tion to and from work; and to provide an additional exemption for income tax purposes for a taxpayer or spouse who is disabled; to the Committee on Ways and Means.

By Mr. JARMAN:

H.R. 14151. A bill to protect interstate and foreign commerce by prohibiting the movement in such commerce of horses which are "sored," and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. KASTENMEIER:

H.R. 14152. A bill to amend title II of the Social Security Act to provide a 25-percent across-the-board increase in benefits thereunder, with a minimum primary benefit of $110 and subsequent cost-of-living increases, and to raise the amount individuals may earn without suffering loss of benefits; to amend title XVIII of such act to make health insurance benefits available without regard to age to all individuals receiving cash benefits based on disability, and to provide coverage for qualified drugs under part B of such title; and to authorize appropriations to finance the cost of these changes; to the Committee on Ways and Means.

By Mr. LONG of Maryland:

H.R. 14153. A bill to amend title II of the Social Security Act to provide a 15-percent across-the-board increase in the monthly benefits payable thereunder, with a minimum primary benefit of $80, and for other purposes; to the Committee on Ways and Means.

By Mr. MOLLOHAN:

H.R. 14154. A bill to amend the Randolph-Sheppard Act for the blind so as to make certain improvements therein, and for other purposes; to the Committee on Education and Labor.

H.R. 14155. A bill to modify ammunition recordkeeping requirements; to the Committee on Ways and Means.

By Mr. QUIE:

H.R. 14156. A bill to exclude from Federal income taxation amounts received under insurance contracts for increased living expenses necessitated by damage to or destruction of an individual's residence; to the Committee on Ways and Means.

By Mr. QUILLEN:

H.R. 14157. A bill to provide for the orderly marketing of flat glass imported into the United States by affording foreign supplying nations a fair share of the growth or change in the U.S. flat glass market; to the Committee on Ways and Means.

By Mr. ROYBAL:

H.R. 14158. A bill to amend title XVIII of the Social Security Act to provide that payment may be made under the hospital insurance program for emergency inpatient hospital services furnished in Canada or Mexico regardless of where the emergency occurred; to the Committee on Ways and Means.

By Mr. KIRWAN:

H.R. 14159. A bill making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers-Civil, the Panama Canal, the Federal Water Pollution Control Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1970, and for other purposes.

By Mr. ASHLEY:

H.R. 14160. A bill to provide additional mortgage credit, and for other purposes; to the Committee on Banking and Currency.

By Mr. BROTZMAN:

H.R. 14161. A bill to protect interstate and foreign commerce by prohibiting the movement in such commerce of horses which are "sored," and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. COLLIER:

H.R. 14162. A bill to amend the Social Security Act to provide an increase in benefits under the old-age, survivors, and disability insurance program, provide for automatic benefit increases thereafter in the event of future increases in the cost of living, provide for future automatic increases in the earnings and contribution base, and for other purposes; to the Committee on Ways and Means.

By Mr. CUNNINGHAM:

H.R. 14163. A bill to provide for the distribution to the several States, for display to the public in museums and other appropriate institutions, samples of the lunar rocks and other lunar materials brought back by the Apollo 11 mission; to the Committee on Science and Astronautics.

By Mr. DE LA GARZA:

H.R. 14164. A bill to amend title II of the Social Security Act so as to remove the limitation upon the amount of outside income which an individual may earn while receiving benefits thereunder; to the Committee on Ways and Means.

By Mr. ICHORD:

H.R. 14165. A bill to provide for the orderly marketing of flat glass imported into the United States by affording foreign supplying nations a fair share of the growth or change in the U.S. flat glass market; to the Committee on Ways and Means.

By Mr. MacGREGOR:

H.R. 14166. A bill to provide for the prototype construction of a commercial supersonic transport airplane, and for other purposes; to the Committee on Interstate and Foreign Commerce.

H.R. 14167. A bill to amend section 274 of the Atomic Energy Act of 1954 to allow the imposition by a State of more restrictive standards relating to the discharge into the navigable waters of the United States of radioactive materials; to the Joint Committee on Atomic Energy.

By Mr. POAGE:

H.R. 14168. A bill to extend the act establishing Federal agricultural services to Guam; to the Committee on Agriculture.

By Mr. SISK:

H.R. 14169. A bill to amend section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, in order to remove certain restrictions against domestic wine under title I of such act; to the Committee on Agriculture.

By Mr. STAGGERS:

H.R. 14170. A bill to amend section 13a of the Interstate Commerce Act, to authorize a study of essential railroad passenger service by the Secretary of Transportation, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. TIERNAN:

H. Con. Res. 396. Concurrent resolution expressing the sense of the Congress relating to the withdrawal of U.S. Forces from South Vietnam; to the Committee on Foreign Affairs.

By Mr. VANIK:

H. Res. 563. Resolution to establish a Select Committee on Post-War National Priorities; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ICHORD:

H.R. 14171. A bill to except Col. Alexander M. Hearn, U.S. Marine Corps (retired), from the application of the provisions of section 283, title 18, United States Code; to the Committee on the Judiciary.

By Mr. KEITH:

H.R. 14172. A bill for the relief of Maria dos Anjos Branco Silva and her minor children Jose, Octavio, and Germina; to the Committee on the Judiciary.

SENATE—*Thursday, October 2, 1969*

The Senate met at 11 o'clock a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, our Father and Preserver, we give Thee thanks that of Thy goodness Thou hast watched over us during the night that is past and brought us to this new day; and we beseech Thee to renew and strengthen us by Thy spirit as we dedicate ourselves to Thy service.

Uphold this Nation in all her righteous endeavors. Draw together the broken multitude into one united people strong in the Lord and in the power of His might that the good life may be fulfilled in all men. Protect the protectors of our safety and guard the guardians of our lives and property that our ways may be the way of peace and justice. Give wisdom to all who teach and all who are taught that the young may be nurtured in Thy truth and qualified to lead in the days of promise and hope into which Thy providence guides us.

In Thy holy name we pray. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate.

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 2, 1969.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. ALLEN thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, October 1, 1969, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in

relation to the transaction of routine morning business be limited to 3 minutes.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered. The nominations on the Executive Calendar will be stated.

NATIONAL COUNCIL ON THE ARTS

The assistant legislative clerk read the nomination of Nancy Hanks, of New York, to be Chairman of the National Council on the Arts.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF JUSTICE

The assistant legislative clerk proceeded to read sundry nominations in the Department of Justice.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

GREETINGS TO SENATOR MANSFIELD

Mr. SCOTT. Mr. President, I ask unanimous consent to extend the greetings of the Senate to the distinguished majority leader, to welcome him back, and to find him in excellent health.

Mr. MANSFIELD. I thank the Senator.

The ACTING PRESIDENT pro tempore. We are delighted to have the majority leader back in the Senate.

Mr. MANSFIELD. I thank the minority leader and the Chair.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FORMER SENATOR HAYDEN'S 92D BIRTHDAY ANNIVERSARY

Mr. GOLDWATER. Mr. President, I invite the attention of the Senate to the fact that today is the 92d birthday anniversary of our esteemed former colleague, Carl Hayden, and at this moment a little celebration is going on in observance of his birthday at the Hayden Library at Arizona State University at Tempe, Ariz.

I thought perhaps some of my colleagues might wish to send him a telegram or something, because not many men reach that age, particularly with the great veneration he commands.

EXECUTIVE COMMUNICATIONS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSED AMENDMENT TO THE BUDGET, 1970, FOR DISASTER RELIEF

A communication from the President of the United States, transmitting an amendment to the budget for the fiscal year 1970, in the amount of $125 million, for disaster relief (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

PROPOSED FAMILY ASSISTANCE ACT OF 1969

A letter from the Secretary, Department of Health, Education, and Welfare, transmitting a draft of proposed legislation to authorize a family assistance plan providing basic benefits to low-income families with children, to provide incentives for employment and training to improve the capacity for employment of members of such families, to achieve greater uniformity of treatment of recipients under the Federal-State public assistance programs and to otherwise improve such programs, and for other purposes (with accompanying papers); to the Committee on Finance.

REPORT OF CLAIMS OF EMPLOYEES FOR DAMAGE CLAIMS SETTLED BY THE DEPARTMENT OF COMMERCE, 1969

A letter from the Assistant Secretary of Commerce, transmitting, pursuant to law, reporting on claims of employees for damage to or loss of personal property sustained by them incident to their service which the Department of Commerce settled during fiscal year 1969 (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

Two letters from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders suspending deportation of certain aliens, together with a statement of the facts and pertinent provisions of law pertaining to each alien, and the reasons for ordering such suspension (with accompanying papers); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting admission into the United States of certain defector aliens (with accompanying papers); to the Committee on the Judiciary.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Harry D. Steward, of California, to be U.S. attorney for the southern district of California; and

Jack V. Richardson, of Kansas, to be U.S. marshal for the district of Kansas.

By Mr. LONG, from the Committee on Commerce:

Helen D. Bentley, of Maryland, to be a Federal Maritime Commissioner.

By Mr. CANNON, from the Committee on Commerce:

Secor D. Browne, of Massachusetts, to be a member of the Civil Aeronautics Board; and

Isabel A. Burgess, of Arizona, to be a member of the National Transportation Safety Board.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 533. A bill for the relief of Barbara Rogerson Marmor (Rept. No. 91–437);

S. 2096. A bill for the relief of Dr. George Alexander Karadimos (Rept. No. 91–438);

S. 2231. A bill for the relief of Dr. In Bae Yoon (Rept. No. 91–439);

S. 2443. A bill for the relief of Dr. Silvio Mejia Millan (Rept. No. 91–440);

H.R. 3165. An act for the relief of Martin H. Loeffler (Rept. No. 91–441); and

H.R. 3560 An act for the relief of Arie Rudolf Busch (also known as Harry Bush) (Rept. No. 91–442).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 1775. A bill for the relief of Cora S. Villaruel (Rept. No. 91–444).

By Mr. EASTLAND, from the Committee on the Judiciary, with amendments:

S. 1797. A bill for the relief of Dr. Wagih Mohammed Abel Bari (Rept. No. 91–443).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

H.J. Res. 851. Joint resolution to request the President of the United States to issue a proclamation calling for a "Day of Bread" and "Harvest Festival" (Rept. No. 91–446).

By Mr. HRUSKA, from the Committee on the Judiciary, with an amendment:

S. 476. A bill for the relief of Mrs. Marjorie Zuck (Rept. No. 91–445).

By Mr. McCLELLAN, from the Committee on the Judiciary, without amendment:

S.J. Res. 143. Joint resolution extending the duration of copyright protection in certain cases (Rept. No. 91–447).

By Mr. TYDINGS, from the Committee on the Judiciary, with an amendment:

S. 981. A bill to amend title 28 of the United States Code to provide that the U.S. District Court for the district of Maryland shall sit at one additional place (Rept. No. 91-448); and

S. 1508. A bill to improve judicial machinery by amending provisions of law relating to the retirement of justices and judges of the United States (Rept. No. 91-449).

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. CURTIS:

S. 2983. A bill to amend the Federal Meat Inspection Act to give any State an additional year to develop and enforce an effective inspection program for meat and meat food products that are distributed wholly within such State, and for other purposes; to the Committee on Agriculture and Forestry.

(The remarks of Mr. CURTIS when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. FANNIN:

S. 2984. A bill to permit certain service performed as a temporary employee of the field service of the Post Office Department to be counted toward civil service retirement; to the Committee on Post Office and Civil Service.

By Mr. JACKSON (for himself and Mr. ALLOTT) (by request):

S. 2985. A bill to improve the administration of the National Park System by the Secretary of the Interior, and to clarify the authorities applicable to the System, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. SCOTT (for himself, Mr. BROOKE, Mr. DOMINICK, Mr. GRIFFIN, Mr. HANSEN, Mr. JAVITS, Mr. PROUTY, Mr. SCHWEIKER, and Mr. STEVENS):

S. 2986. A bill to authorize a family assistance plan providing basic benefits to low-income families with children, to provide incentives for employment and training to improve the capacity for employment of members of such families, to achieve greater uniformity of treatment of recipients under the Federal-State public assistance programs and to otherwise improve such programs, and for other purposes; to the Committee on Finance.

(The remarks of Mr. SCOTT when he introduced the bill appear in the RECORD under the appropriate heading.)

By Mr. BENNETT:

S. 2987. A bill for the relief of Alba Cristina Asserbauer Pirez; to the Committee on the Judiciary.

By Mr. HARTKE (for himself and Mr. MCGEE):

S. 2988. A bill to amend title 5, United States Code, relating to civil service retirement; to the Committee on Post Office and Civil Service.

By Mr. GOODELL:

S. 2989. A bill to permit the vessel *Marpole* to be documented for use in the coastwise trade; to the Committee on Commerce.

S. 2983—INTRODUCTION OF A BILL AMENDING THE FEDERAL MEAT INSPECTION ACT

Mr. CURTIS. Mr. President, just 21 months ago, in December 1967, the Wholesome Meat Act, a great milestone in consumer protection, was signed into law. The act was designed to provide a cooperative Federal-State program of meat inspection that would guarantee a uniformly high standard of purity and wholesomeness in meat or meat products slaughtered or processed for sale anywhere within the United States.

Since the passage of that act the States have made impressive strides in bringing their individual inspection systems up to Federal standards. Every one of the 50 States has either passed a new meat inspection law, amended its old law, or is now considering in its legislature a new or amended statute. Forty-four States and the Commonwealth of Puerto Rico have signed cooperative meat inspection agreements with the U.S. Department of Agriculture. Since January 1 of this year the States have initiated inspection in 1,200 plants that were previously uninspected. There are today a total of 9,079 plants under State inspection. The States are also making impressive strides in hiring and training new personnel for their programs. And more than $20 million have been budgeted by the States for plant inspection during fiscal year 1970.

However, while much has been done, much remains to be done. On December 15 of this year the Secretary of Agriculture must determine whether each State has a system of meat inspection "at least equal" to the Federal system. If the State does not have such a system fully operative but is making good progress toward it, the Secretary may extend the time for developing such a system to December 15, 1970.

I believe that it will be unfortunate if the Secretary of Agriculture is forced to take over intrastate meat inspection. The Wholesome Meat Act was designed to establish a cooperative Federal-State system of inspection. We should give the act every chance to do just that.

Under a cooperative Federal State system small plant operators may have the benefit of more responsive state inspection. It is much easier for local plants to have their plans approved and their inspection administered by State officials who are within the range of convenient communication and transportation arrangements.

Moreover, if the Federal Government is forced to take over all State meat inspection activities the additional cost will run upward of $50 million.

The legislation which I introduce today (S. 2983) will do three things. It will give each State an additional year in which to achieve an inspection system equal or better than the Federal system. The legislation will also grant a further 3-year exemption from inspection to some small business concerns to allow them opportunity to bring their intrastate facilities up to Federal standards. Finally, this legislation will allow inspected packing plants to perform exempt custom slaughter and processing of livestock for a producer's individual use.

As I have pointed out, the States are making impressive efforts to create high standards of meat inspection in accordance with the spirit of the Wholesome Meat Act. However, in many of these States biennial legislatures have just passed or are just in the process of passing or amending their meat inspection laws. The implementation and the financing of these programs will take time. If we cut these States off too soon, others may feel that their efforts are not worthwhile. Hasty action can produce a domino effect in which State inspection systems and the concept of Federal-State cooperative inspection fall by the wayside. Extending the final time that may be allowed for compliance to December 15, 1971, will allow biennial legislatures to meet to implement and finance the systems which they have now established or are establishing.

I believe that it is also necessary to provide a short-term exemption for small operators that will allow them to bring their intrastate plants up to Federal or at least equal State standards.

I am thinking of the small plants in my own State and in other States which slaughter and process only for local citizens and local markets. Under the present law these plants will have to comply with Federal standards which are incorporated in the proposed new Federal meat inspection regulations, or at least equal State requirements, not later than December 15, 1969, or December 15, 1970, if the Secretary grants the additional year to the State.

However, the proposed Federal meat inspection regulations were only published on August 14 of this year. It may be after January 1, 1970, before they become effective. It will take an incredible effort for operators of small plants just to ascertain whether their facilities now comply with such standards. And the problems of changing facilities to meet the requirements that are finally adopted and of financing such changes simply cannot be solved in the time now permitted.

The operators of the plants who would benefit from this exemption do a relatively small business, less than $250,000 gross a year. They are reputable members of the local community and they are known by their customers in that community. The purpose of this exemption is not to allow them to operate indefinitely at a lower standard but to allow them time to obtain the advice and financing necessary to reach a higher standard.

Finally, legislation I have introduced would relieve current provisions in the law as to custom slaughtering and preparation of meat products for limited use by a livestock owner. The present law allows custom slaughter and preparation of meat products for such uses without Federal inspection, but only if the slaughterer does not engage in any other slaughtering or processing activities.

The legislation I propose, numbered S. 2983, follows what I believe is a fair and sensible route. Under it custom slaughter activities could be exempted from the inspection requirements that apply to a plant's commercial operations. The Secretary would be authorized to

issue regulations to assure that custom slaughtered meat is kept strictly separate from meat that is held for sale.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 2983) to amend the Federal Meat Inspection Act to give any State an additional year to develop and enforce an effective inspection program for meat and meat food products that are distributed wholly within such State, and for other purposes, introduced by Mr. CURTIS, was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

S. 2985—INTRODUCTION OF A BILL IMPROVING THE ADMINISTRATION OF THE NATIONAL PARK SYSTEM

Mr. JACKSON. Mr. President, on behalf of the Senator from Colorado (Mr. ALLOTT) and myself I introduce, for appropriate reference, a bill to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes.

This measure was submitted and recommended by the Department of the Interior and I ask unanimous consent that the letter from the Secretary of the Interior accompanying the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the letter will be printed in the RECORD.

The bill (S. 2985), to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes, introduced by Mr. JACKSON (for himself and Mr. ALLOTT) (by request), was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

The letter furnished by Mr. JACKSON follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 23, 1969.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To improve the administration of the National Park System by the Secretary of the Interior, and to clarify the authorities applicable to the System, and for other purposes."

We recommend that this bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The national park concept in the United States had as its genesis the establishment of Yellowstone National Park in 1872 (17 Stat. 32; 16 U.S.C. § 21 *et seq.*) Some 44 years later the National Park Service was created to: "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations. . . ." (39 Stat. 535; 16 U.S.C. § 1)

The years since that time have been witness to an increased national awareness of our heritage which has expanded and varied the nature and quality of resources which the American people demand as the focus of that awareness. Since 1916 the National Park Service has been honored by the trust bestowed for administration of areas containing superb natural, historic, and recreational resources. This maturing process has, however, resulted in vestiges of the separate origins which are anachronism today. The proposed bill would clearly unify all these areas, and insure a greater measure of uniformity by clarification of existing general authorities, as well as adding new authorities to assist in administration.

Section 1 of the bill consists of a legislative recognition of the growth of the National Park System, and a declaration of the close relationship of the distinct, yet interrelated areas, and of the part they play as expressions of our national heritage.

Section 2 of the bill amends the Act of August 8, 1953 (67 Stat. 496), which defines the term "National Park Systems". The amendment would redefine National Park System to mean all areas administered by the Secretary through the National Park Service. "National Park System" is currently defined only in terms of six specific types of areas (16 U.S.C. § 1(c)). Other types of areas, administered pursuant to cooperative agreement, are excluded from that definition but are defined as "Miscellaneous areas", while others, such as recreational areas, are not involved at all. The statutory references in the bill are to authorities which should be applicable in aid of unified administration, as follows:

1. General National Park Service authority
2. Rights-of-way
3. Donations of land and money
4. Roads and trails
5. Approach roads
6. Conveyance of roads to states
7. Acquisition of inholdings
8. Aid to visitors in emergencies
9. Arrests
10. Services to the public, emergency supplies and services to concessioners, acceptability of travelers checks, and care and removal of indigents
11. Concessions
12. The land and Water Conservation Fund
13. General sellback and leaseback authority (except in national parks or national monuments of scientific significance) and general exchange authority

Section 3 of the draft bill provides the Secretary with authority to undertake certain activities, as follows:

(a) Transportation for employees and their families at isolated situations could be provided. There are, at present, situations in which restrictions on use of leave time, access to shopping, and so on, caused by distance from the lack of transportation to the nearest convenient areas, constitutes a condition of employment amounting to a penalty, (such as at Isle Royale National Park and Fort Jefferson National Monument). The authority would be exercised where adequate commercial transportation is not available and only where incidental to official transportation services.

(b) Provide recreation facilities for employees and their families at isolated situations. The authority would be similar to that given the Forest Service in Public Law 87–867 (76 Stat. 1157).

(c) Appoint advisory committees to advise the Director on matters concerning existing programs and to bring about a greater public understanding of such programs. Members shall receive no compensation, but may be reimbursed for necessary travel expenses.

