

File: Regulatory ReformLEGISLATIVE ANALYSIS

Bill No. S. 1823 Report No. \_\_\_\_\_ Companion No. \_\_\_\_\_  
 Introduced By: Levin Date: 4 Aug. 1983  
 Referred to: Gov't Aff.  
 Contacts: \_\_\_\_\_  
 Hearings/Mark-up: \_\_\_\_\_

Conclusion:

- No Agency objection  
 Monitor  
 Distribute for comment  
 Agency objection and/or needs amendment

Analysis:

S. 1823 sets up a procedure for the establishment of "regulatory negotiation commissions" that would participate in agency rulemaking. The purpose of the bill is to give affected parties a voice in the formulation of rules that will affect them. The procedure involves a request to the Chairman of the Administrative Conference of the U.S. to form a "reg. negotiation comm'n", an investigation by the Chairman, and a recommendation to the Agency whether to establish a commission. Since the agency making the rule has the final say on establishing a commission,

Passage \_\_\_\_\_

House \_\_\_\_\_

Senate \_\_\_\_\_

I don't think we are ~~to~~ hurt by this bill; however, the Chairman's investigation authority could be bothersome although not a palpable

(if it were to pass)

In general, I feel that this bill could not hurt us + in practice we could ignore it altogether. However, we could nonetheless seek a fix now -- along the lines of the exemptions for "military/foreign affairs" and "procurement" exceptions to §553 rulemaking -- and make our status clear. I'm just not sure its worth the effort or whether the bill will go anywhere.

17 AUG 1983

II

98TH CONGRESS  
1ST SESSION

# S. 1823

To provide for an alternative to the present adversarial rule making procedure by establishing a process to facilitate the formation of regulatory negotiation commissions.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, AUGUST 1), 1983

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To provide for an alternative to the present adversarial rule making procedure by establishing a process to facilitate the formation of regulatory negotiation commissions.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Regulatory Negotiation  
4 Act of 1983".

5

### FINDINGS

6

SEC. 2. The Congress finds and declares that:

7

(1) Government regulation of the economy has in-

8

creased rapidly since the enactment of the Administra-

9

tive Procedure Act.

1           (2) Although this increase in regulation has had  
2 commendable purposes, it has been accompanied by a  
3 formalization of the rule making process which has fre-  
4 quently resulted in unjustifiably expensive, contradic-  
5 tory, and often counterproductive rules.

6           (3) The adversarial nature of the rule making  
7 process has often resulted in unnecessary regulations  
8 which have a significant adverse effect on the econo-  
9 my.

10          (4) In the current rule making process, the parties  
11 often assume antagonistic positions and the best solu-  
12 tions to the problems under consideration are often ig-  
13 nored by the parties since the parties act in a manner  
14 which maintains their bargaining positions.

15          (5) In the current rule making process, the parties  
16 rarely have the opportunity to meet as a group and  
17 communicate directly with each other, and the lack of  
18 this opportunity effectively limits the ability of the par-  
19 ties to reach agreement on a rule that fulfills the intent  
20 of Congress and is acceptable to all parties.

21          (6) The adversarial nature of the rule making  
22 process frequently limits the extent to which the exper-  
23 tise, technical ability, and great resources of persons  
24 working in a regulatory area are used to solve the  
25 problem under consideration.

1

PURPOSE

2       SEC. 3. The purpose of this Act is to establish an alter-  
3 native rule making procedure which permits the establish-  
4 ment of regulatory negotiation commissions that can be used  
5 in appropriate circumstances to permit direct participation of  
6 interested parties in a rule making, the negotiation of regula-  
7 tory policy by such parties, and the development of rules that  
8 represent a consensus of the members of the commission.

9

DEFINITIONS

10       SEC. 4. For purposes of this Act—

11           (1) the term “agency” has the same meaning as  
12 in section 551(1) of title 5, United States Code;

13           (2) the term “person” has the same meaning as in  
14 section 551(2) of such title;

15           (3) the term “party” has the same meaning as in  
16 section 551(3) of such title;

17           (4) the term “rule” has the same meaning as in  
18 section 551(4) of such title;

19           (5) the term “rule making” has the same meaning  
20 as in section 551(5) of such title;

21           (6) the term “Conference” means the Administra-  
22 tive Conference of the United States;

23           (7) the term “Chairman” means the Chairman of  
24 the Administrative Conference of the United States;

1           (8) the term "consensus" means a unanimous  
2 agreement among all interests represented in the nego-  
3 tiation of a proposed rule under this Act, and does not  
4 mean a unanimous agreement among all individual  
5 members involved in the negotiation;

6           (9) the term "interest" means a position with re-  
7 spect to an issue that may be considered by a regula-  
8 tory negotiation commission and that may be repre-  
9 sented by one or more persons;

10          (10) the term "mediator" means an individual se-  
11 lected to mediate discussions between the members of  
12 a regulatory negotiation commission and to facilitate  
13 communications between such members in the develop-  
14 ment of a proposed rule;

15          (11) the term "member" means a person who is a  
16 member of a regulatory negotiation commission; and

17          (12) the term "regulatory negotiation commis-  
18 sion" means a voluntary group established by the Con-  
19 ference in accordance with this Act to consider issues  
20 for the purpose of reaching a consensus in the develop-  
21 ment of a proposed rule.

22   **REQUEST FOR REGULATORY NEGOTIATION COMMISSION**

23   **SEC. 5. (a)** An agency or a person who is qualified to  
24 represent an interest with respect to an issue may request the  
25 Chairman to determine whether to recommend to the agency

1 having jurisdiction over the development of a proposed rule  
2 with respect to such issue that a regulatory negotiation com-  
3 mission be established to develop such a proposed rule. The  
4 request shall explain the reasons why the agency or person  
5 believes that the use of a regulatory negotiation commission  
6 would be an appropriate method of developing a proposed  
7 rule.

8 (b) The Chairman shall consider each request made  
9 under subsection (a) for the establishment of a regulatory ne-  
10 gotiation commission to develop a proposed rule with respect  
11 to a particular issue. If the Chairman determines that there is  
12 a substantial likelihood that the agency having jurisdiction  
13 over the development of such a rule will seriously consider  
14 issuing a proposed rule relating to such issue, the Chairman  
15 may conduct an informal investigation with respect to the  
16 advisability of establishing a regulatory negotiation commis-  
17 sion to develop such a proposed rule. In conducting such an  
18 investigation, the Chairman may consider and make determi-  
19 nations concerning—

20 (1) whether there are a limited number of inter-  
21 ests which would be substantially affected by a pro-  
22 posed rule relating to the issue;

23 (2) whether persons can be selected as members  
24 of a regulatory negotiation commission who would rep-  
25 resent the interests identified pursuant to paragraph

1 (1), including recommendations for persons to be select-  
2 ed;

3 (3) whether the persons recommended for selec-  
4 tion as members of a regulatory negotiation commis-  
5 sion would be willing to make a commitment to negoti-  
6 ate in good faith to reach a consensus on a proposed  
7 rule concerning such issue;

8 (4) whether the agency having jurisdiction over  
9 the development of such a proposed rule would use the  
10 regulatory negotiation commission to develop such rule;

11 (5) the scope of the issues to be considered by the  
12 regulatory negotiation commission in developing such  
13 rule; and

14 (6) a preliminary schedule for the completion of  
15 the work of the regulatory negotiation commission.

