10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To hold hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
4232 Dirksen Building

OCTOBER 3

9:30 a.m.
Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of the Education for All Handicapped Children Act of 1975 (P.L. 94-142).
4232 Dirksen Building

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To continue hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
6226 Dirksen Building

OCTOBER 4

9:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Credit and Rural Electrification Subcommittee
To hold hearings on S. 1465, proposed Farm Credit Act Amendments.
322 Russell Building

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To continue hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
4232 Dirksen Building

OCTOBER 5

9:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Credit and Rural Electrification Subcommittee
To continue hearings on S. 1465, proposed Farm Credit Act Amendments.
322 Russell Building

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To continue hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
4232 Dirksen Building

OCTOBER 9

9:00 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Credit and Rural Electrification Subcommittee
To resume hearings on S. 1465, proposed Farm Credit Act Amendments.
322 Russell Building

OCTOBER 10

9:30 a.m.
Labor and Human Resources
Handicapped Subcommittee
To resume oversight hearings on the implementation of the Education for All Handicapped Children Act of 1975 (P.L. 94-142).
4232 Dirksen Building

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To resume hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
1318 Dirksen Building

OCTOBER 11

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To continue hearings on proposed authorizations for fiscal year 1981 for programs under the Higher Education Act.
4232 Dirksen Building

OCTOBER 17

8:00 a.m.
Labor and Human Resources
Child and Human Development Subcommittee
To hold oversight hearings on the implementation of older American volunteer programs by ACTION agencies.
4232 Dirksen Building

CANCELLATIONS

SEPTEMBER 12

10:00 a.m.
Special on Aging
To hold hearings to review plans for an adequate program of assistance to meet the particular needs of elderly persons to be included in the development of a national energy plan.
6226 Dirksen Building

SEPTEMBER 18

9:30 a.m.
Labor and Human Resources
To hold hearings on S. 1486, to exempt family farms and nonhazardous small businesses from the Occupational Safety and Health Act of 1970.
4232 Dirksen Building

SEPTEMBER 19

9:30 a.m.
Labor and Human Resources
To continue hearings on S. 1486, to exempt family farms and nonhazardous small businesses from the Occupational Safety and Health Act of 1970.
4232 Dirksen Building

SENATE—*Tuesday, September 11, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

The Reverend Alton Parris, minister, First United Methodist Church, Tuscumbia, Ala., offered the following prayer:

Hear the words of the 103d Psalm:

Bless the Lord, O my soul; and all that is within me bless His holy name. Bless the Lord, O my soul, and forget not all His benefits: Who forgiveth all thine iniquities; who healeth all thy diseases; who redeemeth thy life from destruction; who crowneth thee with loving kindness and tender mercies; who satisfieth thy mouth with good things; so that thy youth is renewed like the eagle's.

Let us pray.

We bow before Thee, our Father, acknowledging Thee as our God and the Lord of our lives. Thou knowest the weakness and cowardliness of our hearts. Thou knowest how much we care for the opinion of men. Help us, we pray Thee, to care more for what will please Thee.

Lord, make us strong and courageous that we may never be afraid to do our duty. Give us grace and courage to speak when and as we should, and the power to make our lives equal to our words. Let us never betray Thee either by word or act.

Give us, O God, ears open to hear Thy word; minds willing to accept Thy truth; wills ready to obey Thy commands; and above all, hearts eager to receive and to share Your love.

O God, grant Thy wisdom and guidance to our President, to our Senators, and to all those in positions of leadership and responsibility. In Thy name we ask it. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 11, 1979.

To the Senate:

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

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Mr. ROBERT C. BYRD. Mr. President, I shall yield 9 minutes of my 10 minutes to the distinguished Senator from Washington. I reserve 1 minute and yield the remainder of the time to Mr. JACKSON.

Mr. BAKER. Mr. President, will the majority leader yield to me for just a moment before he yields to the Senator from Washington?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. I understand that the Senator from Washington may have a need for more time than the 9 minutes, and I wish to say if he does, I am glad to yield him a part of my time under the standing order.

Mr. JACKSON. Mr. President, I hope I can finish within 9 minutes. I appreciate the willingness of the minority leader to offer that, and I may accept it.

Mr. BAKER. Why do I not do this, then, if the majority leader has no objection? I ask unanimous consent to yield 6 minutes of my time to the Senator from Washington.

Mr. JACKSON. What I do not use I will yield back to the majority leader and the minority leader.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAKER. I thank the Senator.

RECOGNITION OF SENATOR JACKSON

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

FORTRESS CUBA

Mr. JACKSON. Mr. President, I believe that the American people owe a debt of gratitude to our colleague from the State of Florida, Senator RICHARD STONE, for his tenacious efforts to bring to the attention of the Nation the fact that the Soviet Union once again has exploited the trust of the American people. As he warned us, and as we now know, the Soviets have deployed an integrated combat force—a "brigade"—to Cuba. This force is in addition to the 1,500 to 2,000 Soviet military advisers deployed there. It is now quite clear that during the same period that the world saw Soviet forces deployed to Angola, naval forces and command headquarters personnel deployed to Ethiopia, ground and air personnel and equipment deployed to Afghanistan, and naval forces deployed to South Yemen and Vietnam, the Soviets were deploying combat ground forces and their weapon systems to an island just off our coast. At the same time, the Cuban proxies of the Soviet Union have been involved in conflicts in Africa, the Middle East, and in Central America.

Mr. President, this deployment of Soviet combat forces in Cuba is not an isolated event; it is a most dramatic example of a pattern of Soviet and Cuban behavior which is hostile to the interests of the United States, its friends, and allies. Other things have been going on with which we should be equally concerned. We have seen Soviet airlift and sealift assets transport Cuban fighting personnel to distant conflicts. We have also seen Soviet pilots "relieve" Cuban pilots so that they could be free to fight in Ethiopia.

In the last 2 years, we have begun to see the development of "Fortress Cuba"—a major upgrading of the combat capabilities of the Cuban Armed Forces. The military buildup in Cuba of most concern has been a qualitative one, and represents a major change in what the Soviets and the Cubans believe they can get away with in this part of the world.

Mig-23's have been introduced. One variant of this type of sophisticated aircraft deployed in Cuba is designed for ground attack, and has the necessary range to reach points in the southeastern part of the United States. Similar aircraft in the Soviet Union are capable of carrying nuclear weapons.

More ominous, during this past year the Soviets have supplied the Cubans with their first attack submarine capability. They have introduced two boats: One is a training unit, the other is a combat unit. Cuba has no experience in submarine warfare. Are the officers who will call the shots on Cuban attack submarines Cuban or Soviet? What is the role of any Soviet naval advisers embarked? This is a brand new military capability for Cuba. And it would seem likely that the Soviets would provide a separate training submarine only if they intended to supply Cuba with a number of attack boats. Diesel submarines are very quiet when operating on batteries; the type of submarine supplied—known as Foxtrot—is an oceangoing combatant; and boats of this type are capable of laying mines covertly off our coast. In numbers, they would constitute a major threat to our oil supplies. Even a small number are especially well suited for covert insertion of personnel and small arms throughout the Caribbean and Central America.

Mr. President, not far from Cuba are two U.S. ballistic missile submarine bases, and many of our important sea lines of communications pass near Cuba. The relevant question is how many submarines will the Cubans have to have before we are required to allocate a portion of our shrinking navy to deal with these submarines at the onset of a major war—or in times of heightened tension?

Certainly, one or two submarines or a dozen or so Mig-23's do not constitute an overwhelming threat to the United States in and of themselves. The point is that this is a beginning. Where should we draw the line? To what degree can we tolerate a hostile power in the Caribbean which can pose a major threat to our Central American and Caribbean allies, and something of a threat to us? How big a "Fortress Cuba" is too big? The Cubans, clearly with the support of the Soviets, today feel free to involve themselves in hostilities throughout the world. More important, the Cubans and the Soviets would appear to believe that there is little or no risk of adverse United States response to Cuban involvement in the internal affairs of Central American and Caribbean countries.

The military balance today is very different from that which existed in 1962. We have allowed ourselves to drift into a position where the Soviets believe that they can do most anything they and their Cuban surrogates wish to do—even in this hemisphere. We are now witnessing just one of the effects of the unparalleled Soviet military buildup and the adverse shift in the military balance. We can expect that this accumulation of conventional and nuclear strength will lead the Soviets to become more bold and more confident that their freedom of action increasingly is becoming less constrained. In Africa, in the Middle East, in the Indian Ocean area, in the Far East, and in the Caribbean, the Soviets are asserting themselves. They are exploiting their military capabilities for political advantage.

Mr. President, we can no longer delay in reexamining, in taking a fresh look at what the Soviets are up to in the world. And, Mr. President, the time for the United States to reaffirm its position on what Soviet behavior we will not tolerate in this hemisphere is now. As a beginning, we must insist on no less than the following:

First, Soviet combat units must be removed from Cuba.

Second, Soviet high performance ground attack aircraft must be removed from Cuba.

Third, under no circumstances should the Soviet Union be allowed to provide Cuba with additional submarines, or other naval forces with the reach to threaten our ports or our shipping.

The military balance has shifted adversely over the last decade and a half, and we must take actions to redress this shift. Fortunately, the United States still possesses political strength and considerable military power. What is needed now is a national consensus behind our determination that we will not allow the Soviets to turn Cuba into a fortress-state capable of threatening the United States, our allies and friends in this hemisphere, and our vital lines of communication.

Mr. President, I yield back such time as I may have to the majority leader and to the minority leader.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The Senator from West Virginia has 1 minute.

Mr. ROBERT C. BYRD. I yield it to Mr. EAGLETON. If he does not use all of his time, he can yield it to the next person.

Mr. BAKER. Mr. President, do I have some time remaining?

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes and 45 seconds.

Mr. BAKER. Mr. President, I would be glad to supplement the time for the distinguished Senator from Missouri if he wishes it.

Mr. EAGLETON. I need no additional time, but I thank my colleague.

RECOGNITION OF MR. EAGLETON

The PRESIDING OFFICER. Under the previous order, the Senator from

Missouri (Mr. EAGLETON) is recognized for not to exceed 16 minutes.

NEW STUDY DETAILS IMPACT OF CHRYSLER COLLAPSE

Mr. EAGLETON. Mr. President, it is clear that a shutdown or major curtailment of Chrysler operations would have substantial economic consequences for the Nation. A study commissioned by the Congressional Budget Office last month concluded that a complete collapse of the company "would lower real economic growth by 0.6 percent to 1.0 percent for a half a year and reduce employment by 500,000 persons."

Bleak as that nationwide picture is, the figures understate the impact on the economies of cities and regions where Chrysler has major facilities. An analysis of these regional effects has just been made available to the Treasury Department in a preliminary staff study by the Department of Transportation's Transportation Systems Center in Cambridge, Mass.

The analysis is, as I say, preliminary and was meant only as an informal technical document for working level communication. However, the issues addressed in this study are so relevant to congressional debate on the subject, and the data provided so important, that I am today making the report available to my colleagues.

Mr. President, the St. Louis area where Chrysler operates a truck and a car assembly plant would be far less severely impacted by a Chrysler shutdown than some other cities such as Detroit. Even so, a collapse of the company would be a serious blow to the economy of the St. Louis area.

The DOT study estimates that direct and secondary job losses in St. Louis would range from 21,360 to 26,700. Direct and secondary economic output losses are projected to be in excess of $1.9 billion.

These figures do not include dealers of which there are 135 in Missouri employing 1,650 persons. Nor does it fully account for the losses likely to be experienced by the 561 Chrysler suppliers throughout Missouri—mostly small firms—who collectively do about $100 million a year in Chrysler business.

Mr. President, in other cities, a shutdown or major reduction in Chrysler operations could have devastating employment and economic effects. According to the DOT study, the Detroit area could see its jobless rate increase from the current 8.7 to 16 or 19 percent. Direct taxes to the city of Detroit would be reduced by $34 million, severely limiting the city's capacity to meet increased unemployment and welfare payments. A very high percentage of Chrysler's Detroit work force consists of minority workers.

Contrary to the assumption of some analysts, the DOT study concludes there are only limited opportunities for absorption of displaced Chrysler workers by other automakers. The reasons are spelled out in the report, but the conclusion reached by DOT analysts is that the employment impact would be prolonged and in some areas permanent.

A similar conclusion is reached in the study about prospects of other auto companies either foreign or domestic acquiring Chrysler plants. Except for two facilities, most Chrysler plants would be unsuitable for other auto companies, according to the study. Their value, if any, would be limited to that of the property they occupy.

Another suggestion often heard is that Chrysler could be reorganized as a smaller company specializing in production of small fuel-efficient cars. The DOT analysis concludes "this is not possible under existing plant and capitalization structures," citing the obstacles of covering fixed costs on a limited product basis and the small profit margins that can be realized on small cars.

Mr. President, Chrysler's need for some form of outside assistance is well established by the quarterly losses recently announced by the company.

The national interest in providing that assistance is well presented in this study.

I ask unanimous consent that the text of the study be printed in the RECORD at this point in my remarks.

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

EMPLOYMENT AND ECONOMIC EFFECTS OF A CHRYSLER SHUTDOWN OR MAJOR REDUCTION IN BUSINESS: PRELIMINARY DATA AND ANALYSIS

INTRODUCTION

The purpose of this paper is to address two major questions concerning the Chrysler Corporation and its current financial problems:

What employment effects would result from a major reduction in operations, or shut down?

What economic effects would the Nation, and more particularly several regions of the Nation, sustain under major reductions in business?

It was not intended to address several critical financial questions such as the effect of Federal relief measures, or the ability of Chrysler to continue full operations.

Data and analysis in this document are all derived from detailed study of the plant and facilities base of the Chrysler Corporation. Unlike similar current studies of the company and its situation, this analysis builds upward from plant and community data, rather than moving downward from macroeconomic or corporate level data.

National and even regional macroeconomic analysis can obscure critical data: by ignoring the local dependence upon Chrysler, by simplifying the apparent re-employment of Chrysler workers without regard for their actual living situations, and by avoiding important constraints such as the capacity of other companies to pick up Chrysler workers or sales.

The community-based method used in this report, while missing some of the larger effects such as those upon the capital markets, more accurately demonstrates the regional dislocations instigated by a Chrysler shut down, and the level of effort required to re-integrate the Chrysler capacity into the economy.

This is important, for even though a Chrysler shut down will have measurable national effects, it is clear that certain regions of the country will bear a disproportionately large burden. In the case of the City of Detroit, the burden would be nothing short of devastating, and could effectively destroy that city's economic base for a period of years.

This report is organized into three major sections:

Employment Effects.
Economic Effects.
Ancilliary Issues.

A complete summary of data is appended, and it is suggested that the best understanding of the complexity of the situation can be obtained by viewing the plant and community data sheets.

EMPLOYMENT EFFECTS OF CHRYSLER SHUT DOWN OR MAJOR REDUCTION IN BUSINESS

It is clear that several thousand Chrysler workers would not be affected by the problems facing the automotive operations of the company. These workers are primarily confined to the marine division, defense operations, and some corporate staffs. It appears that in the event of a shut down, the Marine and Defense operations might be spun off in some way that their employment effects would be minimized. Some corporate staff people might more easily transfer to the other auto companies, because their skills are currently in high demand, and because their hiring would not depend upon the productive capacity of the other companies.

However, it is also clear that more than 100,000 production workers would be directly affected, and that they would be effectively removed from the economy at least until the current economic slowdown ends. Even when economic conditions return to more positive levels, the reintegration of the Chrysler work force would be limited by regional concentration, by workers limited abilities to relocate, by the limited capacity of other producers to pick up Chrysler people, and by the decimated Detroit economic base.

Chrysler worker rolls indicate 140,977 workers currently carried. Of these, approximately 24,000 are now on indefinite or extended layoff and are receiving the normal layoff benefits. In the event of collapsing auto operations, the following automotive production workers would be immediately affected:

United States (approximately)	97,000
Canada	15,000
Mexico	7,500
Total	119,500

Most of these would be released, with the possible exception of workers at several facilities who might remain employed if other companies sought to take them over. It is estimated that workers potentially retained would be at the following facilities.

New Process Gear.

Belvidere Assembly (with temporary shut down for retooling).

Introl Division.

Kokomo Transmission (only partial retention).

Under the most optimistic scenario, only 12,000 workers would be eligible for retention. A more realistic assessment would be 6,000 workers retained with an additional 2,500 eligible for re-employment at Belvidere after a one year layoff. This assumes immediate takeover by another company.

The Canadian and Mexican operations, because of their dependence upon production in the U.S., would certainly close. It should be noted that the Canadian work force is concentrated in the Windsor, Ont. area which is contiguous to Detroit. This exacerbates the regional effect in Detroit.

Because Chrysler is less fully integrated than the other auto companies, it purchases more parts from independent suppliers. Therefore, layoffs in the Chrysler production base would have immediate ripple effects throughout the supplier chain. We estimate that approximately 70 percent of Chrysler supplier companies are small manufacturing concerns with great concentrations of business in Chrysler products. Leaving aside the question of bankruptcy for these companies (a very real possibility), it is clear that many jobs would be directly lost owing to elimination of Chrysler orders.

It is possible to estimate these multiplier effects in several ways. We have used a regional multiplier method derived from local economic impact assessment, and we have corroborated these estimates with an actual headcount of supplier employment estimates. A headcount suggests the following related jobs potentially lost, at least temporarily:

Suppliers (approximately)	180,000
Dealers (approximately)	100,000
Freight and related (approximately)	12,000
Total	292,000

Our analysis suggests that many additional supplier workers, mainly at larger companies, produce Chrysler components and might be faced with job losses. We believe that a number of dealer employees, after initial dislocation, might be picked up either by domestic or foreign producers.

The data and estimates contained in this document are based upon our multiplier analysis, and because we can discern larger employment effects in our headcount, we believe that our employment multiplier analysis is quite conservative. It should be read as our minimum estimate of employment.

Regional multipliers, derived from past employment behavior under changing economic conditions, indicate that for the various regions involved, a lost automotive production job instigates 1.4 to 2.0 additional job losses in the local economy. It is important to note that this is community based, and will therefore miss other job losses which might be instigated outside of the regions measured.

Multiplier analysis indicates primary and secondary job losses derived only from the Chrysler production employment ranging at a minimum from 240,000 to 295,000 jobs. An additional 50,000 jobs would be lost just from direct layoffs in Chrysler's staff and nonproduction workers.

Notice that this multiplier estimate, which includes Chrysler employment, is smaller than the headcount of non-Chrysler workers mentioned above. We expected that the actual effects will be larger than our multiplier analysis suggests.

These are short-term job losses. Many analysts assume these jobs will be picked up by other employment concerns, according to gross estimates of job creation. Our analysis indicates that the rate of re-employment will be strongly constrained by the attributes of Chrysler workers location, the mix of skills they represent, the state of the economy forced by recession and the Chrysler economic effects, and by the specific capacity available for re-employment. These effects will be documented below.

Also note that our multiplier estimates do not include dealer, defense, financial, real estate, or marine employment.

Ability of other auto companies to pick up Chrysler workers

The major constraint on re-employment is the limited ability of Ford and GM to hire additional workers. The easiest job transfer would be to facilities needing the specific auto-making skills of the Chrysler workforce.

Our capacity analysis, summarized in Exhibit 8, shows that Ford and GM have considerable excess capacity in the sales segments released by a Chrysler collapse. This means that as GM and Ford picked up those sales, they would be drawing from their own employment rolls, currently on layoff, and they would have little need for Chrysler labor.

In those cases where GM and Ford could not pick up the excess unit demand dumped to the market by Chrysler, the companies are constrained by physical capacity. They are already running at overtime levels to supply the small car demand segment, and could not expand capacity for these units of production for some time. If they were to add increments of physical capacity for existing models, lead times would run one year minimum, and more likely two years. If the other companies were to add capacity for new models, lead times until production could run as long as 4 years.

This effect would only be exacerbated by the current recession, and it perhaps would be magnified by economic fallout from the Chrysler collapse. It is also important to note that even as the companies introduce new smaller models, they will be employing primarily their own workers shifted from larger cars.

This capacity constraint is heightened by the location of capacity. Chrysler is unique in that most of its productive capacity resides in the City of Detroit. The other companies have for many years moved capacity away from Detroit (see Exhibit 15). GM and Ford have relatively little production capacity within range of many Chrysler workers, so even if they were capable of employing these workers, such employment would require worker relocation.

A second complicating factor is the incompatibility of skill mix by geographic location. As can be seen in Exhibit 7, even when Chrysler has facilities located near those of the other companies, the nature of the skills employed is not entirely compatible. Foundry workers cannot be easily shifted to assembly operations, and certainly not to skilled machining operations. Skilled diemakers are more easily transferred, but their total number is not large. Methods of production are also quite different among companies, and Ford and GM will not be entirely disposed to considerable retraining expense unless there is compelling demand which cannot be satisfied with their own trained workforce.

In the case of the Chrysler suppliers, the other companies will not be able to pick up foregone Chrysler orders and therefore supplier employment will be affected. GM is almost totally integrated, producing most of its parts, Ford purchases from outside sources in limited quantities, and only when internal capacity is not large enough or not economic to build. Because Chrysler suppliers are making very specific parts for Chrysler products, their markets would be instantly removed, and there would be little relief available from the other domestic manufacturers. Even if they could find new markets, employment would be low during periods of retooling, which could last upwards of one year in the case of transfer-line-type production.

If Chrysler collapsed, they would cancel approximately $2 billion of future tooling orders. Lead times for new capital equipment in this industry range 2 to 4 years into the future, and Chrysler has many orders in the pipeline. This effect is not included in our multiplier analysis, because tooling deliveries have never been permanently cancelled in such large quantities before.

Competition for toolmaking capacity is intense, owing to the extremely high investment in new products in the industry. It is quite likely that other orders would come in to fill the lost Chrysler business, but it is not clear how much value currently in production would be lost, or how quickly toolmakers could realign their efforts.

Some facilities might be salvaged

Many analysts assume Chrysler facilities will be purchased by other companies, domestic and foreign producers being most often cited. Our analysis indicates very little possibility of this, again attributable to the nature of the Chrysler facilities, their location, and the investment strategies and needs of the other companies.

As indicated earlier, most Chrysler facilities are in the Detroit area. What is not revealed by gross economic data is the fact that these facilities are old, inefficient in their spatial layout, limited in their potential for expansion, and located in areas known to have some of the most inefficient and troublesome workforces available.

Other auto companies would certainly have little use for Chrysler's Detroit facilities. It is clear that Ford and GM have moved production rapidly away from the city, and that they have all new capacity plans currently in the pipeline away from the city.

The only other producer in the City of Detroit is GM. These facilities are either lower volume Cadillac plants, with little capacity to absorb workers, or they produce items which currently experience low demand, and therefore excess capacity. GM is moving some of these facilities out of the city.

Ford has never really operated in the city, although they have facilities in nearby Dearborn. However, as shown in Exhibit 15, Ford's future plans are not in this area, and it is unlikely they would see any value in taking over Chrysler's old plants.

Even if these companies were to acquire the plants, they would be purchasing only the property space, for none of the tooling matches their needs. This means little employment results for several years while the companies retool. Again, this is not even considered likely because capital is already scheduled for non-Detroit placement, and little interest on the part of Ford and GM for Chrysler's plants is foreseen.

Foreign producers might be interested in some of Chrysler's facilities, but again this would only be for property space, not for its productive capacity. This would not create new jobs. It is far more likely that foreign producers would only be interested in some of Chrysler's non-Detroit facilities, which would have little effect on the main problem.

Based upon analysis of the quality of Chrysler assets, the needs of other producers, and the mix of production at the Chrysler facilities, it is believed that four facilities might have potential for at least partial takeover of the production capacity.

The most promising assets appear to be *New Process Gear*, located primarily in Syracuse, New York. This facility produces drivetrain componentry in efficient facilities, primarly for use by other companies. It supplies transfer cases, for example, to producers of four-wheel-drive vehicles. It is estimated that New Process is a profitable operation, with considerable demand away from the Chrysler base. This makes it a good takeover possibility.

However, the recent reductions in light truck sales have hurt New Process. Estimates suggest perhaps a 30% reduction in demand for major components. We would have estimated the economic value of New Process to be $350 million to $450 million, prior to this reduction. Our new estimates suggest its value to be at the low end of earlier estimates.

Takeover management would undoubtedly retool much of the facility. This would result in partial job reduction for periods greater than one year, with employment only necessitated by changeover operations and continued production of demanded components.

Another takeover candidate would be the Belvidere Illinois assembly plant, currently producing Omni/Horizons. This is Chrysler's most efficient assembly operation and its basic facilities could be seen as valuable. But again, we doubt that other producers would want to continue Omni/Horizon production, and therefore one could expect job losses while the takeover company retooled the plant. This could take from one year to three, depending upon the nature of planned production and the availability of tooling capacity.

A third possible salvage item could be part of the Kokomo Indiana transmission facility. This plant is not entirely renovated, but it has modern tooling and does produce for outside companies. We estimate that retooling here would have to be more pervasive, most likely for integration into some other company's product base. This suggests lower

employment possibility, but some potential for medium term pickup.

The last facility we considered acquirable for its capacity is the Introl Division which makes instrumentation and similar componentry. This is probably eminently transferrable, but its economic power is small (at perhaps $40 million), and its employment potential limited at 1300 people.

Other facilities might be acquired, but this would be for land space. Given the complexity of new production processes, and the need for efficient building design from the ground up in these expensive energy times, it is usually more economical for an automotive type producer to construct new facilities in places away from the traditional manufacturing base. This is the driving force behind Ford and GM investment plans, and presents a strong barrier to the salvaging of Chrysler jobs.

One interesting sidelight, which has resulted from the expense of pollution control, is that some old plants in the industrial belt are acquired by producers with other large facilities. These acquiring parties can shut down the acquired older facilities and obtain pollution credits to apply to their desired production base. We do not believe this will be any real influence in the Chrysler situation, but we have noted such occurrences, and they could be expected. This does not result in job creation, of course.

It is very important to bear in mind that any acquiring party would be faced with initial purchase, scrappage of Chrysler equipment, ordering of new tooling, and retraining of the workforce. This will undoubtedly slow the absorption of Chrysler workers into the labor force.

Regional strains

The most glaring conclusion of our analysis is that several major industrial communities will bear a very heavy burden in any Chrysler collapse, owing to the concentration of Chrysler plants in specific areas.

In most Chrysler communities, Chrysler employment is a significant portion of the manufacturing workforce. Even a 2 or 3 percent reduction in employment, the effect in the most diffused Chrysler locations, will produce local unemployment effects which can snowball. Cities most affected are:

Detroit, MI.
Kokomo, IN (from other facilities not mentioned above).
New Castle, IN.
Fostoria, OH.
Belvidere, IL.
Newark, DE.
Syracuse, NY.
Huntsville, AL.
Windsor, ON, Canada.

School budgets, city budgets, property values, and retail trade could all be severely affected in the short term in these areas. In cases such as Detroit and New Castle, the effects would be debilitating. See Exhibits 2–7 for the estimated employment effects and local economic output effects.

Strong effect on minority work force and economy

Because of Chrysler's center city facility placement, the company employs a great number of minority workers. This is concentrated in the production workforce, which is the area most affected by a Chrysler collapse. Exhibit 17 summarizes the minority employment situation. Under shut down conditions, Chrysler would release approximately 35,000 minority workers in the Detroit area. Overall effects on minority employment would total more than 38,000 workers.

Given the precarious state of the employment base in the center city, and the somewhat limited ability of workers to relocate, this can be seen as a devastating social impact.

Estimates of the portion of the economy available to minority workers range widely. One recent estimate from the Bureau of Census suggests flows to the black economy of approximately $80 billion per year. Chrysler salary payments to its black workers are estimated to be $800 million, which is roughly 1% of the $80 billion figure. To the extent the black economy estimate is correct, this will have a serious impact.

Note that salaries and benefits in the auto industry are generally much better than in most other manufacturing concerns. This means that even if minority workers were able to find other jobs, the net economic loss would be large in both cash and social benefits terms.

Families affected

Using typical demographic data for the communities measured, we estimate that more than 399,000 family members will be directly affected by a shutdown of Chrysler automotive operations. This does not include family members of non-auto workers, dealers, staff, suppliers, and others. If the demographics held for all the other categories, more than 1.1 million family members could be affected.

This is not a direct employment or economic effect included in our measurements. It is possible that second worker households would fare better than single worker ones, but it is also possible that Chrysler or its suppliers would employ more than one member of the same household. Obviously, the effect is large no matter how it is measured.

Unemployment resources limited

It must be noted that Chrysler's unemployment benefits fund is already being strained, and that in the event of a collapse it would be eliminated. This means the employment impacts mentioned above carry greater weight than previous layoffs in the auto business cycles, because the economic support in unemployment is nonexistent.

Long-term turnover measurements

Recent estimates suggest that in good times, the average production worker turnover owed to attrition, retirement, and firing averages 10% of the workforce in a given year. This is a suspect ratio, because local effects dictate actual turnover, but it is at least useable for perspective.

At first look, this turnover number suggests 70,000 job placements open in the U.S. each good year. This should be reduced by transfer turnover, which would reduce openings for Chrysler workers, but more importantly this is once again restricted by the location of Chrysler workers. Turnover in the Detroit and Dearborn area would only produce 11,000 job places in a good year, which suggests that even with worker relocation, only 25% of Chrysler workers could be picked up each year.

Again, this does nothing for suppliers because of the integration of the other producers. Our community analysis is more accurate in measuring the actual effects and potential for placement.

Dealers

The economic effect upon dealers would be immediate and strong, because they are holding so much Chrysler inventory. However, employment effects are more difficult to judge. Most would experience immediate job losses, but this sector is more easily picked up by other companies.

Domestic companies might not be motivated to aquire Chrysler franchises, owing to location concentration and to the fact that dealer units are already somewhat low and could not be diluted further. The gain in sales from dumped Chrysler market segments would not be large enough to warrant full scale dealer networks.

However, it is entirely likely that Ford and GM would pick up some dealers and that foreign producers might acquire more. Likely candidates would start with Mitsubishi, currently selling through Chrysler dealers, and long desirous of its own marketing network here. VW might take some and Renault is likely, as are Peugeot and other Japanese companies.

City of Detroit

The impact of a Chrysler shutdown on Detroit area is extremely serious, and could represent a regional depression. Volatile auto economics have always had a strong effect here, but this situation is different because it means a permanent loss of the production base.

Total employment in the Detroit SMSA peaked prior to the 1973–75 oil embargo and recession in December 1973. Wage and salary employment had risen to 1,712,700 workers, there were 622,500 jobs in the manufacturing sector, and the unemployment rate was approaching 5.0%.

As a result of the embargo and recession, employment in Detroit steadily declined until second quarter 1975. Wage and salary employment bottomed out at 1,525,000, manufacturing employment at 488,000, and the unemployment rate rose to 14%. Total employment declined by 188,000, manufacturing by 135,000, and the unemployment rate rose 9% points.

It took the Detroit area over two years—until second quarter 1977—to regain a level of wage and salary employment equal to the peak 1973 level. However, manufacturing employment has never returned to its peak 1973 level despite several strong years of automotive production between 1973 and 1979. As of the second quarter of 1979, manufacturing employment was 588,400—6% below 1973 levels. This measure has been declining since the third quarter of 1978.

The unemployment rate for the area has been consistently higher than the historical rate, fluctuating between 6%–12% since 1973. The average rate since 1973 has been 8.4%, and currently stands at 8.7%.

The slow rate of recovery, even given near record auto production, shows the basic deterioration in the Detroit economic base, and its vulnerability to automotive changes.

The aggregate employment effect of a Chrysler shut down on the city would be very similar to the 1973–75 employment decline. But instead of being a gradual decline, this would be an immediate economic shock, with unemployment rising in the SMSA from its present 8.7% to 16%–19%.

There would be no future promise of reduction in unemployment, because unlike the last recession, gains in auto sales would produce no production increases in Detroit. The Chrysler effect immediately recreates the depths of the past recession, but establishes it as a permanent change.

One needs no strong reminder of previous social unrest in the Detroit area. While social tensions are not as strong today as they were in more troubled times, it takes little imagination to envision the results of such massive economic reductions in the inner city. It need not be emphasized that the unemployment race among minority workers is higher now, and would soar under Chrysler shut down conditions.

Preliminary estimates suggest that Chrysler pays direct taxes to the City of Detroit (not SMSA) of $34 million. This is a significant portion of the budget. Other economic effects would place strains on city services, and unemployment/welfare payments could be debilitating. Detroit is still recovering from welfare disbursements of the last recession.

Even if these workers could be re-employed elsewhere, the downtown area of Detroit would be left empty. Our preliminary estimates suggest that upwards of $3 billion of new capitalization would have to be brought into the city to reestablish a Chrysler size operation. Given the potential social situation, one wonders about the prudence of such an investment.

ECONOMIC EFFECTS OF A CHRYSLER SHUTDOWN

This is a very difficult area of assessment, because the Chrysler enterprise is intricately involved in many sectors of the economy, either through direct productive output, or through capital markets, and indirect economic multiplier effects.

Even in the cases where new facilities might be added, or where other producers might refurbish Chrysler plants, lead times for such renewal dictate at least a year's delay in economic activity, which does little to counter the large drop in output.

Also the nature of this shock could disrupt other economic sectors at each location, making capital formation and recovery somewhat more difficult. Suffice it to say, that the economic fallout of the Chrysler shut down would be enormous, and long lasting in several critical metropolitan areas.

Unemployment compensation and welfare

As was mentioned earlier, Chrysler's shut down would remove all of the traditional benefits which supplement government payments to laid off auto workers. This means the entire assistance burden would fall upon government organizations. It would also result in large drains on funds, and at the same time taxes would be dropped.

Assuming unemployment benefits averaging $100 per week per worker—most auto workers would be eligible for payments in excess of this—government assistance bills could exceed $30 million per week, or $1.5 billion over one year. Welfare payments to perhaps 1 million family members affected would add to this.

It is doubtful that local coffers could support this level of payment.

Income tax losses

In addition to direct property and other corporate taxes, upwards of $500 million of income taxes could be lost through reduced employment in the Chrysler and supplier base.

One could also expect sales tax losses through reduced activity in economically depressed areas.

Financial markets

Losses are obvious. They would start with $1 billion debt, and similar amounts of commercial paper. Treasury data is most accurate source in this instance.

Pensions

Exhibit 13 highlights some of the most important pension numbers. Additional losses in Chrysler stock held for retirement would disrupt this aspect of financing for existing and retired Chrysler workers.

Balance of trade and payments

We estimated that several hundred thousand units of sales would be picked up by imports, owing to constrained production facilities at Ford and GM. VW production facilities in 1980 and beyond might mitigate this, but the direction is clear. This could increase imports value by about $1.5 billion per year (241,000 units at $6000).

Foreward tooling cancellations

As mentioned above, Chrysler would cancel perhaps $2 billion or more of foreward tooling orders. This is actually proxied in our economic flow estimates, but it does represent several years of tooling business, rather than the first year effects measured above.

Regional steel sales

If Chrysler were to shut down, it is possible that several local steel producers would not have volume sufficient to continue operations. This requires further research, but early indications suggest a problem.

Ancillary issues

Obviously a number of other effects would result from a Chrysler shutdown beyond those mentioned above. This section should be considered less of an analysis and more of a thought outline relating to other aspects of the problem.

Fuel economy effects

Contrary to media implications, Chrysler currently holds the highest Corporate Average Fuel Economy rating of the domestic companies. This is largely supported by Mitsubishi sales, but approximately 60% of Chrysler's current sales mix is in small and compact autos. The company is about to place approximately 500,000 new fuel efficient production units on the market in the next 20 months.

A Chrysler shut down would therefore remove approximately 800,000 units of small cars from the American production base by 1981. This would lower the potential for fuel savings derived from new fleet sales each year.

Partial shut down

This analysis has not considered scenarios in which only part of Chrysler's automotive production is shut down. Some analysts suggest Chrysler could operate as a limited line producer, building only smaller cars.

Our facilities analysis suggests this is not possible under existing plant and capitalization structures, for two primary reasons.

It can be seen that the plant base, while separated by model line in the assembly functions, it integrated across model lines in the component facilities. Were Chrysler to operate only limited product lines, the componentry base could not be efficiently reduced to get fixed costs in line with sales volumes. This could only be performed by large infusions of external capital to reconstruct the very expensive engine, transmission, suspension, and driveline facilities. Our estimates of new capital for this start at about $1.5 billion. A more realistic estimate could approach $4 billion.

The second impediment to limited production of smaller cars is that the size of the market and the prices Americans are willing to pay for small cars would not support a strong financial organization around these sales. Variable margins on larger cars can be as much as ten times the size of margins in small cars, which does not leave much profit in 800,000 units or less of small car production. It is not entirely clear that the required new capital for facility retooling would flow to such a small margin business.

This topic is under continuing investigation.

Related producer effects

It should be noted that Chrysler produces components parts for a number of other companies. AM and International Harvester, for example, would have to seek new component sources were Chrysler to shut down. Some of this might be mitigated if other companies picked up New Process Gear and Introl, but the potential for disruption exists.

Several overseas companies would also experience problems.

Impact on existing Chrysler owners

Registration data suggest there are almost 17,000,000 Chrysler vehicles in use in the United States. Using the scrappage rate of auto fleets and the average cost of servicing over the life of the vehicle, it is estimated that parts and service requirements to maintain these vehicles would have a present value in 1979 dollars of $41,932 million. This is the present value of the amount of business activity which would be required to keep these vehicles running.

If no one were willing to keep making Chrysler parts in this amount, then the utility of these vehicles to the present owners would rapidly decay.

Using a 6% after tax return on the wholesale value of this service business, and a 9% cost of after tax capital, one might be willing to invest as much as $1.8 billion today in such an operation. If the scrappage of vehicles did not occur any faster than in the past, this might be a reasonable investment.

The problem is that the initial investment required to make these components could easily total more than the present value of earnings, unless the investing party were able to acquire existing Chrysler production tooling. However, in the event of a Chrysler collapse, it is not at all clear that the production assets would be available for purchase—they would most likely be encumbered by claims.

The value of these owned vehicles, using a range of average resale values from $2000 to $4000, is between $30 billion and $70 billion. Unless parts and service operations were continued, most of this value would be quickly lost.

EXHIBIT 1

CHRYSLER CORPORATION EMPLOYMENT 5/79

	Salary	Hourly	Total
1. Central offices—Detroit, Mich.:			
Finance and general counsel	2,960		2,960
Engineering and product development	7,412		7,412
Personnel and others	1,646		1,646
Total	12,018		12,018
2. Diversified products group:			
Defense	2,903	2,534	5,437
Electronic products	817	1,544	2,361
Component products	810	2,352	3,162
Marine division	566	939	1,505
Total	5,096	7,369	12,465
3. Manufacturing and purchasing group:			
Office	1,255	888	2,143
Stamping and assembly division	8,342	52,431	60,773
General manufacturing division	3,656	21,711	25,367
Engine and casting division	1,744	8,604	10,348
Total	14,997	83,634	98,631
4. Sales and marketing group:			
Service and parts division	2,431	2,708	5,139
Sales, dealers, marketing, etc	2,161	93	2,254
Total	4,592	2,801	7,333
5. Mexico	1,925	5,361	7,286
6. Canada	2,592	12,402	14,994
7. International—Not Canada, Mexico	4,926	10,141	15,067

EXHIBIT 2

CHRYSLER AUTO PRODUCTION EMPLOYMENT BY METROPOLITAN AREA 5/79

State: Metropolitan area (or county)	Plants	Auto production employment		Annual payroll ($M)	Employment as percent of—	
		Hourly/Salary	Total		Total	Manufacturing
Michigan:						
Ann Arbor	2	974/302	1,276	$37.3	1.0	3.2
Detroit	22	44,269/7,407	51,676	1,508.9	3.0	9.0
Lansing-Lyons	1	541/111	652	19.0	.4	1.5
Total, Michigan	25	45,784/7,820	53,604	1,565.2	1.5	4.6
Indiana:						
Indianapolis	2	3,499/593	4,042	113.0	.8	3.1
Kokomo	2	5,870/894	6,764	189.2	13.9	
Michigan City (LaPorte County)	1	241/54	295	8.2	1.6	
New Castle (Henry County)	2	2,240/367	2,607	72.9	11.6	
Total, Indiana	7	11,800/1,908	13,708	383.3	.6	1.9
Ohio:						
Dayton	1	1,635/291	1,926	51.9	.5	1.8
Fostoria (Senaca)	1	531/121	652	17.6	2.5	
Sandusky (Erie)	1	207/137	344	9.3	1.0	
Toledo	1	2,033/356	2,389	64.5	.7	2.7
Twinsburg (Summit)	1	3,280/468	3,748	101.1	1.7	
Van Wert-Lima SMSA	1	304/43	347	9.4	.4	
Total, Ohio	6	7,900/1,416	9,406	253.8	.2	.7
Missouri: St. Louis	2	7,959/941	8,900	235.1	.9	3.5
Total, Missouri					.5	2.0
Illinois: Belvidere-Rockford SMSA	1	4,574/502	5,076	136.7	4.3	9.4
Total, Illinois					.1	9.4
Delaware: Newark-Wilmington SMSA	1	3,960/517	4,477	108.2	2.3	7.2
Total, Delaware					1.7	6.5
New York: Syracuse	1	3,133/546	3,679	112.2	1.5	5.5
Total, New York					.05	.2
Alabama: Huntsville	1	1,100/641	1,741	40.7	1.7	6.7
Total, Alabama					.1	.5

EXHIBIT 3

CHRYSLER AUTOMOTIVE FACILITIES—EMPLOYMENT AND ECONOMIC DATA BY LOCATION

State: Plants by metropolitan area	Function	Years since construction or acquisition	Employment hourly/salary	Total employment	(SFB) annual payroll (millions)	Family dependents (estimate)	Personal income tax on current salary (million; estimate)	Economic flow through factory (millions; estimate)
Michigan:								
Ann Arbor:								
Introl Division—Ann Arbor	Auto instruments	11	974/302	1,276	$37.3	5,104	$7.0	$111.7
Introl—Scio Plant	do	11						
Detroit:								
Lynch Rd.	Newport, New Yorker, St. Regis	51	4,431/636	5,067	148.0	20,268	27.8	443.5
Jefferson Ave.	Pickups and utilities	54	2,679/397	3,076	89.8	12,304	16.8	269.2
Hamtramck [1]	Volare, Aspen	51	5,222/797	6,019	175.8	24,076	33.0	526.8
Warren Truck	Pickups, vans, RV's	42	6,736/777	7,513	219.4	30,052	41.1	657.6
Eight Mile	Auto stampings	26	1,959/405	2,364	69.0	9,456	12.9	206.9
Outer Dr.	do	26						
Mack Ave.	do	26	3,656/455	4,111	120.0	16,444	22.5	359.8
Sterling Heights	do	14	2,760/440	3,200	93.4	12,800	17.5	280.1
Warren-Stamping	do	41	2,855/403	3,258	95.1	13,032	17.8	285.2
Northern Steel	Steel fabrication	5	29/13	42	1.2	168	.2	3.7
Vernor Tool & Die	Dies, jigs, fixtures	26	796/501	1,297	37.9	5,188	7.1	113.5
Detroit Trim	Trim components	9	822/151	973	28.4	3,892	5.3	85.2
Mound Rd. Engine	318/360 CID, V-8 engines	26	2,486/391	2,877	84.0	11,508	15.8	251.8
Trenton Engine	361/413 CID, V-8; 225 CID, L-6; 1.7 L-4	27	2,139/464	2,603	76.0	10,412	14.3	227.8
Huber Ave. Foundry	Iron castings	13	1,839/383	2,222	64.9	8,888	12.2	194.5
Winfield Foundry	do	31	248/52	300	8.8	1,200	1.7	26.3
Detroit Axle	Auto parts and axles	51	3,482/606	4,088	119.4	16,352	22.4	357.8
Detroit Forge	Auto forgings	51						
Detroit Universal	U-joints, drivetrain, steering	24	948/140	1,088	31.8	4,352	6.0	95.2
Amplex Harper	Powdered metal products	51	315/115	430	12.6	1,720	2.4	37.6
McGraw Glass	Glass fabrication	43	610/141	751	21.9	3,004	4.1	65.7
Trenton Chemical	Brake linings, adhesives, etc.	32	257/140	397	11.6	1,588	2.2	37.4
Lansing/Lyons [1]	Trim components	14	541/111	652	19.0	2,608	3.6	57.1
Indiana:								
Indianapolis:								
Indiana Foundry	Engine castings	20	848/201	1,049	29.3	4,196	5.5	91.8
Indiana Electrical	Electrical components, power steering units.	28	2,601/392	2,993	83.7	11,972	15.7	262.0
Kokomo:								
Kokomo Casting	Aluminum castings	14	761/143	904	25.3	3,616	4.7	79.1
Kokomo Transmission	Automatic transmissions	13	5,109/751	5,860	163.9	23,440	30.7	512.9
New Castle:								
New Castle Forge	Powertrain components	54	2,240/367	2,607	72.9	10,428	13.7	228.2
New Castle Machining	do	54						
Michigan City: New Castle Molded Product	Plastic parts	3	241/54	295	8.2	1,180	1.5	25.8
Ohio:								
Dayton: Dayton No. 1	Air-conditioners and heaters	54	1,635/291	1,926	51.9	7,704	9.7	168.6
Fostoria: Fostoria Foundry	Iron castings	7	531/121	652	17.6	2,608	3.3	57.1
Sandusky; Vinyl Products	Plastic products	11	207/137	344	9.3	1,376	1.7	30.1
Toledo: Toledo Machining	Machining components	12	2,033/356	2,389	64.5	9,556	12.1	209.1
Twinsburg: Twinsburg Stamping	Auto stampings	22	3,280/468	3,748	101.1	14,992	19.0	328.1
Van Wert: Amplex (3 plants)	Powered metal products, magnets, extrusions	14	304/43	347	9.4	1,386	1.8	30.4
Missouri: St. Louis:								
St. Louis Car	LeBaron, Diplomat	20	4,337/527	4,864	128.5	19,456	24.1	425.7
Missouri Truck	Vans	13	3,622/414	4,036	106.5	16,144	20.0	353.3
Illinois: Belvidere: Belvidere Assembly	Omni/Horizon	14	4,574/502	5,076	136.7	20,304	25.6	444.3
Delaware: Newark: Newark Assembly	Aspen/Volare; Diplomat/LeBaron	27	3,960/517	4,477	108.2	17,908	20.3	391.9
New York: Syracuse: New Process Gear	Manual transmissions; axles	18	3,133/546	3,679	112.2	14,716	21.0	322.0
Alabama: Huntsville: Huntsville Electronics	Electronic components	14	1,100/641	1,741	40.7	6,964	7.6	152.4

[1] Plants to be phased out within next calendar year.

PARTIAL LISTING OF CHRYSLER FACILITIES, DEALERS, AND SHAREHOLDERS

	Employees	Wages (millions)	Suppliers	Direct local purchases (millions)	Auto dealers	Marine dealers	Dealer employment	Direct local taxes (millions)	Shareholders
Alabama	1,894	$45.6	480	—	61	29	1,226	$0.8	1,512
Alaska	0	0	8	.0	4	—	169	.0	114
Arizona	35	1.8	44	7.6	28	0	380	.1	1,535
Arkansas	17	.4	18	.5	66	18	1,806	0	429
California	1,248	30.1	59	84.1	230	26	6,460	.9	12,468
Colorado	129	3.4	38	3.4	51	9	1,646	.1	1,220
Connecticut	46	1.4	324	96.6	68	14	1,818	.2	3,773
Delaware	4,897	118.5	112	11.4	14	5	389	3.6	1,416
Washington, D.C.	0	0	14	.1	3	1	83	0	647
Florida	808	12.5	142	2.8	126	96	3,254	.8	11,089
Georgia	234	6.7	116	31.5	88	31	3,443	.3	1,714
Hawaii	0	0	2	0	5	1	1—	.1	700
Idaho	11	.2	2	.1	33	6	898	0	324
Illinois	5,455	146.9	1,468	376.6	253	50	6,828	4.0	10,350
Indiana	14,675	410.3	1,431	453.8	147	37	4,002	8.2	4,740
Iowa	23	.6	53	30.1	156	37	4,141	.4	1,594
Kansas	158	4.4	38	3.4	91	13	2,431	.2	1,213
Kentucky	27	.7	78	28.4	82	21	2,237	0	1,520
Louisiana	270	7.6	271	11.9	70	31	1,975	.7	1,470
Maine	11	.3	5	.2	45	11	1,225	0	708
Maryland	149	4.2	95	4.5	73	26	2,028	.1	3,129
Massachusetts	228	6.1	319	26.6	100	27	2,943	.3	5,395
Michigan	82,060	2,395.6	6,314	2,456.9	187	70	5,212	94.6	43,433
Minnesota	165	4.4	151	39.2	149	61	4,194	.4	1,977
Mississippi	17	.4	15	.9	52	23	1,597	0	557
Missouri	9,223	243.6	561	99.1	135	28	1,650	5.4	4,186
Montana	0	0	1	0	34	10	936	0	428
Nebraska	50	1.4	14	.1	69	30	1,894	0	670
Nevada	17	.3	4	.4	13	6	368	0	294
New Hampshire	0	0	47	23.7	34	10	935	0	683
New Jersey	112	3.3	557	69.4	143	39	3,913	.5	10,204
New Mexico	0	0	1	0	26	0	716	0	390
New York	4,205	128.2	1,333	295.3	305	69	8,275	6.4	22,181
North Carolina	32	.9	62	31.6	106	33	2,971	.1	1,664
North Dakota	10	.3	2	0	42	10	1,142	0	340
Ohio	11,195	302.1	2,451	1,024.3	260	33	6,935	9.2	9,449
Oklahoma	28	.7	28	.7	70	16	2,000	.1	664
Oregon	119	3.0	29	3.6	50	20	1,400	.1	892
Pennsylvania	935	25.0	901	428.9	350	36	9,280	.5	12,643
Rhode Island	0	0	51	5.1	17	5	467	0	909
South Carolina	44	.9	33	3.1	51	16	1,406	0	1,006
South Dakota	0	0	8	0	40	11	1,075	0	361
Tennessee	169	4.7	128	53	103	26	2,808	.2	1,539
Texas	747	15.8	381	53.2	213	107	6,073	.7	3,002
Utah	16	.4	7	.2	33	6	888	0	367
Vermont	0	0	7	.9	27	4	722	0	401
Virginia	94	2.5	54	77.9	128	21	3,433	.1	3,320
Washington	37	.9	21	1.6	63	31	1,——	.8	1,519
West Virginia	15	.3	13	6.7	74	7	1,980	0	1,——
Wisconsin	950	17.3	562	102.7	167	71	4,692	.6	2,814
Wyoming	0	0	2	.1	21	4	566	0	203
Total, this listing	140,615	3,954.0	19,454	5,975.0	4,769	1,402	131,002	140.4	149,065

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EXHIBIT 6

SUMMARY OF EMPLOYMENT AND ECONOMIC OUTPUT LOSSES FROM COMPLETE SHUT DOWN (DIRECT AND SECONDARY)

THIS IS OUR CONSERVATIVE ESTIMATE

	Employment loss	Lost economic output (millions)
Auto production	241,418–294,415	[1] $22,006
Other	[2] 50,776	11,067
Total	292,194–345,191	33,073

[1] This is understated because of our method.
[2] Minimum.

Note: This does not include multipliers in the dealer or supplier networks.

EMPLOYMENT AND ECONOMIC OUTPUT EFFECTS, AUTOMOTIVE PRODUCTION FACILITIES ONLY (DOES NOT INCLUDE STAFF, DEFENSE, FINANCIAL, REAL ESTATE, DEALERS, MARINE)

State and location	Chrysler auto production employment	Economic flow through plants (estimated) (million)	Direct and secondary job losses (range)	Direct and secondary economic output losses (millions)
Michigan:				
Ann Arbor	1,276	$112	3,062–3,828	$280
Detroit	51,676	4,523	124,022–155,028	11,308
Lansing-Lyons	652	57	1,565–1,956	143
Total	53,604	4,692	128,650–160,812	11,730
Indiana:				
Indianapolis	4,042	354	9,701–12,126	885
Kokomo	6,764	592	16,234–20,292	1,480
Michigan City	295	26	708–885	65
New Castle	2,607	228	6,257–7,821	570
Total	13,708	1,200	32,899–41,124	3,000
Ohio:				
Dayton	1,926	169	4,622–5,778	423
Fostoria	652	57	1,565–1,956	143
Sandusky	344	$30	826–1,032	$75
Toledo	2,389	209	5,734–7,167	523
Twinsburg	3,748	328	8,995–16,491	820
Van Wert	347	31	833–1,041	78
Total	9,406	824	22,574–28,218	2,060
Missouri: St. Louis	8,900	779	21,360–26,700	1,948
Illinois: Belvidere	5,076	444	12,182–15,228	1,100
Delaware: Newark	4,477	392	10,745–13,431	980
New York: Syracuse	3,679	322	8,830–3,679	805
Alabama: Huntsville	1,741	153	4,178–5,223	383
Total auto production	100,591	8,806	241,418–294,415	22,006

Note: Our measure understates the economic flow at each factory.

OTHER EMPLOYMENT AND ECONOMIC EFFECTS BEYOND AUTOMOTIVE PRODUCTION

State, location and function	Employment	Direct economic flow (estimated) (millions)
Michigan—Detroit:		
Central offices	12,018	$1,055
Defense	5,437	477
Marine	1,505	132
Factory office	2,143	188
Sales and marketing	7,393	649
Mexico: Auto	7,286	640
Canada: Auto	14,994	1,316
Total	50,776	4,427

NOTES

Estimated direct and secondary economic output loss $11,067,000,000.

The measure we have used understates the economic effects at the factory, and overstates the economic effects of corporate staff. This means the economic effects we have measured are conservative, since most economic power resides in factory base.

EXHIBIT 7

GEOGRAPHIC DISTRIBUTION OF SKILL MIXES

State and location	Chrysler	Ford	GM	AM	IH	Total, SMSA
Indiana: Michigan City						295
Materials	295	(1)	(1)	(1)	(1)	
Ohio:						
Dayton						24,615
Components	1,926	(1)	22,689	(1)	(1)	
Other						
Fostoria						652
Foundry	652	(1)	(1)	(1)	(1)	
Sandusky						5,771
Materials	344	(1)	(1)	(1)	(1)	
Components		2,427	3,000			
Twinsburg						3,748
Stamping	3,748	(1)	(1)	(1)	(1)	
Toledo						18,342
Components	2,389	(1)	8,286	(1)	(1)	
Stamping		1,165		6,502		
Van Wert						5,436
Metals	374	(1)	(1)	(1)	(1)	
Engines						
Missouri: St. Louis						21,175
Assembly	8,900	3,175	9,100	(1)	(1)	
Illinois: Belvidere						5,076
Assembly	5,076	(1)	(1)	(1)	(1)	
Michigan:						
Ann Arbor:						
Components	1,276	(1)	11,500	(1)	(1)	16,191
Material		3,415				
Detroit, SMSA	49,354	72,400	101,402	200		223,455
Assembly, Stamping	34,001	37,540	70 667	(1)	(1)	
Engine	5,480	1,287	17,700	(1)	(1)	
Foundry	2,477	6,169	2,200	(1)	(1)	
Components		17,515	10,835			
Other	7,396	9,889	(1)	200	(1)	
Detroit, central city	27,343	6,409	41,270			75,020
Assembly, stamping	16,888	5,322	23,900	(1)	(1)	
Engine	2,877	1,087	10,200	(1)	(1)	
Foundry	2,447	(1)	(1)	(1)	(1)	
Components	3,943	(1)	7,170	(1)	(1)	
Other	1,188	(1)	(1)	(1)	(1)	
Indiana:						
Indianapolis:						
Assembly, stamping			5,134	345		
Engine			4,000		2,500	
Foundry	1,049	(1)	(1)	400	(1)	
Components	2,993	4,793	(1)	(1)	(1)	
Other						
Kokomo						8,764
Foundry	904	(1)	(1)	(1)	(1)	
Components	5,860	(1)	2,000	(1)	(1)	
New Castle						2,607
Chassis components	2,607	(1)	(1)	(1)	(1)	
Delaware:						
Newark						6,202
Assembly	4,477	(1)	1,725	(1)	(1)	
New York:						
Syracuse						5,290
Component	3,679	(1)	(1)	(1)	(1)	
Stamping			1,611			
Alabama:						
Huntsville						2,741
Components	1,741	(1)	1,000	(1)	(1)	

[1] No compatibility of skill mix.

EXHIBIT 8

IF CHRYSLER SHUT DOWN, COULD FORD AND GM PICK UP THE CHRYSLER SEGMENTS OF THE MARKET?

[In thousands]

Market segment by Chrysler body size (small to large reading downward)	Recent Chrysler sales, before worst slump	Available excess capacity at Ford and GM for these segments [1]	Any leftover units, which would not be picked up domestically?
L-body	307	81	226
F-body	302	287	15
M, Sx	263	430	
R-body	134	514	
Pickups	154	814	
Vans	93	368	

[1] This capacity would all be supplied from existing Ford and GM workforce. It would not require hiring any Chrysler workers. This is reinforced by seniority rules.

Source: MVMA, Ward's, TSC capacity analysis.

EXHIBIT 9

PARTS WHICH CHRYSLER PURCHASES OUTSIDE

Substantial purchases

Batteries.
Bearings.
Bumpers.
Carburetors.
Carpets.
Cloth.
Decorative die castings.
Malleable iron.
Nuts, bolts, fasteners.
Radiators.
Raw glass.
Seat belts.
Steel.
Tires.
Wheels.

Partial purchases

Engines.
Shock absorbers.
Starters.
Air pumps.
Driveshafts.
Rack and pinion steering.
Seat foam.
Air conditioners.
Suspension members.
Brake discs.
Lamps.
Insulation.
Catalytic converters.
Electronic controls.
Stampings.
Transmissions (manual).

GM would purchase almost none of these items. Ford tends to purchase some portion of both lists, but they do so only as an additional flexible source to their integrated operations on the same items. The percentage of Ford purchases would be substantially lower than Chrysler's. Ford would purchase no engines, drivelines, or important suspension components.

EXHIBIT 10

CHRYSLER PLANTS WHICH PROVIDE IMPORTANT COMPONENTS TO OTHER AUTO MANUFACTURERS

Introl (instrument clusters, emission control devices):	
Domestic	American Motors (instrument cluster). General Motors (emission control devices).
Foreign	Peugeot-Citroen (instrument clusters).
Detroit Universal (prop-shafts):	
Domestic	American Motors.
Amplex Powdered Metal Products (80 percent of sales to outside) Automotive and nonautomotive:	
Domestic	General Motors. Ford Motors. American Motors. International Harvester.
Toledo Machining (torque converters):	
Domestic	American Motors. International Harvester.
Foreign	Mitsubishi. Peugeot-Citroen.
Kokomo Transmissions (automatic-RWD, Automatic transaxles-FWD):	
Domestic	American Motors. International Harvester.
Foreign	Simca. Mitsubishi. Peugeot-Citroen (transaxles).
New Process Gear (front-wheel-drive 4x4, transfer case):	
Domestic	General Motors. Ford. American Motors. International Harvester.

EXHIBIT 11

CHRYSLER ASSETS WHICH ARE MOST VALUABLE TO OUTSIDE PURCHASERS

	Value of estimated earning (millions)
Valuable for earnings:	
New Process Gear	[1] $350–$450
Introl Division	40– 70
Valuable only for production capacity (requires purchaser who needs this specific auto capacity):	
	Values are guesstimates based on tooling cost (millions)
Kokomo Transmission	$100–$300(?)
Belvidere Assembly	100– 200(?)
Newark, Delaware	(?)
St. Louis, Assembly only	(?)

[1] Throughout has slowed by 30 percent because of dropping GM and Ford truck sales.

EXHIBIT 15

Recent or pending GM asset placements	Recent or pending Ford asset placements
In Detroit:	In Detroit:
Clark Ave. Cadillac.	None.
In Detroit SMSA:	In Detroit SMSA:
Romulus.	Flat Rock.
Pontiac.	Sterling.
Livonia.	Dearborn.
Warren.	Mount Clemens.
	Sterling Heights.
	Wayne.
	Wixom.
Outside Detroit area:	Outside Detroit area:
Windsor, Ontario, Canada.	Tulsa, Okla.
Oklahoma City, Okla.	Milan, Mich.
Shreveport, La.	Rawsonville, Mich.
Three Rivers, Mich.	Sandusky, Ohio.
Ypsilanti, Mich.	Indianapolis, Ind.
Wilmington, Del.	Los Angeles, Calif.
Saginaw, Mich.	Atlanta, Ga.
Tonawanda, N.Y.	Allen Park, Mich.
Lansing, Mich.	St. Paul, Minn.
Van Nuys, Calif.	San Jose, Calif.
Flint, Mich.	Cleveland, Ohio.
Bowling Green, Ky.	Batavia, Ohio.
Norwood, Ohio.	Chicago, Ill.
Dayton, Ohio.	Saline, Mich.
Moraine, Ohio.	Romeo, Mich.
Parma, Ohio.	Louisville, Ky.
Grand Rapids, Mich.	Sheffield, Ala.
Linden, Mich.	Kansas City, Mo.
Anderson, Ind.	Ontario, Canada.
Philadelphia, Pa.	Lima, Ohio.
Kettering, Ohio.	Buffalo, N.Y.
Clinton, Miss.	
Bedford, Ind.	
Messena, N.Y.	
Fredricksburg, Va.	
Constantine, Mich.	
Limestone, Ala.	
Buena Vista, Mich.	

EXHIBIT 16

GM'S DETROIT FACILITIES [1]

Fisher Body:	
Central Plant, Fleetwood Plant, Fort St. Plant.	These are stamping facilities for Cadillac. They employ 10,242 workers. They have excess capacity with these workers.
Cadillac Detroit Assembly, Cadillac Detroit Press. Metal, Cadillac Engine.	These plants produce for Cadillac. Portions of 2 of them will move out of the city. This will release some of their 10,000 workers.
Chevrolet Gear and Axle, Chevrolet Forge, Chevrolet Light Truck.	These plants produce for heavier cars and trucks. They are underproducing with their 9,610 workers, and cannot absorb new employment.
Detroit Diesel	Makes heavy truck engines. If big truck sales continue, they might pick up some workers. They employ 9,000.

[1] These are the only automotive facilities near Chrysler's worker population in central Detroit. They cannot pickup many workers. Chrysler could release as many as 27,000 production workers in this area.

EXHIBIT 17

CHRYSLER SHUTDOWN WOULD HAVE STRONG IMPACT ON MINORITY EMPLOYMENT AND ECONOMY

Total Chrysler employment roll (8/8/79 more than 23,000 of these are on layoff), 140,977.

Of this, minority employment is—36,400 black; 1,336 Hispanic; and 792 other, 38,528.

Most minority employment is in Detroit. Fifty-four percent of Detroit employment is minority.

Of blue collar workers, 35,000 or 33 percent are minority.

Of white collar workers, 3,500 or 10 percent are minority.

Chrysler payroll to black workers is $800 million. (Bureau of Census, special studies P–23 No. 80, States that estimated black economy in U.S. is $80 billion. Chrysler payroll appears to be 1 percent.)

EXHIBIT 18

CHRYSLER SHUTDOWN WOULD SEVERELY AFFECT CHRYSLER PENSIONS AND STOCK HELD IN EMPLOYEE RETIREMENT PLANS

December 31, 1978 value of vested pension benefits exceeded funds by $1.1 billion.

It is estimated that $800 million is insured.

Approximately 25 percent of Chrysler stock is employee-held. Value lost at various marked prices would be:

$8—$124 million.

$13—$202 million.

$25 (past purchase)—$388 million.

Present value of employee dividends (.90 rate, 20 yr., @ 7%) =$150 million.

Book value lost=$651 million.

Remaining stock (current market value $375 million) is held by individuals, not institutions.

EXHIBIT 19

FOR CHRYSLER, THE DIFFERENCE BETWEEN THIS RECESSION AND THE LAST IS THE HIGH PROPORTION OF FIXED CAPITAL SPENDING IN FINANCIAL FLOWS

	1974	1978
Decline in unit sales (percent)	(−16.8)	(−5.0)
Cash outflow (millions)	$766	$768
Capital spending (millions)	$467	$671
Percentage of capital spending in cash outflow	61	87

EXHIBIT 20

CHRYSLER'S FORWARD DEBT REPAYMENT SCHEDULE IS LARGE, ESPECIALLY WHEN COMPARED TO LARGER VOLUME COMPETITORS

[Estimated forward long-term debt obligations in millions]

	Chrysler	Ford	GM
Year:			
1979	$12.4	$255	$137.8
1980	302.6	242	53.5
1981	49.5	78	75.4
1982	86.1	87	72.2
1983	87.6	109	50.8
1984	42.0	50	43.0
1985	42.0	33	343.0
1986	42.0	106	55.0
1987	42.0	124	16.0
1988	42.0	109	16.0
1989	42.0	34	16.0
1990	42.0	34	16.0
1991	42.0	34	16.0
1992	42.0	34	16.0
1993	42.0	34	16.0
1994	42.0	34	16.0
1995	42.0	34	16.0
Total	1,042.0	1,431	975.0

Source: 10-K's and TSC estimates.

CONGRESSMEN AFFECTED BY CHRYSLER SHUTDOWN

Congressmen	Congressional district
Michigan:	
John Conyers (Democrat), Detroit	1
Carl Pursell (Republican), Plymouth	2
Harold Sawyer (Republican), Rockford	5
Bob Carr (Democrat), East Lansing	6
Charles Diggs (Democrat), Detroit	13
Lucien Nedzi (Democrat), Detroit	14
William Ford (Democrat), Taylor	15
John Dingell (Democrat), Detroit	16
William Brodhead (Democrat), Detroit	17
James Blanchard (Democrat), Pleasant Ridge	18
Senator Don Riegle (Democrat).	
Senator Carl Levin (Democrat).	
Indiana:	
John Brademas (Democrat), South Bend	3
Elwood Hillis (Republican), Kokomo	5
Dave Evans (Democrat), Indianapolis	6
Philip Sharp (Democrat), Muncie	10
Andrew Jacobs (Democrat), Indianapolis	11
Senator Richard Lugar (Republican).	
Senator Birch Bayh (Democrat).	
Ohio:	
Tony Hall (Democrat), Dayton	3
Tennyson Guyer (Republican), Findlay	4
Delbert Latta (Republican), Bowling Green	5
Tom Ashley (Democrat), Maumee	9
Don Pease (Democrat), Oberlin	13
Charles Vanik (Democrat), Euclid	22
Senator Howard Metzenbaum (Democrat).	
Senator John Glenn (Democrat).	
Missouri:	
Robert Young (Democrat), St. Ann	2
Senator John Danforth (Republican).	
Senator Tom Eagleton (Democrat).	
Illinois:	
John Anderson (Republican), Rockford	16
Senator Charles Percy (Republican).	
Senator Adlai Stevenson III (Democrat).	
Delaware:	
Tom Evans (Republican), at large	1
Senator William Roth (Republican).	
Senator Joseph Biden (Democrat).	
New York:	
James Hanley (Democrat), Syracuse	32
Gary Lee (Republican), Ithaca	33
Senator Jacob Javits (Republican).	
Senator Daniel Moynihan (Democrat).	
Alabama:	
Ro!lie Flippo (Democrat), Florence	5
Senator Howell Heflin (Democrat).	
Senator Don Stewart (Democrat).	

Mr. RIEGLE. Mr. President, will the Senator yield for a comment?

Mr. EAGLETON. Yes, I am pleased to yield to the Senator from Michigan.

Mr. RIEGLE. I just want to commend the Senator for his statement, and say that I support very strongly the points he has made today in this debate. This debate will continue for some period of time and is a vitally important one from a national economic point of view. It has a bearing on particular States in the extreme, certainly, the State of Missouri and my State of Michigan—but the national implications of the 600,000 workers losing their jobs and increasing the Federal deficit by something on the order of $11 billion is a national economic danger that affects all 50 States, and therefore our entire economic system.

I think we must carefully weigh the national economic implications and the individual family hardships involved here, so that we can evolve a course of action. The remarks of the Senator from Missouri, I think, are an important part of a serious discussion which needs to continue. I also want to acknowledge the important leadership that Senator EAGLETON is giving to finding a workable answer to this problem.

Mr. EAGLETON. I thank the Senator from Michigan. From the very early days of this discussion—which, by the way, goes back several weeks to when it was becoming apparent that the Chrysler Corp. was heading into great difficulty—the Senator from Michigan has exercised a key leadership role in this matter, indeed the key leadership role, and I compliment him for his continued and keen interest in this subject matter. I think the brief synopsis he has just delivered is preeminently correct.

Mr. RIEGLE. I thank the Senator.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Under the previous order, the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for not to exceed 15 minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and that I may proceed for 30 seconds.

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

ORDER FOR RECESS UNTIL 1 P.M. TOMORROW — UNANIMOUS-CONSENT AGREEMENT AS TO ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I have cleared the following re-

quest with the minority leader (Mr. BAKER), and I will condition it on his approval. I see he is now present; I was just saying that I would condition the following request on the majority leader's approval:

I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 1 o'clock p.m. tomorrow; that the time of the two leaders on tomorrow be limited to 5 minutes each; that upon the expiration of that time or its being yielded back, the Senate proceed to the consideration of the second concurrent budget resolution; and that upon the disposition of that concurrent resolution, the Senate proceed to the consideration of S. 14.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I apologize to the majority leader that I was not on the floor when he began his request; I was in the Republican cloakroom on the telephone.