(d) This extends the provisions regarding "waterproof footwear" (45 Stat. 238) to other field equipment, and clarifies existing authority as to items such as safety glasses, foul weather gear, wet suits, safety shoes and other specialized footwear, chaps, scuba gear, etc.

(e) This paragraph would authorize contracts to provide services and property such as water, at reasonable rates, for visitor facilities which may be located outside the boundaries of a unit of the National Park System.

(f) This provision would enable the National Park Service to equip certain special purpose vehicles, such as U.S. Park Police cruisers, patrol vehicles in remote desert areas, etc., with air conditioners. These are especially needed in park police cruisers where officers spend many hours patrolling the national capital parks. Similar authority with respect to vehicles used by the Washington Metropolitan Police is contained in the District of Columbia Appropriation Act for Fiscal Year 1969.

(g) In the interpretation of certain historical properties, Washington's Birthplace at Wakefield, Virginia, for example, and in providing meaningful environmental exposure to urban visitors, the National Park Service operates as interpretive facilities such exhibits as living farms. Products and services from these facilities, such as eggs, vegetables, and breeding stock can, under this authority, be sold without regard to the surplus property procedures of existing law, and the proceeds credited to the appropriation which funds the National Park Service interpretive activity, rather than being credited to miscellaneous receipts in the Treasury as required under existing law.

(h) This provision authorizes the National Park Service to transport children from nearby communities to organized interpretive and recreational programs in the parks. For example, under such authority children from Washington, D.C., metropolitan area could be transported to Prince William Forest Park for organized camping and outdoor recreation. Similar authority exists for transportation to assemblies called by the Secretary of Agriculture in the furtherance of his extension services.

Section 4. This amendment to section 1 of the 1948 Act would remove the requirement of exclusive or concurrent jurisdiction as to park police arrest authority. Since the arrest authority is for *Federal* crimes on *Federal* property, the present requirement is unnecessary and results in a confusion of the authority.

Piscataway Park, which is in the National Capital Region, is partly within Prince Georges County, and partly within Charles County, Maryland. Likewise, Prince William Forest Park is partly within Prince William County and partly within Stafford County, Virginia. Park police arrest authority does not extend to Charles County, or to Stafford and Prince William Counties. The amendment would add these counties to the definition of "environs of the District of Columbia" in section 3 of the 1948 Act.

All of these authorities will greatly assist us in providing for the American people and, indeed, the people of the World, service commensurate with the extraordinarily fine and unique resources administered by the National Park Service.

The Bureau of the Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

S. 2986—INTRODUCTION OF THE FAMILY ASSISTANCE ACT OF 1969

Mr. SCOTT. Mr. President, I introduce on behalf of myself, and other Senators, "The Family Assistance Act of 1969," comprehensive legislation addressed to one of our most serious do-

mestic problems. This bill constitutes one of the most important domestic initiatives which the Nixon administration will undertake. It embodies the administration's proposals for a complete overhaul of our present, highly unsatisfactory welfare system. President Nixon did not overstate the case when he termed the welfare system a colossal failure and a huge monster. No one is happy with welfare as it now exists—neither the taxpaying American, administrators at the Federal, State, and local levels of government, nor the recipients themselves.

Most of the problems in the existing system center around the program known as AFDC—aid to families with dependent children. In a period of increasing prosperity, and decreasing unemployment, this program has grown steadily. Since 1960, its cost has tripled, and the number of recipients has more than doubled. This program is now responsible for payments to 6,500,000 persons. Yet this program is basically unfair. It is unfair to men who work hard for low wages. It is unfair to families that stay together, instead of breaking up. It is unfair to people who live in different States, some of whom receive a payment of $39 a month, and others of whom receive as much as $163 a month.

After a great deal of study, the administration has concluded that the best way to remedy these problems is to establish a uniform Federal payment—a family assistance payment—to families with children and with comparable amounts of income. This is not a guaranteed income program. Persons who do not accept work or training opportunities will not be eligible for payments. It is a program that guarantees that help will be available for any family, with children, where the breadwinner uses his best efforts. It is designed as a program to encourage people to help themselves. The incentives to have earnings, and to increase earnings, are large.

Under this plan, the basic benefit for a family with no income would be $500 for each of the first two persons in the family, and $300 for each additional one. Thus, in the case of a family of four without income, payments of $1,600 annually would be available. The first $720—based on $60 a month—of annual earnings, would not result in any reduction in the basic family assistance benefit. This would ordinarily cover the expenses of employment so that an individual would not be disadvantaged by going to work. Above this level, a dollar of earnings would result in only a 50-cent reduction in benefits. For each dollar of unearned income, there would be only a 50-cent reduction, thus providing a monetary incentive for child support, and for more stable work effort by individuals so that higher unemployment compensation benefits would be available.

The food stamp program which was proposed by the President, and for which legislation has now been passed by this body, will enhance the benefits available. The comprehensive manpower and training bill will make more available training opportunities in relation to local labor markets, and the opportunity for placement of welfare recipients in the type of training program most likely to fit them for available jobs. This bill will complement both programs. With regard to the latter, this bill provides funds to help defray training costs, and it vastly expands—compared with present programs—the authority for day care. Any unemployed person who is able to work or take training will be required to register with the State employment services. An exception is made in the case of mothers of children under 6 whose acceptance of training or employment is voluntary.

Under the existing system there is, as I pointed out, a very wide variation in payments. It would be unfair to significantly reduce the amount of assistance being received by individual families today. This bill, accordingly, contains provisions for State supplementation so that persons will not lose under the new arrangement. Obviously, the intact working families who are eligible for nothing today will gain, and greater equity will result.

In the program for the aged, blind, and disabled, Federal matching is materially improved. The Federal Government would provide 100 percent of the first $50 of payment per individual, 50 percent for the next $15, and 25 percent of the amount above $65. Of vital importance is the principle of a minimum income floor that would be established for the first time. As a condition for receiving Federal grants, the States would have to assure that each aged, blind or disabled individual would have at least $90 from his assistance payment and other income each month.

The bill has been designed to assure some fiscal relief under the welfare programs as compared with existing law. It includes provisions that the Federal Government will reimburse the States for any required non-Federal expenditures that exceed 90 percent of what their expenditures would be under existing law. At the same time, other provisions assure that States will expend at least one-half as much as they are spending at present. These provisions, coupled with the revenue-sharing proposals of this administration, will aid hard-pressed State treasuries.

Out of new expenditures of approximately $5 billion—$4 billion under the bill that I have introduced and $1 billion of direct revenue sharing—the savings to State treasuries is estimated at $1.7 billion, one-third of the total. The remaining expenditures will go primarily to the recipients of family assistance payments, for training costs and day care and for administration and other items.

The bill makes minimal changes in the existing provisions for social services to families. This, I understand, will be the subject of later proposals. Similarly, the bill makes only minimal changes in the medicaid program which is now under intensive review by the Department of Health, Education, and Welfare.

Mr. President, the welfare proposals contained in this bill are designed to correct four basic evils in the present system—evils which provide strong incentives for abuse. It corrects the evil inequities between male and female-headed families which today provide an incentive for them to leave home. It corrects the inequities today between the idle and the working poor which presently provide an incentive for idleness. It requires recipients to accept available work or training and provides expanded training in day care services to make this possible.

Mr. President, this bill is long; it is complex. Not all may agree with the details of every provision. Certain refinements may be suggested in committee, and on the floor. Yet, overall, I believe these proposals constitute a major improvement in the way in which we deal with one of our most troublesome problems. They warrant fully the most careful consideration by all of us, leading to enactment.

For the first time since the 1930's the emphasis in Federal programs has shifted from the merely custodial to the remedial. President Nixon recognizes that the Federal dole is demeaning to human dignity, and only encourages a cycle of dependence from one generation to the next. This bill is vitally essential to the successful implementation of his stated goal to "assist millions of Americans out of poverty and into productivity."

I am pleased to have joining me as cosponsors in this effort the following distinguished Senators: Mr. GRIFFIN of Michigan, Mr. BROOKE of Massachusetts, Mr. DOMINICK of Colorado, Mr. HANSEN of Wyoming, Mr. PROUTY of Vermont, Mr. SCHWEIKER of Pennsylvania, Mr. STEVENS of Alaska, Mr. JAVITS of New York, and Mr. PERCY of Illinois.

Mr. President, I ask that an explanatory statement by Health, Education, and Welfare Secretary Robert H. Finch, and a section-by-section analysis of the Family Assistance Act of 1969 be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the explanatory statement and section-by-section analysis will be printed in the RECORD.

The bill (S. 2986), to authorize a family assistance plan providing basic benefits to low-income families with children to provide incentives for employment and training to improve the capacity for employment of members of such families, to achieve greater uniformity of treatment of recipients under the Federal-State public assistance programs and to otherwise improve such programs, and for other purposes, introduced by Mr. SCOTT (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Finance.

The material furnished by Mr. SCOTT follows:

STATEMENT OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ROBERT H. FINCH, IN EXPLANATION OF THE FAMILY ASSISTANCE ACT OF 1969

The Family Assistance Plan is a revolutionary effort to reform a welfare system in crisis. With this program and the Adminis-

tration's proposed Food Stamp plan, the Federal Government launches a new strategy—*an income strategy*—to deal with our most critical domestic problems. For those among the poor who can become self-supporting, this strategy offers an avenue to greater income through expanded work incentives, training, and employment opportunities. For those who cannot work, there is a more adequate level of Federal support.

If the Family Assistance and Food Stamp proposals are enacted, we will have reduced the poverty gap in this country by some 59 percent. In other words, these two programs taken together will cut by almost 60 percent the difference between the total income of all poor Americans and the total amount they would have to earn in order to rise out of poverty. In one particular category of the poor, that of couples over 65 years of age, the Family Assistance Plan will in fact raise recipients' incomes above the poverty line altogether. This income strategy includes an Administration proposal for a 10 percent increase in Social Security benefits, coupled with an automatic cost of living escalator. This is a real war on poverty and not just a skirmish.

I. THE FAILURE OF WELFARE

On August 8 the President addressed the nation and called the present welfare system a failure. He said:

"Whether measured by the anguish of the poor themselves, or by the drastically mounting burden on the taxpayer, the present welfare system has to be judged a colossal failure....

"What began on a small scale in the depression 30's has become a huge monster in the prosperous 60's. And the tragedy is not only that it is bringing States and cities to the brink of financial disaster, but also that it is failing to meet the elementary human social and financial needs of the poor."

The failure of the system is most evident in the recent increases in welfare costs and caseloads. In this decade alone, total costs for the four federally-aided welfare programs have more than doubled, to a level now of about $6 billion.

In the Aid for Families with Dependent Children program (AFDC), costs have more than tripled since 1960 (to about $4 billion at the present time) and the number of recipients has more than doubled (to some 6.2 million persons). Even more disturbing is the fact that the *proportion* of persons on AFDC is growing. In the 15 years since 1955, the proportion of children receiving assistance has doubled—from 30 children per 1,000 to about 60 per 1,000 at present.

Prospects for the future show no likelihood for relief from the present upward spiral. By conservative estimates, AFDC costs will double again by Fiscal Year 1975, and caseloads will increase by 50 to 60 percent. Yet, the great irony is that despite these crushing costs, benefits remain below adequate levels in most States.

Moreover, the present AFDC program is built to fail. It embodies a set of inequities which help to cause its own destruction. First, it is characterized by unjustifiable discrepancies as between regions of the country. With no national standards for benefit levels and eligibility practices, AFDC payments now vary from an average of $39 per month for a family of four in Mississippi to $263 for such a family in New Jersey.

Second, it is inequitable in its treatment of male-headed families as opposed to those headed by a female. In no State is a male-headed family, where the mother is also in the home and the father is working full time for poverty wages, eligible for AFDC. In half the States, even families headed by unemployed males are still not eligible under the AFDC–UF program. On the other hand, families in poverty headed by women working full or part-time are almost universally covered. The result of this unfortunate discrimination is the creation of a powerful economic incentive for the father to leave home so that the State may better support his family than he can. For example, if a father employed full time in a low wage job is able to earn only $2000 per year, and welfare in the State would pay a fatherless family $3000 per year, his wife and children are financially 50 percent better off if he leaves home. And this financial incentive has taken its toll. In 1940, only 30 percent of the families on AFDC had absent fathers, but today the figure stands at over 70 percent.

Third, AFDC imposes inequities between those who work and those who do not. Because families in poverty headed by working men are not covered, it is easily possible for such a working family to be less well off than the welfare family. And what could be more debilitating to the motivation to work to see the opportunity for one's family to be better off on welfare? Moreover, the present system further undercuts the incentive to work by reducing welfare payments too rapidly and by too much as the head of the household begins to work.

II. THE FAMILY ASSISTANCE PLAN

This Administration began its formal inquiries into welfare reform even before the inauguration. From the report of the Transition Task Force on Welfare to the present time, a number of reform proposals have been considered. The final result reflects the best efforts of many different people in and out of government and in different Federal agencies.

This analysis led us to the conclusion that revolutionary *structural reform* in the system is required. The first priority of the Family Assistance Plan has been to remove, or at least minimize the inequities of present welfare policies. It is designed to strengthen family life and incentives for employment. This strategy may not pay off immediately, but unless this investment is made now, fundamental reform will be even more expensive in the future.

The Family Assistance Plan provides fiscal relief for hard pressed States and at the same time raises benefit levels for recipients in those areas where they are lowest. Of the $2.9 billion made available in new funds under the plan for benefits to families and to aged, blind and disabled adults, an estimated $700 million will have the effect of providing fiscal relief for the States and about $300 million will be for benefit increases for present recipients. But these goals, it must be said, cannot be our first priority at the present time. There are others who would invest more of our available resources in benefit increases or in a federalization of the program designed to provide maximum fiscal relief to the States. These are not easy priorities to weigh and balance, but we have concluded that—while those other approaches might be politically more popular in many respects—they only pour more Federal money into a system doomed to failure. The *system* must be changed, not just its payment levels or the division of labor between the Federal and State governments within it.

The technical operation of the Family Assistance Plan is described in the attached summary. This memorandum will review its major purposes.

First, it combines powerful work requirements and work incentives for employable recipients. By including the working poor—families in poverty headed by men working full time—the new plan much reduces and in many cases eliminates the inequity of treatment between those who work and those who do not. Second, by making it possible for a family to earn $60 per month without any reduction of benefits, a recipient will have a strong financial incentive to enter employment and will be able to recoup his expenses of going to work without a drop in total income. Third, the program includes a strong work requirement: those able bodied persons who refuse a training or suitable job opportunity lose their benefits. For this reason, the program is not a guaranteed annual income. It does not guarantee benefits to persons regardless of their attitudes; its support is reserved to those who are willing to support themselves. The work requirement is made effective by a new obligation of work registration. In order to be eligible for benefits, applicants must first register with their employment service office so that training and job opportunities can be efficiently communicated to them. Mothers with children under six, are however, exempted from this requirement of work and work registration and may elect to stay at home with their children without any loss in benefits.

Second, the Family Assistance Plan treats male and female-headed families equally. All families with children, whether headed by a male or female, will receive benefits if family income and resources are below the national eligibility levels. From this structural change in coverage flows one of the key advantages of the program in terms of family stability. No longer would an unemployed father have to leave the home for his family to qualify for benefits. In fact, the family is better off with him at home since its benefits are increased by his presence. And for employed men, the system greatly reduces and in some cases reverses the financial incentive to desert. In the example cited above of the father earning $2000 in a State where his family would receive $3000 on welfare, the Family Assistance Plan would supplement his wages by $960, giving the family $2960 in income and eliminating the financial incentive for the father to leave home.

Third, the program establishes a national minimum payment and national eligibility standards and methods of administration. For a dependent family of four, the Federal benefit floor will be $1600 per year. *When benefits under the President's Food Stamp proposal are also taken into account, the assistance package for such a family is about $2350 per year, or more than two-thirds of the poverty line as it has been most recently redefined.* This is not, of course, a sufficient amount to sustain an adequate level of life for those who have no other income; it is, nevertheless, a substantial improvement and can be made more adequate as budget conditions permit. As a result of the establishment of the Federal benefit floor of $1600, payment levels will be raised in 10 States and for about 20 percent of present recipients.

For the aged, blind, and disabled, a nationwide income floor would be set at $90 per month per person of benefits plus other income. This comes on a yearly basis to $2160 for two persons, an amount which is actually above the poverty line for an aged couple. This represents an important change which we have made in the program since the President announced it on August 8; when the minimum for the adult categories was set at $65.

Perhaps at least as important as the establishment of national minimum benefit levels, however, is the provision of national eligibility standards and administrative procedures to govern the Family Assistance and State supplementary payment programs. For the first time, a single set of rules will apply throughout the nation, although the States will remain free to administer their supple-

mentary payment programs under these uniform rules if they so desire. (The pre-existing State standards of need and payment levels will still continue to control in the supplementary payment programs with regard to eligibility and amount of benefits.)

States will be given the option, for both the supplementary payment and the adult category programs, to contract with the Social Security Administration for Federal assumption of some or all of the administrative burdens under these programs. In this way, we should be able to move toward a single administrative mechanism for transfer payments, taking advantage of all the economies of scale which such an automated and national administered system can have. The eventual transfer of Food Stamp Program to the Department of Health, Education, and Welfare—as previously proposed by the Administration—should further enhance this administrative simplification.

Fourth, the plan includes over $600 million for a major expansion of training and day care and opportunities. Some 150,000 new training opportunities will be funded under the legislation, which, when combined with the proposed Manpower Training Act is a simplified and centralized framework, should greatly broaden the opportunities for self support for recipients. Some 450,000 quality child care positions are also funded in a new and flexible program which further extends the Administration's commitment to the first five years of life.

Fifth, the Family Assistance Plan provides major fiscal relief for the States. An estimated $700 million of the $2.9 billion in new Federal money being made available for expanded cash assistance will go to the States in the form of saving on their existing welfare costs. For five years from the date of enactment, every State is assured fiscal relief at least equal to 10 percent of what its costs would have been under the old welfare program. When these savings are combined with the new money going to the States through the training and child care components and through the separate revenue sharing program, major relief for State governments is produced. In particular, by including the working poor within the Family Assistance Plan, we are establishing a wholly Federal responsibility for a category of potential recipients which an increasing number of States are beginning to assist at their own initiative. Some 7 States now have Statewide programs of relief for the working poor and another 8 States have local or experimental programs directed to these people—all entirely at State expense. By establishing a Federal program to cover the working poor, we are relieving the States of what seems to be the next likely increase in costs and coverage.

III. IMPACT ON OTHER PROGRAMS

The Family Assistance Plan has a major impact on several other Federal programs bearing on the poor.

First, we have changed the treatment of unearned income compared to the present welfare system so that the recipient of Family Assistance benefits loses only 50 cents from his benefit for each dollar of unearned income received. This results in the elimination of an important inequity which, for example, would make a female-headed family of four ineligible for Family Assistance benefits if it received $1700 per year in alimony or support payments, but would pay that family a benefit if the husband were at home and earning $1700 per year. It also has an important impact on other Federal programs such as Old Age, Survivors and Disability Insurance, and Unemployment Insurance by eliminating the dollar-for-dollar loss in benefits under welfare as income from these other programs is received.

Second, this legislation amends Title XIX (Medicaid) to extend mandatory coverage under that program to the AFDC–UF category. It is not possible at this time to include the working poor adults in Medicaid even though they are added to public assistance coverage under Family Assistance.

Third, Family Assistance has been carefully harmonized with the Food Stamp Program. As has already been stated, the benefits under these two programs are additive, so that a family of four receives a package of Family Assistance and Food Stamp subsidies totalling about $2350. Moreover, the eligibility ceilings have been set at virtually the same point—$4000 for a family of four—and both programs would now extend coverage to the working poor.

Finally, certain changes in the programs of services for AFDC recipients under Title IV of the Social Security Act are necessitated as a result of the Family Assistance Plan. The Department of Health, Education, and Welfare will be submitting more comprehensive amendments on the service program shortly. These amendments will include an expanded program of assistance to the States for foster care. In the meantime, however, we are leaving the present AFDC services provisions intact and retaining the 75-percent Federal matching for the financing of these programs.

SUMMARY OF FAMILY ASSISTANCE ACT OF 1969

TITLE I—FAMILY ASSISTANCE PLAN

Establishment of plan

Section 101 of the bill adds new parts D, E, and F to title IV of the Social Security Act, establishing a new Family Assistance Plan providing for payment of family assistance benefits by the Secretary of Health, Education, and Welfare and supplementary payments by the States.

Eligibility and amount

The new part D of title IV of the Social Security Act authorizes benefits to families with children payable at the rate of $500 per year for each of the first two members of a family plus $300 for each additional member.

The family assistance benefit would be reduced by non-excluded income, so that families with more non-excludable income than these benefits ($1600 for a family of four) would not be eligible for any benefits.

A family with more than $1500 in resources, other than the home, household goods, personal effects, and other property essential to the family's capacity for self-support, would also not be eligible.