16 (c) Within sixty days after receiving a request under  
17 subsection (a) with respect to the development of a proposed  
18 rule concerning an issue, the Chairman shall report to the  
19 Conference and the agency having jurisdiction over the de-  
20 velopment of such a proposed rule the determinations of the  
21 Chairman under subsection (b) and the recommendations of  
22 the Chairman as to whether a regulatory negotiation com-  
23 mission should be established to develop such a proposed  
24 rule.



1 (d) The Chairman, with the advice of the agency having  
2 jurisdiction over the development of a proposed rule with re-  
3 spect to an issue for which a request is submitted under sub-  
4 section (a), shall have complete discretion in determining the  
5 subjects to be considered by any regulatory negotiation com-  
6 mission established to develop such a rule. Any determination  
7 by the Chairman with respect to the subjects to be considered  
8 by a regulatory negotiation commission shall not be subject to  
9 judicial review in any court.

10 USE OF REGULATORY NEGOTIATION COMMISSION

ILLEGIB 11 SEC. 6. (a) If, on the recommendation of the Chairman,  
12 an agency decides to use a regulatory negotiation commis-  
13 sion, the agency shall publish in the Federal Register a  
14 notice concerning the proposed use of such commission in the  
15 development of a proposed rule. Such notice shall include—

16 (1) an announcement that the agency intends to  
17 use a regulatory negotiation commission in the devel-  
18 opment of the proposed rule;

19 (2) a general description of the subject matter to  
20 be considered by the regulatory negotiation commis-  
21 sion; and

22 (3) a list of mediators compiled and approved by  
23 the Conference, from which persons applying for mem-  
24 bership on the commission may select a proposed medi-  
25 ator.

1       (b)(1) For a period of at least thirty days after the date  
2 on which the agency publishes a notice with respect to a  
3 regulatory negotiation commission under subsection (a), the  
4 Chairman shall accept applications from persons who are  
5 qualified to represent an interest on the commission. Each  
6 such application shall specify—

7           (A) the name of the person submitting the applica-  
8 tion and a description of the interest such person will  
9 represent;

10          (B) the persons recommended for membership on  
11 the commission and the reasons of the applicant for  
12 such recommendations;

13          (C) whether a mediator will be needed by the  
14 commission, and, if necessary, the name of a proposed  
15 mediator;

16          (D) recommendations for the issues to be consid-  
17 ered by the commission;

18          (E) recommendations for rules for the operation of  
19 the commission;

20          (F) a proposed organizational plan and a proposed  
21 agenda for the commission;

22          (G) a proposed schedule for completing the work  
23 of the commission; and

24          (H) a written commitment that the applicant  
25 will—

1 (i) negotiate the issues under consideration  
2 by the commission in good faith; and

3 (ii) produce a report on the negotiation  
4 within a time period appropriate to the issues  
5 under consideration.

6 (2) In order to ensure that all interests, including inter-  
7 ests represented by public interest groups, have an adequate  
8 opportunity to participate in a regulatory negotiation com-  
9 mission, the Chairman may suggest that a person submitting  
10 an application under paragraph (1) request a grant under sec-  
11 tion 9 of this Act to pay the expenses that will be incurred by  
12 such person as a result of participation on the regulatory ne-  
13 gotiation commission.

14 (c) During the period in which the Chairman is accept-  
15 ing applications under subsection (b)(1), an agency which  
16 published a notice under subsection (a) with respect to a reg-  
17 ulatory negotiation commission shall submit to the Chairman  
18 a written statement specifying—

19 (1) the name and position of a senior official of the  
20 agency who will represent the agency on the commis-  
21 sion;

22 (2) whether a mediator will be necessary for the  
23 commission, and, if necessary, the name of a proposed  
24 mediator;

1           (3) the persons recommended for membership on  
2           the commission and the reasons of the agency for such  
3           recommendations;

4           (4) recommendations for the issues to be consid-  
5           ered by the commission;

6           (5) recommendations for rules for the operation of  
7           the commission;

8           (6) a proposed organizational plan and a proposed  
9           agenda for the commission;

10          (7) a proposed schedule for completing the work  
11          of the commission; and

12          (8) a written commitment that the agency will—

13                (A) negotiate the issues under consideration  
14                by the commission in good faith; and

15                (B) produce a report on the negotiation  
16                within a time period appropriate to the issues  
17                under consideration.

18          (d) After the period for applications for membership on a  
19          regulatory negotiation commission under subsection (b) has  
20          expired, the Chairman shall consider all of the applications  
21          submitted under such subsection and the statement submitted  
22          by the agency under subsection (c). If, after considering such  
23          applications and statement, the Chairman determines that all  
24          necessary interests will be represented on the regulatory ne-  
25          gotiation commission for which the applications are made and

1 that persons representing such interests will have an oppor-  
2 tunity to contribute to the negotiation of a proposed rule, the  
3 Chairman shall announce the establishment of such a com-  
4 mission in accordance with subsection (e).

5 (e) The Chairman shall announce the establishment of a  
6 regulatory negotiation commission for the development of a  
7 proposed rule through publication in the Federal Register  
8 and through notices in appropriate journals, newsletters, and  
9 other media. Such announcement shall include—

10 (1) a description of the issue to be considered by  
11 the commission;

12 (2) a tentative list of the subjects to be considered  
13 by the commission in negotiating with respect to the  
14 issue described pursuant to in paragraph (1);

15 (3) the name and position of the senior official of  
16 the agency having jurisdiction over the development of  
17 such a rule who is proposed to represent the agency on  
18 the commission;

19 (4) the name of each person proposed for selection  
20 as a member of the commission, and a specification of  
21 the interest to be represented by each such member;

22 (5) the name of a proposed mediator for the com-  
23 mission, if any;

24 (6) a proposed schedule for the completion of the  
25 work of the commission; and

1           (7) a request that members of the public comment  
2           on the proposed commission, including comments on---

3                   (A) whether each appropriate interest will be  
4           represented on the commission;

5                   (B) the persons selected to represent each  
6           such interest;

7                   (C) the official proposed to represent the  
8           agency; and

9                   (D) the issues to be considered by the com-  
10          mission.

11          (f) For a period of at least thirty days after the date on  
12          which the notice required under subsection (e) is published in  
13          the Federal Register, the Chairman shall accept comments  
14          from the public with respect to the matters specified in such  
15          notice. The Chairman, with the advice of the agency having  
16          jurisdiction over the proposed rule to be developed by the  
17          commission, shall consider all relevant matter and comments  
18          submitted, and may modify the proposal for the use of a regu-  
19          latory negotiation commission specified in such notice with  
20          the agreement of the agency and the members proposed by  
21          the Chairman in such notice to represent the major interests  
22          on the commission.

23          (g) The agency shall publish in the Federal Register a  
24          final notice concerning the establishment of a regulatory ne-  
25          gotiation commission to develop a proposed rule. The notice

1 shall specify the matters described in paragraphs (1) through  
2 (6) of subsection (e) with respect to the regulatory negotiation  
3 commission that will be established.

4           **PROCEDURES FOR REGULATORY NEGOTIATION**

5                           **COMMISSIONS**

6           **SEC. 7. (a)** Each regulatory negotiation commission es-  
7 tablished pursuant to this Act shall consider the subjects  
8 specified by the Chairman for consideration by the commis-  
9 sion and shall attempt to reach a consensus concerning a  
10 proposed rule with respect to such issues.

11           **(b)** The official representing the agency on a regulatory  
12 negotiation commission shall participate in the deliberations  
13 and activities of the commission as a voting member who is  
14 equal to all other members of the commission.