But it is my understanding that the request consists of these parts: first, upon the completion of the matter now pending before the Senate, that we proceed to the consideration of the second concurrent budget resolution. Is the request that that begin tomorrow after we convene at 1, or today after we finish with the pending business?

Mr. ROBERT C. BYRD. Tomorrow.

Mr. BAKER. Tomorrow; that we come in at 1 o'clock, and following on after the disposition of the second concurrent budget resolution, that we proceed immediately to the consideration of S. 14?

Mr. ROBERT C. BYRD. That is correct.

Mr. BAKER. It would appear to me, then, that that would produce a schedule that would have us on the second concurrent budget resolution Wednesday afternoon or Thursday, and thereafter until it is completed?

Mr. ROBERT C. BYRD. Not necessarily. Just to begin its consideration on the disposition of the second concurrent budget resolution.

Mr. BAKER. I thank the majority leader. Mr. President, I have no objection.

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

Mr. ROBERT C. BYRD. I thank the Senator from Virginia for permitting this matter to come ahead of his order.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 15 minutes.

THE RUSSIAN COMBAT BRIGADE IN CUBA

Mr. HARRY F. BYRD, JR. Mr. President, first I wish to commend and express agreement with the Senator from Washington (Mr. JACKSON) on his appraisal a few moments ago of the continued military buildup in Cuba. I join with Senator JACKSON in commending the Senator from Florida (Mr. STONE). It was Senator STONE who first brought to the attention of the Senate, of the Foreign Relations Committee, and I would suppose of the State Department the existence of a combat brigade in Cuba.

Senator STONE pursued the matter, and although the Secretary of Defense on July 27 denied that there is such a military buildup in Cuba, the State Department was forced to admit in August the existence of a combat brigade in Cuba.

The Senator from Washington, in his comments earlier today, pointed out that the combat brigade is only a part of the Russian buildup in that island just off of our shores. The Senator from Washington mentioned the combat aircraft which are there, and the submarines and other ships of Russian origin which are there.

I share his great concern, and I share the view that Senator JACKSON expressed to the Senate that it is important, not just that the combat troops be removed from Cuba, but that the combat aircraft and the submarines likewise be removed.

Mr. President, on another subject——

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Washington.

Mr. JACKSON. I wish to thank the distinguished Senator from Virginia for his comments. He has been extremely alert and indeed very helpful in analyzing and digging into the situation that we face in Cuba.

The Senator has summed it up very well. This is not just a matter of a combat brigade; it is a matter of dealing with what could become Fortress Cuba.

I commend the Senator for all that he has done and his diligent effort to get the truth and the facts for the American people.

Mr. HARRY F. BYRD, JR. Mr. President, I am grateful to my friend from Washington State. I want to use a quote which the Senator from Washington used earlier, that what has just been made public in regard to Cuba dramatizes that Russia is continuing to exploit the trust of the American people. I think that is a very important element in this whole equation.

THE ADMINISTRATION'S ENERGY PLAN

Mr. HARRY F. BYRD, JR. Mr. President, 6 years now have passed since the Organization of Petroleum Exporting Countries dramatically boosted the price of oil and rocked the industrialized democracies with an oil embargo.

When these shocks were administered to the United States and the other major industrialized nations, there was almost instant agreement in all quarters that steps should be taken to reduce—initially, many said eliminate—the dependence upon OPEC oil.

During the 6 years since the first price boosts and the embargo, what has the United States done to move toward energy independence?

I think most of us would agree that the list of positive steps is pitifully short.

There is the Alaska pipeline. This important link has enabled Alaskan oil to flow southward, but, unfortunately, the lack of an adequate west-east petroleum transportation system has seriously reduced the usefulness of this oil—and increased its cost to the areas most in need of it.

There is the deregulation of natural gas—too little and too late, but at least in motion. And natural gas supplies have increased.

There is a broad-scale effort in research and development, encompassing a multitude of potential energy sources ranging from solar to nuclear fusion.

And just recently, the President has committed himself to the decontrol of oil prices—again slowly and belatedly, but the process has begun.

That is about it.

The rest of the record since 1973 is pretty depressing. The much-heralded swing from oil and gas to coal in the generation of power and in industrial plants has not materialized to any great extent. Nuclear power is hobbled by a combination of soaring costs, safety problems, environmental concerns, and uncertainties about future demand for electricity.

The lengthy and artificial depression of domestic oil prices by the Government has encouraged waste and discouraged new production. Conservation measures have been adopted, such as auto mileage standards, but probably have accomplished little that the market would not have achieved on its own. We have a 55-mile-an-hour speed limit, but its observance is spotty at best.

In summary, there has been no true national commitment to reducing our dependence upon OPEC. As recently as July, James Schlesinger, then Secretary of Energy, said we still have no national energy plan.

We have lost precious time.

In this environment, and while President Carter was in Tokyo for an economic summit, OPEC struck again with yet another 25 percent boost in its already rapacious oil prices.

And so the President returned, retired to Camp David, and then went before the people with what is at least the fourth widely ballyhooed national energy plan since the crisis 6 years ago.

The essential points of the President's proposal are these:

First. The decontrol of oil prices, a process already begun.

Second. The establishment of a target of holding oil imports to 25 percent of consumption by 1990 (imports now are about half of consumption).

Third. A ceiling on oil imports at the relatively high level of 1977 (8.8 million barrels a day).

Fourth. A "windfall profits" tax on revenues according to oil producers as a result of decontrol.

Fifth. A trust fund, financed with windfall profits revenues, to develop synthetic fuels, sponsor automotive efficiency research, subsidize mass transit and provide aid to poor persons hit by escalating fuel bills.

Sixth. Expediting of key energy production decisions by cutting through regulatory red tape, this function to be

entrusted to a new agency called the Energy Mobilization Board.

Let us examine this package of recommendations.

First, the decontrol of oil is clearly desirable. I commend the President for taking this action, a necessary first step in meeting our energy problems.

Second, I believe the President is also correct in establishing a target of bringing oil imports down to 25 percent of consumption by 1990.

Third, a ceiling on oil imports may be desirable, but must be set with great caution. We must keep in mind that potential increases in domestic production, or savings from further conservation, may take some time to take effect. The ceiling should not be placed at a level which would create artificial shortages or hamper the productivity or competitiveness of our industry during the period when the Nation is working toward greater independence in energy.

This brings us to points four and five, the heart of the President's proposal, a windfall profits tax and the establishment of a trust fund to spend the proceeds from such a tax.

Some kind of windfall profits tax will be demanded by the public because of the billions in new profits which will flow to oil producers because of price decontrol. Of course, a windfall profits tax would be in addition to increased income taxes on the higher oil industry profits.

We should understand, also, that the administration's so-called windfall profits tax is not a tax on profits at all. It does not rise and fall with profits, nor is it based on any consideration of the oil industry's past profitability.

The Carter administration tax is actually an excise tax on oil, based on the difference between the old, controlled prices and the world price, toward which all prices will be moving under the decontrol program.

This is not necessarily a weakness. An excise tax is simpler to administer than an excess profits tax, although the administration seems to have made its own peculiar excise tax quite complicated.

I might add that the Senate Committee on Finance is finding every day just how complicated this new proposed tax is as the committee continues its deliberations.

One key point is the level of the tax. While equity demands that it be high enough to capture profits which are unreasonable, good sense dictates that it be low enough to permit producers to invest in greater production. Too high a tax could be self-defeating because of lost opportunity for greater energy supplies.

A major weakness in the President's program, as I see it, is the absence of measures to stimulate greater domestic production in the near term. All of the administration's eggs have been placed in the basket of long-term projects to develop new energy sources, and so the program offers little hope of greater oil and gas supplies over the next few years. Indeed, the prospect of any increases in such production is simply written off as impossible.

Independent oil producers, most of them small, heatedly dispute this position of the administration. They are the people in the field, the ones who do the exploring and development needed to bring oil and gas on line, and I believe we should listen to them.

In my view, any windfall profits tax should be structured so as to provide incentives for our independent producers to find new supplies of oil and gas. The independents maintain that they can bring on stream—with sufficient capital—2 million barrels a day of new production, over and above the current level, by 1985, and that is not something which should be written off by the Government.

Therefore I think the so-called windfall profits tax should either be at a level lower than proposed by the administration, or should be designed to permit those who explore for petroleum to retain and reinvest sufficient capital to increase domestic supply in the short run. This is an important, immediate and concrete step which can be taken to lessen our independence upon OPEC.

Once the tax is set at an equitable level, providing an incentive to produce, the question arises as to use of the revenues.

The whole thrust of the administration plan is to subsidize expensive schemes for synthetic fuel development that will not pay off for 10 years—if ever.

The principal feature of the proposal is an ambitious, 10-year synthetic fuel program at a projected cost of $88 billion, to be operated by an Energy Security Corporation (ESC) with trust fund financing.

I think this proposal has several dangers. Synfuel technologies are unproven on a large, commercial scale, and it is hard to see how a figure of $88 billion over a 10-year-period can be projected with any confidence.

Let me say that synthetic fuel programs should be pursued, particularly the ones which promise fuller utilization of coal, but it is not wise to commit huge sums to particular technologies until their potential can be better assessed.

I cannot see how we can justify an advance commitment of $88 billion, as proposed by the President, before we have a chance to monitor progress on these synfuel programs.

The committee in the House of Representatives has taken just that position and I would hope that the Senate would do likewise.

Furthermore, the proposed corporation to run the program would be beyond congressional or Executive control and thus would have no accountability to the taxpayers for the huge sums entrusted to it.

I believe it would be preferable to start the expansion of the synfuels effort—bearing in mind that over 100 projects in this area already are underway—on a smaller scale, and await results at each state of development before committing such an enormous investment of tax funds. And it also seems wise to me to have the agency sponsoring this program an on-budget agency, with full review by the Congress of its work. Such review did not hamper the successful space program, and I see no reason why it should hold back synthetic fuel development. Indeed, it should insure responsibility on the part of the officers and accountability to the public.

Other projects envisioned for use of windfall tax revenues include research, mass transit programs and assistance for the poor.

I see no objection to sponsoring research and development in energy with windfall profits tax funds. Such efforts as are not undertaken by private industry are legitimate endeavors to be undertaken with this money. Again we must bear in mind that as in the case of synfuels, many R. & D. programs in other energy forms already are being conducted, and coordination will be of prime importance.

As to mass transit programs and assistance for those hardest hit by increasing energy costs, I am reluctant to see the windfall profits tax devoted to programs other than energy production and research.

In the case of mass transit, we are dealing essentially with a means of conserving energy. As I see it, mass transit should compete with other efforts in this area for shares of general revenues. I support conservation efforts and indeed have supported most public transportation programs, but I feel that general revenue funding for these projects is the most appropriate.

As to other assistance programs, I am fearful that the administration of such programs may involve the establishment of a whole new bureaucracy setting up complicated guidelines and perhaps even passing out energy stamps or coupons. To the extent that energy-cost aid to the poor is warranted, I think it would be preferable to conduct it through existing programs, with careful controls.

What I fear is that the windfall profits tax will end by creating a huge slush fund for spending schemes of all kinds.

Finally, I think there are two major omissions from the policy set forth in the President's newest energy program. Nowhere is there acknowledgement of the roles which can be played in our energy future by nuclear energy or the direct use of coal.

Everyone recognizes the problems associated with nuclear energy: safety, siting, waste disposal, to list the most prominent. But nuclear power is an ongoing technology, not something in the misty future. I do not think it should be ignored.

Coal is our most abundant energy resource. To be sure, the President's program would call for major increases in coal production, should the technology for synthetic fuels prove workable. But coal is usable as it stands, today, in many applications, particularly the generation of electricity. This too should be taken into account.

A final part of the President's program is the creation of the Energy Mobilization Board to expedite critical energy projects by cutting through redtape. Certainly it is important to reduce bureau-

cratic delay. But unless there are changes in substantive law, the EMB could well end by hurrying negative decisions.

To summarize, I believe the great strengths of the President's program are the decontrol of oil and the expression of determination to cut the degree of dependence on foreign crude.

The chief problems are the inclusion of too many nonenergy programs in the uses of the windfall profits tax and the ignoring of the potential contribution of oil, gas, nuclear energy and coal in direct use.

By all means let us explore the potential of new sources and new technologies. But let us also use what we have. The energy problem we face is not 10 years away, it is here today, and it calls for immediate production as well as imaginative schemes for the long term future.

The PRESIDING OFFICER (Mr. PRYOR). The 15 minutes of the Senator from Virginia have expired at this time.

The Senator from Michigan is recognized for 15 minutes.

Mr. RIEGLE. I thank the Chair.

Mr. President, I did not intend to make a comment about energy, but in light of the remarks of the Senator from Virginia I will make a brief comment or two because I think there are a couple of essential facts about the energy strategy in the United States that every person needs to bear in mind.

A little over 2 years ago when the Carter administration came to power, they approached the Congress and requested that we set up a Federal energy department.

We set it up at Cabinet level and created a new Cabinet officer to deal with this problem, to dig out the facts, make an assessment, and then, in turn, devise a national energy strategy and policy so that we could deal with this problem.

I might say that the Congress responded to that request quite readily and, as a matter of fact, we acted quickly to establish the Department of Energy.

We gave the power to the President to name a Cabinet officer to run the energy program. We now have about 2 years of performance by that particular agency.

I suspect that not many people in the United States, I say to my friend from Virginia, would imagine the size of today's Energy Department. I spoke yesterday at a chamber of commerce meeting in Livonia, Mich. I asked a group of assembled businessmen how many employees they might guess were presently employed in the Department of Energy.

The first person said, "Well, maybe 3,000." Somebody said, "7,000."

After several had made estimates, I indicated that the current number in the Department of Energy is 19,000.

Then we talked about the size of the budget. The size of the budget for this fiscal year we are concluding for the Federal Energy Department is $10.9 billion.

So it would be wrong, I think, for any citizen to assume that nothing has been done. Although, on the other hand, obviously very little has been done. We have spent an enormous sum of money. We have got a tremendous number of people. But I am quite frank to say that I think this particular agency has been mismanaged as badly as any agency in the history of the Federal Government.

I lay much of that responsibility on the person who was in charge of putting that show together—Schlesinger—and, in turn, on the doorstep of the President himself, who selected Schlesinger and is ultimately responsible for both his performance and the performance of the energy agency.

So it is a little late in the game for someone to say now that here is the energy problem and it is time for the Congress to get busy on this because we have spent as a nation already enormous effort in the area of energy. But, frankly, we have next to nothing to show for it.

But that bungling and ineptness and mismanagement is a story that has not been sufficiently told. Why it has not, I really am at a loss to say.

I think the press has been asleep on this issue. It is asleep today on the issue. Therefore, there is great confusion among the public as to whether or not any good faith effort has been made to try to deal with the energy problem.

The fact is that the effort has been mismanaged from day one. Whether or not the man who now runs it—the former chief executive officer of Coca-Cola, who has been named to run the energy agency—can make some sense of this, after 2 years of lost time, we will have to wait and see. I hope he can. I must say that I was not impressed with his technical credentials; nonetheless, I voted for the confirmation of his nomination because I felt we should have someone in there who could try to make some sense of this.

SOVIET TROOPS IN CUBA

Mr. RIEGLE. Mr. President, the matter of Soviet troops in Cuba has now come to the fore. Had I been here yesterday morning—I was traveling back from Michigan—I would have delivered these remarks then. Therefore, I deliver them this morning.

Regarding that situation and the controversy that has arisen with respect to the Russian presence in Cuba, I agree with President Carter.

I agree with President Carter that the presence of some 2,000 to 3,000 Soviet troops in Cuba, apparently for the past several years, does not pose an immediate security threat to the United States. At the same time, appropriate U.S. diplomatic efforts should proceed with the Soviet Union to pursue the matter to a conclusion that is consistent with U.S. security interests.

That task is not an assignment for the Senate Foreign Relations Committee, Congress, or Presidential contenders, among others; it is the proper responsibility of those directly charged with the administrative duty of conducting American foreign policy.

Those of us with constitutional responsibilities for oversight of American foreign policy can fully meet these responsibilities without attempting to usurp the proper role of the President and his Secretary of State.

This is neither a time, nor a situation, in which hysteria or exaggerated responses by either side are warranted or useful.

All strategic defense matters concerning the United States and the Soviet Union must be evaluated, ultimately, in a comprehensive all-inclusive framework. Therefore, this matter of Soviet troops in Cuba, and all other Soviet military initiatives, must be examined in a context that includes the SALT II treaties.

While it is not immediately apparent to me that a brigade of Soviet troops deployed in Cuba, apparently present there for some several years, has any significant bearing on SALT II consideration, I will await further intelligence briefings before making a final judgment in that regard.

At a moment when the American Presidency is in a severely weakened domestic political posture, we must, as a nation, remain calm and prudent. We must not let domestic political adventurism distort our national judgment or alter the prudent exercise of American diplomacy and other power initiatives.

The United States today has sufficient strength in all forms to appropriately deal with any strategic threats posed by the Soviet Union. The Soviet Union should have no illusions about the ability and willingness of the United States to use whatever resources are necessary to promptly and fully defend our strategic interests—in this hemisphere and all others.

Those in our country who suggest otherwise do a disservice to the United States and, in turn, present a false and dangerous impression to the Soviet Union.

Finally, we should have no illusions about the Soviet Union. They are a determined and dangerous adversary who will attempt to take full advantage of any situation ripe for exploitation. We would be foolish to expect anything but unremitting pressure from the Soviets, and we must plan and act accordingly.

One additional comment with regard to the presentation earlier this morning by the Senator from Washington (Mr. JACKSON).

He raises some new issues—the possibility of a further buildup of forces of various kinds in Cuba that would represent a change in the status quo. My remarks today do not address that question; nor do they address the question of Cuban military initiatives abroad, which are matters about which I have very deep concern.

However, with regard to the comments of the Senator from Washington, I think that any significant development or enlargement of offensive Cuban military capability in this hemisphere would be unacceptable. I believe that any new assertions that suggest that there has been or is about to be such a change in circumstance have to be examined with the greatest care. The issue will have to be examined, but it is not the one on which I wish to focus today, which is the one I addressed in the first part of my comments—namely, the matter of the Soviet troop forces that are presently in Cuba, that have been identified as being there

for some period of time, and which have been the subject of debate during the last several days.

SURFACE MINING AMENDMENTS OF 1979

The PRESIDING OFFICER (Mr. DECONCINI). Under the previous order, the Senate will now proceed to the consideration of S. 1403, which will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 1403) to amend sections 502(d), 503(a), and 504(b) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), and to provide a 7-month extension for the submission and approval of State programs for the implementation of a Federal program.

The Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Surface Mining Control and Reclamation Act Amendments of 1979," and that the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) is hereby amended as follows:

SEC. 2. Sections 502(d), 503(a), and 504 (a) of the Surface Mining Control and Reclamation Act of 1977 (hereinafter referred to as "the Act") are amended as follows:

(a) In section 502(d) of the Act in the last sentence, strike the words "forty-two months" and substitute the words "fifty-four months";

(b) In section 503(a) of the Act, strike the words "eighteenth month" and substitute the words "thirtieth month";

(c) In section 504(a) of the Act, strike the words "thirty-four months" and substitute the words "forty-six months";

(d) In section 504(a)(1) of the Act, strike the words "eighteenth month" and substitute the words "thirtieth month";.

SEC. 3. Sections 503(a)(7) and 701(25) of the Act are amended as follows:

(a) In section 503(a)(7) of the Act, strike the phrase "regulations issued by the Secretary pursuant to";

(b) In section 701(25) of the Act, strike the phrase "and regulations issued by the Secretary pursuant to this Act".

SEC. 4. Section 523(a) of the Act is amended by striking the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Subject to the provision of section 523(c), implementation of a Federal lands program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no nongermane amendments be in order to the surface mining bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. FORD. Mr. President, I ask unanimous consent that during the consideration of and voting on S. 1403 the following members of the staff of the Energy and Natural Resources Committee be granted the privilege of the floor: Dan Dreyfus, Mike Harvey, Tom Laughlin, and Barbara Haugh.

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

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. JACKSON. Mr. President, today the Senate is considering legislation which, if passed as reported by the Committee on Energy and Natural Resources, would have a seriously deleterious effect on the implementation of the Surface Mining Control and Reclamation Act of 1977. That the Senate should even consider such an action barely 2 years after enacting this landmark legislation is unfortunate. But to enact it after the years of effort which led up to the passage of the act would be tragic.

Enactment of S. 1403, as amended, would:

First. Prevent creation of a uniform national minimum standards which could penalize States that wish to provide greater protection for lands within their border.

Second. Assure extensive litigation over varying interpretations of the law.

Third. Result in the courts "writing regulations" by a series of decisions.

Fourth. Create uncertainty for the coal industry at the very time that stability is needed as a basis for expansion.

Fifth. Delay the approval of State reclamation programs. Without this approval the State of the reclamation fund will not be available to reclaim orphan land.

The environmental, socal, and psychological destruction caused by unregulated surface coal mining in the past several decades finally came to the attention of the general public in the late 1960's. The Buffalo Creek disaster of 1972 in which 125 people lost their lives, served to crystallize the grassroots movement which can take much credit for the law. Another major impetus came with the realization that our national energy needs would require massive surface mining of the western coal fields. Easterners, who lived with previous destruction and westerners who wanted to avoid a similar fate, joined hands to support national legislation.

Much of the support for national legislation came from those who believed in abolition of surface coal mining is indicative of the severity of the problem and the depth of emotions relating to it. Many believed that surface mining should not be abolished, but that a national program involving Federal enforcement is necessary. Two outstanding reasons were cited as the basis for this approach: First, some States had relatively good surface mining control legislation, but could not or would not enforce them, and second, States which did attempt to pass and enforce tough laws were often threatened with the loss of coal operators to neighboring, more lenient States. A national standard, nationally enforced would have remedied both of these problems.

However, neither a program of abolition nor a federally run program became law. Congress made allowance for regional differences and experience by adopting a so-called "State-lead" concept in which national standards would be established, but enforcement would fall to the States, provided they could demonstrate that they had in place a suitable program, capable of meeting the national standards.

Thus, the "State-lead" concept, which the proponents of S. 1403 argue has been so eroded that legislaton is required, already represented a substantial moderation of the position advocated by those most directly affected by surface mining. However, the "State-lead" or "State primary" aspect of the act should not be confused with the preexisting situation.

If it has been the Congress intent to countenance continued vying between States to attract coal operators, sacrificing health, safety, and environmental goals in the process, the Surface Mining Control and Reclamation Act would never have been enacted. Yet the Senate is now being asked to do precisely this. It is being asked to sweep aside the Federal regulations which have been issued pursuant to the act, based on the intent of Congress as expressed in its legislative history. This deceptively simple amendment will create such confusion that enforcement of a national surface mining control program is likely to be set back for several years as the courts are forced to substitute their judgment for that of the Congress—on a State-by-State basis.

One might expect that such a sweeping change in an act which has as yet to be fully implemented would be based on substantial evidence. This is not the case. At the time the committee adopted the substitute text, not one complete State program has even been submitted to the Secretary of the Interior for review. Therefore, the charge that existing law does not provide sufficient flexibility for the design of State programs is based on speculation. Moreover, many of the regulations which would be thrown out are regulations defining terms the meaning of which does not vary between region. These terms include "valid existing rights"; "Government financed construction"; and "substantial legal and financial commitments."

Some States have now submitted a State program or are expected to do so within the next few weeks. The Office of

Surface Mining has responded positively to complaints about its regulations dealing with bonding and with assistance to small operators. It has already made a favorable determination on a petition from the State of Montana regarding a delay in the implementation of the Federal lands program. Director Heine has established a special position in his immediate office to work with the States to assure that questions and concerns are fully addressed. OSM has contracted with the National Governors' Association to provide assistance in identifying State concerns and to facilitate communications. Regular meetings between the Director and his staff and the Interstate Mining Compact Commission, an organization representing 14 coal-mining States have been initiated. In short, far from ignoring the States, there is every evidence that the Office of Surface Mining is bending over backward to understand and accommodate their needs. This process should be given a chance to work.

One change in the law which would help to do this is the delay in the deadline for submissions from the States and a similar delay in the implementation of a Federal lands program in the absence of an approved State program. Judge Flannery's decision of August 22, has accomplished the first of these changes. However, the June 3, 1980, deadline for implementation of a Federal program remains in effect. The Senate should enact this change. It will permit adequate time for consideration of State program submittals. It will facilitate a better working relationship between the OSM and the States. It will remove much of the paranoia of those working under pressure to design the Federal and State programs within extremely tight time schedules. I strongly urge the Senate to adopt such a change in the law which will be offered later, I understand, by Senator MELCHER in the form of a substitute amendment, and reject amendments which will weaken the act.

Before closing, Mr. President, I ask unanimous consent that a telegram dated August 1, 1979 which I received from Gov. Ed Herschler of Wyoming be printed in the RECORD at this point.

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

[Telegram]

CHEYENNE, WYO.,
August 1, 1979.

Senator HOWARD M. JACKSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: This telegram is to confirm my continued support for the Federal lands extension which we agreed to in your office last month.

I also intend to honor my commitment not to push for any other amendments at this time. Both you and Congressman Udall were extremely candid in our discussion about acceptable amendments. I appreciate your assistance on our behalf.

ED HERSCHLER,
Governor of Wyoming.

Mr. JACKSON. There has been much debate over what the Governor said at hearings before the Committee on Energy and Natural Resources and just what he meant. I think that this latest telegram clarifies that he does not seek any deletion of the requirement that State programs be consistent with Federal regulations at this time.

I also have a technical note. I wish to note for the record that the committee report on S. 1403 (96–271) has the following errors:

First. On page 2 of the report, in the fourth line, after word "of", the following should be inserted: "a Federal lands program shall occur and coincide with the implementation of".

Second. Also on page 2, in the first line of the purpose section, the last word in the line should read "for".

Third. On page 36 of the report, in the fourth line from the bottom of the page, a heavy bracket indicating deletion should be placed before the word "regulation" the second time it appears and in the fifth line after the word "to".

Fourth. On page 37, the seventh line from the bottom of the page, after the word "of", the following should be inserted: "a Federal lands program shall occur and coincide with the implementation of".

Mr. President, I yield now to the distinguished Senator from Oregon (Mr. HATFIELD), the ranking minority member of the committee.

Mr. HATFIELD. Mr. President, I thank the chairman of our committee, the Senator from Washington (Mr. JACKSON), for yielding at this point.

I ask unanimous consent that the privilege of the floor be granted to George Ramonas, of Senator DOMENICI's staff, during the consideration of S. 1403.

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

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), the Senator from New Mexico (Mr. DOMENICI), the Senators from North Dakota (Mr. BURDICK and Mr. YOUNG), the Senators from Utah (Mr. GARN and Mr. HATCH), the Senator from Alaska (Mr. STEVENS), the Senator from Kansas (Mrs. KASSEBAUM), the Senator from Wyoming (Mr. SIMPSON), the Senator from Indiana (Mr. LUGAR), the Senator from Virginia (Mr. WARNER), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Kentucky (Mr. FORD), and myself be added as cosponsors to S. 1403, a bill to amend the Surface Mining Control and Reclamation Act of 1977 (Public Law 95–87) to provide an extension of time for the submission and approval of State programs or the implementation of a Federal program, to clarify the contents of a State program, to provide for increased cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and for other purposes.

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

Mr. HATFIELD. Mr. President, coal has been described as our "ace in the hole." It is this Nation's most abundant fossil fuel. Over 435 billion tons of recoverable reserves bless our lands. Yet we carry in public policy many discriminatory measures to punish increased coal use.

Interpretations of the Clean Air Act have established impediments to expanded coal use, impediments which need not exist to satisfy national ambient air quality standards.

Current regulatory procedures, particularly in these inflationary times, prevent rapid retirement of utility boilers and make it difficult to raise sufficient capital for replacement construction.

Coal is losing the cost advantage it enjoyed subsequent to the oil embargo. Increased Government regulations over the mining, transport, and burning of coal have led to nearly a doubling of coal prices in the last 4 years, while there is significant unemployment and perhaps 150 million tons of unused production capacity at the mines.

No effective coordinating mechanism exists for the numerous Federal agencies and departments involved in dictating coal production, transportation, and use policies. Delay, inaction, and an unacceptably low 2 percent annual growth rate in coal use results.

Because of these constraints, any status report on coal as a domestic energy resource must paint a bleak picture:

Coal production remains stagnant at less than 700 million tons per year; surface mine productivity per man per day has decreased steadily from 36 tons in 1970 to 25 tons in 1978; Federal coal under lease has languished at 0.8 percent of available Government lands since 1970; and the regulatory burden continues to increase.

In his prognostication to the President before leaving office, Secretary Schlesinger laid it out in stark, indeed frightening, terms:

Without greatly expanded use of coal, this country just may not make it.

With this preamble we today face the Surface Mining Control and Reclamation Act of 1977.

For those of us who labored through the seemingly endless hours of negotiation on the Surface Mining Act, I sense a certain feeling of lost faith. We were assured practical, good sense interpretations of the act would be made and that the States would be given every opportunity to derive their own reclamation laws and programs.

Broken promises and lost faith have resulted.

A nearly unanimous critique of the Office of Surface Mining's performance to date by engineers, industry, States, the Department of Energy, and the Council of Economic Advisers concludes that the final rules add unnecessarily to costs of production and, in some instances, actually preclude more appropriate engineering practices.

Let me cite several specifics:

An analysis, dated June 11, 1979, prepared by the Congressional Research Service concludes:

Many of the regulations contained in the enforcement program are inconsistent with the spirit of the Surface Mining Act and some appear to be inconsistent with the actual language.

The sheer magnitude and the intricacies of the requirements could very easily become a hardship to small and intermediate-sized operators with consequent effects on their competitiveness in the coal market.

A massive, detailed report prepared by Consolidation Coal Co. released in May of this year computes the cost difference between "good engineering practices: which meet the letter of the law and final regulations by OSM. Consolidation finds the excess expenditures amount to an average of $2.35 per ton of coal on just 21 of the act's provisions."

The American Consulting Engineers Council concludes that OSM's interpretations of the act add between $3 and $5 per ton in gentle terrain and as much as $8 to $12 in mountainous terrain over and above what would be required to meet the intent of the act.

The National Governors Association criticizes OSM for frustrating State primacy and for making it virtually impossible to develop anything other than a "State level clone" of OSM regulations because of impending deadlines and voluminous paperwork.

The Secretary of Energy, in his report to the President June 4, 1979, on increasing coal production and use, also concludes that OSM regulations may be setting a trend away from the act's intent. He recommends that:

DOI's surface mining regulations and unsuitability criteria be applied in a way that facilitates increased coal production.

Mr. President, coal may be this country's energy "ace in the hole." But the regulatory overkill fostered by the Office of Surface Mining has dealt us a joker instead. We are in no position to bluff our way through gas lines and inflation caused by huge oil imports. We have to play our coal card.

Short of revamping the law, which most would agree—and I am included—has not had time to be implemented, there are several corrective steps which should be taken to give the States a little more time to prepare their reclamation programs and reestablish the objective of State primacy.

These corrective measures were passed by the Energy and Natural Resources Committee on July 27 as a substitute—the Hatfield-Ford substitute—to S.1403.

S. 1403, as amended, would make, by way of minor modifications, three crucially important changes in the 1977 act as follows:

First. Extend the deadlines for submission and approval of State programs by 12 months;

Second. Delay implementation of a Federal lands regulatory program from October 12, 1979, until State programs are implemented in mid-1980 or early 1981; and

Third. Eliminate the requirement that State regulations be identical to those of OSM thus allowing the States to tailor their regulations to take into account the special needs and unique features of each State so long as those regulations conform to the strict standards of the act.

These changes were specifically proposed by several Governors—including Governor Herschler of Wyoming, Governor Link of North Dakota, and Governor Rockefeller of West Virginia.

S. 1403 makes absolutely no substantive changes in the basic 1977 statute. All of the statutory environmental standards remain intact. And, very importantly, nothing in S. 1403 affects or diminishes the Secretary of the Interior's ultimate responsibility to review State program applications to determine whether State laws and regulations do in fact meet the requirements of the act. In other words, the Secretary continues to retain full authority as originally authorized by the statute to approve or disapprove State programs. If the State-proposed regulations are found lacking by the Secretary, he may and, in fact, must disapprove those regulations and reject the State program.

The permanent program regulations recently promulgated by the Office of Surface Mining will not be voided. They will remain available as a basis for comparison by the Secretary with State program submittals, as well as for implementation on Federal lands and in those States which either fail to gain regulatory authorization or choose not to do so. The Secretary is faced with no greater threat of litigation in making these rulings than he would be under the current statute and his own "State window" regulatory exception.

Mr. President, the three amendments to the Surface Mining Act which comprise S. 1403, are a meager but important beginning to bringing the act back in line with the congressional objective of State primacy.

I should like to digress just a moment.

We are increasingly faced here in Congress with new proposals to provide for a one-House or two-House congressional veto over regulations promulgated by executive agencies—due in part to the fact that these regulations either have become overly burdensome or such regulations have failed to be in conformity with the original legislative act, legislative intent, or legislative history. That is one of the reasons why, even at the current time, the Senate, in the Energy Committee, is considering such a one-House veto—or a two-House veto—on matters relating to the Energy Mobilization Board, because of the record of these agencies failing to live up to and implement rules and regulations in conformity with the act as originally intended.

Other amendments may be needed at some future date, but I urge my colleagues first to view the results of this bill. S. 1403 may mend a few broken promises and restore a little faith. It may also help us play that ace that we need desperately today known as coal.

Mr. President, I am particularly pleased to be in the same league and in the same corner today with my colleague and good friend from Kentucky (Mr. FORD), who has given extraordinary leadership to the proposals I have discussed in my opening statement while we served as members on the Energy Committee together.

Mr. FORD. Mr. President, I thank my colleague from Oregon for his kind words. It is always a joy to be with someone in a battle when he articulates the problem and the ultimate solution to that problem so well. He comes only armed with the silver tongue of truth. When you have that, it is difficult to go against you.

Mr. President, I should like to make a few remarks relating to S. 1403, the Surface Mining Amendments of 1979. We shall get into some of the debates and some of the statements made by the chairman of our committee (Mr. JACKSON) a little later. I understand the distinguished Senator from Montana wants to close the window which we already have in the bill, but we shall get to that shortly.

Mr. President, S. 1403 was originally introduced by our distinguished chairman, Senator JACKSON, at the request of the administration. It provided for a 7-month delay for submission of State programs for surface-mining regulation and reclamation. It also provided for a 7-month delay for Federal approval of the State programs and deleted the authority of the Secretary to extend for an additional 6 months in States where an act of the legislature is needed to comply with the Surface Mining Act.

Federal regulations had been 7 months late in being promulgated under the act. Every reasonable person recognized that delay was necessary or the result would be a nationwide Federal administration of surface-mining regulation and reclamation.

The administration recognized it. They came to Congress to ask for it. The U.S. District Court for the District of Columbia, on July 25 of this year, granted the States a 7-month extension to March 3, 1980. However, the court held that the June 3, 1980, deadline for Federal approval of State programs was mandatory and required legislative changes.

The court, in its order, made a point that is important in consideration of S. 1403 as amended and reported:

[The Secretary] cannot escape the effect of his own delays and for his administrative convenience, take time from the States that the Act requires them to have. Such a result would be an affront to *the principles of Federalism that underlie this national structure.*

Mr. President, I emphasize—"the principles of Federalism that underlie this Nation's structure." When the Congress enacted the Surface Mining Control and Reclamation Act of 1977 after years of struggle and months of intensive committee, floor, and conference work, it based the law on the principles of Federalism. The administration of the law and Federal requirements beyond the law abandon these principles of federalism.

S. 1403, as reported, seeks to redress this abandonment.

The 1977 law finds that, and I quote:

The primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States;

The Federal role is to, and I quote:

Assist the States in developing and implementing a program to achieve the purposes of this act;

The Secretary is to, quoting again:

Assist the States in the development of state programs for surface coal mining and reclamation operations which meet the requirements of the act, and at the same time, reflect local requirements and local environmental and agricultural conditions.

I think the distinguished Senator from Oregon and I are saying the same thing, maybe in different manners, but we are coming down on the same points.

Mr. President, S. 1403, as reported, seeks to restore these principles of federalism that have been abandoned in the administration of the act.

Mr. President, the 1977 act is a detailed piece of legislation which specifies the standards to be met by the States in carrying out their primary role under the act.

This is the most vital part of S. 1403 and this is what I hope my colleagues will understand. The focal point of S. 1403 should be this:

Congress recognized that State regulations would have to be detailed to meet the standards of the act but the primary responsibility for developing and enforcing regulation was assigned to the States: The Federal role was to assist—to assist—the States and to take over a program when a State did not meet the requirements of the act.

Mr. President, S. 1403, as reported, addresses two problems—the necessary delay in implementation and, more basically, the principles of federalism that underlie this Nation's structure.

Section 2 extends the statutory deadline for submission of State programs by 12 months from February 3, 1979, to February 2, 1980. This has the effect of extending the current August 3, 1979, deadline (which includes a 6-month extension granted by the Secretary) for 6 months to February 3, 1980. This section leaves intact the authority of the Secretary to extend the deadline for an additional 6 months in States where compliance with the act requires an act of the State legislature. This section also extends by 12 months the date by which the regulatory authority must take action on permits to operate under a permanent program and the deadline for imposition of a Federal program.

The committee believed that it would take States longer to redesign State submissions which are partially completed, but based on the regulations. Additional time would probably be required to restructure programs based upon consistency with the act.

The extension of time for State legislatures to take necessary action is retained because of the recurring OSM findings that a State law does not give the State administrator the authority to issue a particular set of regulations.

Let me digress just a minute. When the State legislature considered a piece of legislation—and this is a fact—the Attorney General as the one law enforcement official of that State, gave the opinion that the bill complied completely with the Federal law. The State legislature then passed overwhelmingly that piece of legislation believing that their State was in compliance with Federal law.

The Attorney General said that they did comply, as the courts later found. But when the plan was submitted, OSM officials said "No, you do not comply because we're now legislating by regulation, even though the thrust of this regulation is not backed by the intent of legislation."

This is a fact. This is something we have to stop here in Washington. We have to stop it by introducing legislation to restructure the thinking of bureaucrats that the intent of Congress is such.

The net result of this has been a practical requirement that, more and more, State law has had to conform not only to the Federal law but also to the Federal regulations.

We have gotten into a cookbook proposition. Federal officials say that State law must be identical to Federal law. But when the laws are identical and an agreement is reached on intent, the States are told that the regulations have to be identical. That becomes a cookbook in which States have no standing and the intent of the legislation is usurped.

As the act is now being administered, the only way for a State to insure compliance would be to enact the Federal regulations as State law.

And the regulations are not in compliance with the intent of the legislation or the intent of Congress.

The original 1977 bills in both Houses of Congress did require that State law conform to Federal law and regulations. The Congress dropped this but the OSM is seeking to achieve the same end in its administration of the program.

Section 3 deletes the requirement in the act that State programs submitted to the Secretary for approval or disapproval have rules and regulations consistent with the regulations issued by the Secretary pursuant to the act. The section leaves intact the requirement that rules issued by the States be consistent with the act. Nothing was taken out. They must be consistent with the act.

The committee believes that without this change, States will not have the opportunity to design regulatory programs which reflect local conditions. The requirement that State programs be consistent with the regulations inhibits the flexibility of the States in the design of their programs.

Section 4 deletes the requirement that the Secretary implement a Federal lands program within 1 year of enactment of the act and adds language which directs him to implement a Federal lands program coincident with the implementation of a State program or a Federal program, whichever is the case, except where a State has a cooperative agreement with the Secretary to provide for State regulation on Federal lands pursuant to subsection 523(c) of the act.

This section was adopted because of concern by States with Federal lands that implementation of the Federal lands program will preempt the ability of the State to design its program.

So I hope that this piece of legislation, as it has arrived to the Senate floor from the Committee on Energy and Natural Resources, will be kept intact and that we can implement the intent of Congress as it relates to the Surface Mining Reclamation Act of 1977.

Mr. MELCHER. Mr. President, this bill, as amended, came to the floor from the committee with a 10-to-8 vote, which is rather narrow in our committee; and it reflects the strong feeling of many of us on the committee that the bill simply has gone astray from what is needed in the Nation's energy program.

The original act passed in 1977, to regulate reclamation of lands throughout the country which are involved in strip mining for coal, sets the minimum Federal standards. All States have been given time to review those minimum Federal standards and to adjust their State laws to at least meet the minimum standards and submit their plans to the Secretary of the Interior. If they meet the minimum Federal standards, then the Secretary approves the State plan, and the State runs the reclamation program in that State.

That was the thrust of the act, and it is still the thrust and intent of the act at this time. States are submitting their plans.

My State of Montana, a few weeks ago, submitted to the Secretary, Montana's strip mine reclamation program. We feel confident that it meets the intent of the act, that it does cover the minimum standards, and that the Secretary will approve it.

The bill before the Senate today has three features, and two of these are not in conflict with the overall intent of all the members of the committee. The Governors of coal producing States testified that they would like until sometime in March of next year for submission of the State plan. We have no objection to that at all. The Governors also testified that they would like the implementation of the Federal lands program to be held off until such time as a State plan has been submitted and acted upon by the Secretary. We are not in disagreement on that.

However, there is a third section of the bill, and we are in disagreement on that, in very vigorous disagreement. That third section of the bill simply states that while the 1977 act will not be amended, the regulations will be canceled. This is totally unprecedented.

I do not know of any time in the past—and I invite the sponsors of this legislation to submit this for discussion—when a subsequent act of Congress dealing with previous legislation did not amend or repeal the act itself but instead simply canceled the regulations implementing the act. Section 3 of this bill seeks to do that. That is the objectionable feature of the bill as presented.

I know of no precedent and I know of no way in which this innovative unprecedented procedure will lead to more coal mining. What it would mean would be that a State would draw its own regulations based on the act; and if it were not agreed to, it would lead to a confrontation in court in a lawsuit. We would have numerous lawsuits, based on various interpretations by States of the 1977 act of Congress. I think there would be chaos in the courts.

It has been stated that the State requirements would be identical with the

act or meet the intent of the act. Then it would be up to each court to interpret whether those proposed State regulations were compatible, did meet the minimum standards of the Federal act. A judge in one district might make a finding that would be totally disagreed to by a judge in another district. I cannot imagine any greater invitation for lawsuits than this procedure.

Contrary to any impression that might have been garnered from the remarks that have been made by the proponents of this bill, as it is presented to the Senate, the 1977 Reclamation Act does not require that each State's plan be identical with the Federal regulations. In fact, the whole thrust of the bill was that, having set the minimum Federal standards, a State, on its own volition, could exceed the minimum standards.

The proposition is made, and rightly so, that reclamation procedures in States and various regions of the country will vary, and in order to accommodate that, the basic law passed by Congress in 1977 gives the Secretary some discretion in recognizing that regulations as applied uniformly to all the States may not accomplish the necessary reclamation procedures. The Secretary of the Interior refers to that as the so-called State window, where some variation can be allowed, and Federal regulations provide for recognition of different conditions for reclamation to be approved in State plans to deal with various problems that can be solved in a State with varying conditions.

The Governors of the coal-producing States have testified rather emphatically on the need for more time for submission of State plans. Their point is well taken, and I do not believe anyone in the Senate disagrees. But to go beyond that and to say that all of the regulations of the Secretary of the Interior on this act will be nullified completely and disregarded in approving State plans goes into every part of the act.

While there may be in a State some regulations promulgated by the Secretary of the Interior that are not objected to and which they find quite incompatible with what they view as their proposed State plan, they probably number, in each State, only six, seven, or eight regulations.

Yet this bill would strike out all Federal regulations in approving State plans and leave just the statute available for the courts to interpret.

I think it is very necessary to remind all of us that there are probably too many lawsuits introduced that hold up energy production.

Would this help? Would this procedure help, striking down the Federal regulations? I think not. I think to the contrary, it would only add lawsuits. I think it is fair to say that most of us are quite disenchanted with the length of time it takes on individual lawsuits holding up energy production. Would this procedure knocking out the Federal regulations somehow expedite the case in court? I think not.

I feel that it would even add and stretch out the period of litigation for an individual lawsuit, that the appeal process would be delayed even further, and that rather than expediting any procedure to provide for the opportunity to have strip mining of coal throughout the country on a good and sound basis, this would be a direct hindrance on development of sound and practical and worthwhile strip mining operations.

I think the end result of this feature of the bill would be so chaotic, so time-consuming and so divisive that we would actually set back strip mining of coal by several years for many proposed mines.

That is not our goal. That is neither the goal of myself nor the proponents of this bill.

I think we join together on that score in wanting to expedite rather than to hinder production. I think we join together in wanting it to be on a sound basis for reclamation. Where we differ is how to arrive at those very laudable goals.

Later in the day we will offer a substitute, which will recognize the requests of the coal State Governors for more time, will recognize the request of the coal State Governors for the implementation of the——

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

Mr. MELCHER. In just a moment I will.

Mr. FORD. He is referring to the coal State Governors. I do not want the RECORD to reflect that he is speaking for all Governors who head coal States, and I hope that the Senator will at least not include the Governor from my State who happened to be chairman of the Governors Conference last year.

Mr. MELCHER. I thank my friend from Kentucky for that and I will refer to it after I have completed the thought I was expressing.

The substitute I shall offer will provide the additional time, per the request by the National Governors Association for the implementation of the Federal lands program being tied to the approval of the State program.

But it will not contain section 3 of the bill that is now before us that would nullify all of the Federal regulations pertaining to approval of State plans in the 1977 act.

In referring to the Governors of coal-producing States, I refer to the testimony that was presented to the committee during our hearings by Gov. Ed Herschler, of Wyoming, who testified on behalf of the National Governors Association, and whatever other Governors agree with that position as presented by Governor Herschler on behalf of the National Governors Association are the coal-producing State Governors that I referred to.

Mr. ROBERT C. BYRD. Mr. President, I hope it may be possible to reach a time agreement on this bill a little later. For the moment I shall simply make a few remarks.

S. 1403 addresses complex regulatory problems associated with the development of coal. The bill amends the Surface Mining Act by extending administrative deadlines and by providing the States with much-needed flexibility as they develop reasonable reclamation plans.

This bill is the embodiment of a simple principle, a very simple principle. That principle is this Nation must produce more coal in an environmentally acceptable manner.

The United States is beyond the stage where it can afford to pay lip service to coal. Our coal reserves are immense; enough to supply our basic energy needs for centuries. We need coal for the generation of electricity, for fueling industrial boilers, and for conversion into synthetic fuels. We cannot allow this precious resource to languish any longer. A fair and sensible coal development policy must be established, as Congress intended when it passed the original Surface Mining Act. The bill being considered today will provide several crucial ingredients of a workable coal policy.

First, S. 1403 will extend the time given to the States for submission of their reclamation plans. The reclamation plan of each State will outline the precise procedures to be used by mining concerns to restore the land once the coal has been extracted. The Surface Mining Act requires that reclamation plans be greatly detailed. Under the act, the Office of Surface Mining in the Department of Interior is responsible for approving or denying the plans, a process which requires a great deal of time. In order to insure fair and complete consideration of the State plans, the deadline for approval of the plans is also extended in this bill.

Second, the bill unambiguously reaffirms the intent of Congress with respect to the role of the States in surface mining regulation. The 1977 act specifically declares that "the primary responsibility for developing, authorizing, issuing, and enforcing surface mining regulations rests with the States."

As the act has been implemented, the role of the States has been diminished. That policy shift is not fair to States that have consistently supported the goals and purposes of the Surface Mining Act. It demonstrates a lack of realistic planning. It is not a sound basis for our coal policy.

Section 3 of the bill, sponsored in the committee by Senators FORD and HATFIELD will allow the States to assume their proper place in the regulatory process. Under this language, which is often referred to as the Rockefeller amendment, the Surface Mining Act itself will be the standard by which reclamation plans are evaluated. The act is more specific than is usually the case and was deliberately designed in that fashion.

By this change, Congress is not abandoning the goals of the Surface Mining Act. Instead, we are bringing the act back to its proper foundation. It should be recalled that the Office of Surface Mining continues to have the power to turn down a reclamation plan if it is not consistent with the act.

The Governors of the major coal-producing States have developed a consensus in support of this bill. Many of them were in office 2 years ago when the original act was passed, and they supported

that effort strongly. At the time, the principle of State regulatory responsibility seemed to be firmly accepted. Only when it became apparent that the States would be practically preempted from meaningful participation in the process did they seek relief.

I believe S. 1403 can provide the basis for the pragmatic policy this Nation needs. A fundamental portion of any national energy action must include coal development. This bill will push forward toward that objective, and I urge its passage.

I express my strong support for the language in section 3, and I also express the fervent hope that any effort to strike will be defeated.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. FORD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HATFIELD. I yield.

Mr. FORD. Mr. President, I ask unanimous consent that Ric Fenton and Tom Altmeyer from Senator RANDOLPH'S staff have the privileges of the floor for the duration of the Senate's consideration of S. 1403.

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

Mr. TSONGAS. Mr. President, will the Senator yield for 30 seconds?

Mr. HATFIELD. I yield.

Mr. TSONGAS. Mr. President, I was in the House of Representatives when the Interior Committee spent a great deal of time on the so-called Federal Strip Mining Act of 1977.

I would simply state that the act that is before us now causes certain problems, and for that reason I strongly support the Melcher-Jackson substitute.

I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, the Senator from Montana has raised a very pertinent matter relating to the response or the attitude of the Governors concerning this proposed legislation we have before us today.

Early in the consideration of the amendments which Senator FORD and I have proposed, and which were adopted by the Senate Energy Committee, I circulated the text of those amendments to the Governors and asked for their response to the proposed amendments, specifically the three amendments we have incorporated, along with four other amendments that I happened to be considering at the time.

I would like to submit for the RECORD at this time, and ask unanimous consent for its submission, the responses from the 19 coal State Governors who have gone on record through these documents which I present at this time in support of the amendments to the bill which extends the time and which also includes the so-called Rockefeller amendment.

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

STATE OF WEST VIRGINIA,
OFFICE OF THE GOVERNOR,
Charleston, W. Va., July 6, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HATFIELD: I appreciated your June 28, 1979, mailgram concerning the Federal Surface Mine Act. The issues you mention have also concerned me for some time; and, the changes you suggest are, I believe, appropriate.

As you know, I have also suggested one of the amendments you mention: I refer to the proposal that states should only be required to have programs consistent with the federal act itself. This amendment alone would help bring order to current efforts and restore the primary role for enforcement to the states, as Congress intended. I have discussed the amendment with both Senators Randolph and Byrd.

Certain observers have indicated that a large number of amendments to the act could be an impediment, but, of course, I leave strategy to you. In any event, some changes, and particularly the one I have mentioned, are essential if the 1977 Act is to be workable.

I am sure that members of your staff are in touch with Phil McGance in Senator Randolph's office, for the purpose of discussing strategy. My office is staying in touch with Phil.

I sincerely appreciate your interest.

Sincerely,

JOHN D. ROCKEFELLER IV.

OFFICE OF THE GOVERNOR,
Richmond, Va., July 6, 1979.

Senator MARK O. HATFIELD,
U.S. Senate Committee on Energy, and Natural Resources, Washington, D.C.

DEAR SENATOR HATFIELD: The Commonwealth of Virginia fully supports the efforts of yourself and other members of the U.S. Senate to amend the Surface Mining and Reclamation Act of 1977 in order to assure that primacy responsibility for implementation of the Act rests with the States.

We have consistently opposed the Office of Surface Mining's policies and regulations that have clearly frustrated the efforts of the States to comply with the intent of Congress. The proposed amendments you have sent us will provide the extension of the time that most States need in order to develop acceptable state programs. The additional amendments will provide States the opportunity to address conditions unique to each State.

Virginia has continued to exhibit good faith efforts to comply with the provisions of the Act. However, to meet the August 3 deadline, Virginia will simply be lifting many of the Federal regulations and placing them in our State Program. Clearly this was not the intent of Congress.

We support your efforts and please let us know if we can provide information that will assist you in your efforts.

With all good wishes, I am

Very truly yours,

JOHN N. DALTON.

OFFICE OF THE GOVERNOR,
Little Rock, Ark., July 9, 1979.

Hon. MARK O. HATFIELD,
U.S. Senator, U.S. Senate, Commission on Energy and Natural Resources, Washington, D.C.

DEAR SENATOR HATFIELD: Thank you for your letter of June 29, 1979 forwarding a copy of your proposed amendments to the Federal Surface Mining Control and Reclamation Act of 1977 (PL 95-87). Arkansas is currently struggling to prepare a permanent regulatory program to obtain primacy over surface coal mining and has experienced some of the same problems discussed during the oversight hearings.

We support your efforts to amend PL 95-87. I would like to point out an area that you may have overlooked. While your proposed amendment will eliminate the state's obligation to comply with the requirements of 30 CFR 731, et seq. dealing with preparation of state programs, you make no mention of Section 503(2)(7) of the Act which requires the states to establish rules and regulations consistent with the regulations issued by the Secretary. By retaining that provision, the states will still have no choice "but to become state level clones of the federal regulations" as stated in your June 28, 1979 letter.

I also call your attention to Section 705 (a) of the Act, which provides for decreasing federal support of state programs (from 80 per centum the first year to 40 per centum for the third year). It would appear that in view of the delays in developing the federal regulations, the justifiable extension of the date for submitting state program plans should be coupled with an extension of the first year support level.

I appreciate the opportunity to lend my support to your efforts and hope you are successful.

Very truly yours,

BILL CLINTON,
Governor of Arkansas.

GOVERNOR'S OFFICE,
Harrisburg, Pa., July 20, 1979.

Senator MARK O. HATFIELD: I strongly support the need for extending the deadline for submission and approval of State program applications under the Federal Surface Mining Control and Reclamation Act of 1977 as proposed in H.R. 4728 and S. 1403.

I support State flexibility in administering a delegated Federal program, as embodied in section 2 of the Hatfield-Ford amendments to S. 1403.

DICK THORNBURGH,
Governor of Pennsylvania.

STATE OF OHIO,
ENVIRONMENTAL PROTECTION AGENCY,
July 9, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, Russell Building, Washington, D.C.

DEAR SENATOR HATFIELD: This letter is in response to your Mailgram of June 28, 1979, to Governor James A. Rhodes regarding proposed amendments to P.L. 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Ohio Environmental Protection Agency (Ohio EPA) supports your proposed amendments to P.L. 95-87.

In particular, the Ohio EPA supports the proposal to remove Section 503(a)(7) of the SMCRA which requires state rules and regulations be consistent with the rules and regulations issued by the Secretary of Interior pursuant to the Act. The proposed amendments would allow flexibility within the states to maintain their own regulatory authority while complying with the intent of the SMCRA, and would, therefore, avoid duplication of existing state regulatory authority regarding the exploration and extraction of coal. Your proposed amendments would allow states, such as Ohio, to avoid duplication of regulatory authority and yet to meet the intent of the SMCRA. Equally important it would relieve the additional regulatory burden and possible economic impact imposed on Ohio's coal industry.

The SMCRA affirmatively requires the state agency responsible for carrying out the program (i.e., Ohio Department of Natural Resources (Ohio DNR)) to assure minimum environmental degradation in accordance with Section 515 of the SMCRA. The SMCRA further provides that in no event shall applicable state and federal environmental, health, or safety statutes, regulations, or standards be violated by a permitted facility.

Although the SMCRA was intended to supply regulatory authority over mining operations which were not already under regulatory supervision, the situation in Ohio is that regulatory permitting and enforcement authority over mining operations was already covered by Ohio EPA and DNR. Thus instead of expanding authority over previously unregulated activities, duplication of authority over mining operations in Ohio has resulted.

In accordance with statutory enactments, through the Clean Water Act (CWA), P.L. 95-217, and the Ohio Water Pollution Control Act in the Ohio Revised Code Chapter 6111, the Ohio EPA administers the laws and rules pertaining to the prevention, control and abatement of water pollution and supervises the disposal of industrial and other wastes.

In the performance of these duties, Ohio EPA issues permits to coal mining operations for the installation and construction of treatment works and for the placing of pollutants into waters of the state, which permits contain effluent limitations. The performance of similar activities by the Ohio DNR will result in a duplicity of governmental effort and confusion to the regulated entity.

In the area of assuring minimum environmental degradation from mining operations, therefore, the Ohio DNR and EPA have concurrent jurisdiction and responsibility.

While cooperative state agency agreements can be engaged in so to meet the intent of the SMCRA, the Final Rules and Regulations, 30 CFR, promulgated by the Department of Interior (DOI) in March, 1979 to implement the SMCRA, and Section 503(a)(7) of the Act requiring states to comply with the federal Rules and Regulations have insufficient flexibility to allow state agencies to enter into a viable cooperative agreement of state regulatory authority.

An additional proposal to amend Section 405(c) of the SMCRA would allow for the expenditure of abandoned mine reclamation funds prior to approval of a state regulatory program pursuant to Section 503.

The State of Ohio is a major coal producer in the United States, having produced seven percent of the total tonnage. In addition, Ohio today is the leading coal consumer in the nation, accounting for almost twelve percent of the total consumption. The development of the industry, however, was not without serious long term liability. This liability today represents more than 370,000 acres of land requiring reclamation; and in excess of 1,300 miles of Ohio streams either continuously or intermittently affected by the discharge of 1,000,000 pounds of acid per day from inactive mines.

Ohio EPA supports this proposed amendment to allow for full or partial release of funding for the state abandoned mine reclamation program at the earliest possible date. Any immediate funding towards this program development would allow Ohio and other states to begin planning for the restoration of abandoned mined areas.

The expeditious release of funding for restoration will provide for a more immediate protection of the public's health, safety, and general welfare, and for improved land and water resources to meet the intent of both the SMCRA, and the CWA goal of swimmable, fishable waters by the year 1983. It would be unfortunate to both the welfare of the state and the nation to delay any longer the program development of abandoned mined lands reclamation when such delays are due to state difficulties in fulfilling the requirements of Section 503.

Ohio EPA further supports the proposed establishment of a 15 member commission to review the DOI, Office of Surface Mining's implementation of SMCRA. With the proposed responsibilities granted to this body to review and advise on the implementation of the federal program, it is hopeful the state agencies granted regulatory authority to control environmental degradation from the effects of coal mining operations will be able to proceed with their program development and implementation without undue confusion and duplication of effort.

If we may be of any further assistance to you in your efforts to pass these proposed amendments, please let me know.

Sincerely,

JAMES A. MCAVOY,
Director.

OFFICE OF THE GOVERNOR,
Springfield, Ill., July 16, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, McLean, Va.

DEAR SENATOR HATFIELD: I have received your letter of June 29 about needed amendments to the Surface Mining Control and Reclamation Act. I have already indicated to Secretary Andrus my strong support for the seven months extension in state program submittals and approvals, contained in S. 1403. I am also in sympathy with each of your additional proposals. They would provide more complete assurance than the existing law that restoration and reclamation efforts may proceed in each state in accordance with Congressional standards, under State direction tailored to economic, geographical and environmental considerations unique to each State. I also believe state administration of abandoned mined lands reclamation funds should begin at once. I would hope Congress and the Administration will be willing to listen to your sensible proposals, and to adopt them. I hope you will find a way to bring these proposals to Congressional attention in an atmosphere of full, sound, and immediate deliberation on an issue of national importance, involving a critical energy resource.

Perhaps these issues will be most constructively addressed separately from consideration of the seven-months extension in S. 1403, at least as long as the Administration threat of veto to any attempt to amend S. 1403 persists. I think most members of Congress would be shocked at the dictatorial and costly red tape that has occurred since the Act was passed, out of all proportion to intended environmental benefits, and will favor restoration of control of land use and mined land reclamation to the States and local citizenry, as originally envisioned by most of them.

Sincerely,

JAMES R. THOMPSON,
Governor.

GOVERNOR'S OFFICE,
Santa Fe, N. Mex., July 11, 1979.

Senator MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, McLean, Va.

DEAR SENATOR HATFIELD: The State of New Mexico has reviewed the proposed amendments to the Federal Surface Mining Act which you are considering for introduction in the United States Senate, and strongly support them as being in New Mexico's and the Nation's best interest.

We agree that the performance standards on reclamation requirements set by the act should not be diminished. However, performance should be measured by results achieved, and the individual States should be allowed to devise the proper methods to achieve the desired results. The present final surface mining regulations recently published by the Office of Surface Mining are tedious, complex, and inflexible, and will actually impede the efforts of State reclamation agencies in developing improved reclamation technologies. We also strongly support the extension of the time allowed States to submit their reclamation programs.

As you have stated, it is the clear intent of the act that the States should assume the responsibility in planning and providing environmental protection, and ensuring reclamation of coal mined lands with high Federal standards. The act should be amended to protect that intent.

If there is any further effort that we can make to help in passage of these amendments, please advise.

Sincerely,

BRUCE KING,
Governor.

BISMARCK, N. DAK.,
July 6, 1979.

HON. MARK O. HATFIELD,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR HATFIELD: This letter is in response to your mailgram of June 28, 1979, regarding your proposed amendments to the Surface Mining Control and Reclamation Act of 1977.

The State of North Dakota supports your proposed amendments as does the state regulatory authority governing surface coal mining in our state, the North Dakota Public Service Commission (hereinafter NDPSC). The State of North Dakota also urges you to incorporate four additional amendments into your bill which we believe are essential if state programs are to succeed under the federal Act. These amendments are discussed in more detail in the enclosed letters to Senators Burdick and Young from the NDPSC.

Finally, I wish to emphasize that reclamation will succeed only if the states are allowed to be responsive to particular reclamation problems in their states. The regulatory constraints imposed by the federal government on the states must be removed if we are to respond to our country's energy crisis and at the same time, insure that reclamation is accomplished in an effective manner.

Sincerely yours,

ARTHUR A. LINK,
Governor.

PUBLIC SERVICE COMMISSION,
Bismarck, N. Dak., July 3, 1979.

Hon. MARK HATFIELD,
U.S. Senator,
Washington, D.C.

DEAR SENATOR HATFIELD: I have just finished reading a copy of the telegram that you recently sent to a number of governors, including Governor Arthur A. Link of North Dakota.

In your telegram, you point out that you are planning to introduce a bill which would amend the Surface Mining Act. I support your desire to amend the Surface Mining Act because the Act, as it is being administered at the present time, needs to be corrected if the United States is ever going to be able to move toward energy independence.

I visited today by telephone with Senator Quentin Burdick of North Dakota and Senator Milton R. Young. Both have indicated a willingness to support your legislation either as cosponsors or in any other way possible.

In North Dakota, the Public Service Commission is the State agency in charge of reclamation of mined lands. My concern about the present administration of the Surface Mining Act comes from the fact that, as head of the State agency charged

with planning and enforcing reclamation and environmental protection during mining, we find that OSM (Office of Surface Mining) has come way beyond what we feel the intent of the Congress was.

Our agency is planning to put together testimony in support of the legislation you plan to introduce on July 9. You may rest assured that we will do anything we can to help demonstrate to your colleagues in the Senate and House the importance and timeliness of the amendments you are proposing.

With warmest personal regards, I remain.

Yours truly,

RICHARD A. ELKIN,
President.

THE CAPITOL,
Jackson, Miss., July 12, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, McLean, Va.

DEAR SENATOR HATFIELD: Mississippi is in sympathy with your position on the Office of Surface Mining's implementation of the Surface Mining Act. We would not have the degree of conflict that other states might have as there are no active coal mines in Mississippi and have not had to regulate them under OSM standards in an interim program. For these reasons, our dealings with OSM have been fairly subdued.

In the development of our state coal mining laws and regulations, we have, by necessity, tracked the Federal regulations. If states could be given greater leeway, the size of our implementation regulations could be cut by hundreds of pages. This, of course, would mean that it would be much easier to enforce our law on a state level. A great deal of language in the Federal law does not pertain to many of the states, and it would be helpful if these states could be given greater latitude in developing their own programs.

We support all of your goals as stated in paragraph 4 of your mailgram except that we find no particular fault in the bonding requirements as applied to Mississippi. We know of the problems of state regulatory authorities in their dealings with OSM and will give you our support in your attempts to make the law more workable and more sympathetic to the states.

If you would like to discuss this matter further, please do not hesitate to call on me.

With kindest personal regards and best wishes, I am

Sincerely,

CLIFF FINCH,
Governor.

GOVERNOR'S OFFICE,
Montgomery, Ala., July 17, 1979.

Hon. MARK O. HATFIELD,
U.S. Senator, U.S. Senate Committee on Energy and Natural Resources, Washington, D.C.

DEAR SENATOR HATFIELD: I am conscious of the complex problems associated with the coal-producing states' efforts to seek compliance and primacy with the Surface Mining Control and Reclamation Act of 1977 of Public Law 95-87 and particularly of the untenable schedule to achieve program approval.

I wholeheartedly support your proposals.

With kindest regards, I remain

Sincerely,

FOB JAMES,
Governor.

LEXINGTON, KY.,
July 17, 1979.

Senator MARK O. HATFIELD,
Attention Members of Energy and Natural Resources Committee, U.S. Senate, Washington, D.C.

The Interstate Mining Compact Commission understands that 3 amendments are before the Energy and Natural Resources Committee: 1. Extend for 1 year the time allowed States to submit their State program; 2. Remove the requirement that States comply with the Secretary's rules and regulations which implements the act, but leaving intact the requirement that States comply with the act; 3. Insures that implementation of a federal lands program coincides with implementation of a state program or federal program as appropriate. In a vote taken by our member States the majority favors these amendments.

In favor of amendments are Maryland, North Carolina, West Virginia, Ohio, Virginia, Illinois, Alabama, Oklahoma, Tennessee, Kentucky, Indiana. Texas neither approves or disapproves of the time extension but votes for the other 2 amendments. South Carolina was unavailable to vote; Pennsylvania favors the time extension, but has not yet decided on the other 2 amendments.

INTERSTATE MINING COMPACT COMMISSION.

INTERSTATE MINING COMPACT,
LEXINGTON, KY.,
July 19, 1979.

Senator MARK O. HATFIELD,
U.S. Senate,
Washington, D.C.

In review of amendments before the Energy and Resources Committee, Tennessee has reconsidered and is now supporting the Jackson Amendment.

OFFICE OF THE GOVERNOR,
CHEYENNE, WYO.,
July 16, 1979.

Senator MARK O. HATFIELD,
Washington, D.C.

DEAR SENATOR HATFIELD: I wish to confirm the agreement we reached in Washington last Wednesday regarding amendments to the Surface Mining Control and Reclamation Act of 1977. First, I support a general 7-month extension of the deadlines as proposed by Senator Jackson. This will give the States approximately 1 full year from publication of the Federal permanent program regulations to prepare a State program submission as was originally contemplated under the act. Second, I strongly support the agreement reached by you and Senator Jackson to extend the Federal lands program until the Secretary has taken final action on a State's proposed program: I understand that the proposed amendment would add the following sentence:

"Subject to the provisions of section 523 (c) implementation of a Federal land program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate."

These amendments will not resolve all of our problems with the Federal Office of Surface Mining but they represent a beginning.

I sincerely appreciate your efforts on behalf of Wyoming and her sister States on this matter.

ED HERSCHLER,
Governor.

NATIONAL GOVERNORS' ASSOCIATION,
July 13, 1979.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: Thank you for your letter of June 28th concerning the National Governors' Association's position on amendments to the Surface Mining Control and Reclamation Act of 1977. The governors strongly support the legislation you have introduced, S. 1403, which extends the deadline for submission of state programs seven months beyond the current August 3, 1979 deadline. This extension is much needed to allow states the full twelve months the Act originally provided for the preparation of state programs. The National Governors' Association strongly supported passage of the Act and we feel your bill insures that the intent of the Act will be carried out.

As regards the amendments offered by Senator Hatfield, the Association has no existing policy relating to these changes. In addition, no governor proposed any new policy dealing with surface mining during our recently completed annual meeting in Louisville. Hence, we cannot support the Hatfield amendments as a matter of NGA policy.

I would add that I, as Governor of Colorado, strongly support the extension of the deadline for implementation of the permanent program regulations on federal lands until final action has been taken on state program submissions. The agreement reached Wednesday between you, Governor Herschler, Congressman Udall, and Senator Hatfield is a very positive step. I also agree with your feeling that any other amendments, such as those proposed by Senator Hatfield, should be considered separately from the legislation to extend these two deadlines. These extensions are of critical importance to the achievement of state primacy in surface mining regulation and should not be endangered by other amendments, no matter how worthy.

I appreciate your continuing interest in the implementation of the Surface Mining Act and would welcome the participation of your staff in monitoring negotiations between the states and OSM.

Sincerely,

RICHARD D. LAMM,
Chairman, Natural Resources and Environmental Management Committee.

U.S. SENATE, COMMITTEE ON
ENERGY AND NATURAL RESOURCES,
Washington, D.C., July 20, 1979.

DAVE: Robin Ross, Deputy Counsel to Gov. Thornburgh, called and gave me the text of a telegram that is being sent to all Members of our Committee.

"I strongly support the need for extending the deadline for submission and approval of state program applications under the Federal Surface Mining Control and Reclamation Act of 1977 as proposed in H.R. 4728 and S. 1403.

"I support state flexibility in administering a delegated Federal program, as embodied in Sec. 2 of the Hatfield-Ford Amendments to S. 1403.

"GOV. DICK THORNBURGH."

Please call Robin when the vote has been taken to let him know how it turned out. (717) 787-2551.