Countable income would include both earned income (remuneration for employment and net earnings from self-employment) and unearned income.

In determining income the following would be excluded (subject, in some cases, to limitations by the Secretary):

(1) All income of a student;

(2) Inconsequential or infrequent or irregular income;

(3) Income needed to offset necessary child care costs while in training or working;

(4) Earned income of the family at the rate of $720 per year plus ½ the remainder;

(5) Food stamps and other public assistance or private charity;

(6) Special training incentives and allowances;

(7) The tuition portion of scholarships and fellowships;

(8) Home produced and consumed produce;

(9) ½ of other unearned income.

Veterans pensions, farm price supports, and soil bank payments would not be excludable income to any extent and would, therefore, result in reduction of benefits on a dollar for dollar basis.

Eligibility for and amount of benefits would be determined quarterly on the basis of estimates of income for the quarter, made in the light of the preceding period's income as modified in the light of changes in circumstances and conditions.

Definition of family and child

To qualify for Family Assistance Plan benefits a family must consist of two or more related individuals living in their own home and residing in the United States and one must be an unmarried child (i.e., under the age of 18, or under the age of 21 and regularly attending school).

Payment of benefits

Payment may be made to any one or more members of the qualified family. The Secretary would prescribe regulations regarding the filing of applications and supplying of data to determine eligibility of a family and the amounts for which the family is eligible. Beneficiaries would be required to report events or changes of circumstances affecting eligibility or the amount of benefits.

When reports by beneficiaries are delayed too long or are too inaccurate, part or all of the resulting benefit payments could be treated as recoverable overpayments.

Registration for work and referral for training

Eligible adult family members would be required to register with public employment offices for manpower services and training or employment unless they belong to specified excepted groups. However, a person in an excepted group may register if he wishes.

The exceptions are: (1) ill, incapacitated, or aged persons; (2) the caretaker relative (usually the mother) of a child under 6; (3) the mother or other female caretaker of the child if an adult male (usually the father) who would have to register is there; (4) the caretaker for an ill household member; and (5) full-time workers.

Where the individual is disabled, referral for rehabilitation services would be made. Provision is also made for child care services to the extent the Secretary finds necessary in case of participation in manpower services, training, or employment.

Denial of benefits

Family Assistance benefits would be denied with respect to any member of a family who refuses without good cause to register or to participate in suitable manpower services, training, or employment. If the member is the only adult, he would be included as a family member but only for purposes of determining eligibility of the family. Also, in appropriate cases, the remaining portion of the Family Assistance benefit would be paid to an interested person outside the family.

On-the-job training

The Secretary would transfer to the Department of Labor funds which would otherwise be paid to families participating in employer-compensated on-the-job training if they were not participating. These funds would be available to pay the training costs involved.

STATE SUPPLEMENTATION OF FAMILY ASSISTANCE BENEFITS

Required supplementation

The individual States would have to agree to supplement the family assistance benefits under a new part E of title IV of the Social Security Act wherever the family assistance benefit level is below the previously existing Aid to Families with Dependent Children (AFDC) payment level. This supplementation is a condition which the State must meet in order to continue to receive Federal payments with respect to maternal and child health and crippled children's services (title

V) and with respect to their State plans for aid to the aged, blind, and disabled (title XVI), medical assistance (title XIX), and services to needy families with children (part A of title IV). Such "supplementation" would be required to families eligible for family assistance benefits other than families where both parents are present, neither is incapacitated, or the father is not unemployed. The States would thus be required to supplement in the case of individuals eligible under the old AFDC and AFDC–UF provisions; they would not have to supplement in case of the working poor.

Amount of supplementation

Except as indicated below and, except for use of the State standard of need and payment maximums, eligibility for and amount of supplementary payments would be determined by use of the rules applicable for Family Assistance benefits.

In applying the family assistance rules to the disregarding of income under the supplementary payment program—

(1) In the case of earned income of the family, the State would first disregard income at the rate of $720 per year, and would then be permitted to reduce its supplementary payment by 16⅔ cents for every dollar of earnings over the range of earnings between $720 per year and the cutoff point for family assistance (i.e., $3,920 for a family of four), and could further reduce its supplementary payments by an amount equal to not more than 80 cents for every dollar of earnings beyond that family assistance cutoff point.

(2) In the case of unearned income, these same percentage reductions would apply, although the initial $720 exclusion would not apply.

Requirements for agreements

Some of the State plan requirements now applicable in the case of Aid and Services to Needy Families with Children would be made applicable to the agreement. These include the requirements relating to:

(1) Statewideness;

(2) Administration by a single State agency;

(3) Fair hearing to dissatisfied claimants;

(4) Methods of administration needed for proper and efficient operation, including personnel standards, training, and effective use of subprofessional staff;

(5) Reporting to Secretary as required;

(6) Confidentiality of information relating to applicants and recipients;

(7) Opportunity to apply for and prompt furnishing of supplementary payments.

Payments to States

A State agreeing to make the supplementary payments would be guaranteed that its expenditures for the first 5 full fiscal years after enactment would be no more than 90 per cent of the amount they would have been if the Family Assistance Plan amendments not been enacted. This would be accomplished by Federal payment to each State, for each year, of the excess of—

(1) The total of its supplementary payments for the year plus the State share of its expenditures called for under its existing State plan approved under title XVI plus the additional expenditures required by the new title XVI, over

(2) 90% of the State share of what its expenditures would have been in the form of maintenance payments for such year if the State's approved plans under title I, IV(A), X, XIV, and XVI had continued in effect (assuming in the case of the part A of title IV plan, payments for dependent children of unemployed fathers).

On the other hand, any State spending less than 50 per cent of the State share, referred to in clause (2) above, for supplementary payments and its title XVI plan would be required to pay the amount of the deficiency to the Federal treasury.

A State would also receive ½ of its cost of administration under its agreement.

ADMINISTRATION

Agreements with States

Sufficient latitude is provided to deal with the individual administrative characteristics of the States. Provision is made under which the Secretary can agree to administer and disburse the supplementary payments on behalf of the States. Similarly the States can agree to administer portions of the family assistance plan on behalf of the Secretary, with respect to all or specified families in the States.

Evaluation, research, training

The Secretary would make an annual report to Congress on the new Family Assistance Plan, including an evaluation of its operation. He would also have authority to make periodic evaluations of its operation and to use part of the program funds for this purpose.

Research into and demonstrations of better ways of carrying out the purposes of the new Plan, as well as technical assistance to the States and training of their personnel who are involved in making supplementary payments, would also be authorized.

Special provisions for Puerto Rico, the Virgin Islands, and Guam

There are special provisions for these areas under which the amount of family assistance benefits, the $720 of earned income to be disregarded, and several other amounts under the Family Assistance Plan and the new title XVI of the Social Security Act (aid to the aged, blind, and disabled) would be reduced to the extent that the per capita income of these areas is below that of that one of the 50 States which had the lowest per capita income.

TRAINING, EMPLOYMENT, AND DAY CARE PROGRAMS

Section 102 of the Administration bill would replace part C of title IV of the Social Security Act in its entirety.

Purpose

The purpose of the revised part C is to provide manpower services, training, and employment, and child care and related services for individuals eligible for the new Family Assistance Plan benefits (new part D) or State supplementary payments (new part E) to help them secure or retain employment or advancement in employment. The intent is to do this in a manner which will restore families with dependent children to self-supporting, independent, and useful roles in the community.

Operation

The Secretary of Labor is required to develop an employability plan for each individual required to register under the new part D or receiving supplementary payments pursuant to the new part E. The plan would describe the manpower services, training, and employment to be provided and needed to enable the individual to become self-supporting or attain advancement in employment.

Allowances

The Secretary of Labor would pay an incentive training allowance of $30 per month to each member of a family participating in manpower training. Where training allowances for a family under another program would be larger than their benefits under the Family Assistance Plan and supplementary State payments, the incentive allowances for the family would be equal to the difference, or $30 per member, whichever is larger.

Allowances for transportation and other expenses would also be authorized.

These incentive and other allowances would be in lieu of allowances under other manpower training programs.

Allowances would not be payable to individuals participating in employer compensated on-the-job training.

Denial of allowances

Allowances would not be payable to an individual who refuses to accept manpower training without good cause. The individual would receive reasonable notice and have an opportunity for a hearing if dissatisfied with the denial.

Utilization of other programs

In order to avoid the creation of duplicative programs, maximum use of authorities under other acts could be made by the Secretary of Labor in providing the manpower training and related services under the revised part C, but subject to all duties and responsibilities under such other programs. Part C appropriations could be used to pay the cost of services provided by other programs and to reimburse other public agencies for services they provided to persons under part C. The emphasis is on an integrated and comprehensive manpower training program involving all sectors of the economy and all levels of government to make maximum use of existing manpower and manpower related programs.

Appropriations and administration

Appropriations to the Secretary of Labor would be authorized for carrying out the revised part C, including payment of up to 90 percent of the cost of training and employment services provided individuals registered under the Family Assistance Plan. The Secretary would seek to achieve equitable geographical distribution of these funds.

In developing policies and programs for manpower services, training and employment for individuals registered under the Family Assistance Plan, the Secretary of Labor would have to first obtain the concurrence of the Secretary of Health, Education, and Welfare with regard to all programs under the usual and traditional authority of the Department of Health, Education, and Welfare.

Child care and support services

Appropriations to the Secretary of Health, Education, and Welfare would be authorized for grants and contracts for up to 90 per cent of the cost of projects for child care and related services for persons registered under the Family Assistance Plan and in manpower training or employment. The grants would go to any public or non-profit private agency or organization, and the contracts could be with any public or private agency or organization. The cost of these services could include alteration, remodeling, and renovation of facilities, but no provision is made for wholly new construction. The Secretary of Health, Education, and Welfare could allow the nonfederal share of the cost to be provided in the form of services or facilities.

These provisions (unlike other provisions of the bill) would become effective on enactment of the bill.

Advance funding

To afford adequate notice of available funds, appropriations for one year to pay the cost of the program during the next year would be authorized.

Evaluation and research

A continuing evaluation of the program under part C and research for improving it are authorized.

Annual report and advisory council

The Secretary of Labor is required to report annually to Congress on the manpower training and related services.

ELIMINATION OF PRESENT PROVISIONS ON CASH ASSISTANCE FOR FAMILIES WITH DEPENDENT CHILDREN

Section 103 of the bill revises part A of title IV of the Social Security Act which relates to cash assistance and services for needy families with children. The new part A is called Services to Needy Families with Children, reflecting the elimination of the provisions on cash assistance. The cash assistance part is no longer necessary because of the Family Assistance Plan in the new part D of title IV.

The revised part A provides for continuation of the present program of services for these families. Foster care for children and emergency assistance, as included under existing law, are also continued.

Requirements for State plans

Section 402 of the Social Security Act which sets forth the requirements to be met by State plans before they are approved and qualify the State for federal financial participation in expenditures, would be revised as appropriate in the light of the elimination of the cash assistance provisions.

Payments to States

The provisions on payments to States for expenditures under approved State plans remain the same as existing law with respect to services, emergency assistance, and foster care. The matching formulas continue to vary, as in existing law, according to the kinds of services involved.

Definitions

The definitions of "family services" and "emergency assistance to needy families with children" have not been substantially changed.

The definitions of "dependent child", "aid to families with dependent children", and "relative with whom any dependent child is living" have been replaced (as no longer applicable) by definitions of

(1) "Child"—which refers to the definition in the new part D, establishing the Family Assistance Plan; this in effect substitutes a requirement that the child be a member of a "family" (as defined in the new part D) instead of having to live with particularly designated relatives;

(2) "Needy families with children" (and "assistance to such families")—this being defined as families receiving family assistance benefits under the new part D, if they are also receiving supplementary State payments pursuant to the new part E or would have been eligible for aid under the existing State plan for aid to needy families with children if it had continued in effect.

Foster care and emergency assistance

The provisions on payments for foster care of children and emergency assistance remain virtually the same as under existing law.

Assistance by Internal Revenue Service in locating parents

The provision on this subject remains the same and allows use of the master files of the Internal Revenue Service to locate missing parents in certain cases.

TITLE II—AID TO THE AGED, BLIND, AND DISABLED

This title revises the current title XVI of the Social Security Act and sets forth the revised title XVI in its entirety. One of the major changes is the removal of the provisions relating to medical assistance for the aged which, under existing law, would terminate at the end of calendar 1969. All medical assistance for which the Federal government shares costs will now be provided under approved title XIX State plans.

Requirements for State plans

Few changes are made in this section (sec. 1602), aside from deleting the provisions relating to medical assistance for the aged. The section retains, without substantial change, the requirements relating to:

(1) Administration by a single State agency (except where a separate agency is permitted for the blind as under existing law);

(2) Financial participation by the State;

(3) Statewideness;

(4) Opportunity for fair hearing;

(5) Methods of administration, including personnel standards, training, and effective use of subprofessional staff;

(6) Reporting to the Secretary as required;

(7) Confidentiality of information relating to recipients;

(8) Opportunity for application and furnishing of assistance with reasonable promptness;

(9) Establishment and maintenance by the State of standards for institutions in which there are individuals receiving aid;

(10) Description of services provided for self-support or self-care; and

(11) Determination of blindness by an opthalmologist or an optometrist.

The present prohibition against payment to persons in receipt of assistance under title I, IV, X, or XIV would be applicable instead to cases of receipt of family security benefits under the new part D of title IV.

The provision on inclusion of reasonable standards for determining eligibility and amount of aid would be replaced by one requiring a minimum benefit of $90 per month, less any other income, and by another requiring that the standard of need not be lower than the standard applied under the State plan approved under the existing title XVI or (in case the State had not had such a plan) the appropriate one of the standards of need applied under the plans approved under titles I, X, and XIV.

While the requirement relating to the determination of need and disregarding of certain income in connection therewith has been continued (although without the authorization to disregard $7.50 per month of any income, in addition to other income which may or must be disregarded), it has been expanded in a manner parallel to family assistance benefits to include disregarding as resources the home, household goods, personal effects, other property which might help to increase the family's ability for self-support, and, finally, any other personal or real property the total value of which does not exceed $1500. There would also be a new requirement for not considering the financial responsibility of any other individual for the applicant or recipient unless the applicant is the individual's spouse or child under the age of 21 or blind or severely disabled, and a prohibition against imposition of liens on account of benefits correctly paid to recipients.

Other new requirements relate to provision for the training and effective use of social service personnel, provision of technical assistance to State agencies and local subdivisions furnishing assistance or services, and provision for the development, through research or demonstrations, of new or improved methods of furnishing assistance or services. Also added is a requirement for use of a simplified statement for establising eligibility and for adequate and effective methods of verification thereof. Finally, there are new requirements for periodic evaluation of the State plan at least annually, with reports thereof being submitted to the Secretary together with any necessary modifications of the State plan; for establishment of advisory committees, including recipients as members; and for observing priorities and performance standards set by the Secretary in the administration of the State plan and in providing services thereunder.

The present prohibitions against any age requirement of more than 65 years and against any citizenship requirement excluding U.S. citizens would be continued.

In place of the present provisions on residency, there is a new one which prohibits any residency requirement excluding any resident of the State. Also there would be new prohibitions against any disability or age requirement which excludes a severely disabled individual aged 18 or older, and any blindness or age requirement which excludes any person who is blind (determined under criteria by the Secretary).

Payments

In place of the present provision on the Federal share of expenditures under the approved State plan there is a new formula which provides for payment as follows with respect to expenditures under State plans for aid to the aged, blind, and disabled approved under the new title XVI:

With respect to cash assistance, the Federal Government will pay (1) 100 per cent of the first $50 per recipient, plus (2) 50 per cent of the next $15 per recipient, plus (3) 25 per cent of the balance of the payment per recipient which does not exceed the maximum permissible level of assistance per person set by the Secretary (which may be lower in the case of Puerto Rico, the Virgin Islands, and Guam than for other jurisdictions).

With respect to services for which expenditures are made under the approved State plan, the Federal Government would pay the same percentages as are provided under existing law, that is, 75 per cent in the case of certain specified services and training of personnel and 50 per cent in the case of the remainder of the cost of administration of the State plan.

Payment by Federal Government to individuals

The revised title XVI includes authority for the Secretary to enter into agreements with any State under which the Secretary will make the payments of aid to the aged, blind, and disabled directly to individuals in the State who are eligible therefor. In that case, the State would reimburse the Federal Government for the State's share of those payments and for ½ the additional cost to the Secretary of carrying out the agreement, other than the cost of making the payments themselves.

Definition

The new title XVI defines aid to the aged, blind, and disabled as money payments to needy individuals who are 65 or older or are blind or are severely disabled.

Transitional and related provisions

Titles I, X, and XIV of the Social Security Act would be repealed.

Provision is made for making adjustments under the new title XVI on account of overpayments and underpayments under the existing public assistance titles.

Provision is also made for according States a grace period during which they can be eligible to participate in the new title XVI without changing their tests of disability or blindness. The grace period would end for any State with the June 30 following the close of the first regular session of its State legislature beginning after enactment of the bill.

Conforming amendments

The bill also contains a number of conforming amendments in other provisions of

the Social Security Act in order to take account of the substantive changes made by the bill. Thus, the changes in the medicaid program (title XIX of the Social Security Act) would require the States to cover individuals eligible for supplementary State payments pursuant to the new part E of title IV or who would be eligible for cash assistance under an existing State plan for aid to families with dependent children if it continued in effect and included dependent children of unemployed fathers.

Effective date

The amendments made by the bill would become effective on the first January 1 following the fiscal year in which the bill is enacted. However, if a State is prevented by statute from making supplementary payments provided for under the new part E of title IV of the Social Security Act, the amendments would not apply to individuals in that State until the first July 1 which follows the end of the State's first regular session of its legislature beginning after the enactment of the bill—unless the State certified before this date that it is no longer prevented by State statute from making the payments. In the latter case the amendments would become effective at the beginning of the first calendar quarter following the certification.

Also, in the case of a State which is prevented by statute from meeting the requirements in the revised section 1602 of the Social Security Act, the amendments made in that title would not apply until the first July 1 following the close of the State's first regular session of its legislature beginning after the enactment of the bill—unless the State submitted before this date a State plan meeting these requirements. In the latter case the amendments would become effective on the date of submission of the plan.

Another exception to this effective date provision is made in the case of the new authorization, in the revised part C of title IV of the Social Security Act, for provision of child care services for persons undergoing training or employment—which would be effective on enactment of the bill.

Mr. JAVITS. I have joined as a cosponsor, Mr. President, because I wish to encourage the administration in this initiative.

I advise the Senator from Pennsylvania (Mr. SCOTT) that I reserve the right to put in another bill or move amendments, but the fundamental principle is so important and I think the initiative of the administration so sound and desirable that I felt it my duty to join as cosponsor.

Mr. SCOTT. I thank the Senator from New York.

ADDITIONAL COSPONSORS OF A BILL AND JOINT RESOLUTIONS

S. 2979

Mr. DOMINICK. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Arizona (Mr. GOLDWATER), the Senator from Florida (Mr. GURNEY), the Senator from New Jersey (Mr. CASE), the Senator from Hawaii (Mr. INOUYE), and the Senator from Alabama (Mr. ALLEN) be added as cosponsors of S. 2979, to amend the Internal Revenue Code of 1954 to allow a credit against income tax to individuals for certain expenses incurred in providing higher education.

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

SENATE JOINT RESOLUTION 154

Mr. EAGLETON. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. BAYH), the Senator from Florida (Mr. GURNEY), the Senator from Rhode Island (Mr. PELL), and the Senator from Illinois (Mr. SMITH) be added as cosponsors of Senate Joint Resolution 154, to authorize and request the President to proclaim the month of January of each year as "National Blood Donor Month."

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

SENATE JOINT RESOLUTION 155

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Alaska (Mr. GRAVEL), I ask unanimous consent that, at the next printing, the names of the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from New Mexico (Mr. MONTOYA), the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Montana (Mr. METCALF), and the Senator from Maryland (Mr. TYDINGS) be added as cosponsors of Senate Joint Resolution 155, to provide for a study and evaluation of international and other foreign policy aspects of underground weapons testing.

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

SETTLEMENT OF CERTAIN LAND CLAIMS OF ALASKA NATIVES—AMENDMENT

AMENDMENT NO. 221

Mr. STEVENS. Mr. President, today I would like to submit an amendment, intended to be proposed by me, in the form of a substitute for S. 1830, the Alaska Natives Land Claims Settlement. This amendment has been prepared at the request of the Alaska Federation of Natives, and represents their views on a land claims settlement.

Mr. President, because of the extremely wide interest this legislation has aroused in my home State of Alaska, I ask unanimous consent that in addition to the normal number, 1,500 extra copies of this amendment be printed and made available to the Interior Committee.

The ACTING PRESIDENT pro tempore. The amendment will be received and printed, and will be appropriately referred.