15           **(c)(1)** Any mediator selected by the Chairman for a reg-  
16 ulatory negotiation commission shall—

17                   **(A)** chair the meetings of the commission;

18                   **(B)** assist the members of the commission in con-  
19 ducting discussions;

20                   **(C)** keep the Congress informed of the activities of  
21 the commission; and

22                   **(D)** assist in the deliberations of the commission.

23 A mediator shall not vote on any matter before the commis-  
24 sion or participate in any agreement made by the commis-  
25 sion.

1           (2) If the Chairman has not selected a mediator for a  
2 regulatory negotiation commission, the commission shall elect  
3 a chairperson from among its members to carry out the func-  
4 tions of a mediator described in paragraph (1). A chairperson  
5 elected under this paragraph shall be entitled to vote on any  
6 matter before the commission and participate in any agree-  
7 ment made by the commission.

8           (d) Whenever possible, not more than fifteen members of  
9 a regulatory negotiation commission shall participate in the  
10 deliberations of the commission at any one time. The total  
11 number of members of a regulatory negotiation commission  
12 may exceed fifteen.

13           (e) A regulatory negotiation commission may change its  
14 membership, rules, or agenda if a majority of the interests  
15 represented on the commission agree to such change and if  
16 the commission submits such change to the Chairman for  
17 review. If the Chairman determines that any such change  
18 will substantially impair the ability of the commission to  
19 carry out the purposes of this Act, the Chairman may—

20                   (1) suggest additional changes in the membership,  
21 rules, or agenda of the commission in order to assure  
22 consistency with the purposes of this Act; or

23                   (2) require that the commission, and any members  
24 thereof, repay the Government the amount of any



1 grant provided under this Act which has not been obli-  
2 gated or expended.

3 The Chairman may not require a commission to make repay-  
4 ment under paragraph (2) of this subsection unless the Chair-  
5 man determines that efforts by the commission to assure con-  
6 sistency with the purposes of this Act have failed.

7 (f) At the conclusion of negotiations, each regulatory ne-  
8 gotation commission shall prepare and transmit to the Chair-  
9 man, the head of the agency participating in the commission,  
10 each committee of the Senate and House of Representatives  
11 having legislative jurisdiction over the subjects considered by  
12 the commission, and the Director of the Office of Manage-  
13 ment and Budget a report with respect to the negotiations  
14 conducted by the commission. If the commission reached a  
15 consensus and developed a proposed rule, the report shall  
16 contain the proposed rule developed by the commission and a  
17 concise general statement of the basis and purpose of that  
18 rule. If the commission did not develop a consensus and a  
19 proposed rule, the report shall specify the areas in which the  
20 commission reached a consensus, the areas of disagreement  
21 among the commission, and such recommendations and back-  
22 ground material the commission may consider appropriate.

23 (g) Any meeting of a regulatory negotiation commission  
24 shall be open to the public, unless a majority of the members  
25 of the commission determine by vote that a closed meeting is

1 necessary to achieve the purposes of the commission. Each  
2 open meeting shall be announced at least fifteen days prior to  
3 the date of the meeting in the Federal Register if possible,  
4 and a record shall be prepared of each such meeting.

5 (h)(1) A regulatory negotiation commission which devel-  
6 oped a proposed rule shall be terminated—

7 (A) on the date on which the agency that partici-  
8 pated in the commission publishes a notice of proposed  
9 rule making under section 8(a) for such proposed rule;  
10 or

11 (B) in any case in which the agency chooses not  
12 to publish a notice of proposed rule making for such  
13 proposed rule, on a date determined by the Chairman  
14 which occurs—

15 (i) after the commission has had an opportu-  
16 nity to comment on the agency action with re-  
17 spect to such proposed rule; and

18 (ii) after the commission has transmitted the  
19 report required under subsection (f) to the commit-  
20 tees of the Senate and the House of Representa-  
21 tives referred to in such subsection.

22 (2) A regulatory negotiation commission which did not  
23 develop a proposed rule shall terminate fifteen days after the  
24 date on which the commission transmits the report required

1 by subsection (f) to the committees of the Senate and the  
2 House of Representatives referred to in such subsection.

3 **AGENCY ACTION**

4 **SEC. 8. (a)** An agency shall publish in the Federal Reg-  
5 ister a notice of proposed rule making in accordance with  
6 section 553 of title 5, United States Code, for any proposed  
7 rule developed by a regulatory negotiation commission unless  
8 the agency determines that there is good cause for not pub-  
9 lishing such notice. The agency may propose amendments to  
10 or modifications to the proposed rule developed by the regu-  
11 latory negotiation commission and shall publish such amend-  
12 ments or modifications in the Federal Register with the  
13 notice of proposed rule making. The agency may publish with  
14 such notice such additional explanatory material as the  
15 agency considers appropriate.

16 (b) The agency shall make available the report transmit-  
17 ted under section 7(f) by the regulatory negotiation commis-  
18 sion concerning the proposed rule developed by such commis-  
19 sion.

20 (c) The agency shall allow a period of at least thirty  
21 days for the public to review and comment on—

22 (1) the notice of proposed rule making published  
23 under subsection (a);

1           (2) any amendments or modifications proposed by  
2           the agency under such subsection to the proposed rule  
3           developed by a regulatory negotiation commission; and

4           (3) any other material published under such sub-  
5           section.

6           (d) The agency shall provide a regulatory negotiation  
7           commission which developed a proposed rule an opportunity  
8           to review and comment upon any material received by the  
9           agency pursuant to the notice of proposed rule making for  
10          such rule published under subsection (a) and an opportunity  
11          to participate in any additional proceedings the agency con-  
12          ducts with respect to such proposed rule.

13          **GRANTS FOR REGULATORY NEGOTIATION COMMISSIONS**

14          **SEC. 9.** (a) In order to carry out the purposes of this  
15          Act, the Conference, through the Chairman, shall make  
16          grants to—

17               (1) regulatory negotiation commissions for the  
18               payment of administrative expenses of such commis-  
19               sions; and

20               (2) members of a regulatory negotiation commis-  
21               sion who are unable to afford to pay the costs of par-  
22               ticipation in the commission.

23          (b) The Chairman shall announce through publication in  
24          the Federal Register and through notice in appropriate jour-  
25          nals, newsletters, and other media, the availability of grants

1 under this Act, and shall take such other actions as may be  
2 necessary to provide notice to the public concerning the  
3 availability of such grants.

4 EXEMPTIONS FROM CERTAIN PROVISIONS OF LAW

5 SEC. 10. (a) The Federal Advisory Committee Act shall  
6 not apply to any regulatory negotiation commission estab-  
7 lished pursuant to this Act.

8 (b) Notwithstanding any other provision of law, no writ-  
9 ten or oral communication—

10 (1) between the members or staff of a regulatory  
11 negotiation commission and the staff of an agency;

12 (2) the members of a regulatory negotiation com-  
13 mission or their staff; or

14 (3) between any person and a regulatory negotia-  
15 tion commission and its staff;

16 shall be regarded as an improper ex parte communication  
17 subject to any sanction imposed by statute, regulation, or ju-  
18 dicial precedent.

19 (c) Information or records submitted to a regulatory ne-  
20 gotiation commission shall not be regarded as agency records  
21 for purposes of section 552(a)(3) of title 5, United States  
22 Code.

