

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Nebraska (Mr. NELSON), and the Senator from Illinois (Mr. OBAMA), are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska (Mr. NELSON) would vote "yea".

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

The result was announced—yeas 91, nays 6, as follows:

[Rollcall Vote No. 9 Leg.]

#### YEAS—91

Akaka	Durbin	Mikulski
Alexander	Ensign	Murkowski
Barrasso	Enzi	Murray
Baucus	Feingold	Nelson (FL)
Bayh	Feinstein	Pryor
Bennett	Graham	Reed
Biden	Grassley	Reid
Bingaman	Harkin	Roberts
Bond	Hatch	Rockefeller
Boxer	Hutchison	Salazar
Brown	Inhofe	Sanders
Brownback	Inouye	Schumer
Bunning	Isakson	Sessions
Burr	Johnson	Shelby
Byrd	Kennedy	Smith
Cantwell	Kerry	Snowe
Cardin	Klobuchar	Specter
Carper	Kohl	Stabenow
Casey	Kyl	Stevens
Chambliss	Landrieu	Sununu
Cochran	Lautenberg	Tester
Coleman	Leahy	Thune
Collins	Levin	Vitter
Conrad	Lieberman	Voinovich
Cornyn	Lincoln	Warner
Crapo	Lugar	Webb
DeMint	Martinez	Whitehouse
Dodd	McCain	Wicker
Dole	McCaskill	Wyden
Domenici	McConnell	
Dorgan	Menendez	

#### NAYS—6

Allard	Corker	Gregg
Coburn	Craig	Hagel

#### NOT VOTING—3

Clinton	Nelson (NE)	Obama
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The amendment (No. 4010) was agreed to.

Mrs. MURRAY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the question is on the engrossment of the amendment and third reading of the bill.

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

The bill was read the third time.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON), the Senator from Nebraska (Mr. NELSON), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announced that, if present and voting, the Senator from Nebraska (Mr. NELSON) would vote "yea."

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

The result was announced—yeas 81, nays 16, as follows:

[Rollcall Vote No. 10 Leg.]

#### YEAS—81

Akaka	Dorgan	Menendez
Alexander	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Graham	Pryor
Biden	Grassley	Reed
Bingaman	Harkin	Reid
Bond	Hatch	Roberts
Boxer	Hutchison	Rockefeller
Brown	Inouye	Salazar
Brownback	Isakson	Sanders
Bunning	Johnson	Schumer
Burr	Kennedy	Smith
Byrd	Kerry	Snowe
Cantwell	Klobuchar	Specter
Cardin	Kohl	Stabenow
Carper	Landrieu	Stevens
Casey	Lautenberg	Sununu
Chambliss	Leahy	Tester
Cochran	Levin	Thune
Coleman	Lieberman	Vitter
Collins	Lincoln	Voinovich
Conrad	Lugar	Warner
Cornyn	Martinez	Webb
Dodd	McCain	Whitehouse
Dole	McCaskill	Wicker
Domenici	McConnell	Wyden

#### NAYS—16

Allard	DeMint	Kyl
Barrasso	Ensign	Murkowski
Coburn	Enzi	Sessions
Corker	Gregg	Shelby
Craig	Hagel	
Crapo	Inhofe	

#### NOT VOTING—3

Clinton	Nelson (NE)	Obama
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The bill (H.R. 5140), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### MODIFICATION TO AMENDMENT NO. 4010

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the passage of H.R. 5140, the Reid-McConnell amendment No. 4010 be modified with the technical change at the desk.

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

The modification is as follows:

tion. Such term shall not include a TIN issued by the Internal Revenue Service."

(b) ADMINISTRATIVE AMENDMENTS.—

(1) DEFINITION OF DEFICIENCY.—Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by striking "and 53(e)" and inserting "53(e), and 6428".

(2) MATHEMATICAL OR CLERICAL ERROR AUTHORITY.—Section 6213(g)(2)(L) of such Code is amended by striking "or 32" and inserting "32, or 6428".