The amendment (No. 221) was referred to the Committee on Interior and Insular Affairs and ordered to be printed.

THE DRAFT CALL REDUCTIONS—A CRUEL HOAX? CLAYTON FRITCHEY ANALYZES THIS PROPAGANDA

Mr. YARBOROUGH. Mr. President, recently this administration announced, with considerable fanfare, a reduction in draft calls for the remainder of this year. At the same time, a call was issued for meaningful draft reform. I am proud to say that I was among the first Senators to endorse this action for draft reform.

Now, however, serious questions have been raised about the validity of these draft-call reductions. It appears that, for the first 10 months of this year, draft calls have been running considerably higher than they were for the similar time period of last year. In fact, if my figures are correct, the average monthly draft call last year was 24,667 as opposed to 29,040 this year. That is over 4,000 men per month more than were being drafted last year.

In this light, the draft-call reductions are not so significant, for the administration has been drafting more men up to now, perhaps with the intent to announce reductions in draft calls later in the year.

A similar tactic was used by this administration earlier in the year when it announced a reduction in U.S. troop strength in Vietnam knowing full well that there had been a sharp increase in the numbers of U.S. forces there beforehand.

Mr. President, if these developments indicate any sort of trend in the way this administration intends to deal with the American people, they are perpetrating a cruel hoax on this Nation for which they will be held accountable.

While it may be possible to market a candidate like a new brand of laundry detergent, it is not possible to merchandise national policies in this way. The people are too alert to what an administration does for it to be able to continue to make meaningless gestures of the sort I have been discussing.

Mr. President, I ask unanimous consent that an article entitled "Are Draft Cuts, Token Pullouts Fooling Anyone?" written by Clayton Fritchey, and published in the Washington Star of Friday, September 26, 1969, be printed in the RECORD.

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

ARE DRAFT CUTS, TOKEN PULLOUTS FOOLING ANYONE?

(By Clayton Fritchey)

Dr. Benjamin Spock and some of the student leaders dismissed President Nixon's draft reduction announcement as "fakery," which may be putting it a little strongly, but certainly there are good reasons for taking a hard look at the hat from which this rabbit was pulled.

Nixon's hand is quick, but not quicker than the computers. And the computers show that he has been drafting young Americans even faster than Lyndon Johnson did last year. The administration is able to call off draft calls for November and December because the government has inducted so many into the armed forces since Nixon took office that it already has enough in the pipeline to sustain operations for the time being.

The unpublicized, although significant fact is that draft calls have shot up 70 percent over last year since Nixon announced in June that he was beginning the withdrawal of U.S. troops from Vietnam. In October 1968, for instance, the call was for 13,800 as against 29,000 this October.

In the five-month June–October period the 1968 total was 79,300, compared with 135,700 in 1969. In 10 months this year, Nixon is going to draft almost as many men (290,400) as Johnson did (296,000) in 12 months last year.

Is the President really fooling anybody (except possibly himself) in hoping that momentary draft cuts and token troop withdrawals will take him off the Vietnam hook, and make the war acceptable to the American public, especially the students he is presently so concerned about?

A Pentagon official is quoted as saying, "We're simply buying time—on the installment plan." Gen. Lewis Hershey, director of Selective Service, views the presidential move as buying a "breather for a couple of months."

In its cynicism, the administration may have underestimated the idealism that animates many students. The anti-war spirit on the campuses is not based solely on self-interest and fear of the draft. Actually, most of the militant leaders have been immune to the draft.

"The time has come for peace," the President told the United Nations last week, but the delegates noted that, despite his earlier "hopes" of withdrawing all of America's combat troops next year, Nixon has currently settled for another small cutback of 35,000 men by Dec. 15.

Since the first reduction was 25,000, this means total withdrawals for 1969 will be only 60,000. At this rate it would take eight years to bring them all home. Moreover, even if future casualty rates do not exceed the level of the present fighting, such a prolonged withdrawal would cost the U.S. about 600,000 more killed and wounded.

For months, the administration has tried to pacify the public with talk of "lulls" and turning the fighting over to the South Vietnamese army. Yet, says the Armed Forces Journal, after a new analysis of casualties: "The harsh fact is that U.S. military forces in Vietnam have suffered approximately 30 percent more combat deaths in the first six months of the Nixon administration than in the last six months of the Johnson administration."

Under Nixon, combat deaths jumped from 4,894 to 6,358, and wounded rose from 31,557 to 45,363. Even during the most recent "lull" U.S. killed and wounded have been averaging around 1,500 a week, or over 75,000 annually, which is higher than the average for the last three years.

The figures do not support Pentagon propaganda that militarily the war is going our way. Just the contrary. In the last six months of 1968, the kill ratio of enemy combat deaths to total allied combat deaths was 5.49. For the first half of 1969 the ratio was 3.95. Between the first and second quarters this year, it dropped from 6.74 to 2.76. Does this sound as if the enemy have lost the capacity to fight effectively?

YOUNG DEMOCRATS ENDORSE U.S. RATIFICATION OF HUMAN RIGHTS CONVENTIONS

Mr. PROXMIRE. Mr. President, in November 1967, more than 1,000 Young Democrats gathered in Miami, Fla. They went there to discuss matters of great import to both the country and the party. Out of this assembly came a number of resolutions.

I am gratified that one of the resolutions concerned the human rights conventions. The resolution contains a ringing endorsement of the conventions and a call for Senate ratification. I feel that it is noteworthy that even though dealing with such topics as Vietnam, foreign aid, and the war on poverty, these young people found time to include human rights among their priorities. I suggest that we follow the example and advice of the Young Democrats by placing human rights among our priorities and ratifying the human rights conventions.

Mr. President, I ask unanimous consent that the Young Democrats resolution on human rights be printed in the RECORD.

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

HUMAN RIGHTS CONVENTION

The United States Senate is presently considering several international Human Rights Conventions, among them the convention on the political rights of women, the convention on Genocide.

The Senate has held hearings on these conventions wherein many prominent Americans and organizations have testified in favor of their ratification.

A number of United States Senators, most prominent among them the Hon. William Proxmire of Wisconsin, have continued the fight for ratification of these conventions and the principles involved in these conventions have long been held basic to the American way of life and would require no amendment of our own laws but would simply reaffirm our desire to make universal those rights already prevailing in the United States.

Most of the nations of the world have ratified these conventions, but the United States, whose principles they embody, has not.

The Young Democratic Clubs of America call upon the United States Senate to ratify the convention on the political rights of women, the convention on Genocide, as soon as possible as proof to the world that we stand behind the principles that made our country great.

THE COST OF QUOTAS

Mr. BROOKE. Mr. President, this morning's Wall Street Journal has a fine editorial that effectively pinpoints the tremendous inequity and inadequacy of this country's oil import program.

The burden that this costly program puts on New Englanders is intolerable. Since the implementation of the mandatory oil import program nearly a decade ago, many millions of oil consumers have paid increasingly higher prices to heat their homes. The cost of home heating oil in New England is far higher than in any other section of the Nation. This program has turned the New England area into a carefully manipulated captive market dominated by the major oil companies. The end result has been that the people of New England have paid more than their fair share of the several billion dollar yearly outlay that it takes to support this program.

We hope that the Presidential task force now studying the oil import program will be the vehicle for vast changes in this costly and unfair quota system.

I ask unanimous consent that the article be printed in the RECORD.

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

THE COST OF QUOTAS

While no one doubts that oil import quotas cost U.S. consumers a great deal of money, there's a wide divergence of opinion as to what the cost amounts to.

Imported oil on the average is much less expensive than petroleum produced domestically. So companies that get permission to bring in foreign crude reap windfall profits, and consumers pay more for gasoline and other petroleum products than they otherwise would.

How much more? Well the Interior Department last July officially estimated the extra outlay at $2.2 billion to $3.5 billion a year. But one of the department's own agencies, the Bureau of Mines, puts it substantially higher and figures it will amount to more than $7 billion a year by 1975.

John Ricca, deputy director of the Office of Oil and Gas, which oversees oil-import analysis, said the two reports "are based on different economic models and different assumptions." He explained that the earlier estimate assumed that product prices are influenced by larger integrated oil companies, while the Bureau of Mines study assumed that prices are determined by independent refiners.

That sort of explanation isn't likely to make consumers feel any better. Nor, for that matter, does it make the oil import quotas look any better.

The alleged purpose of the quotas is to assure the U.S. an adequate supply of oil if it is cut off from foreign sources by a world emergency. Quotas protect domestic producers and supposedly encourage them to go on hunting for new U.S. oil supplies.

The argument is at best questionable, in view of such factors as large existing reserves on this continent and new discoveries in Canada and Alaska. If the argument is fully accepted, however, an import-control program of unknown cost, paid willy-nilly by consumers, is still a poor way to assure adequate oil supplies. By contrast, direct and open subsidies to the industry would look fairly good if assistance were really needed.

Even that misguided chap who buys a pig in a poke at least knows what he's paying for it.

CHAIRMAN OF HOUSE JUDICIARY COMMITTEE VOWS FIGHT TO PREVENT REPEAL OF AMMUNITION CONTROLS

Mr. DODD. Mr. President, many of us are gravely concerned over a "Christmas tree" attachment to H.R. 12829, pending on the Senate Calendar, which would repeal the ammunition controls of the Gun Control Act of 1968.

The distinguished chairman of the Committee on the Judiciary of the House of Representatives (Mr. CELLER) discussed this matter on the floor of the other House yesterday. Because I wish to call the attention of Senators to this valuable statement, I ask unanimous consent that it be printed in the RECORD again today.

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

INTEREST EQUALIZATION TAX EXTENSION ACT

(Mr. CELLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CELLER. Mr. Speaker, in the other body, the Finance Committee has added a totally nongermane and regressive amendment to the Interest Equalization Tax Extension Act—H.R. 12829. The amendment repeals the ammunition recordkeeping requirements of the Gun Control Act of 1968.

The Senate committee amendment elimi-

nates recordkeeping in sales of, first, shotgun ammunition; second, rifle ammunition; third, .22 caliber rimfire ammunition, and component parts thereof.

The 1968 act prohibits the sale of ammunition to certain juveniles, mental incompetents, known felons, drug addicts, and other irresponsible persons. Requiring a prospective purchaser to give his name, address and substantiate his age is not a nuisance. Clearly, enforcement of the act's prohibitions would be impossible without requiring dealers to keep records of ammunition transactions.

Under the Senate committee rider, ammunition recordkeeping for approximately 90 percent of all firearms would be eliminated.

Recordkeeping will deter those who cannot legally buy ammunition.

Recordkeeping will insure that dealers will exercise a higher degree of care in determining whether the buyer is barred under the statute from buying ammunition.

Availability of ammunition records will aid in the investigation of firearms crimes.

The only way of affecting the 90 million firearms already privately owned is by regulating the flow of ammunition.

According to Senate Juvenile Delinquency Subcommittee studies: .22 caliber pistols and revolvers were involved in 30 percent of the handgun murders committed last year; .22 caliber rifles were involved in 60 percent of the rifle murders last year; .22 caliber rimfire bullets accounted for 37 percent of the homicides committed in this country last year; that is, 3,300 Americans were murdered by these bullets.

The weapon used to kill Robert Kennedy was a .22 caliber revolver which fired a .22 caliber rimfire bullet.

Mr. Speaker, the Gun Control Act of 1968 represented one of the outstanding accomplishments of the 90th Congress. It marked the beginning toward reducing the level of gun violence in this country. Now, without any hearings and only 10 months after the act has become effective, a Senate committee has moved to strike an essential element from the act's regulatory fabric.

No examination of the need or consequences of repealing ammunition controls has been made. It is unwise and regressive to cut back the scope of the act of 1968. Should the other body nevertheless adopt this ammunition rider, it will encounter sustained opposition on the floor of the House. The resulting delay may well jeopardize the enactment of the Interest Equalization Tax Extension Act. The ammunition amendment should be defeated.

PROPOSED DEPARTMENT OF CONSERVATION AND ENVIRONMENT

Mr. CASE. Mr. President, the responsibilty for protecting our environment currently is scattered among more than 90 Federal agencies. One of these agencies is the Bureau of Sports Fisheries and Wildlife, which is conducting a continuing study of the amounts of hard pesticides accumulated in the bodies of fish, birds, and shellfish.

An article published recently in the Newark Sunday News reported that the study has revealed that wild ducks shot by hunters in New Jersey contained one of the highest concentrations of DDT in their bodies found among ducks anywhere in the country.

This is just one example of how, with the aid of technological and scientific developments, we have accelerated the pollution of the soil, the air, and the waters to a point where irreparable harm to the health and livability of our surroundings is a distinct possibility.

Unless man begins to take better care of his environment, the earth may become as inhospitable to life as the moon.

Therefore, I have introduced proposed legislation to create a new Federal Department of Conservation and the Environment, which would for the first time give a specific single Government agency responsibility for protecting our environment.

Mr. President, I believe that the article in the Newark Sunday News should be of interest to Senators. Therefore, I ask unanimous consent that it be printed in the RECORD.

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

[From the Newark (N.J.) Sunday News, September 28, 1969]

STUDY FINDS HIGH DDT IN NEW JERSEY DUCKS

(By James M. Staples)

WASHINGTON.—A two-year federal survey has revealed that ducks from New Jersey had among the highest concentrations of the pesticide DDT in their bodies found anywhere in the United States.

It is part of a continuing study by the U.S. Bureau of Sport Fisheries and Wildlife on amounts of DDT and other "hard pesticides" accumulated in bodies of fish, birds and shellfish. Findings will be used as a base against which future research can be measured.

Wings of mallard and black ducks collected from hunters during the hunting seasons of 1965 and 1966 were assayed for pesticide contents. The wings were originally collected in order to plot duck population and migration data.

The new findings were expected to heighten the New Jersey confrontation between conservationists and agricultural-chemical interests on controls for DDT and other chlorinated hydrocarbons.

HARD PESTICIDES

They are termed hard pesticides because they retain chemical identity for many years after being applied, entering bodies of fish, birds, animals and man and gradually building up concentrations suspended in fats. Foes of the DDT family stress that there are some 900 pesticides which are not under attack.

A bill in the New Jersey Legislature, introduced by Assemblywoman Josephine S. Margetts, R-Morris, and Assemblyman Thomas H. Kean, R-Essex, would establish a state pesticide review board with the power to assess and, if deemed advisable, ban any insecticide, fungicide or herbicide from sale or use in the state.

New Jersey Secretary of Agriculture Philip Alampi heads a Pesticide Study Council named a month ago by Gov. Hughes. Alampi has spoken out strongly in favor of pesticides generally, saying that his council will seek to "protect and reassure" pesticide users.

DDT has been charged with bringing on the imminent extinction of bald eagles, peregrine falcons, ospreys and pelicans, because it causes weakness in egg shells which leads to their collapse during incubation and death of the unhatched bird. There is a growing mass of evidence that chlorinated hydrocarbons damage sex hormones in mammals and may lead to genetic problems.

OTHER SURVEYS

Published recently in the government's pesticide monitoring journal, the duck survey and a companion one on starlings will be followed soon by a report on DDT and other pesticides found in shellfish.

Another study in the same series earlier this year showed that of fish sampled throughout the country, the highest DDT concentrations were in fish from the Delaware River near Burlington, N.J.

The report on ducks focused on four "flyways," or migration routes taken by the birds each year. They are along the Atlantic Coast, the Mississippi River, Rocky Mountains and Pacific Coast.

Ducks killed in New Jersey averaged 2.1 parts per million of DDT in adults and 1.75 in immature birds. The part per million measurement is the ratio of pesticide to body weight.

Researchers noted that all ducks collected were killed by hunters during hunting seasons. This means that some could have migrated southward and others could have been residents of New Jersey.

Findings in adult ducks in Delaware at the same time showed only .88 parts per million (ppm) of DDT. In Pennsylvania it was 1.14 ppm, New York, 1.24 ppm; Rhode Island, .94 ppm; Connecticut, 1.51 ppm, and Massachusetts, 1.69 ppm. These states, along with New Jersey, are an "overlap area" for duck breeding and migration grounds.

Comparable findings to those in New Jersey came also from Alabama; along the Mississippi flyway ducks were "cleanest" from the DDT standpoint, followed by those along the Mississippi.

Scientists scanning the survey theorized that ducks, living in wetlands, acquire DDT mainly in areas which have been dosed for mosquito control. They said the same thing about DDT found in the fish from the Delaware River.

The starling survey showed nationwide DDT accumulations, with the Southeast averaging highest. Two samplings from Arizona and New Mexico were the highest individual readings, between 15 and 25 ppm.

Dieldrin, like DDT, a chlorinated hydrocarbon pesticide but 50 or more times as powerful, also showed up uniformly among starlings and most ducks. Although dieldrin readings were much lower than DDT, its added potency caused concern among reseachers.

PUBLIC SUPPORT FOR THE ESTABLISHMENT OF AN AMERICAN FOLKLIFE FOUNDATION GROWS

Mr. YARBOROUGH. Mr. President, I have been greatly encouraged by the rapidly growing public support for my bill, S. 1591, to create an American Folklife Foundation within the Smithsonian Institution.

The American people are recognizing the necessity for accumulating and permanently recording the diversified traditions and cultures which have molded our Nation. Not only does each American enjoy the distinctive ways of his own family, ethnic group, region, and occupation which comprise his traditional or folk culture; but he also shares with all Americans a common body of customs and traditions which is our national culture and heritage. The establishment of the Foundation would guarantee the preservation of the very basis of our unique society.

In a letter to me endorsing the bill, Mrs. Mildred L. Rahn of Baltimore, Md., lucidly warns of the increasing homogenization of our society in this day of mass communication and conformity.

We must act quickly to prevent the eventual loss of this vital portion of our heritage.

Mr. President, I ask unanimous consent that Mrs. Rahn's letter, dated September 27, 1969, be printed in the RECORD.

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

BALTIMORE, MD.,
September 27, 1969.

Senator RALPH YARBOROUGH,
Senate Committee on Labor and Public Welfare, Old Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: This letter is in support of your Senate Bill No. 1591, relating to the American folk life foundation. I think it is time that the various cultures within the United States are consolidated, studied, and preserved as a national folk life.

Maybe a separate folklife museum could be founded to sponsor folklife demonstrations throughout the nation—a sort of travelling version of the Smithsonian's folklife festivals.

I am especially partial to the American folk music. Our country has such a wealth of folk song tradition. The excellent exhibit by Mr. Scott Odell at the Smithsonian should be expanded and made a permanent part of the Institution. I am referring to the Country Music exhibit with instruments, pictures, tapes, and slides. This could even become part of the American folklife foundation.

Please urge the committee to pass the bill so researchers can begin collecting while there is still time. Each generation loses a bit more of the past tradition. Let it be recorded for everyone, now, while we still have people from the pre-T.V. generation—who knew folk culture before mass communication.

Pacem in terris,

MILDRED L. RAHN.

CALIFORNIANS KILLED IN VIETNAM

Mr. CRANSTON. Mr. President, in the past week, since last Thursday, September 25, the Pentagon has notified 14 more California families of the death of a loved one in Vietnam. Those killed were:

Pfc. Dennis L. Bartlebaugh, son of Mr. Kenneth L. Bartlebaugh of Fullerton.

Sp4c. Encarnasion Rodriquez, son of Mr. and Mrs. Encarnasion A. Rodriquez of La Mirada.

Sp4c. Kenneth G. Burlock, Jr., son of Mr. Kenneth G. Burlock of San Bernardino.

Pfc. Gregg L. Cochrane, son of Mr. and Mrs. Robert S. Cochrane of Santa Clara.

Sp4c. Robert A. Cooke, son of Mr. and Mrs. Dan Cooke of Durham.

Sgt. Lowry T. Cuthbert, son of Mr. and Mr. Richard Cuthbert of Compton.

Pfc. David T. Ford, son of Mr. and Mrs. Gordon E. Ford of Hayward.

Pfc. Charles H. Goldmeyer, son of Mrs. Ellen L. Erdman of San Diego.

Cpl. Frank J. Montez, brother of Miss Dianne Montez of San Martin.

Lt. John A. Reed, husband of Mrs. Susanne C. Reed of Fallbrook.

Pfc. James S. Rogers, husband of Mrs. Luann Rogers of Palmdale.

Sp4c. Nels V. Rosenlund II, husband of Mrs. Vivian P. Rosenlund of Rio Dell.

Pfc. John C. Sterling, son of Mrs. Angelina M. Espinosa of Concord.

Pvt. Erich L. Tidwell, son of Mrs. Beverly S. Bush of San Diego.

They bring to 3,815 the total number of Californians killed in the Vietnam war.

SUPPORT FOR THE PRESIDENT'S EFFORTS TOWARD PEACE IN VIETNAM

Mr. HANSEN. Mr. President, it is time that Members of Congress who believe in national honor and national principle should stand up for the President of the United States in his efforts to bring about an honorable and just peace in Vietnam.