[Telegram to be sent to U.S. Senator Mark O. Hatfield, U.S. Senate Committee on Energy and Natural Resources]

DEAR SENATOR HATFIELD: The State of New Mexico has reviewed the proposed amendments to the Federal Surface Mining Act which you are considering for introduction in the United States Senate, and strongly support them as being in New Mexico's and the Nation's best interest.

We agree that the Performance Standards on Reclamation Requirements set by the Act should not be diminished. However, performance should be measured by results achieved, and the individual states should be allowed to devise the proper methods to achieve the desired results. The present final surface mining regulations recently published by the Office of Surface Mining are tedious and complex and inflexible, and will actually impede the efforts of state reclamation agencies in developing improved reclamation technologies. We also strongly support the extension of the time allowed states to submit their reclamation programs.

As you have stated, it is the clear intent of the Act that the states should assume the responsibility in planning and providing en-

vironmental protection, and ensuring reclamation of coal mined lands with high federal standards. The Act should be amended to protect that intent.

If there is any further effort that we can make to help in passage of these amendments, please advise.

Sincerely,

BRUCE KING,
Governor, State of New Mexico.

MONTGOMERY, ALA.,
July 16, 1979.

Senator MARK O. HATFIELD,
Capitol One, D.C.

I urge you to support the Ford-Hatfield amendment to SB1403.

FOB JAMES,
Governor, State of Alabama.

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., July 10, 1979.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The State of North Dakota has great concern with the implementation of legislation affecting surface mining. I understand that your Committee will take up this matter in the near future. I also understand that Senator Hatfield will propose a series of amendments at that time.

I would like to take this opportunity to record my support for Senator Hatfield's proposals as well as the support of the State of North Dakota. I attach for your information copies of pertinent correspondence from the North Dakota Public Services Commission to me, and from Governor Link to Senator Hatfield.

I also attach a series of amendments recommended by the State of North Dakota. I earnestly request that you and your colleagues on the Committee give them serious consideration. They will go far in helping insure that the enforcement of this Act follows the original intent of Congress.

Thank you very much for your assistance in this matter.

With kind regards, I am

Sincerely,

QUENTIN N. BURDICK.

NATIONAL GOVERNORS' ASSOCIATION,
July 13, 1979.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: Thank you for your letter of June 28th concerning the National Governors' Association's position on amendments to the Surface Mining Control and Reclamation Act of 1977. The governors strongly support the legislation you have introduced, S. 1403, which extends the deadline for submission of state programs seven months beyond the current August 3, 1979 deadline. This extension is much needed to allow states the full twelve months the Act originally provided for the preparation of state programs. The National Governors' Association strongly supported passage of the Act and we feel your bill insures that the intent of the Act will be carried out.

As regards the amendments offered by Senator Hatfield, the Association has no existing policy relating to these changes. In addition, no governor proposed any new policy dealing with surface mining during our recently completed annual meeting in Louisville. Hence, we cannot support the Hatfield amendments as a matter of NGA policy.

I would add that I, as Governor of Colorado, strongly support the extension of the deadline for implementation of the permanent program regulations on federal lands until final action has been taken on state program submissions. The agreement reached Wednesday between you, Governor Herschler, Congressman Udall, and Senator Hatfield is a very positive step. I also agree with your feeling that any other amendments, such as those proposed by Senator Hatfield, should be considered separately from the legislation to extend these two deadlines. These extensions are of critical importance to the achievement of state primacy in surface mining regulation and should not be endangered by other amendments, no matter how worthy.

I appreciate your continuing interest in the implementation of the Surface Mining Act and would welcome the participation of your staff in monitoring negotiations between the states and OSM.

Sincerely,

RICHARD D. LAMM,
Chairman, Natural Resources and Environmental Management Committee.

PUBLIC SERVICE COMMISSION,
STATE OF NORTH DAKOTA,
Bismarck, N. Dak., July 3, 1979.

Hon. MILTON R. YOUNG,
U. S. Senate,
Dirksen Office Building,
Washington, D.C.

DEAR SENATOR YOUNG: It is our understanding that Senator Mark Hatfield of Oregon is intending to sponsor a bill which would amend the Federal Surface Mining Control and Reclamation Act of 1977 to insure that the states can continue to administer and enforce its surface coal mining and reclamation laws.

The North Dakota Public Service Commission urges you to co-sponsor this legislation and work for its enactment. In addition, the PSC is requesting that four additional amendments be incorporated into the Hatfield bill as we believe these amendments are essential to the existence of a workable state program for North Dakota. The additional amendments we propose are as follows:

First. A deletion of the requirement that North Dakota must disapprove a permit application for violation by the operator of another state's environmental laws even though the other state's environmental laws may be inapplicable to operations in the State of North Dakota (see Attachment 1);

Second. A deletion of an escrow provision which violates the due process rights of the operators and also requires penalties to be assessed prior to an examination of the evidence by a state regulatory authority (see Attachment 2);

Third. A prohibition on the imposition of a federal lands program so that a dual layer of federal and state bureaucracy is avoided (see Attachment 3); and

Fourth. A clarification of the definition of federal lands so that federal permitting is not required for private lands above federal coal (see Attachment 4).

We are also enclosing a copy of the proposed Hatfield bill with our suggested amendments incorporated therein (see Attachment 5). We would appreciate it if you would contact Senator Hatfield and his staff prior to introduction of his bill and attempt to get our suggested amendments included.

Please let us know if you have any questions regarding these amendments.

We do believe it critical to our state's reclamation program that these amendments be adopted. Thank you in advance for your assistance.

Sincerely,

RICHARD A. ELKIN,
President.
BEN J. WOLF,
Commissioner.
BRUCE HAGEN,
Commissioner.

ATTACHMENT 1

PROPOSED AMENDMENT TO PUBLIC LAW 95-87, 30 U.S.C. 1201 ET SEQ.

Section 6. (a) Section 510(c) of the Act is amended by inserting after the phrase "The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any" the word "Federal", and by inserting after the phrase "law, rule, or regulation of the United States, or of any" the word "Federal".

Rationale:

North Dakota vigorously objects to OSM's interpretation of Section 510(c) of the Act as including a notice of violation of any State air, water or other environmental protection statute with respect to coal mining operations. OSM's interpretation goes well beyond the meaning of Section 510(c). If Congress had intended that an applicant be required to list any notice of violation of any State law, it could easily have said so in Section 510(c). However, Section 510(c) does not mention violations of State laws. The only notices of violations that are required to be listed are violations of "this Act" and "any law, rule, or regulation of the United States, or of any department or agency in the United States." The word "State" is conspicuously absent. Section 510(c) further states as follows: "where the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or such other laws referred to (in) this subsection . . ." The "other laws" referred to in Section 510(c) are laws of the "United States." No reference is made to other State laws. Nor does the last quoted phrase refer to any "rule or regulation" of any department or agency in the United States. The quoted phrase only refers to other "laws."

However, OSM has chosen to interpret Section 510(c) as including a violation of any "State" air, water, or other environmental protection statute that implements a similar federal statute. A violation of a State law that is more stringent than the Federal Act, or a violation of a State law which governs conditions not existing in all states, should have no bearing on the issuance of a permit in another state. OSM's interpretation would require the applicant to meet the standards of the most stringent state in which the permit applicant operates before he could operate in any other state. The effect of this is to apply the standards of the Act to the standards of the most stringent state or to the state where peculiar conditions exist.

In addition, it is an extremely burdensome process for the applicant to list all other State law violations, no matter how irrelevant, and for the State regulatory authority to examine all of these other violations, no matter how inapplicable. In order for a State program to be "approved," the State program must be at least as stringent as the Act. The State regulatory authority should therefore not be required to concern itself with violations of other State laws that are more stringent than the minimum required by the Act, particularly where the other State law is concerned with a different type of coal mining operation from that commonly used in the State in which the application is being made.

The type of examination envisioned by OSM will make the application process more costly, and will hamper the flexibility of a State. If the Federal government wants to go to this extreme when issuing Federal permits, it may do so. However, the States should not also be burdened with such an unnecessary, expensive, and burdensome approach which is contrary to the intent of Congress.

ATTACHMENT 2

PROPOSED AMENDMENT TO PUBLIC LAW 95–87, 30 U.S.C., 1201 ET SEQ.

Section 6. (b) Section 518 of the Act is amended by deleting subsection (c) thereof in its entirety.

Rationale:

The "escrow account" procedure set forth in Section 518(c) of the Federal Act is a violation of the fundamental constitutional right of due process. This section requires an operator, who may later be absolved from all violations, to pay a "proposed" penalty in advance as a condition for obtaining a hearing on the violation. If he does not pay this "proposed" penalty when due, he thereby waives all legal rights to contest the violation or the amount of the penalty.

The operator should not be required to pay a penalty until after the amount of the penalty has been determined as a result of a hearing on a violation. If the purpose of this section is to ensure collection of the penalty, there are other provisions in the Act that can be used to accomplish this purpose without violating rights of due process, such as Section 518(d), which allows civil penalties to be recovered in civil actions.

An additional effect of this section is to assess a penalty without examining the evidence. The goal of enforcement should be effective remedial measures that result in sound reclamation practices. Remedial measures are a much more effective means of insuring compliance with the law and in achieving reclamation. For example, the North Dakota PSC recently decided a case where the remedial measures resulted in a cost of over $100,000 for the operator. If the North Dakota PSC had been required to assess the penalty prior to the hearings on the violations in question, it is questionable whether effective remedial measures could have been imposed. Thus, we believe that Section 518 (c) prevents a regulatory authority from assessing all of the evidence and then making a rational decision on what the most effective penalty should be as it relates to the goal of actually accomplishing reclamation. For these reasons, we strongly urge the repeal of Section 518(c) of the federal Act.

ATTACHMENT 3

PROPOSED AMENDMENT TO PUBLIC LAW 95–87, 30 U.S.C. 1201 ET SEQ.

Section 67. (a) Section 523(a) of the Act is amended by deleting the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Implementation of a Federal lands program shall only occur if a State program has been disapproved and the State has failed to remedy the defects within a reasonable time, or if a State program has been approved and the State has elected not to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State."

Rationale:

A Federal lands program should not be implemented by OSM until after either a State program has been disapproved, or, if approved, until a State has elected not to enter into a cooperative agreement to regulate Federal lands. The amendment proposed by the North Dakota Public Service Commission would insure that there would not be a dual level of bureaucracy in a State at anytime. An amendment providing only that the timing of a Federal lands program should coincide with either the implementation of a state program or a Federal program will not prevent a dual level of bureaucracy from occurring.

If OSM is given the opportunity at anytime to implement its federal lands program, our experience has shown that the result will be an "administrative disaster," which will strangle administrators, operators and citizens.

ATTACHMENT 4

PROPOSED AMENDMENT TO PUBLIC LAW 95–87, 30 U.S.C. 1201 ET SEQ.

Section 67. (c) Section 701(4) of the Act is amended at the end of the paragraph by deleting the period and by adding the phrase ": Provided further, that this definition does not include private or State surface lands above a Federal mineral interest."

Rationale:

The policies and regulations of OSM have the effect of requiring OSM approval for surface coal mining operations on all private and State lands in the State of North Dakota.

In North Dakota, as in many western States, Federal lands are interspersed with private and State lands. Specifically, approximately 75 percent of our State's coal reserves are found on private and State lands with the remaining 25 percent being found on Federal lands.

However, under the umbrella of "protection for public lands," OSM's permanent program regulations (Section 741.11(b), 44 Fed. Reg. 15333, 1979) provide that intermingled private and State lands must be mined pursuant to OSM standards, not State standards. In addition, OSM requires Federal approval of any "associated disturbances" on private lands above Federal Coal.

The effect of OSM's implementation of the Federal Act is clear: the Federal government not only will control mining and development on Federal lands, but they have now, through OSM, extended their authority regarding development to private and State lands as well. OSM's extension of authority to private and State lands for States with State programs is contrary to the intent of Congress.

Certainly, we agree that the States should not take actions that adversely impact the Federal coal resource. However, associated disturbances such as haul roads or topsoil stockpiles on private lands above Federal coal do not in anyway adversely affect the Federal coal. Thus, associated disturbances on private lands should not be subject to Federal permit or approval.

In order to prevent OSM from controlling all activities on private and State lands, we urge that a proviso to the definition of "Federal lands" be added which would "except" private or State surface lands above a Federal mineral estate from the Federal land definition. In otner words, we believe the surface owner above Federal coal, whether it is the State or a private individual, should control the surface without regard to the desires or permission of the Federal government. We also wish to point out that it was on the basis of this philosophy that Congress enacted the surface owner consent provision of the Federal Act (see 30 U.S.C. 1304).

ATTACHMENT 5

PROPOSED AMENDMENTS SUBMITTED BY NORTH DAKOTA PUBLIC SERVICE COMMISSION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Mining Control and Reclamation Act Amendments of 1979".

Section 1. (Same as proposed Hatfield Bill).

Section 2. (Same as proposed Hatfield Bill).

Section 3. (Same as proposed Hatfield Bill).

Section 4. (Same as proposed Hatfield Bill).

Section 5. (Same as proposed Hatfield Bill).

Section 6. (a) Section 510(c) of the Act is amended by inserting after the phrase "The applicant shall file with his permit application a schedule listing any and all notices of violations of this Act and any" the word "Federal", and by inserting after the phrase "law, rule, or regulation of the United States, or of any" the word "Federal".

(b) Section 518 of the Act is amended by deleting subsection (c) thereof in its entirety.

Section 7. (a) Section 523(a) of the Act is amended by deleting the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Implementation of a Federal Lands program shall only occur if a State program has been disapproved and the State has failed to remedy the defects within a reasonable time, or if a State program has been approved and the State has elected not to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State."

(b) (Same as proposed Hatfield Bill).

(c) Section 701(4) of the Act is amended at the end of the paragraph by deleting the period and by adding the phrase ": Provided further, that this definition does not include private or State surface lands above a Federal mineral interest."

Section 78. (Same as proposed Hatfield Bill).

STATE OF WASHINGTON,
OFFICE OF THE GOVERNOR,
July 18, 1979.

Senator MARK O. HATFIELD,
Ranking Minority Member, U.S. Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR SENATOR HATFIELD: I find your letter proposing changes in the federal Surface Mining Act encouraging, but even with those proposed changes it still puts the states in the position of having to administer a federal program for which the State must provide part of the funding. You may not have been aware that our Department of Natural Resources, the agency in our State that administers our Surface Mined Land Reclamation Act, made the decision some time ago not to participate in the federal reclamation program. The reason for that decision was that the law and regulations were written so tightly that we felt that we would have to duplicate the Federal law and rules and regulations almost verbatim to have an acceptable program. This provided no latitude to fit the regulations to our State's rather unique geologic and climatic conditions.

Our reclamation staff has reviewed your proposed changes and find them headed in the right direction, but they still feel the law will be too tightly written to give proper latitude to cover regional variations in conditions. It is clear that your amendments are to get more states to administer the federal program rather than to correct the basic problem of the federal government interloping into the state area. It is my feeling that all that is needed is a law that provides an adequate vehicle for states to set up reclamation programs. Acceptable reclamation should be the object of the law and it should be up to the states to achieve the minimum standards set by the federal law.

On advice from our reclamation staff, I give tacit support to the changes you are proposing in P.L. 95–86, and hope that modifications can be made in the future to take into consideration the states' actual needs. I would propose that congressional staff talk to the states that had reclamation acts predating the federal act and see just how much of P.L. 95–86 is really necessary.

Sincerely,

DIXY LEE RAY,
Governor.

OHIO DEPARTMENT
OF NATURAL RESOURCES,
Columbus, Ohio, July 20, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate Committee on Energy and Natural Resources, Russell Building, Washington, D.C.

DEAR SENATOR HATFIELD: This letter is in response to your mailgram of June 28, 1979 to Governor James A. Rhodes concerning proposed amendments to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. In Ohio, Governor Rhodes has designated the Division of Reclamation, Ohio Department of Natural Resources as the agency authorized to participate in the Federal programs established by P.L. 95-87. I have enclosed an affidavit prepared by Charles E. Call, Chief of the Division of Reclamation supporting your proposed amendments. I hope the affidavit provides you with the necessary information.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

ROBERT W. TEATER,
Director.

STATE OF MONTANA,
OFFICE OF THE GOVERNOR,
Helena, August 10, 1979.

Hon. MARK O. HATFIELD,
U.S. Senate, Committee on Energy and Natural Resources, Washington, D.C.

DEAR SENATOR HATFIELD: I am in receipt of your recent letter regarding modification of the Federal Surface Mining Control and Reclamation Act of 1977. Several of the points which you mentioned are of deep concern to me and I believe require some corrective action. Fortunately Montana will be in a position to submit its permanent program to the Office of Surface Mining in August and therefore several of the points you mentioned are not of immediate concern. The two items of your proposal in which I am most interested and can certainly lend my support, deal with the delegation of authority to states to review and approve mine plans of federal lands and the delay in implementation of the federal lands program. Without these necessary changes, I believe that Congress' intent to have the states play the primary role in implementation of the reclamation program will be a facade in the west because of the extensive federal land holdings.

I am also concerned with the extensive regulations required by the Office of Surface Mining in its implementation of the act. Prior to passage of the federal act, Montana administered its program with 20 pages of law and 17 pages of regulations. Under the federal program required by the Office of Surface Mining, we now have over 70 pages of law and approximately 200 pages of regulations, many of which are unnecessary or not applicable. I do, however, have some reservations about basing approval of state programs solely on the requirements of the act. It would seem that the regulations adopted by the Secretary are the Office of Surface Mining's interpretation of what the act requires; therefore, as long as the Office of Surface Mining and the Secretary have approval authority they can simply demand that the states' programs be consistent with the regulations. If Congress is to address this issue, I believe it must clearly indicate the standards which are to be used to judge state programs; otherwise such decisions will likely be made by the courts with little direction from Congress. More important, however, is the potential for conflict with the federal lands program. If the standards for judging state programs acceptability are changed, then they must be made consistent with standards applied to the federal lands. The two programs must be consistent in order for me to support such a change.

As to the remaining points contained in your proposed legislation, Montana certainly has no objections to them. If I can be of any further assistance to you, please do not hesitate to contact me.

Best regards.

Sincerely,

THOMAS L. JUDGE,
Governor.

STATE OF WASHINGTON,
OFFICE OF THE GOVERNOR,
July 18, 1979.

Senator MARK O. HATFIELD,
Ranking Minority Member, U.S. Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR SENATOR HATFIELD: I find your letter proposing changes in the federal Surface Mining Act encouraging, but even with those proposed changes it still puts the states in the position of having to administer a federal program for which the State must provide part of the funding. You may not have been aware that our Department of Natural Resources, the agency in our State that administers our Surface Mine Land Reclamation Act, made the decision some time ago not to participate in the federal reclamation program. The reason for that decision was that the law and regulations were written so tightly that we felt that we would have to duplicate the federal law and rules and regulations almost verbatim to have an acceptable program. This provided no latitude to fit the regulations to our State's rather unique geologic and climatic conditions.

Our reclamation staff has reviewed your proposed changes and find them headed in the right direction, but they still feel the law will be too tightly written to give proper latitude to cover regional variations in conditions. It is clear that your amendments are to get more states to administer the federal program rather than to correct the basic problem of the federal government interloping into the state area. It is my feeling that all that is needed is a law that provides an adequate vehicle for states to set up reclamation programs. Acceptable reclamation should be the object of the law and it should be up to the states to achieve the minimum standards set by the federal law.

On advice from our reclamation staff, I give tacit support to the changes you are proposing in P.L. 95-86, and hope that modifications can be made in the future to take into consideration the states' actual needs. I would propose that congressional staff talk to the states that had reclamation acts predating the federal act and see just how much of P.L. 95-86 is really necessary.

Sincerely,

DIXY LEE RAY,
Governor.

STATE OF MICHIGAN,
OFFICE OF THE GOVERNOR,
Lansing, July 31, 1979.

Hon. MARK O. HATFIELD,
U.S. Senator,
Committee on Energy and Natural Resources, Washington, D.C.

DEAR SENATOR HATFIELD: Thank you for your communications regarding amendments to the Surface Mining Control and Reclamation Act.

Michigan's Department of Natural Resources is charged with the responsibility in our state of formulating our program. I have received its comments regarding your suggestions.

I support your efforts to reestablish the original intent of the Congress to place primary responsibility for the Surface Mining Control and Reclamation Act with the individual states.

Additionally, I believe that it is critical that the act be amended to assure that state governments are granted 100 percent federal funding to meet additional costs incurred by new federal requirements. In these times of constrained budgets, it is imperative that when responsibilities are given to individual states, that concurrent funding to meet those responsibilities also be provided.

And finally, I believe that "potential coal-producing states" should also be represented on the proposed commission. At one time, Michigan had as many as 38 operating coal mines. Although we are not currently a coal-producing state, we do have sufficient reserves to have already created an interest in future coal mining. Representation by states like Michigan should be included.

Thank you for allowing me to comment on this important issue. I am also providing copies of this letter to the members of Michigan's Congressional delegation.

Kind personal regards.

Sincerely,

WILLIAM G. MILLIKEN,
Governor.

Mr. HATFIELD. The States included are West Virginia, Virginia, Arkansas, Pennsylvania, Ohio, Illinois, New Mexico, North Dakota, Mississippi, Alabama, Maryland, North Carolina, Oklahoma, Kentucky, Indiana, Wyoming, Washington, Michigan, and Texas.

Mr. President, I think probably one of the most eloquent pieces of testimony, which represented many of the Governors' viewpoints, was given by Gov. Ed Herschler of Wyoming when he testified on his own behalf and on behalf of the National Governors' Association. I would like to underscore that his testimony was presented on behalf of the National Governors' Association as well as himself. In this testimony I would like to quote a number of his comments because they are very pertinent to the issues which have been raised by the Senator from Montana. He says:

As you know, the Surface Mining Control and Reclamation Act of 1977 looks to the States to take the lead in implementing a national program. The thrust of my testimony today is that the Federal Office of Surface Mining has jeopardized this fundamental feature of the Federal act with its performance to date. And we doubt that the situation will improve in the months to come.

My personal experience has been as bad as any. As a governor who has built a fine reclamation program, from a state destined to be the nation's leading coal producer, the problems came to my attention early. I have faithfully pursued my remedies within Interior for over a year; the best that can be said about the result is that Interior has occasionally been courteous. More often than not, I have been rewarded for my pains with episodes like the cooperative agreement that was forgotten for four months, or the Secretary's personal letter detailing 67 major shortcomings of the Wyoming statutes.

The fact that OSM has used three-fifths of the States' time, in addition to its own, points to more than OSM's failure to meet a deadline. It illustrates OSM's basic attitude toward the States. They give us excuses, justifications, offer to work hand in hand, reassurance that we are to receive primacy—but they deny us the things that count.

Then he lists various and sundry recommendations which are incorporated basically in the committee print or the committee bill, as amended by Senator FORD's and my amendments.

First, interpret or amend the deadlines to give States at least 12 full months from publication of the permanent program standards to prepare program submissions, along with all other timetable adjustments necessary to bring the States back into the act as partners; we are confident that this delay will not cause environmental harm.

Second, interpret or amend the requirements for State program submissions so that the standards of the act are the test of State program adequacy, not the overblown Federal regulations. An amendment would change section 503(A)(7) to read, rules and regulations consistent with this act.

Still quoting from the Governor's testimony:

I would like to close with some remarks on my own behalf. Mr. Chairman, I have never dealt with a Federal agency as arrogant as the Office of Surface Mining. Through one failure after another of its own—deadlines, our cooperative agreement, last fall's farce with mountaintop mining—OSM has steadfastly maintained that the only shortcomings that count are those of someone else. It makes no sense to me that the States and the operators should be accountable while OSM is not. As the creators of this agency, I sincerely hope that you can help me, and the State officials with me today, to restore equity to the implementation of this act.

Governor Herschler continues:

Our final area of immediate concern is that OSM has pushed the whole surface mining program from complexity to regulatory overkill. It is significant that the agency is still suffering growing pains. But the chief problem is the sheer volume of the Federal regulations. There is simply too much red tape.

Our disillusionment with the agency doesn't mean that we are disillusioned with the act. The States of the National Governors' Association believe that we can make the tough standards of the act work—in large part because many of us had standards as good or better before the act was passed. The problem hasn't been the standards, the problem has been OSM.

We have a great many ideas for action that would help the situation. The most immediate are as follows:

Mr. President, I would also like to submit for the RECORD, and I ask unanimous consent to do so, the full statement of Governor Herschler of Wyoming at this point in the RECORD.

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

STATEMENT OF GOVERNOR ED HERSCHLER OF WYOMING

I am Gov. Ed Herschler of Wyoming. I am here today with other State officials on behalf of the National Governors' Association. We share a number of strong concerns regarding the performance of the Federal Office of Surface Mining, and hope that our testimony will be of interest to this committee.

As you know, the Surface Mining Control and Reclamation Act of 1977 looks to the States to take the lead in implementing a national program. The thrust of my testimony today is that the Federal Office of Surface Mining has jeopardized this fundamental feature of the Federal act with its performance to date. And we doubt that the situation will improve in the months to come.

My personal experience has been as bad as any. As a Governor who has built a fine reclamation program, from a State destined to be the Nation's leading coal producer, the problems came to my attention early. I have faithfully pursued my remedies within Interior for over a year; the best that can be said about the result is that Interior has occasionally been courteous. More often than not, I have been rewarded for my pains with episodes like the cooperative agreement that was forgotten for four months, or the Secretary's personal letter detailing 67 major shortcomings of the Wyoming statutes. Most States have horror stories of their own. Many of these problems merge into five common concerns.

Our first principal concern is with the August 3 deadline for State program submissions. I have prepared a chart on this question for your reference. You will see that the Congress contemplated a reciprocal schedule for implementation of the act—the Secretary prepares regulations, the States respond with proposed programs, and the Secretary assesses the adequacy of the State programs. The message of my chart is simple. Under the act, the States had the time to work as partners. In practice, OSM has frustrated that partnership.

The fact that OSM has used three-fifths of the States' time, in addition to its own, points to more than OSM's failure to meet a deadline. It illustrates OSM's basic attitude toward the States. They give us excuses, justifications, offer to work hand in hand, reassurance that we are to receive primacy—but they deny us the things that count.

Another major State concern involves the State window. As you know, section 101 (f) of the act vests primary regulatory responsibility in the States "because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations". OSM regulations implement this policy through the State window, a regulatory provision which allows individual States to depart from the language of Federal regulations.

As a practical matter, the window is closed. The regulations require excessive proof that a departure from the Federal regulations is warranted. Many State officials believe that the required showing would be as expensive as a lawsuit. The result is particularly frustrating because the Federal regulations go beyond the standards of the act to require specific procedures and techniques. It follows that the States will be required to use procedures that clearly do not fit nationwide. This is not what the Congress intended.

We have other reasons to believe that OSM is not serious about the State window. First, the permanent program standards are scheduled to become effective on Federal lands on October 12, long before State programs can be approved. This would leave operators in public lands States open to costly changes in procedures if the State window were ever used. Second, the premature deadline for program submissions means that many States are looking at so much paperwork by August 3 that they will have no time to prepare serious proposals. Third, OSM has failed to take any steps to lead in the direction of new research in mined land reclamation, ignoring its statutory mandate to assist the States in this regard and effectively looking to frozen regulations nationwide. The States doubt that any of this was what Congress intended, either.

Our third major area of concern is OSM's approach to enforcement policy. The States understood the act to place OSM in the position of an auditor of State performance, with the manpower and practices of an auditor. Instead, we find excessive Federal manpower—810 permanent employees on board as of June 7—and rhetoric which strongly indicates that OSM intends to duplicate State authority.

This duplication isn't limited to enforcement. In May, OSM region V sent letters to Wyoming operators notifying them that spring was here, and that OSM stood ready to help them get their vegetation in order. I was naturally pleased to hear that spring had arrived and that OSM was on hand to explain it; spring has always been something of a mystery to me. But I don't think OSM has any business handing out free gardening tips in Wyoming, particularly when communications with the operators are supposed to be channeled through the State.

The clearest indicator of OSM's approach to enforcement is its practice of defining performance in terms of the number of violations it issues to operators. These numbers clearly give OSM a dramatic basis for criticizing the states, just as they give OSM an excuse for expanding its activities. But the practice represents a separation of the permit review, technical assistance, and inspection functions which are usually integrated at the state level. This leads to federal inspectors incapable of giving operators competent advice on alternatives for curing violations. It abdicates a field responsibility for educating operators. It builds more inertia and red tape into the system, as the checklists of OSM inspectors become ever longer and ever less flexible. The experience of the states indicates that this is a mistake; we do not need an inflexible bureaucracy to enforce the standards of the act.

A fourth subject of immediate concern is OSM's method for evaluating state program submissions. We originally understood the act to provide for state program approval on a simple showing that the seven tests of section 503(A) were met. We thought there would be ample opportunity to either make adjustments or withdraw federal approval later, if necessary. Now we find ourselves facing a burden of proof apparently like that of a plaintiff in a lawsuit. Further, while OSM has laid out the criteria for making its judgment, we have little or no idea what standards go along with the criteria, or which criteria are most important. We wonder if OSM really has any standards at all. This is an impossible position for the states, particularly in view of the limited time to prepare a program submission before August 3.

Our final area of immediate concern is that OSM has pushed the whole surface mining program from complexity to regulatory overkill. It is significant that the agency is still suffering growing pains. But the chief problem is the sheer volume of the federal regulations. There is simply too much red tape.

We have been told that the principal purpose of the regulations is to define the standards of the program, and in doing so to provide clear guidance for us. It hasn't worked this way. The expansion of state program submission requirements has only created new uncertainties, as I have shown. And the volume of paperwork will create more uncertainties. Virginia's program submission is now over 1500 pages long. It must be published in summary form in a newspaper of general circulation in the state as part of OSM's review. How long must this summary be? If Wyoming experience is any indicator, there will be 1500 pages of correspondence before we have an answer.

Even where the standards do make things clear, the value of the detail is questionable. We find, for example, that the biologic community of a perennial stream is related to certain questions regarding "two or more species of arthropods or molluscan animals." This is almost silly.

Since a great deal of this red tape ultimately has little to do with the welfare of the land, it seems only sensible to conclude that it is related to the welfare of OSM instead. It is inevitable that this red tape will be used to justify additional red tape, and additional OSM. The tide is running in the direction of justifications for eliminating the states entirely, a dandy result for federal employment, but a terrible result for the country. We should stop this bureaucratic juggernaut before it grows beyond all control.

To sum up, Mr. Chairman, the states do not believe that OSM in Washington is committed to the delegation of primary program authority to the states. Despite repeated assurances to the contrary, we do not believe that their performance matches their promises.

Our disillusionment with the agency doesn't mean that we are disillusioned with the act. The states of the national governors association believe that we can make the tough standards of the act work—in large part because many of us had standards as good or better before the act was passed. The problem hasn't been the standards, the problem has been OSM.

We have a great many ideas for action that would help the situation. The most immediate are as follows:

First, interpret or amend the deadlines to give states at least twelve full months from publication of the permanent program standards to prepare program submissions, along with all other timetable adjustments necessary to bring the states back into the act as partners; we are confident that this delay will not cause environmental harm.

Second, interpret or amend the requirements for state program submissions so that the standards of the act are the test of state program adequacy, not the overblown federal regulations. An amendment would change section 503(A)(7) to read, "rules and regulations consistent with this act."

Third, provide for congressional oversight of a detailed sunset schedule within OSM, to limit the OSM inspection function to its proper role of auditing state programs.

Fourth, reduce OSM's budget so that it will not have the resources to stimulate its own bureaucratic expansion, and so that it will have greater incentive to delegate to the states.

Fifth, interpret section 523 (C) to provide for maximum possible delegation of the secretary's authority over public lands to the states; and if OSM resists, amend the act so that the secretary can delegate this authority to the states. The simplest amendment would strike the last sentence of section 523 (C).

Sixth, establish continuing liaison between the states and this committee on the many issues remaining. For example, in view of OSM's performance on delegation to states, I believe we should unhinge title IV funds allocated to the states from the requirement for a state program under title V.

I would like to close with some remarks on my own behalf. Mr. Chairman, I have never dealt with a Federal agency as arrogant as the Office of Surface Mining. Through one failure after another of its own—deadlines, our cooperative agreement, last fall's farce with mountaintop mining—OSM has steadfastly maintained that the only shortcomings that count are those of someone else. It makes no sense to me that the states and the operators should be accountable while OSM is not. As the creators of this agency, I sincerely hope that you can help me, and the state officials with me today, to restore equity to the implementation of this act. Thank you.

STATUTORY TIMETABLE (UNDER PUBLIC LAW 95-87) VERSUS ACTUAL PERFORMANCE

	Public Law 95-87 (months)	Actual performance
Initial OSM regulations	3	4 mo, 10 days.
Permanent OSM regulations	12	19 mo, 10 days.
Submission of State programs	18	(18 mo).
Submission of State programs with extensions.	24	24 mo.
Secretary's review of response to State programs.	30	30 mo.
Cumulative time to prepare permanent Federal regulations.	12	19 mo, 10 days.
Cumulative time to prepare and submit State programs.	12	4 mo, 21 days.
Time for Secretary, DOI, to review and respond to State program submissions.	6	6 mo.

Mr. HATFIELD. Now, Mr. President, a further statement from a Governor which, I think, would be very helpful to illustrate the intensity of a feeling and also the experience on the record of the OSM up to this point, is that from Governor Lamm of Colorado.

The Chairman, in his minority views, characterizes the National Governors' Association and Governor Lamm as being opposed to the Hatfield-Ford surface mining amendments. The chairman states, and I quote:

Governor Lamm indicated in a letter of July 13, 1979 that the (National Governors') Association "cannot support the Hatfield amendments as a matter of NGA policy."

This interpretation of the NGA policy, and the Senator from Washington, should clearly realize this is most certainly not accurate. It is, in fact, entirely misleading.

What Governor Lamm said in his letter is that the NGA, as a whole, has not deliberated on the issue of surface mining, beyond those dicussions prior to Governor Herschler's testimony before the Senate. As a result, no formal vote has been recorded either in favor of or in opposition to any surface mining amendments.

The Governor of Colorado was so taken back by the interpretation accorded his letter that on July 17 he sent a clarifying telegram to the chairman, which, unfortunately, the chairman did not mention in his minority views. The telegram from Governor Lamm to Senator JACKSON reads as follows:

DENVER, COLO., *July 18, 1979.*

Hon. HENRY JACKSON,
Senate Office Building,
Washington, D.C.

The National Governors' Conference did not mean to imply in our letter of July 13 that we opposed the Hatfield amendment to the Surface Control and Reclamation Act of 1977. We have no official position on the Hatfield amendment and in fact the amendment does have support among many Governors.

GOV. RICHARD LAMM.

Mr. PERCY. Mr. President, I wonder, I wonder if within the next couple of minutes it would be possible to put a question to the floor managers with respect to the pending amendment.

Mr. HATFIELD. I yield to the Senator from Illinois.

Mr. PERCY. Mr. President, I have a question I should like to put to my distinguished colleagues, the floor managers of the present bill. As a member of the Coal Commission I find it highly desirable, to support every effort that remains consistent with the present law, consistent with the standards we know we must maintain, and yet also provides adequate leeway for the States.

However, the one concern I have is to make absolutely certain that the law we fought for for so long—the Surface Mining and Reclamation Act of 1977—cannot be undercut by this amendment. There are 18 million acres of land with coal under it that is prime farmland, half of which is in the State of Illinois. We have to insure that while this coal can be mined, the land must be restored to prime farmland, so that we can continue to grow crops. In a long colloquy on the floor, we defined what prime farmland is in the law. The intent of the law is very clear, and just for the record I would like to make certain that the present amendment will not in any way endanger that particular Federal law, which is designed to protect one of the greatest assets this country has, our prime farmland. These lands give us huge exports which we need so badly to maintain our balance of payments.

Mr. HATFIELD. Let me assure the Senator from Illinois that the amendments as proposed by Senator FORD and myself, and the one particular one to which the Senator refers, which is commonly identified as the Rockefeller amendment, in no way attacks, undermines, diminishes, or circumvents the acts which the Senator from Illinois and I both enthusiastically supported.

I remind the Senator from Illinois that the act has 115 environmental performance standards, listed in the act, and those are held inviolate by the proposals that are being considered here today on the floor. They in no way affect or impact upon those performance standards of the act.

I would say, as I have earlier, that the Senator from Illinois is familiar with the frustration that many of our constituents have experienced and that we ourselves have experienced in other areas than surface mining, where the legislative body, the Congress of the United States, has enacted a law with clear intent, clear wording, and clear understanding on the part of the initiators and the Congress itself, and then, in the implementation, have found that the agency charged with the implementation has gone far beyond what the act ever intended or included, and that those regulations have taken on the very impact of law.

Look at the problem we had with OSHA. I could not believe I had voted for that act, once I saw it in operation. We had to come back and, in effect, reconstitute what was the original intent of Congress.

This is another such experience. Right today, in our Energy Committee, we are attempting to mark up the President's proposal for synthetic fuel and for a mobilization board or commission, and the whole purpose of the mobilization commission is to create expedited proce-

dures to cut through the redtape that has brought this Nation almost to a state of paralysis on any way to deal with the energy problem.

Almost precisely the same thing is true with the Office of Surface Mining. We have found, under the regulations they have set up, that they are not attempting to subscribe to the intent of the law, which says the States have primary responsibility, and the standards set forth in the law provide that if the States fail to act, then the Secretary must establish a Federal program, but that the primary responsibility is with the States, and that is what Congress intended.

But what we have here now is that, through regulatory authority, the OSM has come up with a cloning effect, saying in effect to each State, "You shall clone the regulations that we have created," not giving the States even an opportunity to know the criteria that are expected beyond the statements of the law.

So I assure the Senator—I did not mean to get into such a long response, but the crux of this whole bill at this point is that this has maintained the standards set forth by the law has clearly defined performance standards in such detail that you can identify 115 of them, and will maintain those as stated in the law.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. PERCY. Just one moment, if I may, and then I will yield back to the members of the committee.

I would simply like to thank the distinguished Senator. With the representations that have been made, I see no reason why I cannot enthusiastically support the pending Ford-Hatfield amendment, with the Rockefeller contribution to it. I commend Governor Rockefeller on his hard work in this area.

The whole purpose and intent would seem to be to accomplish what the distinguished majority leader and I have been attempting to accomplish through regulatory reform: To cut through some of these regulations which, in the main, do not accomplish any real good, and which many times go beyond the law and the intent of Congress.

Though I do not have the floor, I will be happy to yield to the Senator from Montana. The Senator from Oregon has the floor.

Mr. MELCHER. Will the Senator from Oregon yield?

Mr. HATFIELD. I yield.

Mr. MELCHER. There has been a question as to whether the proposal would do damage to the prime farmland provisions. Indeed it would. The prime farmland section is rather short; let me read it. It says:

> In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland pursuant to Section 507(b)(16), the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to accomplish successful reclamation.

What S. 1403 does as it is presented here, and that is the objectionable feature and the only objectionable feature, is cancel all of the regulations. It cancels the regulations the Secretary of the Interior has drawn in consultation with the Secretary of Agriculture with the Secretary of Agriculture's agreement, on prime farmland. So therefore that section of the bill will not be operative any longer, because the whole section deals with those regulations drawn by the two Secretaries to identify prime farmland assure adequate reclamation plans if it is strip mined.

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

Mr. MELCHER. Yes.

Mr. PERCY. The Senator from Illinois, with 9 million acres of prime farmland in Illinois with coal under it, has no objection to that coal being mined. The only assurance I want is the absolute guarantee that that land will be restored, not just for general usage as pastureland, but restore to prime farmland. This is technically feasible and possible. A study by the Office of Management and Budget indicates that 18 million acres of prime farmland in 14 major agricultural States are potentially affected by strip mining, because they are underlain with strippable coal reserves. These 18 million acres are a substantial share of the 28 million acres of prime farmland in these 14 States.

Mr. MELCHER. That is correct.

Mr. PERCY. I have no objection to the coal being mined, and in fact would not want to keep out of the energy requirements of the country the 18 million acres of prime farmland that have coal under them. We simply want to be certain that after the mining operation is completed, the land be restored to prime farmland.

As I understand the explanation of the managers of the bill and the proponents of the amendment, this particular amendment would not allow that provision of the Federal law to be overridden. As long as it would be restored to prime farmland, I am satisfied.

Mr. MELCHER. Might I point out that the decision on how to implement a reclamation program to restore it to prime farmland is immediately struck down by removing the Federal regulations that are called for to do that very thing if section 3 of this bill is accepted.

This happens to be a section of the bill that reaches directly to those regulations. S. 1403, in this one section, just nullifies, cancels out, and repeals all of the Secretary's regulations. It would mean, in effect, that whatever Illinois did in their own regulations, under their own plan, would have to be tried in court. If that happens, we might get one result in Illinois, whereas in the neighboring State of Indiana, the courts may find that implementation of the prime farmland reclamation procedures would be entirely different. It would be utter chaos to recommend and enact into law a repeal of the regulations, and that is the objectionable feature of S. 1403.

Mr. PERCY. I would appreciate a comment from the distinguished minority manager.

Mr. HATFIELD. I think we may understand from the statement of the Senator from Montana that he is assuming a Federal lead in this. He has stated there might be differences. That was precisely the intent of the bill, that there might be unique circumstances and conditions, and that each State should have the primary responsibility to bring forth their plan, and that would be subject to approval by the Federal department.

Let me quote from section 515 of the original act:

> (7) for all prime farmlands as identified in section 507(d)(16) to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the Secretary of Agriculture, and the operator shall, as a minimum, be required to—
>
> (a) segregate—

I am summarizing: segregate the soil lands, replace and regrade the root zone material, redistribute and grade, and then demonstrate that the size of the impoundment is adequate, and then it goes on, for water impoundments, and gives all these very specific performance standards that must be included.

In no way does S. 1403 impact upon this. We in no way change this. We are only saying—as I say, I think the Senator from Montana clearly indicated his whole hand here today by saying there would be differences between States. That is exactly the argument we are making.

The law provided the primacy for the States. The law provided that the States must comply with these performance standards. S. 1403 is merely restating that proposition that was the intent of the original law.

Mr. MELCHER. Mr. President, I think that the profound effect of repealing all regulations of an act of Congress of this magnitude was properly identified by the Senator from Oregon. He just stated what the performance standards were in one section of the law, but ignored completely what the mining permit application procedures would be under prime farmland mining permits.

The courts are fouled up enough and are bogged down enough with lawsuits over energy proposals. How would repealing regulations governing coal strip mining help? That would mean each court's interpretation of what the act says and people rely on that interpretation, which will undoubtedly vary from court to court.

I think it would be hardly consistent with expediting coal strip mining procedures to have the great number of lawsuits that would follow. Some would probably be in State courts, some would be in Federal courts. Without the guidance of Federal regulations to help the court interpret the provisions of the act, I believe there would be such a variety of decisions that no one mining company operating in several different States could ever feel confident of what it could do in one State as opposed to what the

reclamation procedures would be in another State.

Mr. PERCY. Mr. President, my concern throughout this debate has been the effect S. 1403 will have on the prime farmland regulations. I wonder if the distinguished floor leader, Senator FORD, would respond for the record as to what impact the Rockefeller provision would have on those regulations?

Mr. FORD. Mr. President, I would advise the Senator from Illinois (Mr. PERCY) that I concur with Senator HATFIELD in his statement and position with respect to the effect of S. 1403 on the prime agricultural provisions of Public Law 95-87.

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

I urge my colleagues to defeat this ill-designed bill.

The Surface Mining Control and Reclamation Act of 1977 is one of the most important steps Congress has taken to protect our natural resources. Passing the law took a full decade of intensive legislative work. After working that hard to produce this milestone law, we should not now lightly pass crippling amendments to it.

It is important that we stop to remember the basic purpose of the law which S. 1401 would undercut. The Surface Mining Act is designed to prevent in the future the wholesale destruction of our land, water, and air caused by uncontrolled strip mining practices. This destruction is not merely a hypothetical possibility. Documented abuses prompted Congress to pass the law. Without the safeguards of the law, we will again see those abuses. Preventing these abuses is not just an environmental luxury; it is necessary to preserve the future economic use of mined land, to protect the public health, and to strengthen the economy.

The Surface Mining Act is even more important now than when it was enacted in 1977. Our country needs to produce more domestic coal that we anticipated even 2 years ago. We can produce that coal consistent with the guidelines of the act. To weaken the act at the very time we are accelerating our production of coal would not help us meet our energy needs, it would just prevent us from meeting the other critical national needs that prompted the strip mining law.

The original proposal of the administration and the distinguished chairman of the Energy and Natural Resources Committee would not have undercut the law. Their original proposal would have merely adjusted the deadline for States to submit their programs for implementing the law, to compensate for time lost early in the program when appropriations to the Office of Surface Mining were delayed. That proposal was reasonable.

Unfortunately, the Energy Committee went far farther than the simple extension of time for State submittals. Prompted by a well-intended but misguided concern about excessive Government regulation, the committee adopted the bill we are now considering.

I am sympathetic to the committee's frustration with Government regulation. We are all frustrated with very real abuses by the regulatory bureaucracies. But this bill will not do anything to correct any regulatory abuses. The bill is being defended with a lot of rhetoric about excessive regulation, but it will not do anything to correct a single regulatory abuse.

I trust my colleagues will not be tempted to support bad legislation just because it is being couched in terms of preventing excessive regulation.

The only real effect of this bill would be to undercut and postpone implementation of the strip mining law. Mr. President we waited 10 years to get this milestone legislation passed. We should not now have to wait longer to get it implemented.

Mr. President, I just want to take about 30 seconds to say that no one in Congress has done more to strengthen the strip mine control laws that I know of than the Senator from Montana. I strongly support his views on this measure. I hope they do prevail. I hope the pending legislation is defeated. I urge my colleagues to support the Senator from Montana in his efforts, because I think he is exactly right, and certainly it is in the interests of States such as Colorado that his views prevail.

Mr. MELCHER. I thank my friend from Colorado.

Mr. President, I yield the floor.

Mr. FORD. Mr. President, it seems ironic to me that in this debate, the distinguished Senator from Montana keeps mentioning that we are going to court. The only reason we are going to court is because of the regulations; not because of the law. OSM has burdened us with regulations that no one can understand. The bureaucrats have gone beyond the intent of the law and the result is legislation by regulation.

My colleague says this is going to take us to court. We are in court now, because of the bill he is trying to impose upon the mining States.

He talks about prime agricultural land. We worked diligently—diligently—to be sure that prime agricultural land was protected.

The Senator from Oregon listed 115 specific items that the States must comply with. That is not what Congress said would be required of the States. The act provides for uniform minimum standards. But the regulations that we now have on the books do not allow much flexibility, if any, by the States.

The Senator from Montana does not want anybody to go to court. He wants the States to operate by a cookbook, with OSM providing the regulations. If identical law is established, and identical regulations follow, then the States can never enter court to say "Big Brother has loved me too much." And Big Brother is loving the States when the Governors say, "No, we have too much, please let us develop our own regulations, our own reclamation program within the law."

The permit application shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things, I say to the good Senator from Montana, section (16):

> For those lands in the permit application which a reconnaissance inspection suggest may be prime farmland, a soil survey shall be made or obtained according to standards established by the Secretary of Agriculture in order to confirm the exact location of such prime farmlands, if any.

That is the law. That is the Senator's intent, that is my intent. That is what we wrote; that is what we struggled over.

In section (17), information pertaining to coal seams, "Test borings, core samplings, or soil samples as required by this section, shall be made available to any person with an interest which is or may be adversely affected: *Provided*, That information which pertains only to the analysis of the chemical and physical properties of the coal will be excluded."

I think this is fair. I just do not see how in the world one could say that the prime farmland is not protected. We spelled out in the law how the application would be submitted, what the application would include, and how it would protect.

So we say we are going to have a lot of lawsuits. Well, we have lawsuits now under the present system. We have all kinds of lawsuits. Every Federal court in the eastern part of the United States; has a lawsuit under the present situation.

I agree with the Senator that when we pass a bill we do not know what it is going to look like until the bureaucrats get through with it. When they get through with it, how in the world can you say it is your piece of legislation? It is not your piece of legislation. Somebody else has massaged it to the point that you cannot recognize it any more.

I want the States to have standing in the court and I do not want to take it away from them. If we operate by a cookbook, this is the result: The door slams and the cake falls. OSM is slamming a door on the States, so the cake falls.

There is apprehension that S. 1403 will prevent creation of uniform national standards which could penalize the States that wish to provide for greater protection for lands within their borders. The response to this issue, I think, is quite simple. As a matter of law, this is dead wrong. Uniform national standards were created by the passage of the Surface Mining Control and Reclamation Act of 1977. Those standards were the principal goal of that lengthy legislative effort.

I do not think anybody—at least on this side—got burned more or had any more hide taken off than this Senator did while trying to work out an acceptable piece of legislation. I happen to represent the largest coal-producing State in the Nation, and 50 percent of that coal comes from surface mines.

And my contract is up next year. It is up for renewal. But you have to do what you think is right. And serving in the Governor's chair, provides a little bit of understanding about what Big Brother can do when you are trying to correctly administer a State government.

The distinguished Presiding Officer in the Senate at this time understands. He

is fresh out of Big Brother loving him too much.

The intent of the law is not in question. The regulations are in question.

S. 1403 does not change the minimum national standards in any way nor does it affect any State's right to issue rules and regulations more stringent than those contained in the Federal law.

If the Senator from Montana wants to protect Montana and his State has a more stringent reclamation program, it is bound to be approved. No one is suggesting anything to the contrary.

But I think the States want the right to develop their own program based on what they think is in the best interests of their respective States.

I guess there are good leaders and bad leaders. But, basically, they all want to do what is right.

I think we have a philosophy that the government closest to the people is the most important. Each Governor or a State legislator wants to do what is right for their State and we should not preempt their ability to do it.

This was the original intent of the act. I think it gives the States the opportunity to implement the minimum national standards, taking into account unique features of local climate and terrain.

We are not doing away with any regulations. We are not doing away with national standards or minimum standards. We are not doing away with the ability of the State to implement more stringent standards. It is a State's prerogative.

I would hope that the Senator would see the wisdom of this argument and withdraw his substitute. We could pass this piece of legislation and get on with other things.

I am sure he will not do that, but I would encourage him to give it consideration at this time anyhow.

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

Mr. FORD. I am glad to yield.

I may not answer the Senator's question. But I have almost as good a staff surrounding me as he has. I am glad the chairman is loaning him his No. 1 man here so that we can really get the matter settled.

Mr. MELCHER. Is it the Senator's intent to nullify this provision of prime farmland where it refers to the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland?

Mr. FORD. The performance standards stay intact. We are not doing anything to jeopardize the performance standards here.

Mr. MELCHER. That is certainly correct, that the performance standards, which is a different provision of the bill, will stay intact.

But I wonder if it is the Senator's intent to nullify the language I have just read of prime farmland mining permit application procedures which requires—requires—by law that the Secretary of the Interior issue regulations after consultation and approval by the Secretary of Agriculture.

Mr. FORD. Let me say to the Senator, and I want to make a broad brush statement to him, nothing in the intent nor the language of what we are trying to do here would eliminate any original intent, because we worked so hard to pass the 1977 Surface Mining and Reclamation Act.

Mr. MELCHER. Would the Senator modify the proposal on the bill then?

Mr. FORD. I am not going to modify anything as of the moment. But if I can persuade the Senator to agree now by, maybe, changing the ands and ors, something like that, I might do that.

Mr. MELCHER. Mr. President, the effect of a section in the bill is to entirely wipe out the Secretary's regulations.

Mr. FORD. I say that the bill, as I see it, only modifies two sections and the prime farmland is not disturbed in any way.

So I say to the Senator, in trying to make the point, I do not think the bill is disturbed at all. We are referring to only two sections.

Mr. MELCHER. I think there is a very sincere miscalculation here by the sponsors of the bill in thinking that the repeal of the regulations in these two sections would only affect two sections.

But the matter is much broader than that. A really broad brush stroke, if I might paraphrase the comments of the Senator from Kentucky.

Mr. FORD. It was a broad brush stroke. I just did a lot of whitewashing when I was a farm boy and we used a big brush and tried to cover a lot of wood.

I just call it broad brush.

Mr. HATFIELD. Will the Senator yield?

Mr. FORD. Yes.

Mr. MELCHER. I yield to the Senator.

Mr. HATFIELD. I would like to respond to the Senator to support the comments made by the Senator from Kentucky, but to add to those comments.

Throughout the bill, we will note in many sections of the bill, it refers to rules and regulations made by the Secretary individually or Secretaries together.

There are two things to bear in mind, I believe, which will help to allay the fears raised by the Senator from Montana and also to save time to rebut his statement that somehow this S. 1403 is repealing certain sections of the bill.

It in no way affects the rulemaking authority. Bear in mind, if a State does not have a plan, if a State does not come up with a plan, then the Federal Government, through the agencies designated and with the rules and regulations established under this act, will impose a Federal plan.

Now, S. 1403 in no way affects the rulemaking authority.

Second, rules and regulations may be and continue to be made under this bill, under S. 1403. They will be guidelines. They can be used as guidelines. They can be used as criteria. But they are not going to have the impact of the law we have written in terms of the performance standards in the act itself, if the States are in compliance with those performance standards, and the statements in the law.

So what we are saying is that the rulemaking authority is not in any way affected. We are not repealing any part of the law in that sense as it relates to the authority of the Secretaries to make rules.

Mr. MELCHER. I very much appreciate the Senator from Oregon's remarks about a State that does not submit a plan and, therefore, obviously, is going to be controlled on the reclamation program by the Federal Government. That, however, is not what we are in contention about at all.

The coal-producing States, by and large—perhaps all of them—are going to submit a State plan. So when you delete, as the bill before us does, the requirements of the regulations issued by the Secretary pursuant to this act, that means that in considering the State plan, the Secretary of the Interior can not consider his own regulations. Neither can the courts in interpreting the act.

What is even important, if a suit is brought in either a State or a Federal court, the State judge or the Federal judge will be interpreting the act without the advice of the regulations of the Secretary of the Interior. This simply nullifies any consideration of the regulations of the Secretary in looking at a State plan for approval. On that basis, I think it is complete chaos, completely unprecedented in any previous act of Congress of which I am aware, where, instead of repealing or amending certain sections of an act of Congress, the attempt is made not to do that. Rather than decisive actions by Congress to amend and correct anything wrong in the act section 3 of this bill just cancels the Federal regulation.

The Senate is asked here to approve a procedure which merely repeals the Secretary's regulations pertaining to approval of State plans.

With respect to the instance of the prime farmland, the section I have read from the act would be completely nullified by section 3 in S. 1403. It is true, as Senators have pointed out, that it does not nullify the standards. It merely nullifies the procedure for approving a mining plan where prime farmland is involved. It would be totally irresponsible on the part of Congress to enact this.

Mr. RANDOLPH. Mr. President, it is my considered judgment that in these Surface Mining Amendments of 1979 we are not acting in haste, but have informed ourselves of all the problems that have been identified in the original Surface Mining Act. I am an advocate of the purpose and the intent of the pending measure.

I commend Senator FORD, chairman of the Energy Resource and Materials Production Subcommittee, and Senator HATFIELD for directing the oversight hearings on June 19 and 21, 1979, which has led to a needed reassessment of the implementation of the 1977 Surface Mining and Reclamation Act. We have experienced how the act will eventually work if not modified and I congratulate my col-

leagues (Senator FORD, of Kentucky, and Senator HATFIELD, of Oregon), coming back to the Senate and indicating that there are limited changes that need to be made so that the legislation which became law in 1977 can be more effective today.

Mr. President, earlier this afternoon, I listened with intense interest to the able Senator from Oregon as he talked about OSHA and other matters to which we address ourselves from time to time.

All too often, once this body creates a new office or other regulatory entity, regular congressional oversight of its activities is neglected. I believe the limited changes suggested in this legislation will serve to right the situation where flexibility purposely written into the original 1977 act was interpreted by the Office of Surface Mining as an absence of position.

Once a measure becomes law and we experience the administration of the law in a realistic setting—we see the actual effect of what Congress did. The intent of Congress is not always just in the language of the legislation. The intent of Congress often is in the hearings, in the colloquy, in the debates, in the decisions that are made here after careful deliberation.

I am very certain when I say that I know from my own experience in Congress that there are laws that have been placed upon the books, with clear intent by Congress. Those in the Senate know that with increasing frequency on the passage of those laws, when regulations are written to implement the statute there has been a subverting of the law, as to the intent of Congress.

I do not imply that this has taken place in connection with the administration of this law, but there are indications that there has been a misinterpretation of this law, with the regulations threatening to become the law itself.

No law ever has had to rely upon the regulatory situation. It relies upon the intent of Congress. That is why, in recent years we have done something that should have been done in greater degree and more frequently in the past, and that is to review the statutes as they are passed and then again as they have been administered by the agencies.

These are just limited changes, and they are changes that I believe are necessary. I think they give a certain desirable and necessary flexibility to the administration of a law of this kind.

I want to make it clear that as a Senator from West Virginia, I supported this legislation to help assure that the Appalachian States would continue to be healthy, safe places to work and sustain the scenic beauty inherent to our region of the country for all to enjoy. My major concern as we worked in the Senate was to make sure the environmental objective was accomplished, while guaranteeing the coal industry would continue to increase production. The Congress designed the surface mining law to insure equitable and uniform regulation of the industry through use of the "State window" concept. Flexibility was built into the statute to provide latitude in implementing the legislation.

Governor Rockefeller, the West Virginia State Department of Natural Resources, operators, and miners alike are concerned and troubled by the Office of Surface Mining's implementation efforts—especially their rulemaking activities. It seems that if final regulations are put in effect, as presently written, there is good chance they will stymie coal production, particularly in Appalachia, to the point of practical shutdown. West Virginia envisioned great benefits from this act and is today hoping that those environmental benefits will become a reality.

In Public Law 95-87, we created an extremely specific congressoional act which outlines and mandates strong environmental performance standards that must be met by the coal industry. I did not envision, however, when the act passed the great role and central source of problems that the rules and regulations would be, for example:

The sheer volume and complexity of the regulations have made understanding and compliance by West Virginia and the coal industry in the State extremely difficult or impossible.

The regulations have resulted in extreme adverse public and, in particular, legislative reaction in Charleston, our capital city. Where State legislative leaders have historically pushed for strong environmental programs in West Virginia, the atmosphere created by a well meaning but overzealous Office of Surface Mining is now one of antiregulation insofar as regulation of the coal industry is concerned. This backlash is creating a situation where it is very difficult to get legislative cooperation in passing bills to bring West Virginia into compliance with the Federal program.

Rulemaking problems have placed the West Virginia Department of Natural Resources in an extremely uncomfortable position, in that they have felt compelled to be highly critical of an agency which was designed by Congress to assist the States.

To be more specific, I believe the effluent limitations adopted in the Office of Surface Mining regulations are clearly impossible for the mining industry to meet. Additionally, the construction design criteria for drainage systems, which is a central part of the program, are clearly, in many cases, impossible to construct because of terrain limitations. A basic management concept in any undertaking is to establish realistic goals. From the testimony I heard not only in the Energy Committee's oversight proceedings, but also in Senator HUDDLESTON'S hearings on Government regulations associated with coal production and use, effluent limitations and the design criteria for construction of facilities to abate pollution are, along with numerous other Office of Surface Mining regulations not technically feasible.

I think we must realize that the central underlying cause of virtually all of these problems the belief and policy made evident in discussion and negotiations with the Office of Surface Mining that State laws and regulations, in order to be consistent with Federal regulations, must be identical to federally proposed regulations. I feel that section 2 and section 3 of the amendment before us will help correct these problems.

It is important that we are able to recognize problems and can work them out. There can be a correcting measure as the two Senators managing this legislation and members of the subcommittee and the committee by virtue of the amendment we discuss today, understand.

In section 2 of S. 1403 the date is extended for submission of a State program from 7 months to 6 months but leaves untouched the option of the Secretary to extend it for an additional 6 months in States where an act of the State legislature is needed to comply with the Surface Mining Act.

The final date by which a Federal program must be implemented in the absence of a State program is extended by 12 months instead of 7 and the corresponding date by which the regulatory authority must take action on permits to operate under the permanent regulatory program is also increased from 7 to 12 months. The need for a time extension arose because there had been a 7-month delay in the funding of the Office of Surface Mining which resulted in a delay of 7 months in the issuance of the permanent regulations. This provision will not weaken the act or change the intent of Congress, but will, in fact, strengthen the opportunity for compliance with the will of Congress. Most importantly, it will insure that the States have an adequate and fair opportunity to become the prime regulatory authority, as was initially intended.

Section 3 of S. 1403 would delete section 503(A)(7) of the 1977 act which requires that the States' permanent programs have laws and regulations consistent with the act and the Secretary's rules and regulations. Instead, the amendment requires only that State programs be consistent with the act itself. This provision allows the States to assume the role that I as a Senator and I believe the Senate desired in which the States would be invested with maximum flexibility, from the Federal regimentation that has developed. Flexibility, very frankly, is important in the administration of any law, just as it is important, to most of us as we carry forward our personal and official lives and duties.

Several committees of the Senate are currently considering programs which will place primarily reliance on coal based synthetic fuel technologies.

Coal, as my colleagues have heard me say many times, is America's most abundant fossil fuel resource. Its expansion in the short and the long term cannot and should not be denied.

Most of the second generation coal liquefaction and gasification technologies now being tested will convert about 1 ton of coal into 2.5 to 3 barrels of synthetic products. The Department of Energy has said recently, that a 1 million barrel per day synfuels industry would consume 156 million tons of coal per year, or about one-quarter of current use. Most analysts assume that the in-

creased production will come primarily not from the deep mining but from the surface mining which we are discussing here today.

Largely, all of the increases in production of the coal mining industry since 1961 have been generated by new production from surface mines. In 1961 coal from underground mines made up 67.7 percent of coal mined in the United States; 1977 Department of Energy information states a decrease in underground mined coal to 39.9 percent of the total output.

Approximately one-half of U.S. coal production comes from surface mining the coal seams which lie fairly close to the Earth's face. The average overburden in the East is 100 feet with seam thickness of 4 feet as opposed to western overburden depths of 35 feet with seams ranging from an average of 35 feet to 100 feet.

New mines will have to meet the standard of the surface mining law. We must see that this law is not in turmoil. We cannot force the States who will be responsible for running reclamation programs into constant confrontation with the Federal Office of Surface Mining over certain reclamation standards.

We know that costs production in coal are escalating. Freight rates, mining equipment costs, leasing costs, are on the rise. Essential black lung benefits are paid in part as an internal cost; a younger work force is increasing training cost, and large severance taxes are required.

With these requirements on the existing coal industry, the modern industry, we must assure that mining operations can produce the mineral in a safe, efficient, and environmentally sound manner, rather than having to devote its primary efforts to paperwork compliance imperfectly implemented within some agencies and too often poorly coordinated between the agencies.

Mr. President, in offering my support for the amendments to the Surface Mining Control and Reclamation Act of 1977, I would like to draw on the detailed knowledge I have available as chairman of the Environment and Public Works Committee on how the Environmental Protection Agency coordinates its activities with the States. Based upon the nature of what was being regulated, Congress has mandated different relationships be established between the Environmental Protection Agency and the States.

In offering my support for these amendments to the 1977 act, I wish to draw on knowledge that comes to me in a practical manner. In serving as chairman of the Environment and Public Works Committee, and I want to just talk briefly about how the Environmental Protection Agency coordinates its activities with States.

Based upon the nature of what is being regulated, Congress has mandated different relationships to be established between the Environmental Protection Agency and the States.

Under the Clean Air Act and its amendments the Environmental Protection Agency has various relationships with the States in establishing regulations. In the case of automobile emissions, a detailed national standard has been established, and there is only one standard and one set of regulations. If the 50 States each established their own standards, the automobile manufacturers would be in an impossible position of trying to comply with 50 sets of regulations. Congress recognized the environmental diversity of the country has little to do with controlling auto emissions. The Environmental Protection Agency alone except in California, a special case, sets the regulatory standard and is in charge of enforcement.

In the next example, the Environmental Protection Agency has an entirely different relationship to the States' because Congress recognized a different set of environmental circumstances. Due to the diversity of climate and terrain, Congress decided that the States should establish their own regulations on what the specific sulfur emissions should be for a specific stationary source in order to meet the national standard. The Environmental Protection Agency has established the national ambient air quality standard. Based upon unique set of environmental factors each State establishes its own specific regulations to meet the national standard. Then, the powerplant adopts a pollution control strategy to meet that State regulation. For example, installing scrubbers or burning lowsulfur coal or oil. Thus, depending on a set of environmental considerations Congress determines the Environmental Protection Agency's relationship to the States themselves.

In the case of surface mining, Congress finds and declares under section 101(f) "that because of diversity in terrain, climate, biological, chemical, and other physical conditions * * * the primary governmental responsibility for developing * * * regulations for surface mining and reclamation operations subject to this act should rest with the States." To me, Congress understands the different relationships a Federal regulatory authority should have with the States. In the case of surface mining it is clear to me that the Office of Surface Mining's role should be similar to the Environmental Protection Agency's role concerning stationary sources of pollution. It should be one of oversight, while the prime role of developing detailed regulations should be left with the States.

Now, to me Congress understands the different relationship of the Federal regulatory authority. It should be made with the States. In the case of surface mining it is very clear to me and, I hope, to other Senators that the Office of Surface Mining's role should be similar to that of the Environmental Protection Agency's role concerning stationary sources of pollution. It should be one of oversight, while the prime role, I say to Senator FORD, for detailed regulations should be left to the States.

Those who claim that these amendments will gut or destroy the surface mining law should closely examine how the Environmental Protection Agency has successfully established its relationship with the States in areas where there is a need for taking into account differences due to climate and terrain. Through the enactment of these amendments, the Office of Surface Mining will successfully do the same.

Mr. President, I strongly endorse S. 1403, as modified, which must be made in a nonmarket regulatory program, and which must positively affect the industry's ability, a needed ability at this time, to produce the large quantities of coal we must have to stabilize our economy from the standpoint of producing, marketing, and using energy.

Again, I commend those who bring the measure to the floor. I only wish the Chamber could be occupied by more Senators during the debate, so that they might have the full understanding of amendments or proposals made as we discuss this issue that may be contrary to the intent of the limited changes which the Surface Mining Amendments of 1979 suggests, and which I endorse.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Tim Dudgeon of my staff be granted the privileges of the floor during the discussion and voting on this measure.

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

Mr. HUDDLESTON. Mr. President, I ask unanimous consent to be added as a cosponsor to S. 1403.

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

Mr. HUDDLESTON. Mr. President, I rise to voice my strong support for the efforts of my colleague from Kentucky and the majority of the members on the Senate Energy and Natural Resources Committee to bring some sensibility into the ranks of the Federal bureaucracy.

One purpose of S. 1403, the legislation before us today, is, of course, to extend the deadline of submission of State reclamation programs to February 3, 1980. There can be no doubt that this is a needed extension in light of the delays which occurred in the funding of the Office of Surface Mining. The extension will be helpful not only to the States but also to the Office of Surface Mining. The substitute language offered by Senator FORD and Senator HATFIELD offers additional help to the States and coal producers in that State rules and regulations will not have to mirror the regulations issued by the Secretary of the Interior pursuant to the Surface Mining Act. This is a most important step if we are serious about trying to bring ourselves out of the regulatory morass which faces the energy producing sector of our economy.

The Surface Mining Act was a product of long and hard discussion and debate. I strongly supported that act because of my desire to see that our environment is protected. Also behind my support was a belief that it was clear from the language of the legislation that the States would have the primary role in enforcement of the provisions in the law. However, as is so often the case, the bureaucracy has somehow interpreted our actions in passage of the Surface Mining Act to mean that they have the right to dictate to the States the exact methods by which the State can meet the requirements of the law. This is utter nonsense. I believe it is rare that we in

the Senate have the opportunity to correct such a clear issue of regulatory overkill in a clear and understandable fashion.

The environmental safeguards put forth in Public Law 95–87 are strong and specific. The Ford-Hatfield language leaves those standards intact. Under the terms of the proposal offered by Senator FORD the States would simply be granted some degree of flexibility in meeting the requirements of Public Law 95–87. It is incomprehensible that the Office of Surface Mining would demand that State programs be carbon copies of the cookbook type regulations promulgated by the agency.

If a requirement or standard called for in the act can be met by methods other than those laid out by OSM I cannot see any reason why the specific design criteria called for by OSM must be used. This approach thwarts innovative engineering methods and really does nothing to enhance the quality of the environment.

Furthermore, the committee substitute will not in any way diminish the authority of the Secretary of the Interior to monitor the performance of States in achieving the goals set forth under the law.

Just last week the distinguished senior Senator from Arkansas had an amendment adopted to the Federal Courts Improvement Act which demonstrated the commitment of the Senate to address the general problem of overregulation. In the debate on that measure Senator BUMPERS clearly points out something which all of us know as a result of our communication with our constituencies. He said:

> Over the years the Congress has abdicated its responsibility in favor of the regulatory agencies and has given them almost carte blanche authority.

Today we can take a giant step in revoking that carte blanche approach and at the same time see our environment is not defiled.