23 (d) The members of a regulatory negotiation commission  
24 and any mediator of such commission shall not be regarded as

1 employees or agents of the United States solely because of  
2 their participation in the commission.

3                                   STAFF FACILITIES AND RESEARCH

4       SEC. 11. (a)(1) The Chairman of the Administrative  
5 Conference of the United States is authorized to—

6           (A) employ an individual to carry out the duties of  
7 the Chairman under section 5(b); and

8           (B) subject to paragraphs (2), (3), and (4), enter  
9 into contracts with individuals to serve as mediators for  
10 regulatory negotiation commissions.

11       (2) The Chairman may not enter into any contract under  
12 paragraph (1)(B) with an individual if such individual—

13           (A) may represent any interest with respect to the  
14 issue to be considered by a regulatory negotiation com-  
15 mission in developing a proposed rule; and

16           (B) is a member of, or is associated with, any or-  
17 ganization which may represent such an interest.

18       (3) The Chairman may compensate any individual em-  
19 ployed under paragraph (1)(B) at a daily rate equal to the  
20 maximum daily rate of pay for level 15 of the General Sched-  
21 ule under section 5332 of title 5, United States Code.

22       (4) The authority of the Chairman to enter into con-  
23 tracts under this subsection shall be to such extent or in such  
24 amounts as are provided in appropriation Acts.

1       (b) A regulatory negotiation commission is authorized to  
2 utilize the services and facilities of Federal agencies and  
3 public and private agencies and instrumentalities with the  
4 consent of such agencies and instrumentalities and with or  
5 without reimbursement to such agencies, and to accept vol-  
6 untary and uncompensated services without regard to the  
7 provisions of section 1342 of title 31, United States Code.

8       (c) Members of a regulatory negotiation commission may  
9 agree to share the research and scientific and technical data  
10 available to such members.

11                                   AUTHORIZATION OF APPROPRIATIONS

12       SEC. 12. To carry out this Act, there are authorized to  
13 be appropriated to the Conference not in excess of  
14 \$1,000,000 for each of the fiscal years 1985, 1986, and  
15 1987.

○

August 4, 1983

## CONGRESSIONAL RECORD — SENATE

S 11787

graphs (9) and (10) of section 103A (1) shall apply.

"(3) MORTGAGE MAY NOT EXCEED VALUE OF RESIDENCE.—The principal amount of any qualified first or second mortgage on any residence, when added to the aggregate outstanding principal amount of all previous such mortgages on such residence, shall not, on the date such mortgage is issued, exceed the fair market value of such residence on such date.

"(4) CONSTRUCTION LOANS NOT PERMITTED.—The term 'qualified first or second mortgage' shall not include any construction loan.

"(5) ORIGINAL ISSUE DISCOUNT.—Except to the extent provided in regulations prescribed by the Secretary, the term 'qualified first or second mortgage' does not include any mortgage originated with an original issue discount.

"(c) QUALIFIED PARTICIPATION.—The term 'qualified participation' means any participation in any mortgage or pool of mortgages but only if—

"(1) such mortgages would be qualified first or second mortgages if held directly by the TIM, and

"(2) the mortgages of such mortgages remain the primary obligors.

"(d) QUALIFIED REPURCHASE OBLIGATIONS.—The term 'qualified repurchase obligation' means any qualified first or second mortgage which is subject to a repurchase agreement under which—

"(1) any amount payable to the TIM does not exceed the payments due on the mortgage subject to the agreement.

"(2) such TIM purchases such mortgage for not more than the fair market value of such mortgage, and

"(3) the amount paid for repurchase is fixed at the time the agreement is entered into.

"(e) QUALIFIED INCOME INVESTMENTS.—

"(1) IN GENERAL.—The term 'qualified income investment' means any security, letter of credit, certificate of deposit, surety bond, or other similar instrument or device which—

"(A) is acquired during the 18-month period beginning on the date the TIM is incorporated or formed, and

"(B) is acquired—

"(1) to provide cash to meet fixed obligations of such TIM which cannot be met from investments in other qualified obligations, or

"(ii) to provide income to the TIM to offset income which is lost by reason of the prepayment or liquidation (other than by sale by such TIM) of any qualified obligation before maturity.

"(2) TERMINATION AS QUALIFIED OBLIGATION.—Any qualified income investment shall not be treated as a qualified obligation after the earlier of—

"(A) the date which is 7 years after a TIM is incorporated or formed, or

"(B) in the case of such a TIM with a fixed term, the date on which the first one-third of such term has expired."

(b) CONFORMING AMENDMENT.—The table of parts for subchapter M of chapter 1 of such Code is amended by adding at the end thereof the following new part:

"PART IV—TRUSTS FOR INVESTMENTS IN MORTGAGES."

SEC. 2. TAX ON PROHIBITED TRANSACTIONS OF TIMS.

(a) IMPOSITION OF TAX.—Chapter 44 of the Internal Revenue Code of 1954 (relating to excise tax on real estate investment trusts) is amended by adding at the end thereof the following new section:

"SEC. 4982. EXCISE TAX ON PROHIBITED TRANSACTIONS OF TIMS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on each prohibited transaction of a TIM a tax in an amount equal to the gain or loss allocable to such transaction.

"(b) PROHIBITED TRANSACTION DEFINED.—For purposes of this section, the term 'prohibited transaction' means the disposition by a TIM of—

"(1) any qualified obligation held by such TIM for less than 3 years, or

"(2) any qualified obligation which is—

"(A) held by the TIM for 3 years or more, and

"(B) described in section 1221(1).

"(c) EXCEPTION FROM PROHIBITED TRANSACTIONS.—

"(1) IN GENERAL.—A disposition shall not be treated as a prohibited transaction if—

"(A) such disposition is in connection with the prepayment, retirement, or renegotiation of a qualified obligation,

"(B) such disposition is of—

"(i) any defective qualified obligation,

"(ii) foreclosure property, or

"(iii) qualified short-term investment, or

"(C) such disposition is in connection with the involuntary liquidation or dissolution of a TIM.

"(2) CERTAIN TRANSACTIONS NOT TREATED AS PROHIBITED TRANSACTIONS.—Paragraph (2) of subsection (b) shall not apply to any qualified obligation described in such paragraph for any taxable year if—

"(A) not more than 20 percent of the aggregate face amount of all such qualified obligations are disposed of during such taxable year,

"(B) not more than 50 percent of the aggregate face amount of all such qualified obligations are disposed of during taxable year, but not more than 5 obligations are disposed of during such taxable year, or

"(C) the disposition is—

"(i) pursuant to a bulk sale as part of a plan of complete liquidation, and

"(ii) by a TIM which has been a TIM for a least 3 taxable years before such disposition.

"(d) QUALIFIED SHORT-TERM INVESTMENTS.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified short-term investment' means any qualified obligation which—

"(A) is designated by a TIM as a qualified short-term investment on the date such obligation is acquired,

"(B) is held by a TIM for less than 180 days (or if longer than 180 days, is held to maturity), and

"(C) the proceeds of which are—

"(i) used to acquire other qualified obligations, or

"(ii) distributed by the TIM to its shareholders.

"(2) SPECIAL RULE FOR REINVESTMENT DURING PHASE-IN PERIOD.—Notwithstanding paragraph (1), during the 18-month period beginning on the date a TIM is incorporated or formed, proceeds from the disposition of a qualified short-term investment may be invested in other qualified short-term investments.