Day after day, we hear and read about the advocates of surrender and retreat until sometimes average Americans must think there are only quitters and cowards in their country's Capitol.

Those are harsh words, Mr. President, but I believe they are fully justified.

Get out now, some say.

Get out by 1970, or by the end of 1970, or by the middle of 1970, others say.

Get out at any cost—to us or to our allies.

And daily as they talk, they strengthen the resolve of the enemy in the field and harden his heart at the bargaining table, thus making the road to peace ever longer and more difficult. But these people do not represent all America or even most of America. And it is time the world knew it.

Whether we are in Congress or out in the hinterlands, it is time the enemy know that most Americans support their President and, even more, believe that he should be given a decent time in which to arrange an honorable peace without the harpers and the hippies creating confusion at home and lending comfort to the other side with their eternal bleating.

Mr. President, it is time for America to tell the President it stands with him during this time of awful responsibility. It is time for Americans who still put their country's honor and duty first, to stand up and be counted.

MILITARY PROCUREMENT

Mr. MONDALE. Mr. President, the military procurement bill reported by the House Committee on Armed Services came as a shock to those of us who are concerned about wasteful and unnecessary military expenditures. Instead of following the lead of the Senate Committee on Armed Services, which recognized the necessity of reducing the military budget, the House Committee actually increased the total authorization approved by the Senate Committee in the amount of approximately $1.3 billion.

Most of this increase can be traced to the $1 billion which the committee added to the administration's budget request for Navy shipbuilding. According to the chairman of the House Committee, this billion-dollar addition is justified because the Navy asked for it. The distinguished chairman, who professes an allegiance to the principle of civilian control of the military, was not persuaded by the fact that the Navy's civilian superiors in the Defense Department submitted a budget to Congress which did not recommend this additional billion dollars for shipbuilding.

What is particularly disturbing about the recommended increase in the Navy's authorization is the inclusion of approximately $100 million for the procurement of items for the nuclear attack carrier designed as CVAN–70—which the administration did not plan for funding until fiscal year 1971. This recommendation flies in the face of the amendment unanimously adopted by the Senate, requiring a comprehensive study of the Navy's carrier program before any funds can be authorized for the carrier CVAN–70.

I see no justification for the House committee's action. At a time when most of the American people are already bearing an unfair tax burden and at a time when our overwhelming domestic problems require a reordering of national priorities, it would be fiscally irresponsible for Congress to act in this manner.

I should assume that President Nixon would strongly oppose this recommended increase in his own military budget. When the House recently added more than $1.1 billion to his budget request for education, the President immediately announced his intention not to spend these additional funds. He expressed the importance of holding down Federal "spending in the present economic environment," and stated that "present circumstances plainly require a point of predictable firmness and responsibility in dealing with these budgetary problems."

In light of the President's sentiments on Government spending, I was dismayed when the chairman of the House Committee on Armed Services announced that the President supported this effort to add $1 billion to the Navy's budget. The chairman told the House:

> The President of the United States has promised me that he is going to proceed with this addition in as orderly a fashion as he can, and as fast as he can. And I do not believe Richard Nixon would say that if he did not mean it. He happens to be concerned for the U.S. Navy.

I strongly disagreed with the President's decision to withhold desperately needed funds for education. I do not believe that it is justifiable to cut education programs in an attempt to restrain an inflation which is fed primarily by excessive military expenditures.

But his unwise decision not to spend money appropriated for education in excess of his budget request is even more indefensible if he in fact supports the $1 billion addition to his military budget by the House committee.

It is ironic that the additional amount of funds in both cases is approximately $1 billion. If the President's position is that he will support inflationary spending for naval shipbuilding but will oppose funds to improve the education of our children, it exposes his administration's distorted sense of national priorities.

MAHATMA GANDHI AND THE ENDING OF THE GANDHI BIRTHDAY CENTENNIAL CELEBRATION YEAR

Mr. McGEE. Mr. President, today is an appropriate day to pay tribute to Ma-

hatma Gandhi, the most effective apostle of nonviolence this world has seen in generations, if not centuries. Today the Gandhi Birthday Centennial Celebration Year, proclaimed by UNESCO, comes to an end.

That this year has been full of conflict and violence is a fact that Gandhi would have lamented, but be assured that he would not have rested with lamentations alone. We can only believe that he would reaffirm these words he wrote in 1920:

I believe that non-violence is infinitely superior to violence, (that) forgiveness is more manly than punishment. Forgiveness adorns a soldier. But abstinance is forgiveness only when there is the power to punish; it is meaningless when it pretends to proceed from a helpless creature.

But Gandhi recognized that this was only half the problem, and he did not counsel the helpless to depend upon the generosity of the strong. He wrote:

Non-violence in its dynamic condition means conscious suffering. It does not mean meek submission to the will of the evil-doer, but it means the putting of one's whole soul against the will of the tyrant. Working under this law of our being, it is possible for a single individual to defy the whole might of an unjust empire to save his honor, his religion, his soul, and lay the foundation for that empire's fall or its regeneration.

There should be a special place in American hearts for Gandhi and the philosophy he espoused. Not only does he arouse our sympathy for the underdog, he also reminds us that the United States was also once a colony and had to struggle for its national independence. It should not be forgotten either, that Henry David Thoreau's "Essay on Civil Disobedience" exerted a strong influence upon Gandhi's thought. Nor that Thoreau himself had been deeply influenced by the teachings of Hindu scriptures.

So it is highly fitting that we take this occasion to pay our respects to the memory of Mahatma Gandhi, the man about whom Albert Einstein wrote:

Generations to come will scarce believe that such a one as this ever in flesh and blood walked upon this earth.

SURRENDER NOT WANTED IN VIETNAM

Mr. GOLDWATER. Mr. President, I note with some interest and more than a little skepticism the declaration of the Democratic national chairman that he is not trying to make retreat and surrender in Vietnam a Democratic issue.

I think it would be more accurate to say that he is trying, but is having little success.

Mr. President, everyone wants peace. But only a very few want surrender. Everyone wants Americans troops out of Vietnam. But only a few want a cowardly retreat.

Everyone wants to get out. But only a few want to bug out.

Everyone wants to negotiate, if possible, an honorable end to this war. But only a very few insist on undercutting the President and his negotiators at the negotiating table.

Mr. President, I should say that, on the basis of his recent statements, the chairman of the Democratic National Committee is beginning to sound like one of that little group who would surrender, retreat, and bug out.

I think he is wasting his time. Most Democrats, like most Republicans, want an honorable, negotiated peace which would find the United States living up to its commitments and which would insure the freedom of our allies.

I hope that eventually the chairman of the Democratic Party will join with the great majority of Americans in seeking to attain those goals.

THREATENED AMERICA; WILDERNESS AREAS ARE DEFENDED BY LIFE MAGAZINE; THE BIG THICKET SHOULD BE SAVED

Mr. YARBOROUGH. Mr. President, the August 1 issue of Life magazine contains an editorial and an excellent article which describe the effects of man's lack of concern for his environment.

The editorial points out that our continental wilderness has largely vanished and that what remains is threatened by our own increased needs. It tells of how pollution, the misuse of pesticides, and indiscriminate and ruthless development are deteriorating the quality of American life today, both in the countryside and in our cities.

The article, entitled "Threatened America," written by Donald Jackson and Grey Villet, describes the erosion of our little remaining wilderness. They sampled the survivors and discussed how Hell's Canyon along the Idaho-Oregon border, the continent's deepest gorge, is threatened with inundation by a reservoir; how Yosemite National Park in California is already inundated with people; how Corkscrew Swamp in south Florida, a teeming pool of life, is endangered by water-draining canals; how the Pine Barrens of New Jersey are in danger by a projected jet port; and how Admiralty Island in Alaska, domain of the grizzly and the bald eagle, is headed for the power saws of the loggers. As the author says, "the wilderness erodes. And as it does, perhaps we do, too."

Mr. President, these are only a few of the limited samples of wilderness areas threatened with destruction. The Big Thicket, a unique and beautiful wilderness in southeast Texas which is unparalleled in the richness and diversity of its plant and animal life in the southwest, is also facing destruction. It has already been reduced from its original size of 3.5 million acres to about 300,000 acres. I have introduced bills to create a Big Thicket National Park in each Congress since 1966. My bill, S. 4, to save the Big Thicket is pending now. We must act soon if we are going to save this incomparable area from destruction.

Mr. President, I ask unanimous consent that the editorial from Life magazine and the article, written by Donald Jackson and Grey Villet, be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

AN EDITORIAL

The following story shows a part of America that is threatened by our spreading civilization and growing population—the wilderness lands. These lands—10 million acres now under protection, almost all west of the Mississippi—have always held a magic. F. Scott Fitzgerald wrote of the early settlers arriving at the new world three centuries ago: "For a transitory enchanted moment man must have held his breath in the presence of this continent, compelled into an esthetic contemplation he neither understood nor desired, face to face for the last time in history with something commensurate to his capacity for wonder."

That enchanted moment is long past. The continental wilderness has largely vanished, and what remains of it is threatened by our own increasing needs. Our capacity for wonder survives, but less survives to be wondered at.

Vanishing wilderness is, however, only one aspect of the deteriorating quality of American life today, both in the countryside and in our cities. There are many others: pollution, endangered wildlife, smog, urban sprawl and that new catch-all term, "uglification." In later issues Life will show this deterioration and recommend ways to prevent it.

Change, of course, is inevitable; and progress, which is intelligently conceived change, is desirable. There must indeed be more jet airports, highways, housing and power plants, and it is foolish to maintain—as some conservationists do—that their encroachment must be prevented everywhere and at all costs. But too often the cost is too high. We are a rich country, but as Jean Mayer, a population expert and Special Consultant to the President, writes in *Columbia Forum:* "Rich people occupy much more space, consume more of each natural resource, disturb the ecology more, and create more land, air, water, chemical, thermal and radioactive pollution than poor people."

The population of the U.S. is headed toward 300 million in the next quarter of a century; our GNP will reach a trillion dollars in the next two years. This explosive combination of people and money will produce ever greater demands for more cars, dams, lumber, fuel, food, roads, land. These demands will lead, unless checked, to more pollution, garbage, trash, noise, desecration—and leave much less beauty to evoke our capacity for wonder.

What we now require is an intelligent and continuing weighing of the demands of "progress" against what might be sacrificed to them. Fortunately, some momentum in this direction already exists. Both government and industry have shown awareness—though not yet enough—of the environmental side effects of their activities. The Wilderness Act of 1964 set aside vital acreage for protection and provides a method for setting aside much more. Two months ago President Nixon established an Environmental Quality Council at Cabinet level, with himself as chairman and his scientific adviser Dr. Lee DuBridge as executive secretary. The same executive order set up a Citizens' Advisory Committee on Environmental Quality, with Laurance Rockefeller as its chairman. Both groups have a broad charter but have yet to show what they can do. Such industries as chemicals, oil and utilities have recently shown a greater responsibility toward the environment in which they flourish.

Public concern has also increased. The destruction of rivers by chemicals and detergents, the destruction of wildlife by insecticides, the destruction of landscape by indiscriminate and ruthless "development"—all are now less likely to occur without protest than was possible 10 years ago.

Nevertheless, not nearly enough informa-

tion exists to enable government, industry and the public to determine whether or not specific projects should be approved. The Santa Barbara oil-drilling leases, granted by the U.S. Department of the Interior, might not have been granted if the full extent of the threat had been known. The use of DDT, a successful chemical against insects, is either being questioned or has been banned in 17 states because its damage to other forms of life is finally recognized. Marshlands that have been filled in and gobbled up by industry and housing might well have have been protected if more people had realized that one acre of marshland potentially can produce 10 times as much animal protein (fish, oysters, clams, crabs) as one acre of farmland.

Quite aside from the purely physical destruction involved in careless exploitation are the esthetic losses. Even when no ecological damage is committed, we constantly afflict the eye with shoddy excrescences of bad design, ugly and haphazard travesties of modernity spattered across the landscape in the name of expansion.

Life will undertake to treat these themes in pictures and words. We will report the threats and attempts to show how they can be opposed and, if possible, defeated. We believe that the threats are serious, that the potential losses are critical and that the need for action is urgent.

THREATENED AMERICA: POLLUTION, TRASH, SMOG, SPRAWL, NOISE, GARBAGE, UGLINESS—THE WILD LANDS STRUGGLE TO SURVIVE

(By Donald Jackson)

The wilderness erodes. What remains of it survives in isolated and glorious patches, on mountainsides and remote islands and dark swamps and deserts. For every strip that's left there are competing claims, often more than two; the back country may be serene. but there is little security.

Here we look at a sampling of the survivors, at how they achieved that state of grace and what their prospects are: Hells Canyon, the continent's deepest gorge, threatened with inundation by a reservoir; Yosemite, already inundated with people; Corkscrew Swamp, a teeming pool of life endangered by water-draining canals; the Pine Barrens of New Jersey, a tidy forest being eyed by the jetport builders; Admiralty Island, Alaska, a domain of grizzlies and bald eagles, headed for the power saws of the loggers. "Something will have gone out of us as a people," Wallace Stegner has written, "if we ever let the remaining wilderness be destroyed." The wilderness erodes. And as it does, perhaps we do too.

HELLS CANYON

The canyon liberates the imagination even as it constricts the horizon. The sun arrives late and leaves early, and the long dark lets you see what your grandfather saw, and his grandfather, and you hear the sounds they heard, and you know their dreams and dreads and joys. A wondrous gift, this wilderness, a summoning of the senses and a teasing at the spirit. The wild river sings the spring away, and in the summer it lies on its back, kicking and biting like a downed cat—at once violent, poignant and beautiful. Across the river might as well be across the sky. On the canyon wall the would-be dam builders have painted their initials, like fraternity boys autographing a railroad bridge: HMS—High Mountain Sheep Dam. For 15 years engineers for Northwest power companies have gazed fondly at their blueprints and dreamt of this dam—a canyon almost *demands* a dam. The only undammed reach of the Snake, its last 80 miles of wild water, would be tamed; a 60-mile-long reservoir would rise lolling and drown the fragrant riverside meadows, and water skiers would glide where rapids had snarled. The few sheep and cattle ranchers who live there, the outdoorsmen who come in by rapids-running boats or pack mules would just have to find someplace else. The dam was approved by the Federal Power Commission, a compromise dam was suggested by the Interior Department, and the Supreme Court finally bounced the whole question back to the FPC. Engineers and conservationists are now arguing through another round of hearings.

"I spent three weeks in there once," the old woodsman said. "Never saw a soul. Do you understand? Never saw a soul."

YOSEMITE

It's 8 a.m. A squirrel hobbles gamely under half a piece of bread. Smell of bacon and woodsmoke. Sound of raucous bluejays. Of 5,000 people camped in Yosemite Valley, 4,000 are asleep. One rolls out of a sleeping bag and finds a hot dog for breakfast. The tough part is finding a stick. For sale at the gate: "Instant fire-pac Pres-to-Logs. An evening's fire in a carton." Rivers full, white. Gentle morning sun paints the mountainside. Trailers everywhere. Cars everywhere. People everywhere. Question: What is a national park? Answer: A national parking lot.

Two p.m. Motorcycles, each with built-in girl, makes circles in the dust. An old couple watches transistor TV. "We've got crime enough here for a city of 200,000," says a ranger. Drinkers drink. Sleepers sleep. A hundred eager tourists surround a bear at Glacier Point. The ranger keeps his distance, does nothing. Is it dangerous? "Sure, but we're okay here." The bear nuzzles a woman. She looks annoyed. Question: What are these people doing here? Answer: Having a cheap vacation.

Eight p.m. Hippies convene in a meadow. Smell of pot. Sound of acid rock. "Hey, want to trade a swig of wine for a cigarette?" Squares at Yosemite Lodge, digging the slide show. They hiss when a picture of a skunk appears. "Look, I live in Glendale," says a camper. "In Glendale we got smog. Here you got good water, good air and the smell of pines. Crowded, sure, but it's better than smog." Impartial bluejays mooch from everybody. San Jose-in-the-pines. Disneyland-in-the-wild. Question: Where is the wilderness? Answer: Over there somewhere, beyond the auto nature trail.

CORKSCREW SWAMP

The swamp makes feeble tools of our senses. There is too much to absorb: too many sounds, too much density, motion, mystery. The colors are too bright, too true; none of man's paints can match them. Suddenly a heavy splash, a strangled squawk: something is dying. On the lake of water lettuce the heron stalks, one long twig of a leg hanging absently in the air, hypnotized by some twitch of life on the water. The tension breaks, the sounds resume: the faintly nasal grunt of the alligator, the skull-rattling drumbeat of the woodpecker, a dozen birds singing in a dozen keys for a dozen reasons. There is something terrible about the swamp: it seems to stir some forgotten fear—perhaps of dark and silent death, the clumsy stranger's death, a quick and quiet ripple on the black water. More here than you can see, or hear, or smell; intimations of things never known.

This swamp survives, but its enemy closes. Land developers ("Building New Worlds for a Better Tomorrow") have dredged canals near the swamp, lowering the water level on which everything depends—orchid and wood stork, bluegill and otter. The Audubon Society, owner of the 10,000-acre swamp, has fought back by buying buffer land, building dikes, drilling wells. "I think," says the Audubon superintendent cautiously, "we can reasonably expect to survive." "The wilderness has been pushed aside," boasts the housing developer's brochure. Not yet. Not quite.

PINE BARRENS

Strange these woods should be here. Miraculous, in fact. (The green dark of the pines closes in, closes in.) They must be a part of some "master plan," there will be a city here, certainly, or a nuclear power plant, or a shopping center. (Look at the water beetles, chugging around the neat dark river like miniature speedboats. Taste the water. You can drink it.) This is New Jersey, smack in the middle of the megalopolitan main line. Twenty million people live within two hours of these "barrens"—so named by early farmers because of their disappointing soil. Obviously the barrens can't stay this way, 1.3 million acres of green in midurbia, there must be something—ah, a jetport, they're talking about a jetport. *That* sounds more like it. (In the canoe we glide, silent as Indians, and I feel invisible.) "What are you going to do, waste a *resource* like this, let it just sit there, undeveloped? Ninety percent of it *privately owned!* Man, that's opportunity!" Maybe they'll build a jetport, maybe they won't, they haven't decided—but you don't think it's going to stay here like it *is*, do you? (What secrets have these woods kept? What promises? Why are they here?) Something, *something* will happen, certainly. All those people so close, all this space, all those people so close, all this space . . .

ADMIRALTY ISLAND

This island is the home of royalty, and the rest of us tread here at the sufferance of the monarchs. A neat division has been worked out by the rulers: the land belongs to the grizzly, the sky to the bald eagle. Very little grousing by the subjects, either. Man, though—well, you know man, he's the touchy one. He slashes the trees and chokes the salmon streams with his debris, just to show who's *really* boss. So far the logging has been small-scale and well hidden; the bulk of Admiralty has remained the preserve that the monarchs know. But the bulldozers are revving their engines offshore, and the power saws are coming in their dozens. The land is national forest, but the U.S. Forest Service has chosen to sign a contract with a lumber company turning over nearly half of the remaining open land to logging. "We harvest timber like farmers harvest crops," says a Forest Service man. But why here, why in this realm of wonders? "Everybody's gotta be somewhere," comes the reply.

In the carpeted forests and the perfumed meadows, though, out there amid the sedge and wild raspberries, lush moss and brilliant streams, playfully splashing herring and silver-domed sea otters, out in the wild stillness the monarchs aren't listening. There's the grizzly, lazing up to a stream and selecting his breakfast salmon. There's the eagle, preserving his dignity through strength alone as he drops into the nest. Surely we can't intimidate *them*. High, high up in the Arctic sky a jet bomber slides soundlessly west, the only visible work of man, taking a full minute to traverse the broad horizon. There is no past, no future, only this stillness, eagle and plane and bear, together in a frozen tick of time.

The sight of a bear track on an Alaskan island, intimidatingly huge, a miniature amphitheater filled with three inches of water . . . the smell of spring in Hells Canyon, sweet and soft and fresh . . . the sound of a full and violent river, a ceaseless fast freight smacking along to some midnight rendezvous . . . a sudden stillness in a place vivid with life . . . the feeling of oneness with your tribal past, the ease of letting years blow away like blossoms in the wind . . . an echo off a cedar swamp . . . the surprising gentleness of nature . . . fear . . .

wonder . . . solitude . . . mystery. "Wilderness," wrote one connoisseur, "holds answers to questions man has not yet learned how to ask."

Our history was written in prairies and mountains, not castles and cathedrals, and the raw spectacle confronted by the first Europeans on this shore had no equal in the Old World. Americans still live so close to the wilderness, figuratively if not often in fact, that it's difficult for many to see that it is practically gone. It doesn't *look* that way, flying over the country at 28,000 feet, but almost all that land down there is spoken for—it's being used to graze cattle or sheep, it's part of a military base or a testing site, it's been leased to a lumber company. Excluding Alaska, only between two and three percent of the U.S. qualifies for the federal definition of wilderness: "An area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain . . . [an area] without permanent improvement or human habitation." Most of that slender remnant has either been picked over once, or is about to be. The Wilderness Act of 1964 set aside nine million acres for permanent preservation (a million more acres have been added since then), but left the remaining *de facto* wilderness as a shrinking arena where the final scenes of an old American drama are being played—the conflict between the developers and the conservationists.