I urge my colleagues to follow up on the rhetoric which very often comes from this Chamber. A vote for the so-called Ford-Hatfield amendment will be clear and convincing proof to the public that we are serious about regulatory reform. We are the elected representatives of the people and it is up to us to see that the statutes we pass are implemented properly. The public must be confident that we are not neglecting our duty. I believe the action last week on the Bumpers amendment was a signal in a general sense that the Senate is serious about regualtory reform. A vote for the Ford-Hatfield approach will demonstrate that we are capable of dealing with specific regulatory problems which have come about as a result of the bureaucracy not living up to perhaps one of the prime facets of the Surface Mining Act—State primacy in the implementation of the Surface Mining Act.

Mr. President, I ask that my colleagues of the Senate give serious consideration to this legislation and vote favorably on it. I thank the Chair.

Mr. FORD. Mr. President, I thank my senior colleague for his fine statement and support of the so-called Hatfield-Ford substitute for S. 1403.

There are other Senators who would like to make statements in support of this legislation, but because of various meetings at this time and various hearings these Senators are not on the floor.

I ask the distinguished Senator from Montana (Mr. MELCHER) if he has anything to say at this time. If not, I will suggest the absence of a quorum for a few moments.

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

The PRESIDING OFFICER (Mr. CHURCH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. HUDDLESTON assumed the chair.)

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

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

Mr. DOMENICI. Mr. President, I ask if Senator MORGAN will yield 5 minutes to the Senator from New Mexico.

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

Mr. DOMENICI. Mr. President, I rise in support of the 1-year extension that this bill contemplates and to support the two proposals in addition to the 1-year extension that had been recommended that for purposes of discussion bear the names associated with their principal sponsors from the States, the distinguished Governor of Wyoming, Mr. Herschler, recommending one, and the distinguished Governor Rockefeller, of West Virginia, the other.

Mr. President, on August 9, 1979, the Energy and Natural Resources Subcommittee on Energy Resources and Materials Production held field hearings in Farmington, N. Mex., regarding coal productivity. The following facts come from those hearings. Prior to the Surface Mining Act's passage, the State of New Mexico had established the New Mexico Coal Surface Mining Commission. This commission was a unique mix of environmentalists, representatives of industry, and officials of the State government. D. E. Gray was the chairman of this commission and he testified before the committee. I ask unanimous consent that his remarks be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. DOMENICI. Mr. President, the points made by Mr. Gray, representing the State of New Mexico, are astounding and must be reiterated.

The commission which operated in New Mexico was a group of seven with a total annual budget of approximately $30,000. Since the creation of the Office of Surface Mining, the staff has tripled and the budget has grown to $250,000 annually.

And the benefits?

Prior to OSM, the New Mexico Commission promulgated standards acceptable to environmentalists, safety experts and industry which were enforced on a basis of voluntary compliance. And this commission was able to start two mining operations and approve a third. Since OSM was created to expedite procedures there has been no new mining activity.

Specifically, the Denver region of OSM has impeded mining in New Mexico. Coal mining in New Mexico is done in arid areas. OSM requires these areas to be revegetated. Although there exists a mining operation which has successfully been revegetating vast tracts for 4 years, OSM is not satisfied that revegetation is feasible. Consequently, there has been no new production of available coal reserves. The States of New Mexico estimates it has lost approximately $900,000 in revenues from potential mining royalties.

The State knows revegetation is possible. The land that is being mined, absent mineral value, sells for around $100 per acre. The revegetation cost is as high as $4,000 per acre and OSM is still not satisfied.

A specific example of the delays caused by OSM is the consolidated goal proposal for a mining operation approved by New Mexico in 1977.

On September 5, I was notified that this proposal, which has been modified twice, has been recommended for approval with 26 stipulations relating to revegetation. The sum total of these stipulations is to make the mine proposal economically unfeasible. And this comes at a time when the President has called for increased coal production to help us through the present energy crisis.

New Mexico has vast coal reserves. New Mexico can mine these reserves with adequate safeguards to the environment. The sole impediment appears to be the Office of Surface Mining.

Mr. President, I would just like to speak a little bit on the Surface Mining Act and what I see as its evolution to this point and urge my fellow colleagues to support the amendments proposed here today.

I can remember vividly when we prepared this bill in the committee and brought it to the floor we were not in nearly as serious a posture in terms of energy crisis as we are today.

But there was general discussion that this was going to be a reasonable bill, that its prinicipal goals were to prevent what happened heretofore in the United States in terms of surface mining disgraces. Those of us who had serious question about whether or not we could really regulate out of one agency the diversity of America when it comes to surface mining, for the most part, we all went along with it.

I, for one, am sorry I did. I do not believe we will get the kind of mining activity in the area of coal mining this country needs as a result of this law as it is interpreted by those administering it, and I can say that with all honesty.

In my State, for instance, we had a 5-member commission administering State law on strip mining and revegetation. That was kind of an ideal law. It did not cost much money to administer—about $25,000. It was drawn by environmentalists and the business community. This law and this commission was made up of different segments. They had an excellent record. They knew we could revegetate

where we needed in surface mining in New Mexico. They had tremendous success in developing plans that were adequate for our State, a very conservation-minded and environmental-minded State.

Let me tell what has happened. Not a single new piece of coal has been mined in that State. Instead of $25,000, we will spend—how much?—$250,000 for the administrative work we were doing for $25,000 and we still have not been able to satisfy the Federal regulators with reference to a State plan.

That is why it is absolutely imperative we get the 1 year extended, because that was a commitment that, in the orderly business of a State, we could come up with our own approach to this.

That was said right here on the floor. We intended this window to permit the States to come up with a plan that fit Federal regulations, and they have not been able to do that. That tells me that either the law was drawn wrong or those administering it do not want the States to come up with their own plan.

I submit, if we have one agency of this Government administering surface mining for America, it will be a fiasco. The right things will go unheeded. The wrong things approved. We will not mine coal, all of which add to the consumer burdens of America, make coal cost more, and add to our dependence, because we will produce less of it.

I do not think we can have that situation go on much longer. If nothing else, these amendments will focus attention on the fact that the safeguards of surface mining need not be used to prevent coal mining just because Federal regulators feel it should not be mined.

I believe that I could submit to the 100 United States Senators the 26 stipulations that they have now sent to one mining company on revegetation and I think I could get 99 Senators to agree they are unreasonable, the majority of the times unneeded, unnecessary, and many of the times literally stupid.

We have had some where they have now checked back and found 13 species of grass in an arid area and unless they can prove they can reproduce most of those in revegetation, they cannot mine coal.

Nobody in our State thought that was necessary before we put this agency in business. I believe it is time that more of us come to the floor and tell them we want some good commonsense.

Now, as it pertains to the Governors, they have been criticized because they want to get on with the business of coal mining and reasonable regulation. Let me say, if it was not for Governors coming before the committee in the last week before we passed this bill saying, "We want it," we would not even have a surface mining bill. That is the same Governors Rockefeller, Herschler, and others, who came to the Senate and said, "Let's try it now." They are being accused of disregard for the environment in their States, where they are elected to preserve and protect it. To me, that is ridiculous.

I hope we will grant the 1-year extension. I hope we will go along with the other two amendments. But if we do not, I hope the message is sent that we want them to administer this within the spirit of why it was passed and not any inventions of bureaucrats and administrators that just do not want any kind of surface mining to occur.

I thank the Senator from Oregon for yielding me time, and if I have any, I yield it back.

EXHIBIT 1

TESTIMONY OF D. E. GRAY

D. E. GRAY. I would like to go back and give you an opportunity to know what the New Mexico Coal Surface Mining Commission did prior to the federal act and then proceed from there.

Senator DOMENICI. Would you do that, please?

D. E. GRAY. The New Mexico Coal Surface Mining Commission and the Surface Mining Act became law in 1972. The Act and its regulations were written by a unique coalition of the environmental community, representatives of industry and officials of the state government. The Act established the New Mexico Coal Surface Commission. The Commission is comprised of seven appropriate state agencies or their designees and brings the expertise necessary to cover all facets critical to surface mining and reclamation. The structure of this Commission currently is one of the major factors assuring balance in the development of New Mexico's coal resources. Some of the duties of the Commission were to administer the Act and make every reasonable effort to obtain voluntary cooperation in mining the strip mining land, approve or disapprove mining claims and develop reasonable regulations concerning the productive reclamation of the strip mining lands. The New Mexico Act provided that no regulation may be adopted, amended or repealed without a public hearing. On February 9, 1973 the Commission adopted regulations which required, among other things, environmental impact hearings on development mining plans and the county in which the mine was to be located gives the public an opportunity to present all relevant evidence, call and examine witness, introduce exhibits, cross examine witnesses and submit rebuttal evidence.

The Commission has found mine operators willing to cooperate in reclaiming the mining land. Companies that were surface mining prior to the New Mexico Act volunteered to reclaim pre-law spoil which amounts to 500 plus acres at one mine and 1500 plus acres at another, provided that five years would be allowed by the Commission for the reclamation.

No general funds were permitted by the Legislature to administer this Act. Each Commissioner was full-time employed of his respective agency. There were fees collected from each of the operators. These fees were about adequate to take care of the contract mining inspectors that we have that were full time employees of the New Mexico Coal Surface Mining Commission. Salaries, mileage and per diem to each of the Commissioners were paid by the respective agencies. It was recognized soon after the enactment of public law No. 587 that a part-time Commission could not provide the necessary services to the State of New Mexico and the cooperators and supervisors because of the burdensome requirements of Federal law. Therefore in the 1979 Legislative Session the new Surface Mining Act was passed and became law June 15, 1979. The 1979 Act contains to the Commission the authority to promulgate regulations and the Commission is to serve as an appeals forum for those persons who are grieved by the decision of the Director of the Mining Commission. The Act gave to the Director the authority to approve permits and exercise all powers and enforcement of administration arising under the Act.

It should be noted by the way, for the record, that the inspection fees that we were collecting at that time were about $18,500.00. In the last year of inspection this was not quite enough to take care of our contract inspector, that made a total of about $25,000.00 for his services and then other items as printing and the like. It is estimated that the salaries of the Commission, mileage and per diem was paid by the respective agencies was totalling about $30,000.00 a year. It should be noted that in the 1979–1980 budget, we will have a budget of $267,000.00. In 1980–1981 it will approximate $300,000.00. Of course, some of this is going to be given back to us by the Federal government but it is still coming from the taxpayer.

Senator DOMENICI. Now, let me make sure that we've got the right comparison. This is $30,000.00 plus $25,000.00 that could be compared with $267,000.00?

D. E. GRAY. Not really, Senator, because my salary is paid as an employee, State Engineer, and I still have the function as an employed State Engineer, so it was—most of that time was actually spent after 5:00, so I believe in the true sense, that if we're talking about dollars and cents——

Senator DOMENICI. Now, I told Mr. Crane this in a Senate hearing and I used a little bit of a wrong figure and I correct it, but not so wrong. I said we were spending $15,000.00 a year and many people thought we were doing a very good job. We are now going to spend $267,000.00 and many people think we are doing a very poor job. As a matter of fact the $15,000.00 was wrong. It was $23,000.00 in your opinion.

D. E. GRAY. Yes sir, that's correct.

Senator DOMENICI. I don't contribute the rest of the statement to you, just the dollar statement amount. Now we're going to go to $300,000.00, is that right?

D. E. GRAY. In this coming year, yes sir, and I'm sure as time goes on this will have to increase.

Senator DOMENICI. Now, so I will understand, is that to do the same for the people of this state, its environment, as far as its goal that the $267,000.00 is going to do?

D. E. GRAY. Yes sir, the end results are going to be the same, but it's going to be a little more costly to achieve by the Federal Act.

Senator DOMENICI. Okay. Go ahead.

D. E. GRAY. The Commission agrees that the purpose is to set forth sections one and two of the Surface Mining Control and Reclamation Act of 1977. However the Commission objects to the manner in which the Department of Interior's Office of Surface Mining is attempting to implement building. Unfortunately the Act penalizes all coal mining, coal producing states because those states have failed to require the mine operators to be a good citizen. The Act goes too far. Actually there is no need for publication of regulations and when Congress wrote the Act it wrote the regulations. I cite two items in my prepared text as to how far it goes and we do have the regulations there, but in Sections 515(b) (17) and (18) they're talking about the construction of roads in the mining areas. The act contains 75 words.

The regulations that expanded this was Sections 816.150 through 816.181 of the Permanent Program Performance Standards to 6400 words and there's repetition in this. And that only pertains to the surface mining activities. This is duplicated again pertaining to the underground mining activities. So this thing has been exploded up to go over 13,000 words. Nothing is left to discretion of the State. I think also of interest in Section 816.106 of the Federal regulations where it is stated "when rills and gullies deeper than nine inches form in areas that have regraded and top soiled, the rills and gullies shall be filled, graded or otherwise stabilized . . . "

A Federal employee who is an expert in surface coal mining and reclamation, but is not in OSM, made this comment regarding

this regulation: "The person or persons responsible for writing this unrealistic and impractical requirement obviously spent his entire life in a city and has never observed nature at work. This requirement is a definite harassment measure and should be eliminated."

It is the opinion of the New Mexico Coal Surface Mining Commission that the Federal Act and the voluminous Federal regulations will achieve no better reclamation than that which has been achieved under New Mexico's original seven-page Act and thirteen-page regulations. The Commission believes that a monster has been created in the form of OSM. We will need more than just the acceptance of the so-called "window" in state regulations, but we are going to have the opportunity to be of regulatory authority in our state. There is an urgent need for the Office of Surface Mining to become more cooperative and more responsive to states. The Office of Surface Mining's action in New Mexico have given not only the Commission, but also the operators the impression of the conventional goodguy. There are at least four reasons why the Commission believes the Office of Surface Mining's not responsive. New Mexico has been attempting to enter the cooperative agreement with the Office of Surface Mining since September, 1978. On submittal of the first draft several changes were made——

Senator DOMENICI. Mr. Gray, we need a break for the reporter. While she's doing that, let me make an announcement, and you don't need to take this down. All right, we're sorry to have interrupted you.

D. E. GRAY. Upon the submittal of the first draft to which New Mexico agreed and the draft agreement was returned to Denver for approval and signing. The Office of Surface Mining in Denver made several subsequent changes to which New Mexico agreed. The regional office concluded it was an acceptable agreement and it was sent to Washington for approval. Washington personnel are presently going through the same routine and now some ten months later no cooperative agreement has been finalized. It appears that the Office of Surface Mining attorneys are having trouble among themselves or the Office is intentionally playing a game.

The second is that New Mexico is concerned about the time which it's taking the Office of Surface Mining to process the application for mining on Indian land. On December 4, 1975, Consolidated Coal Co. submitted a mining and Reclamation Plan to the United States Geological Survey, Bureau of Reclamation, Bureau of Indian Affairs and Navajo Tribe. I am going to skip quite a bit of this because it is in my prepared text but as of July 30, 1979, OSM published a "Notice of Availability of Proposed Mining and Reclamation Plan for Public Review" of Consolidated Coal Company's project. The following is an excerpt from the notice: The notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the proposed plan will be in compliance with the applicable regulations . . . The application has been subject to initial reviews and more appropriate technical reviews, final technical reviews and environmental analyses and compliance determinations and to date no permit has been issued. The application can be considered ad infinitum if the energy crisis does not worsen. There is no way this nation can comply with President Carter's order for energy independence and utilize our great coal reserves if OSM continues to flounder on future coal mining applications as it has on the Consolidated Coal application.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—this has been cleared with Mr. MELCHER—that a vote occur up or down on an amendment by Mr. MELCHER at 5:15 p.m. today; that a vote occur on final passage of the bill, with paragraph 3 of rule XII being waived, at no later than 7 o'clock p.m. today; that there be a time limit on an amendment by Mr. BELLMON of 30 minutes, to be equally divided; a time limit on an amendment by Mr. WARNER of 30 minutes, to be equally divided.

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

Mr. ROBERT C. BYRD. I thank all Senators.

The PRESIDING OFFICER. Does any Senator wish to be heard?

UP AMENDMENT NO. 542

Mr. BELLMON. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an unprinted amendment numbered 542.

Mr. BELLMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 4, line 9, insert the following:

Sec. 5. Section 502 of the Act is amended by adding a new subsection "(g)" as follows:

"(g) Notwithstanding any other provision of this section, each State shall, to the greatest extent possible, have principal responsibility for the inspection of mines during the period of time prior to the submittal of State plans for approval. Such responsibility shall remain with each State until such time as the Secretary disapproves the State plan. The Secretary shall furnish personnel assistance to the States in carrying out this responsibility upon request of the State regulatory agency."

Mr. BELLMON. Mr. President, I will explain the amendment, but first I will recite what has happened in connection with surface mining control.

Before we passed the Surface Mining Control Act, States generally were charged with this responsibility. Some were doing well and some poorly. After we passed the Surface Mining Control Act, the States were given time to meet the requirements of that act. But immediately—at least, in some cases—Federal authorities moved in and began to meddle in this business of reclamation control. So the fact is that at the present time, under the law, the States will still have the major responsibility.

The result is that we now have both the States and the Federal authorities trying to tell the miners how they should handle the reclamation problems.

The purpose of this amendment—and all it would do—is to say that as long as an agreement is under consideration and until it has been approved or disapproved, the responsibility for controlling reclamation problems shall remain with the State regulatory agency. In other words, what we will have is one agency, the State agency, charged with this responsibility, until an agreement has been reached, in which case the State would continue, or until an agreement has failed to be reached, in which case the Feds would take over.

It is wrong, in my opinion, to have two authorities trying to accomplish the same task. In this case, it is causing great confusion and increase in the cost of mining, which has to be passed on to the consumer.

I hope the Senate will agree to this amendment.

Mr. FORD. Mr. President, I reluctantly oppose the amendment of the Senator from Oklahoma.

Many times on this floor one would like to do certain things and make changes, but circumstances prohibit these changes.

The Senator from Oklahoma is a member of the Energy and Natural Resources Committee, and he is very familiar with the procedure we had to follow in order to get S. 1403 to the Senate floor.

The Senator also recalls the closeness of some of the votes—the original amendment as submitted by the distinguished Senator from Oregon—and how many of those different proposals were dropped in the committee, in order to report the compact bill we now have before us.

There are many things about surface mining we would like to correct. I suppose there is a lengthy gamut of things that people would like to see eliminated from or added to the bill.

However, under the circumstances, I think we must restrain ourselves from trying to enlarge this piece of legislation, because if we are going to give the States the opportunity to submit their own plans, this is the only vehicle we can use.

Mr. BELLMON. Mr. President, will the Senator yield?

Mr. FORD. I yield.

Mr. BELLMON. My amendment would not in any way keep the States from submitting their own plan. It says that while the plan is being considered, the States would have the responsibility for enforcing reclamation law, instead of having the Federal Government in there meddling and confusing the issue.

Mr. FORD. The Senator knows what I am talking about. If we accept additional amendments, we open a Pandora's box, regardless of how good the Senator's amendment is—I know this will not set very well with him, and I regret that. If we are in the position of adding amendments and extending the use of this legislation for amendments, then the mechanism and the bill for getting it through will be diluted considerably.

Mr. BELLMON. Mr. President, I am not aware of any special condition in the Senate that requires us not to amend this bill. We amend bills day after day.

If the Senator is concerned about opening a Pandora's box, I suggest that he take the amendment, and that is the end of it.

Mr. FORD. It has to go to another House. The Senator is on the committee, and he understands what I am saying.

Mr. BELLMON. I am afraid I do not.

Mr. FORD. The Senator has been here longer than I have.

Mr. DOMENICI. I ask this question of the Senator: What he is saying is that there is a great deal of reluctance to accept amendments other than the 1-year extension by certain people in the administration.

Mr. FORD. No. The Senator also is on the committee, and he knows how the committee voted, and he knows what is before us. It is not just the extension. It is the Western lands and the ability of the States to submit their own reclamation plan.

If we continue to add amendments, the legislation is saddled with more than I think it can carry mechanically.

Mr. DOMENICI. This amendment could almost be called a clarifying amendment, an interpretive amendment.

There is a vague area, while we are waiting around for a final plan. Two agencies are doing the same kind of work. That is what Senator BELLMON is addressing. It is not a very significant addition, as I understand it.

Am I correct?

Mr. BELLMON. The Senator is correct. All we are trying to do here is to clarify what seems to be a misunderstanding.

The Feds seem to think that until there is an agreement, they have a right and a responsibility to come in and establish their own standards.

The States have been doing the work all along, and they feel that until they have been taken out of the picture, they have a right to be involved.

Mr. FORD. The Senator says in his amendment "the principal responsibility." But let us go back to section 502(d), to the last line:

But in no case later than 42 days from enactment of this act.

The Senator has not eliminated that. He still goes along with the same procedure. He has not eliminated anything allowing OSM to go in and inspect.

Mr. BELLMON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. Mr. President, the amendment says very plainly that until an agreement has been worked out, the States, to the greatest extent possible, shall have principal responsibility for the inspection of mines during the period of time prior to the submission of State plans for approval.

Mr. FORD. But section 502(e) says exactly what the Federal Government should be doing in the States. The Senator from Oklahoma has not eliminated all that. He still allows section 502(e) and that whole page and each of those paragraphs to apply. I do not see how the amendment helps anything.

Mr. BELLMON. The amendment says "notwithstanding any other provision."

Mr. FORD. It says "principal responsibility." What about secondary responsibility, then? That would be the Feds who come in on secondary responsibility.

Mr. BELLMON. The States have principal responsibility.

Mr. FORD. Who has secondary responsibility?

Mr. BELLMON. There need not be secondary responsibility.

Mr. FORD. Section (e) gives them all that authority, and the Senator has not eliminated that.

Mr. BELLMON. We have said that notwithstanding any other provision, the States will have principal responsibility.

Mr. FORD. But the Senator has not eliminated the other responsibilty under the act, which is section 502(e) and all those subparagraphs. He has not eliminated anything. He has said one is principal, and the other is still going to be in there. The Senator has not eliminated the OSM inspection whatsoever.

Mr. BELLMON. It seems to me that the States have the principal responsibility, that that puts the Federal Government in a subordinate position.

Mr. FORD. They still inspect.

Mr. BELLMON. I have no problem with their inspecting. I have a problem with their coming in and giving a set of standards to the miners when the States already have done that, and the miners cannot tell which authority to follow. We need to have a principal authority, and this amendment gives that responsibility to the States.

Mr. FORD. They can come in and inspect. They still come in and give citations.

I understand that the Senator is trying to eliminate dual inspection and dual responsibility. He has not done that. They have their cookbook regulations, and the Feds come in and give citations. I do not think the Senator has eliminated that.

Mr. BELLMON. I would be willing to leave that to the courts.

Mr. FORD. We have been here all day, and the way we are going, we will have more before the courts. It seems to me that the way we are going, we want to get everything into court.

Mr. BELLMON. I have no desire to get everything into court.

The amendment plainly says that the States have the primary responsibility, and the Feds are in a secondary role; and when a decision has to be made, the States will make it.

Mr. FORD. The Senator says it should be left to the courts, and this leaves open another avenue for us to get into court.

We are trying to keep the bill as simple as possible, without making it complex and adding so many amendments that we will go to court. I hope the Senator will withdraw the amendment.

Mr. BELLMON. I will put the Senator's mind at rest. I am not going to withdraw the amendment.

Mr. FORD. That is right. I understand what the Senator is trying to do and I probably agree with him, but I do not think the Senator's end result will ever come to pass.

Mr. BELLMON. Mr. President, I am willing to yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. FORD. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. BUMPERS), the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Idaho (Mr. MCCLURE) and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

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

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

The result was announced—yeas 73, nays 20, as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—73

Armstrong	Garn	Packwood
Baker	Glenn	Pell
Bellmon	Goldwater	Percy
Bentsen	Gravel	Pryor
Boren	Hart	Randolph
Boschwitz	Hatch	Riegle
Burdick	Hatfield	Roth
Byrd, Harry F., Jr	Hayakawa	Sasser
Byrd, Robert C.	Heflin	Schmitt
Cannon	Heinz	Schweiker
Chafee	Helms	Simpson
Chiles	Hollings	Stafford
Church	Huddleston	Stennis
Cochran	Humphrey	Stevens
Cohen	Jepsen	Stewart
Cranston	Johnston	Stone
Danforth	Kassebaum	Talmadge
DeConcini	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Eagleton	Matsunaga	Weicker
Exon	McGovern	Young
Ford	Morgan	Zorinsky
	Nunn	

NAYS—20

Baucus	Kennedy	Nelson
Biden	Leahy	Proxmire
Bradley	Levin	Sarbanes
Culver	Magnuson	Stevenson
Durkin	Melcher	Tsongas
Jackson	Metzenbaum	Williams
Javits	Moynihan	

NOT VOTING—7

Bayh	McClure	Ribicoff
Bumpers	Muskie	
Inouye	Pressler	

So Mr. BELLMON's amendment (UP No. 542) was agreed to.

Mr. BELLMON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I ask unanimous consent that Rob Wallace of Senator WALLOP's staff be accorded the privilege of the floor during the debate on this issue.

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

Mr. WARNER. Mr. President, I ask unanimous consent that two members of my staff, Mr. John White and Mr. Sindelav, be granted the privilege of the floor during the remainder of the consideration of S. 1403.

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

What is the pleasure of the Senate?

UP AMENDMENT NO. 543

Mr. WARNER. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Virginia (Mr. WARNER) proposes an unprinted amendment numbered 543:

On page 4, line 9, insert the following:

SEC. 5. Sections 515(b), 515(c), 515(d), 515(e) of the Act are amended as follows:

(a) in section 515(b)(3) strike the words "except as provided in subsection (c)";

(b) in section 515(b)(3) strike the phrase "restore the approximate original contour of the land with all highwalls" and substitute the phrase "eliminate at least seventy-five percent of the highwall created by the mining operation, with all"

(c) in section 515(b)(3) after the words "Provided, however," there should be inserted the phrase "that final regrading shall be compatible with the approved post-mining land use; and provided further,"

(d) in section 515(b)(3) strike the phrase "and where the operator demonstrates that overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour,"

(e) in section 515(b)(3) after the words "in the course of the mining operation is more than sufficient to" strike the phrase "restore the approximate original contour," and substitute the phrase "achieve the approved post-mining site configuration,"

(f) in section 515(b)(3) after the words "the operator shall" strike the phrase "after restoring the approximate contour,"

(g) in section 5115(b)(9) there should be added a new clause at the end of the sentence "provided further that when only augering is conducted on a previously mined area, the highwall shall be eliminated to the extent allowed by existing material."

(h) in section 515(c) strike subsections 515(c)(1) through 515(c)(6),

(i) Section 515(d) should be renumbered 515(c);

(j) renumbered section 515 (c)(2) should be deleted;

(k) Section 515(e)(1) through 515(e)(6) should be deleted.

Mr. WARNER. Mr. President, Virginia is the Nation's seventh ranking coal-producing State. We have tried very hard to live within the confines of the new law and the regulations.

About one-third of Virginia is coal country. In recent years 14 million tons annually, have been produced in our State through strip mining techniques, approximately one-third of the coal produced in the State each year.

Frankly, our experience has proved that the present requirement in the Surface Mining Act calling for mine operators to restore the mined land to original contours is extraordinarily costly and indeed infinitely unwise. But we are a State that is very proud of the progress we have made in protecting our environment under this act though at times it has been to our detriment.

Further, frequently the steps necessary to bring about original contours surface restoration have proved hazardous to the individuals performing this work. Quite frankly, sometimes it is plainly impossible to restore vast mountain slopes to their original contours. Many of our slopes average, from 20 to 30 degrees. Human hands and technology simply cannot restore these slopes to their original contours.

This has resulted in a drastic curtailment of strip mining, ever-increasing unemployment, and a detrimental economic situation to many Virginia communities.

It is for that reason that I submit this amendment, which I feel is quite reasonable. It merely, in summary, asks that the 100 percent original contour restoration requirement be moved back to a reasonable 75 percent. In other words, the operators must at least restore the contours to 75 percent of their original slope. While my bill addresses Virginia's economic, environmental, and safety concerns in the surface mining restoration area, it would also have added benefit of possibly providing southwestern Virginia with increased usable land. Virginia's communities have been able to utilize restored land for entirely new purposes—hospitals, schools, housing, and other necessary improvements in everyday life. My bill would make available to them additional land for community use.

Mr. President, a U.S. district judge in western Virginia, in examining the Surface Mining Control and Reclamation Act of 1977 during litigation proceedings in February of this year, made findings of fact that the act imposes stringent performance standards upon coal mining operations on slopes greater than 20 degrees. The judge found that the act makes surface mining economically prohibitive on slopes of 20 degrees or greater.

The judge found further that the act has its greatest impact on the land area located in the western district of Virginia, since 95 percent of the coal reserves found in Virginia and capable of being strip mined are located on slopes with an incline greater than 20 percent.

It was held that the evidence presented clearly proved that the act establishes performance standards which are designed to restrict or prevent the recovery of coal from 95 percent of the coal reserves in the western district of Virginia.

This nonrecovery of coal means a loss of jobs in Virginia and economic hardship wrought upon innocent families.

At the present time 2,000 of Virginia's 20,000 coal mines are out of work in southwest Virginia.

My amendment which would relieve some of the act's stringent requirements would go a long way toward alleviating this existing economic disaster.

I only wish that my colleagues could join me and see the beautiful hills of Virginia and see how the people, through restoration, have made safe and productive use of land that has yielded forth the coal. In this hour of economic crisis, in this hour when we still are confronted with a national energy problem, I urge my colleagues to consider favorably this amendment, which will help many regions of America.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. HUDDLESTON. Mr. President, I commend the distinguished Senator from Virginia for presenting this amendment and focusing attention, again on what I consider to be one of the most onerous impractical provisions of the Surface Mining Act. The requirement to return land to the original production contour is one that is most troublesome to the eastern section of the State of Kentucky. It imposes unnecessarily severe restrictions on coal producers and is such a difficult task to accomplish, yet the requirement totally ignores the benefit that may come from leaving the land in such a condition that it can be utilized in another manner.

But the fact is that when you mine coal you can leave benches and you can leave flat surfaces in the place of steep hillsides without doing any damage to the environment.

The scarcest commodity in the eastern section of Kentucky, where some of the highest quality coal in the United States is produced, is flat land. The only way that area of this country is going to develop in the future, and is going to be able to benefit from this tremendous resource this energy resource of coal, is to be assured that it will be left in such a condition that future generations can build a new economic foundation.

That cannot occur if land is not available for factories, or available for building homes, public buildings, highways, and the numerous other facilities that accompany economic growth.

It may well be, as I am sure the committee will indicate, that this is not the proper time to seek substantial changes in the law itself because, as a matter of fact, it has not gone into full operation at this time. Maybe it is an issue that should be dealt with later, after more experience has been had and more knowledge about just exactly what we are talking about. But I hope that, somewhere along the line, the Senate will give very serious consideration to the fact that it is difficult to write a law and include in it very specific provisions that apply equally all over the United States and for every kind of situation.

I think that with further study and further experience, it can be demonstrated that the law, in fact, may well be counterproductive to environmental considerations. At the same time, the approximate original contour requirement denies the opportunity for development of land which could be significant to the future economic strength in the coal producing regions of our country.

Mr. RANDOLPH. Will the able Senator from Kentucky, who addresses himself to the Warner amendment, yield to me?

Mr. HUDDLESTON. Yes, I yield to the Senator from West Virginia.

Mr. RANDOLPH. I thank the Senator.

Mr. President, as the Senator from Kentucky has said and as other Senators who are in the Chamber know, there are the questions on returning land to original contours and filling deep valleys

with overburden in our States. Granted we must be careful to see that surface mining does not destroy our scenic landscapes. But sometimes in areas like West Virginia we are also interested in what I understand Senator WARNER's amendment would address. That is the opportunity to improve the land, for the purposes that will provide housing and other sites for public facilities can be created for the benefit of those who move in to mine the coal itself. If land can be used in this manner, in states with mountainous terrain like West Virginia, restoration to original contour should also be treated flexibly.

We have to be realistic. Sometimes, in West Virginia, I am told by individuals and companies alike that land is sadly lacking for new community development purposes. Armco, for example, recently opened two new mines. They said very frankly that there was a problem of securing sufficient miners for the actual mining of the coal because of the inability to find sites where they could live, in close proximity to where they had to mine the coal.

The Senator from Kentucky knows that our miners are, ofttimes, driving 50 and 60 miles each way to work in the mines—not only the deep mines, but the surface mines as well. So I feel that Senator WARNER's 75 percent of original contour amendment that has been offered would not damage this legislation. I believe that is Senator HUDDLESTON's position. The amendment, in fact, gives States the opportunity to modify surface-mined land for construction of houses, schools, and other community facilities.

That is my understanding, and I support the amendment.

Mr. FORD. Mr. President, how much time remains? I understand we have 15 minutes each.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Kentucky has 15 minutes.

Mr. FORD. Has all of it been taken out of the time of the Senator from Virginia? How much time does he have left?

The PRESIDING OFFICER. The Senator from Virginia has 5 minutes.

Mr. WARNER. Mr. President, I wish to thank my distinguished colleagues from Kentucky and West Virginia and gratefully yield the time to each of them.

Mr. FORD. I thank the Senator.

Mr. President, the Senator from Virginia makes good ecological sense. I have struggled with this problem for a long time, since long before I came to the U.S. Senate. Therefore, I am not a new hand at this.

I struggled in the 95th Congress—in full committee, on the floor, in conference. I finally got a little experimental language toward the end that if the Secretary would approve would result in some experimental operations related to this.

When engineers who are well educated and have given their lives to this arena come forward with their statements and positions, it makes you wonder when others come and say so harshly, "You have to do it this way," even when sound engineering practices dictate a certain way.

I can assure the Senator from Virginia that I will work with him to try to secure a responsible and sound legislative approach to the problem.

I will tell the Senator, at least in my judgment, that if this amendment should go with this piece of legislation, it would probably put it back into the arena of the controversy we have had over the years. In that light, and the consideration of that amendment on this piece of legislation, I would hope that we would not have to go into that arena to fight again.

I think with the information we have had and the problems that have been presented, that in a short period of time we will be in a better position to look at the real world and say what has happened and what has not happened, then we can come forward.

Mr. President, I have no real argument with the Senator from Virginia as to what he is trying to do because I have tried to do that, and I think he understands.

Mr. President, I have no further argument against it, I just hope the Senator will not require us to make a decision on this particular amendment today.

Mr. WARNER. Mr. President, I ask if the minority Senator would like to speak to this matter. I would yield some time to him. I have 5 minutes remaining.

Mr. FORD. I have some.

Mr. HATFIELD. I thank the Senator from Virginia.

I will ask for 3 minutes from the majority leader of the bill since I think he has a little more time left.

Mr. FORD. Yes.

Mr. HATFIELD. Mr. President, as one who served on the committee which developed this mining act in the last Congress, I can understand the concerns expressed by the Senator from Virginia.

My State is not such a State that is involved or affected by the Surface Mining Act in the same way. We do not have such deposits of coal and other minerals of this type.

I remember that in the discussion that took place as to the way we were going to reconfigure and reconform the terrain following these surface mining activities, I asked a question somewhat facetiously. It seemed to me in my travels in the State of West Virginia particularly, when I saw the amount of money required to try to develop some flat surface for schools and football fields, and other such municipal and local enterprises, that there was a lack of flat surface terrain to construct on as the villages and towns were growing in the State of West Virginia. That seemed to be one of the great problems and one of the cost factors involved in accommodating that growth.

So that perhaps, rather than requiring that terrain in which they were surface mining be put back into its original form, perhaps they would be better off to level it off in some cases and get some flat surface.

Of course, as I say, that was raised in sort of a facetious manner. Yet it bore on a very important point that not only exists in West Virginia, but other States as well. There has to be more flexibility, perhaps, than we discussed in the original act, so that local areas and conditions can have at least a little input in the decisionmaking.

I have seen lands that have been reclaimed, and in some instances in Pennsylvania where I have seen such lands, they are more attractive than the original terrain, and they did not conform to the exact shape and form of the original terrain.

So I think the Senator has raised some very significant issues here. I assure him, along with the majority leader of the bill, the Senator from Kentucky (Mr. FORD), as a fellow member on the same committee, that if the Senator from Virginia is interested in pursuing this in the legislative route, I certainly will be very open and very empathetic with the proposals he may raise.

But again I would like to urge the Senator to take that route rather than attempting to set that into law now. We would run not only into difficulties with the House managers and conferees, the entire bill would be placed in jeopardy.

I think something of this kind has such broad-based application, it perhaps deserves a new hearing where other States participate and other views be expressed on the subject.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATFIELD. I thank the Chair.

I will be very happy to work with the Senator from Virginia.

Mr. WARNER. Mr. President, I am, first, very appreciative of the remarks expressed by all who have addressed this amendment. Those remarks reflect a deep concern as well as an understanding of the problems facing those States affected by the "original contours" requirement of the act. The floor leaders on this legislation, I think, have indicated that in their best judgment, considering the entire industry, that while this amendment has merits it needs further exploration by the Senate, perhaps even hearings.

If I interpret the remarks of Senator FORD and Senator HATFIELD correctly, they will facilitate such hearings.

Further, it is in the best interests of the whole industry that the legislation, S. 1403 as amended, now pending before the Senate, should be permitted to go forward without the attachment of this amendment. To do otherwise may well endanger the passage of this bill. As I strongly support S. 1403 and believe that it must be enacted to provide an impetus for increased coal production vitally needed by this Nation. I defer to their judgment. I will at the proper time reintroduce my amendment as an original bill and seek the support and cosponsorship of those Senators who have spoke on my amendment on the floor today. At this time, without prejudice to my amendment, I ask unanimous consent that it be withdrawn.

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

Mr. FORD. Mr. President, I do not know of any other amendments, at least I have not been informed of any other amendments.

UP AMENDMENT NO. 544

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER), for himself, Mr. JACKSON and Mr. TSONGAS, proposes an unprinted amendment numbered 544.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted by the committee amendment insert the following:

That this Act may be cited as the "Surface Mining Control and Reclamation Act Amendments of 1979."

SEC. 2. Sections 502(d), 503(a), and 504(a) of the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) are hereby amended as follows:

(1) in section 502(d) in the last sentence, strike the words "forty-two months" and substitute the words "forty-nine months";

(2) in section 503(a), strike the words "eighteenth-month" and substitute the words "thirty-one months";

(3) in section 504(a), strike the words "thirty-four months" and substitute the words "forty-one months";

(4) in section 504(a)(1), strike the words "eighteen-month" and substitute the words "thirty-one months"; and

(5) in section 504(a) after paragraph (3), strike the sentence:

If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months."

SEC. 3. Section 523(a) of the Act is amended by striking the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Subject to the provision of section 523(c), implementation of a Federal lands program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate.".

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

Mr. MELCHER. Yes.

Mr. FORD. Is this the amendment that the majority leader secured the time agreement on with the Senator—at 5:15?

Mr. MELCHER. Yes, it is.

Mr. FORD. I say to the Senator, I have just now been informed that there may be another amendment, and we have a time agreement.

I am just trying to be sure we do not have any problems here parliamentary-wise.

Mr. President, I am proceeding on the understanding of the request made by the majority leader that we would vote on Senator MELCHER's substitute at 5:15, and then we would go to third reading and final vote no later than 7 p.m.

If other amendments are to be submitted, I suggest that proponents of those amendments have the responsibility to present them prior to that time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MELCHER. Mr. President, I ask unanimous consent that Mr. Jim Cubie, of Senator KENNEDY's staff, have the privilege of the floor during the consideration of this bill.

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

Mr. MELCHER. Mr. President, I wish to discuss the amendment I have at the desk and which is the pending business before the Senate.

Section 3 of the proposal before the Senate, is a completely novel approach to congressional actions. The feeling of the Senate and the House has been expressed that the 1977 Surface Mining Control Act was oriented toward a State lead, and there is no argument with that. It was oriented toward a State accepting the minimum standards required under the Federal law as State law and developing a program for reclamation of coal strip mined land, submitting it to the Secretary for his approval, as meeting those minimum standards, and then the State operated the reclamation program. There is no argument at all with that.

However, when we have been told by our constituents in the past that the act that brought about Federal regulations were too much to put up with or threatened not to accomplish the purpose for which the act was adopted, we ordinarily have addressed ourselves then to specific parts of that Federal law, in an attempt to make modifications in the law by amendment and on some occasions to repeal the law.

The novel approach today in S. 1403 is not to amend the law but to repeal those regulations in place, promulgated by the Secretary of the Interior to carry out the intent of the law as it affects the approval of a State's program to run the reclamation program on lands that are strip mined for coal.

How does it do this? S. 1403 says that the State program will not have to be consistent with the Secretary's regulations in considering such State program. Rather than just addressing some regulations or parts of the act that the industry might find objectionable or a State might find is incompatible with its particular circumstances, rather than just addressing those specific points, this bill would have us use a broad ax approach just to take away the Secretary's regulations regarding approval of a State plan.

So it is not just the performance standards of section 515 and section 516 of the act, but it involves the rest of the regulatory scheme, including the permit application and approval, bonding, inspections, designations of lands as unsuitable. The whole body of regulations would be eliminated as a standard to judge the adequacy of a State program.

Earlier today, we had a question from the Senator from Illinois regarding what would be the effect on prime farmlands if the bill were passed as presented. We looked at the permitting procedures to identify when a mining plan would be approved, to extract the coal that underlies land that has been designated as prime farmland. Under that permitting procedure, in the explicit language of the act, it refers to the requirement of the Secretary of the Interior to develop the regulations pursuant to this point in cooperation with and the approval of the Secretary of Agriculture.

The effect of S. 1403 as drafted and presented by the proponents of the bill would be to nullify, in effect repeal, that very procedure for granting a permit to mine under prime farmland, to extract the coal by means of strip mining.

The Secretary of the Interior in a letter dated today notes that this section of the bill deletes his authority to use regulations as a basis for review and decision on State program proposals. It can only lead to court challenge of almost any decision that he makes regarding a State program.

He points out that over 500 issues were raised by the States, by the industry, or by the public, while the Department of Interior was writing the final rules.

He further points out that many of those issues are likely to be raised again with respect to one or more State programs. In deciding them, the Secretary states, "The courts will be effectively writing the national regulations on a State-by-State basis."

I wish to remind my colleagues in the Senate of some of the points that would be of very much concern to me and I think to most of the people who are relying on the 1977 act to prevent degradation of land or water throughout the country where coal is strip mined.

If this bill is adopted as it is presented to us, the Secretary will be shorn of his ability to use those regulations, to judge whether or not a State program can meet the specific application under the broad standards of the act. In fact, the Secretary would probably not be even able to use those regulations as a guide to aid him in assessing the State's submissions, because this act of Congress, if this bill were passed, will effectively say forget about those regulations, forget about them. As has been so often the case in debate this afternoon, the proponents of this proposal have stated that the regulations are too burdensome, too cumbersome, and there are too many of them.

Where do we start then? Where is the benchmark? If we have a case in court, State or Federal court, where is the benchmark to review and compare the proposals made by an individual State as to the requirements of meeting the language in the act?

I do not think I am exaggerating to say that will vary depending upon who the judge is and how strong the argument is made by one side or the other before that particular judge.

The court then will have to render a decision, and as the various courts are to decide what the interpretation of the act is, then we are going to have a patchwork system of what that interpretation is, varying from court to court, or very likely from State to State.

I have a point here. Many of the act's standards are very broad and surely they are not self-enforcing. For instance, the act requires mining to be conducted in

such a way as to minimize the disturbance to the prevailing hydrologic balance, stabilize and protect all surface areas to control erosion and air and water pollution and assured treatment of all toxic- or acid-forming materials.

That is what the act requires, and we know we want that. There is not a one of us who does not want that in the act and we want it enforced and we want it enforced uniformly on those matters. We know that there must be a variance in some instances. There must be some differences in some States, and the Secretary has that authority under the act.

For instance, the Secretary in his letter today said this amendment is not needed "because the variations the States will most likely propose can be approved under the State window provided in our regulations if they are consistent with the act and warranted. States may submit laws or regulations which differ from the regulations if they achieve the purposes of the act. I can and will approve such alternatives where I find, based on information provided by the State or otherwise available, that equivalent levels of protection to the public and environment will be achieved."

I think that procedure is much preferable to a procedure where a Federal or a State judge decides on such regulations as would affect, for instance, the hydrologic balance, so important to us in the West.

Are we to throw in doubt just what the act meant when we passed it here after so many years of effort, that it really meant to protect the water availability in Western States? I would hope not. Yet the provision in this proposed bill that would remove the Secretary's regulations from consideration and approving a State plan would do exactly that and throw it into a court for a determination.

I have noted some of the examinations that have been made on the legal implications of this provision. The section 3 provision will cause extensive and unnecessary litigation, I am advised by legal authority who reviewed it carefully and reviewed the history of the act. States will argue that their programs meet the requirements of the act and the Department of the Interior through the Office of Surface Mining will not have their regulations as official interpretation. States will litigate to force the Department of the Interior to approve their programs. It is likely that the coal industry within a State will litigate, arguing that the approved State program is inconsistent with the act, and it is possible, indeed it is likely, that an individual or citizen organization will challenge the approved State program as not being adequate to meet the requirements of the act.

The desire for a uniform program nationwide is certainly diminished under those circumstances. Many of the provisions of the act granted are broad general statements of intent and policy and like almost all legislation Congress passes we expect it and we require that the Department of the Interior will carry the congressional mandate by regulation and will interpret and design a uniform program based upon the general desires of Congress and to achieve that through the promulgation of regulations as the usual process.

There is an environmental implication here, also.

I have mentioned the protection of the hydrology particularly in the Western States where it is so vital to use.

Let me also remind the Senate that the interpretation of the environmental protection standards and permit requirements will differ from State to State and the ability of the Office of Surface Mining in the Department of the Interior to insure that these provisions are adequately carried out will be greatly diminished if we were to accept S. 1403 as presented to the Senate because that provision in the bill forbids the Office of Surface Mining the use of a model to assist the States in drafting their program, and it is very likely that under that provision certain States will continue to be in an economic disadvantage for neighboring State programs will not necessarily be as stringent as their own. So the abuses of the past are likely to continue.

Mr. CULVER. Mr. President, will the Senator yield?

Mr. MELCHER. I am glad to yield to my friend from Iowa.

Mr. CULVER. I appreciate very much the Senator's yielding, and I wish to commend him for his interest and leadership in this important area.

Mr. President, when I introduced the so-called prime farmlands amendment to the Surface Mining Control and Reclamation Act in 1977 it was intended to protect prime farmland potentially subject to surface mining operations.

Mr. President, it is my understanding that implementation of this provision by the Department of the Interior has been in accordance with the intent of Congress in approving my amendment. Moreover, I can assure the Senate that its implementation has certainly been in accordance with the intent of the original amendment's prime sponsor.

Essentially, the amendment provided that an applicant for a new permit to conduct surface mining of prime farmland must demonstrate to the State regulatory authority that he can restore the land to its full premining agricultural potential.

This amendment was premised upon the belief that prime farmland is a critically important natural resource. Its value is long term and renewable—if it is properly safeguarded, we can benefit from its bounty almost indefinitely. That renewable quality makes it almost unique; other resources, once exploited, are gone forever. As a Senator from the State of Iowa, which has so long exemplified the immense capacity of American agriculture, I may display a certain bias but I believe firmly that next to our people, our fertile soil is our Nation's most valuable resource.

It is precisely because this soil is so vital that if it is to be used for additional or alternate purposes, its primary usefulness as farmland must be guaranteed. Its permanent loss would severely undermine our future food production potential and place greater pressure on our remaining agricultural resources. As Secretary of Agriculture Bergland has stated:

> Any loss of prime farmland, no matter how small, is a loss that cuts at the very heart of long-term American productivity and strength.

I believe that the prime farmland amendment approved in 1977 provides the needed guarantee of continued productivity in a manner that is both practical and fair to the nonagricultural potential of farmland.

The provision does not prohibit surface mining on prime agricultural land; it merely requires that mined land be restored to its original capacity.

The provision uses existing, proven criteria for the definition of farmland. These criteria have been employed for a considerable time by the Soil Conservation Service. They are comprehensive and precise.

The provision does not threaten the need for increased coal production. According to OMB, at most 1.3 percent of the 1978 forecast for such production would be affected.

The provision does not place unfair burdens on mining operations. The coal companies maintain that reclamation is technologically feasible. That verdict is confirmed by the independent judgment of the Iowa coal project and the Iowa Department of Soil Conservation.

The provision protects a significant amount of valuable farmland. OMB calculates that a minimum of 12 million acres of prime farmland contain coal subject to surface mining.

While the bill under consideration today does not repeal the performance standards governing the mining of prime farmland, it does remove, for an unspecified number of year's the ability of the Secretary of the Interior to enforce those standards. In my view this is tantamount to outright repeal.

S. 1403 would remove any protection of prime farmland from the Interior Department's authority under Public Law 95-87 and on that basis alone should be defeated if the Melcher substitute is not approved.

Mr. President, one of the most important, yet, I think, least understood national problems that we face as a people in America today is the very dangerous and frightening erosion and disappearance of our prime farmland in America.

We hear a great deal today about the adequacy of the national defense of this country, how secure our national security interests are. I think it is very important to keep in mind that when we define the adequacy of our security and our defense system we acknowledge and recognize that it is more than just guns and tanks. It is the economic health of this country. It is the political will and morale of the people. It is their confidence in the political institutions of this Nation.

One of the most critical aspects of our strength in the world is our agricultural productive capability. We talk about what percentage of GNP or what percentage of our budget we spend on defense and try to fix an arbitrary measure of how sufficient it is.

I think it is important to keep in mind that the Soviet Union spends about a quarter of its GNP on agriculture and cannot feed itself.

Here in America, and particularly in the State of Iowa that I proudly represent, we are fortunately blessed with a high percentage of the total available grade A farmland in the entire world. Yet today we see a steady erosion through problems with soil conservation or the conversion of agricultural land to nonfarm uses, through such things as unreclaimed strip mines.

Today in America through soil erosion alone we are losing 3 to 4 billion tons of our best black soil every year. In addition, out of my own State we are losing an estimated 200 million tons each year down the Mississippi River.

We have some 27 million acres of cropland in the State of Iowa. It is some of the richest in the world. And yet a study that is going to come out next January will demonstrate that we are losing each year over 5 tons per acre on half of that rich land.

In the last 100 years we have lost through failure to implement sound soil conservation practices one-half of the topsoil of Iowa. If we do not improve upon that situation in the next 100 years I think clearly the implications for the strength, for the economic prosperity, of this Nation would be devastating, and this Nation would greatly suffer.

We are going to export an estimated $32 billion worth of farm exports next year. We import $45 billion of oil from OPEC. Clearly without the economic power of agricultural export markets this country would be a basket case.

We often talk about the black gold in the nature of OPEC oil. But, Mr. President, we have in our own rich productive topsoil, if it is properly maintained and preserved, a renewable resource that is far more valuable than the finite wealth that is represented in the remaining oil reserves on this entire planet.

For these reasons it is essential that we be responsible stewards of this land so that we may preserve and maintain the economic strength, prosperity, and way of life that have been so fundamentally important to the security and well-being of this Nation and its influence in the world.

Mr. HATFIELD. Mr. President, I am sorry I was not on the floor when the Senator from Iowa began his remarks because I had to be called off the floor.

I did want to associate myself with the remarks of the Senator from Iowa on his agricultural speech because I fully support and agree with him concerning his statements on the loss of topsoil and the problems facing us as a Nation on agricultural prime farmlands.

I assume his statement was to be entered into the RECORD before our discussion here on this Surface Mining Act because I do not get any connection between what I heard the Senator from Iowa say and the present matter under consideration and at hand, because if the Senator is implying or indicating that this proposal in S. 1403 in any way diminishes, threatens, or denigrates the basic concern about the programs underway or about to be placed in action or put underway relating to conservation of farmlands, he is sadly mistaken. S. 1403 in no way affects that basic concern that I share equally with the Senator from Iowa as he has expressed here on the floor in his very eloquent statement.

I want to emphasize again that those of us who had a hand in drafting the Surface Mining Act, as well as other areas of resource management, who are committed, as I am, to conservation practices and conservation ethics and conservation principles, would in no way seek to weaken that commitment by introducing a bill today as Senate bill 1403.

I want to restate that what we are attempting to do, and only what we are attempting to do today, in the Rockefeller amendment is to restore, through the maze of existing confusion created by the Office of Surface Mining in its publishing of regulations, the original intent of the bill which was to put the States on notice that the Federal Government, through its powers and through its authority and its responsibilities, expected the States to come up with a reclamation program that would be in conformity with the 115 environmental performance standards that we wrote into the law.

When we were writing this act, I want to remind my colleagues, there were those who raised the question as to whether we should write all this into law or whether we should give some consideration to making broader principles as the statement in the bill and let the agency implement those broader principles by specific regulations.

Well, it was not an either/or situation. The point was that we did not want to chance, through rules and regulations, that the full intent of this Surface Mining Act in any way would be diminished or demeaned.

We wanted it written into law that these were performance standards we were going to consider as a minimum; that if the States wanted to exercise their responsibility under the act to incorporate those standards, that would be perfectly welcome and in fact encouraged, but that it was clearly established by the record, by the wording of the law, by the legislative record, by the markup sessions of the committee, and by such debate as we had here on the floor that the primary initial responsibility was vested in the States, and if a State did not perform, then the Federal Government would place into action and into operation such a reclamation program upon the State that failed to come up with an acceptable program of reclamation based upon the criteria of the law.

Now, what we have an example of here is not unique, as I indicated earlier. We have had overkill on the part of the agency. We have had another typical example of bureaucratic arrogance—arrogance that says, in effect, "We don't care what Congress says, we don't care what the intent of the law was, we are going to do it as we see fit and as we wish." That is the only way you can interpret the rules and regulations set forth by the Office of Surface Mining at this point, which has usurped the authority vested in the States by the act itself, and has gone totally contrary to the intent of Congress.

They have said, "We are not waiting for the States to act; we are going to be the leaders. We are going to clone the States. The States are exactly the same across this country, all 50 States, and we are going to set rules and regulations for State plans and State programs."

Let me say, Mr. President, I have seen too many other acts that were noble in character and concept and type at their birth, that have been contorted and set up in such a way that you could hardly recognize the original act, through the rulemaking and regulating authority of the agency.

Again, I emphasize that I do not support the growing tendency of Congress to get at this problem by declaring that Congress shall have veto power over the normal policymaking and rulemaking authority of these agencies. But why is Congress increasingly writing such veto power into law? Because of the very tendency of which this is an example. Congress has found, too often, that the whole legislative intent and the laws that they have created have been perverted and subjugated to the arrogance of bureaucrats who have been writing rules and regulations that have the full impact and status of law, and enforcing them as such, contrary to the very organic act or original bill that was passed by Congress.

This is not a States rights argument per se. I have been on both sides of this particular problem, having been the Governor of a State and having had to deal with Federal bureaus, Federal rules, and Federal regulations. I know the inhibiting power that is placed upon Governors who want to be creative, and I think I can stand here with a fine record of coming from a State that has probably been as creative and innovative as any State of the Union in public policy, environmental growth, and progressive legislation throughout the history of our State. We declared our beaches a public highway in 1911, so that the people would have access to our beaches and they could not be controlled by resorts or single ownership. We set up forestry controls in our State that saw what had happened in Michigan, where lumber barons had raped the State of Michigan in their quest for the dollar, and we forestalled them before they reached our State by setting up reforestation programs that are effective and functioning today. So I have my historical heritage in my State, and my own personal political heritage.

I have been instrumental, in my State, in getting legislation enacted protecting the environment. I will take a back seat to no one in this Chamber so far as commitment to conservation is concerned.

I am only stating the simple proposition here today that we must recognize that there is value in diversity. We have to recognize that there is such diversity within our union of 50 States, and that

frequently, in our quest to try to correct a problem that has gone too long unanswered and without proper leadership at the State level, we have set forth standards not practicable or not applicable in all States.

So I am one who believes in State criteria, and we have in this bill a section that lists 115 performance standards. I participated in creating those standards, and I am willing to have enough faith in the people, acting through their own States, to at least give them a reasonable time to come up with a program in conformity with the Federal standards as set forth in the law.

I am for very strict enforcement, that if the States fail to respond, we should move into the vacuum created by the States' nonperformance and set forth a program from the Federal level and impose it upon the States.

But I want to say again, the States have been far more creative than the Federal Government has ever been. My State was the first State to have a progressive income tax. We watched that whole concept develop in this country.

When you go back through some of the most progressive pieces of legislation in the history of the Republic, you will find they did not start with the Federal Government, they started with experiments at the State level, and I think the States will have that capability to be innovative, as we have been in our State of Oregon. I think other States besides my State are willing to respond to this call for reclamation in matters relating to surface mining

So I have faith in the people. I still have faith that the States can perform. Until I have the evidence to the contrary, I continue to have that faith. I resist this concept of centralizing authority and centralizing power in the hands of the Federal Government. I think some of the greatest political problems we face today are because of this overcentralization that started with the New Deal and has accelerated under Democrats and Republicans as well since the New Deal said, "We will have to do it, because you do not have the capability."

Mr. President, the people feel this. If you talk to average American people today, they seem to feel a sense of irrelevance and disconnectedness with the central Government. They are beginning to feel enmity toward their central Government. The man down at 1600 Pennsylvania Avenue got elected in 1976 primarily on the basis of this disenchantment of the people with their Federal Government. He campaigned against Washington. That was the thesis of his whole effort. There were other reasons, but I think that is the primary reason why Jimmy Carter sits in the White House today is that he capitalized on that kind of malcontent in the minds of the American people today toward the performance record of Washington.

Yet here we are with another example of the kind of arrogance and misaction that gives credence to this feeling in the minds of the American people today, by the arrogance of an agency that, before the States have had an opportunity to respond, has moved into what it says will be the rule, contrary to the act itself.

It is more than just a matter of reclamation, strip mining, and all the problems created by that. I think it is an issue that strikes at the very heart of the Republic's problems today, and that is the relationship of the people with their Government.

I hope this body will again today assert the central truth that States have a right under this act and a responsibility under this act. We are going to give them a reasonable time to respond. If they fail to do so, we are going to fill the vacuum. In the meantime we are not going to let an office in the Office of Surface Mining preempt the States in violation of the original intent of the law.

(Mr. BAUCUS assumed the chair.)

Mr. MELCHER. Mr. President, I have a great deal of respect for my friend, the Senator from Oregon, for his fine record here, in the Senate, and his previous record in public life serving the people of Oregon. But I think I have to resist very stoutly what the Senator from Oregon is proposing today.

Our State of Montana is involved in the strip mining of coal, and I believe that involvement will increase as the years unfold before us in the future. The proposal that we are asked to swallow here is so novel, so different, and so reckless—I repeat reckless—as to demand that we exert all the effort we can, first of all, to let each Senator know what the sweeping effect of this proposal would be.

We have the language of the bill before us that seems so short, so simple, so direct, yet is so far-reaching. One provision simply states to strike the phrase "and regulations issued by the Secretary pursuant to this act." That does not sound like a great deal. Yet, when you look at what it means in various sections of the act, then you understand how sweeping the proposal is because, the Secretary must then review a State program on the basis of only the language of the act, not the regulations that the Secretary has issued.

The very purpose of the bill—in many instances, the very language in the bill—calls for the Secretary to issue regulations on the various provisions and the various sections of the bill. And because that is so much a part of the act, to strip the act of the Secretary's regulation would leave the entire matter in utter chaos.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. FORD. Mr. President, I understand that the distinguished Senator from Colorado has an amendment he would like to discuss. I yield to the Senator.

UP AMENDMENT NO. 545

Mr. ARMSTRONG. Mr. President, I thank the Senator for yielding.

I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 545:

On page 4, line 9, insert the following:

SEC. 5. Section 517 of the Act is amended by striking section (a) and by inserting a new section (a) to read as follows: "Once a State plan has been approved by the Federal government, the State at its discretion and upon notification to the Secretary of Interior, shall exercise exclusive jurisdiction over the inspection of activities regulated by the approved State plans. In the absence of an approved State plan or decision of the State not to exercise exclusive inspection authority, the Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary, consistent with the provisions of this Act, to develop or enforce any Federal program and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations."

Mr. ARMSTRONG. Mr. President, before I comment on the amendment I have presented, I compliment the manager of this bill. Obviously, it is a matter of great interest and concern to us in Colorado. I, of course, expect to support the measure and assume that it will pass by a very wide margin. I appreciate the leadership of the Senator from Kentucky in bringing this matter to the floor; because in extending the deadline for the States to get their programs together, it does aid materially many of the States that have not been able to comply until now.

The purpose of the amendment I have offered is very simple, and it ties in, in a sense, with the amendment offered earlier by Senator BELLMON. Under the Bellmon amendment, which was adopted, State inspectors will continue to have jurisdictional authority over mine inspection prior to the time the State plan is submitted.

My amendment addresses itself to the period of time following the submission and approval of the State plan. It simply says that if the State plan has been approved by the Secretary, the States may conduct the inspections under their plan and that there will be no need for a Federal inspection.

I think most Members of the Senate would vouch for the fact that our miners—indeed, most of the business operations and most of the local governments in our States—have swarms of inspectors from every known agency calling on them every day of the week and that to whatever extent we can reduce that number responsibly and eliminate overlapping and duplicating inspections, we would be wise to do so.

My amendment simply says that when the Secretary has signed off on the plan and has approved it, the State shall have the discretion to conduct its own inspections and that the Federal Government would not duplicate that inspection.

Mr. FORD. Mr. President, the Senator's amendment has a great deal of merit. The amendment, however, would affect the Federal Government's ability

to determine whether or not a State program is being carried out in compliance with the act. I do not think the Senator would want to do anything to dismantle the basics of the 1977 act.

I have not had the opportunity to study the Senator's amendment. Under the circumstances, I hope he will not ask us to accept this amendment or take it to a vote today but will give us an opportunity to study its far-reaching effect.

I do not want to go beyond that, nor do I want to do anything less. Congress worked long and hard and labored night and day in order to arrive at a consensus. The Senator has experience in the House, and he understands the long hours spent to bring this matter to its present stage.

I am sure that the Senator is one of the strong advocates of legislative intent, that we should do what Congress says and no more, stopping the bureaucratic regulations that keep mounting and mounting and mounting. I agree with him.

So, under the circumstances, without having had an opportunity to study the amendment, I hope the Senator will afford this opportunity. Then, at some future date, we would have an opportunity to put it on another vehicle or bring it up in the Energy Committee and discuss it there, seeing if we could find an arena in which we could use it.

Mr. ARMSTRONG. Mr. President, I appreciate the comments of the distinguished manager of the bill. He is correct in stating that I am very much interested in this legislation, the underlying purpose of which is to protect the environment in States like my own.

In fact, I recall vividly serving as a Member of the other body when this legislation was adopted, and I was one I think of a dozen members of my party who voted to override the President's veto of this legislation when it came through, and as a pretty good party man I hated to do that, but I thought it was an important bill. I thought it was important that we begin to move to cause people who use the products of these mines to pay the costs of reclaiming the land and restoring it. So this is important legislation.

I am also sensitive, however, to the concern which the Senator has expressed, the fact that this is an unexpected amendment. Frankly, this concern had been brought to me. The concern expressed over my amendment is a thought which I have not had a chance to study at length myself.

But it does seem to me that the elimination of overlapping and duplicating inspections is an idea that is worthwhile.

Rather than press it to a vote at this point, which I believe would be premature, in a moment I shall ask permission to withdraw it.

But I particularly appreciate the Senator's expression of interest and am hopeful that other members of the committee and other Members of the Senate will also be interested in this concept and at the right time we could prevail on the committee to put this amendment and others which may be in order into a second bill and bring it to the floor for our further consideration.

Mr. FORD. Mr. President, will the Senator yield at this point?

Mr. ARMSTRONG. Of course, I am happy to yield.

Mr. FORD. I heartily endorse the Senator's statement and his attempts to eliminate the overlapping and duplicative experiences that we have in the States.

As I have expressed on the floor today, maybe when the Senator was not here, but as a Governor of a State I have been loved too much by Big Brother. I would like for him to leave the States alone to do their work without the duplication of the Federal Government and the oppressiveness of regulations.

I just wanted to endorse the Senator's position to eliminate the overlapping operations of Government.

Mr. ARMSTRONG. I appreciate that very much and the manager's courtesy.

Mr. President, with that word of explanation, I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw the amendment without unanimous consent.

The amendment is withdrawn.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, the Congressional Research Service assessment of the Office of Surface Mining's implementation of the act has conducted a review by my request of subsection 503 (a) (7) and related OSM regulations in order to determine the States' capability to assume regulation while maintaining their ability to accommodate regional mining and reclamation characteristics.

Mr. President, I ask unanimous consent that the entire analysis by the Congressional Research Service be printed in the RECORD.

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

JULY 24, 1979.

To Senate Committee on Energy and Natural Resources, Attention: Mr. Dave Russell.

From Duane A. Thompson, Analyst Environment and Natural Resources Policy Division.

Subject Section 503(a)(7) of Public Law 95-87, The Surface Mining Control and Reclamation Act of 1977.

In response to your request of July 23, 1979, I have reviewed Section 503(a)(7) and related OSM regulations in order to determine the States capability to assume regulation while maintaining their ability to accommodate regional mining and reclamation characteristics.

The Surface Mining Control and Reclamation Act of 1977 was originally intended to allow the individual States to assume the authority and responsibility for the regulation of surface mining within their own boundaries. This concept is contained in Section 101, "findings", of the Act, which states explicitly that:

"(f) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for *developing*, authorizing, issuing and *enforcing regulations* for surface mining and reclamation operations subject to this Act should rest with the States;" [emphasis added]

With this concept in mind, Congress, in the law, made provisions for the institution of State enforcement programs that would allow the States to assume regulation, thus providing for the vastly different regional characteristics of surface mining, with the proviso that the regulations promulgated by the individual State enforcement agencies would be consistent with the minimum performance standards set forth in the Act. This requirement is contained in Section 503(a)(2) of the Act which states that in order for a State to assume responsibility, it must provide:

"(2) a State law which provides sanctions for violations of State laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, which sanctions *shall meet the minimum* requirements of this Act, ..." [emphasis added]

Section 503, in subsection (a)(7), goes on to further condition the assumption of regulation on the implementation of State "rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." Congress, however, did not define the key phrase "consistent with" in the Act, leaving this option to the Federal regulatory authority. The Office of Surface Mining established by the legislation has since defined this phrase to mean:

"7305 Definitions: (b) With regard to the Secretary's regulations, the State laws and regulations are no less stringent than and meet the applicable provisions of the regulations of this Chapter."

Because of this requirement in the Act, some States now conclude that they must, in effect, accept the regulatory requirements of the Federal agency as their own in order to assume regulation of surface mining.

In response to a voluminous number of comments directed to the inflexibility of the regulations in their proposed form, the Office of Surface Mining developed a "State window" concept that, according to the Agency, would allow the States considerably more flexibility in developing their own regulatory programs. The language of the "State window" regulation, however, requires the States to:

"731.13(c) Explain how and submit data, analysis and information, including identification of sources, demonstrating—(1) that the proposed alternative will be *in accordance with* the applicable provisions of the Act and consistent with the regulations of this Chapter and (2) that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions." [emphasis added]

The *underlined* phrase "in accordance with" has been defined identically to "consistent with", meaning that all of the States proposed alternatives to the Federal regulations must be as stringent as those Federal regulations. Charges have been made by the surface mining industry and some of the States that the Office of Surface Mining has pursued a policy of developing detailed regulations for design criteria rather than performance standards for regulation. A complete review of the regulations tends to suggest that there is some legitimacy in this criticism. The States do appear to be left with few options but to accept all of the Federal regulations as their own in order to assume regulation of surface mining.

It could be noted that a review of the applicable provisions of the Act suggests that Congress intended to be much more liberal in its approach to alternatives to the law and the regulations. With the exception of Section 503(a)(7), already mentioned, which requires the State to promulgate regulations at least as stringent as those of the Federal regulatory agency, there is nothing within the section on State programs that requires the States to provide absolute proof of the feasibility of alternatives to the regulations

and/or conventional reclamation technology. In fact, Section 711 of P.L. 95-87 [91 STAT. 523] "Experimental Practices", reflects the intent of Congress to "encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use . . ." Furthermore, Congress, in this section, did not require that the proposed alternative technology be proven, only that it exhibit "potential" to be at least as or more environmentally protective than reclamation required by promulgated standards.

In conclusion, as long as the public law requires the State regulations to be consistent with those issued by the Federal agency as a prerequisite for State authority, and as long as the Federal agency pursues a policy of establishing design criteria instead of minimum performance standards outlined in the Act, the flexibility of the individual States to develop and implement regulations adapted to the unique geological characteristics of coal deposits and to respond with sound but reasonable regional approaches to reclamation could be substantially impaired.

Should you or any of your staff have any further questions on this or related subjects please call me at 287-5873.

Mr. HATFIELD. Mr. President, I highlight one of their findings.

In a July 24, 1979, analysis to the Energy and Natural Resources Committee, the Congressional Research Service concluded rather starkly that:

Charges have been made by the surface mining industry and some of the States that the Office of Surface Mining has pursued a policy of developing detailed regulations for design criteria rather than performance standards for regulation. A complete review of the regulations tends to suggest that there is some legitimacy in this criticism. The States do appear to be left with few options but to accept all of the Federal regulations as their own in order to assume regulation of surface mining.

In conclusion, as long as the public law requires the State regulations to be consistent with those issued by the Federal agency as a prerequisite for State authority, and as long as the Federal agency pursues a policy of establishing design criteria instead of minimum performance standards outlined in the Act, the flexibility of the individual States to develop and implement regulations adapted to the unique geological characteristics of coal deposits and to respond with sound but reasonable regional approaches to reclamation could be substantially impaired.