"(e) DEFINITION.—For purposes of this section—

"(1) TIM; QUALIFIED OBLIGATIONS.—The term 'TIM' and 'qualified obligation' have the same meanings as when used in part IV of subchapter M of chapter 1.

"(2) FORECLOSURE PROPERTY.—The term 'foreclosure property' has the same meaning given such term by section 856 (e) without regard to whether such property is held by a real estate investment trust."

"(b) CONFORMING AMENDMENTS.—The table of sections for chapter 44 of the Internal Revenue Code of 1954 is amended—

(1) by inserting "AND TIMS" after "TRUSTS" in the heading thereof, and

(2) by adding at the end thereof the following new item:

"Sec. 4982. Excise tax on prohibited transactions of TIMS."

Mr. LEVIN:

S. 1823. A bill to provide for an alternative to the present adversarial rulemaking procedure by establishing a process to facilitate the formation of regulatory negotiation commissions; to the Committee on Governmental Affairs.

REGULATORY NEGOTIATION ACT OF 1983

Mr. LEVIN. Mr. President, I am pleased to introduce today a bill that provides for an alternative to the present adversarial rulemaking procedure by facilitating the use of a process called regulatory negotiation.

The current approach to regulatory policymaking has evolved into a very adversarial and litigious process. Affected businesses, interest groups, and regulatory agencies all tend to adopt antagonistic postures during the promulgation and implementation of Federal regulations. Thus, it is not surprising that the policies and regulations that result are often considered inappropriate and ineffective by both business and interest groups and that litigation and conflict have become an integral and inevitable part of the process. The resulting regulatory policy crisis has become so severe that innovative alternatives are needed to encourage a more cooperative and productive process, where as many common positions as possible can be reached and incorporated into regulations.

One of the most exciting and promising new approaches to the regulatory policy procedure is a process called regulatory negotiation. Regulatory negotiation operates on the premise that industry, government, and interested groups can sit down together and, with the aid of a mediator, attempt to fashion a consensus in areas of mutual concern. The basic notion is that if responsible people commit themselves to find points of agreement in a cooperative atmosphere, regulations can be designed which better meet true policy needs, and needless conflict and delay can be avoided.

The need for such an approach is apparent. Regulations often create anxiety among the parties who have an interest in their promulgation and implementation. Business often sees regulations as limiting its freedom to function as it desires. Other interested groups believe that the public welfare is sacrificed in the regulatory process and that interest groups are not represented and not heard. Legislators, who thought the problem was solved when they adopted legislation are faced with a continuing battle throughout the rulemaking and enforcement process.

If a party has little or no role in the formulation of a rule, it has little or



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no vested interest in following that rule.

Attempts to use regulatory negotiation as an alternative have been successful in several areas, most recently in the area of environmental issues.

The most recent environmental negotiation involved the Environmental Protection Agency (EPA), the steel industry and the Natural Resources Defense Council (NRDC).

In May 1982, the EPA proposed in "final" form a rather controversial regulation on the control of water pollution in the steel industry. The law set July 1984, as the deadline for companies to limit their water pollution to levels at or below those attainable with the "best available technology, economically achievable." Of approximately 700 specifications outlined in the regulation, the industry challenged about 30 of them as being based on faulty information. In addition, the NRDC challenged the EPA's use of a "bubble" concept that would have allowed companies to make cost-saving tradeoffs among effluent sources so long as the aggregate pollution result was no worse. Inevitably the matter landed in the courts.

However, in October 1982, the parties began a negotiation process in an effort to avoid the delays and conflicts of litigation. On the one hand, industry was concerned about ending the uncertainty attendant to the incomplete regulatory process and on the other hand, the NRDC and the environmentalists were concerned with expediting matters because the steel industry regulations were to be the forerunners to many industrywide regulations.

In a settlement reached in late February of this year, the steel industry won concessions on the technical numbers, the NRDC and the environmentalists won a modification of the "bubble" provision, and costly and time-consuming litigation was avoided.

The most well-known regulatory negotiation success story is probably that of the national coal policy project (NCCPP). The NCCPP was an outgrowth of the recognition that it was important for the United States to shift from oil and natural gas to coal. In order to accomplish this, there had to be a reconciliation of environmental and industrial interests.

In July 1976, business representatives and environmentalists endorsed the regulatory negotiation concept and agreed to pursue important coal related environmental and energy policy issues using this approach.

The participants in the negotiations used the following principles known as the "rules of reason" to resolve differences and develop workable solutions:

First. Data should not be withheld from the other side.

Second. Delaying tactics should not be used.

Third. Tactics should not be used to mislead.

Fourth. Motives should not be impugned lightly.

Fifth. Dogmatism should be avoided.

Sixth. Extremism should be counseled forcefully but not in kind.

Seventh. Integrity should be given first priority.

The Georgetown University Center for Strategic and International Studies (CSIS) served as the neutral meeting place for the project participants. It also raised funds and provided administrative support for the project. The project itself was financed by grants and contributions from foundations, Government agencies, and industry.

Five task forces were established to cover the following coal policy issues: mining, transportation, air pollution, fuel utilization and conservation, and energy pricing. The governing body for the project was called the plenary group and was made up of task force cochairmen and vice cochairmen. The duties of the plenary group were to define the nature and scope of the project, provide guidance, review and finally approve task force recommendations, and resolve task force disputes. Of the 200 task force recommendations 90 percent we unanimously achieved.

The NCCPP report found that the project was very successful in dispelling stereotypes:

Quite apart from the substance of the recommendations, the project has been valuable in dispelling stereotypes. Those environmentalists who had previously regarded the position of industry on environment and energy issues as being monolithic and intransigent were rather quickly disabused of that notion. This was largely because of the differing perspectives of the industry members. For example, producers of fuel, regulated utilities and industrial users of large quantities of energy each tended to have different interests and views on questions of energy pricing.

In similar fashion, those industrialists who expected the environmentalists to be opposed to economic growth and to the introduction of new technology, and in favor of governmental rather than marketplace decisions on the allocation of resources, were pleasantly surprised to find that their suppositions were incorrect. The environmentalists opposed a pattern of growth that produced wasteful use of natural resources and an environmental impact which they felt was unacceptable; they did not oppose economic growth in itself. They welcomed new technology that would serve to increase efficiency and reduce adverse environmental impacts and demands on natural resources. They preferred marketplace decisions to economic regulation by government when markets are workably competitive; when this was not the case, or when important (external) environmental and social impacts were not properly valued in the market, the environmentalists were eager to explore methods of influencing the market (as with emission charges) so that the desired goals would be achieved while retaining the advantages of keeping detailed decisions in the private sector.

The report stated further that:

We are not proposing that the process of discussion and negotiation in which we have participated should replace the adversary

process. Indeed many of the policy recommendations on which we have agreed would have to be implemented through the traditional adversary system; that is, they require action by legislative and judicial bodies . . . there are others that simply do not lend themselves to negotiated agreements.

We believe, however, that exclusive reliance on adversarial processes is likely to produce decisions that are less desirable (from the point of view of either of the parties) than those in which a common position serving both interests could have been agreed to in a non-adversarial context.

The NCCPP recommendations have received agency support from the Office of Surface Mining (OSM) and the Federal Energy Regulatory Commission (FERC). OSM adopted word-for-word project recommendations regarding bonding concerns and operations. FERC adopted the coal generation and small power recommendations.

Two bills were also introduced in May 1980: H.R. 7464 and H.R. 7465, which adopted the recommendations that called for the use of incentives to develop pollution control technology and the development of plant siting procedures.