In the past the fight has never been even. From the beginning, when the last Conestoga was put on blocks and the boosters fanned into the countryside, building the dam has had clear precedence over listening to the river, clearing the woods has had the edge on getting lost in them. There have been isolated victories for the conservationists through the years—it comes as a revelation to learn that Yellowstone Park was set aside as a "public park or pleasuring ground" *97 years ago*—but those were exceptions.

The American creed was and is foursquare for growth; growth is seen to have a sort of *a priori* goodness, a moral value, and against that force the tender arguments of the wilderness-lovers ("deep breathers" and "kissers of the wind," one developer calls them) were feeble indeed. Still, there was an ambivalence in the American mind: if conquest of the wilderness seemed necessary and therefore Christian and laudable, it was gradually subverted to the idea of wilderness as sanctuary, as escape, as the resting place of truth and beauty. It's a tough one: both ideas are wholly American, both impulses beat in the American breast, and thus the conflict is not so much a clash of two opposing groups as it is a collision of two ideas within the mind of each of us. "We have met the enemy," Pogo said, "and they are us."

Both sides indulge in what might be called the "last great" syndrome. In Hells Canyon on the Idaho-Oregon border, for example, private and public power companies have hankered to build a dam for half a generation, claiming that the middle Snake River represents the "last great source of hydroelectric power in the Pacific Northwest." The Sierra Club, a late-arriving but fiercely effective foe of any dam in the canyon, ripostes with the charge that the Snake is the "last great free-flowing river in the West." Both contentions are wrong, and both sides, in moments when candor gets the better of combat, will admit it.

But now the fight is a lot closer to even than it ever was. The reason, probably the only reason that could explain it, is that the public, or at least large segments of it measurable regularly in election returns, has become conservation-minded.

Nothing like reliable statistics are available to document this phenomenon, but its existence is conceded by both dam builders and river preservers, the former with a sour mutter that "the pendulum has swung too far the other way," and the latter with the kind of raucous victory shout peculiar to long-time losers.

Nirvana for the deep breathers is still beyond the sunset, however. David Brower, the eloquent conservationist recently ousted from leadership of the Sierra Club, explains that "there's plenty of power when the public gets excited about a specific issue like Grand Canyon or the redwoods, but there's still not enough day-in-day-out support."

Brower's examples are not random; preservation of the Grand Canyon (from a dam which would have backed reservoir water into the canyon) and the redwoods (from the lumber industry) were victories for an army he commanded. Through dogged energy and charismatic flair, Brower built the Sierra Club to its present strength and letter-writing clout. In April he was voted out of office. Critics charged that he was authoritarian, spent too freely and acted without the consent of the club's board of directors. As a result, the conservationists are floundering momentarily for lack of strong leadership. The two most significant and visible leaders of the last decade, Brower and former Interior Secretary Stewart Udall, are currently without portfolio.

The best illustration of the growing strength of the wilderness forces is the sunburst of conservation legislation that emerged from Congress during the Johnson years. The Wilderness Act was only one of dozens that reflected an increasing environmental uneasiness—the scenic rivers bill, antipollution laws, establishment of new parks and others.

In the courts as well, the values of wilderness have begun to get a hearing. A federal appeals court ruled in 1965 that scenic, historic and recreational values had to be taken into account by the Consolidated Edison Company in its proposal to build a nuclear power plant on the Hudson River. A 1967 U.S. Supreme Court decision on the Hells Canyon dam issue introduced the same ideas into an order remanding the question to the Federal Power Commission, where it remains.

Industry itself has begun to show some long-absent sensitivity to conservation. Public relations men go to elaborate lengths to avoid offending the wind-kissers. Some firms have subsidized conservation studies, others have donated parks or wild land to local governments. This kind of thing cuts no ice with Brower, however. He calls it "cosmetics for rape." He is, of course, incorrigible.

Along with the growing power of the conservationists has come a change in the character of the movement. The wind-kissers, in fact, are in decline. The scientists, more specifically the ecologists, are increasingly important. Nowadays a stand of trees or a piece of sageland is worth preserving not necessarily for its beauty or its opportunity for solitude; it is more likely defended as vital to the balance of nature, the "chain of life" in a given area, or as a natural laboratory containing potentially valuable secrets. The ecologists talk less about the romance of wilderness and more about "ecosystems," distinctive networks of relationships between land and water, vegetation and wildlife.

This has led to some peculiar gyrations. Some scientists are trying to "quantify," in the good new American way, the values of wilderness. This is a ploy born in desperation. For decades developers have been able to show, in dreary charts of "cost-benefit ratios," what *specifically* might be gained from whatever project they have in mind—read: dollars. In reply the conservationists have fiddled with their fingernails and talked about beauty. Now they are groping for figures to fight the developers on their own terms; hence graphs that measure "scale of valley character" and assign numerical values to a view of a mountain or the presence of a bear.

"What it comes down to is this," says Brower. "If you can't measure a thing, measure it anyway for those who won't know anything about it unless you do."

The ecologists are running the palace, all right, but the troubadours are still skulking around outside in the high grass, practicing birdsongs, comparing back packs, listening, frowning when they hear an airplane. Udall thinks the two sides, conservationists and developers, now have "a kind of parity of influence," but most conservationists disagree. "There's very little conservation legislation coming forward these days," says one congressman. "The logging and power interests are still damned strong. I'm pessimistic."

The one huge, dark fact dominating the entire question of land preservation is continued population growth. Any question of conserving space leads ultimately to a question of limiting the people with claims on that space. Most defenders of the wilderness are, at bottom, pessimistic about their chances, and spiraling population is the reason. It seems the final, ironic fruition of the "more is better" philosophy—to simply outgrow our resources. Nothing riles conservationists more than the celebration of growth for its own sake—ceremonies saluting the arrival of the 200 millionth American, the National Park Service's breathless releases on rising attendance figures. A Sierra Club poster is only about 20% facetious when it suggests that man, like the bald eagle or the flamingo, is now an "endangered species."

Another dark shadow on the future of wilderness is the state of public ignorance. Despite the growth of interest in the outdoors, most Americans remain urban, motorized and oblivious to the physical and spiritual wonders of the wild. The major recreation phenomenon of the past few years is the growth of trailers and camper trucks, motel rooms on wheels with names like Teardrop, Week-N-Der, Six-Pac, Rolls Royal and Char-Akee. Most camper drivers get no closer to the wild than a national park campground.

On the other hand, though most Americans may personally feel no urge to tramp the back country, they are enchanted by the idea of its existence. The camper truck may become an outdoors teaser; as he sees a little of raw, splendid America, the driver may want to see more; he may even recognize that the easiest way is not necessarily the best way—but that's getting giddy.

For the men who draw up "master plans" and "long-range policy," then, there is this difficult series of questions: what does the majority want, open country or scenic overlooks? Do you strike a balance between tourist development and wilderness preservation and, if so, how? Is *everything* that remains worth saving, or just some of it? (When conservation pioneer Bob Marshall was asked how much wilderness was enough, he replied, "How many Brahms symphonies are enough?" He was incorrigible too.) How do we develop an ecological conscience in America? Through education, but why haven't we done so? Why aren't children taught to respect all living things? Wilderness is peculiar among American possessions in that it is not susceptible to compromise. To take some wilderness is still to take wilderness. Roads cannot be unbuilt.

The men who worry about these questions have come up with a few suggestions. (No ideas or initiatives have come from the new Administration, except for the President's creation of an Environmental Quality Council. "We're trying to steer clear of the con-

troversial ones right at the start," says a high Interior Department official.) Here are the proposals:

The National Park Service is considering eliminating cars from some parks and operating campgrounds on a reservation system, as opposed to the present first-come, first-served method.

Some conservationists have urged that tax relief be granted to encourage the preservation of open space. Pay landowners, in effect, not to develop their land.

Udall suggests that "environmental mediators" could arbitrate disputes between developers and conservationists, in the manner of labor mediators.

Brower would like to see a sort of Fair Conservation Practices Commission, an independent nongovernmental agency with authority to review projects before and after construction.

Biologist Garrett Hardin proposes that access to wilderness be limited to those "of great physical vigor," willing and able to walk and to take the risks of the wild, and that wilderness and park areas be established at graded levels of difficulty according to ability.

Hardin's intriguing idea recognizes the final paradox: as more people learn to know and appreciate wilderness, more will want to experience it. Ultimately, their numbers might destroy it just as effectively as would highways or snack bars. It could be cherished to death.

THE PESTICIDE PERIL—LX

Mr. NELSON. Mr. President, environmental quality should be a matter of concern to every individual throughout the world. Abuse of the environment in one geographic area will in time effect neighboring geographic areas. The disastrous effects on the total environment from the use of persistent pesticides has international significance and has already been the subject of grave concern by many countries.

An article published recently in the Toronto, Canada, Globe & Mail reports on the findings of high levels of DDT residues in fish in some Canadian lakes. In Lake Simcoe DDT residues were found at levels twice that permitted in commercial fish in the United States.

The Canadian Government is concerned and beginning to phase out the use of DDT. The newspaper article reports:

The Ontario Water Resources Commission had stopped issuing permits for DDT use in controlling aquatic nuisances, and the Department of Lands and Forests stopped using DDT for mosquito and black fly control in 1966. Last year it stopped using DDT altogether, as did the Metro Toronto Parks Commission the year previously.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Toronto (Ontario) Globe Mail, July 8, 1969]

ONTARIO TESTS FOR RESIDUE, BUT MAINTAINS POLICY OF FINDING DDT SUBSTITUTE

(By Loren Lind)

Lake Simcoe supports the largest sport fishery of any lake in Ontario other than the Great Lakes, Patrick Hardy, editor of the Canadian Audubon, says.

Mr. Hardy says the 283 square miles of water 40 miles north of Toronto also takes the drainage from much of York and Simcoe counties, where 14,128 pounds of DDT pesticide were sprayed on crops last year.

He wrote an angry editorial recently, telling the Department of Lands and Forests it ought to be monitoring the level of DDT. "Is it being done?" he asked. "If so, what are the levels?"

One man who read this editorial on the subway one morning was Douglas Roseborough, supervisor of fish management for Lands and Forests.

"He's pretty hard on us, but he's asking some good questions," said Mr. Roseborough, "We are monitoring for DDT in Lake Simcoe."

The results are neither conclusive nor reassuring. Five spawning lake trout, netted in Lake Simcoe in the fall of 1967, showed telltale signs of DDT residue at more than twice the level permitted in fish sold commercially in the United States. Their DDT content ranged from 12.55 to 18.44 parts per million.

No tests for DDT residue in Lake Simcoe fish have been completed since that date, but the result was a concentrated research project that should provide clues about the extent and origin of DDT contamination by 1970.

This study, conducted jointly by Lands and Forests and the Ontario Water Resources Commission, will include two other DDT trouble spots, Lake Muskoka and the Bay of Quinte.

The Lake Simcoe finding followed a 1966 sample taken on Lake Muskoka, which showed lake trout there to have 19 to 72 parts per million of DDT. This exceeded the level at which young fry died in a study at Lake George in New York in 1964, and it led the researchers to conclude that these female lake trout would be incapable of reproducing "without subsequent fry mortality developing."

Lake Muskoka was chosen for the study because lake trout were dying out there, and widespread DDT spraying for mosquitoes and blackflies had been conducted for several years. The conclusion that DDT appeared to cause fish deaths was more predictable than the suggestion that human health might also be in danger.

Their high DDT content, said the Subcommittee on Pesticides in its report to the Government, "raises the question of whether these fish are suitable for human consumption."

Dr. Ernest Mastromatteo of the Department of Health later declared these fish warranted concern but not alarm, even though their DDT content exceeded the 7 parts per million maximum set by the Food and Drug Directorate for fruits, vegetables and the fat of cattle, hogs and sheep.

He explained last week: "In terms of the total diet, they would have little effect on a person. But if these fish were a person's only food, the judgment would be quite different."

The Muskoka finding led the Department of Health to ban commercial application of DDT in the Muskoka Lakes system, although it permits DDT spraying in other areas.

The Ontario Water Resources Commission had stopped issuing permits for DDT use in controlling aquatic nuisances, and the Department of Lands and Forests stopped using DDT for mosquito and black fly control in 1966. Last year it stopped using DDT altogether, as did the Metro Toronto Parks Commission the year previously.

But according to the Department of Health, which requires registration of all DDT sales over four pounds, at least 305,961 pounds of the pesticide were sold in Ontario last year. More than one-third of this was used in Norfolk County (133,236) pounds, mainly for the control of cutworm in tobacco growing. It is used on rye grass cover crops prior to tobacco planting.

The Department of Agriculture and Food has a goal of cutting back the use of DDT by 20 percent in five years, but almost 80 percent of its current use is for tobacco crops. No satisfactory substitute has been found to combat the cutworm and Ontario's policy regarding DDT has been one of substitution.

M. K. McCutcheon, executive director of the Department of Energy and Resources Management was asked whether laws restricting DDT use might need to be enacted. "I don't think we have any real worry about this," he replied, "because the industries themselves have been very vigilant in finding alternatives."

W. L. Smith, the man who issues commercial spraying licenses for the Department of Health, said he intends to keep a close watch on DDT, but just now he wouldn't want to commit himself one way or another.

"We are not in favor of banning or prohibiting anything if we can avoid it, because that is pretty final. But we are discouraging its use. We haven't issued any permits for the use of DDT for biting fly control by aircraft in 1968 and 1969."

Byron Beeler, soils and crops branch director for the Department of Agriculture and Food, said his department is gradually trying to fade out the use of DDT. Yet he recommends its use for cutworms on tobacco crops, leafhoppers on potatoes and codling moths on apples, in the spraying calendar issued annually.

"If we come up with a product that can do as good a job and compete favorably economically, then I think we can phase DDT out."

This objective will be helped along by new Food and Drug Directorate rules which will reduce the permissible uses of DDT from 60 to about a dozen. Expected in January, the new rules will ban DDT use for mosquito control, combatting dutch elm disease, protecting such fields crops as beans, corn, and peas, and spraying against the common housefly in homes.

But it will be permitted to protect fruit crops, potatoes, tomatoes, grapes, berries and tobacco, said Lloyd Roadhouse of the federal Agriculture Department's pesticide technical information office. His reasoning: no adequate substitutes have been found.

In some instances, the substitutes prove too expensive. For example, it takes 1½ pounds of DDT per acre to protect carrots from leafhoppers. This much DDT costs about 90 cents. A farmer might use one-quarter of a pound of Phosdrin instead, but this would cost him $2.18.

Mr. Roadhouse said the public outcry against DDT has compelled government and industry to come up with alternatives that break down more rapidly than DDT. It has a half-life of five to 15 years, which means its total biological activity is reduced to half its original power in that much time.

This means that DDT which has a half-life of 15 years would still retain one-eighth its original effectiveness after 45 years. This allows much time for it to accumulate in the lower forms of life and then become transferred to the fat tissue of cattle and humans. For this reason, alternatives that break down more swiftly, such as methoxychlor in mosquito control, are being used in place of DDT.

As the Agriculture Department reduces the permissive use of DDT, the Food and Drug Directorate intends to reduce the amount of DDT allowed in foods. A. B. Swackhammer, an official with the FDD, said the 1 ppm maximum may be replaced by a graded scale but the effect will be to cut down on the total DDT content in food.

At present, even though the official 7 ppm maximum does not apply to fish, the director-

ate uses this level as a guideline to decide if fish is edible. Mr. Swackhammer said he has found no instances in which the edible parts of fish in an entire region ran above this level.

Dr. Mastromatteo emphasized that the 7 ppm level retains a large margin of safety, so that persons eating any one fish with that much DDT would be in no danger. Even though very little of the DDT is lost in cooking, it would take more than a steady diet at that level to cause any immediate danger.

Milk is another substance in which DDT often appears, but a province-wide study by the Provincial Pesticide Residue Testing Laboratory at the University of Guelph shows little cause for alarm.

"The study hasn't been released yet," said Dr. Heinz Braun, chief chemist, "but I can generally say that the report will probably allay a lot of suspicion people have right now about DDT."

Ontario's 130,000 coho salmon, stocked in rivers near Toronto last spring, stand little chance of contracting the high DDT level of their Michigan cousins. Last March the U.S. Food and Drug Administration seized 28,000 pounds of commercially caught cohos found to have DDT at 12 to 19 parts per million.

When that happened, Mr. Roseborough had his men check the cohos being caught on the banks of Lake Huron at Sarnia and Goderich. They found the DDT less than 1 ppm. "I don't know where they're getting this fantastic level they talk about, because we just haven't got it," said A. E. Armstrong, a biologist, with the Department of Lands and Forest. Fish in Lakes Erie and Ontario generally have even lower levels of the pesticide than those in Lake Huron.

PUBLIC HEARINGS TAX REFORM ACT OF 1969—SUMMARY OF TESTIMONY

Mr. LONG. Mr. President, today the Committee on Finance received testimony relating to various features of the House-passed tax reform bill, including those which revise the standard deduction allowance and the accumulated earnings tax. Other topics before the committee involved the tax treatment of both retired persons and single persons. However, a majority of our witnesses today testified in connection with the House bill in general.

So that Senators might follow the progress of these tax reform hearings, I ask unanimous consent that a summary of the testimony be printed in the RECORD.

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

WITNESSES

HON. HENRY BELLMON, U.S. SENATOR, STATE OF OKLAHOMA

General

Believes the main purpose of our tax system should be to raise revenue, and questions whether it is now necessary for extensive use of our tax system for social purposes.

Recommends that the tax reform law include a provision which would allow a taxpayer who goes to court and successfully proves his innocence to recover the costs of such litigation from the Federal Government.

Believes that equity requires an immediate upward adjustment of the personal income tax exemption, and that if the total adjustment cannot be made in 1 year, it should be made in stages that will not unduly upset the Nation's economy.

Cites a University of Oklahoma study indicating that during a recent 2-year period, independent oil producers drilled 86.5 percent of the exploratory wells and 20 percent of the development wells completed in Oklahoma, and that it showed that 70 percent of the capital employed by independent operators is obtained from outside investors who are not connected in any other way with the independents' oil operations. Concludes that it is clear that the independent oil producer in Oklahoma relies heavily on outside investment funds as a source of capital to supplement his own funds obtained through capital recovery. States that if a current writeoff of intangible drilling costs is restricted and the proposed reduction in the depletion allowance to 20 percent is carried out, drilling operations of independent oil producers in Oklahoma might be reduced by as much as 45 percent,.

Supports the Treasury's position calling for the deletion of the House proposal eliminating depletion on foreign oil and gas production.

HON. CHARLES M'C. MATHIAS, JR., U.S. SENATOR, STATE OF MARYLAND

Philanthropy

Considers the House bill to be a severe challenge to the spirit of philanthropy.

Charitable contributions

Supports the increase in the limit on charitable deductions from 30 to 50 percent. Expresses concern about other provisions which could discourage large contributions, such as charitable trusts and gifts of appreciated property. Considers the Treasury proposals as an improvement over the House bill, but indicates that further modifications should be considered.

Objects to different tax treatment of gifts of appreciated property to private foundations as contrasted to similar gifts to other tax-exempt organizations.

Foundations

States that the proposed 7½ percent tax on investment income is excessive and unwarranted. Supports, as a compromise, the Treasury recommendation to reduce the tax to 2 percent. Believes that such a levy should be explicitly imposed as a user charge or fee, earmarked to defray administrative expenses.

Contends that the "income equivalent" provision requiring a minimum 5 percent yield is unrealistic and would reduce the flexibility of investment practices of foundations.

Maintains that the stock ownership limitations would impose special hardships on foundations whose assets consist wholly or primarily of stock in closely held family corporations, and whose major contributors are members of that family. Questions the necessity of such complete divestiture if stock is nonvoting. Expresses concern that divestiture would result in lower prices being paid for this stock than its real value.

Suggests that redemption of such closely held stock by the issuing company should be allowed over the 10-year period with no adverse tax effects to the foundation, the redeeming corporation, its stockholders, or the original donor of the stock.

Urges that the language of the House bill be modified and clarified regarding the permissible activities of foundations in public policy fields. Contends that the line between lobbying and educational activities is delicate and elusive.

State and municipal bonds

Maintains that the House provisions have caused chaos in the bond markets. Urges caution in considering measures which could make it more difficult for States and localities to finance public improvements.

Pension plans and deferred compensation

Opposes the proposed change in tax treatment of lump sum distributions from qualified pension plans.

Suggests postponement of consideration of deferred compensation pending further study.