So, Mr. President, this is the reason I have asked this to be printed in the RECORD because this is an independent research project which would certainly give credence to what has been stated here in the Chamber by the Senator from Kentucky and myself and other supporters of Senate bill 1403.

OVERSIGHT HEARINGS AND THE NEED FOR AMENDMENTS

Mr. President, June 28 I sent to the Senate a "Dear Colleague" letter which addressed seven deficiencies of the Surface Mining Act.

I had intended to introduce a bill after the July 4 recess which would have included those seven provisions:

Briefly, the bill would have returned to the States the role of planning for and enforcing reclamation and environmental protection during mining; required States to comply with the act, but not with the Secretary's other rules and regulations; extended the time allowed States to submit their reclamation programs; unhinged the payment to States out of the Abandoned Mine Reclamation Fund from approval of State programs; lessened onerous bonding requirements dealing with performance standards for revegetation; and established an independent, ongoing audit of the Office of Surface Mining's implementation of the act.

In lieu of those proposals, the Hatfield-Ford substitute evolved. We feel these proposals represent the bare minimum for returning to the States the "lead" role in reclamation enforcement.

Findings of the June 1979 oversight hearings were often in the category of what witnesses described as "regulatory overkill."

We found that almost half the States will be unable to submit their programs by August 3 of this year as required by the act because OSM not only used all its time to write the regulations, but used three-fifths of the States' time as well.

We found many States having no choice but to become "State level clones" of the Federal regulations because the Federal bureaucracy will not otherwise accept the States' offerings. Having to "lift" whole sections of the final rules for placement in State programs certainly strays from the intent of Congress and places an unacceptable burden on State legislatures.

We found eastern small and medium sized coal operators unable to obtain reclamation bonds from surety companies because the OSM has not utilized the flexibility granted by the Congress and because the act itself demands strident bonding requirements.

We found the States must prove overwhelmingly their programs meet the Secretary's rules and regulations as well as the act. The State of Wyoming, for example, had been asked to change its statute of limitations and administrative procedures act, not to comply with the act, but to comply with the Secretary's regulations. The States are, in effect, guilty until proven innocent under this backward scheme.

We found the States unable to use their portions of the Abandoned Mine Reclamation Fund because the moneys are tied statutorily to approval of a State program. This carrot, in practice, appears to be a whip to the States, a whip which denies them even planning funds for restoring lands and communities to their productive limits.

A nearly unanimous record in recent hearings in both the House and Senate by the National Governors' Association, coal unions, coal operators, engineers, and industry require that we move to rectify these shortcomings. It is not our purpose to diminish the performance standards or reclamation requirements set by the act, and these amendments do not affect those areas. And we must fully realize the need to fend off other, more divisive and, as yet, undemonstrated problems with the act.

Simply shoving through a 7-month extension for the States only adds to the time Governors have to agonize over the incredibly detailed regulations with which the States must comply.

If we do not face up to the difficulties in amending the act to correct the disturbing trend away from the congressional intent of State primacy, then we will have succumbed to those omnipresent pressures to turn a deaf ear. And, again, our abundant coal reserves will have been thwarted. We cannot afford to leave our coal State constituencies and our energy conscious country in the breach.

Mr. President, I ask unanimous consent that the bill proposed in my "Dear Colleague" letter and a summary be printed in the RECORD at this point.

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

INITIAL DEAR COLLEAGUE PROPOSAL FOR: SURFACE MINING CONTROL AND RECLAMATION ACT AMENDMENTS OF 1979

MAJOR PROVISIONS

1. Extends for one year the time allowed States to submit their State programs.

2. Removes the requirement that States comply with the Secretary's rules and regulations which implement the Act, but leaving intact the requirement that States comply with the Act.

3. Shifts the burden of proof to the Federal Government that the State program does not meet the intent of the Act, and eliminates the requirement that the Secretary not delegate responsibility to the States for mine plan approval and unsuitability designation on Federal lands.

4. Removes duplicative, confusing and differing enforcement programs in states where a Federal Land Program must be initiated prior to an approved state program by making the times coincide.

5. Eliminates the requirement that monies from the Abandoned Mine Reclamation Fund not be freed up until approval of a State program.

6. Eases bonding requirements: in the area of revegetation performance standards; and by providing for increases in the release of bonding when revegetation is established.

7. Establishes a 15 member commission to audit the Office of Surface Mining's implementation of the Act.

S. 1403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Mining Control and Reclamation Act Amendments of 1979".

SECTION 1. Section 405 of the Surface Mining Control and Reclamation Act of 1977 (hereinafter referred to as "the Act") is amended by deleting subsection (c) thereof in its entirety, and by deleting from subsection (h) the phrase "and of the surface mine regulatory program pursuant to section 503".

SEC. 2. (a) Section 502(d) of the Act is amended by deleting the words "forty-two" therefrom, and inserting in lieu thereof the words "fifty-four".

(b) Section 503(a) of the Act is amended by deleting the word "eighteenth" therefrom, and inserting in lieu thereof the word "thirtieth".

(c) Section 504(a) of the Act is amended by deleting the words "thirty-four" therefrom, and inserting in lieu thereof the words "forty-six", and by deleting in paragraph (1) of Section 504(a) the word "eighteen", and inserting in lieu thereof the word "thirty".

Sec. 3. (a) Section 503(a)(7) of the Act is amended by deleting therefrom the phrase "regulations issued by the Secretary pursuant to".

(b) Section 503(b) of the Act is amended by deleting the phrase "not approve any State program submitted under this section until he has—", and inserting in lieu thereof the following: "approve any State program submitted under this section which meets the requirements of this Act. In carrying out his approval responsibilities, the Secretary shall demonstrate that he has—".

(c) Section 701(25) of the Act is amended by deleting the phrase "and regulations issued by the Secretary pursuant to this Act".

Section 4(a) Section 507(b)(14) of the Act is amended by inserting after the phrase "registered professional engineer," the words "registered land surveyor".

Sec. 5. (a) Section 515(b)(20) of the Act is amended at the end of the paragraph by deleting the semicolon and by adding the phrase ": *Provided further*, That the applicable five- or ten-year period of responsibility for revegetation shall be shortened upon satisfactory demonstration by the operator that successful revegetation, as required by paragraph (19) above, has been achieved; ".

(b) Section 519(c)(2) is amended by deleting the period from the end of the first phrase and adding the phrase "the release of an additional 30 percentum of the bond or collateral for the applicable permit area.

(3) When successful revegetation has been established." Section 519(c)(2) is further amended by striking the word "When" in the first full sentence and placing in lieu thereof the word "In".

(c) Section 519(c)(3) is renumbered as Section 519(c)(4).

Section 6. (a) Section 523(a) of the Act is amended by deleting the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Implementation of a Federal lands program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate."

(b) Section 523(c) of the Act is amended by deleting the last sentence thereof in its entirety.

Section 7. Title VII of the Act is amended by adding a new section 720 "Commission on Surface Mining Control and Reclamation", as follows:

"Sec. 720(a) For the purpose of carrying out the purposes set forth in section 102 of the Act, there is hereby established a commission to be known as the Commission on Surface Mining Control and Reclamation, hereinafter referred to as "the Commission".

(b) The Commission shall be composed of fifteen members as follows:

(i) Two majority and two minority members of the Senate Committee on Energy and Natural Resources to be appointed by the President of the Senate;

(ii) Two majority and two minority members of the House Committee on Interior and Insular Affairs to be appointed by the Speaker of the House of Representatives;

(iii) The Secretary of the Interior, or his delegate, with the consent of the Secretary;

(iv) The Secretary of Energy, or his delegate, with the consent of the Secretary;

(v) The President of the National Academy of Engineers, or his delegate with the consent of the President;

(vi) 2 Governors of the major coal-producing states; and

(vii) 2 members appointed by the President of the United States from among individuals who, by virtue of experience or training, are knowledgeable in the field of coal mining, and who are industrial users of coal and coal-derived fuels, the coal industry, mine workers, nonindustrial consumer groups, or institutions concerned with the preservation of the environment.

(c) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filed in the same manner in which the original appointment was made.

(d) The organization meeting of the Commission shall be held at such time and place as may be specified in a call issued jointly by the senior member appointed by the President of the Senate and the senior member appointed by the Speaker of the House of Representatives.

(e) 7 members of the Commission shall constitute a quorum, but a smaller number, as determined by the Commission, may conduct hearings.

(f) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g)(1) Members of the Commission who are not regular officers or employees of the United States Government shall, while serving on business of the Commission, be entitled to receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Members of the Commission who are officers or employees of the Government shall be reimbursed for travel, substistence, and other necessary expenses incurred by them in carrying out their duties on the Commission.

(h) The Chairman of the Commission shall be elected by majority vote of the members thereof.

(i) The Commission shall (i) study this Act and the regulations published by the Secretary of the interior thereunder; (ii) review the policies and practices of the Federal agencies charged with implementation of the Act; (iii) compile data necessary to understand and determine whether the purposes of this Act as specified in section 102 of this Act are being properly achieved, particularly with reference to subsections (d), (f), (g), (h), and (i) of section 102; and (iv) recommend such modifications to this Act, regulations promulgated thereunder, and policies and practices developed in connection therewith as will, in the judgment of the Commission, best serve to carry out the purpose specified in section 102.

(j) The Commission shall, not later than June 30, 1980 and every six months thereafter until June 30, 1982, submit to the Congress and to the President of the United States a report on its activities as described in subsection (i) of this section.

(k) The Chairman of the Commission shall invite the Governor of each coal-producing State to designate a representative to work closely with the Commission on matters pertaining to its activities as described in subsection (i) of this section.

(l) The Commission or, on authorization of the Commission, any committee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable. Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued only on the authority of the Commission and shall be served by anyone designated by the Chairman of the Commission.

The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matters which would require the presence of the parties subpoenaed at a hearing to be held outside of the State wherein the witness is found or resides or transacts business. The Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission upon request made by the Chairman.

(m) There are authorized to be appropriated not to exceed $2,000,000 beginning with the fiscal year 1980 and each fiscal year thereafter through the fiscal year ending on Aug. 31, 1982, to carry out the provisions of this section.

Mr. HATFIELD. Mr. President, one of the three elements of S. 1403 as reported by the Senate Committee on Energy and Natural Resources is a provision which would delete the requirement that State rules and regulations be consistent with regulations issued by the Secretary of the Interior. State rules and regulations, however, would still be required to be consistent with the provisions of the Surface Mining Act, including the detailed environmental protection performance standards of title V.

This element of the committee bill was suggested by Gov. Jay Rockefeller of West Virginia, who, as Senators know, was a leading proponent of the Surface Mining Act and is currently the chairman of the President's Coal Commission. Its purpose is to do nothing other than to restore to the States the concept of "State lead" by specifying that the essential requirement for State programs is to to comply with a specific provision of the act. Section 101(f) of the Surface Mining Act clearly enunciates the congressional policy that "* * * the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this act should rest with the States."

The opponents of the committee bill charged that this amendment amounts to a substantial undermining of the intent of Congress in passing the Surface Mining Act. This is a patently false charge. The opponents of this legislation will agree that the rules and regulations issued by the Secretary constitute his interpretation of congressional intent in setting these standards and the program associated with their enforcement. S. 1403 does no harm to the Secretary's interpretations. The Secretary still retains full authority as specified by the act to approve or disapprove a State program. And, if he disapproves a State program, the Secretary retains full authority to implement a Federal program in its place.

Furthermore, the committee bill makes no changes to the Secretary's authority as specified in section 501 of the act to establish regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards based on and conforming to the provisions of title V; and establishing procedures and requirements for preparation, submission, and approval of State programs; and development and implementation of Federal programs under the title. Additionally, no changes are made to section 201(c) of the act which authorizes the Secretary to publish and promulgate such rules and regulations as may be nec-

essary to carry out the purposes and provisions of the act.

The committee bill simply authorizes the States to develop the implementing rules and regulations to comply with the act.

As the distinguished majority leader, Senator BYRD, stated in remarks on the Senate floor on July 27:

> The clear intent of Congress when it fashioned the Surface Mining Act was to provide a set of specific guidelines which each state would use to craft its own reclamation plan. That plan would be tailor-made for each state, taking into account the special needs and unique features of each state. In this way, Congress sought to protect the environment and at the same time respect the rights and responsibilities of the states.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. FORD. Mr. President, I have talked with the distinguished Senator from Montana (Mr. MELCHER), and we are going to endeavor to divide the time between now and final vote at 5:15 p.m. as to the pros and cons, and I make that a part of the record. There is just a gentleman's agreement on that. We do not want to get into the finite of it, that I might get 1 more minute and he might get 2 more. But basically we are going to try to divide the 35 minutes between the two of us.

So, in order to begin with that division, and we were in a quorum call, I think I will take this time now to make some points, if I may.

Mr. President, the committee substitute embodied in S. 1403, as reported, did not develop in a vacuum. Oversight hearings conducted by this committee over the 2 years since passage of the Surface Mining Control and Reclamation Act of 1977 have produced, I think, and without question, a consistent thread of evidence that the statutory role of the States in the implementation of that act has been significantly impeded. Indeed recent oversight hearings documented a nearly unanimous conclusion by the National Governors Association, coal unions, coal operators, engineers, and industry that the congressional intent of State primacy in carrying out the Surface Mining Act was being frustrated by an overzealous Office of Surface Mining.

A succession of Governors and representatives of State regulatory authorities has identified two central deficiencies in the regulatory program developed by the Office of Surface Mining pursuant to the 1977 legislation. These are: First, the severe problems facing the States in meeting several of the fixed statutorially imposed deadlines for certain phases of the State and Federal programs, a problem which has resulted largely from OSM's delay in promulgating its rules and its regulations.

Second, confusion as to precisely how the States are to take the regulatory lead, and I underscore "lead," enumerating the numerous specific environmental protections of the Surface Mining Act, a problem which has resulted from OSM's interpretation of that section of the act governing the content of State programs' application.

These related problems raise the very real potential, let me underscore that, very real potential, for a marked departure from the regulatory concept envisioned by this committee in 1977 when the Surface Mining Act was reported.

In the report accompanying S. 7 the serious need for greater uniformity in the environmental protection practices contained in the various State surface mining and reclamation programs was recognized. To establish that uniformity, a bill was drafted containing 115 environmental performance standards set out in highly detailed and exceedingly specific technical language.

That degree of specificity, uncommon—and I underscore "uncommon"—in most Federal legislation was incorporated with the intent that the environmental protections to be imposed on a national basis were to provide a uniform set of minimum standards for all surface mining operations.

S. 7's approach to the implementation of the Federal law on surface mining was called, and I quote, "the State lead" or "State primacy" concept during legislative debate, and was never—and I reiterate, was never—in dispute even through the deliberations of the committee of conference.

The federally imposed environmental protection provisions were considered minimum standards which, in effect, created a floor, not a cap, but created a floor upon which the States were to construct—and I reemphasize the States were to construct—a regulatory structure tailored to meet the individual State's terrain, climate, biological, chemical, and other relevant physical features.

In the execution of our oversight function, it has become clear that this State lead concept has been seriously eroded. This has occurred partly because of the compressed time frames available to the States to prepare their application. The erosion has also been accelerated by the nature of the regulatory requirements being imposed upon the States in order for them to obtain OSM approval for individual State programs.

The second problem stems from the fact that rather than issuing rules advising the States of the minimum statutory performance standards their programs must meet, OSM has promulgated even more detailed Federal regulations and preamble—covering 550 pages in the Federal Register—establishing uniform national rules specifying exactly how all States must proceed to comply with the standards of the act.

The result of OSM's interpretation of section 503 of the act is "Federal lead" rather than State primacy, with deviation from OSM mandated rules and procedures only through use of a very limited mechanism, the so-called "State window" rule. This provision restricts the States to requesting OSM approval to depart from the precise requirements of the Federal regulations when local conditions warrant, but then only if the States can also demonstrate that any alternative will be in accordance with the act and "* * * consistent with the regulations of * * *" OSM. Thus, under current practice, States may seek to tailor their programs and request deviation from Federal rules; but any new State regulation must accord not only with the Surface Mining Act, but must be consistent with the Federal regulations as well.

Implicit in the OSM State window procedure is the recognition that there are alternative regulatory approaches available to the States which can indeed satisfy the provisions of the act. Without exception, witnesses representing Governors of the various coal-producing States emphasized this point. Moreover, a witness representing Gov. John D. Rockefeller IV, of West Virginia, explained the quandry facing the States under the OSM rules—

> The central underlying cause of virtually all of these problems is the belief and policy made evident in discussion and negotiations with OSM that State laws and regulations, in order to be consistent with Federal regulations, must be identical to the regulations contained in the Federal Register. If they are not, State program disapproval is almost always threatened.

And, as Governor Ed Herschler of Wyoming testified—

> As a practical matter, the (State) window is closed. The regulations require excessive proof that a departure from the Federal regulations is warranted. Many State officials believe that the required showing would be as expensive as a lawsuit.

Based upon these appraisals, both Governor Rockefeller and Governor Herschler, speaking on behalf of the National Governors' Association, urged Congress to make clear—through amendments if necessary—that the standards of the act are the test of State program adequacy, not the Federal regulations.

A July 24, 1979 assessment by the Congressional Research Service similarly concludes that—

> The States appear to be left with few options but to accept all of the Federal regulations as their own in order to assume regulation of surface mining.

CRS found that the—

> Congress intended to be much more liberal in its approach to alternatives to the law and regulations.

The assessment concludes that as long as the act requires State regulations to be consistent with those issued by OSM as a prerequisite for State primacy, the flexibility of the States to implement rules adapted to the States' unique characteristics could be substantially impaired.

The frustrated goal of State primacy becomes more clearly focused when specific examples are cited where OSM's design criteria in the final regulations are shown to significantly exceed the act's detailed environmental performance standards. These interpretations

by OSM which clearly go beyond the act's intent add unnecessarily to mining costs, do little to further the goals of environmental protection, and further impede the States' objective of State primacy in governing surface mining.

Mr. President, I would like to cite two examples because they touch on specific amendments of mine to the 1977 act. The first on experimental practices is covered in the CRS report.

EXPERIMENTAL PRACTICES

With the exception of section 503(a)(7), which requires the States to promulgate regulations at least as stringent as those of the Federal regulatory agency, there is nothing within the section on State programs that requires the States to provide absolute proof of the feasibility of alternatives to the regulations and/or conventional reclamation technology. In fact, section 711 of Public Law 95–87 "experimental practices" reflects the intent of Congress to—

Encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use....

Furthermore, Congress, in this section, did not require that the proposed alternative technology be proven, only that it exhibit "potential" to be at least as or more environmentally protective than reclamation required by promulgated standards.

MOUNTAINTOP REMOVAL

The second example is to do by regulation what the Department was unable to do in the law—prevent the well established major mining technique of mountaintop removal.

I cannot think of any provision of the law—and subsequent regulation—that better describes the dilemma facing States than the section pertaining to mountaintop removal.

Mr. RANDOLPH. Mr. President, will my colleague yield?

Mr. FORD. I will be delighted to yield to the Senator from West Virginia.

Mr. RANDOLPH. The good Senator is saying—and I call him good because he is doing a good job here in this particular problem, is that regulations must reflect the reality of a particular State's problems.

Mr. FORD. I like that.

Mr. RANDOLPH. I just want to say there has to be a realism not only when we in the Senate draft legislation but a realism in the administration of a measure that becomes law.

The regulations promulgated by OSM have done little to resolve ambiguities in critical areas relating to State primacy; but rather have only proceeded to deny to the States the flexibility needed to make responsive program submissions.

The reality is that OSM has failed to implement many of the suggested strategies and programs designed to assist the States in developing their permanent program proposals in a way that addresses varying conditions between regions. Thus, they have directly frustrated my State's, and I am sure other States', efforts to develop their permanent programs.

The lack of a Federal/State partnership perspective is of deep concern to West Virginia and prompted Governor Rockefeller to pen the following telegram which I request be included as part of the RECORD.

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

Re S. 1403.

HON. JENNINGS RANDOLPH,
Senate Office Building,
Washington, D.C.

I urge your support of S. 1403, which was reported and recommended by the Senate Energy and Natural Resources Committee.

Some opponents of this measure have characterized it as an attempt to weaken the environmental protections of the 1977 Surface Mining Act. This is absolutely not the case.

My record as an advocate for the Surface Mining Act, as well as my long-standing concerns for the environment, are well known. I am convinced that passage of the Committee bill will simply insure a proper balance between the states and the Federal government as contemplated by the Congress.

The Committee bill makes no substantive changes in the law. The stringent environmental protection standards which were painstakingly built into the original act remain unaffected. The intent of this bill is to make it clear that the states are to have the lead in developing regulations which comply with the specific provisions of the act.

Opponents of this measure also misunderstand its impact on the discretion and authority of the Secretary of the Interior. Unchanged is the ultimate responsibility of the Secretary to review state program applications to make certain that they are in compliance with the act. Unchanged is the Secretary's absolute duty to reject any applications, which include a State's regulations, not found to be in compliance with the act. Unchanged is the ability of the Secretary to use the Federal regulations as a basis for comparison with state applications or, ultimately, for implementation in states which fail or decline to submit acceptable programs.

I urge the prompt passage of S. 1403.

JOHN D. ROCKEFELLER IV,
Governor.

Mr. FORD. The Senator is correct. The intent of the bill was for the States to have prime responsibility in developing their programs, subject to the approval, subject to the minimum standards and detailed language which was included in the legislation.

Mr. RANDOLPH. Senator ROBERT C. BYRD and I have worked in these matters with you and these others, and I believe the Senate will be impressed with the cogent arguments the Senator is making at this time.

Mr. FORD. I thank the Senator and I certainly hope they are impressed.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. FORD. I would be delighted to yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I want to compliment the distinguished Senator from Kentucky on the able presentation he has made in the legislation before us, in defense of it, and I also want to compliment my senior colleague, Mr. RANDOLPH, and I want to compliment Mr. HATFIELD, the very able ranking manager of the bill.

The Surface Mining Act was passed by Congress in 1977. It set forth the single national minimum standards. There are 115 of these standards in the statute, so it is not a weak environmental law by any means.

The act stated, and it clearly was the intent of Congress, that each of the 50 States would devise its own program. Such program would be acceptable, provided it met the minimum standards set forth in the act.

This design made sense. It not only respected States rights, it also recognized that mining and environmental conditions vary in each State, and that State officials were in the best position to fashion realistic plans.

Since 1977, however, the Office of Surface Mining has issued thousands of pages of regulations. The Office of Surface Mining claims States' plans have to comply with all of these detailed regulations as well as with the minimum standards of the statute itself. The result, in effect, a single national plan and an override of States rights.

Section 3 of the bill before the Senate, which is commonly referred to, the section itself, as the Rockefeller amendment or the Ford-Hatfield amendment, reinstates the original intent of the statute by stating that original State plans do not have to comply with all Federal regulations. They must, of course, still comply with the minimum standards of the act.

I compliment Mr. FORD and Mr. HATFIELD, and I hope the amendment they have incorporated into the bill in committee will prevail, and that the Senate will support that language and that the bill will be adopted by the Senate.

Mr. FORD. I thank the Senator from West Virginia for his kind words and for his support of this legislation.

I would like to make just one other remark or two before I yield to the Senator from Montana.

The Senator from West Virginia, our distinguished majority leader, talked about thousands of pages. The preamble to the Federal regulations covered 505 pages in the Federal Register. The result of OSM's interpretation of section 503 of the act is not a State lead; it is a Federal lead, and that is in direct opposition to the intent of the Surface Mining Act of 1977.

Mr. President, I want to make other points, if I may, one in particular.

The distinguished chairman of the House committee that helped draft the bill was somewhat reluctant to discuss several aspects that I thought were important enough to have incorporated in the bill. I was fortunate to get Chairman UDALL to make a trip to Kentucky to see what I was referring to as mountaintop removal. He could not envision taking off the top of a mountain and making level land for farms, industrial sites, or subdivisions for the construction of homes. He could not envision that. But when he visited Kentucky and saw that this was a valuable restoration technique, he looked at the group and said to me:

Draft statutory language permitting this practice, and I will support it wholeheartedly.

I did, he did; but the Department did not.

That sums up the point: That we here

in this Congress passed a piece of legislation having an intent, which the Department did not follow.

Mr. President, there is nothing more scarce, more needed, or more valuable in the mountainous areas of Appalachia than flatland. The environmentally acceptable restoration practice of mountaintop removal creates much-needed flat land where residents of the area could build homes and businesses, away from the flood-prone area where they had been forced to previously live—not by choice, but by necessity since no other sites were available.

This provision in the surface mining legislation we passed in 1977 offered these people the chance to turn strip-mined land into an asset that would enable them something they had never had before.

But what has happened since we passed that legislation—legislation spelling out that mountaintop removal was an acceptable reclamation practice?

We find the Department saying that you have to get a variance. Let us just say that for all practical purposes that section has been written out of the law—written out, mind you, not by the Congress, but the regulation writers in the Office for Surface Mining.

The regulations—section 816.133—call for "letters of commitment" for financing alternative post-mining land uses. It is completely unreasonable to expect that financial institutions will give specific letters of commitment for land developments 5 to 10 years prior to their initiation. This requirement in the regulations—a requirement in direct conflict with what the act intended—will preclude many desirable alternative land uses and impede the conduct of mountaintop removal operations.

We are all against Federal regulations. We have too many now. We want Big Brother to stay out of our business. Just leave us alone, and let the free enterprise system work. But when we attempt to do that, when we come forward with an amendment that says "Let the States do it, the government closest to the people, the government that understands the topography of the State and the environmental problems," no, we cannot agree to do that. We say, "Let Big Brother come in and run it. Let Big Brother come in; the States cannot do that."

We have been threatened here today by lawsuits and more lawsuits and more lawsuits. The suggestion is obviously speculative. It is unfortunate, too, that we have to say that we are going to get more lawsuits. That statement is no more accurate with regard to the impact of S. 1403 than it is for the law in its current state.

As the Surface Mining Act is presently interpreted by the Office of Surface Mining, States may request permission to issue State regulations which differ from the Federal rules. Any action by the Secretary approving or disapproving such State window requests is just as apt to be ridiculed as State programs which they themselves find offensive. Indeed, the mere decision by the Secretary to grant or deny State program applications will most likely be appealed as well.

So the threat of lawsuits would be lessened, I think, by trying to comply with the law and the intent of the law.

PERFORMANCE STANDARDS

Mr. President, I believe some emphasis should be placed on what the committee substitute does not do.

In absolutely no way do the committee-passed changes affect the crucial environmental protections or reclamation requirements contained in the act. All of the detailed environmental performance standards of section 515 of the act continue in full force and effect including return to approximate original contour. Any State seeking to take the lead in enforcing the act must demonstrate that it has the legal authority, including appropriate rules and regulations, as well as the personnel to enforce the environmental performance standards.

A second and related point is that these amendments in no way restrict or impede the responsibility or authority of the Secretary to review and approve or disapprove of State program applications, contained in whole or in part, based upon the detailed criteria in section 503.

In summary, these amendments address a clearly identified need to give guidance to the executive agency responsible for implementing the 1977 Surface Mining Act to assure that the States in fact maintain the lead regulatory role contemplated by Public Law 95–87.

Mr. President, I have used about half of the time, and I do not want to take any time away from the distinguished Senator from Montana. I reserve the remainder of my time.

Mr. MELCHER. Mr. President, the language of the bill (S. 1403) requires amendment. The part that needs to be amended and the part that is objectionable is section 3.

Section 3 is the section that says we will strike from the Surface Mining Control Act of 1977, the requirements that regulations issued by the Secretary should be considered when a State plan is submitted for approval by the Secretary of the Interior.

Now, the labors of Congress in developing the strip mining bill are quite properly recorded in the CONGRESSIOAL RECORD. The details of the committee hearings and the committee deliberations are quite properly recorded in the Senate and House committee records. It involved thousands upon thousands of words, scores of thousands of hours of staffs of the committees, members of the committees, and the entire membership of the House of Representatives and the Senate in three different Congresses.

It is a detailed bill. It is a comprehensive bill. It covers the reclamation procedures in all of the States, with some exceptions in Alaska.

It was never the intent of Congress, however detailed that bill is, that the Secretary of the Interior would not have to write regulations. Indeed, certain parts of the act itself note the use of the Secretary's regulations on the question of the prime farmland section. In section 510, dealing with the permit approval or denial that considers prime farmlands, the very language of the act itself says:

. . . the regulatory authority shall, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of Interior with the concurrence of the Secretary of Agriculture, grant a permit to mine on prime farmland if the regulatory authority finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area.

The act says that we have to protect the prevailing hydrologic balance. It is found in section 510, the permit approval or denial procedures.

That section, so significant in the entire thrusts of the bill, would be nullified in certain important areas if Senate bill 1403 is not amended. For instance, it says the applicant for a permit or a revision of a permit shall have the burden of establishing that his application is in compliance with the requirements of applicable State or Federal programs. Within 10 days after the granting of a permit, the regulatory authority shall notify the local government officials and the local political subdivisions.

It goes on to require that those who are asking for a permit to mine must make some very detailed findings. Those who want to mine the land submit a reclamation plan, and the plan must show the details demonstrating that reclamation will succeed.

How would you do that? How would you establish that procedure if you were not to consider regulations? The thrust of the act in this particular section is significant in that it makes certain requirements of those who are making an application to mine. It makes some findings and certain demonstrations of fact their responsibility to the satisfaction of the regulatory authority. But S. 1403, in section 3, would, in the guise of flexibility, allow a return to some of the practices of the past, which brought on the very determined outcry in this country for relief from violations of both land and water protection regarding the development of strip mining for coal.

What about the specific impact of this section in the bill on certain key performance standards? For example, would that section of the bill permit a State program to be approved which allowed relaxation of the approximate original contour? Would section 3 of S. 1403 permit a State program to be approved which allowed the States to define for themselves what constitutes prime farmland?

Would that section permit a State plan to be approved which allowed end or side dumping of spoil in the head-of-hollow fills?

Would section 3 of S. 1403 permit a State plan to be approved with no specific water standards, or water standards for sediment greater than 35 milligrams per liter of suspended solids in a pH discharge of less than 6.0, which are standards set out in the regulations?

Would section 3 of S. 1403 permit a rather cavalier treatment of the question of hydrologic balance?

Would section 3 permit approval of a State plan that really would not control erosion or prevent water pollution?

If we are going to disregard the carefully drawn regulations of the section in these areas, it would be very difficult to

answer the questions I have posed should section 3 of S. 1403 be enacted by Congress.

The Surface Mining Reclamation Act is too broad to be self-implementing. It was never meant to be self-implementing. The Federal regulations, often in areas where Congress specifically called for them, are essential if the States will continue, in the guise of flexibility, the old practices which are specifically condemned by Congress in the act of 1977. The very thrust of the protection of the water requires regulations to be drawn on requirements for the permit applications called for in section 510.

My point in raising these questions is simply to point out the dissent that, if there were need to make corrections in the act to remove certain phrases, certain requirements that are called for in regulations that the Secretary has promulgated, the usual procedure of the amendment process of the act should be followed. It should be done specifically and selectively. But that is not the approach in section 3 of S. 1403.

I have dwelled long on this particular section because it is a section that we find totally reckless, unquestionably without precedent, and completely unneeded. My substitute does allow for some of the points that have been requested by the testimony of the National Governors Association before the committee in our hearings.

Specifically, it allows for the implementation of the Federal lands program with the State plans and extends the time for submission of a State plan to March 3, 1980. That is reasonable.

The testimony of Governor Herschler was very clear and to the point on that particular matter, testifying on behalf of the National Governors Association. But where are we, exactly, in this procedure of having State plans submitted to the Secretary of the Interior for his approval? So far, four State plans have been submitted. Those States are Texas, Montana, Wyoming, and Mississippi. But there could be another score of State plans submitted to the Secretary in behalf of individual States, and my substitute would allow that time frame to be extended to March 3 of next year, per the request of the testimony by the National Governors Association.

Also, my substitute would extend the time for implementation of the Federal programs to January 3, 1981. As I earlier stated, it provides for the implementation of the Federal program with the State plan very similar—identical—to the provision in S. 1403.

What my substitute does not do: It does not include section 3 of S. 1403. It does not strike down the Secretary's regulations. We should not do that, because section 3 of S. 1403, as presented, goes too far, and sets a dangerous precedent. It states that the State program will not have to be consistent with the Secretary's regulations. This is not just the performance standards of section 515 and 516; it refers to all the rest of the regulatory scheme called for in the act. It would exclude the regulations from being considered in determining whether or not a State plan should be approved, concerning those regulations dealing with the permit applications and approval, bonding, inspections, designation of lands as unsuitable for mining. In fact, a whole body of regulations developed by the Secretary are eliminated as a standard of the adequacy of a State program.

That puts the question of the requirements of reclamation of the coal strip mining into total confusion.

Let us review what would happen under section 3 of S. 1403 if it became law.

The State submits a plan. It is challenged by the industry, so it goes to court; or the State plan is challenged by a citizen organization and that goes to court. The court, whether it is State or Federal, looks at the law, and only the terms of the law, and not at the Federal regulations developed by the Secretary pursuant to the law.

The resolution of the court case is bogged down by total confusion. How many district court judges are knowledgeable, first of all, of the act itself? How many of them would be knowledgeable of the effects of the protection of land and water without some guidance from regulations?

It is obvious that different courts are going to have different interpretations of what the act provides for, what it calls for.

It is going to be patchwork interpretation of the act, varying from court to court, and those patchwork decisions will lead to further litigation, further lawsuits.

Let us all remember that one of our prime intents in drafting the act is to set uniform minimum standards throughout all the country for the reclamation of these strip mined lands. What would be the effect on our energy policy as we swing to a policy of utilizing more of the Nation's coal?

I think it stands evident, it is self-evident, that we do not mine coal on the basis of chaos.

Mr. President, I say to my colleagues, we do not need section 3 of S. 1403. We do need the simple extension of time. We do need the requirements that we have set forth on those extensions of time. We do need the implementation of a Federal program on Federal land in relationship to approval of the State plan. But that is all we need.

We do not need the added delay, the added confusion, the added court cases that will result if the Senate should take, and the House approve, and the President sign, that very unusual procedure of just setting aside the consideration of the Secretary's regulations.

I remind my colleagues that such an unprecedented act is extremely dangerous.

Any Federal law that somebody would like to oppose and does not care to go to the trouble of selectively and carefully amending to make it properly workable can adhere to the recommendation that is before us in section 3 of S. 1403 and simply strike out the Federal regulations of a particular law, do not permit the regulations to be considered, in approving State plans.

I find it so dangerous and so unworkable that I encourage my colleagues with the utmost sincerity to disregard S. 1403 as presented and to vote for the substitute which we have offered, which I assure my colleagues is better legislation, entirely workable, is the usual pattern of legislation, and will get us on to the proper role of utilizing coal in those areas where strip mining can be successfully followed with proper reclamation.

The PRESIDING OFFICER (Mr. MATSUNAGA). The hour of 5:15 having arrived——

Mr. FORD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. PRESSLER) is necessarily absent.

The PRESIDING OFFICER. Are there any Senators who have not yet voted who wish to vote?

The result was announced—yeas 29, nays 66, as follows:

[Rollcall Vote No. 271 Leg.]

YEAS—29

Baucus	Jackson	Nelson
Biden	Javits	Proxmire
Boschwitz	Kennedy	Riegle
Bradley	Leahy	Sarbanes
Church	Levin	Stevenson
Cranston	Magnuson	Stone
Culver	McGovern	Tsongas
Durenberger	Melcher	Wallop
Durkin	Metzenbaum	Williams
Hart	Moynihan	

NAYS—66

Armstrong	Glenn	Packwood
Baker	Goldwater	Pell
Bayh	Gravel	Percy
Bellmon	Hatch	Pryor
Bentsen	Hatfield	Randolph
Boren	Hayakawa	Roth
Burdick	Heflin	Sasser
Byrd, Harry F., Jr.	Heinz	Schmitt
	Helms	Schweiker
Byrd, Robert C.	Hollings	Simpson
Cannon	Huddleston	Stafford
Chafee	Humphrey	Stennis
Chiles	Jepsen	Stevens
Cochran	Johnston	Stewart
Cohen	Kassebaum	Talmadge
Danforth	Laxalt	Thurmond
DeConcini	Long	Tower
Dole	Lugar	Warner
Domenici	Mathias	Weicker
Eagleton	Matsunaga	Young
Exon	McClure	Zorinsky
Ford	Morgan	
Garn	Nunn	

NOT VOTING—5

Bumpers	Muskie	Ribicoff
Inouye	Pressler	

So Mr. MELCHER's amendment (UP No. 544) was rejected.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. WALLOP. Mr. President, I rise today to express my very reluctant support for the provisions contained in the Melcher substitute. I do so with regret, for as a representative of a major western coal-producing State, I am well aware of the frustrations experienced by the coal community. For several years, the Federal Government has given mixed signals to the industry. The coal leasing program has been in disarray since 1971. The administration is now encouraging utilities to switch not to coal, but to natural gas as an alternative fuel to oil. Recent regulations published pursuant to the Clean Air Act amendments and the Surface Mining Control and Reclamation Act have contributed to the uncertainty.

Inflation, too, has taken its toll. The capital cost of a new coal-fired powerplant has risen immensely. In 1970, those costs were $144 per kilowatt-hour. For a plant that is scheduled to be on line in 1987, those costs skyrocket to $1,096 per kilowatt-hour. In addition, public utility commissions have been reluctant to encourage experimental technologies in the use of coal. If a venture does not produce power, the cost of the new plant is not incorporated into the rate base. Therefore, it is the stockholders and not the consumers that are forced to take the risk.

Yet another consideration that cannot be overlooked has been a drop in the annual growth rate of electric consumption. That rate has dropped from an historic average of 7 percent in 1973 to around 3.5 percent in recent years.

So given the multitude of factors, Mr. President, it is certainly easy to understand the concerns and frustrations of people who are trying to reduce our Nation's dependence on foreign oil by increasing the use of our abundant coal resources. No wonder they complain. There are over 30 agencies or organizations in 12 Federal departments that now regulate the U.S. coal industry.

In essence, the provisions contained in S. 1403 will do the following:

It will grant a 1-year extension in the time limit for States to submit programs for approval by OSM,

It will defer the October 12 deadline for the implementation of a Federal lands program by the Department of Interior,

And finally, it will require that States comply only with the act and not with subsequent regulations promulgated by the Department of Interior.

There have been some substantial developments in recent weeks which have altered the timeliness of two provisions in S. 1403. Let me explain. On July 25, 1979, Judge Flannery of the U..S. District Court for the District of Columbia granted a preliminary injunction which would delay by 7 months the dates that States have to submit a program for approval. That decision will enable States to submit a program up until March 3, 1980, but Interior must still make a final decision by June 3, 1980.

I have also been in contact with the Secretary of Interior's office today. They have informed me that it is the intention of the Secretary to publish regulations to defer the implementation of the Federal lands program until States have had the opportunity to have their programs either approved or denied by the Department of the Interior. Although I believe it is vital to reaffirm that decision through a statutory change in Public Law 95–87, the Secretary's decision is a positive step in reassuring States of the intent of DOI to properly administer the provisions of the Surface Mining Act.

What remains, is the controversial Rockefeller amendment which, as I previously stated, requires only that States comply with the act and not subsequent regulations. Once again, there is understandable concern about the strictness of OSM's regulations. I agree with critics of these regulations that they are too rigid and more oriented toward mandating certain design criteria than setting forth minimum performance standards for which States can mold and shape their programs according to their own particular situations.

But let us examine further what the Rockefeller amendment might do. It could subject the Secretary's decision to approve or disapprove a State mining program to countless delay in courts. Without some guideline on which the Secretary can base his decision, anything he does could be made to appear capricious and arbitrary and therefore subject to challenge. There are numerous terms in the Surface Mining Act that require further definitions by someone. Such terms as "substantial financial and legal commitment," or "imminent environmental impact," or "best available topsoil," all require more clarification. If it is not the Secretary of Interior that provides that clarification, it will be numerous district courts throughout the country—each with their own definitions.

Let me reemphasize that I am sympathetic with what the Rockefeller amendment intends to do. Section 102(f) of the Surface Mining Act clearly states that—

> Because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this act should rest with the states.

Yet there must still be some minimum guidelines and standards for the Secretary to use to base his decisions. If those guidelines are not promulgated by the Department of the Interior, they will be formulated through numerous court battles. Again, more, not less, delay.

Underneath I remain strongly committed.

I remain strongly committed to that idea. But we really know very little about the subsequent impact of exempting States from regulations published pursuant to the Surface Mining Act. The controversy today bears testimony to this fact.

During the committee hearings, we did not give careful consideration to what would happen if the Rockefeller amendment were enacted into law. Therefore, I am troubled that we may, in essence, be further complicating our stated goal of increasing the Nation's coal production by once again placing unknown burdens on the States, Federal Government, and the coal industry.

Last week, Mr. President, I supported a measure which I believe is wiser than the approach outlined in S. 1403. It was an amendment to S. 1477, the Federal Courts Improvement Act of 1979. The essence of the amendment reversed a longstanding presumption of the validity of Government regulations. Under this change the Government would be required to justify the promulgation of any regulation by supporting it with evidence of statutory authority—an idea, which had it been followed by OSM, would not have us here today, and which should keep us out of this argument in the future.

THE NEED FOR REASONABLE COAL REGULATIONS

Mr. BAYH. Mr. President, during my term in the Senate I have been a strong advocate of developing our huge domestic coal reserves, including those in my own State of Indiana. Balancing the goals of increased use of coal, environmental quality, and public health is an extremely difficult task. And it is one we will examine once again in our deliberations on S. 1403 today.

When the 95th Congress passed the Surface Mining Control and Reclamation Act of 1977, a measure supported by the entire Hoosier delegation and most other coal State representatives, we were attempting to construct a balanced approach to surface mining regulation. By that time, over half of the coal produced in the Nation was produced by surface mining techniques, resulting in the disturbance of more than 1,000 acres of land each week. Valuable prime farmlands were being increasingly despoiled, in some cases, never to regain their prior productivity. Scarce water supplies in the West were being irrevocably poisoned. In some States, acres of land were covered with gob piles—or waste heaps—scarring the landscape, and denying land for community development. Erosion problems, incessant blasting, toxic runoffs, and landslides were additional problems faced by residents of many coal mining areas.

The Congress acted to put a stop to this waste and degradation of our Nation's natural resources by requiring all States to live up to the standards that some States were already requiring of their mining operators. This step constituted an important national commitment. It also served to protect States, such as my own, which had strong reclamation statutes, from being at a competitive disadvantage with other States that had far weaker reclamation standards.

INDIANA'S PROGRAM

Mr. President, my State of Indiana was one of the few with a reclamation program on the books early on. Indiana passed reclamation legislation, requiring revegetation of mined areas, as early as 1941. At a time when only a handful of States required binding up the wounds of surface mining, reclaimed lands in Indiana became the site of forests and lakes, providing wildlife habitats, recreational areas and scenic residential sites. Yet, even with this progressive tradition, Indiana has not escaped the toll of extensive surface mining. Stark gob piles, or waste heaps, still scar the land around my farm in Vigo County, as a result of inadequate reclamation; erosion problems and toxic runoffs continue to bear legacy to initially inadequate efforts.

Faced with these visible signs of environmental spoilation, additional State legislation was passed by the legislature in the 1960's and 1970's to further strengthen Indiana's earlier State law. By 1977, Indiana was viewed by many as a leader in reclamation policy. A survey by the Library of Congress in 1977 found that the State program had resulted in 85 percent of the land reclaimed in the prior decade being returned to agricultural uses, with 96 percent of the land affected by 1977 permits to be likewise restored. Much of this reclaimed land has been used to once again grow row crops.

THE STATES AND OSM

Mr. President, the surface mining bill that passed the Senate in 1977 clearly intended for the States to develop and enforce State programs. Under the act, States had 18 months to develop State plans, suited to their special needs, but meeting minimum guidelines set out in the statute.

Unfortunately, the implementation of this program by the Office of Surface Mining, has strayed far afield and provides us with a clear example of regulatory overkill.

OSM has missed every deadline set for it by the Congress. Yet, despite OSM's own failings, the agency has continued to ride roughshod over the States, demanding them to put together State programs literally dictated from Washington, in a climate of confusion and great uncertainty.

OSM was expected by the Congress to provide guidelines for the States, but to permit each State sufficient flexibility to develop locally appropriate reclamation plans. Instead, the agency has literally shut the supposed "State window" provided in the legislation for States to develop their own programs. Rather than respecting local initiatives, they have drafted the equivalent of over 2,000 pages of complex Federal regulations—specific step-by-step, cookbook regulations—which, as our distinguished majority leader, Senator BYRD, said recently, has caused the States to "comply with, and in effect duplicate, every jot and tittle of the Federal regulations." Instead of developing programs suited to their own needs.

OSM has been arrogant in its dealings with the States, rather than developing the cooperative partnership envisioned by the Congress in 1977, and has harassed small operators trying their best to comply with confusing interim programs.

NEED FOR A NATIONAL COAL POLICY

Mr. President, public confidence in Government is at a low tide, particularly with respect to energy policy. Three Presidents have supported increased coal production, with a flourish, as our ticket to greater self-sufficiency. Yet none has demonstrated a real commitment to conversion to coal. While the President's Coal Commission estimates that 60 oil-burning facilities could switch to coal in the next few years, saving 400,000 barrels of oil per day by 1985, 2 coal conversion bills have had no practical effect. Saving this much crude oil by converting to coal would more than match any increased production that may flow from the lifting of price controls off domestic crude; this type of fuel switching would not cost consumers a penny, while decontrol will cost them billions.

In fact, even with the expenses associated with pollution equipment, conversion to coal on the part of these utilities would save consumers money—reducing energy bills—an unheard of phenomenon in these days of skyrocketing electricity rates, home heating oil, and gasoline prices.

Mr. President, we are just not taking advantage of our mammoth coal reserves to the extent we must. National production capacity is currently about 725 million tons. The national energy plan called for doubling this. Yet, we will likely use only 80 percent or so of those resources this year. In Indiana, we could produce 30 to 35 million tons of coal in 1979, but will likely produce only 21 million tons—less than was produced last year, when the industry experienced a prolonged strike that cut into production. This has meant loss of jobs for hard-working miners, with families to support and financial ruin for many small mining operators in my State.

There are many reasons why America has turned away from coal, Mr. President, and significant increases in demand and production cannot occur rapidly. Such increases will take hard decisions by major utilities and industrial firms to invest their future in coal. It will take an upgrading of our rail system to efficiently transport that coal. It will take a decision by mining operators to invest in new equipment. And it will take a commitment from all of us to reduce the regulatory uncertainty that has plagued the coal industry. We must insist that Federal regulations stay within the realm of the defensible, and not grow topsy turvy because some idle hands downtown have nothing better to do than make mischief.

THE NEED FOR CONGRESSIONAL OVERSIGHT

Mr. President, last spring a large and united group of Senators, from coal producing States, made absolutely clear to both the President and the Environmental Protection Agency, that we would not sit idly by and accept proposed EPA standards for new coal-fired powerplants that would effectively shut in vast amounts of Eastern coal but provide no health benefits for the public. The Congress set up EPA to protect the public's health—not to play cat and mouse with new coal-fired facilities.

Mr. President, I urge my colleagues today to reflect the same good commonsense with respect to the Office of Surface Mining as we did with EPA. The Energy Committee has reported out a bill that meets three very legitimate concerns:

First. The need for a deadline extension for State plan submissions, because of OSM's own delays;

Second. The desire of Western States to coordinate reclamation programs within their borders; and

Third. The need to free State governments from overzealous bureaucrats.

We can accomplish that by insisting that the States be freed of voluminous and suffocating Federal regulations and require them to only meet the performance standards contained in the surface mining bill itself.

This State lead approach, embodied in the so-called Rockefeller amendment—named after the Governor of West Virginia, an early supporter of adequate reclamation programs—much more nearly represents what the Congress had in mind in 1977 when it passed the surface mining bill. It in no way weakens our commitment to adequate cleanup efforts. It continues to require State compliance with Federal standards. But the critical point is that it will permit States to design programs tailored to their own needs. It will return the lead in this effort to the States, where Congress intended it to be. And it will result in freeing up our scientists and engineers to follow good engineering practices tailored to specific sites, rather than tying their hands with constraining and inflexible design regulations. Mr. President, I hope my colleagues will join me in supporting S. 1403 as amended by the Energy Committee.

Mr. FORD. Mr. President, I yield back the remainder of my time.

Mr. HATFIELD. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

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

Mr. FORD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the bill pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

Mr. STEVENS. I announce that the

Senator from South Dakota (Mr. PRESSLER) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators wishing to vote?

The result was announced—yeas 69, nays 26, as follows:

[Rollcall Vote No. 272 Leg.]

YEAS—69

Armstrong	Goldwater	Packwood
Baker	Gravel	Pell
Bayh	Hatch	Percy
Bellmon	Hatfield	Pryor
Bentsen	Hayakawa	Randolph
Boren	Heflin	Roth
Burdick	Heinz	Sasser
Byrd, Harry F., Jr.	Helms	Schmitt
	Hollings	Schweiker
Byrd, Robert C.	Huddleston	Simpson
Cannon	Humphrey	Stafford
Chafee	Jepsen	Stennis
Chiles	Johnston	Stevens
Cochran	Kassebaum	Stewart
Cohen	Kennedy	Talmadge
Danforth	Laxalt	Thurmond
DeConcini	Levin	Tower
Dole	Long	Wallop
Domenici	Lugar	Warner
Eagleton	Mathias	Weicker
Exon	Matsunaga	Young
Ford	McClure	Zorinsky
Garn	Morgan	
Glenn	Nunn	

NAYS—26

Baucus	Hart	Nelson
Biden	Jackson	Proxmire
Boschwitz	Javits	Riegle
Bradley	Leahy	Sarbanes
Church	Magnuson	Stevenson
Cranston	McGovern	Stone
Culver	Melcher	Tsongas
Durenberger	Metzenbaum	Williams
Durkin	Moynihan	

NOT VOTING—5

Bumpers	Muskie	Ribicoff
Inouye	Pressler	

So the bill (S. 1403), as amended, was passed, as follows:

S. 1403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Mining Control and Reclamation Act Amendments of 1979", and that the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 445) is hereby amended as follows:

SEC. 2. Sections 502(d), 503(a), and 504(a) of the Surface Mining Control and Reclamation Act of 1977 (hereinafter referred to as "the Act") are amended as follows:

(a) in section 502(d) of the Act in the last sentence, strike the words "forty-two months" and substitute the words "fifty-four months";

(b) in section 503(a) of the Act, strike the words "eighteenth-month" and substitute the words "thirtieth month";

(c) in section 504(a) of the Act, strike the words "thirty-four months" and substitute the words "forty-six months";

(d) in section 504(a)(1) of the Act, strike the words "eighteen-month" and substitute the words "thirtieth month";

SEC. 3. Sections 503(a)(7) and 701(25) of the Act are amended as follows:

(a) in section 503(a)(7) of the Act, strike the phrase "regulations issued by the Secretary pursuant to";

(b) in section 701(25) of the Act, strike the phrase "and regulations issued by the Secretary pursuant to this Act".

SEC. 4. Section 523(a) of the Act is amended by striking the words "and implement" in the first sentence thereof, and by adding at the end of the subsection a new sentence as follows: "Subject to the provision of section 523(c), implementation of a Federal lands program shall occur and coincide with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504, as appropriate.".

SEC. 5. Section 502 of the Act is amended by adding a new subsection "(g)" as follows:

"(g) Notwithstanding any other provision of this section, each State shall, to the greatest extent possible, have principal responsibility for the inspection of mines during the period of time prior to the submittal of State plans for approval. Such responsibility shall remain with each State until such time as the Secretary disapproves the State plan. The Secretary shall furnish personnel assistance to the States in carrying out this responsibility upon request of the State regulatory agency.".

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1403.

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

Mr. ROBERT C. BYRD. Mr. President, I wish to take this moment to express appreciation to the Senator from Kentucky (Mr. FORD) and the Senator from Oregon (Mr. HATFIELD), the managers of the bill in behalf of the committee, for the skill and the dedication which they demonstrated in bringing this measure to the floor and in adding to its provisions the language that was of great concern to Senators from coal-producing States. I congratulate them on their successful managership of this bill, which is not only important to coal-producing States but to the Nation as a whole.

Mr. FORD. Mr. President, I thank the majority leader for his kind words.

I am learning each day the procedure of the Senate and how things are done, and I appreciate his valuable support. Mr. President, every time you have an experience here you gain something. Every time I have the opportunity to be associated with the distinguished Senator from Oregon (Mr. HATFIELD), I always come off a winner, because I gain much more than when I came in. I am grateful to him for his guidance and counseling of me as a freshman, and he has my admiration.

Mr. HATFIELD. Mr. President, I am compelled to rise, not only to express my appreciation for the kind words of the Senator from Kentucky, but to the majority leader, who has been very helpful in this whole matter. The battle won today was certainly due to the efforts of many people, including the majority leader's great efforts as well as those of my comanager of the bill, the Senator from Kentucky (Mr. FORD).

Again Senator FORD exhibits the generosity so typical of a Southern gentleman when he ascribes his kind remarks to me, but I am conscious that none of us would have been successful without the help of many Senators, and particularly the fine staffs on both the majority side and the minority side.

Mr. BAKER. Mr. President, I will not prolong this, except to say I wish also to pay my respects to the Senator from Oregon for his diligence and effectiveness in shepherding this bill to passage, and that of the Senator from Kentucky (Mr. FORD), who has great expertise in this field and managed the matter with great effectiveness. I thank them as well for doing it so promptly. The bill was dispatched in a relatively short period of time, and that is always welcome news to the majority and minority leaders.

Mr. ROBERT C. BYRD. Mr. President, I thank also the Senator from Idaho (Mr. CHURCH) for his patience in withholding calling up his conference report until the final vote had occurred, so that Senators could be on their way to their offices and to other engagements.

I wish to express particularly my thanks to my own colleague from West Virginia (Mr. RANDOLPH) for the good work he did in contacting Senators in connection with this measure, and I particularly congratulate the Senator from Montana (Mr. MELCHER), who offered an amendment, fought a good fight on it, kept the faith, and finished his course in the way of a gentleman; and I appreciate his attitude and also that of Senators who opposed the amendment by Mr. MELCHER.

Mr. WARNER. Mr. President, I wish to join in congratulation of the managers of this bill. I introduced an amendment earlier, and, in accordance with their very wise counsel, I withdrew that amendment.

Mr. President, as a cosponsor of S. 1403, I applaud Senators FORD and HATFIELD and the Energy Committee for coming forward with positive legislation that will push us on our way to achieving our goal of energy independence.

Energy, and America's need for increasing amounts of it, is generally recognized as this Nation's number one domestic problem. Indeed, it has spawned many of this country's other domestic concerns—inflation, unemployment, recession, social problems.

For America to continue to grow and prosper and not be dominated and dictated to by the pricing whims of foreign oil producers, we as a nation must become energy independent by developing our own primary and alternative energy resources.

President Carter has proposed an energy plan to ease America's dependence on foreign oil which calls for, among other things, a greater reliance on coal.

This is only a natural recognition—and, I must say, long overdue—that coal is America's most abundant resource.

Coal represents 90 percent of our Nation's total energy reserves. The U.S. geological survey estimates that there are at least 1.7 trillion tons of coal beneath American soil—or, put in more meaningful terms, our coal represents the energy equivalent of 10 Saudi Arabias and will provide us with hundreds of years' supply at current rates of use.

President Carter has declared in his energy messages that he wants the United States to double its annual coal production by the mid-1980's—from about 700 million tons now to 1 to 2 billion tons.

The President, in a meeting before the President's Coal Commission and the congressional coal group, said:

Coal will be the backbone of my energy position.

But this has not always been the case.

For too long, America's most abundant natural resource has languished and lain underutilized while America has been forced to pay rapidly rising ransom to foreign energy producers.

The Office of Technology Assessment in its 441-page report, "The Direct Use of Coal," indicated that coal production in recent years has lingered slightly above its earlier peak in 1947 at about 700 million tons, with 689 million tons being produced in 1977 and 724 million estimated for 1979. The OTA estimates that growth in coal demand will continue slowly and will only total 1.5 to 2.1 billion tons by the year 2000.

What has caused this lagging demand for production from the Nation's coal reserves?

Industry observers attribute the poor growth in the coal market to:

First. Government regulations that are too stringent and repetitious;

Second. Rising production costs of which a major portion can be ascribed to Government regulations;

Third. Increased competition from foreign producers; and

Fourth. A lack of a clear-cut Government policy that promotes the use of coal.

It appears that the latter problem was taken care of by the President's April 5 energy speech to the Nation, but appearances can be deceiving.

President Carter, in his April 5 speech, called on the Departments of Energy and Interior and the Environmental Protection Agency to submit, within 60 days, recommendations for enhancing the development and use of coal to help guide his administration in its energy decisions. When the 60-day time limit had elapsed, only the Department of Energy had submitted its recommendations. As yet, the administration still has not set forth a comprehensive clear-cut program for increased utilization of coal.

This lack of clear-cut governmental policy, coupled with the other factors, has brought about a decrease in coal production, resulting in an unmitigated disaster in the Nation's coal fields.

Coal is a $1 billion industry in my State of Virginia, which is the Nation's seventh-ranking coal-producing State, and yet about 2,000 of Virginia's 20,000 coal miners are currently laid off due to the slump in coal production. The Richmond News Leader, in an August 29, 1979, article, stated:

The cutbacks in southwest Virginia, long dependent on coal for economic survival, have been felt across the region from grocery stores to trucking companies.

Mr. President, I visited southwest Virginia and its coalfields during the Senate's August work session, and I visited with some of the miners affected by this coal slump. It is fair to say that they are suffering dearly because we have not adopted strong coal utilization policies. It is also fair to say that they and their families have had their fill of empty promises and beautiful but meaningless rhetoric. They are seeking action on the part of the administration and Congress to promote coal production so that they will be able once again to earn a living for themselves and their families.

But Virginia is not alone in the problems it is experiencing in this area, nor are the feelings experienced by its coal miner citizens any different from those of the States of West Virginia, Kentucky, or Tennessee.

The Nation's coal miners want positive decisive action from their leaders.

Often when one is faced with a complicated, multifaceted problem, rather than attempt to deal with the whole problem at one time, which may be self-defeating, a wiser course is to deal with each separate facet of the problem and thus, over a period of time, accomplish positive results.

S. 1403 presents the Senate with just this option. It deals only with the problems of time extensions for submission of State reclamation plans and extraneous regulation correction of these problems will help increase coal production, without venturing off into the more complex, controversial areas of this problem.

In June, I had the opportunity to attend the oversight hearings on the Surface Mining and Reclamation Act held by the Senate Energy Committee and was accorded the privilege of questioning witnesses at these hearings. I was amazed and aghast at the many problems that are facing our Nation's coal operators and miners in trying to comply with the Surface Mining Act.

If the various States are to have any chance at all of at least complying with the statutory filing deadline of the act, there must be an extension of the time limit for filing. Since the Office of Surface Mining was delayed 7 months past its statutory deadline for publishing its permanent regulations on the act, it seems only fair to me that the States should not be penalized for circumstances beyond their control and they should be allowed the courtesy of a similar delay to comply with the final regulations.

Section 2 of S. 1403 incorporates this idea.

Section 3 was drafted to give the States maximum flexibility to design their regulatory programs to reflect local conditions.

Section 101(f) of the act clearly specifies that—

Because of the diversity of terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary responsibility for developing, authorizing, issuing, and enforcing and reclamation operations subject to this Act should rest with the States.

In response to a question posed by the Senate Energy Committee, the Congressional Research Service analyzed the ability of the States to comply with the congressional mandates of the act under the regulations proposed by the Office of Surface Mining. CRS, in a report dated July 24, 1979, found that—

Charges have been made by the surface mining industry and some of the States that the Office of Surface Mining has pursued a policy of developing detailed regulations for design criteria rather than performance standards for regulation. A complete review of the regulations tends to suggest that there is some legitimacy in this criticism. The States do appear to be left with few options but to accept all of the Federal regulations as their own in order to assume regulation of surface mining.

CRS then concluded by stating that—

As long as the public law requires the State regulations to be consistent with those issued by the Federal agency as a prerequisite for State authority, and as long as the Federal agency pursues a policy of establishing design criteria instead of minimum performance standards outlined in the act, the flexibility of the individual States to develop and implement regulations adapted to the unique geological characteristics of coal deposits and to respond with sound but reasonable regional approaches to reclamation could be substantially impaired.

Mr. President, I ask unanimous consent to have the complete CRS report printed at the end of my record.

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

Mr. WARNER. Section 3 of S. 1403 will correct this problem, and will bring back the flexibility to the States in their complying with the act, taking into consideration their own unique characteristics in their State plans. Thus, the State's primacy, which was the intent of Congress in the act, will be reestablished and I accordingly strongly support section 3 of this bill.

Section 4 postpones the implementation of the Federal lands program until a State program has been given the opportunity to be approved or denied. As this amendment prevents the Federal Government from preempting the State government's program, I support also section 4 of the bill.

S. 1403 takes a small but very important step to correcting some of the problems encountered with implementing the act and removes several obstacles from the increasing of U.S. production in coal. I strongly urge that the Senate pass S. 1403.

EXHIBIT 1

JULY 24, 1979.

To Senate Committee on Energy and Natural Resources; Attention: Mr. Dave Russell.

From Duane A. Thompson, Analyst, Environment and Natural Resources Policy Division.

Subject Section 503(a)(7) of Public Law 95-87, The Surface Mining Control and Reclamation Act of 1977.

In response to your request of July 23, 1979, I have reviewed Section 503(a)(7) and related OSM regulations in order to determine the States capability to assume regulation while maintaining their ability to accommodate regional mining and reclamation characteristics.

The Surface Mining Control and Reclamation Act of 1977 was originally intended to allow the individual States to assume the authority and responsibility for the regulation of surface mining within their own boundaries. This concept is contained in Section 101, "finding", of the Act, which states explicitly that:

"(f) because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for *developing*, authorizing, is-

suing and *enforcing regulations* for surface mining and reclamation operations subject to this Act should rest with the States; [emphasis added]

With this concept in mind, Congress, in the law, made provisions for the institution of State enforcement programs that would allow the States to assume regulation, thus providing for the vastly different regional characteristics of surface mining, with the proviso that the regulations promulgated by the individual State enforcement agencies would be consistent with the minimum performance standards set forth in the Act. This requirement is contained in Section 503(a)(2) of the Act which states that in order for a State to assume responsibility, it must provide:

"(2) a State law which provides sanctions for violations of State laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, which sanctions *shall meet the minimum* requirements of this Act, . . . " [emphasis added]

Section 503, in subsection (a)(7), goes on to further condition the assumption of regulation on the implementation of State "rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." Congress, however, did not define the key phrase "consistent with" in the Act, leaving this option to the Federal regulatory authority. The Office of Surface Mining established by the legislation has since defined this phrase to mean:

"§ 730.5 Definitions: (b) With regard to the Secretary's regulations, the State laws and regulations are no less stringent than and meet the applicable provisions of the regulations of this Chapter."

Because of this requirement in the Act, some States now conclude that they must, in affect, accept the regulatory requirements of the Federal agency as their own in order to assume regulation of surface mining.

In response to a voluminous number of comments directed to the inflexibility of the regulations in their proposed form, the Office of Surface Mining developed a "State window" concept that, according to the Agency, would allow the States considerably more flexibility in developing their own regulatory programs. The language of the "State window" regulation, however, requires the States to:

"731.13(c) Explain how and submit data, analysis and information, including identification of sources, demonstrating—(1), that the proposed alternative will be *in accordance with* the applicable provisions of the Act and consistent with the regulations of this Chapter and (2) that the proposed alternative is necessary because of local requirements or local environmental or agricultural conditions." [emphasis added]

The underlined phrase "in accordance with" has been defined identically to "consistent with", meaning that all of the States proposed alternatives to the Federal regulations must be as stringent as those Federal regulations. Charges have been made by the surface mining industry and some of the States that the Office of Surface Mining has pursued a policy of developing detailed regulations for design criteria rather than performance standards for regulation. A complete review of the regulations tends to suggest that there is some legitimacy in this criticism. The States do appear to be left with few options but to accept all of the Federal regulations as their own in order to assume regulation of surface mining.

It could be noted that a review of the applicable provisions of the Act suggests that Congress intended to be much more liberal in its approach to alternatives to the law and the regulations. With the exception of Section 503(a)(7), already mentioned, which requires the States to promulgate regulations at least as stringent as those of the Federal regulatory agency, there is nothing within the section on State programs that requires the States to provide absolute proof of the feasibility of alternatives to the regulations and/or conventional reclamation technology. In fact, Section 711 of P.L. 95-87 [91 STAT. 523] "Experimental Practices", reflects the intent of Congress to "encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use. . . ." Furthermore, Congress, in this section, did not require that the proposed alternative technology be proven, only that it exhibit "potential" to be at least as or more environmentally protective than reclamation required by promulgated standards.

In conclusion, as long as the public law requires the State regulations to be consistent with those issued by the Federal agency as a prerequisite for State authority, and as long as the Federal agency pursues a policy of establishing design criteria instead of minimum performance standards outlined in the Act, the flexibility of the individual States to develop and implement regulations adapted to the unique geological characteristics of coal deposits and to respond with sound but reasonable regional approaches to reclamation could be substantially impaired.

Should you or any of your staff have any further questions on this or related subjects please call me at 287-5873.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. I ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 30 minutes, with Senators permitted to speak therein up to 5 minutes each.

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

Mr. BAKER. Mr. President, will the majority leader yield for a moment?

Mr. ROBERT C. BYRD. Will the Senator from Idaho obtain recognition, and then yield to the minority leader?

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. BAKER. Mr. President, will the Senator from Idaho yield to me?

Mr. CHURCH. I am happy to yield to the minority leader.

Mr. BAKER. I merely wish to inquire of the majority leader if he anticipates any further rollcall votes today.

Mr. ROBERT C. BYRD. No; may I say to the minority leader, there will be no further rollcall votes today.

Mr. BAKER. I thank the majority leader. I appreciate the Senator from Idaho's yielding.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

NATIONAL SECURITY AND DEFENSE SPENDING—MESSAGE FROM THE PRESIDENT—PM 103

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Armed Services, the Committee on Appropriations, and the Committee on the Budget, jointly, by unanimous consent:

To the Congress of the United States:

I am sure you agree with me that we cannot effectively safeguard U.S. legitimate interests abroad nor pursue safely peace, justice and order at home unless our national security is protected by adequate defenses. The fundamental responsibility of the President—a responsibility shared with Congress—is to maintain defenses adequate to provide for the national security of the United States. In meeting that responsibility, this Administration moved promptly and vigorously to reverse the downward trend in U.S. defense efforts. This is demonstrated by an examination of the trends in real defense expenditures since the mid 1960s. At NATO Summits in May 1977 and 1978 we persuaded our allies to join with us in endorsing a goal three percent real annual growth in defense outlays and an ambitious Long Term Defense Program for the Alliance. Together these represented a turning point, not only for the United States, but the whole Alliance.

For our part, we moved promptly to act on this resolve. We authorized production of XM-1 tanks; we greatly increased the number of anti-tank guided missiles; we deployed F-15s and additional F-111s to Europe, along with equipment for additional ground forces. We reduced the backlog of ships in overhaul and settled contractual disputes that threatened to halt shipbuilding progress. In strategic systems, we accelerated development and began procurement of long range air-launched cruise missiles, began the deployment of Trident I missiles, and have begun the modernization of our ICBM force with the commitment to deploy the MX missile in a survivable basing mode for it.

These and other initiatives were the building blocks for a determined program to assure that the United States remains militarily strong. The FY 1980 budget submission of last January was designed to continue that program. In subsequent months, however, inflation has run at higher levels than those assumed in the cost calculations associated with that defense program. Accordingly, I plan to send promptly to the Congress a defense budget amendment to restore enough funds to continue in FY 1980 to carry out the Administration's defense program based on our current best estimate of the inflation that will be experienced during the fiscal year. Although the detailed calculations needed to prepare an amendment are still in progress, I expect that the amount of the amendment will be about $2.7 billion in Budget Authority above the Administration's January 1979 budget request.

Correcting for inflation is not enough in itself to assure that we continue an adequate defense program through FY 1980. We must also have the program and the funds authorized and appropriated, substantially as they were submitted. Therefore, in the course of Congressional consideration of the second budget resolution, I will support ceilings for the National Defense Function for

FY 1980 of $141.2 billion in Budget Authority and $130.6 billion in outlays. I will also request that the Congress support the Administration's FY 1980 defense program and, in particular, that the Appropriation Committees actually appropriate the funds needed to carry it out.

Furthermore, in FY 1981 I plan a further real increase in defense spending. The Defense Department is working on the details of that budget. It would, therefore, be premature to describe the features of that budget beyond noting that it will continue the broad thrust of our defense program, and that I intend to continue to support our mutual commitment with our NATO Allies.

While this defense program is adequate, it is clear that we could spend even more and thereby gain more military capability. But national security involves more than sheer military capability; there are other legitimate demands on our budget resources. These competing priorities will always be with us within the vast array of budget decisions both the Congress and the President are called upon to make. Defense outlays are actually lower in constant dollars than they were in 1963, and a much lower percentage of the gross national product (5% compared with 9%). There are those that think this has caused a decline in American military might and that the military balance has now tipped against us. I do not believe this to be so, but I am concerned about the trends. I believe that it is necessary for us to act now to reverse these trends.