In addition to the two projects that I have just mentioned, regulatory negotiation has been tried in the environmental area of toxic substances. The Conservation Foundation was involved in this approach during the implementation of the Toxic Substances Control Act (TOSCA).

Specifically, approximately 13 business persons and environmentalists met to discuss the training of toxicologists, the testing of new chemicals and the prioritizing of what chemicals should be tested and the nature and scope of agency followup on the chemical after it reaches the market.

With respect to the testing of new chemicals, the Conservation Foundation's committee made four recommendations:

First. That a conceptual framework for a testing program be developed to test chemicals using a tier system.

Second. That all relevant aspects of the potential impact on human and animal health be tested, starting with inexpensive tests and ending with more complex tests.

Third. That the tests within the tier be required on a selective and necessary basis.

Fourth. That tier 0, the first tier, should be viewed as a minimal test—therefore, all substances should be tested under the first two tiers at a minimum.

The EPA is now developing guidelines—regulations—to effectuate the first recommendations.

In the area of labor relations, regulatory negotiations have also emerged. For example, the joint labor management-committee for the retail food industry utilized the process to reach an agreement on an OSHA regulation for protective equipment for employees in the meat department of supermarkets.



(12) the term "regulatory negotiation commission" means a voluntary group established by the Conference in accordance with this Act to consider issues for the purpose of reaching a consensus in the development of a proposed rule.

**REQUEST FOR REGULATORY NEGOTIATION COMMISSION**

Sec. 5. (a) An agency or a person who is qualified to represent an interest with respect to an issue may request the Chairman to determine whether to recommend to the agency having jurisdiction over the development of a proposed rule with respect to such issue that a regulatory negotiation commission be established to develop such a proposed rule. The request shall explain the reasons why the agency or person believes that the use of a regulatory negotiation commission would be an appropriate method of developing a proposed rule.

(b) The Chairman shall consider each request made under subsection (a) for the establishment of a regulatory negotiation commission to develop a proposed rule with respect to a particular issue. If the Chairman determines that there is a substantial likelihood that the agency having jurisdiction over the development of such a rule will seriously consider issuing a proposed rule relating to such issue, the Chairman may conduct an informal investigation with respect to the advisability of establishing a regulatory negotiation commission to develop such a proposed rule. In conducting such an investigation, the Chairman may consider and make determinations concerning—

(1) whether there are a limited number of interests which would be substantially affected by a proposed rule relating to the issue;

(2) whether persons can be selected as members of a regulatory commission who would represent the interests identified pursuant to paragraph (1), including recommendations for persons to be selected;

(3) whether the persons recommended for selection as members of a regulatory negotiation commission would be willing to make a commitment to negotiate in good faith to reach a consensus on a proposed rule concerning such issue;

(4) whether the agency having jurisdiction over the development of such a proposed rule would use the regulatory negotiation commission to develop such rule;

(5) the scope of the issues to be considered by the regulatory negotiation commission in developing such rule; and

(6) a preliminary schedule for the completion of the work of the regulatory negotiation commission.

(c) Within sixty days after receiving a request under subsection (a) with respect to the development of a proposed rule concerning an issue, the Chairman shall report to the Conference and the agency having jurisdiction over the development of such a proposed rule the determinations of the Chairman under subsection (b) and the recommendations of the Chairman as to whether a regulatory negotiation commission should be established to develop such a proposed rule.

(d) The Chairman, with the advice of the agency having jurisdiction over the development of a proposed rule with respect to an issue for which a request is submitted under subsection (a), shall have complete discretion in determining the subjects to be considered by any regulatory negotiation commission established to develop such a rule. Any determination by the Chairman with respect to the subjects to be considered by a regulatory negotiation commission shall not be subject to judicial review in any court.

**USE OF REGULATORY NEGOTIATION COMMISSION**

Sec. 6. (a) If, on the recommendation of the Chairman, an agency decides to use a regulatory negotiation commission, the agency shall publish in the Federal Register a notice concerning the proposed use of such commission in the development of a proposed rule. Such notice shall include—

(1) an announcement that the agency intends to use a regulatory negotiation commission in the development of the proposed rule;

(2) a general description of the subject matter to be considered by the regulatory negotiation commission; and

(3) a list of mediators compiled and approved by the Conference, from which persons applying for membership on the commission may select a proposed mediator.

(b)(1) For a period of at least thirty days after the date on which the agency publishes a notice with respect to a regulatory negotiation commission under subsection (a), the Chairman shall accept applications from persons who are qualified to represent an interest on the commission. Each such application shall specify—

(A) the name of the person submitting the application and a description of the interest such person will represent;

(B) the persons recommended for membership on the commission and the reasons of the applicant for such recommendations;

(C) whether a mediator will be needed by the commission, and, if necessary, the name of a proposed mediator;

(D) recommendations for the issues to be considered by the commission;

(E) recommendations for rules for the operation of the commission;

(F) a proposed organizational plan and a proposed agenda for the commission;

(G) a proposed schedule for completing the work of the commission; and

(H) a written commitment that the applicant will—

(i) negotiate the issues under consideration by the commission in good faith; and

(ii) produce a report on the negotiation within a time period appropriate to the issues under consideration.

(2) In order to ensure that all interests, including interests represented by public interest groups, have an adequate opportunity to participate in a regulatory negotiation commission, the Chairman may suggest that a person submitting an application under paragraph (1) request a grant under section 9 of this Act to pay the expenses that will be incurred by such person as a result of participation on the regulatory negotiation commission.

(c) during the period in which the Chairman is accepting applications under subsection (b)(1), an agency which published a notice under subsection (a) with respect to a regulatory negotiation commission shall submit to the Chairman a written statement specifying—

(1) the name and position of a senior official of the agency who will represent the agency or the commission;

(2) whether a mediator will be necessary for the commission, and, if necessary, the name of a proposed mediator;

(3) the persons recommended for membership on the commission and the reasons of the agency for such recommendations;

(4) recommendations for the issues to be considered by the commission;

(5) recommendations for rules for the operation of the commission;

(6) a proposed organizational plan and a proposed agenda for the commission;

(7) a proposed schedule for completing the work of the commission; and

(8) a written commitment that the agency will—

(A) negotiate the issue under consideration by the commission in good faith; and

(B) produce a report on the negotiation within a time period appropriate to the issues under consideration.

(d) After the period for applications for membership on a regulatory negotiation commission under subsection (b) has expired, the Chairman shall consider all of the applications submitted under such subsection and the statement submitted by the agency under subsection (c). If, after considering such applications and statement, the Chairman determines that all necessary interests will be represented on the regulatory negotiation commission for which the applications are made and that person representing such interests will have an opportunity to contribute to the negotiation of a proposed rule, the Chairman shall announce the establishment of such a commission in accordance with subsection (e).

(e) The Chairman shall announce the establishment of a regulatory negotiation commission for the development of a proposed rule through publication in the Federal Register and through notices in appropriate journals, newsletters, and other media. Such announcement shall include—

(1) a description of the issue to be considered by the commission;

(2) a tentative list of the subjects to be considered by the commission in negotiating with respect to the issue described pursuant to in paragraph (1);

(3) the name and position of the senior official of the agency having jurisdiction over the development of such a rule who is proposed to represent the agency on the commission;

(4) the name of each person proposed for selection as a member of the commission, and a specification of the interest to be represented by each such member;

(5) the name of a proposed mediator for the commission, if any;

(6) a proposed schedule for the completion of the work of the commission; and

(7) a request that members of the public comment on the proposed commission, including comments on—

(A) whether each appropriate interest will be represented on the commission;

(B) the persons selected to represent each such interest;

(C) the official proposed to represent the agency; and

(D) the issues to be considered by the commission.