Livestock

Contends that lengthening the required holding period and including livestock in the depreciation recapture rule could create havoc in the industry.

GENERAL

DAN TROOP SMITH, PROFESSOR OF FINANCE, HARVARD UNIVERSITY

General

States that many of the substantive revisions of H.R. 13270 are long overdue, and will prevent abuses which have developed under the letter of the existing law but seem to flout the spirit and intent of Congress. Considers examples of this to include the *Clay-Brown* provisions, extending unrelated business income tax to other exempt organizations, tighter rules on farm and hobby losses, multiple corporations, cooperatives, recapture of depreciation on real estate, stock dividends, and limitations on certain aspects of mergers. Indicates, on the other hand, that some of the substantive provisions represent new departures, some of which seem unduly complicated and questionable from economic or social policy.

State and municipal bond interest

Considers the proposed option to issue taxable bonds, with a Federal interest subsidy to offset the higher interest cost, to be the best approach devised. States that the issues of State and local bonds have become so large they can only be absorbed by offering high yields which give extra benefits to the highest bracket taxpayers, and results in higher revenue losses to the Federal Government than the interest savings to State and local governments.

Maintains that inclusion of municipal bond interest in LTP would be retroactive legislation which has already disturbed the bond market. Recommends adoption of the Treasury proposal to remove this item from LTP, and the sooner the better.

Private foundations

Believes that the prohibitions on self-dealing seem reasonable and desirable, as do the limitations on stock ownership and use of assets, though a long period should be allowed for divestment.

Argues that the proposed tax on investment income is undesirable. Feels that this would penalize recipients of grants, and possibly encourage higher taxes on foundations.

Maintains that the demarcation between permitted and forbidden activities concerning legislation is too vague and would prevent grants for many important topics such as population and pollution control and other areas where foundation activity has preceded government activity.

Restricted property

States that since options in restricted stock may be used to secure more favorable tax treatment, it is not unreasonable that their value should be taxed fully as ordinary income. Suggests that the present law on qualified stock options might well require a longer holding period and permit a longer period for options to run before exercise.

Believes that the maximum marginal tax rate of 50 percent on earned income will change the relative attraction of options and cash compensation in favor of cash.

Deferred compensation

Feels that the 50-percent maximum marginal rate on earned income will also

substantially reduce the advantage of deferred compensation contracts. Suggests that in view of this, it seems doubtful that it would be worthwhile to recreate the uncertainty of tax treatment of deferred compensation contracts. Proposes postponement of legislation in this area. Recommends, however, if legislation is adopted now, that deferred compensation from earned income be included in earned income to which the 50-percent maximum marginal rate applies.

Percentage depletion on foreign production

Notes that any revenue gain from the repeal of foreign percentage depletion will be eliminated in the long run by increased foreign taxes. Contends that the profits of U.S. companies will be reduced by higher foreign taxes and that our balance of payments will be hurt. Supports the Treasury proposal to delete this provision.

Capital gains and losses

Considers the proposed removal of the 25-percent maximum alternative tax rate to be undesirable and unfair, since it has been in the law for many years and that this one rate is singled out for a substantial increase while other rates are being reduced. Argues that such a large increase in rate may so reduce transactions that both revenue and mobility of capital funds will be reduced.

Supports the extension of the holding period from 6 to 12 months, as gains on short-term holdings may be expected to represent trading profits rather than true capital appreciation. Indicates that although the longer holding period will probably reduce total transactions in the security markets, this rapid turnover may just represent churning in the markets with little benefit with regard to investment savings.

Urges that consideration be given to a sliding scale of inclusions of capital gains based on length of holding period, such as: up to 1 year—full inclusion; 1 to 2 years—75 percent; 2 to 5 years—50 percent; 5 to 10 years—30 percent; and over 10 years—20 percent. States that with a sliding scale such as this, there would be no need for an alternative tax rate.

Charitable contributions

Supports the Treasury recommendation to remove the appreciated property of gifts from LTP and allocation of deductions. Maintains that if this is not done, it will hurt giving to educational institutions and hospitals.

Believes that there has been abuse in claims of high values for art objects. Feels that a limitation on charitable contributions of art to cost would not be unreasonable, nor would it prevent ultimate gifts to museums due to the estate tax.

Accumulation trusts

States that the proposed new rules on accumulation trusts are exceedingly complicated. Supports the Treasury recommendation that this be applied prospectively to avoid the impossible task of reconstructing income for past years.

Purposes an alternative approach that would tax income of an inter vivos trust to the grantor unless it was distributed and taxed to a living beneficiary and require the consolidation of income from all testamentary trusts and inter vivos trusts after the death of the grantor.

Suggests that if the H.R. 13270 provision is adopted, it be made applicable only to accumulations after the beneficiary has come of age at which time a young person may be expected to keep adequate income records anyway.

Investment credit and amortization

States that the investment credit should never have been adopted and its repeal is no loss. Recommends that the reserve ratio test of the depreciation guidelines be removed by administrative or statutory action. Maintains that no other major industrial country has any similar constraints.

Suggests that the special amortization of pollution control facilities may be justified because of the importance of the subject. Indicates, however, that the provision is inadequate and incorrect. Considers severe fines and other penalties to be necessary and appropriate so that the costs of pollution are borne by the producers and the consumers of these products.

Corporate mergers

Believes that more study is necessary to determine the impact of different types of requisitions. Notes that many mergers may strengthen firms and increase their competitive effectiveness, but other mergers may reduce competition. Indicates that the capital structures of some of the new conglomerates are uncomfortably reminiscent of some of the holding ocmpany inverted pyramids of the late 1920's.

Feels that when the fixed charges on new securities issued in acquisitions exceed the pretax income of the companies acquired it seems likely that leverage is being pushed too far, and that a tax law which discriminates against equity financing is leading to unstable financial structures.

Considers the most serious result of the conglomerate merger movement to be the prominence it gives to the "wheeler-dealer" type of entrepreneur. Indicates that the House bill provisions appear reasonable but may be too lenient. Supports the denial of the installment sale provisions.

Other provisions in H.R. 13270

Considers the balance of H.R. 13270 to be deficient in that individual tax burdens are reduced by $7.3 billion and corporate tax burdens are increased by $4.9 million. Maintains that this does not seem wise in a country which needs continuing new investmet in order to increase labor productivity (and keep wage increases from being too inflationary) and strengthen the international competitive position.

States that the 50-percent maximum marginal tax rate is the most important single change which could be made to reduce the search for new tax loopholes. Feels that it is unfortunate that a similar maximum is not set up for all income.

Suggests that deductions for dependent children be limited to two at a high enough income level to prevent hardship for larger families now in existence, such as $15,000. Considers the tax subsidy to large families to be unjustified due to the immense problem of population control.

GEORGE S. KOCH, CHAIRMAN, FEDERAL FINANCE COMMITTEE, COUNCIL OF STATE CHAMBERS OF COMMERCE

General

Urges the committee delay its decisions on the House bill, so as to provide the time needed for Congress, the administration, taxpayers and tax specialists, to study the bill and be more nearly certain of its effect on the economy and the Nation's institutions.

Believes that the House provisions respecting State and local bond interest, the oil industry, the capital formation markets, contributions to schools and other institutions, the obvious trend toward a gross income tax, and the attacks on the foreign tax credit, are wrong for the Nation and its economy. States that numerous provisions of the bill would not produce any meaningful revenue effect or gain, and questions how, with a small, relatively insignificant revenue effect, these changes can be justified as against the predictable serious and adverse effects on our economy that many foresee.

States that the House bill has a number of retroactive features which in fairness should be eliminated; for example, the increased capital gains tax on individuals and corporations applying to appreciation which occurred before the date of change, inclusion of State and municipal bond interest in the limit on tax preferences, and the application of the limit on tax preferences and allocation of deductions to capital gains, appreciation in donated property, and excess depreciation on real estate.

STANLEY NITZBURG, TAX COUNSEL, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.

General

States that tax incentives are not "loopholes" but a proper part of the socially and economically justifiable dynamics of a free enterprise system. Suggests that the raising of corporate taxes and reducing incentives for technological advancement and new plant construction will add to the competitive burden of U.S. business with foreign trade and will aggravate our trade and payments problem. Feels that tax relief will be attained through tax reform and that tax reduction at this time is an inappropriate response to continued inflation. Believes that our inequitable and complex system of taxation requires both reform and simplicity.

Analysis of provisions in House bill

Supports the following provisions in the House bill:

(1) Section 121 restricting business activities of tax-exempt organizations by subjecting their unrelated business income to tax at ordinary corporate tax rates.

(2) Section 231 which would liberalize deduction of moving expenses.

(3) Section 311 which would liberalize income averaging by reducing the qualifying percentage to 120 percent and by including capital gains in the computations.

(4) Section 412 which limits the application of the election to have an installment sale.

(5) The provision encouraging rehabilitation of low-income housing.

(6) Section 421 which restates the existing law making stock distributions taxable where the stockholders not accepting cash or other property receive a proportionate corporate interest.

(7) Sections 801–804 which would afford tax relief to individual taxpayers with a reservation as to fiscal soundness of enacting such provisions at this time.

Opposes the following provisions in the House bill:

(1) Unreasonable dollar limitation imposed on moving expenses.

(2) Section 301 which would restrict the amount of tax preference income which an individual could earn without being subject to tax.

(3) Section 302 which requires the allocation of expenses between taxable income.

(4) Section 331 which would impose an additional "minimum tax" on deferred compensation payments.

(5) Section 401 which would penalize small business by changing the tax treatment of multiple corporations.

(6) Section 413 which requires a pro rata portion of original issue discount to be included in a bondholder's annual income and requires a corporation to file an information return recording the amount of discount earned by each bondholder.

(7) Section 414 which limits the deduction paid by a corporation on repurchase of its convertible securities.

(8) Section 461 which would increase the alternative capital gains rate for corporations from 25 percent to 30 percent.

(9) Section 515 which would eliminate capital gain treatment on total distributions from qualified plans made to an employee in 1 year.

(10) Section 521 which eliminates the use of the double declining balance and sum of

the years digit methods of accelerated depreciaton on new buildings.

(11) All provisions of the bill which would have retroactive application.

ARTHUR J. PACKARD, CHAIRMAN, GOVERNMENTAL AFFAIRS COMMITTEE, AMERICAN HOTEL AND MOTEL ASSOCIATION

Capital gains

Contends that the proposed increase in the corporate capital gains rate from 25 to 30 percent should be deleted because it is grossly unfair. States that corporate income is taxed twice, once to the corporation and a second time on distribution to its stockholders as dividends at normal tax rates.

Real estate depreciation

Contends that the changes in the use of the accelerated methods of depreciation are unrealistic. States that while the bill allows the 150 percent declining balance method on new construction of hotel and motel properties, older properties purchased do not share such treatment, yet the depreciable factors remain the same. Argues that more depreciation occurs in the case of new properties than in used properties during the early years, and this fact has been recognized by the provisions of existing law, which permit the 200 percent declining balance and the sum-of-the-year digits methods in the case of new properties and a maximum of 150 percent declining balance method for used properties. Contends that these provisions should be maintained.

Objects to recapture of depreciation in excess of straightline because no consideration is given to the part which inflation plays in increasing the selling price of an asset. States that the current law gives some effect to the inflationary aspect of the economy and contends that to convert what is now taxed as capital gains into ordinary income as excessively burdensome.

Earnings and profits

Opposes the provision dealing with the effect on earnings and profits of accelerated depreciation on the grounds that it introduces a double standard (1) for the determination of taxable net income, and (2) for the computation of earnings and profits.

Argues that if accelerated depreciation is considered correct, and recognized in the determination of taxable income, it should be accepted in computing earnings and profits.

Multiple corporations

Objects to the elimination of the multiple surtax exemption and other related benefits as discriminatory, since two or more separate business activities owned by different interests will pay less income tax than if they were under common control. Contends that there should be no tax penalty imposed upon the business community in conducting business activities in a multiplicity of corporate forms that are found essential and desirable in the ordinary course of business.

Exempt organizations

Agrees with extension of the "unrelated business income tax" to virtually all exempt organizations and advocates imposing a tax on the investment income of such organizations.

Proposes exclusion from "unrelated trade or business" the activities of a trade show sponsored by a business league exempt under section 501(c)(6). States that existing regulations imply that a trade show of a type common to the hotel/motel industry represented an "unrelated trade or business."

States that the Internal Revenue Service takes the position that income from trade shows is not unrelated income where the exhibits are for products or services utilized by the sponsoring organization's members. Argues that the display at an industry trade show by suppliers of products used in the industry is also within the activities and purposes of the industry's business league.

CARL A. BECK, CHAIRMAN OF THE BOARD OF TRUSTEES, NATIONAL SMALL BUSINESS ASSOCIATION

Surtax exemption

Recommends that the surtax exemption be increased from $25,000 to $100,000. Justifies this recommendation on the premise that the present exemption dates back to the "thirties" since which time the dollar has lost almost 75 percent of its value. States that technology requirements demand larger investments by small business in plant and equipment, hence, greater demands on the small firm's revenues. Points out that increasing the level of the surtax exemption from $25,000 to $100,000 is almost exactly equal to lowering the tax rate 2 percent on the first $1 million of corporate profits.

Accelerated depreciation

States that sec. 452 of H.R. 13270 restricting the use of accelerated depreciation by all corporations unduly penalizes the smaller firm in that investments by small firms are sporadic and any single purchase of equipment is a large percentage of the total capital invested in the business while in the case of large corporations, the effect of section 452 would be relatively minuscule. Feels that rapid depreciation more nearly reflects the actual—and true—rate of depreciation of plant and machinery. Concludes that accelerated depreciation is vital to small business in that it allows the entrepreneur a return of capital to be reinvested thus permitting the smaller business to expand and keep modern.

Cooperatives

Supports the provisions of S. 2646 with respect to cooperatives, and urges their substitution for section 531 of H.R. 13270.

Tax on unrelated business income

Supports, in principle, the provisions of section 121 of H.R. 13270 relating to the business income of now tax-exempt organizations. Feels that income derived by such organizations from commercial transactions in direct competition with taxpaying business should not be tax exempt.

ROBERT G. SKINNER, EXECUTIVE COMMITTEE, DIVISION OF FEDERAL TAXATION, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Taxation of payments for merchandise or other property received prior to the occurrence of sale

Proposes that section 451 of the code be amended by adding a new subsection which would simply provide that payments received for goods sold by a taxpayer in the ordinary course of trade or business shall be included in income in the year in which the sale takes place. Adds that for this purpose the method of accounting regularly employed by the taxpayer in keeping his books shall be determinative.

Alternatively, suggests that section 451 could be amended to make it clear that gross income from the sale of merchandise or other property is the gain from such a sale and not the gross receipts from the transaction.

Relaxation of requirements for advance rulings regarding transactions involving foreign corporations

Suggests that the Secretary of the Treasury or his delegate should be given statutory authority to make a determination after an exchange that the exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

Amortization of intangible assets

Proposes that the cost of purchased goodwill, trademarks, trade names, secret processes, formulas, licenses, and other similar intangible assets should be amortizable over a stated period fixed by statute to the extent that these costs are not otherwise deductible under other sections of the code.

Recommends an amendment of the code to provide that if a definite life cannot be determined for a purchased intangible asset, its cost can be amortized over a period of 120 months or, at the election of the taxpayer, over a longer period, with a provision in section 1245 which would provide for recapture of amortization when the intangible asset is sold or otherwise disposed of in a transaction covered by that section.

Private foundations

Supports the prohibitions on self-dealing although unable to express a consensus of opinion on other provisions of the bill regarding private foundations.

Suggests the following modifications relating to private foundation provisions:

(1) The tax on investment income should be limited to the extent it is intended to raise revenue. It should not be imposed as a "user" fee.

(2) While it is difficult to object to the imposition of the proposed tax on termination of exempt status for willful repeated acts or for a willful and flagrant act (proposed code section 507), the computation of the aggregate past tax benefits is too complicated and seems unnecessary in view of the circumstances under which the tax would be imposed.

(3) The tax on failure to distribute (proposed code section 4942) requires that allowance for amounts set aside for future projects be established to the satisfaction of the Internal Revenue Service at the time they are set aside. In view of the penalties for failure to distribute, the Service will be able to prevent the setting aside of amounts merely by failing to act on applications or through the manner in which information supporting the amounts set aside is required to be filed. Foundations should be permitted to support these "set-asides" later.

(4) The bill limits to 20 percent the combined ownership of the corporation's voting stock which may be held by the foundation and all disqualified persons. We believe that this percentage limitation should be 35 percent.

(5) The tax on investment which jeopardize charitable purposes (proposed code section 4944) is too punitive considering the subjective nature of the act that would give rise to the tax. Any investments that experience a loss in value would be regarded by some as having jeopardized the exempt purposes. As a minimum, there should be a "correction period" as provided in proposed code section 4941(e)(4).

(6) The attribution rules included in proposed Code section 4946(a)(3) for determining "disqualified persons" should be modified to follow the rules of section 318(a) rather than code section 267(c), or section 267(c)(3) should be modified to apply only to partners having an interest of 10 percent or more.

Other exempt organizations

States that section 121(d) dealing with the Clay B. Brown problem seems unnecessarily harsh in attempting to tax all debt-financed income. Proposes an alternative that the present exemption from the unrelated business income tax for rents from personal property leased with realty could be eliminated. Suggests that this would prevent Clay Brown-type transactions by taxing the rent from any lease for whatever term where personal property constitutes more than an incidental or insubstantial portion of the property subject to the lease.

Supports the extension of the tax on unrelated business income, however, recommends that the specific deduction allowed in

the determination of unrelated business income be raised from $1,000 to $5,000 which should eliminate much of the burden of compliance by the organizations and audit by the Internal Revenue Service.

Recommends that in the case of social clubs, the allocation of income and expenses between member and nonmember activities will present difficult accounting and definitional problems that should be provided far more clearly.

Advertising income derived from periodicals of exempt organizations

Believe that it is possible for both the advertising and editorial content of certain periodicals to be functionally related to the exempt purposes of the organization. Consequently, it seems that the regulations which single out advertising activities of a periodical published by an exempt organization for treatment as an unrelated business, are unrealistic in concept. Recommend that section 512 or 513 should be amended to incorporate the following concepts:

(1) A trade or business should be defined along vertically integrated lines so that advertising activity, alone, cannot constitute a trade or business.

(2) If the activities of such defined trade or business are functionally related to the purposes for which an organization has been granted exemption, this trade or business should not be characterized as unrelated to the exempt purposes of the organization.

Suggests that this approach should prevent the unfair competition that was the original target of Congress in enacting the tax on unrelated business income.

Charitable contributions

With respect to sections 201 (c) and (d) regarding charitable contributions of appreciated property, does not favor the distinction drawn between gifts to public and gifts to private foundations. Feels that contributions of such property should be treated in the same manner without regard to the type of charitable recipient.

Farm losses

Agrees with the intended purpose of the proposed legislation to curb abuses of capital gain provisions coupled with the use of losses from farming operations, however, believes that the language of section 211 of the bill is so sweeping that it will affect more taxpayers than intended.

Recommends that the bill be clarified so that there is no doubt that the $50,000/$25,000 de minimis exceptions apply also in the case of farm net losses for the current taxable year.

Hobby losses

Agrees with the intended purpose of the proposal for dealing with so-called hobby losses. Suggests the provisions should be modified to the following extent:

(1) The $25,000 excess of deduction over gross income should be changed to $50,000 (proposed code section 270(b)).

(2) Wherever it appears throughout the section, the term "activity" should be changed to "trade or business."

(3) The application of this proposal should be limited to individual taxpayers.

Limitation on deduction of interest

Does not agree with the proposed limitation on the deduction of interest on funds borrowed for investment purposes because it has been an established general principle of economics, accounting and taxation that expenses incident to the production of income are deductible from such income. Suggests that this legislative proposal in a sense represents an artificial and arbitrary mutation of this principle which would tend to discourage the assumption of risk and the investment of capital—both of which have been important factors in the growth and development of our economic system. Furthermore, it would constitute an inconsistent exception to the cash receipts and disbursements method of accounting under which expenses are deducted when they are paid and income is taxed when it is received.

Adds, however, that if this proposed provision is enacted in basically its present form, it is suggested that the limitation be made applicable at both the corporate and the shareholder level in the case of subchapter S corporations.

Moving expenses

Believes that the dollar limitations on amounts of certain of these deductions are unrealistic in today's economy and that they should be increased. Also believes that the deductions provided for should be extended to self-employed taxpayers and to partners.

Urges that the moving expense proposals be made effective for taxable years beginning on or after January 1, 1964.

Limit on tax preferences

Recommends that the tax preference items be dealt with through direct legislation. States that if this is not practicable, then supports the provisions of the bill with one modification, for example, the tax preference item regarding the excess of accelerated depreciation over straight line depreciation should likewise provide for a reduction when straight line depreciation exceeds accelerated depreciation.