The Secretary of Defense will be presenting to the Congress over the coming months the highlights of our defense program in terms of the goals we think we should achieve and the Five-Year Defense Program we plan to achieve them. In this context he will point out, among many other items, how MX and our other strategic programs will contribute to the maintenance of essential equivalence between the central strategic forces of the United States and Soviet Union, how we plan to modernize theater nuclear forces in cooperation with our NATO allies, how our general purpose forces programs contribute both to our military capability to support our NATO allies and rapidly to deploy forces to defend our vital interests elsewhere. That presentation can serve as the basis for future discussions (including open testimony) that will allow us to build the national consensus that is the fundamental prerequisite of a strong and secure America.

JIMMY CARTER.

THE WHITE HOUSE, *September 11, 1979.*

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the message from the President on national security and defense spending be referred jointly to the Committee on Armed Services, the Committee on Appropriations, and the Committee on the Budget.

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

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:40 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1646. An act to amend the International Banking Act of 1978 (Public Law 95-369) to extend the time for foreign banks to obtain required deposit insurance with respect to existing branches in the United States.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

At 3:17 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 756. An act to authorize appropriations for the Office of Federal Procurement Policy for fiscal years 1980 through 1984.

The message also announced that the House disagrees to the amendments of the Senate to H.R. 4387, an act making appropriations for agriculture, rural development, and related agencies programs for the fiscal year ending September 30, 1980, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. WHITTEN, Mr. BURLISON, Mr. TRAXLER, Mr. ALEXANDER, Mr. MCHUGH, Mr. NATCHER, Mr. HIGHTOWER, Mr. JENRETTE, Mr. ANDREWS of North Dakota, Mr. ROBINSON, Mr. MYERS of Indiana, and Mr. CONTE as managers of the conference on the part of the House.

The message further announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 740. An act to amend the Geothermal Steam Act of 1970 for the purpose of enhancing the development of geothermal resources situated beneath Federal lands;

H.R. 1212. An act for the relief of the University of Florida, Gainesville, Fla.;

H.R. 1319. An act to extend the period for duty-free entry of a 3.60-meter telescope and associated articles for the use of the Canada-France-Hawaii telescope project at Mauna Kea, Hawaii;

H.R. 2297. An act to continue until the close of June 30, 1982, the existing suspension of duties on synthetic rutile;

H.R. 3122. An act relating to the tariff treatment of certain articles; and

H.R. 4732. An act to fix the annual rates of pay for the Architect of the Capitol and the Assistant Architect of the Capitol.

HOUSE BILLS REFERRED

The following bills were read twice by their titles and referred as indicated:

H.R. 740. An act to amend the Geothermal Steam Act of 1970 for the purpose of enhancing the development of geothermal resources situated beneath Federal lands; to the Committee on Energy and Natural Resources.

H.R. 1212. An act for the relief of the University of Florida, Gainesville, Fla.; to the Committee on Finance.

H.R. 1319. An act to extend the period for duty-free entry of a 3.60-meter telescope and associated articles for the use of the Canada-France-Hawaii telescope project at Mauna Kea, Hawaii; to the Committee on Finance.

H.R. 2297. An act to continue until the close of June 30, 1982, the existing suspension of duties on synthetic rutile; to the Committee on Finance.

H.R. 3122. An act relating to the tariff treatment of certain articles; to the Committee on Finance.

HOUSE BILL ORDERED HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 4732, an act to fix the annual rates of pay for the Architect of the Capitol and the Assistant Architect of the Capitol, be held at the desk pending further action.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 11, 1979, he presented to the President of the United States the following enrolled bill:

S. 1646. An act to amend the International Banking Act of 1978 (Public Law 95-369) to extend the time for foreign banks to obtain required deposit insurance with respect to existing branches in the United States.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary, without amendment, but with a preamble:

S.J. Res. 90. A joint resolution to provide for the designation of a week as "National Recreation and Parks Week" (Rept. No. 96-315).

EXECUTIVE REPORTS OF COMMITTEES

By Mr. KENNEDY, from the Committee on the Judiciary:

Cornelia G. Kennedy, of Michigan, to be U.S. circuit judge for the Sixth Circuit.

Mary M. Schroeder, of Arizona, to be U.S. circuit judge for the Ninth Circuit.

Richard D. Cudahy, of Wisconsin, to be U.S. circuit judge for the Sixth Circuit.

Boyce F. Martin, Jr., of Kentucky, to be U.S. circuit judge for the Sixth Circuit.

Otto R. Skopil, Jr., of Oregon, to be U.S. circuit judge for the Ninth Circuit.

James M. Sprouse, of West Virginia, to be U.S. circuit judge for the Fourth Circuit.

Avern Cohn, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Stewart A. Newblatt, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Benjamin F. Gibson, of Michigan, to be U.S. district judge for the western district of Michigan.

Douglas W. Hillman, of Michigan, to be U.S. district judge for the western district of Michigan.

Zita L. Weinshienk, of Colorado, to be U.S. district judge for the district of Colorado.

Jim R. Carrigan, of Colorado, to be U.S. district judge for the district of Colorado.

William L. Hungate, of Missouri, to be U.S. district judge for the eastern district of Missouri.

Howard F. Sachs, of Missouri, to be U.S. district judge for the western district of Missouri.

Scott O. Wright, of Missouri, to be U.S. district judge for the western district of Missouri.

John V. Parker, of Louisiana, to be U.S. district judge for the middle district of Louisiana.

Veronica D. Wicker, of Louisiana, to be U.S. district judge for the eastern district of Louisiana.

John M. Shaw, of Louisiana, to be U.S. district judge for the western district of Louisiana.

George Arceneaux, Jr., of Louisiana, to be U.S. district judge for the eastern district of Louisiana.

Patrick E. Carr, of Louisiana, to be U.S. district judge for the eastern district of Louisiana.

Robert J. Staker, of West Virginia, to be U.S. district judge for the southern district of West Virginia.

Falcon B. Hawkins, of South Carolina, to be U.S. district judge for the district of South Carolina.

C. Weston Houck, of South Carolina, to be U.S. district judge for the district of South Carolina.

Matthew J. Perry, Jr., of South Carolina, to be U.S. district judge for the district of South Carolina.

Richard M. Bilby, of Arizona, to be U.S. district judge for the district of Arizona.

Edward C. Reed, Jr., of Nevada, to be U.S. district judge for the district of Nevada.

Abner J. Mikva, of Illinois, to be U.S. circuit judge for the District of Columbia Circuit.

Bailey Brown, of Tennessee, to be a U.S. circuit judge for the Sixth Circuit.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. RIEGLE:

S. 1736. A bill to extend Letters Patent Numbered 2,322,210, and for other purposes; to the Committee on the Judiciary.

By Mr. BOSCHWITZ:

S. 1737. A bill for the relief of Monchito C. Entena, Antonia V. Entena, Robert Entena, Cathleah Entena, Arvin Entena, and Eliza R. Ayala; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

S. 1738. A bill to amend the Tariff Schedules of the United States to repeal the duty of certain field glasses and binoculars; to the Committee on Finance.

By Mr. HEINZ:

S. 1739. A bill to amend the Federal Food and Cosmetic Act to require certain warning labels on prescription drugs; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MATSUNAGA:

S. 1738. A bill to amend the Tariff Schedules of the United States to repeal the duty on certain field glasses and binoculars; to the Committee on Finance.

● Mr. MATSUNAGA. Mr. President, on May 13 of last year, I introduced a bill S. 1519 to suspend tariffs on certain telescopes and binoculars. After S. 1519 was passed by the Senate, it was brought to my attention that the types of telescopes and riflescopes included in my bill were being manufactured domestically. I therefore voluntarily withdraw my bill from final consideration by the House.

On August 8, 1978. I introduced S. 3387, redrafted to suspend tariffs only on certain imported field glasses, opera glasses, and imported prism binoculars. Telescopes and riflescopes were excluded.

American demand for binoculars has greatly increased over the years. However, imported binoculars have been subjected to a 20-percent ad valorem tariff. Originally, the tariff was established because of our own American optical industry was experiencing technical difficulties in producing quality optical instruments. The national interest at that time warranted protection of our optical industry.

Today, however, the Department of Commerce reports no known commercial production in the United States of the kind of prisms used in the imported binoculars on which heavy duty is still being imposed. The small domestic production of binoculars which does occur, in fact, uses imported prisms. Domestic production is presently directed at the most expensive, high quality, high performance instruments for an extremely select market which will not be affected by my bill.

The reason for tariff protection of our binocular industry, once valid, no longer exist. However, U.S. importers of foreign-made binoculars continue to pay a 20-percent ad valorem tariff and this tariff is invariably passed on to the consumer. Consequently, American consumers continue to pay a protective tariff which protects no one.

The Senate passed my proposal last year to suspend the tariff on field glasses, prism binoculars, and opera glasses. However, the press of business at the close of the 96th Congress prevented the House from acting on the measure.

Today, I am reintroducing the measure to reduce the duty permanently. In doing so I wish to call my colleagues' attention to the fact that this proposal has the full endorsement of the Special Trade Representative.

I urge early and favorable consideration of my bill.●

By Mr. HEINZ:

S. 1739. A bill to amend the Federal Food, Drug, and Cosmetic Act to require certain warning labels on prescription drugs; to the Committee on Labor and Human Resources.

PRESCRIPTION TRANQUILIZER LABELING ACT

● Mr. HEINZ. Mr. President, I take pleasure in introducing today a bill to prevent the sometimes fatal misuse of prescription tranquilizers like valium, librium, and miltown, when used in combination with alcohol. Recent research by the National Institute of Mental Health and the National Institute on Drug Abuse has presented frightening statistics on these most widely prescribed mood-altering compounds. In examining the mental health needs of women, for example, I have found that many apparent suicide victims had unwittingly used tranquilizers with alcohol.

By amending the Federal Food, Drug, and Cosmetic Act to require mandatory warnings on bottles of certain prescription tranquilizers, the public would be informed about these inherent dangers. Mr. President, I believe that public education is invaluable in the fight against drug abuse and is, moreover, the best insurance against such mishaps. It is incumbent on both Government and the private health industry to work together to significantly reduce the specter of tragedy through the abuse of psychoactive drugs and alcohol.

Far from indicting the drug industry, pharmacists, or physicians, I am calling on these groups to lend their support for the passage of the Prescription Tranquilizer Labelling Act. There are legitimate medical uses for tranquilizers like valium, librium, and miltown; and, accordingly, the medical community must also appreciate the potential dangers to the lives of millions of Americans who are given these drugs each year. To many, the tranquilizer has become a panacea to mask the visible symptoms of stress, depression, and mental illness. The National Institute on Drug Abuse found that, in 1977, 94 percent of the valium-related deaths involved the concurrent use of alcohol or some other drugs. And for drug-related emergency room visits, "women are twice as likely as men to report valium abuse in an emergency room visit."

Mr. President, I consider the labeling of prescription tranquilizer bottles with warnings against possible hazardous combinations of tranquilizers with alcohol to be an essential element in a comprehensive strategy to eliminate drug abuse in this Nation and to improve the mental health of all Americans. I call on my colleagues in the U.S. Senate to support the Prescription Tranquilizer Labelling Act and to work for its passage.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at this time, along with the articles and the statistics relevant to this text.

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

S. 1739

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 503 (b) is amended—

(1) by striking out "(5)" and inserting in lieu thereof "(6)"; and

(2) by inserting the following new paragraph after paragraph (4):

"(5) A drug subject to paragraph (1) of this subsection which has been found by the Secretary to be hazardous when used in combination with alcohol, shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear a statement warning against use of such drug in combination with alcohol.".

TOP 26 PROBLEM DRUGS IN THE U.S.

Based on statistics gathered in 24 cities between May 1976 and April 1977, the National Institute on Drug Abuse (NIDA) has developed the following national estimates on drug-related deaths and emergency treatment for the 26 most abused drugs. There were an estimated 8,000 deaths and 284,000 emergency room visits related to drugs. Prescription information is included to put these statistics in perspective:

Drugs: Generic/sample brand names	Estimated emergency room visits	Rank	Estimated deaths for single and combination drugs	Rank	Estimated deaths for single drug	Estimated Rx's	Estimated pills	Average pills per Rx	Emergency room visits per 10,000,000 pills	Deaths for single and combination drugs per 10,000,000 pills	Deaths for single drug per 10,000,000 pills
Heroin/morphine	17,000	4.0	1,700	2.0	660						
Methadone	4,500	19.0	300	13.0	100						
Codeine	2,700	24.0	400	10.5	20						
Marihuana	5,700	13.0	0	26.0	0						
Phencyclidine	4,100	20.0	100	22.5	60						
Alcohol-in-combination	47,700	2.0	2,500	1.0							
Secobarbital (Seconal)	7,400	10.0	800	5.0	250	1,507,000	67,096,000	45	1,100	119	37
Pentobarbital (Nembutal)	2,900	23.0	600	7.0	250	1,702,000	81,860,000	48	350	73	31
Seco/Amobarbital (Tuinal)	7,300	11.0	500	8.5	210	1,173,000	54,348,000	46	1,340	92	39
Amobarbital (Amytal)	400	26.0	300	13.0	30	375,000	34,013,000	91	120	88	9
Phenobarbital (Luminal)	7,700	8.0	500	8.5	110	7,910,000	784,409,000	99	100	6	1
Diazepam (Valium)	54,400	1.0	900	4.0	50	57,084,000	3,204,062,000	56	170	3	0
Chlordiazepoxide (Librium)	9,300	7.0	200	17.0	10	15,340,000	923,642,000	60	100	2	0
Meprobamate (Equanil, Miltown)	3,200	22.0	200	17.0	30	9,751,000	612,509,000	63	50	3	0
Thioridazine (Mellaril)	5,300	15.5	200	17.0	40	7,187,000	473,398,000	66	110	4	1
Doxepin (Adapin, Sinequan)	3,300	21.0	200	17.0	80	4,072,000	193,830,000	48	170	10	4
Chlorpromazine (Thorazine)	6,100	12.0	100	22.5	20	4,749,000	270,951,000	57	230	4	1
Flurazepam (Dalmane)	11,500	5.0	100	22.5	10	12,795,000	401,709,000	31	290	2	0
Methaqualone (Quaalude)	5,500	14.0	100	22.5	10	1,352,000	50,221,000	37	1,100	20	2
Ethchlorvynol (Placidyl)	5,000	17.0	300	13.0	70	1,878,000	59,234,000	32	840	51	12
Glutethimide (Doriden)	2,000	25.0	200	17.0	80	2,195,000	86,613,000	40	230	23	9
d-Propoxyphene (Darvon)	10,800	6.0	1,100	3.0	320	19,488,000	703,409,000	36	150	16	5
Aspirin	17,600	3.0	400	10.5	90						
Acetaminophen (Tylenol, Datril)	4,700	18.0	100	22.5	0						
Diphenylhydantoin (Dilantin)	5,300	15.5	100	22.5	0	8,571,000	986,186,000	115	50	1	0
Amitriptyline (Elavil)	7,500	9.0	700	6.0	180	8,838,000	488,229,000	55	150	14	4

Sources: Drug Abuse Warning Network V (DAWN V), funded by NIDA and the Drug Enforcement Administration (DEA) National Prescription Audit, IMS America Ltd.

WOMEN AND PRESCRIPTION DRUGS

Historically women have been the major users of prescription drugs. While women tend to use drugs more for medical reasons, statistics show that a greater percentage of those who use both licit and illicit drugs for non-medical or recreational purposes are men.

Following are statistics on women and prescription drugs compiled by the National Institute on Drug Abuse:

GENERAL DRUG USE

An estimated 1 to 2 million women have problems because of prescription drugs.

32 million (42 percent) women have used tranquilizers prescribed for them by a doctor, compared to 19 million (27 percent) men; 16 million (21 percent) women have used sedatives prescribed by a doctor, compared to 12 million (17 percent) men; and 12 million (16 percent women have used stimulants prescribed for them by a doctor compared to 5 million (8 percent) men.

In 1977, 8½ million women used tranquilizers prescribed by a doctor for the first time, 3 million women used sedatives prescribed by a doctor for the first time, and almost 1 million women used stimulants prescribed by a doctor for the first time.

DRUG-RELATED EMERGENCY ROOM VISITS

Sixty percent of all drug-related emergency room visits involve women.

Almost two-thirds of these are the result of a suicide attempt; the remaining one-third are because of drug dependency or psychic effect.

Women are twice as likely as men to report Valium abuse in an emergency room visit, usually in combination with alcohol or another drug.

DRUG-RELATED DEATHS

The drugs most often associated with death are narcotics, sleeping pills, tranquilizers, and pain relievers.

Forty-three percent of all drug-related deaths are female.

In 94 percent of the Valium-related deaths, alcohol or another drug is also involved.

Of the drug-related deaths involving blacks, 35 percent are women; of those involving whites, 45 percent are women.

The median age for drug-related deaths for black males and females and white males is 28 years. The median age for white females is 43 years.

Sources.—Drug Abuse Warning Network, 1977; National Survey on Drug Abuse: 1977; Report of the Commission on Mental Health. 1978.

WHY ARE MORE WOMEN MISUSING DRUGS?

Muriel Nellis, president of a Washington-based consulting firm, is something of an expert on grassroots attempts to define and meet the special needs of women substance abusers. She believes that pharmacists could make an important contribution toward helping those women.

"Even if they just act as informational assistants to the consumer, pharmacists are in a glorious position to educate people about drugs," Nellis told *American Pharmacy* during a congressional hearing on drug abuse and women. "We are all the losers because pharmacists aren't used properly."

Nellis, three congresswomen, special assistant and pharmacist Alberta L. Henderson of the Department of Health, Education and Welfare (HEW) and acting director Karst Besteman and public health analyst Margo Hall, both from the National Institute on Drug Abuse (NIDA), testified in mid-July before Rep. Lester Wolff's (D-NY) Select Committee on Narcotics Abuse and Control. All spoke on women and drugs during one of the committee's investigative hearings on special populations with a high risk of substance abuse.

MORE PRESCRIPTIONS FOR WOMEN

"Statistics indicate that of the more than 200 million prescriptions written each year for tranquilizers, analgesics, barbiturates and amphetamines, women are the recipients of twice as many of these prescriptions as men," Wolff said during his opening statement. He explained that the committee hoped to determine why so many women are taking mood-altering substances, the current availability of treatment services for female substance abusers, special research needs in the area and current federal and local responses to the problem.

Representatives Patricia Schroeder (D–CO), Barbara Mikulski (D–MD) and Lindy Boggs (D–LA) were the first witnesses to testify before the all-male House select committee. Each pointed to societal pressures and the health care professions as contributing to—and even encouraging—women's dependence on "mother's little helpers" such as Librium and Valium to cope with problems in their lives.

"We as a society imply that women are weaker and therefore need more crutches to cope, and drugs are (presented as) an acceptable crutch," Schroeder said.

SCORING PHARMACEUTICAL ADVERTISING

Mikulski was more specific, saying: "The health delivery system for women in this country is a disaster. Drugs are sold by media hype that feeds into male physicians' stereotypes of women."

She displayed examples of pharmaceutical advertising taken from professional journals depicting harassed-looking women for whom mood-altering drugs are recommended.

"These people are legal pushers," she said. "Is this the way that doctors should decide about the medication they give to their patients? I have always thought that doctors made the decisions based on medical journals, not Madison Avenue hype."

"We can do something positive to help people afflicted by substance abuse if the entire community works together," Boggs told the committee, pointing to Nellis and the Alliance of Regional Coalitions on Drugs, Alcohol and Women's Health as examples of effective cooperative programs.

NO 'QUICK FIX' NEEDED

Mikulski summed up the congresswomen's recommendations by urging the committee to take the first step toward "consciousness raising" by interviewing women who abuse drugs and alcohol, talking with physicians who prescribe mood-altering drugs to women and examining pharmaceutical advertising practices.

"I don't want this committee to recommend a 'quick fix,'" Mikulski said. "Don't just recommend reshuffling agencies within HEW or additional research or assertiveness training for women. The problem is bigger than that and the women in this country deserve better."

Rep. L. Herbert Burke (R-FL) didn't see the problem as being quite so clear-cut.

"Who tells women they should turn to alcohol and drugs?" he asked, adding that he had never done so.

Burke expressed his incomprehension of Schroeder's testimony and suggested that she "just doesn't like men." The ensuing dispute was cut short by a call from the floor of the House of Representatives for a vote, and the hearing was recessed.

'LIBERATION, NOT LIBRIUM'

Muriel Nellis, who is the wife of the select committee's chief counsel, Joseph Nellis, helped the hearing resume with her call for "liberation, not Librium" for women.

She referred to an "incestuous relationship" between physicians and other members of the health care industry which prevents adequate attention from being directed toward the special needs of women.

Nellis inserted in the hearing record a copy of the recommendations made by the Alliance of Regional Coalitions on Drugs,

Alcohol and Women's Health, and urged the committee to "spearhead the effort" to "bring together what is known . . . and recommended legislative and Presidential action which would at least preserve the lives and futures of American women and children."

HAS NIDA NEGLECTED WOMEN?

The last three witnesses, all presently or formerly connected with NIDA, admitted that agency's lack of attention to the specific needs of women.

"It isn't a matter of knowing and not acting, it is trying to stimulate action using the means available," explained pharmacist Alberta Henderson, former director of NIDA's Program for Women's Concerns. She explained that during her tenure at NIDA she saw people "making the best effort where they can, when they can" to help develop programs for women, but that lack of money budgeted for women's programs prevented anything from being done.

Karst Besteman, acting NIDA director, and Margo Hall, NIDA public health analyst, admitted that little has changed since Henderson became a special assistant with HEW's Human Development Services nearly a year ago.

However, they said, NIDA is now trying to "shift its research emphasis" to find out why women are misusing drugs and to develop programs of education and treatment more tailored to women's needs.

Henderson agreed with Nellis that pharmacists have a unique role to play in helping prevent the misuse of legal drugs.

"A pharmacist has a responsibility to the community to help make doctors more acutely aware of who is getting what psychotherapeutic drug and in what quantities," she told American Pharmacy. "If a pharmacist can watch prescriptions for mistakes in dosages, for example, he or she can certainly call a doctor and tell him that Mrs. Jones is asking to have her Valium prescription refilled for the eighth or tenth time, or that she has prescriptions for the same drug from more than one doctor.

"Pharmacists can also make themselves available through their professional organizations as speakers to civic groups to educate people about drug use and misuse. A pharmacist should come out and participate in every health effort that comes through the community." ●

ADDITIONAL COSPONSORS

S. 91

At the request of Mr. THURMOND, the Senator from Utah (Mr. GARN) was added as a copsonsor of S. 91, a bill to amend title 10, United States Code, to remove certain inequities in the survivor benefit plan provided for under chapter 73 of such title, and for other purposes.

S. 945

At the request of Mr. MATHIAS, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 945, a bill to prohibit taxation by a State of electricity generated in that State and transmitted to and consumed in another State.

S. 1055

At the request of Mr. HELMS, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 1055, the Gold Coinage Act of 1979.

S. 1068

At the request of Mr. DOLE, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 1068, a bill to amend the Social Security Act to maintain additional 3 years for disabled children receiving SSI benefits.

S. 1121

At the request of Mr. HAYAKAWA, the Senator from Nebraska (Mr. ZORINSKY), the Senator from Florida (Mr. STONE), the Senator from Alaska (Mr. GRAVEL), and the Senator from Georgia (Mr. NUNN) were added as cosponsors of S. 1121, a bill to amend the Saccharin Study and Labeling Act.

S. 1203

At the request of Mr. BAYH, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 1203, a bill to amend the Social Security Act to provide that the waiting period for disability benefits shall not be applicable in the case of a disabled individual suffering from a terminal illness.

S. 1364

At the request of Mr. TALMADGE, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 1364, a bill to amend the Federal Property and Administrative Services Act of 1949 to permit State and county extension services, and any State agricultural experiment station, to obtain excess property from the United States.

S. 1524

At the request of Mr. DOLE, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 1524, a bill to prohibit the enforcement of compliance with voluntary guidelines by withholding Government contracts.

S. 1592

At the request of Mr. DOLE, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 1592, the Financial Regulation Simplification Act of 1979.

S. 1659

At the request of Mr. WALLOP, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of S. 1659, a bill to amend the Internal Revenue Code of 1954 to provide for the treatment of property as energy property for investment credit purposes after December 31, 1982, where the taxpayer is affirmatively committed on that date to its construction, reconstruction, erection, or acquistion.

SENATE JOINT RESOLUTION 97

At the request of Mr. DANFORTH, the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Wyoming (Mr. WALLOP) were added as cosponsors of Senate Joint Resolution 97, designating April 13 through April 19 as "Days of Remembrance of Victims of the Holocaust."

AMENDMENT NO. 407

At the request of Mr. DOLE, his name was added as a cosponsor of amendment No. 407 intended to be proposed to Senate Concurrent Resolution 36, a concurrent resolution revising the congressional budget for the U.S. Government for fiscal years 1980, 1981, and 1982.

AMENDMENTS SUBMITTED FOR PRINTING

SECOND CONCURRENT BUDGET RESOLUTION—SENATE CONCURRENT RESOLUTION 36

AMENDMENT NO. 419

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted an amendment intended to be proposed by him to Senate Concurrent Resolution 36, a concurrent resolution revising the congressional budget for the U.S. Government for the fiscal years 1980, 1981, and 1982.

AMENDMENT NO. 420

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted an amendment intended to be proposed by him to Senate Concurrent Resolution 36, supra.

● Mr. JAVITS. Mr. President, I am submitting an amendment to the second budget resolution, Senate Concurrent Resolution 36, to add $1.1 billion in budget authority and $0.9 billion in outlays to income assistance (function 600) for the purpose of providing fuel assistance to needy families this winter. This action will not increase the deficit because the funds are to be transferred from the energy supply mission (function 270).

I am keenly aware that this will constrain the already stretched energy outlays budgeted by the committee and that this amendment poses some difficult choices. While there is ample room within the budget authority figure of $41 billion to accommodate this and other portions of the President's energy initiatives, the $7 billion in outlays budgeted by the committee is extremely tight. It is our intention that the transfers come from energy supply outlays and be allotted in such a manner that parts of new projects be marginally delayed and that some contracts be put off till next fiscal year. Indeed, the committee may wish to arrange for other transfers among outlays.

However, the urgent needs of the poor for heat and light in the wake of the recent devastating OPEC price increases must be our first priority. It is, indeed, a life and death matter before which other priorities, even important ones like some of our energy construction projects, should give way. The $500 million ceiling on fuel assistance recommended by the committee is simply inadequate to meet the heating needs of the elderly who have inadequate income and the poor this winter.

The recent escalation in residential fuel bills means we would have to double the level of last year's crisis assistance program which was $200 million, merely to meet the needs of the same 900,000 households served by that inadequate program. Yet the administration and the groups representing the poor and these elderly agree that there are many times that number of households in need. The White House has estimated the $1.6 billion in funds requested would provide $200 each to 6 million families in need. Our estimates and those prepared for

the Department of Energy show 12.5 to 16 million poor and near-poor families needing help to avoid the dreadful choice between heating and eating.

My amendment accommodates this more realistic estimate of the minimum need for emergency assistance. At present the committee has allotted $22 billion in additional budget authority in function 270 to reflect commitments from new oil tax revenues to new energy supply programs; and my amendment transfers $1.1 billion from this $22 billion to function 600. The Budget Committee has allotted $4.7 billion in outlays for new energy supply programs; and our amendment transfers $0.9 billion of that to function 600.

Mr. President, we face difficult choices given these tight budget conditions. If we are to accept the responsibility for protecting the poor from the cold we must make tough choices.

It is my hope that together with the distinguished chairman, ranking member, and members of the Budget Committee we can arrive at a way to provide this sorely needed basic energy assistance.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the RECORD.

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

AMENDMENT NO. 420

On page 5, line 10, strike "$41,000,000,000" and insert in lieu thereof "$39,900,000,000," and in line 11 strike "$7,000,000,000" and insert in lieu thereof "$6,100,000,000."

On page 8, line 16 strike "$216,600,000,000" and insert in lieu thereof "$217,700,000,000," and in line 17 strike "$188,400,000,000" and insert in lieu thereof "$189,300,000,000." ●

NOTICES OF HEARINGS

SPECIAL COMMITTEE ON AGING

● Mr. CHILES. Mr. President, I would like to alert the Senate to a change in schedule for hearings before the Special Committee on Aging this week regarding "Energy Assistance for the Elderly."

The hearing scheduled for Wednesday, September 12, has been canceled. In addition, the hearing scheduled for Thursday, September 13, will begin at 9:30 a.m., instead of 10 a.m.

The administration will be the leadoff witness.●

SUBCOMMITTEE ON ALCOHOLISM AND DRUG ABUSE

● Mr. RIEGLE. Mr. President, on Friday, September 14, 1979, the Subcommittee on Alcoholism and Drug Abuse, of the Committee on Labor and Human Resources, will hold a hearing concerning consumer health warnings for alcoholic beverages and related issues, including S. 1574, a bill to amend the Federal Food, Drug, and Cosmetic Act, the Federal Alcohol Administration Act, to provide for health warning labels on alcoholic beverages.

The hearing on September 14 will be held in room 6226 of the Dirksen Senate Office Building at 9 a.m. Questions concerning this hearing should be directed to Craig Polhemus or Nancy Olson of the subcommittee staff at 224–8386.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today beginning at 2 p.m. to hold a hearing on the SALT II treaty.

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

ADDITIONAL STATEMENTS

BUILDING TEMPERATURE CONTROLS—AN EXCELLENT EXAMPLE OF PAPERWORK AND REGULATORY NIGHTMARE

● Mr. DOMENICI. Mr. President, the Department of Energy's emergency temperature restrictions, requiring nonresidential buildings to set thermostats no lower than 78° F. for cooling, no higher than 65° F. for heating, and no higher than 105° F. for domestic hot water, serves as an excellent example to citizens of the United States of the bureaucratic nightmare of converting a plausible energy conservation plan into a paperwork and regulatory nightmare. Congress approved the Department of Energy's temperature control plan on May 10, 1979, and President Carter made the temperature control plan effective July 16, 1979.

Administration of this energy conservation program, projected to reduce oil use by as much as 400,000 barrels daily, has been conducted by not more than a handful of Department of Energy officials. The unfortunate incomplete and ineffective implementation of this temperature control plan has added to the severe lack of public confidence in ability of the Department of Energy to do anything. Perhaps Secretary of Energy Duncan may wish to use this program for his first reorganization project to improve the Department of Energy's administration.

The original plan as submitted to Congress would require each owner to keep records and submit reports as the Secretary of Energy may require. Little did the people or the Congress realize that this delegation of power was going to require mountains of paperwork for the mere adjustment of thermostat settings, particularly for small businesses. Already, the Department of Energy has issued 16 pages of regulations in the Federal Register on temperature restrictions. An additional 15 page manual, "How To Comply With the Emergency Building Temperature Restriction," must be reviewed by building owners before proper compliance can be assured for completing three Department of Energy forms.

For each building an owner must complete and post a Department of Energy "certificate of building compliance," keep on file an "exemption information form," and mail back to the Department of Energy the "building compliance information form," if a businessman owns five or more buildings, three Department of Energy forms must be filled out for each building. This requirement entails the filing of a total of 15 million forms for the entire country.

In addition, each owner or small businessman must have the skills of a lawyer and building engineer to interpret the regulations and to claim any of the 17 exemptions that may apply. For example, a small retail grocer must study the regulations to know that an exemption may be claimed for the proper storage of food because refrigeration equipment suffers severe frost buildup; or the use of waste heat from refrigeraton equipment or solar units as the only source of heating and cooling energy; or State or local health regulations requiring hot water temperature levels above 105° F. Fourteen other exemptions could also apply.

Distribution of the Department of Energy's "How To Comply With the Emergency Building Temperature Restrictions" is another example of disarray. The Department of Energy originally promised the forms and instructions would be "made available at post offices throughout the country." On August 20, 1979, the Department of Energy announced limited distribution to the main post offices in the 65 largest cities. This is a great advantage for those businesses located in the 21 cities in California, Texas, and New York having post offices that will receive the forms. Unfortunately, for my constituents in New Mexico and the people in 20 other States, no distribution to post offices is planned. New Mexicans are understandably irate when informed that forms can be obtained from post offices in Arizona, California, Colorado, and Texas, but not New Mexico.

After promising delivery of the forms by the end of July, some distribution was begun in mid-August. Distribution through trade associaitons may have alleviated the problem. Trade associations providing labels and membership lists received some of the Department of Energy books. The more than 100 national associations and other business representatives ordering bulk supplies for redistribution to members have just begun to receive the forms they have ordered.

Despite these efforts of the private sector, thousands of businesses have not received the forms necessary for compliance. Even though the Department of Energy had delayed the compliance date for posting forms until September 1, 1979, the totally inadequate distribution has made implementation of the program unworkable.

Further, this energy conservation plan is costing the American taxpayers approximately $8 million for administration. Businesses are expending untold dollars for compliance. Many constituents express disbelief at the paperwork required in the name of energy conservation when individual efforts to achieve cost and energy savings are being undertaken.

The best solution is for Department of Energy to abandon the unnecessary paperwork. For the 1978 fiscal year the Department of Energy had reduced the overall burden of repetitive reporting by an estimated 5.1 million hours or 58.3

percent. But between October 1 and December 31, 1978, the burden of repetitive reports increased 1.6 million hours or 42 percent. The Office of Management and Budget's recently issued report "Paperwork and Redtape: New Perspectives—New Directions" anticipates increases in reporting hour burdens under many new energy statutes to be implemented. "For example, the Powerplant and Industrial Fuel Use Act became effective May 8, 1979. The Department of Energy estimates the total burden of seeking exemptions under this statute to be under 200,000 hours; companies estimate the burden of the proposed forms and regulations to be more than 15 times the DOE estimate. Programs to implement the National Energy Conservation Policy Act may involve annual reporting burdens of over 3,000,000 hours."

And after all this, after a patriotic businessman goes through the effort of obtaining the necessary forms, the expense of filling them out and complying with the requirements, what have we achieved? Because of the lack of enforcement capabilities, the indifferent businessman or the one who refuses to participate in this paper flurry will remain out of compliance. The Nation will not save the energy projected and we will have simply expanded the bureaucracy.

The American public has the will to conserve energy. Escalating energy prices have enforced that need on the American people. Future energy conservation plans must allow alternative or comparable methods for conserving energy by businesses and encouraging voluntary compliance. Not all businesses use the same types of energy. Such businesses and industries should be given the opportunity to implement their own energy conservation measures instead of having counterproductive Federal mandatory paperwork and regulations imposed. The people's confidence in the Federal Government will not increase until the people are permitted to control their destiny free of unnecessary and cumbersome regulatory burdens and the result we all desire, conservation of energy, is actually achieved.●

THE WORK INCENTIVE PROGRAM

● Mr. TALMADGE. Mr. President, since its inception a decade ago, the work incentive program (WIN) has steered a million welfare recipients into gainful employment at a tremendous savings to the American taxpayer.

In 1978, almost 500,000 persons left the welfare rolls for employment and training, saving the taxpayers some $650 million in welfare payments, not to mention reduced payments for medicaid, food stamps, or increased revenue generated by placing people in gainful employment.

The work incentive program is the only real welfare reform that I have seen enacted since I came to the U.S. Senate. It is both cost effective, saving $2 for every dollar spent on the program, and it increases human dignity that comes from economic independence and productivity.

Mr. President, I call to the attention of my colleagues an article written by Mr. John Toon regarding the work incentive program in Clarke County, Ga., that appeared in the Thursday, September 6, edition of the Athens Observer, and ask that it be printed in the RECORD.

The article follows:

SAVING WELFARE $$$—WIN PROGRAM PUTS PEOPLE TO WORK

(By John Toon)

The able-bodied welfare recipient who spends his days collecting benefits and watching television is a popular stereotype, but a program jointly carried out by the Clarke County Department of Family and Children's Services (DFCS) and the local Department of Labor is attempting to eliminate that image.

Called the Work Incentive Program (WIN), it has placed some 167 Clarke County public assistance recipients in jobs since October, saving about $74,000 in benefits that would have been paid had the recipients not found work, according to Janet Fong, WIN coordinator for the DFCS.

All recipients not covered by specific exclusions—such as illness, age, or young dependent children—are required to register for work, and "it is our job to get them a job and help them keep it," she explained.

Those excluded from the mandatory registration may still volunteer for the WIN program, and many do, Fong added.

After registering, the recipients go to a job appraisal interview, in which their qualifications and interests are discussed. If the recipients have particular problems, the department can often help solve them.

Child care, family planning counseling, medical care, household budgeting, home management—and employment training—may be offered to recipients who need help getting ready for work, she said.

We know that many children have never been exposed to the significant learning experiences of good day care," she explained. "In fact, statistics prove that increasing numbers of young children of working mothers are cared for poorly or not at all. WIN considers good day care to be a vital step toward breaking the poverty cycle."

The program can pay day care costs for up to 60 days for recipients who need the service in order to work. For recipients in job training programs, WIN can provide child care for up to one year, Fong added.

All the services, she explained, "have to do with increasing the individual's sense of worth; with restoring dignity and a sense of being able to determine one's own destiny."

One of the most innovative services offered by WIN is the intensive employability training. It teaches people what they need to know to get a job and keep it.

"A lot of people we work with either don't have any job experience, or they haven't worked in a long time," she said. The program teaches such things as the importance of getting to work on time, how to apply for a job, how to find a job, and how to get along with fellow employees.

"Sometimes it's as simple as teaching them how to fill out the form," Fong explained. "We want them to be able to find their own jobs."

Once WIN decides the recipient is ready for employment, it has several options available. The first, of course, is regular employment with a firm that has an opening in a position suited to the recipient.

But for the many persons who do not have a marketable skill, there are three training programs designed to give that experience.

"Institutional training is available when the participant has indicated an interest in and has shown an aptitude for employment that requires special training," she noted. Examples are secretarial training and nursing training offered in vocational training schools.

A recipient who has no skills may be placed in a work experience program in which an employer agrees to train the participant—but does not pay him any wages for work done while in training.

Participants are paid up to $30 a month by WIN while in the work experience, and up to $3.50 a day for training expenses.

"The employer obligates himself only to train the participant, but in many cases he hires the individual at the end of the training period," she said, adding that in many cases the training period turns into a probationary period during which the employer finds out if the participant would be a good employee.

A final type of training program is on-the-job training for businesses where there may be a shortage of skilled people.

"Local employers who are willing to contract to provide such training may be reimbursed through WIN for up to 50 percent of the training expenses incurred," said Fong. "At the end of the contract period, the employer is expected to hire the successful trainee."

In addition, 20 percent income tax incentives are available to employers who hire or train WIN participants.

Finally, participants who cannot be placed into any of the other programs may be placed into public service employment with a local non-profit agency. The recipient receives no pay, but the job serves as experience while giving the agency additional manpower at no additional cost.

Fong said that in addition to the 167 persons placed into regular employment, another 10 went into job training, seven into on-the-job training, and five into public service employment.

Between 70 and 80 percent of participants placed into jobs retain them," she said. "Employers have found for the most part that WIN employees are on a par with other employees in performance and dependability—and in some instances superior." ●

SALT III AND ARMS CONTROL

● Mr. McGOVERN. Mr. President, it has become clear that SALT II is at best a modest steps toward genuine arms control. The difficulty is that nuclear technology continues to sprint forward; arms escalation has outpaced arms negotiation. For this reason, a number of Senators will be looking toward SALT III to produce substantial reductions and genuine restraints on strategic arms. My decision whether to vote for or against SALT II will depend largely on the prospects for meaningful limitations in SALT III, and I shall be offering a declaration of policy on SALT III as an amendment to the SALT II resolution of ratification.

Yesterday, the Foreign Relations Committee held a hearing on SALT III and arms control. The statements presented by Ambassador Paul Warnke and by Prof. Wolfgang Panofsky provide a series of constructive proposals and insights to help us begin serious thinking about SALT III. I submit the text of their prepared statements to be printed in the RECORD, to assist my colleagues in their consideration the outlook for SALT III.

The texts of the statements follow:

STATEMENT OF PAUL C. WARNKE

ARMS CONTROL AND SALT III OBJECTIVES

Mr. Chairman and Members of the Committee: As the Members of the Committee

know, I left my government responsibilities with regard to the strategic arms limitations negotiations over ten months ago. Accordingly, my comments today on possible approaches to SALT III must be considered to be those of a private citizen. They are, of course, based on my close personal observation of the SALT process.

In my opinion, it is imperative that the ratification of the SALT II treaty take place as soon as possible so that this process may go ahead without further loss of time. Experience shows that, as SALT plods along, the unimpeded advance of nuclear technology puts ever greater obstacles in the path of sound and effective nuclear arms control.

As I testified before this Committee last July, I see one of the main advantages of the SALT II treaty as being the creation of a firm foundation on which further quantitative reductions, qualitative constraints and other limits on nuclear weapons development may be based. Accordingly, I do not see as the goal of the SALT III negotiations the creation of a whole new replacement treaty. With the entry into force of the SALT II treaty, we will have the basic structure for a continuing nuclear arms control regime.

Much, if not most, of the SALT II negotiations centered around such fundamental issues as the definitions of the particular nuclear weapons systems to be covered and the provisions on verification. These issues need not and should not be renegotiated. They may, of course, be supplemented.

Nor, as was the case with the SALT II treaty, need there be agreement on the entire congeries of complicated issues before agreement can be reached on any individual item or related set of items. In SALT II, nothing could come into effect until everything was settled. Now, it would facilitate the negotiations and yield much more rapid progress if SALT III is conceived as a set of separable packages.

Thus, President Carter has made it clear that he places very high priority on substantial reductions in both the overall aggregate of nuclear weapons delivery systems and the subceilings on the more dangerous and destabilizing of these weapons systems. These subceilings are among the more useful precedents created by the SALT II treaty. At an early stage, it should be possible to agree, for example, that when the reduced ceiling of 2,250 is reached by the end of 1981, further reductions will be made to bring the aggregate strategic nuclear delivery vehicle total to a figure well below that level by the end of 1985. At the same time, and as part of the same package, agreement should be reached to cut, by that same end date and to a significant extent, the subceilings of 1,200 MIRV'ed ballistic missile launchers and 820 launchers of MIRV'ed intercontinental ballistic missiles.

Associated with this package of quantitative cuts, there should be an agreement to extend the term of the SALT II treaty, at least through 1990.

This relatively simple package would, of course, require Senate ratification before it came into effect. It could, however, be presented to the Senate as soon as it has been negotiated and it should not, I think, prove to be controversial.

Another set of related proposals could be those that are designed to have a further inhibiting effect on the development of new types of strategic nuclear weapons capability. One such measure would be a limit on the number of intercontinental and submarine-launched ballistic missile tests that can be conducted in any one year. Either the limit of six which was part of the March 1977 proposal might be considered or perhaps some separate ceiling applicable only to ICBM's.

Another such limit, which could be associated with that on test firings, could be a ban on any testing of submarine-launched ballistic missiles in depressed trajectories, a development which would lessen the warning time for attacks on our strategic bomber force. The limits on changes in existing missiles should be tightened to the extent that verification considerations permit. Specific inhibitions on any new strategic weapons in the early concept stage could also be included in this particular package of SALT III amendments to the basic SALT II treaty.

My preference for this separate package approach to SALT III is grounded in large part by the next set of SALT III issues that I would like to discuss. These involve the so-called grey area systems—the theatre nuclear weapons that come in between the tactical battlefield classification and those of strategic intercontinental range. Obviously, these longer range weapons in the theatre nuclear forces create negotiating and political problems of great complexity. Their direct relationship to alliance force structure decisions means that their disposition in treaty provisions cannot be an exclusively bilateral process. Our recognition of the sensitivities that these theatre nuclear forces evoke was reflected in our insistence in SALT II that only weapons of intercontinental range would be covered. At the Vladivostok meeting between President Ford and General Secretary Brezhnev, the Soviets accepted our position that forward-based systems in Europe would not be included.

There is, as the members of the Committee know, not complete consonance of views among the NATO allies as to the inclusion of theatre nuclear forces in SALT III. At the same time, it is clear that alliance decisions on the upgrading of NATO's theatre nuclear forces can only be made in the context of developments in Soviet nuclear forces of comparable range. Moreover, the only restraints on long-range ground launched and sea launched cruise missiles are those contained in the Protocol, which inhibits only the deployment but not the testing of such weapons through 1981. It seems very likely that the Soviet negotiators will propose, as part of SALT III, new restrictions on cruise missiles on ground or sea launchers that could reach the Soviet Union from Western Europe. We, however, have made it very clear to the Soviets that no such restrictions could be accepted unless there are comparable restrictions on such long-range theatre systems as the Soviet SS–20 and the Backfire bomber.

Any decisions as to what theatre nuclear weapons we are prepared to forego, and in return for what limits on Soviet theatre nuclear forces, must be made in close consultation with our Western European allies. These decisions will require careful analysis of the implications for NATO's security of going ahead or holding back. Will, for example, a surprise attack on Western Europe be less or more feasible if both NATO and the Warsaw Pact have uncountable numbers of long-range cruise missiles deployed on ground and sea launchers? Splendid as our verification capability is, I know of no way that we could tell or the Soviet Union could tell how many such missiles are in fact deployed, against what targets they are aimed, or even whether they are aimed with nuclear or conventional warheads or a mix of both.

Moreover, even if the other NATO countries are willing to have questions of theatre nuclear forces negotiated in bilateral meetings between the United States and the Soviet Union, it seems certain that this part of SALT III could only go ahead with some more formal and more continuous consultative mechanism, whereby we would have constantly to renew the proxy given to us by our allies. We would, I am certain, be completely unwilling to decide issues basic to NATO's nuclear military forces except on the basis of full agreement and understanding within the alliance.

But, as I see it, there is no reason why this set of issues, which raise such troubling political, military and negotiating problems, should hold up further bilateral agreement on deep cuts and new qualitative restraints on strategic range nuclear weapons systems. There is, I recognize, a temptation to find a relationship among all of the questions that can arise as the SALT negotiations continue. The breaking down of these issues into separate packages, that might be negotiated, signed and ratified as separate amendments to the basic SALT II treaty, foregoes some opportunity for trade-offs. But, to take one simple instance, we would certainly have preferred to see lower figures than 2,250, 1,200 and 820 as part of SALT II. We in fact proposed, unsuccessfully, limits on flight tests and the testing of submarine launched ballistic missiles in depressed trajectories. If and when we can secure agreement on these further cuts and these new restraints, I can see no reason why they should not promptly be brought into force as amendments of the basic treaty.

As for the relationship between SALT and other arms control initiatives, I would support Dr. Panofsky's suggestion that the SALT forum might be used to agree with the Soviet Union on a cutoff of production of fissionable material for military purposes. The United States has repeatedly supported such a cutoff in the past and its coming into being would be consistent with our attempts to improve security and lessen the risk of nuclear war by limiting further the development of new nuclear weapons. In addition, I think the speedy completion of a comprehensive ban on the testing of nuclear explosive devices is both possible and highly desirable. Again, such a ban would impede the creation of new and even more destructive nuclear weapons systems. Having headed our delegation to these Comprehensive Test Ban negotiations until last November, I am confident that what once appeared as the major problems can now be readily resolved.

Moreover, the cessation of testing of nuclear explosive devices is, as I see it, an indispensable part of a realistic policy against the proliferation of nuclear weapons. So long as we and the Soviet Union insist on our need for further tests of nuclear weaponry, our pleas that other sovereign states forego any such testing are destined to fall on deaf ears. Whatever national security arguments might be made for continued testing are, I am convinced, dwarfed by the national security detriment of encouraging other countries to acquire a nuclear weapons capability.

Finally, I would like to make my own plea for the assigning of a higher priority to the completion of new limitations on strategic nuclear weapons. The process, as I see it, is inescapably a slow and cautious one. We can't afford to speed it up at the sacrifice of thorough consideration and full exploration of the possibilities. But neither, in my opinion, can we afford to draw it out artificially and unnecessarily by holding SALT hostage to every swing in United States/Soviet relations.

SALT, as I have said repeatedly, is not a favor that we are doing to the Soviets, one that we can withhold as a punishment or proffer as a bribe. SALT is instead a responsibility that history, our scientific genius and our position of world leadership have placed upon us. Confident as I am that the SALT II treaty is a major step forward to nuclear sanity, I am equally convinced that we must go further and go faster. It is for these reasons that I recommend strongly that we get ahead with it, that the SALT II treaty be ratified promptly, and that it be used as the firm foundation for a series of additional and separable improvements that can be considered and accepted as amendments to the basic treaty.

Such an approach can mean more rapid and substantial progress, and permit the consideration of SALT issues in an atmos-

phere less politically charged. It affords a means whereby the more complex and controversial issues will not prevent the prompt entry into force of simpler but no less significant steps in nuclear arms control.

TESTIMONY OF W. K. H. PANOFSKY

APPROACHES TO SALT III

I am pleased to have the privilege of testifying before your Committee again, this time in connection with the pending ratification of the SALT II Treaty. I have been interested and involved in Arms Control since World War II, and I am currently a member of the General Advisory Committee on Arms Control and Disarmament. However, I am testifying here as an individual citizen, giving my personal views.

SALT III in the context of SALT II

I am speaking about approaches to SALT III in the context that SALT II will be ratified without amendments. I will assume that any concurrent resolutions would deepen the legal commitment to the provisions of SALT II, but would not change its substance or basic intent. I continue to be persuaded that ratification of SALT II is strongly in the net security interest of the United States. This Committee has heard many witnesses from within and without the Administration enumerating how the provisions in SALT II place limits on the threat against which this country has to be prepared, and how several of the other provisions assure the integrity of our intelligence collection assets. It has been amply demonstrated that the level of strategic nuclear weapons in the absence of SALT on both sides would be substantially higher than with SALT enacted. Moreover, witnesses have been persuasive in demonstrating that SALT II places more substantial restraints at this stage of nuclear weapons development and deployment on the Soviet Union than it does on the United States. I will not repeat these arguments here in further detail.

You have also heard numerous criticisms of SALT. Yet I have heard no criticisms to which an easier remedy can be found through repudiation of SALT II. You have heard numerous criticisms of our military posture. Yet I have heard no proposed measure to improve that posture which is easier to achieve by repudiation of SALT II. Most, if not all, of these criticisms deal with questions outside the provisions of the SALT agreements themselves, but involve issues which the critics believe will be affected adversely through political linkages if SALT were enacted. I find it interesting that many of these arguments are in opposing directions: There are those who argue that enactment of SALT II will lull us into a false sense of security and therefore will impair the willingness of this country to provide adequately for its own defense. To argue against an arms control treaty which demonstrably in terms of its intrinsic content will enhance our security by claiming that it will make future Administrations and Congresses be less than diligent in providing for the national defense, is at variance with the basic tenets of our system.

There are also those who argue that the price for ratification in terms of additional armaments is too high: in other words that SALT II will increase military spending beyond what could have been justified in the absence of the Treaty.

I note that these two criticisms are paired in their consequences, and I do not believe that either is valid. I have confidence that future elected officials of this nation can establish national priorities wisely.

It is essential to refocus the debate on the fundamental issues of the content of the Treaty and Protocol and not to be swayed unduly by the perceived linkage between SALT and other political or military issues. This conclusion is particularly important in the SALT III context: the progress from SALT II to SALT III, to which both the U.S. and USSR are committed, can hardly continue if the process is burdened with the politically perceived linkages of critics with a wide variety of views.

SALT II vs. Defense spending

Let me specifically comment on the linkage between ratification of SALT II and a commitment on the part of the Administration for increased defense spending, either in terms of a rate of growth of the U.S. defense budget for several years, or in terms of procurement of specific military hardware. I find this concept extremely troublesome. Requiring as a price for ratification increased military spending in the name of arms control would destroy the very purpose of that process. Moreover, it would contradict the key conclusion which I believe has been presented persuasively to this Committee by the majority of witnesses, namely, that the security of this nation will be greater, albeit by a small measure, with enactment of SALT than without. Therefore, however threatening one evaluates the Soviet military buildup to be, the defense spending required to counter that threat would be lower with SALT enacted. Note that this comment does not specify how large defense expenditures should actually be: I am only saying that the effect of SALT should tend to decrease that budren. To maintain exactly the opposite, that ratification of SALT should be held hostage to a commitment for increased military spending, lacks any logical connection, irrespective of Soviet conduct or threat.

If, as part of the duty of the Senate to pass on ratification of a treaty negotiated by the Executive, the Senate would pre-commit itself on defense expenditure levels or approval of specific military systems, this would be a disservice to another constitutional role of the Executive and Legislative branches. The Congress through both the Senate and the House has the responsibility of examining critically any public spending, be it military or civilian, and of passing upon the merit of specific military systems through the annual authorization and appropriation processes. Such decisions determine our national priorities and are traditionally decided by a majority of both houses, not by one third of the Senate. If ratification of SALT II in essence pre-determines such decisions, then the power of both houses and also of the Executive branch in setting the budget is weakened. If SALT II is held hostage until this years' authorizing and appropriating processes have been completed, or until supplementary appropriations have been procured, then SALT II bears a burden through delays and linkage which would augur badly for the future of SALT III.

Arms control vs. technology

This leads me directly to the matter which concerns me most about SALT and that is its slow rate of progress. SALT was initiated in 1967 at the meeting of President Johnson with Premier Kosygin at Glassboro, N.J. It has thence proceeded through four administrations, through a Treaty and several Agreements and Protocols, and has now led to the signature of SALT II. This process was initiated by the realization that, apparently inexorably, the world was accumulating nuclear warheads. Their number is now near 30,000, the great majority of which are more powerful than the two weapons which killed one-quarter of a million people in Japan. It appeared to both nations to be a pressing matter to reverse this evolution. Since well over 99% of the world inventory of nuclear weapons was (and still is) in the hands of the Soviet Union and the United States, a bilateral negotiation with its expectation of relative simplicity appeared to be the best forum. Now, 12 years later, although SALT I has had a beneficial effect in assuring the penetration of our deterrent warheads, and despite the fact that SALT II in itself is a clear asset to our national security, we find that technology has outstripped the pace of diplomacy and political decision making. In other words, the arms limitation which the SALT process has so far achieved is of lesser magnitude than the evolution of new military technical systems which has occurred in the interim period during which these limitations have been achieved. Such items as the Cruise Missile and the Backfire Bomber, as well as most long-range weapons systems which have theatre-warfare roles, were not in the picture when the SALT process commenced, and their emergence greatly complicates future negotiations. Moreover, the quality of strategic weapons has greatly improved while SALT was in the process of negotiation.

Therefore, such problems as the vulnerability of the land-based deterrents of both sides and the consequent deterioration of strategic stability have grown during that period. It is therefore my belief that SALT III offers possibly the last opportunity to convert the important but relatively modest achievements of SALT II into a true halt and possible reversal of the dangerous and burdensome competition in nuclear weapons.

SALT III: Limited or ambitious objectives?

There is currently a substantial division of opinion on the role of SALT III. Some believe that the function of SALT III should be primarily to settle the unfinished business of SALT II. The reason why SALT II has such a complex structure is that it represents different levels of agreement. The Treaty deals with items on which definite long-term agreement was possible. The Protocol covers items which are being put on a limited time "hold" because these issues could not be resolved to the satisfaction of the negotiating parties. The Backfire letter deals with a military area which had been excluded by mutual agreement from the SALT process but on which the U.S. demanded assurance. All these instruments are binding legally but cover a different stage of decision making. Considering the difficult negotiations of the past, it therefore appears natural for some to view SALT III as a vehicle to complete negotiations on these items, and to deepen the actual constraints of SALT II.

There are others, and I count myself among them, who believe that SALT III must achieve what colloquially is designated as "deep cuts." I would rather use the term "incisive arms control" "to signify that a great deal more must be involved than major numerical reduction in military systems. I recommend strongly that highly ambitious goals be set for SALT III since I see the SALT process as the only avenue in view which has any hope of reversing the threatening rise in nuclear weaponry which we are experiencing, and I see the race between SALT and nuclear weapons evolution lost unless the SALT process can be accelerated.

SALT III: Simple formula or complex package?

Let me now turn to SALT III in the "incisive arms control" context. Deep numerical cuts in nuclear weapons systems in themselves may or may not add to our security, depending on their detailed nature. For instance, a formula of annual reduction of the aggregate strategic nuclear delivery vehicles with complete "freedom to mix" among them could have destabilizing consequences. For example, one or the other of the two nations might under such a formula choose to eliminate first those deterrent strategic nuclear delivery systems which are unsuitable for a counterforce role, but would retain those which have the largest potential to preempt

through a first strike the deterrent forces of the opponent.

If such a choice were made, we would face an even more dangerous world. Therefore I see no escaping the conclusion, however much one would like to see a treaty as complex as SALT II be followed by the high simplicity of a simple reduction scheme, that such an agreement would not be in the U.S. security interest. SALT III is likely again to be a complex undertaking and will again require careful attention to details and definitions, as was the case with SALT II. This does not mean that the details of the process under which SALT II was negotiated must be perpetuated: on the contrary, I hope means will be found to accelerate the negotiation and ratification processes.

Starting from the premise that SALT III will have to be an arms control package containing both mutual reductions and qualitative limits or technology, I would like to enumerate several candidate provisions for such an agreement. I am talking here only about candidate provisions because at this time no one can reasonably give detailed prescriptions for each element or the totality of such a package. While I would encourage the Senate to adopt a resolution urging "incisive arms control" and an increase in the pace of arms control negotiations, I strongly counsel against being too specific or constraining in such a resolution. Not only are the necessary basic studies within the government in formulating specific provisions incomplete, but there is also a danger that a Senate resolution which constitutes a "de facto" instruction to the SALT III negotiators will impair the negotiating flexibility of U.S. negotiators which may prove necessary under future circumstances. Too specific a resolution might even increase Soviet intransigence, because it would give the appearance of denying them the opportunity of negotiating SALT III on a balanced basis. Numerical targets, delineation of systems to be controlled, schedules for reduction or restraint—these are all proper subjects for negotiation, not prior determinations.

Examples of SALT III Content: (a) Reduction in Central Systems:

Naturally, SALT III must face the unfinished business of the Protocol of SALT II: these are the questions of controls on ground-launched and sea-launched cruise missiles (GLCMs and SLCMs), and on land-mobile ICBMs. I will discuss these items as candiates for inclusion in the total SALT III agenda.

Substantial reductions of central nuclear weapons systems must remain, of course, the cornerstone of any incisive arms control agreement. I would recommend for the reasons mentioned above that U.S. proposals for reductions apply separately to each category of strategic nuclear delivery vehicles which already identified in SALT II, as well as to overall aggregates. I would recommend that the United States push for phased reductions with a target of about 50% in overall aggregate. Even an eventual reduction as large as that should not induce the Soviet Union to be excessively concerned with the threat they are facing from other unfriendly borders, although this concern can by no means be neglected. Within this aggregate cut I would recommend that the number of MIRV'd land-based ICBMs be further reduced disproportionately. I note that in the ill-fated March 1977 proposal the U.S. moved to reduce this number to 550, with a number of 820 finally arrived at in SALT II. The number 550 proved difficult to negotiate because it corresponds precisely to the number of Minuteman III launchers. Therefore that number, if adopted, would have forced the Soviets to substantial reduction of land-based MIRV'd ICBMs, while it would have implied no reduction whatever on our side; clearly not a negotiable position unless compensating concessions are made elsewhere. I would recommend that consideration be given to reduce the number of land based MIRV'd ICBMs substantially below 550.

The history of proposals for deep reduction in land-based MIRVs or even a zero MIRV provision is checkered. There have been objections by specific interests within this country, and the Soviets opposed reductions in this category initially because they did not wish to be frozen in a position of inferior technology. At this time, with Soviet MIRV technology approaching U.S. performance, particularly with respect to accuracy, and with growing Soviet concern about the vulnerability of their land-based deterrent, I would recommend a serious effort for a very drastic reduction in the land-based MIRV'd ICBMs.

Verification of such a provision would, of course, be a very serious issue. At this time the only available means of verifying the number of MIRV'd land-based ICBMs rests on the counting rule which makes any launcher capable of launching a tested MIRV'd ICBM count as a MIRV'd ICBM launcher. Therefore, single warhead launchers would have to have credible distinguishable characteristics for this counting rule to be effective. It is this consideration which would have to be carefully studied as part of the foundation of the American position for SALT II.

Examples of SALT III Content: (b) Quota on Permitted Missile Test Firings:

A second major component for an incisive arms control proposal should be a limit on the annual rate of permitted ICBM and SLBM test firings. Test firings can serve development, troop training, and proof test purposes. If there were a permitted quota, each side would have to divide its number of firings among these objectives. Present test practices are asymmetrical due to the larger diversity of Soviet deployed systems and their missile firings for troop training from operational silos. Due to its geographic constraints, this is not feasible for the U.S. Accordingly, an equal quota for both sides would have a dissimilar impact on current practice. Such a missile test firing quota was incorporated in the U.S. March 1977 proposal relating to ICBMs only: a rate of 6 per year for both parties was suggested. I consider this number to be a reasonable goal for a phased reduction of annually permitted firings.

A limit on annual permitted rates of test firings is the most powerful verifiable restraint at our command for limiting the rate of growth in technology in the missile arts. Traditionally each new generation of missiles has required 10–30 or so test launches and therefore a stringent limitation of the testing rate would impact drastically the evolution of new generations of missile systems. There is no question that a test ban quota as low as 6 per year would severely constrain modernization. More important, the confidence which each side can acquire under such a restricted test regime, that missiles will perform with high reliability and high accuracy will be low. Accordingly a decision-maker of either side will most likely be dissuaded from considering a preemptive or first strike attack. Thus a limitation on the rate of permitted missile firings would be a substantial factor in increasing strategic stability.

A measure parallel to a restriction on the rate of firing of ICBMs and SLBMs would be a total prohibition on test firings for development of any new system of MIRV'd ICBMs and SLBMs. Such a prohibition would be a useful additional step to prevent an increase in the threat to the fixed land-based deterrents of the two sides, and would be a significant impediment to the deployment of SLBMs with accuracy contributing to the threat to land-based ICBMs of both sides.

Examples of SALT III Content: (c) Ban on Deployment of Mobile Land-based ICBMs:

Deployment, but not development and test, of land-mobile ICBMs is prohibited in the Protocol of SALT II; this provision in no way inhibits U.S. programs. Note that deployment of the already developed Soviet land-mobile SS–16 is explicitly prohibited in the Treaty. This leaves the question of control of mobile ICBMs definitely on the agenda for SALT III.

Definition of a U.S. position is to some extent linked to the total SALT III package. If the matter of vulnerability of the land-based ICBMs is dealt with by the provisions just mentioned (large reduction of the number of MIRV'd missiles, and limits of the rate of missile test firings), then there is no question that U.S. security will be served by negotiating a total ban on land-based ICBMs. The Senate should note that this was at an earlier time the U.S. position in SALT I. Competition in mobile land-based ICBMs is an area of contest between the U.S. and the USSR where Soviet assets are clearly superior to ours. They have larger land areas which can be dedicated solely to military use; they are less constrained by environmental impact factors; successful concealment and deceptive moves are more easily carried out in a closed society. Thus only if we are willing to give overriding priority to the matter of preserving land-based ICBMs, and if this problem cannot be solved by other measures in arms control, can a mobile land-based system offer a possible strategic advantage. I will not discuss here the complex issue of protective basing of ICBMs in a manner other than land-mobile, but I conclude that superior and practical alternatives do exist.

Examples of SALT III Content: (d) SLBM Stand-off and Ban on Depressed Trajectories:

I would suggest for inclusion in a package for SALT III two specific measures relating to the survivability of the air-borne component of the Triad of strategic systems. The first is a ban on testing and development of depressed trajectories from submarines and the second is a minimum standoff distance from shore for submarines capable of launching SLBMs.

Currently there exists a technical possibility that Soviet submarines could approach U.S. coasts and launch SLBMs on trajectories which assure a minimum flight time to U.S. air fields. This could make the time for U.S. bombers to escape marginal. Although the principal counter-measure against such a possibility would be to base an increasing number of bombers further inland, an arms control measure to remedy this threat would be to ban the testing of submarine launched missiles in short flight time, so-called depressed, trajectories. In addition, agreement on a forbidden zone of approach of submarines capable of launching SLBMs would be a further measure to decrease this threat to both sides.

Examples of SALT III Content: (e) Gray Area Systems:

The above examples, which are by no means exhaustive, all relate to central strategic systems and do not touch upon control of the so-called gray area systems, that is those systems which can have both a theatre-warfare and a long-range capability. Few believe that the discussion of gray area systems can be excluded from SALT III.

It is anticipated that the Soviets will insist on the inclusion of forward-base systems in SALT III because they will maintain, with some merit, that "incisive arms control" leading to substantial cuts in central strategic systems increases the relative importance of the U.S. controlled forward-based systems. In turn, inclusion of forward-based

systems, reinforced by the technical developments which blur the border between strategic and theatre-warfare systems, will make consideration of the Euro-strategic balance an unavoidable issue also from the NATO and U.S. points of view. Note that the need to include consideration of GLCMs and SLCMs is "unfinished business" from the SALT II Protocol will also contribute to the pressure to consider European theatre-warfare systems comprehensively.

These issues raise the question of the details of the negotiating format for SALT III, which as a minimum will require a more intensive consultative process with NATO as part of policy formulation. Separating the consideration of gray area systems from SALT and placing it into a separate negotiating forum appears inadvisable, since such a move would be viewed by NATO as an effort to decouple consideration of the Euro-strategic balance from consideration of the overall US/USSR strategic situation. Such decoupling, in turn, would further detract from the credibility of the U.S. central strategic nuclear forces as an element in deterring Soviet incursion into Europe.

Examples of SALT III Content: (f) Cutoff of Fissionable Material For Military Purposes:

An additional element of a SALT III package might well be a renewal of a proposal, previously endorsed by the United States, for the cutoff of production of fissionable materials for military purposes. The current inventories of fissionable materials for nuclear weapons of both sides are large. Any further production can, of course, feed fabrication of additional nuclear warheads. Such increases can support further fractionation of MIRVs, additional cruise missile warheads, or stockpiles of weapons for reload of delivery systems. Moreover, such growth can provide additional warheads for defensive weapons, in particular should ABM deployment again become permissible. A production cut-off would limit these activities on both sides, with a substantial gain in overall strategic stability. Under such an arms control regime there could, of course, be conversion of nuclear weapons inventories among a diversity of military weapons without increased production. Moreover, some increases in total weapons inventory could be advanced through improved economies in the use of fissionable materials. A production cut-off agreement would have to permit maintenance of the existing nuclear device stockpile through certain exceptions to a total production prohibition.

In this connection I would like to stress that ratification of SALT II has a major impact on the efforts to limit proliferation of nuclear weapons to other nations. The Nuclear Non-Proliferation Treaty signed in 1968 and ratified in 1970 contains an explicit declaration that the nuclear weapons states intend "to achieve at the earliest possible date the cessation of the nuclear arms race and to take effective measures in the direction of nuclear disarmament," as well as a specific article constituting a good faith obligation to pursue negotiations toward terminating the nuclear arms race. Failure to ratify SALT II would contribute to the growing cynicism of the non-nuclear weapons states regarding the sincerity and good faith of the Soviet Union and the United States in implementing their obligations under the Non-Proliferation Treaty. Quite apart from the important arms control impact of a provision to terminate production of fissionable material for weapons purposes on its own merit, such a cutoff would demonstrate dramatically to the non-nuclear weapons states a good faith in adherence to the provisions of the Non-Proliferation Treaty.

Let me repeat that the above listing of possible inclusions in a SALT III package is given only on a "for instance" basis, and each item requires detailed analysis both as to specific substance and optimum negotiating tactics. However, it is my deep conviction that if a maximum number of such provisions were introduced and proved negotiable with the Soviet Union, then incisive arms control would indeed result, and the SALT process would have fulfilled its promise of having not only limited but also reversed the competition in nuclear weapons between the United States and the Soviet Union. Yet I see no way in which this expectation, which would greatly increase the security of this Nation, can be fulfilled without prompt ratification of SALT II.

Salt: Perception vs. reality

The above discussions have emphasized the technical content of possible SALT III provisions and refrained from commenting on the future political context and the general question of linkage of the SALT process to Soviet conduct and atitudes. This has been done deliberately. There has been in the discussions of the merit of SALT II a great overemphasis on the perceptions which might flow from the SALT process and from the Soviet and United States strategic military posture, to the detriment of considerations of the actual provisions of SALT II and the physical realities which would befall mankind should nuclear weapons in part or in their totality actually be used in war.

As a member of the technical community I feel a strong obligation to continue reminding the political leaders and decision makers of this country that there is a great danger in considering nuclear weapons primarily as political symbols, and only secondarily as tools which might actually be used. I am hardly alone in raising this issue. Let me remind you of the words of Andrei Sakharov, the eminent and frequently dissident Soviety nuclear physicist: "I believe that the problem of lessening the danger of annihilating humanity in a nuclear war carries an absolute priority over all other considerations."

We must continue to examine the consequences of actual use of such weapons and how they would affect the true outcome of a conflict. If we permit nuclear weapons to enter the decision making processes primarily as symbols of national strength and resolve, then we deny ourselves any rational means to decide when enough is enough.

In this regard let me reemphasize two salient facts:

(1) If nuclear weapons are actually used in any theatre, against any set of targets, for any purpose, by any nation, under any military doctrine, then large fractions of the populations of both the United States and the Soviet Union and their neighbors are at the gravest risk.