(c) TREATMENT OF POSSESSIONS.—

(1) PAYMENTS TO POSSESSION.—

(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall make a payment to each possession of the United States with a mirror code tax system in an amount equal to the loss to that possession by reason of the amendments made by this section. Such amount shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall make a payment to each possession of the United States which does not

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, my mind was on FISA. What we have done is, the staffs are working out a consent agreement where we are going to have three recorded votes. We are going to be able to dispose of two other votes by voice. Then we are working toward—and it is not done yet—we are working toward where that may be all the votes we will have tonight.

Then what we will try to do—not try, it is the only way we can get from here to there to get it done—is tomorrow we still have a lot of debate left in this matter because of the time we have spent dealing on the stimulus package. So today we will do all the votes we can. We are going to have, as I have indicated, at least five amendments we will get rid of. I think that will leave about five. We will then have debate—there are a number of amendments where I think there is still like 6 hours of debate left on those, and they would complete that debate, hopefully get rid of a lot tomorrow, and what we can't, on Monday, and Tuesday morning we will start final votes.

We will have a cloture vote involved in this also, but I think we can work out the time factor on the cloture vote and have final passage on this sometime on Tuesday. I have asked Senator ROCKEFELLER to have a pretty good idea of what will be in the final package as it comes out here. So I think it would be to everyone's benefit that he and Senator LEAHY, Senator BOND, and Senator SPECTER work with their House counterparts to see if they can work on a package to bring back to us.

What we are facing with this, because of the constraint of time, is that the House has to work with the Senate to come up with something. If that doesn't work out, then the legislation expires. There will be no law on the 15th, and I don't think there is anyone who wants that. No one, with all that has gone on, even though I have complained a few times—well, I think there is no need to point fingers now. We are where we are, and we have to move as quickly as we can and try to finish this bill, including the conference report, next week. We have to do that.

The unanimous consent is not ready yet, so I ask unanimous consent that my friend from Illinois, Senator DURBIN, be allowed to speak for 10 minutes as in morning business; and if one of my colleagues on the other side wants to speak before the vote starts, that is appropriate.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, if I can say so, it sounds like a good game plan to me. My understanding is we are going to get started voting here very shortly. Is my understanding correct?

Mr. REID. Well, now, Mr. President, we lost one of them, so we are now down to two rollcall votes and two that can be accepted by voice. So we are two steps forward and one back. So the answer is: Yes, we will have two votes that will be recorded. We should be able to start those in a few minutes.

Mr. DORGAN. Mr. President, will the Senator yield for a question?

Mr. REID. I would be happy to yield.

Mr. DORGAN. Mr. President, I think most Senators will feel good about the significant progress on FISA, and hopefully we will get that completed.

Senator THUNE and I were speaking a moment ago about the other piece of legislation we hope we might finish, when FISA is completed next Tuesday or Wednesday, and that is the Indian Health Care Improvement Act, which we started on the floor of the Senate.

I would ask the Senator: Might we expect to be able to bring that up for a day? We believe we can finish that in a day next week.

Mr. REID. I say to my friend: Is there anything that can be done on that tomorrow or Monday? Has the debate on all the amendments been completed?

Mr. DORGAN. Mr. President, I believe we have worked through most all areas of controversy, where we are waiting on some amendments that I believe Senator COBURN wishes some votes on. But I think we have made a lot of progress on both sides of the aisle to resolve items of controversy. I think if we could get it on the floor for 1 day, we can finish it. And, frankly, there is some urgency to Indian health care issues. As I said, Senators Murkowski, Thune, and others join me in hoping we can include that next week to be completed on the floor of the Senate.

Mr. REID. I ask my friend, the Senator from North Dakota: Is there a way we could have a consent agreement that would give us specific time for any amendments and votes on amendments, and after they are all done, final passage?

Mr. DORGAN. Mr. President, I have been working with Senator KYL and others to try to see if we can reach an agreement on any amendments. I believe there will be very few votes required. I think Senator COBURN has some that may require a couple of votes, but by and large I think we have worked through most of the issues. Senator KYL and Senator THUNE, on that side of the aisle, have been working with me.

But I would very much like to get whatever list or whatever time agreements we need so that we can bring that up. We really do need to finish that next week, following the disposition of FISA, if it is possible.

Mr. REID. I ask my good friend, during those two votes we are going to have in a short time, if we can go to work to see if we could have a specific numbers of amendments, how much time is left on them, we will complete it to final passage.