(f) For a period of at least thirty days after the date on which the notice required under subsection (e) is published in the Federal Register, the Chairman shall accept comments from the public with respect to the matters specified in such notice. The Chairman, with the advice of the agency having jurisdiction over the proposed rule to be developed by the commission, shall consider all relevant matter and comments submitted, and may notify the proposal for the use of a regulatory negotiation commission specified in such notice with the agreement of the agency and the members proposed by the Chairman in such notice to represent the major interests on the commission.

(g) The agency shall publish in the Federal Register a final notice concerning the establishment of a regulatory negotiation commission to develop a proposed rule. The notice shall specify the matters described in paragraphs (1) through (6) of subsection (e) with respect to the regulatory negotiation commission that will be established.

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## PROCEDURES FOR REGULATORY NEGOTIATION COMMISSIONS

Sec. 7. (a) Each regulatory negotiation commission established pursuant to this Act shall consider the subjects specified by the Chairman for consideration by the commission and shall attempt to reach a consensus concerning a proposed rule with respect to such issues.

(b) The official representing the agency on a regulatory negotiation commission shall participate in the deliberations and activities of the commission as a voting member who is equal to all other members of the commission.

(c)(1) Any mediator selected by the Chairman for a regulatory negotiation commission shall—

(A) chair the meetings of the commission;

(B) assist the members of the commission in conducting discussions;

(C) keep the Congress informed of the activities of the commission; and

(D) assist in the deliberations of the commission.

A mediator shall not vote on any matter before the commission or participate in any agreement made by the commission.

(2) If the Chairman has not selected a mediator for a regulatory negotiation commission, the commission shall elect a chairperson from among its members to carry out the functions of a mediator described in paragraph (1). A chairperson elected under this paragraph shall be entitled to vote on any matter before the commission and participate in any agreement made by the commission.

(d) Whenever possible, not more than fifteen members of a regulatory negotiation commission shall participate in the deliberations of the commission at any one time. The total number of members of a regulatory negotiation commission may exceed fifteen.

(e) A regulatory negotiation commission may change its membership, rules, or agenda if a majority of the interests represented on the commission agree to such change and if the commission submits such change to the Chairman for review. If the Chairman determines that any such change will substantially impair the ability of the commission to carry out the purposes of this Act, the Chairman may—

(1) suggest additional changes in the membership, rules, or agenda of the commission in order to assure consistency with the purposes of this Act; or

(2) require that the commission, and any members thereof, repay the Government the amount of any grant provided under this Act which has not been obligated or expended.

The Chairman may not require a commission to make repayment under paragraph (2) of this subsection unless the Chairman determines that efforts by the commission to assure consistency with the purposes of this Act have failed.

(f) At the conclusion of negotiations, each regulatory negotiation commission shall prepare and transmit to the Chairman, the head of the agency participating in the commission, each committee of the Senate and House of Representatives having legislative jurisdiction over the subjects considered by the commission, and the Director of the Office of Management and Budget a report with respect to the negotiations conducted by the commission. If the commission reached a consensus and developed a proposed rule, the report shall contain the proposed rule developed by the commission and a concise general statement of the basis and purpose of that rule. If the commission did not develop a consensus and a proposed

rule, the report shall specify the areas in which the commission reached a consensus, the areas of disagreement among the commission, and such recommendations and background material the commission may consider appropriate.

(g) Any meeting of a regulatory negotiation commission shall be open to the public, unless a majority of the members of the commission determine by vote that a closed meeting is necessary to achieve the purposes of the commission. Each open meeting shall be announced at least fifteen days prior to the date of the meeting in the Federal Register if possible, and a record shall be prepared of each such meeting.

(h)(1) A regulatory negotiation commission which developed a proposed rule shall be terminated—

(A) on the date on which the agency that participated in the commission publishes a notice of proposed rulemaking under section 8(a) for such proposed rule; or

(B) in any case in which the agency chooses not to publish a notice of proposed rule making for such proposed rule, on a date determined by the Chairman which occurs—

(i) after the commission has had an opportunity to comment on the agency action with respect to such proposed rule; and

(ii) after the commission has transmitted the report required under subsection (f) to the committees of the Senate and the House of Representatives referred to in such subsection.

(2) A regulatory negotiation commission which did not develop a proposed rule shall terminate fifteen days after the date on which the commission transmits the report required by subsection (f) to the committees of the Senate and the House of Representatives referred to in such subsection.

## AGENCY ACTION

Sec. 8. (a) An agency shall publish in the Federal Register a notice of proposed rule making in accordance with section 553 of title 5, United States Code, for any proposed rule developed by a regulatory negotiation commission unless the agency determines that there is good cause for not publishing such notice. The agency may propose amendments to or modifications to the proposed rule developed by the regulatory negotiation commission and shall publish such amendments or modifications in the Federal Register with the notice of proposed rule making. The agency may publish with such notice such additional explanatory material as the agency considers appropriate.

(b) The agency shall make available the report transmitted under section 7(f) by the regulatory negotiation commission concerning the proposed rule developed by such commission.

(c) The agency shall allow a period of at least thirty days for the public to review and comment on—

(1) the notice of proposed rule making published under subsection (a);

(2) any amendments or modifications proposed by the agency under such subsection to the proposed rule developed by a regulatory negotiation commission; and

(3) any other material published under such subsection.

(d) The agency shall provide a regulatory negotiation commission which developed a proposed rule an opportunity to review and comment upon any material received by the agency pursuant to the notice of proposed rule making for such rule published under subsection (a) and an opportunity to participate in any additional proceedings the agency conducts with respect to such proposed rule.

## GRANTS FOR REGULATORY NEGOTIATION COMMISSIONS

Sec. 9. (a) In order to carry out the purposes of this Act, the Conference, through the Chairman, shall make grants to—

(1) regulatory negotiation commissions for the payment of administrative expenses of such commissions; and

(2) members of a regulatory negotiation commission who are unable to afford to pay the costs of participation in the commission.

(b) The Chairman shall announce through publication in the Federal Register and through notice in appropriate journals, newsletters, and other media, the availability of grants under this Act, and shall take such other actions as may be necessary to provide notice to the public concerning the availability of such grants.

## EXEMPTIONS FROM CERTAIN PROVISIONS OF LAW

Sec. 10. (a) The Federal Advisory Committee Act shall not apply to any regulatory negotiation commission established pursuant to this Act.

(b) Notwithstanding any other provision of law, no written or oral communication—

(1) between the members or staff of a regulatory negotiation commission and the staff of an agency;

(2) the members of a regulatory negotiation commission or their staff; or

(3) between any person and a regulatory negotiation commission and its staff;

shall be regarded as an improper ex parte communication subject to any sanction imposed by statute, regulation, or judicial precedent.

(c) Information or records submitted to a regulatory negotiation commission shall not be regarded as agency records for purposes of section 552(a)(3) of title 5, United States Code.

(d) The members of a regulatory negotiation commission and any mediator of such commission shall not be regarded as employees or agents of the United States solely because of their participation in the commission.