(2) The number of nuclear weapons in the possession of the United States and the Soviet Union is now so large that a very large fraction of these weapons is aimed against targets of relatively minor economic, political, or military importance.

Under those circumstances, many of the arguments which have been presented to this Committee on the details of the relative military standing of the two nations become relatively less significant when compared to the overarching danger of nuclear war.

Let me close with the expressed hope that it is consideration of the physical realities rather than political perceptions pertaining to strategic nuclear weapons which will remain in the forefront of deliberations of the Senate when considering the question of ratification of SALT II.●

CAMPBELL UNIVERSITY SCHOOL OF LAW WINTER SYMPOSIUM

● Mr. HELMS. Mr. President, a few weeks ago I shared with Senators the text of one of a series of lectures presented at the 1979 Winter Symposium sponsored by the Student Bar Association at the Campbell University School of Law. The symposium, entitled "In Anticipation of the Constitutional Bicentennial: The Philosophical Foundations of the Creation of a Nation," was designed to identify and evaluate the roots of American fundamental law in anticipation of the 200th anniversary of our Nation's Constitution.

Today, I want to share with my colleagues another of these stimulating lectures—this one by a dear friend of mine, Dr. Charles W. Lowry. Charles is author of "To Pray or Not to Pray"—a book on the Supreme Court's school prayer decisions—has been a professor of theology, a parish minister, a Government consultant, and a foundation executive. His lecture addresses the interrelationship of the four great divisions of law—eternal law, natural law, human law, and divine law—in pre-Magna Carta England.

Dr. Lowry observes that the "rejection of the natural law and the elevation of kingly authority above Law and Right" during this period were predecessors to such contemporary issues as the State's assumed jurisdiction over Christian schools, and school prayer and Bible reading.

As we approach the bicentennial of our own Constitution, we would do well to remember Dr. Lowry's conclusion:

> The fact is that man is a religious being as well as a political animal. For this reason, law by itself is not sufficient. Equal justice under law is a mandate only if there is a Supreme Law over all men and all nations.

Mr. President, I ask that the lecture delivered by Dr. Charles W. Lowry at the Campbell University School of Law Winter Symposium on January 18, 1979 be printed in the RECORD.

The material follows:

THE TRANSCENDENT ELEMENT IN LAW WITH SPECIAL REFERENCE TO ENGLAND BEFORE MAGNA CARTA

I propose in this lecture to be as specific and concrete as possible. I should like to heed the admonition of the anonymous rhetorician who wrote: "In promulgating your esoteric cogitations and articulating superficial philosophical and psychological observations, beware of platitudinous ponderosity."

The peril of the philosopher or the philosophical theologian is endless abstraction. Abstraction is of course essential to thought. The thinking powers of man and the mighty results they have led to in philosophy, mathematics, and science—all rest upon that lucky day when some lonely thinker, his face no doubt turned from the sod, discovered the method of abstraction through comparison and elementary classification.

It is a tremendous metaphysician, the late Alfred North Whitehead of Trinity, Cambridge and Harvard, who has warned scientists and the scientific mentality of "the fallacy of misplaced concreteness." He meant that concreteness is precisely what the scientist does not have qua scientist, and cannot have. It is in life and experience and in the firsthand knowledge of individuality all around us that we know the world of the concrete. The scientific method by its very nature must abstract from and leave behind the fullness, richness and uniqueness of given individual being.

The history of law is one long, unbroken illustration at a particular level and context of Whitehead's warning about mislocating the concrete. The law cannot be separated from life, practice, experience, courts, judges, decisions, precedents. I believe that this is what Justice Cardozo was driving at when he wrote:

"We do not need to spend pages in attempted demonstration that Gesetz is not coterminous with Recht, that la loi is narrower than le droit, that the law is something more than statute. We are saved from all this because in every action every day about us is the process by which the forms of conduct are stamped in the judicial mint as law, and thereafter circulate freely as part of the coinage of the realm."

When however we enter into the concrete ambiance or atmosphere or legal coinage of the realm, we discover that something is present and imminent that points beyond the immediate and the empirical. There is something that imparts majesty and speaks with authority.

Both terms are weighty in their legal import. We speak naturally and constantly of "the majesty of the law" and "the authority of the law." What I suggest is that we do this, and must do it, because a concrete transcendent element is always present in the law, just as in the state.

If this is denied implicitly or explicitly, we only emphasize the impossibility of banishing from our courts and our government this mysterious, elusive, but authoritative presence which is like the wind. We cannot see the wind ever. But we see leaves trembling, boughs bending, even mighty trees swaying and on occasion crashing.

When we see these things happening, we know the wind is present. There is no room for doubt. Dubiety has no meaning.

Here is a declaration with which I should like to begin our tracing of the concrete transcendent in law:

There exists one true law, one right reason—conformable to nature, universal, immutatble, eternal—whose commands enjoin virtue, and whose prohibitions banish evil. Whatever it orders, whatever it forbids, its words are neither impotent among good men, nor are they potent among the wicked. This law cannot be contradicted by any other law properly so called, nor be violated in any part, nor be abrogated altogether. Neither the senate nor the people can deliver us from obedience to this law. It has no need of new interpreters or new instruments. It is not one thing in Rome, and another at Athens; it is not one thing today and another tomorrow; but in all nations, and in all times, this law must reign always self-consistent, immortal, and imperishable. The Sovereign of the Universe, the King of all creatures, God Himself, has given birth, sanction, and publicity to this illimitable law, which man cannot transgress without counteracting himself, without abjuring his own nature; and by this alone, without subjecting himself to the severest expiations, can he always avoid what is called suffering."

I have taken this extraordinary testament, which always excites me very much when I read it, from the 6th Book of The Divine Institutions of one Lucius Caecilius Pirmianus Laetantius—a father of the Latin Church who flourished about A.D. 300. Laetantius has been called "the Christian Cicero" and indeed the passage just quoted was written by Cicero in Rome some 50 years before Christ. It is found in his De Republica. Laetantius like many ancients was not always careful to identify sources and quotations.

This powerful passage from Cicero is a statement of the Stoic Natural Law doctrine. It will be well for us to look before and after, to pick up some traces of this durable concept both as it stretches back into antiquity and looms forward along practically the entire track of the Christian era.

The Stoics on the ethical side represented the continuing influence of Socrates as presented by Plato in his Dialogues. Socrates stood for reason and virtue. The Stoic philosophers made these the twin pillars of a way of life and thought.

Behind Socrates and Plato is an impressive intuition about law celebrated in the writings of the great tragedians of Greece, Aeschylus and Sophocles. These poets are theologians; they see law as ultimate and invincible. It is Fate and to it men and gods are alike subject. Indeed Zeus the Father and all-comprehending one is identified with the Law that is the reason of the world and is ineluctable and unescapable Fate.

Oh, may my constant feet not fall,
Walking in paths of righteousness.
Sinless in word and deed,
True to those eternal laws
That scale forever the high steep
Of heaven's pure ether, whence they sprang:
For only in Olympus is their home,
Nor mortal wisdom gave them birth;
And howsoe'er men may forget,
They will not sleep.—(*Oedipus the King*)

Returning to the Stoics, theirs was an ideology ready-made for stern Romans, reaching out to do what Alexander had failed to accomplish: not only to conquer but to rule firmly the known world. From the Roman lawyers and moralists, the dogma of the natural law passed into the theology of the Christian Church. Here in the West it had an undisputed run for more than a thousand years. And in the Roman Catholic Church it remains authoritative to this day.

The finest treatment of the natural law and of law in general probably in all Christian literature, is that of St. Thomas Aquinas in the Summa Theologica. Thomas lived less than 50 years in the very middle of the 13th century, the century of Chartres Cathedral, and of Salisbury in England, and of Dante's Divine Comedy.

When one considers especially the circumstances under which a man had to work in that far-off time—before electric light, printing, typewriting, or automatic copying—it is nearly incredible that one man could have amassed the learning, conducted the research, and done the rigorous writing represented in the output of the Angelical Doctor.

He considers exhaustively the four great divisions of law: eternal law, natural law, human law, and divine law. Here we can simply skim off a little of the rich cream of his prolonged treatise, every point logically argued in the developed scholastic manner.

The Law which is the Supreme Reason is not something other than God and therefore is eternal. Now all things subject to divine providence are ruled and measured by the eternal law. But the rational creature is subject to divine providence in a more excellent way, since it is provident both for itself and for others. "Therefore it has a share of the eternal reason, whereby it has a natural inclination to its proper act and end; and this participation of the eternal law in the rational creature is called the natural law."

St. Thomas goes on to state that the precepts of the natural law are to the practical reason what the first principles of demonstration are to the speculative reason, because both are self-evident principles. The first principle of the speculative reason has to do with being, and the first principle of the practical reason with good. The nature of good is that it is that which all things seek after. "Hence this is the first precept of law, that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are based upon this."

Finally, Thomas emphasizes that human law, which is necessary if man is to have peace and virtue, is derived from natural law. He quotes Augustine's saying, "that which is not just seems to be no law at all," and in a splendid sentence adds: "Hence the force of a law depends on the extent of its justice." And a little further on: "Now the end of law is the common good."

Thomas, it is clear, was to a considerable degree a rationalist. He believed in reason as a reflection of the Divine Light and labored to use it and have it take the mind as far as it could. Thus we are made ready for the saving knowledge that could come only with God's revelation or self-disclosure through the prophets and perfectly in His Son Jesus the Christ.

Unfortunately a storm was blowing up in the late Middle Ages over the subject of the will in relation to reason. The Scriptures tell us that man never continues long in one stay. This is profoundly true. There is always action and reaction, a swinging of the pendulum from side to side.

Thomas' moderate rationalism inspired by Aristotle was destined to make a strong comeback and remain the basis of post-Reformation Roman Catholic theology down to our time. But it did not satisfy for long in the heated atmosphere of the University of Paris in the late 13th and early 14th centuries. To Paris scholars flocked from all over Christendom. From Oxford brilliant Franciscans came, such as Duns Scotus and William of Occam, who magnified the will in the being alike of man and of God.

These men and their successors stressed the independence and arbitrary freedom of the will. With man this created problems, for the power of God had to be reckoned with. But an arbitrary infinite will is indeed a fearsome concept. It is something that is bound to be extreme and overwhelming.

For one thing universals such as justice went by the board. Realism rooted in the ideas or eternal forms of Plato was rejected, and common unitive qualities that had been seen as the basis of classes, species, and genera were dismissed as mere names (nominalism).

Thus it came about that the theological atmosphere that conditioned the Protestant Reformation was one dominated by extreme volitionalism and nominalism. This really means that the tools of basic reasoning and thinking are absent.

The way is paved for an exclusive reliance upon Scripture, an extreme emphasis upon such doctrines as total depravity, justification by faith alone, and double predestination, and—what is relevant to our discussion—the rejection of the natural law and the elevation of kingly authority above Law and Right. A new and a-moral version of the divine right of kings came into play. It not only fortified the tyranny of Henry VIII, and wrecked the Stuarts, but spilled over into the claims of Catholic monarchs as well.

Thus we reach the time of the Bloodless Revolution of 1688, the English Bill of Rights, and John Locke's Two Treatises of Government. This was also the time of the birth of Deism—the most rationalistic perhaps of all rationalisms.

This system provided the ambiance intellectually and philosophically which the brilliant young men who created the American Republic breathed in their formative years. It was not the only influence on these men but it was potent and pervasive, as the example of Thomas Jefferson strikingly shows.

So, reaching Deism, the Declaration of Independence, and the American Constitution, we swing full circle from our starting point of the natural law.

It remains to move back and over into England, looking both before and after the Conquest for the elements transcendent and otherwise that conditioned the development of English constitutional law.

In 55 B.C. Julius Caesar invaded Britain. It was a Roman province for 400 years.

When the Roman legions departed they left external physical signs of their civilization but hardly a vestige of Roman speech, law, or institutions. What the Roman occupation had done was to allow time and occasion for planting the Christian faith firmly in the Island of Britain.

It was British Christians who converted Ireland. The Irish Christians repaid the compliment by recrossing the seas to Scotland. From Scotland Celtic Christianity spread down into Northumbria, Mercia, and East Anglia.

Meanwhile, Pope Gregory had sent Augustine (not Aurelius Augustine of North Africa) to Canterbury to the Kingdom of the Angles and Saxons in Kent. Augustine had an ally in Queen Bertha, a Frankish princess from the Continent, and succeeded in converting King Ethelbert. The Roman form of Christianity planted by Augustine at Canterbury in 597 and extended northward to York a few years later through dynastic marriage and Paulinus, a colleague of Augustine, differed in important respects from Celtic or British Christianity.

These differences concerned the tonsure, the date of Easter, and—more important—the mode of church government, whether by abbots or bishops.

It was not until 664 at the Synod of Whitby that a reconciliation of the two traditions was effected. What this meant basically was a united English Church that was to conform to the life-plan of Roman Christianity and develop under the spiritual rule of the Roman Pontiff.

A great flowering of English Christianity now took place. It centered around York. It expressed itself in art and in scholarship. Bede the scholar extraordinary and famed historian (673–735) was universally honored. It was through his influence that the world came to adopt the practice of reckoning the Calendar from the birth of Christ.

Alcuin of York was called by Charlemagne to preside at his court over efforts to evangelize, civilize, and educate in the Frankish Kingdom. From near Exeter in Southern England Boniface, a Saxon, left to become the Apostle to Germany.

This period of peace and creativity was short-lived. England in fact was doomed for six centuries to know little stability. The reason was the Vikings.

Winston Churchill has a fantastic description of the long-ship used by these merciless raiders to plunder the civilized world and—almost to do England to death. He mentions the length of a vessel of medium size unearthed in perfect condition from a tumulussat Gokstad, Norway in 1880. From stem to stern it measured 76 feet 6 inches. I saw this ship in the Viking Museum, Oslo in 1969. My first impulse was to pace it off, and I made exactly 25 paces.

It was Alfred the Great, a true immortal, peerless as a man, a Christian, and a ruler, who enabled England to survive the fury of the invading Danes in the second half of the 9th century—and to remain and become England.

Two points are notable. Alfred as King knew the necessity of law. He was a creative Law-giver. His Book of Laws called Dooms was an attempt to blend the Mosaic code with Christian principles and old-Germanic mores.

Alfred, for example, inverted the Golden Rule of Jesus, making it read, "What ye will that other men should not do to you, that do not to other men." Commenting on this, the King wrote: "By bearing this precept in mind a judge can do justice to all men; he needs no other law-books. Let him think of himself as the plaintiff, and consider what judgment would satisfy him."

The other point is that the prevailing national disorder and instability encouraged local institutions of rule. This may well be the ultimate explanation of the Common Law in England, as contrasted with the systems developed in other parts of Europe.

Wessex, or West Saxony, had early developed a local organization that was well suited to a prolonged time of troubles. This was the shire with the alderman at its head who could act on his own.

The Dooms of Alfred, amplified by his successors, supplied the body of customary law administered by the shire and hundred courts that was to be known as the Laws of St. Edward (the Confessor: 1042–66). The Norman kings undertook to respect these laws and it was out of them that the Common Law was to be founded.

In between in the reign of Edgar (957–75) there occurred a fundamental reconstruction of lasting importance. The shires were reorganized, each with its sheriff or reeve, a royal officer directly responsible to the Crown. The hundreds, subdivisions of the shires, were created. Towns were prepared for defense. An elaborate system of shire, hundred, and burgh courts was instituted. Through them law and order was maintained and criminals pursued. Taxation was reassessed.

Coincidentally with this was a revival of monastic life and learning, expressing itself in the art of illuminated manuscripts and the beginning of a native English literature. English according to Churchill was the earliest vernacular to achieve the status of a literary language.

Thus in a mysterious way was England prepared for the coming of a powerful descendant of the Vikings, William, Duke of Normandy.

Henry Adams in his enduring classic Mont-Saint-Michel and Chartres notes that down nearly to the end of the 12th century the Norman was fairly master of the world in architecture as in arms. He throws in incidentally an account of the Norman feudal system: tenants of the Duke or the Church or small lords of the neighborhood who at the Duke's bidding will each call out his tenants, perhaps 10 men of arms with their attendants.

Thus William could fight in Brittany or in the Vexin toward Paris or on the great campaign for the conquest of England—"the greatest military effort that has been made in western Europe since Charlemagne and Roland were defeated at Roncesvalles 300 years earlier." For this enterprise William fielded 40,000 men.

This Norman was a man of powerful will and acute, prudent intelligence. He knew what he wanted and moved boldly but carefully to get it. He gave England the strong rule it needed, imparting and impetus to unity and cohesiveness it never lost.

William brought to England two strong new elements: a tight feudal system based on land tenure which in turn was based on military service; and a more closely knit and effective church system on the Roman pattern. At the same time he saw in the dispersed, locally effective legal system rooted in shire and hundred the very instrument he needed for a balanced state.

Thus while the center of Norman government was the Royal Curia, the final court of appeal and the instrument of supervision, the whole system of Saxon local government—the counties, sheriffs, and courts—was retained. Indeed it was by means of this system that William collected the information for Domesday—his celebrated survey in 1086 of the whole wealth of the King's vassals.

The other two Kings who signify for our purpose are Henry I and Henry II. In between them and before Henry I there intervened the curse of monarchy—dynastic quarrels and weak or vicious sovereigns.

The first Henry was William's youngest son. His first act as King was to guarantee the rights of the barons and the Church. And at the same time he promised the people, most of them still Saxons, good justice and the laws of Edward the Confessor. He sent his officers—judges, as they were to become—to activate and regulate the county courts and to make all men see that there was a system of royal justice.

The most important man, perhaps, and the last one in our story is Henry II, the first of the Plantagenets and King from 1154 to 1189. Churchill says of him that "The names of his battles have vanished with their dust, but his fame will live with the English Constitution and the English Common Law."

Henry's great plan, which he largely achieved, was a system of royal courts which would administer a law common to all England and all men. Because of the strong hold of custom and the strength of the multitude of manorial courts, it was desirable to invoke old principles and to clothe innovation in the garb of conservatism.

Since the Constitution was unwritten the King's rights were not clearly defined. This offered a shrewd opening. Fixing upon the elastic Saxon concept of the King's Peace, Henry used it to draw all criminal cases into his courts. Quietly he extended the limits of this Peace, so that it embraced all England and all places where it had been broken.

Civil cases were attracted by fastening on a different principle, the old right of the King's courts to hear appeals in cases where justice had been refused and to protect men in possession of their lands.

It was important to Henry's program to avoid compulsion. He must attract cases to his courts, not compel them. He must offer better justice than men would receive at the hands of their lords.

Accordingly Henry had recourse to a startling new procedure—trial by jury. He did not invent the idea of the jury: actually this idea was the one great contribution of the Franks to the English legal system.

The jury in origin and first use was as a royal instrument of administrative convenience. The King had the right to summon a body of men to bear witness under oath to the truth of a question involving the royal interest. William had used it to determine Crown rights in the massive Domesday survey.

Henry had the genius to use the royal right to summon a jury but to let it decide cases in the royal courts instead of the old recourse to the oath, the ordeal, or the duel. This new procedure quickly gained favor.

Very likely I do not need to say this to an audience such as this which is either learned in the law or rapidly becoming learned—but there were still important differences between the jury in Henry's courts and the jury system as we know it.

The main difference was that the jurymen were witnesses as well as judges of the facts. They were picked not with a view to their impartiality but because they were the men most likely to know the truth.

Such were the foundations of the English Common Law, on which future generations would build. It is a convenient stopping place for me, since there is the firm maxim of English law that legal memory begins with the accession of Richard I in 1189.

There is not time for me to go into the dramatic but tangled tale of Henry and his erstwhile friend and boon companion Thomas á Becket. The most profound treatment of this episode is T. S. Eliot's play Murder in the Cathedral.

Eliot whom I had the privilege of knowing personally was not only a poet. He was a devout believer and churchman. He celebrates in his play the role of the saint and martyr in the Church and its impact upon the state and society.

To us the issues raised by the Constitutions of Clarendon seem remote. From a precise standpoint they are. But the issues of Church and State, religion and government, are very much alive in our world and in our America, for all our tendency to speak complacently of the separation of Church and State.

Consider the phenomenon of Communism and religion in our time and the extraordinary elevation of a Polish Cardinal in a Communist State to the Papacy.

Here in America look at the fight in the Carolinas over Christian schools and the question of the State's jurisdiction over them. Look at the results in our public schools, in teacher morale and youth problems, of the innovative decisions of the Supreme Court in 1962 and 1963 in striking down prayer and Bible-reading in our schools.

The fact is that man is a religious being as well as a political animal. For this reason law by itself is not sufficient. Equal justice under law is a mandate only if there is a Supreme Law over all men and all nations.●

FEDERAL CROP INSURANCE

● Mr. BAUCUS. Mr. President, I stand to support S. 1125, legislation to improve and expand the Federal crop insurance program. This legislation is of utmost importance to farmers in Montana as well as the rest of the Nation.

I would have preferred a simple extension of the disaster provisions of the Food and Agriculture Act of 1977. However, the administration and many Members of Congress have strongly opposed the disaster program because of its high cost. Thus, it is essential that S. 1125 be enacted to protect farmers from devastating financial losses due to crop failure.

This bill will increase the capital stock of the Federal Crop Insurance Corporation and increase membership of the Board of Directors from five to seven. At least three Board members must be active farmers.

The legislation will remove existing limitations so that Federal crop insurance may be offered for all crops in all counties. Under the new program, insurance will be made available to farmers for up to 75 percent of their average yield. The price coverage will be the highest of either the target price, the loan rate, or the projected market price for the crop. Lower levels of yield coverage and other price selections will be made available.

The Federal Crop Insurance Corporation will subsidize between 20 and 40 percent of crop insurance premiums.

The current farm disaster payments and prevented planting disaster payments for wheat, feedgrains, upland cotton and rice will be extended through the 1980 and 1981 crop years. In 1981 producers will have the option of choosing between such disaster payments or participating in the share-cost crop insurance provided by this legislation.

Mr. President, I know that private insurance companies and agents have some real concerns about the effect of this legislation. I appreciate those concerns, and generally am opposed to the Federal Government providing services that could be provided by private industry.

Unfortunately, private industry has never been able to provide all-risk crop insurance that farmers can afford. In order for Federal crop insurance to be effective, large numbers of farmers must participate. Such high level of participation simply cannot be attained under insurance programs offered by private industry.

This bill will not eliminate the role of the private insurance industry. In fact, the Canadian experience with Federal crop insurance has resulted in an increase in both acreage and dollar amount of coverage provided by private industry. At the same time, the government has operated an increasingly successful program.

S. 1125 authorizes the Federal Crop Insurance Corporation to provide reinsurance for private companies. The bill authorizes the Federal Crop Insurance Corporation to contract with private insurance companies in administering the Federal program. Finally, USDA officials have assured me that private agents will have an important role in marketing the Federal insurance program. Competitive commissions will be paid to these private agents.

I intend to work with the private industry and the Federal Crop Insurance Corporation to insure that Federal programs are administered so that there is minimal impact on private industry.

Mr. President, farming has always been a high risk operation. Successful crop and livestock production depends upon a favorable combination of factors. Many of these factors are beyond the direct control of the farmer. Extremes of heat and cold, hail, wind, and other unpredictable natural hazards can seriously damage or wipe out crops. In fact, about 1 of 12 acres planted each year in the United States never reaches harvest.

Modern farming is a complex business requiring large investments of capital, and land, buildings, machinery, livestock, and production inputs. Farmers whose crops are destroyed by natural disasters may be unable to repay not only production loans, but carrying charges on land, buildings, machinery, and other assets.

These factors make effective disaster assistance programs essential. I believe that S. 1125 provides such a program, and would urge my colleagues to support the legislation.●

SALT II: WHAT IT MEANS

● Mr. HELMS. Mr. President, there have been a great number of articles written about SALT II agreement in recent months, but I have found the brief analysis written by Mr. Edward J. Walsh entitled "SALT II: What It Means," published by the U.S. Industrial Council to be one of the best summaries of an important part of the SALT debate that has thus far come to my attention.

Sadly, what Mr. Walsh points out about the progressive collapse of the American negotiating position as the SALT meetings with the Soviets progressed is all too true. Mr. Walsh also makes it quite clear why the Soviet leadership is so desperately anxious to have the Senate ratify the agreement as it now stands.

Mr. President, I ask that Mr. Walsh's analysis be printed in the RECORD.

The analysis follows:

SALT II: WHAT IT MEANS

(By Edward J. Walsh)

The strategic arms limitation treaty (SALT II) signed in June by President Carter is now being debated in the U.S. Senate. The Senate may approve and ratify the treaty as it stands, recommend that certain passages be renegotiated, or reject it outright. Both Mr. Carter and the Soviet Union have demanded that the treaty be accepted without alteration. But the agreement concedes a clear strategic advantage to the Soviet Union. For that reason, the treaty should be rejected by the Senate.

The provisions of the treaty are as follows: The United States and the Soviet Union are to be permitted no more than 2400 strategic launchers, to be reduced to 2250 by January 1, 1982. Of the 2250, no more than 1320 can be MIRV'd, that is, equipped with multiple warheads. Of that 1320, not more than 1200 can be intercontinental ballistic missiles, (ICBM), or submarine-launched missiles (SLBM). There is a sublimit of 820 ICBMs within the total permissable limit of 1200 MIRV'd launchers. The remaining 930 must be single-warhead missiles.

In addition, a protocol to the treaty prohibits the deployment of mobile ICBM launchers and sea- and ground-launched cruise missiles capable of ranges greater than 600 kilometers, or 360 miles. The protocol expires at the end of 1981.

Currently, the Soviet Union possesses a total of 2504 strategic launchers of all types which would be covered by SALT II, to the United States' 2283. Thus the Soviets would be required to destroy or dismantle 104 launchers or bombers in order to reduce its arsenal to 2400 six months after the treaty took effect, and later, 150 more to get down to 2250 by 1982. The U.S. won't be increasing its total to 2400, but will have to scrap several dozen strategic bombers to abide by the end-of-protocol limit of 2250.

At first glance, the agreement *looks* fair, since both sides are allowed the same number of launchers. The inequities lie in the subtotals, and in the qualitative differences among American and Soviet weapons systems. First, included in the Soviets' inventory of 2504 launchers are 1398 ICBMs, of which 608 are MIRV'd. Of these, 308 are "extra-heavy" missiles, designated the SS–18, which according to Senator Henry Jackson may pack more nuclear punch than the entire American arsenal of 1054 land-based missiles. With SALT II, the Soviets would keep these giant missiles; the United States would be forbidden to build a similar weapon.

Second, under SALT II the Soviets have the potential to vastly increase the total kilotonnage of their entire ICBM force. Their "light" ICBM, the SS–19, can deliver more than three times the nuclear payload of the largest American missile, the Minuteman III. The SS–19 can be armed with up to six MIRV'd warheads, while the Minuteman takes only three. Thus the limits on the number of "launchers" is a facade, which ignores the far greater killing power of Soviet rockets. The Soviet preponderance in ICBMs accounts this dangerous disparity.

Third, the debate over the Soviet "Backfire" bomber was a total defeat for the American negotiators. American bombers carrying cruise missiles are counted under the total ceiling on MIRV'd launchers, but the Soviets got off scot-free on the Backfire, a supersonic, intermediate-range bomber that can be modified to reach the continen-

tal United States with nuclear weapons. The Backfire is not counted against the Soviets' aggregate MIRV total, but is to be limited by a vague Soviet statement outside the treaty that it will not be upgraded to a strategic status, and that the production rate will remain at current level of 30 per year.

The final draft of the SALT II accord thus contains inequities dangerous to the United States, viewing the dynamic growth of the Soviet strategic arsenal, and the near-stagnation of U.S. arms programs. The three Soviet ICBMs covered by SALT II, the SS–17, SS–18, and SS–19, have all been deployed since the signing of SALT I in 1972. Only one U.S. program, the Trident submarine, has been started since then, and it is behind schedule.

Behind the specific terms of the treaty lies the history of weapons control and weapons building in the United States and the Soviet Union. A truly equitable arms control agreement might be useful to the United States if it could be trusted to restore a degree of predictability to the arms race and was entered into by the American leadership with a genuine sense of disillusionment about Soviet motives in the world. No one doubts that the United States has the industrial and technological capability to maintain strategic superiority over the Soviets, if it chooses to.

Recent history has shown, however, that the will to maintain nuclear superiority is lacking in the American political leadership; not just in the Carter administration, but in its predecessors as well. The trend through the sixties was to belittle Soviet strategic weapons as crude and inaccurate. Then the theory of mutually assured destruction (MAD) came along, which allowed the Soviets to catch up with the United States in strategic weapons, so that each side could hold the other's population hostage, and thus deter an attack that would presumably be suicidal. The idea of the Kremlin initiating a nuclear holocaust is still dismissed as "cold-war rhetoric," even while current Soviet military literature insists that such an attack is feasible.

In the sixties, the MAD theory provided an intellectual escape for America's leadership from the consequences of a lack of will to provide for genuine strategic security: the determination to avoid nuclear war became the unwillingness to confront the reality of Soviet aggression throughout the world, and a misreading of the Soviets' intent in agreeing to discuss arms control at the 1967 Glassboro summit. President Nixon began the SALT talks with the assumption that the Soviets were genuinely interested, as we were, in making the world safer through arms control. SALT I and the Vladivostok Accord of 1974 laid the groundwork for SALT II. Former Assistant Secretary of Defense Paul Nitze, an opponent of SALT II who participated in the SALT I negotiations says that neither SALT I nor Vladivostok "accomplished much, but didn't hurt us, if we took those actions permitted at Vladivostok that it was wise for us to take."

The rationale for SALT II now being heard is the same as that used to defend SALT I: that it will slow the arms race. But President Carter goes even further, talking endlessly of peace, when much of the world is engulfed by Soviet-sponsored wars. He has taken seriously his Inaugural Day promise to "eradicate nuclear weapons from the face of the earth." He believes SALT II will be his legacy to history, and has sought it more determinedly than anything else since taking office.

His negotiators have thus pursued the SALT agreement relentlessly, with no strategy of negotiation but to grant concessions to push the process along. The giveaways began when the Soviets rudely rejected Mr. Carter's far-reaching proposals for arms reduction in March 1977, shortly after he came into office: when the Soviets turned down an American proposal that only 150 heavy Soviet missiles (the SS–18) be converted to MIRV's, the U.S. negotiators retreated to 190, and finally agreed to allow the entire inventory of 308 be MIRV'd. The Americans also proposed a ban on testing and deployment of a "new" ICBM. The Soviets refused, and one new ICBM was allowed to both sides. The Soviets continued their development programs, but in October 1978 the Pentagon announced a delay of up to one year on the decision on what kind of missile the U.S. would build. Before going to Vienna for the SALT summit, President Carter announced that it would be the MX "mobile" system, with "multiple aim point" basing, to stymie Soviet monitoring.

In late 1977, the Americans conceded that heavy bombers carrying cruise missiles could be counted against the sublimit of 1320 MIRV'd launchers, limiting the U.S. to 120 bombers thus armed, if it should expand its ICBM–SLBM arsenal to the maximum limit of 1,200. Instead, American plans call for deploying 135 bombers with the cruise, dipping into the 1,200 permitted MIRV's. But the B–1 bomber program had been canceled in June of that year. In 1976, the United States has demanded that 250 U.S. warships armed with long-range cruise missiles be permitted in return for the same number of Backfire bombers. This demand was finally dropped, and the Backfire left out of the treaty.

In the SALT debate in the Senate and across the nation, the Administration is not claiming that the agreement will be a guarantee of future peace, or even of improved Soviet behavior in the trouble spots of the world. Rather, the Administration is selling the treaty as an asset to American security since it asserts that any Soviet violations will be instantly detected and challenged. "Verification" of Soviet compliance is one of the touchstones of the debate. The Administration is confident that satellite surveillance and intelligence from other sources will be adequate to detect violations that affect the treaty "in any meaningful way," as Mr. Carter puts it. But even his director of Central Intelligence, Admiral Stansfield Turner, contradicts him with regard to land-based intelligence-gathering, since the loss of radar sites in Iran last winter. The great shortcoming of satellite photos is that they cannot tell us what they miss. There is simply no fail-safe means of verification.

But even if there were, the broadest problem with the SALT II treaty is not what it says about armaments or what it promises, or does not promise, for American-Soviet relations in other areas. SALT is instead a philosophical problem, an object lesson in what Americans have not learned about contemporary history. The lesson we failed to observe is that, from Yalta to the 1973 Paris Peace Plan, the Soviets have never taken any international agreement seriously. International relations, to the Soviets, are not a quest for world harmony or "peace," but the perennial competition among hostile ideologies in politer terms.

Every public statement by every Soviet spokesman is a variation on this theme, and every move the Russians make in the world is animated by this philosophy of history. Signing treaties and then ignoring them are not contradictions in the Soviet lexicon; they are only aspects of the policy of continuing struggle. When the Soviets began their discreet probing of the terms of the 1972 anti-ballistic missile treaty by testing components of a mobile ABM system in Kazakhstan they were not "violating" anything, in the Soviet mind. That is simply the way it is.

Why, then, are the Soviets eager for SALT II to be ratified? It is likely that they are fully aware that they could not win an all-out arms race with the United States. Certainly a SALT treaty would give the Kremlin a greater sense of the predictability of American behavior. Then, too, the Russians know that their greatest progress has come when their rivals believe the rivalry has mellowed. Obviously the most important postwar Soviet gains have come in the years of détente and the Helsinki Accord. Beyond that, they may want more access to Western trade and credit; they may wish to enhance their position with regard to China—all these are possible explanations.

But the fundamental reason why the Soviets go along with SALT is that the Americans want it. Nations of the West, in the Judeo-Christian tradition, have always attached ethical and legal sanctity to contracts—and treaties. With Jimmy Carter, especially, American adherence to the provisions of SALT II will be observed to the letter and in the spirit. Should the treaty be ratified by the U.S. Senate, the Soviet Union will have nothing to fear.●

GAO REPORT ON U.N. SPECIAL SESSION ON DISARMAMENT

● Mr. McGOVERN. Mr. President, one of the most often-repeated criticisms of SALT II is that it fails to impose genuine restraints on the nuclear arms race. I share many of the criticisms because I believe that true national security can only be achieved at mutually reduced levels of nuclear weapons. I am distressed that the SALT process thus far has not brought us closer to this objective. Last year, the United Nations convened a special session on disarmament of the General Assembly to formulate an international agenda of disarmament proposals and to reexamine the international institutions responsible for conducting multilateral negotiations. As one of the United States delegates to the special session, I was impressed with the wide degree of interest and support for disarmament among the member states. Recently, the General Accounting Office released a study of the SSOD proposals and positions. The GAO report, "United Nations Special Session on Disarmament: A Forum for International Participation," is a summary of the SSOD and not an analysis, but it still provides a useful reminder of the bigger international picture which sometimes seems to get lost during the more narrow SALT debate. I submit the text of the digest of the GAO report to be printed in the RECORD and I wish to call the full text of the report to the attention of my colleagues.

The text of the digest follows:

DIGEST

The United Nations Special Session on Disarmament (SSOD) focused the attention of virtually every country on arms control and disarmament for the first time since the 1932 General Disarmament Conference of the League of Nations. It brought together 149 member nations, including France and China, which have not actively participated in recent disarmament conferences; numerous nongovernmental organizations; U.N. affiliates; and research institutes for a six-week session, from May 23 to June 30, 1978.

ORIGINS OF THE SPECIAL SESSION

The Special Session on Disarmament resulted from a variety of factors, including international concern for the ever-increasing level of armaments worldwide; recogni-

tion of the relationship between disarmament, international security, and economic development; dissatisfaction with international progress on disarmament; and a desire to address these issues in a forum in which all nations could participate.

The SSOD, first proposed in 1961, was not convened to draft or negotiate specific arms control or disarmament agreements, but rather to review and appraise the present international situation in light of the pressing need to achieve substantial progress in this area; review the roles of the U.N. and other international institutions in disarmament negotiations; and adopt recommendations, a declaration, and a program of action for disarmament.

DISARMAMENT CONCERNS

U.N. members and affiliates, nongovernmental organizations and research institutes were given the opportunity to address the SSOD. Their comments dealt with:

The diversion of funds (about $400 billion annually) from social and economic development to arms and military programs.

The need to restructure existing international institutions for disarmament negotiations to make them more representative and responsive.

The right of nonnuclear weapon states to have access to the peaceful uses of atomic energy.

The growth of arms levels worldwide and the increasing sophistication of these arms.

The renunciation of the first use of nuclear weapons.

The obligation of nuclear weapon states to renounce the use of such weapons against nonnuclear weapon states.

Nuclear disarmament.

The need for worldwide education concerning arms control and disarmament.

THE FINAL DOCUMENT

The Special Session adopted by consensus a Final Document which recognized the continuing arms race and the need for disarmament and arms limitation to foster international peace, security and economic and social development. The final Document set forth the ultimate objective of general and complete disarmament, in addition to the more immediate goal of eliminating the danger of a nuclear war. It also contained fundamental principles to guide disarmament negotiations and specific measures to enable disarmament to become a reality. Those principles and measures included:

Using both human and technological resources, released as a result of disarmament, to promote the well-being of all peoples;

Strengthening the U.N.'s role in and responsibility for disarmament, including dissemination of information on the arms race and disarmament;

Undertaking negotiations to conclude and implement agreements designed to eliminate the danger of war and the use and threat of force in settling international disputes; and

Continuing international efforts to promote full implementation of and adherence to existing treaties and agreements.

Furthermore, it recognized that the right of all countries to develop, acquire, and use nuclear energy must be consistent with the need to prevent proliferation of nuclear weapons, and that effective arrangements to assure nonnuclear weapon states against the threat or use of nuclear weapons could strengthen peace and security.

The Final Document also described the process, that had been agreed upon to guide work toward general and complete disarmament and assigned priorities in the disarmament process. These priorities are nuclear weapons, weapons of mass destruction, conventional weapons, and armed forces. Specifically, it concluded that realistic progress in disarmament could be achieved by halting nuclear tests, establishing nuclear weapon free zones, reducing military budgets, and implementing international confidence-building measures. Nations were also encouraged to give priority to increasing the dissemination of information about the arms race and arms control efforts. The Document further stated that nations would be obligated to contribute manpower to U.N. peacekeeping efforts.

The Final Document created new machinery to accomplish the U.N.'s work on disarmament. First, the Committee on Disarmament was constituted. The Committee's membership will include all 5 nuclear weapon states and 35 nonnuclear weapon states, have a rotating chairmanship, and be reviewed regularly by the U.N. Second, it established a new Disarmament Commission within the U.N. as a deliberative body composed of all member states to consider and make recommendations in the field of disarmament. Third, it was stated that a second special session devoted to disarmament should be held on a date to be decided by the 33d General Assembly. Fourth, it requested the Secretary General to establish an advisory board of eminent persons to advise the U.N. in the field of arms limitation and disarmament. Finally, the Final Document referred to the numerous proposals and suggestions submitted by the member states and requested the Secretary General to transmit them to the appropriate deliberative and negotiating bodies for more thorough study.

REACTIONS TO THE SPECIAL SESSION

In commenting on the Final Document and the Special Session itself, U.N. members noted the following achievements: establishment of the new disarmament institutions; involvement of all U.N. members; adoption of the Final Document by consensus; security assurances pledged by the major nuclear countries to nonnuclear weapon states; announcement of intended adherence to existing international arms control agreements by additional countries; and the beginning of a process toward disarmament.●

PAY AS YOU GO

● Mr. DOLE. Mr. President, today once again the administration is asking Congress to raise and extend the temporary limit on the public debt. Again we are expected to ratify the deficit run by the Federal Government, and we can be sure that it will not be for the last time. The debt limit is not a meaningful restraint on Government spending; it is just an occasion for reviewing the fiscal performance of the Government. The Government's performance in this regard is nothing to boast about. Each increase in the deficit adds fuel to inflation and in so doing undermines the value of each dollar earned by our citizens.

The Government's approach to deficit finance is very interesting. The Government appears to believe that the people cause deficits by asking for and expecting certain programs and certain expenditures which, when taken together, cost more than the revenues coming in. The Government then runs a deficit and tells the people, in effect, that the resulting inflation is part of the cost of the programs people wanted.

But anyone involved in politics knows that the public is increasingly aware of the high cost of deficit spending. To accommodate this concern, the Government seeks to keep the deficit down somewhat so that it can appear to be practicing fiscal responsibility and austerity. How is the deficit reduced?

By allowing inflation to automatically bring in more tax revenue. As people float into higher tax brackets on inflated dollars, they pay at higher rates of tax even though their real income, as measured by purchasing power, has not increased. This graphically demonstrates how taxpayers are squeezed on all sides. The Government runs an inflationary deficit, which makes it difficult for working people to maintain their standard of living. To offset part of that deficit, the Government counts on revenues generated by workers who manage to keep up with inflation and who pay higher taxes as a consequence.

Mr. President, the Government is not behaving responsibly. The task of our elected representatives is to weigh the spending requests before them and balance them against anticipated revenues. The administration bears a like responsibility. To moderate the deficit by counting on revenues from inflation's impact on the progressive income tax is a fraud on the American people. The way to control the deficit is to cut spending or pass a real tax increase if necessary.

The Senator from Kansas has introduced the Tax Equalization Act, which would end Government's reliance on unlegislated tax increases so that the people will know when changes are made in the tax laws. By adjusting the fixed dollar amounts in the tax tables according to rises in the Consumer Price Index, the Tax Equalization Act would stabilize tax rates in relation to real income. The result will be that Government will need to accept the responsibility for a legislated tax increase if it increases spending.

It may be some time before we have a true, fixed limit on the public debt. But until that day comes, let us not continue to shift the burden of deficit spending to the taxpayer without telling him what we are doing. An honest approach now will force us to deal forthrightly with our fiscal problems. We should act now, for the public is fast coming to understand how it pays for our deficits.●

COMPREHENSIVE MENTAL HEALTH ACT (S. 1289)

● Mr. HEINZ. Mr. President, 2 months ago I introduced the Comprehensive Mental Health Act (S. 1289), a bill to amend title XVIII of the Social Security Act to permit mental health treatment under medicare and to expand the role of community mental health centers as qualified providers for medicare mental health services.

One provision of the Comprehensive Mental Health Act would disallow the use of medicare funds for psychoanalysis in the treatment of elderly patients with symptoms of mental illness. Paul J. Fink, M.D., professor and chairman of the Department of Psychiatry at the Jefferson Medical College in Philadelphia, Pa., recently wrote to tell me of his support for the Comprehensive Mental Health Act, and especially for this provision on psychoanalysis. I consider

Dr. Fink's comments to be especially cogent and insightful.

I, therefore, request that the text of his letter be printed in full in the RECORD.

The letter follows:

JUNE 14, 1979.

Senator JOHN HEINZ,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HEINZ: As Chairman of the Department of Psychiatry and Human Behavior at Thomas Jefferson University in Philadelphia and your constituent, I wanted to extend my deep appreciation of your introduction of the bill to amend Title XVIII of the Social Security Act to eliminate discrimination with regard to coverage for treatment of mental illness under Medicare and to include Community Mental Health Centers among the entities which may be qualified providers of service for Medicare purposes (Bill 1289).

Leadership and commitment to the needs of the mentally ill elderly is well articulated not only by the provisions of the bill but your most thoughtful introductory remarks to the legislation. While you might have expected a Chairman of a Department of Psychiatry, and particularly a psychoanalyst, to be shocked and dismayed by the exclusion of psychoanalysis, I was not. On the contrary, your thoughtful leadership in ending discrimination in psychiatric treatment of the elderly, your insightful comments on psychoanalysis as an unproved method for the treatment of the elderly and concomitantly that it may not be medically necessary and cost effective, only reaffirms my belief in your understanding and knowledge of mental health care.

I would welcome the opportunity to discuss psychiatric medical education and mental health care issues with you in Washington, D.C. or at your convenience when you are next back in Pennsylvania. As President of the Association for Academic Psychiatrists and an officer in the American Association of Chairmen of Departments of Psychiatry, I would like to share with you some of the data we have collected on issues of manpower, training, research, and service in the mental health field. I look forward to hearing from your staff about arranging a mutually convenient meeting place and date. With great appreciation and best wishes,

Sincerely yours,

PAUL J. FINK, M.D.,
Professor and Chairman.●

REJECT SALT NOW

● Mr. TOWER. Mr. President, the belated discovery of Soviet ground combat forces in Cuba, just 90 miles from the continental United States, has, I believe, caused many of my colleagues to take more seriously Soviet overseas adventures. Also, it has made many appreciate the geopolitical role that the SALT process plays in Soviet foreign and national security policy.

The arms control process, including SALT, has already served to "tranquilize" U.S. investment in defense spending at a time when the Soviet Union has been spending 40 percent more than the United States in order to add qualitative superiority to its quantitative superiority in all levels of military weaponry—strategic, theater nuclear, and conventional. Its goal is clear—to neutralize the deterrent and defense capabilities of the United States in the face of an ever growing Soviet capacity to project military power to great distances, including Africa and the Western Hemisphere. With this in mind, it should be no surprise that the Soviet Union is now reported to be building its first large deck aircraft carrier for a dynamic force projection mission even as it develops the capability to destroy our land-based strategic missile force in a surprise attack.

Some of my colleagues, but fewer every day, are heard to say that SALT should not be linked to Soviet behavior around the world. Clearly, however, strategic arms are linked directly to the pursuit of Soviet political and military objectives around the world and, therefore, SALT also should be linked..

The military balance must be maintained and can be maintained by a combination of prudent defense programs and effective arms control. If, however, arms control fails to confine the growing Soviet threat, but does undermine, directly or indirectly, American programs to maintain the military balance, then it is not worthwhile. If SALT is only a means by which we delay necessary decisions, then it is truly dangerous.

As I have said many times, the present SALT II Treaty is unequal and flawed. The Senate must make an effort to correct those flaws and correct the deficiencies in our military programs so that the net result is to restore the military balance. If, however, the complex politics of SALT are likely to result in a failure to create the circumstances which would permit the United States to reestablish a long term, stable military balance which also prevents the Soviet Union from exploiting military power for geopolitical advantage around the world, then we should not fool ourselves. We should then reject SALT so that we are not bound by illusions.

I commend to my colleagues the Wall Street Journal editorial "Reject SALT Now" which appeared on September 11, 1979, as a superb elucidation of the national security impact of SALT, and I insert it in the RECORD following my remarks:

REJECT SALT NOW

The discovery of Soviet troops in Cuba suddenly threatens to become the straw that breaks the back of the strategic arms treaty. Yet the only surprising thing is that anyone should be surprised. Didn't everyone know that the Soviet Union is engaged in a world-wide geopolitical offensive under the umbrella of its massive military build-up? And isn't it equally clear that the debate over SALT is really a debate over whether or not the U.S. will acquiesce to this imperial drive?

As the debate proceeds, both voters and their representatives are gradually awakening to the realities of our situation. The Cuban issue, and before it the Kissinger-Nunn position of linking support, for the treaty to defense budget increases, have been useful steps in the educational process. As debate proceeds further, more people will recognize that the strategic arms negotiations are not incidental to the tipping military and political balance, but instrumental to it.

The treaty as it stands would ratify Soviet gains in central weapons systems. It would also ratify the vacillating foreign policy record of the Carter administration; after all, the administration itself bills the treaty as the centerpiece of its foreign policy. Above all, the treaty would stand in the way of future U.S. efforts to rectify the military balance. Rejecting it would be the clearest first step toward reversing the recent adverse trends. All of this is implicit in much of the recent discussion, and it is time the so-far timid critics grasped the nettle and called for a clear and unambiguous rejection.

It is first of all vital to recognize the enormity of the Soviet arms drive. As Henry S. Rowen details nearby, the Soviets are now outspending us by 45 percent on defense, and by 100 percent in military investment. This increasing Soviet power is before our eyes translating itself into greater boldness and greater political influence throughout the world. Cuba of course strikes close to home, but the threat to the Middle Eastern oil lines is even more significant.

We do of course have the option of accepting a Soviet imperium. It is hard to imagine us failing to retain enough power to make it inconvenient for them to land troops on Long Beach or Long Island. But with the Soviets already sending muscle men around our airports and tapping our phone calls, it is not so hard to imagine the U.S. evolving into a big Finland; there would still be elections, but the Soviets would have a practical veto over certain nominees. Our allies would suffer more. The result would be a worldwide erosion, already to evident in the plight of the Indochinese boat people, of those values for which Western civilization has stood: the idea of progress, economic growth, personal freedom, individual liberty.

The other option is to offset the Soviet arms drive with a military buildup of our own. Senator Nunn's proposed 4% to 5% real growth in spending, borrowed from a politicized Joint Chiefs, is a creditable start for the next fiscal year. But it will not close the gap. A realistic estimate would be that we need additional military spending of about 1% of GNP, moving over a few years from the current 5% to about 6%. This would still not bring us to Soviet spending levels, but it would make their ambitions for superiority expensive enough to stress their economic system. At that point, they might even become willing to talk about serious arms control.

It is no accident that the unparalleled Soviet military gains coincide with the era of arms negotiation. There is of course no treaty with a clause saying the U.S. can spend only so much on defense and the Soviets can spend 45% more. But the dynamics of the process—the attempt to reach a treaty more than the ultimate provisions—have curtailed American military programs. There is no more cogent statement of this than the melancholy testimony of Henry Kissinger reprinted alongside. Note well that Mr. Kissinger concludes that on the record the arms control process has restrained the U.S. without restraining the Soviet Union.

This result cannot be overcome simply by a tougher stance in the future, even if by some superhuman effort we could overcome the problems that arise when an open political system negotiates with a closed one. For we are left with provisions that limit U.S. technologies in ways that make them uneconomic to pursue. SALT–I killed the U.S. anti-missile program in precisely this way, and SALT–II threatens both the mobile ICBM and the cruise missile.

It is said that while the SALT–II provisions do not curb the Soviet arms drive, neither do they stop anything the Carter administration wants to build. This is far from clear, witness the reprinted remarks from Soviet Defense Minister Ustinov; obviously the Soviets believe the treaty outlaws the administration's MX missile because of professed difficulties in verifying how many are deployed.

It is said that there will be no renewal of

the three-year protocol limiting ground and sea-launched cruise missiles to ranges of 600 kilometers—far less than the new Soviet SS–20 missile already threatening our European allies. Even SALT proponents concede these restrictions are so one-sided they cannot be accepted permanently. But at the very least, the protocol precedent, like the MX verification problem, creates huge bargaining chips for the Soviets. If SALT–III is to ignore the protocol precedent and ratify the MX, what else will we have to give up?

And if all this is laid aside, the fact remains that the Carter administration's plans do not call for a gap-closing effort. Lay aside, too, any of the predictable political effects on future efforts; in congressional budget committees the prospect of SALT-III is already being used to argue against new programs. Even if all this is overcome, SALT-II forecloses options that would be of extreme interest to any future administration interested in closing the gap. For example, it precludes cruise missiles based on short take-off-and-landing aircraft as an answer to the SS–20 in the European theater.

The real logic of the Nunn-Kissinger requests for more spending is precisely to demonstrate that a gap-closing effort can be mounted within the provisions of SALT. It is up to the administration to demonstrate this by coming up with real programs. So far the administration offers nothing except an offset to inflation to maintain its original plans. This leaves room for a few billion in concessions later, and perhaps the administration can come up with cosmetic concessions on the troops in Cuba. This would test whether Mr. Kissinger and Senator Nunn and Senator Church have the courage of their convictions.

For arms control retains a diffuse popularity. In a nuclear era it is in fact an idea that cannot be permanently abandoned. But witnessing the negotiations over the past decade, real arms control can come only in a new military and political context, when the U.S. has reestablished its determination to avoid one-sided agreements. Many of the timid critics recognize this, but are unwilling to risk the unpopularity of saying so. So they say that we may have to cut off the current SALT talks, but never today, always tomorrow.

Mr. Kissinger, for example, wants the Senate to review Soviet behavior to see whether the negotiations need to be stopped. But in the past few years, Soviet-backed Marxist governments have taken over seven nations. How many would Mr. Kissinger allow before acting? Eight? Ten? Twenty?

Similarly, former UN Ambassador Moynihan, who obviously understands the dynamics, wants to stop SALT if the Soviets demonstrate they are not interested in real reductions. They have already, repeatedly and brutally, demonstrated that they are interested in no such thing.

Similarly again with the protocol. The only way we can avoid its renewal is simply to refuse, to scuttle the talks. If that is to be the ultimate outcome three years hence, why wait?

In fact, there will never be an easier time than now. With the Carter administration's clear record on foreign policy, and with a new election pending, there will never be an easier time to signal the need for change. With the Soviets so clearly on the march, there will never be an easier time to demonstrate linkage. With the treaty ratifying the Soviet building plans, there will never be an easier time to send the message that arms control means reductions. With the treaty not yet ratified, there will never be an easier time to insure that the protocol provisions do not become permanent.

There will never be an easier time to start a real national debate on meeting the Soviet challenge, perhaps to put arms control on a more solid future footing, and certainly to insure that we are not bullied and intimidated for the rest of this generation. This requires a sustained effort, and cannot be done with one stroke, but has to start sometime. The clearest, most meaningful and most essential starting place is the Strategic Arms Treaty. Between the clear opponents and the timid critics there are more than enough votes to reject the treaty and do it now; the Senators need only summon the courage to draw the obvious conclusion of their own logic.●

WALL STREET JOURNAL ASKS FOR ARMS REDUCTIONS NOW

● Mr. HELMS. Mr. President, the Wall Street Journal, in a major editorial statement today, has called upon the Senate to "Reject SALT Now." It is obvious that the Journal has not rushed to this conclusion. The editorial is a thoughtful piece of considerable length, which touches upon all the major issues in perspective. It is accompanied by a full page of readings supporting the conclusions in the editorial, including statements by former Secretary of State Kissinger and by our distinguished colleague from New York (Mr. MOYNIHAN).

The significance of the editorial lies not just in its call for the rejection of SALT. What is especially significant is the fundamental reason given; namely, that SALT II is not an arms reduction treaty. It is, as the Senator from North Carolina has been saying all along, an arms escalation treaty. As the Journal says:

> For arms control retains a diffuse popularity. In a nuclear era it is in fact an idea that cannot be permanently abandoned. But witnessing the negotiations over the past decade, real arms control can come only in a new military and political context, when the U.S. has reestablished its determination to avoid one-sided agreements. Many of the timid critics recognize this, but are unwilling to risk the unpopularity of saying so. So they say that we may have to cut off the current SALT talks, but never today, always tomorrow.

Further on, the Journal says:

> In fact, there will never be an easier time than now, with the Carter administration's clear record on foreign policy, and with a new election pending, there will never be an easier time to signal the need for change. With the Soviets so clearly on the march, there will never be an easier time to demonstrate linkage. With the treaty ratifying the Soviet building plans, there will never be an easier time to send the message that arms control means reductions.

Mr. President, I ask that the Wall Street Journal editorial be printed in the RECORD.

(The editorial is printed above at the conclusion of Mr. TOWER's remarks relating to the same matter.)●

WHITE HOUSE CONFERENCE ON FAMILIES

● Mr. CRANSTON. Mr. President, as chairman of the Subcommittee on Child and Human Development, I would like to report to my colleagues on the progress of the White House Conference on Families.

Mr. President, I have had a long-standing interest in this Conference, which I believe can provide valuable thought and focus at a time when many believe that the American family is undergoing major sociological and economic changes. In February of 1978, I chaired joint hearings with the House Subcommittee on Select Education to learn more about the administration's plans for the Conference, at that time scheduled for 1979, and to enable groups interested in participating in the Conference to give us their recommendation.

Unfortunately, various problems resulted in postponement of the Conference.

Mr. President, I am very pleased to share with my colleagues the excellent progress the Conference is now making in preparation for a conference in the summer of 1980. In July, the President appointed 40 individuals representing a broad cross section of Americans to serve as members of the National Advisory Committee for the White House Conference on Families under the chairmanship of Jim Guy Tucker, a former Member of the House of Representatives. At meetings on July 19 and 20, the National Advisory Committee adopted six themes for the Conference relating to the general topic, "Families: Foundation of Society." I believe that these themes—family strengths and support, the diversity of families, the changing realities of family life, the impact of public and private institutional policies on families, the impact of discrimination, and families with special needs—will be provocative starting points for a far-reaching investigation into numerous social and economic aspects of families, the cornerstone of our national well-being.

At these July meetings, the National Advisory Committee adopted an innovative process to build a broad base of participation for the Conference. This process, which includes hearings, State activities, national organization activities, and issue work groups to take place in various sites across the country during the next few months, are designed to assure grassroots participation in this national event.

Mr. President, preparation for the White House Conference on Families is finally off to a good start and I am hopeful will result in quality deliberations and concrete recommendations concerning this most important American institution.

Mr. President, I ask that a description of these themes and the goals adopted by the National Advisory Committee, as well as biographical descriptions of the members of the Advisory Committee, be printed in the RECORD.

The material follows:

WHITE HOUSE CONFERENCE ON FAMILIES

The National Advisory Committee on the White House Conference on Families adopted the following six themes as starting points or principles for discussion of issues:

FAMILIES: FOUNDATION OF SOCIETY

Family Strengths and Supports: The family is the oldest, most fundamental human institution, our most precious national resource. Families serve as a source of strength and support for their members and our society.

Diversity of Families: American families

are pluralistic in nature. Our discussion of issues will reflect an understanding and respect of cultural, ethnic and regional differences as well as differences in structure and lifestyle.

The Changing Realities of Family Life: American society is dynamic, constantly changing. The roles of families and individual family members are growing, adapting and evolving in new and different ways to meet the challenges of our age.

The Impact of Public and Private Institutional Policies on Families: The policies of government and major private institutions have profound effects on families. Increased sensitivity to the needs of families is needed, as well as ongoing research and action to address the negative impact of public and private institutional policies.

The Impact of Discrimination: Many families are exposed to various and diverse forms of discrimination. These can affect individual family members as well as the family unit as a whole.

Families with Special Needs: Certain families have special needs and these needs often produce unique strengths. The needs of families with handicapped members, single-parent families, elderly families and many other families with special needs will be addressed during the Conference.

The National Advisory Committee on the White House Conference on Families has adopted the following goals for the Conference:

1. To initiate broad nationwide discussions of families in the United States.

2. To develop a process of listening to and involving families themselves, especially those families which have too often been left out of the formulation of policies which affect their lives.

3. To share what is known about families—their importance, diversity, strengths, problems, responses to a changing world, etc.—and to generate and share new knowledge about families.

4. To identify public policies, institutional actions and other factors which may harm or neglect family life, as well as their differing impact on particular groups, and to recommend new policies designed to strengthen and support families.

5. To stimulate and encourage a wide variety of activities in neighborhoods, grassroots organizations, communities, states, national organizations, media, and other public and private groups focused on supporting and strengthening families and individuals within families.

6. To examine the impact of economic forces (poverty, unemployment, inflation, etc.) on families, with special emphasis and involvement of poor families.

7. To encourage diverse groups of families to work together through local, state and national networks and other institutions for policies which strengthen and support family life.

8. To generate interest in and action on Conference recommendations among individuals, families, governmental and nongovernmental bodies at every level. (These activities will include monitoring and evaluation efforts.)

The National Advisory Committee of the White House Conference on Families is chaired by Jim Guy Tucker, former Member of Congress from Arkansas. The remaining 40 seats are filled by a diverse group of 20 men and 20 women from 26 states. They are:

CHAIRPERSON

Jim Guy Tucker, Little Rock, Arkansas, is currently a partner in the law firm of Tucker and Stafford. From 1977 to 1979, he served in the U.S. Congress, where he was a member of the Ways and Means Committee, the Speakers Committee on Welfare Reform and subcommittees dealing with Social Security and Public Assistance and Unemployment Compensation. In 1978, Tucker was selected by the United States Jaycees as one of the Ten Outstanding Young Men of America. From 1973 to 1977, served as Attorney General of the state of Arkansas. He is the author of numerous articles on energy and consumer protection. Has been active with a variety of voluntary organizations in the state of Arkansas.

DEPUTY CHAIRPERSONS

Mario M. Cuomo, New York, New York, Lieutenant Governor of New York. An attorney, Mr. Cuomo was New York Secretary of State and Professor of Law at St. John's University.

Guadalupe Gibson, San Antonio, Texas, Associate Professor of the Worden School of Social Service, Our Lady of the Lake University; Director of the "La Chicana in Mental Health" project of the National Institute of Mental Health.

Coretta Scott King, Atlanta, Georgia, President of the Martin Luther King Center for Social Change. Mrs. King is Co-Chair of the Full Employment Action Council and a member of the Black Leadership Forum.

Maryann Mahaffey, Detroit, Michigan, President Pro Tem of the Detroit City Council and Professor in the School of Social Work in Wayne State University. She is a former President of the National Association of Social Workers.

Donald V. Seibert, New York, New York, Chairman and Chief Executive Officer of the J. C. Penney Company, Inc. Mr. Seibert is Chairman of the Task Force on Inflation of the Business Roundtable, chairs the Board of the National Retail Merchants Association and serves as a member of the Board of the United Way of America.

MEMBERS

James V. Autry, Des Moines, Iowa, Editor-in-Chief of Better Homes and Gardens magazine, Vice President of the Publishing Group of Meredith Publications, and Chairman of the Board of the Epilepsy Foundation of America.

Charles D. Bannerman, Greenville, Mississippi, Chairman of Delta Foundation and Director of Mississippi Action for Community Education, a community organization working in depressed areas of the Mississippi Delta. He is Co-Chair of the National Rural Center and Rural Coalition.

Carolyn Shaw Bell, Dover, Massachusetts, chairs the Department of Economics at Wellesley College. She is the author of numerous books including "Coping in a Troubled Society" and "The Economics of the Ghetto."

Jeanne Cahill, Atlanta, Georgia, President of Cahill Properties, Inc., former Executive Director and Chair of the Georgia Commission on the Status of Women. She works with the Center for Battered Women and Children in Atlanta.

Bettye Caldwell, Little Rock, Arkansas, Professor and Director of the Center for Early Development and Education at the University of Arkansas; author and researcher in early childhood development.

Ramona Carlin, Smolan, Kansas, is past President of the Central States Synodical Unit of the Lutheran Church of America, and has been active in the International Year of the Child, March of Dimes and the 4-H. She and husband, Governor John Carlin, are dairy farmers.

Gloria Chavez, Los Angeles, California, President of the United Neighborhood Organization for the Federation of East Los Angeles, a low-income community organization working on food, housing and health issues.

Leon F. Cook, Minneapolis, Minnesota, President of American Indian Resource Services, recently served as an elected representative on the Red Lake Band of Chippewa Indians Tribal Council.

Mary Cline Detrick, Elgin, Illinois, national staff member, Church of the Brethren. An ordained minister, she works in areas of youth ministry, family life, marriage enrichment and aging. She is the past President of the National Council of Churches Family Life and Human Sexuality Commission.

Manual Diaz, Jr., New York, New York, Associate Professor, Fordham University Graduate School of Social Service. Diaz is currently a board member of the Family Service Association and has served with the Puerto Rican Family Institute and New York Urban Coalition.

Ruby Duncan, Las Vegas, Nevada, founder and Executive Director of Operation Life, a social service and advocacy center for low-income families.

Karen Fenton, Missoula, Montana, is Director of the Human Resources Development Programs of the Confederated Salish and Kootenai Tribes in rural Montana. Mrs. Fenton is a member of Montana's Committee for the Humanities.

Norman S. Fenton, Tucson, Arizona, Presiding Judge of the Pima County Conciliation Court. Judge Fenton received the 1978 Distinguished Service to Families award of the National Council on Family Relations and chaired the Arizona Governor's Task Force on Marriage and the Family.

Robert B. Hill, Washington, D.C., Director of Research for the National Urban League. He is the author of "The Strengths of Black Families," and numerous other monographs and papers on the subject of black families.

Robert L. Hill, Portland, Oregon, Chairman of the Metropolitan Youth Commission. Mr. Hill, 18, is the youngest panel member and a member of the Portland Public School Advisory Committee.

Charlotte G. Holstein, Syracuse, New York, President of the Loretto Geriatric Center. Past President of the New York State Association for Human Services and a member of the Board of Governors of the American Jewish Committee. Ms. Holstein currently serves on the New York State Council on Youth.

Harry N. Hollis, Jr., Nashville, Tennessee, Director of Family and Special Moral Concerns for the Christian Life Commission of the Southern Baptist Convention. He is a member of the National Council of Family Relations and the Association of Couples for Marriage Enrichment.

Jesse Jackson, Chicago, Illinois, National President of Operation PUSH (People United to Save Humanity), and founder of EXCEL, a national program designed to increase student achievement.

A. Sidney Johnson, III., Bethesda, Maryland, founder and Director of the Family Impact Seminar at George Washington University. Johnson served as staff director to then Senator Walter Mondale's Senate Subcommittee on Children and Youth.

Michael M. Karl, M.D., St. Louis, Missouri, a Professor of Clinical Medicine at Washington University. Dr. Karl is a leader in the Jewish Family Services movement.

Judith Koberna, Cleveland, Ohio, Vice-President of the Buckeye-Woodland Community Organization. She is a licensed practical nurse and has a deep interest in ethnicity and neighborhood concerns.

Olga M. Madar, Detroit, Michigan, President Emeritus of the Coalition of Labor Union Women and a retired UAW Vice President. She is a member of the Board of Directors of the Girl Scouts of America and the Wayne County Commission on Aging.

Harriette P. McAdoo, Columbia, Maryland, Professor in the School of Social Work of Howard University. Professor McAdoo has served as a principal investigator of an HEW research grant on family factors related to occupational and educational mobility in black middle income families.

Georgia L. McMurray, New York, New York,

Deputy General Director for Program Community Service Society of New York. She is a former Commissioner of the Agency for Child Development of the Human Resources Administration of the City of New York.

Patsy Mink, Waipahu, Hawaii, National President, Americans for Democratic Action. Ms. Mink, an attorney, was a Member of Congress from 1965 to 1977 and currently is an instructor of law at the University of Hawaii.

Rashey B. Moten, Kansas City, Missouri, Executive Director of the Kansas City Catholic Charities. Mr. Moten is the former President of the National Conference of Catholic Charities.

Richard J. Neuhaus, New York, New York, Associate Pastor, Trinity Church; Pastor Neuhaus is the author of "To Empower People" and co-director of a national research project sponsored by the American Enterprise Institute on Mediating Structures and Public Policy.

Robert M. Rice, Parkridge, New Jersey, Director of Policy Analysis and Development for the Family Service Association of America. The founding Chairperson of the Coalition for the White House Conference on Families, Dr. Rice is author of "American Family Policy: Content and Context."

Ildaura Murillo-Rohde, Seattle, Washington, Professor and Associate Dean of the School of Nursing of the University of Washington. A marriage and family therapist, she is the Chairperson-Elect of the National Coalition of Hispanic Mental Health and Human Services Organization.

Hirsch L. Silverman, West Orange, New Jersey, Chairman of the Department of Education Administration at Seton Hall University. Professor Silverman is the Chairman of the National Alliance for Family Life and the author of fourteen books dealing with the areas of psychology, philosophy and education.

Eleanor C. Smeal, Pittsburgh, Pennsylvania, President of the National Organization for Women, and an active participant in a variety of advocacy organizations.

Barbara B. Smith, Salt Lake City, Utah, General President of the Relief Society of the Church of Jesus Christ of Latter-Day Saints. She is active in the PTA and the Holladay Child Care Center.

J. Francis Stafford, Baltimore, Maryland, Auxiliary Bishop of the Archdiocese of Baltimore and Chairman of the Bishops Committee on Marriage and Family Life of the United States Catholic Conference.

J. C. Turner, Washington, D.C. President of the International Union of Operating Engineers, AFL–CIO. Mr. Turner serves on the Board of the National Urban League, National Consumers' League, and the YMCA.

Harold Yee, San Francisco, California, Director of Asia, Inc., a research institute for direct service agencies. Mr. Yee, an economist, serves on several San Francisco school advisory committees.●

TAX CUTS NEEDED TO AVERT JOB LOSSES

● Mr. ROTH. Mr. President, when the Senate begins its consideration of the second budget resolution, Senator DANFORTH, Senator HATCH, and I intend to offer an amendment to restrain Federal spending and provide a $24 billion tax cut in calendar 1980.

Under current economic policies, the American people are facing recession, increasing inflation, and rising rates of unemployment. Unless taxes are reduced, millions of Americans are going to lose their jobs and the Federal budget deficit will skyrocket because of lost revenue and increased spending on unemployment.

The administration and the Senate Budget Committee are trying to fight inflation and balance the budget by allowing taxes to increase.

According to Joint Economic Committee estimates, inflation and social security taxes will increase $25 billion in 1979 and $30 billion in 1980.

These massive tax increases are retarding productivity and investment, resulting in more inflation and rising unemployment.

The Federal Reserve Board has projected unemployment will increase from June's 5.6 percent level to 7 percent by the end of this year and to 8.25 percent by the end of 1980. A revised White House staff forecast parallels the Federal Reserve Board's projection. If unemployment increases to these levels, approximately 1.4 million people will lose their jobs by the end of 1979 and 2.7 million people will lose their jobs by the end of 1980.

Assuming this level of unemployment, and assuming the job losses will be distributed among the States in the same proportion that State unemployment was a percentage of national unemployment during the 1975 recession, the number of people who face the loss of their jobs in each of the 50 States is shown on the table below.

