (a), by striking ", including companies operating under the authority of section 301(d),"; and

(B) in subsection (f)(2), by inserting "or investments in obligations of the United States" after "accounts";

(7) in section 320, as redesignated, by striking "section 321" and inserting "section 319"; and

(8) in section 509—

(A) in subsection (a)(1), by striking the second sentence; and

(B) in subsection (e)(1)(B), by striking "subsection (c) or (d) of section 301" and inserting "section 301".

(b) AMENDMENT IN OTHER LAW.—Section 11(h) of the Federal Home Loan Bank Act (12 U.S.C. 1431(h)) is amended by striking "301(d)" and inserting "301".

#### SEC. 11. AMENDMENTS TO THE SMALL BUSINESS ACT.

(a) POWERS OF THE ADMINISTRATOR.—Section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)) is amended by striking the colon and all that follows before the semicolon at the end of the paragraph and inserting the following: "": *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 20(p)(3) of the Small Business Act (15 U.S.C. 631 note) is amended by striking subparagraph (B) and inserting the following:

"(B) \$300,000,000 in guarantees of debentures; and"

#### FALSE STATEMENTS PENALTY RESTORATION ACT

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 3166 and that the Senate proceed to its immediate consideration.

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

The legislative clerk read as follows:

A bill (H.R. 3166) to amend title 18, United States Code, with respect to the crime of false statement in a Government matter.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

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

AMENDMENT NO. 5091

(Purpose: To propose a substitute)

Mr. MURKOWSKI. Mr. President, I understand there is a substitute amendment at the desk offered by Senator SPECTER, and I ask for its immediate consideration.