Mr. KYL. Mr. President, I have been working with the Senator from North Dakota. While we have not surveyed all of the Members on this side, I believe the issues are well known to us; they have surfaced. The three key issues have mostly been worked through, as I understand, and I believe Senator COBURN is willing to put a time agreement on the amendments he has. All of which is to say that I believe, unless there are some votes on our side that have not come forward—and we will certainly inquire—it should be possible to get a time agreement with specific amendments that is not very long and that would result in the bill being concluded in a relatively short time. But we do need to survey the rest of our Members.

Mr. THUNE. Mr. President, I would just echo what my colleague from North Dakota said and would agree that now we will have dealt with FISA and the economic stimulus bill, which I know are matters of great importance and urgency—this is a matter of great urgency to the people we represent. It is long overdue that we get this done. So I will do everything I can on our side to make it possible for us to limit any further amendments or anything that might further delay moving to a final vote.

I appreciate the leader's indulgence, along with my colleague from North Dakota, and would simply ask that when we complete action on this, we move to this bill.

Mr. REID. If I can respond to my three colleagues, originally we thought this bill would take 1 day, and we know it has been bifurcated because of other issues. But I would really think that before we spend another few days on this, we have to do everything we can to see if we can come up with a time agreement to give us a way to get to the end so we can have final passage.

We do not need to speak, as I have, about the drastic needs in Indian territory. We need to do this. So I hope that—my friends, this is certainly a bipartisan piece of legislation—we can work out some time agreements, and part of that will be final passage.

Mr. KYL. I do not know of any reason that cannot be done. There is certainly no intention on our side to take a long time or slow it down. I think the Senator from North Dakota would verify that I have worked to try to resolve issues that are outstanding. It is my belief that this can be done within a time period that is acceptable to the majority.

The PRESIDING OFFICER (Mr. PRYOR.) The majority leader has a unanimous consent request pending. Is there objection? Without objection, it is so ordered.

#### DOJ STAFF MEMO ON THE FUTURES MARKETS

Mr. DURBIN. Mr. President, I thank the majority leader for requesting 10 minutes for me in morning business.

The State of Illinois is home to some of the most dynamic and innovative financial services firms in the world. For the futures markets, Chicago is a global leader. I pay particularly close attention to the vitality of these markets. It is an important part not only of the economy of my home State but of the economy of our Nation. The work in the futures markets has a direct impact on everything from pork bellies to currencies to the price of oil.

I am deeply disturbed with what has taken place this week within the Department of Justice relative to those futures markets. As we have been told, the staff at the Justice Department recently wrote a memo to the Department of Treasury questioning the structure of clearing and settlement services in the U.S. futures industry. The staff has referred to concerns about restraint on competition and other issues.

What is troubling about this disclosure is that the Department of Justice staffers apparently are claiming that they were simply commenting on a Treasury proposal regarding the overall competitiveness of America's financial markets. But the comment period on the Treasury proposal ended 2 months ago, 2 months before the Department of Justice released this memo, and it is been more than 6 months since that same Department of Justice approved the merger of the Chicago Mercantile Exchange and the Chicago Board of Trade.

Well, people say: So what? Bureaucrats release memos. Who pays any attention to those? Well, let me tell you what happened yesterday. When this memo became public, the price of the Chicago Mercantile Exchange stock declined by over \$100 in 1 day. That reduced shareholders' market capitalization by almost \$6 billion. A memo from the Department of Justice to the Department of Treasury leaked to the Dow Jones Press Service, which became public, cost the Chicago Mercantile Exchange, in 1 day, market capitalization of almost \$6 billion. There was no justification for this memo. The comment period was closed, the Department of Justice had acted on the merger, and there was no reason to release it.

I have joined with my colleague, Congressman RAHM EMANUEL, in sending a letter to Attorney General Mukasey and Secretary Paulson calling on them to not only look at the substance of this memo but also the circumstances. By what right was this staff memo issued in the first place or released to the press?

I want to quote one of the Commissioners of the Commodity Futures Trading Commission. That is the Government agency responsible for regulating these markets. This is what the Commissioner said:

The Department of Justice staffer letter has unfortunately roiled the markets, and this is precisely the kind of behavior that Government regulators are supposed to take ordinary care and attention to avoid.