Allowing millions of Americans to lose their jobs will not reduce inflation or balance the budget. The only way to reduce inflation is to increase productivity and real economic growth through lower taxes and less Government spending, and I urge my colleagues to support our amendment.

Mr. President, I submit for the RECORD the table reflecting potential job loss, to which I have referred:

Potential job loss

State	End of 1979	End of 1980
Alabama	19,922	38,421
Alaska	1,820	3,510
Arizona	20,282	39,115
Arkansas	14,358	27,691
California	166,208	320,544
Colorado	14,358	27,691
Connecticut	23,800	45,900
Delaware	4,480	8,640
District of Columbia	4,620	8,910
Florida	65,692	126,692
Georgia	33,600	64,800
Hawaii	5,600	10,800
Idaho	3,766	7,263
Illinois	64,077	123,576
Indiana	36,974	71,307
Iowa	10,051	19,383
Kansas	8,680	16,740
Kentucky	18,487	35,654
Louisiana	19,040	36,720
Maine	8,436	16,270
Maryland	22,974	44,307
Massachusetts	54,564	105,230
Michigan	87,590	168,923
Minnesota	19,180	36,990
Mississippi	13,461	25,961
Missouri	25,480	49,140
Montana	3,780	7,290
Nebraska	5,026	9,692
Nevada	5,026	9,692
New Hampshire	6,102	11,769
New Jersey	60,200	116,100
New Mexico	7,897	15,231
New York	130,200	251,100
North Carolina	38,949	75,117
North Dakota	1,820	3,510
Ohio	77,000	148,500
Oklahoma	15,400	29,700
Oregon	19,600	37,800
Pennsylvania	75,922	146,664
Rhode Island	8,680	16,740
South Carolina	18,487	35,654
South Dakota	1,974	3,808
Tennessee	27,102	52,269
Texas	53,200	102,600
Utah	6,461	12,461
Vermont	3,590	6,923
Virginia	25,900	49,950
Washington	26,385	50,884
West Virginia	10,231	19,731
Wisconsin	26,460	51,030
Wyoming	1,246	2,403

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CHERYL PREWITT, MISS AMERICA 1980

● Mr. STENNIS. Mr. President, Miss Cheryl Prewitt, whose home is at Ackerman, Miss., was crowned Miss America 1980 Saturday night at the conclusion of the annual pageant in Atlantic City, N.J. Naturally, we Mississippians greeted the selection of our State's representative with great joy. However, the selection of this outstanding young lady is exceedingly good news for all Americans who cherish strong spiritual values, good character, and the will to succeed against seemingly unbeatable odds.

At the age of 11, Miss Prewitt was involved in a traffic accident in which her left leg was severely crushed. Doctors told her that the bone in her leg was so badly damaged that she would never be able to walk again. After 8 months in a body cast and wheel chair, through faith and determination and skillful medical care she was able to overcome her injury and walk again.

Throughout her recovery Miss Prewitt's faith was greatly strengthened. She credits that faith for enabling her to walk down that runway in Atlantic City, wearing the coveted Miss America crown, with no sign of ever having been crippled.

Miss Prewitt has many, many fine qualities, but her strong faith in God and in humanity is the quality that offers the greatest example, for the youth of our Nation and in fact for all Americans. I am sure she will accomplish much during her reign as Miss America toward strengthening spiritual values, reinforcing the strong will of the American people to overcome obstacles which appear insurmountable and in taking a leading role in the splendid programs and achievement of the Miss America group.

The new Miss America has earned an outstanding reputation in her community and at Mississippi State University, where she is a music major. I am sure her fine reputation will spread as she travels throughout the Nation.

Truly, the new Miss America has traveled the high road. She brings additional beauty and charm to her new title, and I am sure these qualities coupled with her integrity and sincerity

will help make her reign as Miss America a memorable one.●

DISASTER RELIEF

● Mr. MATHIAS. Mr. President, with the devastation wrought by Hurricane David still fresh in our minds, I think the Senate should focus on the hardships these storms cause to people all over the country, especially in the coastal areas. Fortunately, this recent storm spared the Delmarva Peninsula the full brunt of its destructive force. Next time we may not be so lucky.

The coastline around Ocean City has become especially vulnerable in recent years. A study has shown that massive erosion of the sandy bottom of the ocean just offshore has greatly increased the risk of storm damage to the homes and businesses located along the beach. As the study points out, the situation could eventually be stabilized with the construction of jetties along the shoreline.

While we should pursue a long term solution at the earliest opportunity—and I will lend whatever support I can to this project—I think we should also cover ourselves in case disaster strikes before the jetties are in place.

One thing we can do is change the law so that the people who suffer damage as a result of natural disaster can replace their losses more easily. I have therefore cosponsored Senator COCHRAN'S bill, S. 1505, which allows individuals or businesses to claim a tax loss for property damage suffered in a Presidentially declared disaster based on replacement cost, rather than original cost—all that is allowed under current law.

Let me explain how it would work. If someone bought a refrigerator for $300 in 1970, he or she would have to pay $550 to replace that refrigerator today. So if that refrigerator is lost in a flood or hurricane, we would allow the taxpayer to deduct from his or her Federal income tax the cost of replacing it with a comparable model at today's prices. I think this is both fair and workable, and precedent exists for it in the current Tax Code.

We should always prepare for the worst, and this bill will provide a degree of comfort and protection until we devise a permanent solution. But we must continue to work for the long-term remedy to the threat of danger from natural disasters. The dangers our shoreline faces were described in a recent article from the Washington Star. I ask that the article, entitled "Ocean City Increasingly Vulnerable to Storms," be printed in the RECORD.

The article follows:

OCEAN CITY INCREASINGLY VULNERABLE TO STORMS

OCEAN CITY.—Massive, unanticipated erosion at the bottom of the sea off Ocean City is making the resort's beaches increasingly vulnerable to storm damage, according to a consultant study.

More than 14 million cubic yards of sand has been lost from the ocean bottom since 1929, according to the report by Trident Engineering Associates, which compared federal coastal surveys.

The effect has been to steepen the slope of the near-shore bottom, taking away a gentle incline to slow the waves as they approach the shoreline, said Joseph M. Caldwell, the report's principal investigator.

Thus, the waves crash into the shore with greater intensity, he said. "It means the beach is not in an equilibrium state," he said.

"It has a tendency to lose sand. It is storm sensitive—increasingly susceptible to major storm damage," he said.

The erosion is taking place in a zone beginning 200 feet offshore and extending out to 1,000 feet, said Caldwell, who added he was "astonished" by the group's finding.

"We did not expect it. It only came out in the data a few weeks ago. I'm still not sure what is the cause or what it means in the long run," he said.

Caldwell said the problem may be associated with the natural, long-term westward migration that most barrier islands on the Eastern seabord now are undergoing. Ocean City is one of those unstable islands.

Caldwell said he knew of no other cases where the phenomenon had been identified and studied.

The firm said there is a wide range of measures, costing from several million to tens of millions of dollars, the state and Ocean City could consider to shore up the beaches for the next five to 10 years.

It would take at least that long for the Army Corps of Engineers to gain congressional authorization for a projected $44 million long-term program to rebuild and maintain the beach here.

The Department of Natural Resources' Ocean, Bays and Beaches Task Force picked two alternatives from the Trident report for further study and evaluation by the Annapolis consultant between now and Aug. 25.

Under one plan, groins or jetties about 325 feet long would be built every 300 yards on the beach.

The $9 million project would entail building 19 new jetties and extending the existing ones, and would cost an additional $500,000 a year in maintenance. The groins would provide little protection in a major storm, however.

The second plan involves building 32 groins, 450 feet long, at a cost of about $515 million plus maintenance. These would provide better storm protection but would completely stop the normal north-to-south drift of sand along the coast which nourishes beaches further to the south.

The long jetty built at Ocean City's southern end already halts much of the sand drift used to nourish the beaches of Assateague State Park immediately to the south.

Studies show the four miles of beach on Assateague nearest to Ocean City have been eroding at about 40 feet a year.●

TRACY AUSTIN—CHAMPION

● Mr. CRANSTON. Mr. President, athletic history was made last Sunday at Flushing Meadow, N.Y.

Tracy Austin, 16 years of age, and just about to enter the 11th grade at Rolling Hills High School near Los Angeles, Calif., won the U.S. Open tennis championship—the youngest woman in history to achieve that honor.

In winning this prestigious tournament, the most important tennis championship in the United States, Tracy defeated Chris Evert Lloyd in straight sets, 6 to 4, and 6 to 3.

The victory was significant for Tracy Austin, not just because she was the youngest person ever to win this event, but because she decisively beat a woman who had won the event 4 years in a row and who was seeking an unprecedented fifth victory.

Like a true champion, Tracy Austin said after her victory: "I don't think about being the youngest, just the champion."

Indeed, Tracy Austin is a champion.

Her startling rise to the top of the woman's tennis world was not a fluke. Along the way to the U.S. Open she won six tournaments in her first year as a professional tennis player.

And to win the U.S. Open she not only defeated the second-ranking woman player—Mrs. Lloyd—but also the top ranked star, Martina Navratilova.

Mr. President, as a fellow Californian, I am indeed pleased to take this opportunity to congratulate Tracy Austin on her fine accomplishment last Sunday.

She has the stuff of which champions are made.●

DILEMMAS OF THE COMING DECADE

● Mr. JAVITS. Mr. President, we are going to have to make some very tough decisions in the next 10 years—decisions that will involve tradeoffs and compromises and that could determine the course of our country's economic future for better or for worse. A powerful consensus is developing in the Congress that we must act with judicious timeliness if we are to set in motion policies that will revitalize our country's productive capacity and modernize our business plant and equipment.

The difficult economic choices that confront those of us serving here in the Congress today are underscored in an excellent article by former Secretary of Transportation, Brock Adams, entitled "First Chrysler—and Then?", which appeared in the Washington Post of Sunday, September 9, 1979.

In reference to energy, Secretary Adams urges us to adopt solutions that reflect truly the urgency of the energy problem—a problem which he terms even more serious when viewed from the perspective of future supply—and that truly respond to the national interest. Secretary Adams also urges us to consider the national interest in giving consideration to Chrysler's financial plight. He impels us to resist the temptation to address this problem as an isolated incident requiring a quick financial fix. Rather, he recommends that we seize this opportunity to begin defining a "new economic strategy for the 1980's."

As Secretary Adams so perceptively states, Chryler's problems are not unique, but generic, and they signal what could become a disturbing trend among a whole range of maturing industries as the impending recession becomes more sharply delineated. He characterizes Chrysler's fundamental problem as one of a company faced with "an aging plant, the absence of technological creativity and a shrinking market."

We simply cannot afford to let our powerful industrial machine fall into serious obsolescence. As Secretary Adams so accurately concludes, what we in the Congress must ultimately address is the "reindustrialization of America." I share his view and I recommend his excellent article to my colleagues in the Senate.

Mr. President, I ask to have the fol-

lowing article from the Washington Post of Sunday, September 9 printed in the RECORD.

The article follows:

FIRST CHRYSLER—AND THEN?

One of the consolations of private life is the ability to offer controversial advice without fear of having to take it. With this in mind, I agreed to offer up some thoughts to my former colleagues through the good offices of The Washington Post.

There is little doubt that the Congress faces a confluence of energy and economic decisions that are as politically divisive as they are popularly demanded, and more rides on the outcome than the politics of 1980. At stake are the economics of the next decade, wherein we must decide as a nation whether we will try to rebuild our aging industrial and technological base or continue the retreat toward a service economy.

The issue immediately at hand is the fate of the Chrysler Corporation and, like the Lockheed and Penn Central fights of the last decade, the politics are no-win. Help Chrysler and risk being party to a "bail-out"; refuse aid and leave thousands of auto workers and executives unemployed by Christmas. I believe it is the kind of choice that will recur time and again during the next decade. For while Chrysler's problems are unique in some respects, they are also common to a whole range of "maturing" American industries that will march on Washington for financial relief, the bonus army of the 1980s. Chrysler is merely the advance guard.

In fact, the entire transportation sector, about one-fifth of our gross national product, is in deep trouble. With the need to revitalize mass transit almost desperate, America has but two remaining bus manufacturers with the capacity of roughly 3,000 units per year, a quarter of what is needed. The domestic manufacturers of passenger rail cars have vanished despite increased demands by Amtrak and the new subway and light rail systems now being built. The railroad industry, which with barges and pipelines must carry the nation's long-distance freight, is in a state of near collapse, oversized and underfinanced, with remedial legislation stuck in Congress.

Even worse is the tragedy played out in Detroit. More than 70,000 auto workers are on unemployment and soon joining them will be thousands of middle-age executives who determined perhaps 20 years ago, in a different era, that the insular world of automobiles would provide a secure career. Where do they go now, these 50-year-old men with mortgages suited to $50,000 salaries? For the American automobile industry is in deep trouble (Chrysler now, but Ford is next). And, when Detroit is in trouble, Youngstown and Bethelehem and St. Louis can't be far behind. In fact, the tentacles of the auto manufacturers reach into every state, accounting for the livehihood of 5 million people and more than $150 billion in annual trade. As autos go, so go steel, rubber, plastics, and so on. Right now, they are going straight down hill.

How do we restore the creaky transportation sector, and how can these actions be related to the deeper economic and energy concerns? As a beginning, I would offer five suggestions to the Congress:

1) Resist the temptation to dismiss the Chrysler problems with a quick financial fix, and instead use it as an opportunity to begin defining a new economic strategy for the 1980s. I would give the Chrysler Corporation provisional aid to get it over the short-term crises, but would tie a larger financial package to a policy for the entire auto industry. For, as stated, Chrysler's problems are not unique; they are generic: an aging plant, the absence of technological creativity and a shrinking market.

I would start asking the hard questions: Does the government save all industries that are big and sick? If not, what determines salvation—number of employees, kinds of products and service, effect on the total gross national product? Do we have appropriate measures of national interest? Unless we begin to face these unhappy questions now, the Congress will limp from bail-out to bail-out without any real understanding of where we are going or why. In the cases of Lockheed and Penn Central, these questions were raised but never solved. Now they must be.

2) Focus on the massive need for capital and how it is to be raised and invested. If, for example, the entire windfall profits pot is to be taken by synfuels development, there will be insufficient funds to explore the potential of solar energy, modernize the auto industry and establish a construction trust fund for mass transit. The economic principle of opportunity cost is at play, and there are limits to the amount of money that can be raised under any scenario. We must make broad and informed judgments on how to raise and spend that capital as a total society rather than spilling it piecemeal.

3) Don't get bogged down in ideological battles. Where there is a free market, let's favor free-market solutions. But let's not try to apply this solution to areas where there is no free market. Oil supply is not part of a free market. At home oil is in a corporate straightjacket and abroad it is controlled both in amount and price by a cartel.

The Department of Energy notwithstanding, not all regulation is bad where the national interest is involved. The fuel-economy regulations administered by the Department of Transportation, for example, saved Detroit from an even worse disaster than it is now suffering.

4) Emphasize new technology. America is in the midst of an innovation slump with research and development spending now only about 2 percent of the GNP. Nowhere is this more in evidence than the auto industry, where spending on basic research has dipped to almost nothing at the very time we need breakthroughs in such fields as the nonpetroleum engines. Why not structure the Chrysler solution to produce a major national investment in new auto technology? The basic auto-research program now being negotiated with the industry should be accelerated and vastly expanded beyond what is currently being contemplated.

5) Adopt solutions that truly reflect the urgency of the energy problem—a problem that is far more serious when viewed from the perspective of supply rather than price. That portion of our oil supply that comes from the Mideast, about 40 percent, must travel everyday in tankers through the narrow 20-mile Strait of Hormuz, which any disaster (political, military or technological) could shut down. With our economy hanging by so thin a thread, it is only prudent that we forge ahead with massive investment in both conservation and supply technologies. Since a barrel saved is equal to a barrel produced and often cheaper, this means in the transportation sector we must speed the renovation of the freight railroads and build urban mass transit as well as fuel-efficient autos. Because of the existent capital shortage, those investments should be considered within the context of the windfall profits debate.

The administration has now announced a new $16.5 billion transportation-energy package that can ony be considered a beginning. Retooling the auto industry alone will require tens of billions that Detroit cannot raise on its own. The same magnitude of investment will be needed to modernize the freight railroad industry and renew the inland-waterway system. Economic policy analysis must carefully tabulate the cost of needed investments in transportation and other essential industries and relate them to potential available capital, both public and private. This is essential work, and one hopes Congress will seize the moment. The windfall profits tax, synthetic-fuel development, mass transit, auto-efficiency issues, and Chrysler's financial trouble provide a set of issues serious and broad enough to override any special interest in favor of truly national solutions.

What we are ultimately addressing is the reindustrialization of America, and a new industrial revolution won't happen by itself. I believe we can refurbish our factories and once again make the kind of quality products that will dominate world markets.

But it is easier to draw the plan that leads us there than to follow it. Painful public decisions and regional economic tradeoffs will have to be made and, in the end, only the Congress can make them. From this armchair, I wish my former colleagues Godspeed.●

TAX INCREASES FACING AVERAGE FAMILY

● Mr. ROTH. Mr. President, according to the Joint Committee on Taxation, the Senate Budget Committee's recommendation to delay tax cuts until 1982 will cost the average family of four $926 in higher taxes—$393 in 1980 and $533 in 1981.

Imposing a $926 tax increase on the average working American will not reduce inflation or balance the budget. It will, however, reduce take-home pay, production, savings and investments, resulting in more inflation, a deeper recession, and high unemployment.

The following chart shows the Joint Committee on Taxation's estimate of the tax increases facing a family of four:

	1979	1980	1981
Equivalent income [1]	$18,918	$20,678	$22,456
Federal income tax	1,838	2,123	2,431
Social security tax	1,160	1,268	1,493
Total tax	2,998	3,391	3,924
Tax increase		+393	+533
Tax increase (1980–81)		+926	

[1] Income is assumed to increase to keep pace with an inflation rate of 10.6 percent and 9.3 percent.

I believe the best way to reduce inflation and offset the recession is through lower taxes and less spending, and I urge my colleagues to support my amendment to the second budget resolution.●

AMERICAN LEGION CAMP WEST MAR CELEBRATES 20TH ANNIVERSARY

● Mr. MATHIAS. Mr. President, recently I had the pleasure of joining with other Legionnaires at the 20th anniversary celebration of Camp West Mar, the American Legion's summer camp near Thurmont, Md. This important facility is a living demonstration of true conservation in three significant ways. It conserves a wonderful sweep of Maryland mountain scenery, it conserves the lives of young Americans who will benefit by attending the camp and it conserves the principles on which this country is

founded and which the American Legion is pledged to defend.

For the past 20 years, the Legion's Western Maryland District has given underprivileged campers a unique opportunity to learn new skills and have a good time. At the camp in the Catoctin Mountains they swim, fish, learn crafts, practice archery, and view demonstrations by groups such as the Baltimore Police K9 team.

Camp West Mar is the brainchild of my longtime personal friend, Richard Graham, a fellow member of Francis Scott Key Post No. 11 in my hometown of Frederick. It is through his efforts that the camp has succeeded. I can testify to the time and attention that he has given to Camp West Mar over the years. When something was needed he would spare no effort to find a way to supply it. It can literally be said that he has moved mountains to make the camp a success.

Credit must also be given to all the men and women of the Western Maryland District who through their time and resources have made Camp West Mar grow and prosper. District Comdr. Margaret Carnahan, I am sure, is looking to bigger and better things next year, and is providing leadership to achieve them.

Mr. President, I ask that the following article from the Maryland American Legion's newspaper, the Free State Warrior, on the celebration of Camp West Mar's 20th anniversary be printed in the RECORD at this point.

The article follows:

EARL FRANKLIN AT CAMP WEST MAR 20TH ANNIVERSARY

It does not seem possible that 20 years have passed since Camp West Mar changed from a dream to a reality but it has. On Sunday 29 July, 221 Legionnaires, Auxilliares and guests met at Camp West Mar to celebrate the 20th Anniversary.

EARL FRANKLIN

National Children & Youth Chairman Earl Franklin, long time Mayor of Sterling Colorado, came all the way to Maryland to deliver the principal address at the celebration. He reviewed the history of the Camp West Mar operation and complimented all of us on the great achievement, with our Western Maryland District receiving the credit, of course.

CHURCH SERVICES

The program, under direction of Dick Graham, Jack Weidman and Western Maryland District Commander Margie Jo Carnahan, got off to a good start with ecumenical Chapel Services by Rev. Fogarty. Included were a number of children's hymns which the 85 youngsters attending the Camp sang with gusto. After a warm-up the adult audience also joined in the singing. Probably the best was "Jesus Loves Me", the old standby many of us remembered from the days when we were the age of the Camp West Mar attendees.

Department Commander Bob Neal not only delivered congratulations to Camp West Mar and the District; he also presented a plaque to Dick Graham in recognition of his being the first Director and one of the Founders. Dick had previously announced his retirement as Director and the appointment of Jack Weidman as his successor at the close of this year's encampment so it was not exactly a surprise. However the plaque did take him by surprise and he was thankful to Commander Neal for the recognition on the part of our Department.

OTHER GUESTS

Among the guests who brought greetings were Past National Commander Bob Eaton, U.S. Senator Charles Mac Mathias, Md. State Senator Ed Thomas and various County Officials. Among the Auxiliary Officers present were Dept. President Anna Thompson, Dept. Treasurer Maxine Henley and Dept. Secretary Roseanna Ford. It was a gala day.

MANY ACTIVITIES

The 85 boys attending the Camp had a busy two weeks. They caught large amounts of big fish in the 2 acre pond. The Archery range came in for a big play, as did the horse shoe pitching. Most popular of all were the new swimming pool and the new rifle range. In celebration of the 20th Anniversary, the Campers also took a field trip to Gettysburg battle field and to an Oriole ball game in Baltimore. For this affair Dept. Adjutant Dan Burkhardt donated 50 lbs. of peanuts so that each of the boys had a big bag to munch on at the ball game.

Also during the two weeks at the Camp the boys went on hikes, learned arts and crafts from the superb U.S. Army Liason team which stayed the entire two week period, saw a Baltimore Police Dept. K9 demonstration and a Fire Department demonstration. That Fire Truck was a big hit! All in all it was a two week period the boys will never forget.

WARRIOR SALUTE

The Free State Warrior proudly renders its right hand salute of respect and admiration to the entire Western Maryland District but especially to the Camp West Mar staff, for their magnificent operation. It has been truly said, "No man stands so tall as when he stoops to help a child".●

ASSISTANCE TO UGANDA—CONFERENCE REPORT

Mr. CHURCH. Mr. President, I submit a report of the committee of conference on S. 1019 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. MATSUNAGA). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1019) to amend the International Development and Food Assistance Act of 1978 and the Foreign Assistance and Related Programs Appropriations Act of 1979, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 27, 1979.)

Mr. CHURCH. Mr. President, this bill would lift restrictions on U.S. foreign aid to Uganda. Last year, Congress placed embargoes on trade and foreign assistance to Uganda in protest of the brutal and murderous dictatorship of Idi Amin. This ruthless tyrant has now been overthrown and the Ugandan people are in desperate need of help. The President has already exercised his authority and invoked the waiver restoring trade with Uganda. It is important that Congress now lift its restriction on aid. We must show that congressional sanctions against Uganda were directed at the government of Idi Amin, not the Ugandan people themselves, and we should respond to an urgent situation in the country, whose economy is in ruins.

The State Department plans to respond to Uganda's needs in a modest but important way after Congress enacts this law. Three and a half million dollars of assistance is contemplated, consisting of two parts. The first involves one-half million dollars in disaster relief for the purchase of agricultural implements and seeds needed for a crash program in food production. These items must be available before the end of October, when the rains stop.

The second part of the program consists of $3 million for balance-of-payments support and for the purchase of certain commodities for agricultural and educational rehabilitation. In agriculture, the money will be used to buy farm tools and fertilizers. In education, Uganda has a real need since schools were denuded of everything during Amin's dictatorship, including even schools desks, American funds would thus be used to buy books, school equipment, and teaching materials, to aid the Ugandan Government in getting elementary-age children back to school.

Mr. President, I urge the Senate to adopt this bill to assist in these humanitarian goals and to restore American ties with a country that suffered greatly at the hands of Idi Amin. It will take time for Uganda to get back on its feet. We in the United States should do all we can to help bring it back to normality.

Mr. JAVITS. Mr. President, I join Senator CHURCH in urging the Senate to act promptly to lift foreign aid restrictions against Uganda. I commend him for his leadership on this issue. It is entirely appropriate that he should now be urging Congress to end these restrictions, since he has played a major role in protesting the terrible regime of Idi Amin.

Mr. President, last year Congress banned both trade and aid with Uganda, but it attached a waiver to the trade restriction permitting the President to resume trade when the human rights situation improved in the country. This has now happened and the President has acted. Congress responded to the downfall of Idi Amin by initiating legislation to remove aid restrictions. However, there were some differences between the House and Senate versions. The Senate lifted all restrictions. The House maintained restrictions on military assistance and on funds from the economic support fund.

In conference, these differences were reconciled, as the conference report notes, and the House adopted the conference report by a vote of 280 to 69 on September 7, 1979. The final compromise would end all economic restrictions, while the ban on military assistance would remain in force. This is a compromise that I believe the Senate should support. It allows us to send humanitarian aid to Uganda, which is urgently needed, and at the same time permits us to see how events unfold in Uganda before we wipe the slate clean.

I urge my colleagues in the Senate to support this compromise as a way of showing our approval for the improve-

ment of the human rights situation, to extend a helping hand to people in need, and to strengthen our links with a country in Africa that justly deserves our sympathy and support.

Mr. CHURCH. Mr. President, I thank the Senator from New York for his generous remarks and for his help in bringing about a resolution of the Uganda issue.

I want to mention the presence on the floor of the able and distinguished senior Senator from Oregon (Mr. HATFIELD). Perhaps more than any other Senator, it was Mr. HATFIELD who expressed the outrage and summoned to the fore the conscience of the Senate in such a way as to cause Congress to impose the embargo against further American trade with Uganda, which, I believe, contributed in a very material way to the undoing of Idi Amin. I should not want this moment to pass without recognizing the very important contribution that the distinguished Senator from Oregon made and the leadership that he gave to this worthy cause.

Mr. HATFIELD. Will the Senator yield?

Mr. CHURCH. I am happy to yield.

Mr. HATFIELD. Mr. President, the chairman of the Committee on Foreign Relations, my very good friend and neighbor, Senator CHURCH, of Idaho, has been more than generous in his comments relating to my role in the matter of concern over the regime of Idi Amin and subsequent events that took place here on the floor of the Senate; namely, the boycott and, later, the lifting of those sanctions.

Mr. President, I rise to acknowledge the leadership that has been demonstrated by the chairman of the Committee on Foreign Relations and the ranking minority member, the distinguished Senator from New York (Mr. JAVITS), and to thank them for enduring these long months during which we have been associated and involved in this matter. We may have disagreed from time to time on the mechanism or the timing, but there was never any question in my mind that there was, certainly, the same compassion and concern in the hearts and minds of these gentlemen as I attempted to exhibit as well.

We never had any difference of opinion, in my view, as to the goal and the objectives. I think what they have labored now long and very diligently to bring to this floor as a conference report is an excellent compromise, one which I heartily endorse.

More especially, I want to endorse again the special character of these two gentlemen, who, throughout the entire efforts, always demonstrated that deep concern about their fellow human beings in Uganda. Senator JAVITS has long been involved in civil rights and humanitarian programs, as has Senator CHURCH.

I think that, many times, we become so involved with our neighborhood and our own city, our State, our Nation, that we forget about the problem of human rights in other parts of the world. That has not been so with Senator CHURCH and Senator JAVITS. Whatever the front may be—Africa, the Middle East, Europe, Latin America, Asia, any part of the world that there has been a human rights problem or issue—these gentlemen have been in the forefront of defending the rights of people and advocating actions that will help secure those rights. Therefore, I take this occasion to thank these gentlemen and say I consider it a privilege to have been associated with them in bringing about the culmination of the question on Uganda.

Mr. JAVITS. Will the Senator yield to me?

Mr. CHURCH. Yes.

Mr. JAVITS. Mr. President, I want to thank Senator HATFIELD. I was associated with him long before he came to the Senate, when he was Governor of Oregon. One of the most admirable traits of a politician is unity of character. I know of no one in the Senate who showed that unity of character in his dedication and constancy of beliefs than Senator HATFIELD, and he has had very rough moments.

I thank him very much.

Mr. HATFIELD. I thank the Senator, very much.

Mr. CHURCH. Mr. President, I join with Senator JAVITS in that tribute to our colleague. I join wholeheartedly and reiterate that of all of those who participated in the effort to cut off economic ties with Idi Amin in the hope of weakening his regime and ultimately to bring about his downfall, no one was more correctly on course from beginning to end than the Senator from Oregon.

Mr. President, I move that the Senate adopt the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

ARMS CONTROL AUTHORIZATIONS—CONFERENCE REPORT

Mr. CHURCH. Mr. President, I submit a report of the committee of conference on H.R. 2774 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. MATSUNAGA). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2774) to authorize appropriations for fiscal years 1980 and 1981 under the Arms Control and Disarmament Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 2, 1979.)

Mr. CHURCH. Mr. President, on May 1, 1979, the Senate approved this legislation by unanimous consent. On July 31, the committee of conference met to resolve differences between the House and Senate versions of this bill. The primary points of difference involved the fiscal year 1981 authorization figure, grants for arms control education and training, a study of the economic impact of U.S. arms and arms control policies, and restrictions with respect to the appointment of military officers to high positions within ACDA.

Mr. President, I believe that the committee of conference made the necessary compromises to equitably resolve these differences. The bill as reported by the conference: First, authorizes $18,876,000 in expenditures for the Arms Control and Disarmament Agency in fiscal year 1980, and $20,645,000 for fiscal year 1981; and second, prohibits the appointment of an active duty commissioned officer of the U.S. Armed Forces as Director or Deputy Director of ACDA.

Mr. President, I want to first yield to my colleague, the able Senator from New York, (Mr. JAVITS), before I move the adoption of the conference report.

Mr. JAVITS. Mr. President, I join Senator CHURCH in recommending that the Senate adopt the conference report on H.R. 2774. The Senate members of the committee of conference made every effort to uphold the Senate version of this legislation and to keep the authorization levels within the executive branch's original request.

Mr. President, I ask that the joint statement of managers be printed in the RECORD at this point.

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

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2774) to authorize appropriations for fiscal years 1980 and 1981 under the Arms Control and Disagreement Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

AUTHORIZATION OF APPROPRIATIONS

The conference substitute contains authorizations for appropriations for the Arms Control and Disarmament Agency (ACDA) for fiscal years 1980 and 1981. For fiscal year 1980, the committee of conference adopted a figure of $18,876,000, which is the same as the Senate figure and the executive branch request and $400,000 below the figure recommended by the House. For fiscal year 1981, the committee of conference adopted the

House figure of $20,645,000, which differed from the Senate recommendation and the executive branch request, both of which provided "such sums as may be necessary" for fiscal year 1981. The committee of conference also authorized for both fiscal years such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other non-discretionary costs, and to offset adverse fluctuations in foreign currency exchange rates.

GRANTS FOR EDUCATION AND TRAINING

The House bill added a new section 38 to the Arms Control and Disarmament Act which provided the Director of ACDA with discretionary authority to make grants to institutions of higher education, nonprofit organizations, and public agencies for the purpose of supporting programs in arms control education and training.

The Senate bill did not contain a comparable provision.

The committee of conference adopted the Senate position.

After considerable discussion, the committee of conference concluded that fiscal and budgetary constraints precluded present adoption of this provision. In doing so, the conference committee recognizes the many desirable merits of the provision and urges ACDA to give full and favorable consideration to request such authority in future budget submissions to Congress.

ECONOMIC IMPACT STUDY

Section 4 of the Senate bill required the Director of ACDA, in consultation with appropriate officials of the departments and other agencies of the United States, to conduct a comprehensive study of (1) the impact of military expenditures on the economy of the United States, including but not limited to the impact on the economic factors of inflation, balancing the Federal budget, industrial employment, civilian research and development, civilian industrial productivity, corporate profits, and balance of payments and (2) the impact of such economic factors on national defense policy decisions regarding the procurement of weapons, the size of force structure, troop deployments outside the United States, arms control policy, personnel policies, and conventional arms sales, as well as such other aspects of the national defense posture of the United States as the Director of ACDA may deem relevant.

The House bill did not contain a comparable provision.

The committee of conference adopted the House position.

In not mandating the study due to present budgetary constraints on the Agency, the committee of conference recognizes the merits of providing information to Congress concerning the relationship between the Nation's economic situation and some of the factors cited in the Senate provision.

Accordingly, the committee of conference urged ACDA to give consideration to do a study along the lines of the Senate provision.

RESTRICTIONS WITH RESPECT TO THE APPOINTMENT OF MILITARY OFFICERS

(a) The Senate amendment amended Sections 22 and 23 of the Arms Control and Disarmament Act to prohibit the appointment of an active duty commissioned officer of the U.S. Armed Forces as Director or Deputy Director of ACDA.

The House bill did not contain a comparable provision.

The committee of conference adopted the Senate provision.

(b) The Senate amendment added a new Section 28 to the Arms Control and Disarmament Act to prohibit the two positions of Director and Deputy Director to be occupied simultaneously by persons who, within the preceding 10 years, have been relieved of duty as commissioned officers of regular components of the Armed Forces or have become retired officers of the Armed Forces.

The House did not contain a comparable provision.

The committee of conference adopted the House position.

FRANK CHURCH,
C. PELL,
G. MCGOVERN,
JOHN GLENN,
J. JAVITS,
C. H. PERCY,
JESSE HELMS,
Managers on the Part of the Senate.

CLEMENT J. ZABLOCKI,
L. H. FOUNTAIN,
L. L. WOLFF,
GUS YATRON,
GERRY E. STUDDS,
TONY P. HALL,
HOWARD WOLPE,
WM. BROOMFIELD,
EDWARD J. DERWINSKI,
LARRY WINN, Jr.,
Managers on the Part of the House.

Mr. CHURCH. Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider two nominations at the desk that have been reported from the Committee on the Judiciary and which have been cleared with the minority and which deal with judgeships in West Virginia.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

THE JUDICIARY

The second assistant legislatlve clerk read the nomination of Robert J. Staker, of West Virginia, to be U.S. district judge for the southern district of West Virginia.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

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

The motion to lay on the table was agreed to.

The second assistant legislative clerk read the nomination of James M. Sprouse, of West Virginia, to be U.S. circuit judge for the Fourth Circuit.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominees.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

EAGLETON GETS RESULTS

Mr. PROXMIRE. Mr. President, our distinguished colleagues (Mr. EAGLETON) is known as a man of very deep conviction and a man who has a great heart. He believes very deeply we should do more, and he has worked so hard to have the Congress of the United States and this country do more, for the so-called boat people, the refugees of Southeast Asia, and he deserves great credit for that.

An article in the New York Times appeared on Sunday which indicates he not only has a heart, but he also, as so often, is very successful in getting things accomplished.

I will just read a couple of paragraphs from that article:

With Hope, as in Bob, needed only a mention of the idea and the judicious use of the right connections to whip together a Kennedy Center benefit for the Vietnamese boat people in just under two weeks.

It all started when the entertainer, back from China where he was making a television special, mentioned to Senator Thomas F. Eagleton that he would like to do something for the boat people.

Senator Eagleton, a Missouri Democrat, got in touch with John E. McCarthy, executive director of the Migration and Refugee Services, who talked with William T. Hannan.

And more quickly than you can say Dorothy Lamour, the Bob Hope Refugee Gala was put together.

Mr. President, I ask unanimous consent that this article be printed in full in the RECORD.

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

[From the New York Times, Sept. 9, 1979]

A CAPITAL GALA AS PRODUCED BY THE RIGHT CONTACTS

(By Karen De Witt)

Washington, September 3.—With Hope, as in Bob, it needed only a mention of the idea and the judicious use of the right connections to whip together a Kennedy Center benefit for the Vietnamese boat people in just under two weeks.

It all started when the entertainer, back from China where he was making a television special, mentioned to Senator Thomas F. Eagleton that he would like to do something for the boat people.

Senator Eagleton, a Missouri Democrat, got in touch with John E. McCarthy, executive director of the Migration and Refugee Services, who talked with William T. Hannan, a lawyer with O'Connor and Hannan, who has a knack for expediting things through the right contacts, something he ascribes to being a third-generation Washingtonian.

"ON THE ROAD" TO A BENEFIT

And more quickly than you can say Dorothy Lamour, the Bob Hope Refugee Gala was put together, the John F. Kennedy Center for the Performing Arts engaged for on Tuesday night, advertisements placed with local television and radio stations, invitations mailed, and acceptances from some 2,000 political and business leaders accepted.

"It has rolled along so well because of the wish of the officials in Washington to show their concern for the plight and situation of the refugees," Mr. Hannan explained.

Mr. Hope had said that his schedule would allow him to be in the city this Tuesday and that he would arrange for a special premiere of his television special, "The Road to China," for the benefit. The cause was good, but organizing time was short, especially with the Labor Day weekend intervening.

Initially, Mr. Hannan said, the major problem was a place for the benefit. Everything was booked, including the auditoriums of several local universities. There were discussions with Ambassador Dick Clark about using the State Department auditorium, but it turned out to be unavailable, and anyway its use by private groups was illegal.

Mr. Hannan, who is underwriting the $40,000 cost of the event, then talked with Roger Stevens, director of the Kennedy Center. A rehearsal of the National Symphony Orchestra was moved up, making the center's 2,700-foot concert hall available for the charity, free of charge. Mr. Stevens also offered the center's Atrium for a pre-performance reception and made ticket-buying for the event easier by offering the services of the center's Ticketron.

General admission was set at $10, and there were to be 200 box seats at $500 and 400 orchestra seats at $100 each.

But the group was confronted with the problem of getting the tickets printed, said Mr. Hannan, who describes himself as the "chief negotiator" of the event, under the direction of Mr. McCarthy.

But a public relations firm, Luketon, was engaged to advertise the event. On the Friday before Labor Day it finally looked as if it would all come together.

Mr. Hannan and his fellow "negotiators" managed to get 7,000 tickets and envelopes printed on Saturday, and family and friends and people who owed favors all sat down on Sunday and hand-addressed 3,000 of them. Letter-grams were sent to major corporations asking for their support.

On Labor Day another problem arose: where to get stamps on a day when the Post Office is closed. Mr. Hannan said he called an Undersecretary of Commerce who would remain nameless, that the Undersecretary located the employee who had the key to the stamp safe at the post office and facilitated the purchase of $4,000 worth of stamps.

OUT-CASTING CENTRAL CASTING

Mr. Hannan had already put together a 20-member committee for the event that included Mayor Marion S. Barry Jr.; Kenneth M. Crosby, board chairman and international vice president for Merrill Lynch; H. E. Alejandro Orfila, Secretary General of the O.A.S.; Cardinal John R. Quinn, Archbishop of San Francisco and president of the National Conference of Catholic Bishops, and Edward Bennett Williams, a lawyer and the owner of the Baltimore Orioles and president of the Washington Redskins. Vice President Mondale is the honorary chairman of the charity, sponsored by the Migration and Refugee Services, U.S. Catholic Conference, and Ambassador Clark is one of the cochairmen.

"It took 10 minutes on the phone. Everyone was electric in their response," said Mr. Hannan, the man with the right connections.

EXIT TRIUMPHANT

Still there was entertainment to be put together for the reception. Mr. Hannan called Representative Thomas P. O'Neill Jr., Speaker of the House, who wrangled the use of the Marine band for the two-hour pre-show reception. And there were 48 hours to be spent in getting permission for the projectors required for Mr. Hope's television special to be set up in the Presidential box.

The obstacles have all been overcome now. And by Friday most of the general seats were sold, and half of the box and orchestra seats had been engaged.

"This will roll along just fine, with the grace of God," said Mr. Hannan.

EXPORT-IMPORT BANK PRENOTIFICATION COVERING LOAN TO TAIWAN

Mr. PROXMIRE. Mr. President, I call to the attention of my colleagues a communication I have received from the Export-Import Bank pursuant to section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, notifying the Senate of a proposed direct credit of $115,353,500 to assist the export from the United States of goods and services to be used in the construction of an oil-fired 500 megawatt thermal powerplant in Taiwan. Section 2(b)(3)(i) of the act requires the Bank to notify the Congress of proposed loans or financial guarantees in an amount of $100,000,000 or more at least 25 days of continuous session of the Congress prior to the date of final approval. Upon expiration of this period, the Bank may give final approval to the transaction unless the Congress adopts legislation to preclude such approval.

In this case, the Bank proposes to extend a direct loan to Taipower, the Taiwan Power Co., which is 95 percent government-owned, to assist the purchase of a steam boiler, a turbine generator set, related auxiliary equipment and spares for the project at Hsiehho on the northern coast of Taiwan. The plant will supply 4 percent of the electricity needs for Taiwan. U.S. services will include design engineering and ocean freight charges on U.S.-flag vessels. The loan will cover 85 percent of the cost of the project and will bear interest at the rate of 7.75 percent per annum, payable semi-annually in 20 installments beginning February 28, 1984.

Mr. President, I ask unanimous consent that the letter from the Export-Import Bank pertaining to this transaction be printed in the RECORD.

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

EXPORT-IMPORT BANK
OF THE UNITED STATES,
Washington, D.C., August 22, 1979.

Hon. WALTER F. MONDALE,
President of the Senate, U.S. Capitol, Washington, D.C.

DEAR MR. PRESIDENT: Pursuant to Section 2(b)(3)(i) of the Export-Import Bank Act of 1945, as amended, Eximbank hereby submits a statement to the United States Senate with respect to the following transaction involving U.S. exports to Taiwan.

A. Description of Transaction.

1. Purpose.

Eximbank is prepared to make a credit of $115,353,500 available to Taiwan Power Company (Taipower) to assist Taipower in the purchaso from United States suppliers of turbine generating equipment, a steam boiler, related equipment and services for use in the construction of an oil-fired 500 MW thermal power plant located at Hsiehho on the northern coast of Taiwan.

While no equipment suppliers have yet been selected, it is known that Westinghouse Electric Corporation is bidding to supply the generating equipment and Babcock and Wilcox for the steam boiler equipment.

The total project cost of the plant is $279,700,000 of which the total cost of the U.S. goods and services is estimated to be $135,710,000. Taipower will obtain loans from local banks and government agencies for the local cost of the project, and will also provide its own funds for the project.

2. Identity of the Parties.

Taipower, organized in 1946, is a corporation 95 percent owned by the governing authorities on Taiwan and its political subdivisions. It has the sole responsibility for the supply of electricity throughout the island of Taiwan. Taipower is one of the largest users of Eximbank's programs for its U.S. purchases and has maintained an excellent credit relationship with Eximbank. The Eximbank credit will be made through a U.S. commercial bank or, as permitted under the Taiwan Relations Act and Executive Order No. 12143, through the American Institute in Taiwan, to the Coordination Council for North American Affairs on behalf of Taipower.

The Coordination Council for North American Affairs acting on behalf of the governing authorities on Taiwan will unconditionally guarantee payment of Taipower's indebtedness under the direct credit.

3. Nature and Use of Goods and Services.

The goods to be exported from the United States include a steam boiler, a turbine generator set, related auxiliary equipment and spares. The U.S. originated services consist of design engineering and ocean freight charges on U.S. flag vessels.

The U.S. goods and services will provide for a 500 MW oil-fired thermal power plant, located on the northern coast of Taiwan. The plant will supply approximately 4% of Taiwan's electricity needs. The plant will burn oil to be supplied under a long-term contract with the government-owned Chinese Petroleum Company.

B. Explanation of Eximbank Financing.

1. Reasons.

The Eximbank direct credit of $115,353,500 will facilitate the export of $135,710,000 of United States goods and services.

Eximbank perceives no adverse impact on the United States economy from the export of these goods and services. This transaction will have a favorable impact on employment for substantial numbers of United States workers, as well as on the United States balance of trade. None of the goods to be exported is in short supply in the United States.

The domestic market for conventional power equipment has been well below the United States productive capacity. Foreign orders, therefore, have become a vital portion of United States thermal power equipment manufacturers' business and enable those manufacturers to retain specialized engineering and technical staffs and production work forces. Westinghouse has informed us that the equipment it would be supplying would require 1,146 man years of work at its facilities in Lester, Pennsylvania and East Pittsburgh, Pennsylvania where

the unemployment rate in each locale is 7.5 percent (as of February, 1979). Babcock and Wilcox, which is bidding on the steam boiler and related equipment, estimates that 1,600 man years of work will be required to manufacture such goods, if it is the successful bidder, and such work can be performed at its facilities located in the Canton, Ohio area where the unemployment rate is 6.1 percent (as of February, 1979), Paris, Texas where the unemployment rate is 5.5 percent (as of February, 1979), Beaver Falls, Pennsylvania where the unemployment rate is 5.3 percent (as of February, 1979), Augusta and Brunswick, Georgia where the unemployment rate is 5.9 percent (as of February, 1979), and West Point, Mississippi where the unemployment rate is 6.3 percent (as of February, 1979). In addition, 45 subcontractors located in 10 states throughout the United States would be supplying equipment.

In this transaction, there is a total term of 14 years consisting of a 4-year construction period and a ten-year repayment period. Private financing, which is only available on a shorter repayment term, is inadequate to meet the total financial requirements of this project and the Eximbank direct credit is necessary in order to generate sufficient financing for the U.S. sales.

The United States suppliers have had a long beneficial relationship with Taipower as a result of their dependable performance and superior technology. However, today manufacturers in nearly all of the industrial countries are fully capable of supplying all or nearly all of the goods and services for the power plant, and in most instances at prices substantially below the cost of the U.S. goods and services. In the past, Eximbank has received information that suppliers in Japan, Switzerland, United Kingdom and West Germany, with the strong support of the official export credit agencies in each of these countries, submitted bids for the procurement of major equipment categories for projects similar to the plant. Most were lower in price than the comparable U.S. costs. Taipower has informed Eximbank that the Japanese are offering very favorable financial terms.

In view of the magnitude of the transaction and the necessary repayment term, Eximbank's credit is necessary to secure this sale for United States suppliers.

2. The Financing Plan.

The total cost of United States goods and services to be purchased by Taipower will be financed as follows:

	Amount	*Percent of U.S. costs*
Cash	$20,356,000	15.0
Eximbank credit	115,353,500	85.0
Total	135,710,000	100.0

(a) Eximbank Charges.

The Eximbank credit will bear interest at the rate of 7.75% per annum, payable semiannually. A commitment fee of 0.5% per annum will also be charged on the undisbursed portion of the Eximbank credit.

(b) Repayment Terms.

The Eximbank credit will be repaid by Taipower in 20 semiannual installments beginning February 28, 1984.

Sincerely,

JOHN L. MOORE, Jr.

THE OLDEST POLITICAL PRISONER: THE GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, on April 25 of this year the Milwaukee Journal published a cartoon by Bill Sanders. It depicted a tour group with their guide in a cellar hall of the Capitol—the six tourists staring in disbelief at a gloomy prison-like window at the base of a granite wall. From behind the bars peer two lonely, forsaken eyes. Motioning toward the window the guide explains:

And here we have the oldest political prisoner of the US Senate—the UN treaty on genocide!

Why is such a grave subject portrayed in comic form? The answer, Mr. President, is that this distinguished body has failed to give genocide its proper label as the most heinous and reprehensible of international crimes.

Instead, the Genocide Treaty remains submerged, trapped like a prisoner in the catacombs of the Capitol. Failure to ratify the treaty is a blemish on the Senate's record. Indeed, this failure is a distressing spectacle for all to observe. As the tour group gazes in disbelief at the eyes peeking out from the darkness, so, too, does world opinion frown on the Senate's reluctance to accede to the Genocide Convention.

Let us rid America of this political liability. I ask my colleagues to consider this treaty, which has already been ratified by 83 other nations. We must reinstate our Nation's credibility as a leader in the field of human rights.

Genocide is not a proper subject for a cartoon. The right to live is no comic matter. Yet so long as we refuse to ratify the Genocide Treaty, we are mocked when we wave the banner of human rights. We are in a vulnerable position.

America has been inconsistent in its record on human rights. It is time we act to erase these contradictions. It is time we stop making our failure to ratify the Genocide Treaty the subject of a political cartoon.

DARWIN LAMBERT ESSAY ON HERBERT HOOVER

Mr. HATFIELD. Mr. President, yesterday, I had the privilege to place in the RECORD an essay written by Darwin Lambert of Luray, Va. The essay, entitled "The Rapidan Facet of Herbert Hoover," was submitted by Mr. Lambert as part of the series of essays commemorating the 50th anniversary of the inauguration of Herbert Hoover as our 31st President.

Mr. Lambert, a free lance writer by trade, requested that his interests in the essay be protected to the maximum possible extent, and copyright indicators were written at the beginning and the end of the essay. Unfortunately, the copyright indicators were inadvertently dropped from the essay when it was printed in the CONGRESSIONAL RECORD.

Mr. Lambert's essay begins on page 23917 of the September 10, 1979 CONGRESSIONAL RECORD. I wish to inform all readers of the RECORD that Mr. Lambert owns the copyright on this essay, which was prepared in 1979. He reserves all rights in connection with its reprinting.

SIDNEY YATES—AN ADVOCATE OF THE ARTS

Mr. PERCY. Mr. President, I bring to the attention of my colleagues an article which appears in yesterday's Washington Star entitled, "Sidney Yates—Monitoring the Arts' Money." SID YATES, who has represented the Ninth Congressional District of Illinois for over 30 years, serves as chairman of the House Appropriations Subcommittee on the Interior, which legislates funding for the arts and humanities. In this role he has won the respect of his colleagues and the experts in these fields by exhibiting a superior knowledge and deep concern for the present and future role of the arts and humanities in our society. As chairman of the National Endowment of the Humanities, Joseph Duffey states, SID YATES is a person "whose advocacy for the arts and humanities goes beyond simple rhetoric, a person who leaves a trail of respect for his seriousness of inquiry and efforts." From years of personal experience with SIDNEY YATES, I certainly agree with this statement, and ask unanimous consent that the Washington Star article be printed in the RECORD.

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

SIDNEY YATES—MONITORING THE ARTS' MONEY

(By Ruth Dean)

Sidney R. Yates has come to be regarded unofficially as "Mr. Moneybags for the Arts." But after 30 years in Congress, it's typical for this veteran Illinois Democrat to deflect such a reference to his unquestioned influence on the House Appropriations Committee.

"Well, it's only a small moneybags, really," he says. "Government funding is only one of the ways in which the arts are funded. I would assume corporate contributions make up a great deal of contributions to the arts.

"And the tax deductions we give to schools and colleges, to museums and to arts institutions and galleries, I would guess would make up by far the greatest contributions to the arts and humanities. I've often tried to find a way of computing what that might amount to, but IRS says there is no way they can figure it because it's so extensive."

Yates, chairman of the House Appropriations subcommittee on the interior and related agencies, is an unassuming, friendly, relaxed man—a mixture of soft charm and sharp perception. He talks in low, measured tones, slowly choosing just the right words. But when something sparks his interest—and almost anything can—then his words come rapidly as he reminisces with a smile.

He teases a photographer for being so quiet at her task. "You were very surreptitious," he laughingly accuses. Then he begins to recall. "I used to study photography myself, at the School of Design in Chicago, back in the '30s when Moholy-Nagy headed it. He had just come from the Bauhaus. Georgy Kepes was there too, and some of the photographers from the Farm Security Agency who'd done such marvelous work during the Depression. And we had to work on various aspects of composition. That was fun. I had my own darkroom for a while. But it's too tough now, you people do too much.

"It's kinda like the time I played basketball at the University of Chicago. It was kind of fun. I remember one score, playing against a team that became the Big Ten conference champions. It was 6–4 at the half. Now you see what the scores are like today. So, you see they've made improvements in everything."

Growing up in Chicago, Yates didn't have

to learn a musical instrument, though he picked up the guitar somewhere along the line and describes himself as "an oompah guitarist." His sister did play the piano, and his family loved music. "And as it happened," he says, "my brother-in-law was in the business of selling phonographs and records. So we used to have records of the operas and the symphonies going. And I'd read about them. As a growing-up experience, that impressed me with the values I have today in appreciation of the arts."

Of course, the arts and humanities are only a small part of the budget packages with which Yates deals as subcommittee chairman. But their budgets have escalated to the point that the House, in its pre-August recess vote authorizing the $10.2 billion Interior appropriations bill for fiscal 1980, included an appropriation of $154.4 million for the National Endowment for the Arts and $150.1 million for the National Endowment for the Humanities. Yates floor-managed the bill.

In an uncharacteristically dramatic way, the arts thrust Yates into the headlines last May during the 1980 budget hearings for the endowments when he expressed his "disappointment" with two controversial reports he had ordered from the House Appropriation investigative staff on the workings of the two endowments.

The reports were critical of the two agencies' operations. Perhaps their most damaging accusation, in the eyes of both endowments was the use of the code word "closed circle" to describe practice of an elitist philosophy in choosing grants panelists. Incensed at the conflict-of-interest innuendo, NEA chairman Livingston Biddle Jr. and NEH chairman Joseph Duffey returned to the hearings with lengthy rebuttals of their own, refuting "the flaws" in the reports.

Yates was sympathetic. Even four months later, his thoughts on the subject are unchanged. The reports contained a great deal of "useful material," but tended to "accent the negative" without reporting on the good work done by both agencies, which he thinks was unfortunate.

"They gave a mis-impression, which I thought tended to be unfair," he says, "which is why I brought the reports before the hearing and gave the endowments the opportunity for review and rebuttal. In the future I think our investigative staff will look at and bring forward the good things that are done by agencies as well as the bad. We want to know both."

The 70-year-old Yates is well respected by his colleagues, his staff and arts officials. He's "the boss" to his staff, who put in as many long hours as he does.

"The staff is nutty about him; everyone just adores him," says Mary Anderson Bain, his administrative assistant, longtime supporter and friend, who managed several of his campaigns including his unsuccessful 1962 bid to upset the late Sen. Everett McKinley Dirksen. It was his only political defeat in 30 years of politics. When he returned to the House in 1965, she came with him. No, he says, he'll "never run for the Senate again." He's too happy with what he's doing now.

"I'm very lucky," he reflects. "Members of Congress go through their service frequently serving on committees that are not as interesting to them as others might be. I'm very fortunate in having been able to be on the subcommittee of the Appropriations Committee that permits me to work with the subjects in which I have very great interest.

"And that throws me into contact immediately with the exhibitions that take place in the Washington community, and people throughout the country who have established communication with me."

Despite the drama of last May's hearings, including a surprise appearance by Rep. Shirley Chisholm on behalf of the Black Caucus to protest endowment practices—later refuted—there were no television Klieg lights, just the early May sunshine streaming through the room's basement windows.

Though interested in the potential of television and the movies as art forms he frankly believes both endowments could do more for, Yates is a private person who shuns the limelight of evening TV newscasts. His committee assistants, Fred Mohrman and Mike Dorf, zealously guard his privacy and wishes. If he embargoes a report, mum is the word from them until time for release. Print reporters are allowed into his modest-sized hearing room, just off his subcommittee office, but they have to scramble for seats along with the rest of the public.

The buzz of talks dies to a hush as the tall, slender silvery-haired Yates walks in and takes his place at the long hearing table in the front of the room. His deep-set, electric-blue eyes quickly take in the room and its occupants at a glance as he dons his spectacles and begins the hearing with a welcome to witnesses.

His questions reveal an analytical mind that suffers fools lightly. He cuts right through bureaucratic gobbledygook with get-to-the-point bluntness. And woe betide a witness, or even a colleague, who grandstands or veers away from the subject. Yates ignores them and picks up the beat of the main discussion as if there had been no preceding interruption. He never raises his voice.

He is kind if he gets a witness who is obviously flustered. A little dry humor does the trick. Sometimes the witness turns the tables. NEA deputy chairman Mary Ann Tighe made him laugh when she told him, "I'm ready for you this year."

Yates constantly surprises testifying witnesses with his knowledge and memory of their fields, whether the arts, humanities, museums, national parks or public lands—especially when he quotes them statistics from a previous year that they should have on the tip of the tongue themselves.

"Well, I know a little bit about a number of things," he says, "and fortunately I have a good memory and I can remember the few things that I know."

His boyhood in Chicago "fortunately was in the days before television, and we used to read," he recalls. "As in all big cities, they had branch libraries in all the neighborhoods. And when I was in grammar school particularly, we used to go to the library, and in addition to trading cards that had all the baseball players on them, we used to trade books with people who had books we wanted to read. That was kind of the sporty thing to do. So we came to read a lot."

Yates was "quite an athlete" in his youth, says his wife, Adeline ("Addie" to him and their friends). She fondly recalls meeting him when he was counselor at a summer camp her brother attended. They met when the family came for a visit, kept in touch and married a few years later after she had finished college ("I transferred from Wisconsin to Northwestern because I didn't want him to get away") and he had completed his law studies at the University of Chicago. They have one son, Stephen, now an associate judge of Cook County.

The congressman confines his love of the outdoors now to golf. A new silver trophy on a table in his office proclaims his winning of this year's Congressional Golf Tournament.

Talking about his musical interests, he says, "I have a collection of the folk songs of many of the countries. I like folk songs because I like to indulge in group singing. I learned to strum on a guitar and I know a few of the chords. Fortunately most of the folk songs are susceptible of being sung in one key like the key of C. So occasionally we get together with a group of friends, but I'd much prefer to have one of them play the piano."

Yates is also an art collector, but says it is a small collection he has acquired through the years. It includes a Joni Mitchell and a Picasso. One of his favorites, a painting in wine tones by Peruvian artist Fernando Szylo, hangs on his office wall.

Despite putting in some long days, Yates says that after 30 years in Congress, he has learned to "balance" his life between work, family and friends, and needed recreation.

"He does his homework" has become a byword that is almost a definition of his reputation on Capitol Hill.

Liv Biddle sees him as "immensely knowledgeable about the whole spectrum of the arts, objective in his views, sympathetic to the whole process of greater support for the arts within the limits of his budgetary oversight."

Joe Duffey thinks he is "one of only two or three members of Congress whose advocacy for the arts and humanities goes beyond simply rhetoric, a person who leaves a trail of respect for his seriousness of inquiry and efforts."

Duffey's predecessor, former NEH chairman Ronald Berman, now teaching at the University of California at San Diego, thinks Yates "is terrific. I always thought of him as the highest type of person you could find in Congress. He does his homework. There are two ways you get help from Sid—in hearings and in private discussion in which he covers the ground."

However, Berman expresses his unhappiness with the present state of the arts, expressing his conviction that the Carter administration has "politicized the arts. Just look at the list of grantees. They really belong on the HEW mailing list. What it amounts to is subsidization of literally hundreds of small bureaucracies throughout the country that have nothing to do with the arts."

Asked for his reaction to Berman's views, Yates says, "My concern is that the arts don't be politicized. And I think that's the concern of every member of our committee, and that's good. I'm not sure I understand or would agree with Berman's view. I would like to have the specifics he's talking about rather than the generalities."

There will always be a conflict between those who say that the arts funding should go to a few professionals and thus a limited group, and those who say that arts support should be widespread. Yates points out, "And I think that the endowments' authorizing legislation intends that both of those purposes be fostered. Not only that the old-line, well-established arts and humanities institutions be helped, but that the impact of federal assistance in the arts and humanities be widespread throughout the country. And I think the endowments are trying to do that."

U.S. POLICY IN ANGOLA

Mr. TSONGAS. Mr. President, if one looks at the evening Washington Star, there is a story entitled "Angola's Leader Dies in Moscow."

I suppose one could question what relevance that has to the United States, but let me give a brief synopsis of what is taking place.

Angola, like many former Portuguese colonies, went through a great period of transition wih difficulty, mainly because the Portuguese pulled out all or a good number of their trained personnel and left no provisions for training Africans, which was not an unusual incident in colonial history.

There was a civil war. We, as usual, backed the wrong side; and then President Neto came to power, and he came to power with the backing of the Soviets. Our team, if you will, was defeated, despite the efforts of then-Secretary of State Kissinger and the previous administration.

Subsequent to that, the Cubans came to Angola, apparently to put the civil war behind them, but also, it is argued, to insure a certain atmosphere in which, for example, Gulf Oil could go into Angola and drill and explore and produce oil.

President Neto discovered, as any self-respecting African would in time, that the Soviet embrace was offensive; and Neto, in time, in order to get the Cubans out, and for obvious economic reasons, let it be known that he was interested in a relationship with the United States—as indeed I think any African would who seeks to be truly nonalined.

This is the same President Neto who was very cooperative on the issue of Namibia. While South Africa sent its troops into Angola on raids, Neto continued, despite that provocation, to work with the Western Powers to try to resolve the issue of Namibia. But what happened?

Neto sent out signals that he wanted a rapprochement with the United States; and virtually all the experts in the United States who follow Angola in the State Department and elsewhere, were obviously intrigued by the idea. It was decided in the White House not to do it. It was decided not to do it because of a conservative backlash.

Now Neto is dead; and that opportunity to wean a Marxist state away from the Soviets was lost by this administration because it did not have the guts to do what made sense, because they were afraid of a conservative backlash.

As someone who spent 2 years in Africa, I think, in all modesty, that I know it as well as anybody else in the Senate. I am not worried about the Soviets. I am worried about ourselves. Ethiopia, where I served for 2 years, is a classic example of the United States snatching defeat from the jaws of victory.

Neto, of the two MPLA factions, was by far the moderate, and now the anti-West, antiwhite faction that he defeated has another opportunity.

What is an African leader going to think about the United States and its refusal to respond to overtures of nonalinement? It is too late now. He is dead, and we do not know what is going to happen in Angola.

Not only has Neto died, but, in some respects, his death casts a shadow over this country's Third World policy. With Andy Young—who had credibility in the Third World—gone, I really lament our situation, because I believe the Soviets are now going to have opportunities in Angola that they did not have under Neto. They will have opportunities in Africa not because of what they do right but because of what we do wrong.

It seems to me that, at some point, the United States should stop giving the Soviets entree into Africa. I am sorry that President Neto is dead, but I am more sorry that we do not have the courage of our convictions.

I thank the majority leader for yielding.

EXECUTIVE SESSION—REMOVAL OF INJUNCTION OF SECRECY FROM PROTOCOLS FOR THE FIFTH EXTENSION OF THE INTERNATIONAL WHEAT AGREEMENT, 1971 (EXECUTIVE FF, 96–1)

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the protocols for the fifth extension of the International Wheat Agreement, 1971 (executive FF, 96th Congress, first session) transmitted to the Senate today by the President of the United States, and ask that the protocols be considered as having been read the first time, referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Protocols for the Fifth Extension of the Wheat Trade Convention (WTC) and Food Aid Convention (FAC) constituting the International Wheat Agreement, 1971. The Protocols were adopted by a conference which met in London on March 21–22, 1979 and were open for signature in Washington from April 25 through May 16, 1979.

I transmit also, for the information of the Senate, the report of the Secretary of State with respect to the Protocols.

The WTC Protocol extends that Convention until June 30, 1981, maintains the framework for international cooperation in wheat trade matters, and continues the existence of the International Wheat Council.

The FAC Protocol extends until June 30, 1981, the parties' commitments to provide minimum annual quantities of food aid to developing countries.

Declarations of Provisional Application of both Protocols were deposited by the United States on July 15, 1979, thus permitting the United States to continue full and active participation in the International Wheat Council and Food Aid Committee. This step was necessary to reduce the risk of expiration of the International Wheat Agreement. The WTC Protocol requires deposit of instruments of ratification or declarations of provisional application by June 22, 1979, on behalf of governments of wheat-exporting member nations holding at least 60 percent of the exporter votes and on behalf of importing member nations holding at least 50 percent of importer votes for the extension to enter into force on July 1, 1979. The FAC Protocol requires entry into force of the WTC Protocol and deposit of instruments of ratification or provisional application by all Parties by June 22.

I hope that the Senate will give early and favorable consideration to the two Protocols so that ratification by the United States can be effected at an early date. Doing so will demonstrate our continued commitment to cooperation on international wheat trade matters and to providing food aid to needy developing nations.

JIMMY CARTER.

THE WHITE HOUSE, *September 11, 1979.*

OLYMPIC RECORDS OF THE LATE JAMES (JIM) THORPE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 328, which I believe has been cleared on all sides.

Mr. STEVENS. Mr. President, the Senator from West Virginia is correct.

Mr. ROBERT C. BYRD. I thank the distinguished acting Republican leader.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 29) regarding the restoration of Olympic records of the late James (Jim) Thorpe.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution was considered and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 29

Whereas the Amateur Athletic Union of 1975 restored the amateur status of James (Jim) Thorpe for the years 1909–1912; and

Whereas the United States Olympic Committee forwarded this restoration to the International Olympic Committee: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the International Olympic Committee officially recognize Jim Thorpe's achievements in the 1912 pentathlon and decathlon events and restore these records to the offical Olympic books; and be it further

Resolved, That it is the sense of the Congress that the International Olympic Committee be requested to present duplicate medals to the heirs of Jim Thorpe.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

ORDER FOR RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders have been recognized under the standing order—I believe the order has been entered that the time of the two leaders be reduced to 5 minutes each—Mr. TSONGAS be recognized for not to exceed 15 minutes and Mr. BENTSEN be recognized for not to exceed 15 minutes.

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

ORDER FOR CONSIDERATION TOMORROW OF THE SECOND CONCURRENT BUDGET RESOLUTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two Senators aforementioned on tomorrow, the Senate then proceed to the consideration of the second concurrent budget resolution.

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

DEMOCRATIC CONFERENCE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I call to the attention of my colleagues on this side of the aisle that there will be a Democratic conference tomorrow, in room 207, at 10:30 a.m., and it has to do with the second concurrent budget resolution.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, on tomorrow, the Senate will come in at 1 p.m.

After the two leaders or their designees have been recognized under the standing order for not to exceed 5 minutes each, Messrs. TSONGAS and BENTSEN will be recognized, each for not to exceed 15 minutes, after which the Senate will proceed to the consideration of Calendar No. 327, Senate Concurrent Resolution 36, the second concurrent budget resolution.

Rollcall votes are anticipated, and the Senate could be in late.

RECESS UNTIL 1 P.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 1 p.m. tomorrow.

The motion was agreed to; and at 6:28 p.m., the Senate recessed until tomorrow, Wednesday, September 12, 1979, at 1 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 11, 1979:

THE JUDICIARY

James M. Sprouse, of West Virginia, to be U.S. circuit judge for the fourth circuit.

Robert J. Staker, of West Virginia, to be U.S. district judge for the southern district of West Virginia.

HOUSE OF REPRESENTATIVES—*Tuesday, September 11, 1979*

The House met at 12 o'clock noon.

Dr. Henry Dudley Rucker, the Solid Rock Baptist Church of Christ, Manhattan, N.Y., offered the following prayer:

Eternal God, we come today asking Thy blessings upon this great body, this body that is responsible for the creation of legislation here in the United States of America.

Move them we pray Thee, to give greater attention to the needs of the poor throughout America and also throughout the world. Move them to create a meaningful way for more aid and benefits for the poor people, for the aged people and for those of us, great God, who are seeking and crying and dying for justice.

Move them, we pray Thee, to unite and stand together with the President of this Nation, because these are dangerous times. America's future is at stake. America is at a crossroads.

Help us, we pray Thee, to overcome the dangers to our freedom. Help us, we pray Thee, to know that we are all children of God. Bless this great body that they might create the kind of atmosphere in this Nation that would bring about peace throughout the world.

We ask that Thou will have mercy plentifully upon all of these great minds, that they might find ways and means to overcome ignorance, the lack of quality education, move them to attack the unemployment situation in America, because unemployment creates pain, disease, and death unnecessarily.

We beg of Thee to move our President in such a way that he will have the mercy of Abraham Lincoln, the tenacity of Harry S Truman, the fearlessness of John F. Kennedy, and the intellect of Thomas Jefferson.

Hear our prayer, we pray Thee, for human rights around the world. Men, women, and children are dying every day because of the simple lack of human rights.

We beg of Thee, in the name of Moses, Jesus. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) entitled "An act making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes," and that the Senate agreed to the House amendments to the Senate amendments numbered 1, 23, 24, 29, and 64, and that the Senate receded from its amendments numbered 26, to the foregoing bill.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4392) entitled "An act making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending September 30, 1980, and for other purposes," and that the Senate agreed to the House amendments to the Senate amendments numbered 1, 8, and 37 and that the Senate receded from its amendment numbered 30, to the foregoing bill.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 658. An act to correct technical errors, clarify and make minor substantive changes to Public Law 95–598.

APPOINTMENT OF CONFEREES ON H.R. 4387, AGRICULTURE, RURAL DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS, 1980

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4387) making appropriations for Agriculture, Rural Development, and related agencies programs for the fiscal year ending September 30, 1980, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. ROUSSELOT. Reserving the right to object, Mr. Speaker, could the gentleman explain what is occurring here?

Mr. WHITTEN. It is just a matter of going to conference.

Mr. ROUSSELOT. Period?

Mr. WHITTEN. That is right.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi? The Chair hears none, and appoints the following conferees: Messrs. WHITTEN, BURLISON, TRAXLER, ALEXANDER, MCHUGH, NATCHER, HIGHTOWER, JENRETTE, ANDREWS of North Dakota, ROBINSON, MYERS of Indiana, and CONTE.

DR. HENRY DUDLEY RUCKER

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, it is with a great deal of pleasure and sense of honor that I have the privilege of acknowledging the presence and welcoming to these