## STAFF FACILITIES AND RESEARCH

Sec. 11. (a)(1) The Chairman of the Administrative Conference of the United States is authorized to—

(A) employ an individual to carry out the duties of the Chairman under section 5(b); and

(B) subject to paragraphs (2), (3), and (4), enter into contracts with individuals to serve as mediators for regulatory negotiation commissions.

(2) The Chairman may not enter into any contract under paragraph (1)(B) with an individual if such individual—

(A) may represent any interest with respect to the issue to be considered by a regulatory negotiation commission in developing a proposed rule; and

(B) is a member of, or is associated with, any organization which may represent such an interest.

(3) The Chairman may compensate any individual employed under paragraph (1)(B) at a daily rate equal to the maximum daily rate of pay for level 15 of the General Schedule under section 5322 of title 5, United States Code.

(4) The authority of the Chairman to enter into contracts under this subsection shall be to such extent or in such amounts as are provided in appropriation Acts.

(b) A regulatory negotiation commission is authorized to utilize the services and facilities of Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumental-

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ities and with or without reimbursement to such agencies, and to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code.

(c) Members of a regulatory negotiation commission may agree to share the research and scientific and technical data available to such members.

## AUTHORIZATION OF APPROPRIATIONS

Sec. 12. To carry out this Act, there are authorized to be appropriated to the Conference not in excess of \$1,000,000 for each of the fiscal years 1985, 1986, and 1987.

By Mr. GRASSLEY (for himself and Mr. SYMMS):

S. 1824. A bill to amend the Internal Revenue Code of 1954 to remove the limitation on estate tax exclusions under section 2039; to the Committee on Finance.

## REMOVAL OF LIMITATION ON ESTATE TAX EXCLUSIONS UNDER SECTION 2039

Mr. GRASSLEY. Mr. President, I rise to introduce a bill designed to remedy a problem caused by the Tax Equity and Fiscal Responsibility Act of 1982.

Under the Economic Recovery Tax Act of 1981, taxpayers were permitted to roll over pension accumulations into individual retirement accounts or annuities without estate tax liability upon their death. In TEFRA, we limited the estate tax exclusion on these accumulations to \$100,000. Unfortunately, many taxpayers made this irrevocable election before TEFRA was passed. If the \$100,000 estate tax exclusion had existed when they made the election, they would have made a different decision about the best use for these funds. While I have no quarrel with the conferees' decision to require pension beneficiaries to use these earnings for retirement savings, I feel retroactive application of this rule will cause undue hardship.

Consequently, I am proposing that Congress retain the full estate tax exclusion for those taxpayers who rolled over pension contributions into tax sheltered annuities or individual retirement accounts in reliance upon ERTA. Taxpayers acting after the conferees decision to limit the contributions to \$100,000 of estate tax exclusion will be bound by current law. My intent is only to remedy the hardship caused by taxpayers making an irrevocable rollover decision before TEFRA was enacted.

By Mr. GRASSLEY (for himself and Mr. SYMMS):

S. 1825. A bill to amend to the Internal Revenue Code of 1954 to revise the addition tax for failure to pay estimated income tax; to the Committee on Finance.

## ESTIMATED TAX SIMPLIFICATION ACT OF 1983

Mr. GRASSLEY. Mr. President, I rise to introduce this measure with Senator SYMMS to address many of the problems surrounding the estimated tax penalty.

The estimated tax provision has long been a source of concern to taxpayers.

As currently written, the estimated tax penalty automatically applies if a taxpayer fails to make a quarterly filing. The Commissioner has no authority to waive this penalty, hence many innocent taxpayers are snared by this penalty each year even if they had no prior knowledge that the penalty or the obligation of file existed. Taxpayers commonly subjected to the penalty are workers who have had wage withholding their entire employment careers. Upon retirement, they often have a legal obligation to file quarterly statements but have no knowledge of this requirement. Many of these taxpayers consider their legal tax obligation to be an annual filing of a tax return. Suddenly, they find they have triggered a tax penalty for failure to file a return they never knew existed. Lifelong taxpayers who pride themselves on good compliance records are penalized for their lack of knowledge. Since the estimated tax penalty is a no fault penalty, even in the most sympathetic cases the Commissioner lacks the authority to waive the penalty.

Other taxpayers subject to this penalty are individuals who are unemployed or disabled and are unaware of their obligation to file quarterly. The penalty rate is equal to the statutory interest rate. The Treasury argues that taxpayers had the use of dollars rightfully owed the United States and should be responsible to pay interest on this loan. Unlike other creditors, taxpayers who have triggered the estimated tax penalty often have no knowledge that their bill is overdue. To penalize these taxpayers is not just.

My bill gives the Commissioner the discretion to waive the penalty for reasonable cause. The sponsors of this bill intend to define reasonable cause in the legislative history as those situations which I have chronicled above.

Also, my bill changes the penalty to an interest charge which is deductible by the taxpayer in the year paid or accrued. It retains the same safe harbors that exist in current law and redrafts the section to read more clearly.

It is my hope that this type of needed tax reform can be enacted swiftly. Arbitrary laws breed disrespect for our revenue collection system and encourage noncompliance. These modifications should improve taxpayer attitudes about their financial obligations to their Government.

By Mr. DANFORTH:

S. 1826. A bill entitled the "Hunger Relief Incentives Tax Act of 1983"; to the Committee on Finance.

## HUNGER RELIEF INCENTIVES TAX ACT OF 1983

Mr. DANFORTH. Mr. President, I ask unanimous consent that the text of this bill, as well as the explanation of the bill, be printed in full in the RECORD.

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

S. 1826

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Section 170(e)(3) of the Internal Revenue Code of 1954 is amended to read as follows:

"(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

"(A) QUALIFIED CONTRIBUTIONS, IN GENERAL.—For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) and (2) of section 1221, by a corporation (other than a corporation which is an electing small business corporation within the meaning of section 1371(b)) to an organization which is described in section 170(c)(1) or to an organization which is described in section 170(c)(2) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 492(j)(3)), but only if—

"(i) the use of the property by the donee is related to its governmental purpose or function or to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

"(ii) the property is not transferred by the donee in exchange for money, other property, or service;

"(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

"(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

"(B) SPECIAL RULE FOR CONTRIBUTIONS OF FOOD.—

"(i) IN GENERAL.—In the case of a charitable contribution of food, a contribution which otherwise meets the definition of a qualified contribution under subparagraph (A) shall not be disqualified solely because the taxpayer is not a corporation described in subparagraph (A), if such taxpayer is actively engaged in the trade or business of production or wholesale or retail marketing of food.

"(ii) DEFINITION OF FOOD.—For purposes of this subparagraph, the term "food" shall mean any agricultural product which is intended for, and at the date of contribution is suitable for, human consumption, and which is not subject to the federal excise tax on alcohol and tobacco under Chapters 51 and 52 of the Internal Revenue Code.

"(iii) GLEANING.—For purposes of this subparagraph, a charitable contribution of food shall include contributions of food which a donee organization described in subparagraph (A) has removed from the taxpayer's fields, if the contribution otherwise meets the definition of a qualified contribution under subparagraph (A).

"(iv) Notwithstanding any other provision a contribution of food may qualify under this paragraph in spite of the donee-organization charging a fee to the ill or needy individuals or infants who receive the property from such organization if the fee is small or nominal in relation to the value of the transferred property and is not determined by its value, and the fee is designed to reimburse the donee-organization for its administrative, warehousing, or similar costs.

"(C) SPECIAL RULE FOR CONTRIBUTIONS OF CERTAIN TRANSPORTATION SERVICES.—For pur-