Income averaging

Supports income averaging provision of the bill but takes exception to the proposed effective date of taxable years beginning after December 31, 1969. Notes that the provisions of the bill dealing with the repeal of the alternative tax on capital gains for individuals (section 511) are to be effective with respect to sales and dispositions occurring after July 25, 1969. Suggests that the effective dates of these two provisions coupled with the 10-percent tax surcharge now in effect subjects any long-term capital gain realized by individuals in the brief period from July 26 to December 31 to a severe and inequitable tax penalty. Believes equity dictates that the effective dates for eliminating the alternative capital gains tax and introducing the new averaging provisions be the same.

Restricted property

Supports the restricted property provision on condition that any legislation finally approved continues to provide for the 50 percent maximum rate on earned taxable income. Concludes that this provision, coupled with the capital gain provisions in the bill, reflects a recognition of equality of tax treatment between earned income and capital gain income. Believes that these provisions, taken together, will continue to provide incentive for those who have contributed much to our economic progress and will also lessen the search for transactions motivated by tax avoidance.

Accumulation trusts, multiple trusts, etc.

Supports the provisions of the bill applicable to trusts except for effective dates. Recommends that the restrictive changes proposed with respect to accumulation trusts be made applicable only to those trusts established or additions made to the corpus of existing trusts after April 23, 1969.

With respect to eliminating the exceptions available under the definition of "accumulation distribution" as contained in present section 665(b) of the code, it is recommended that for those accumulation trusts which cannot qualify under these exceptions, the effective date with respect to full or maximum throwback apply only to accumulations in fiscal years ending after April 23, 1969.

Corporate mergers

Disagrees with section 411 of the bill, which provides that a corporation is not to be allowed an interest deduction with respect to certain types of indebtedness. Suggests that any restrictions on the "tide of conglomerate mergers" should be imposed outside the tax law.

Contends that the proposal will adversely affect persons who for valid business reasons may desire to sell their businesses.

Disagrees with section 412 of the bill to the extent proposed section 453(b)(3) will disqualify from installment sale treatment transactions which presently have good business purpose. Contends that section 453(b)(4) is adequate to cover present abuses of the installment method.

Does not agree with section 413 of the bill regarding the tax treatment of the original issue discount on bonds. Feels that the proposed changes violate the well-established rules of the cash method of accounting and further that they will add to complexity and information reporting difficulties far out of proportion to the problem which section 413 is designed to solve.

Recommends as an alternative solution of the problem that present Code section 1221 be amended to exclude from the definition of a capital asset all corporate nonconvertible debt (sometimes referred to as "straight" debt).

Natural resources—Mineral production payments

Recommends that an exception to the treatment of mineral production payments as loans be made for production payments used to equalize the investment of participants in a unitization.

Natural resources—Mining and exploration expenditures

Supports the provisions of the bill dealing with exploration expenditures. Suggests that a provision be added to permit taxpayers who have made elections under present law to have additional time to make new elections.

Capital gains and losses

Believes that a holding period beyond 6 months would more accurately indicate the intention to invest and thereby serve more closely congressional intent that special tax treatment be afforded gains from investment as distiguished from speculative gains.

Effective date for the capital gain and loss provisions can impose serious tax penalties for those sales or dispositions which are made after July 25, 1969, pursuant to action taken prior to that date. Suggests that the effective date be established at December 31, 1969, or, in the alternative, eliminate from the provisions of the bill any transactions to which the seller was committed in writing on or before July 25, 1969. Further suggests that insofar as the repeal of the alternative capital gains tax for individuals and the character of the gain is concerned, collections or other dispositions in connection with transactions in which the installment method was elected should be treated as if they occurred on or before July 25, 1969.

Subchapter S corporations

States that the bill's treatment of contributions to retirement plans is an improper approach to only one subchapter S corporation tax policy matter. Suggests that a better policy would be to amend the H.R. 10 rules to conform them more closely with those accorded corporations. Recommends that no action should be taken on this matter until the overall revision of subchapter S is further considered.

Suggests a more convenient method be provided for handling forfeiture applicable to contributions for years beginning after 1969.

RICHARD L. GOLDMAN, TAX COUNSEL, ASSOCIATION OF MUTUAL FUND SPONSORS, INC.

Associations taxable as corporations

States that an amendment is needed to avoid threat of two capital gain taxes on one

gain, and perhaps one tax on no gain, in the case of investors who accumulate mutual fund shares under a periodic payment plan (by which they may invest, for example, $25 a month for a period of years).

States that when an investor liquidates his interest under the plan (his shares being sold back to the issuing fund by the bank custodian to give him his cash), his gain is taxed to him, as is proper, but contends that it may be taxed a second time because the investors are considered an association taxable to a corporation, and the association is regarded as having sold the fund shares and realized a gain. Maintains that the association, electing to be a "regulated investment company," should not be taxable on the gain, because it is distributed, but the gain is threatened with being treated as if not distributed, for technical tax reasons. Argues that the second tax would be borne in effect by the continuing investors, who do not benefit by the gain.

Maintains that in other instances there could be a tax on no gain at all.

Proposes that association status for such investors be abolished, since they are unrelated, and the action of one should not affect the tax status of the rest.

STANDARD DEDUCTIONS

JOHN RINALDO, RINALDO AND ASSOCIATES, LONG BEACH, CALIF.

Tax rates

Based on statistical studies of the firm's clients and Treasury income statistics, it is recommended that tax rates for individuals (Sec. 804) be retained in order that the middle income taxpayer receive some limited tax relief from the 1969 Tax Reform Law.

TAX TREATMENT OF RETIRED PERSONS

ERNEST GIDDINGS, LEGISLATIVE REPRESENTATIVE, NATIONAL RETIRED TEACHERS ASSOCIATION, AMERICAN ASSOCIATION OF RETIRED PERSONS

Retirement income credit

States that the retirement income credit has not been updated since 1962, and that it no longer provides equal tax treatment for those who may be retired under Government or private pension systems or who make provision for their own retirement. Suggests that the 13-percent increase in social security benefits in 1967 (and a few lesser increases between 1962 and 1967) justify an amendment to permit computation of the credit on an increased base.

States that the maximum amount of income which may qualify as retirement income should be raised from $1,524 to $1,872 a year, and that the reduction made in the credit on account of earned income should be changed to correspond with the changes made in the earned income reduction provided in the social security law.

Urges the adoption of S. 2968, introduced by Senator Ribicoff, and states that it does no more and no less than to again adjust the retirement credit provisions to conform with existing social security laws.

JOHN F. GRINER, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Exemption from income tax of civil service annuities

States that a comparison of the social security, the Railway Retirement Act, and the civil service retirement systems shows that, although all are mandatory, the civil service employee suffers discrimination because his annuities are subject to income tax payment on income derived from contributions of the Federal employer.

Points out that an analysis of the annual income of both the civil service employee and survivor annuitants reveals that an overwhelming majority are living at the poverty level.

Contends that the precepts of tax justice require that we extend to civil service annuitants the same tax policy that now applies to social security and Railway Retirement Act annuitants—total exemption from all income tax.

Recommends that this vestige of tax discrimination which has been endured too long by retired Federal employees, by their dependents and by their survivors be eliminated. Emphasizes that the great majority of them are now living at or near the poverty level and they are in urgent need of tax relief.

THOMAS G. WALTERS, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED CIVIL EMPLOYEES

Exemption of Federal employee annuitants and survivors from tax

States that most annuitants and their survivors are in the low-income bracket. Points out that according to the latest statistics issued by the U.S. Civil Service Commission only 968 annuitants receive a monthly annuity of $1,000 or more; 281,435 annuitants received less than $200 per month and 231,958 survivor annuitants received less than $200 per month; 110,436 annuitants received less than $100 per month and 168,288 survivor annuitants received less than $100 per month.

Recommends the following items regarding the tax treatment of the elderly:

(1) Exemption of the elderly from any surcharge tax.

(2) Exclusion from the gross income of the first $5,000 for a family and the first $3,600 for a single person received as civil service annuity from the U.S. Government or any agency thereof.

(3) Reestablishment of the provision to deduct drug and medical expenses for persons 65 years and older. (Deleted in 1967). S. 1564 introduced by the late Senator Everett McKinley Dirksen and now before this committee provides for this restoration for income tax purposes.

(4) Amendment of medicare to provide for the payment of prescription drugs outside of hospital.

(5) Amendment of medicare to provide that provisions (a) and (b) be made available to all Federal annuitants and their survivors.

SINGLE PERSONS

MISS VIVIAN KELLEMS, EAST HADDAM, CONN.

Tax treatment of single persons

1. Discusses background of the community property laws which resulted in the income-splitting provision for all married couples. Alleges that this is a discrimination against single persons.

2. Claims that discrimination against single persons is unconstitutional.

3. Supports the House bill which extends the head-of-household rate schedule to certain single persons. Strongly endorses the bill (S. 2794) introduced by Senator McCarthy which extends to unmarried persons the tax benefits of income splitting used now by married persons.

GENERAL

ADRIAN H. PEMBROKE, NATIONAL OFFICE PRODUCTS ASSOCIATION AND THE BUSINESS PRODUCTS COUNCIL ASSOCIATION

Accumulated earnings tax

Argues that the accumulated earnings tax is really a penalty, the liability for which often arises from ignorance, bad advice, misunderstanding, or mistakes in business judgment. Contends that it is too complex to be coped with by small corporations, and advocates its repeal.

States that the accumulated earnings tax is applied only to closely held corporations, which are for the most part small businesses. Contends that this gives a competitive advantage to big business. Maintains that the growth of small businesses must be financed through retained earnings, because financing with borrowed capital is unfeasible, particularly in the present high-interest-rate money market.

Urges that if the statute cannot be repealed, it should be amended as follows:

(*a*) The *Donruss* case should be overruled in part by providing that the taxpayer will prevail if it can show that the corporation would have accumulated its earnings without regard to the tax savings at the shareholder level.

(*b*) Something further should be done to alleviate the taxpayer's burden of proof.

(*c*) The amount of the minimum accumulated earnings credit should be increased to reflect the decline in the value of the dollar since the credit was fixed at $100,000.

(*d*) If the higher bracket tax rates are reduced a corresponding reduction should be made in the accumulated earnings tax rates.

ESTIMATES OF CAPITAL EXPENDITURES CONTINUE TO DECLINE

Mr. HARTKE. Mr. President, I oppose the repeal of the investment tax credit because I believe the credit is necessary for our economic strength and because its repeal cannot possibly help to curb inflation.

Outlays for new plants and equipment have not contributed to inflation and in fact may be one of the few factors forcing prices and costs down.

In the arguments for repeal of the tax credit some very inflated estimates have been made for capital expenditures for 1969. In February of this year, it was estimated that capital expenditures would be increased by 14 percent over 1968; in May it was estimated to be a 12½-percent increase. On July 23, I predicted that capital expenditures will show only a 7- to 8-percent increase. It should be remembered that inflated prices distort my estimated 7 to 8 percent increase. In terms of constant dollars, the increase in capital expenditure would be no more than 4 percent; and that is neither inflationary nor even adequate for our growing economy.

I invite the attention of Senators to the most recent estimate for capital expenditures as published in the Commerce Department's "Survey of Current Business" for September. It forecasts only a 10½-percent increase over 1968 for capital expenditures. Whatever the final figures, it is obvious that capital expenditures for 1969 will be much closer to my estimate of 8 percent than the originally predicted 14 percent.

EROSION DESTRUCTION OF WOLF RIVER

Mr. NELSON. Mr. President, on August 1, 1969, I introduced S. 2757, a bill to provide for the control and prevention of pollution, deterioration of water quality, and damage to lands and waters resulting from erosion to the roadbeds and rights-of-way of existing State, county, and other rural roads and highways and from erosion of streambanks.

As I said before the Senate in introducing the bill, erosion along 300,000 miles of the Nation's waterways is destroying valuable land, and the annual cost of removing sediment from stream channels, harbors, and reservoirs is $250 million.

The need for this type of legislation can also be cited by individual examples. An article published in the Appleton,

Wis., Post Crescent on September 14, 1969, tells the story of the pollution of the Wolf River by erosion. A voyage down the river by nine members of the Wisconsin Assembly Conservation Committee opened their eyes to the difference that effective erosion control makes. The last sentence sums up the situation well:

Our eyes have been opened to a tragic thing . . . this disintegration because of the lack of a joint effort.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

LAWMAKERS SEE BOTH SIDES—WOLF RIVER: REAL JEKYL AND HYDE

(By Roger Pitt)

NEW LONDON.—Members of the state Assembly Conservation Committee saw two Wolf Rivers Friday—and it wasn't a mirror image.

The split personality Wolf River could be compared to a person—a real Jekyl and Hyde: one side is ugly, and showing signs of rapid deterioration; the other is wide, beautiful and easily navigable.

It is hard to believe they are the same river.

Fremont is the dividing point. Fremont north, shows the harsh signs of man, while below Fremont man has taken steps to prevent the erosion of valuable river banks.

MANY ACRES LOST

George Framberger, Winnebago County soil conservationist, told Assembly committee members, "I feel 10,000 acres of land has been lost by erosion."

Nine of 13 committee members made the tour. They were accompanied by a large number of officials from areas bordering the Wolf River and newsmen from the state.

A 20-minute drive by car is a long, 40-mile voyage from New London to Fremont.

WILDLIFE ABOUNDS

Twisting, agonizing bends in the river, dead falls protruding from the shores, shifting sand bars resulting from eroding shorelines and other debris of nature challenge the boat pilot. Nearly all obstructions except the meandering river course can in part be blamed directly to man. Even the changing river channel is being affected by man's encroachment on nature.

We saw a picturesque view only nature could duplicate. Bountiful wildlife—ducks, giant blue heron, deer, turtles and muskrats—were seen during the trip. State legislators from the metropolitan area were most impressed. Legislators from this area were most concerned.

Only in two places were cattle—often blamed for bank erosion—viewed along the river. Much of the farm land above Fremont has been rip-rapped with miles of stone and broken concrete. The areas disappearing the fastest are the marshes lining the river's course and privately owned, non-farm land.

Stone rip-rapping below Fremont is interpersed with wood and steel.

Gene Garrow, Fremont, told assemblymen he estimates 700 ton annually of silt pours into the river punctuating the need for greater streambank preservation measures.

MORE FOR LAWS

Wolf River residents hope that the legislative effort needed to end the increasingly serious threat to the river might have gotten its start Friday.

Paul Alfonsi, R-Minocqua, committee chairman, discussed the upper-Wolf problems for two hours with Ed Hildebrand, Weyauwega school teacher and a native of the river.

Hildebrand recalled how the river was "generous to his family during his youth." He said, "Much of our subsistence came from the river . . . white bass smoked, pickled and fresh; northerns—they were called pickerel."

"Now," he just shook his head and made a hand gesture in disgust, never finishing his statement, but clearly showing his thoughts.

Alfonsi said, "Many studies have been made by a varity of agencies . . . it's amazing how much of the material is duplicated."

The majority leader pledged hearings, probably in the spring or summer of 1970, with an eye toward a legislative report and action in 1971. "We have to see that we get all the information there is," he stressed.

"We couldn't paint a picture to show the unfortunate problem existing on the Wolf River," Alfonsi said at a noon luncheon. "Our eyes have been opened to a tragic thing . . . this disintegration because of the lack of a joint effort."

THE NOMINATION OF JUDGE CLEMENT F. HAYNSWORTH

Mr. MONDALE. Mr. President, I very much hope that President Nixon will withdraw his nomination of Judge Clement F. Haynsworth to the Supreme Court.

Judge Haynsworth's record clearly indicates his insensitivity to the needs and aspirations of Americans who have spent the last 50 years struggling for equal rights and the opportunity to earn a decent living. Moreover, I believe the conduct of his personal financial affairs shows far less discretion than we should expect of a Supreme Court Justice.

It is no accident that those most concerned about civil rights and economic justice—the civil rights movement and organized labor—have led the effort to prevent Judge Haynsworth's confirmation. To these groups and organizations, the nomination of a man with Judge Haynsworth's philosophy is a throwback to an America of a different age—when segregation was the law of the land and when working men were prevented from organizing for higher wages and better working conditions.

If this nomination is not withdrawn, the Senate will have to make a decision which may prove to be a turning point in American history.

The question before us is much broader and much more important than merely the nomination of a single individual to our highest court, as important as that would be by itself. The question really is the direction in which we will move in the country concerning the quality of rights which we say we stand for as a nation.

There are already disturbing indications that we have changed our direction on these matters. The administration has issued a statement of change policy on school desegregation, which is nothing more than a blatant invitation to the South to delay further. The statement has been followed by transparent requests to southern courts to slow down based on the claim that desegregation plans could not be implemented in time. In Mississippi, the request for delay in 33 school districts was premised upon the damage created by Hurricane Camille—yet not one of the 33 school districts was in the path of that terrible natural disaster. The administration has awarded defense contracts to textile firms with a history of racial discrimination. It has proposed a voting rights bill which is a clear watering down of the commitment to equal suffrage in the South and a patent call to southern Members to embroil the simple extension of the 1965 act in a welter of confusion and delay.

These are the circumstances in which Judge Haynsworth's nomination is received. Unfortunately, the nomination is clearly another step in the same direction, but this time a step which could affect the course of civil rights enforcement for a generation.

I, for one, will not stand still to see this country go through a second reconstruction period. If the Supreme Court—the one institution to which black Americans have been able to look with confidence—is turned around, there will be no reason for those in the South committed to resist change to act in any way other than according to their convictions.

This is happening already. I frequently hear disturbing reports from back communities in Mississippi and Alabama and rural Georgia that local sheriffs and Klansmen have been striking and retaliating with greater boldness and violence in the last 8 months. Think of what it would mean if they knew that the Federal courts were no longer open to those whose rights they violate.

The Washington Post said the other day that Judge Haynsworth's record on civil rights places him "merely in the middle of the civil rights stream." That is a gross misstatement, and if the editors of the Post had read the testimony of witness after witness before the Judiciary Committee or studied Judge Haynsworth's record with any care, they could never have made that statement.

We are dealing here with a man whose judicial record—not his personal views—is one of evasion and delay in the implementation of the law of the land. Throughout the struggle that has ensued since the Brown decision in 1954, Judge Haynsworth has been on the wrong side in crucial cases ever since he came on the bench.

In a major case where a majority of his court ruled that a hospital receiving Federal funds could not practice racial discrimination, Judge Haynsworth dissented. This dissent expressed his view that since the hospital had been established privately, it could legally practice discrimination, despite its receipt of Federal funds. A man who believes that private hospitals receiving Federal funds can legally discriminate against black Americans does not exemplify the values of 20th century America.

His record on school desegregation cases has been equally unresponsive to the rights of black Americans. In 1962, he said that it was permissible to have a rule which allowed any child to transfer from a school where he would be in a racial minority—despite the fact that the obvious purpose of the rule was to minimize integration. His colleagues overruled him by a vote of 3 to 2.

In 1963, he voted against requiring the schools of Prince Edward County to be reopened, and if any doubt his views on the merits of that case, it is neces-

sary to quote but one sentence from his opinion:

When there is a total cessation of operation of an independent school system, there is no denial of equal protection of the laws, though the resort of the poor man to an adequate substitute may be more difficult and though the result may be the absence of integrated classrooms in the locality.

Luckily the Supreme Court disagreed with him.

In 1965, he said that separate steps need not be taken for faculty desegregation, that assignment of teachers could be expected to change as racial patterns in the school change. Again, the Supreme Court reversed this decision.

In 1967, Judge Haynsworth refused to condemn "freedom of choice" as an ineffective route to desegregation. The Supreme Court reversed him once again. Indeed, Judge Haynsworth filed an opinion 4 days after the Supreme Court's decision disapproving freedom of choice, expressing his preference for this type of plan.

In December 1968, he granted stays in a number of cases to delay desegregation, all of which were vacated by Justice Black. This past summer, Judge Haynsworth refused to move a number of school cases along fast enough to bring desegregation for the fall term. Later in the summer, Justice Black made a statement which is in cold contrast to his record of sanctioned delay:

There is no longer the slightest excuse, reason or justification for further postponement of the time when every public school system in the United States will be a unitary one, receiving and teaching students without discrimination on the basis of their race or color.

Any Presidential appointment requiring Senate confirmation cannot be considered lightly. This is especially true of appointments to the Supreme Court—the one institution which has represented the last hope for redressing the grievances of those who have been denied fundamental rights and opportunities.

It is, therefore, vitally important that men be appointed to the Supreme Court who strongly oppose discrimination and economic injustice and who believe that courts should be prepared to provide remedies where other institutions have failed to do so.

Judge Haynsworth's record strongly suggests that he is not this type of man. It is a record which has not received enough attention. Judge Haynsworth may be a "moderate" on civil rights, but all that means in this context is that he has been sophisticated in his efforts to delay the course of desegregation.

There are other matters as well—such as Judge Haynsworth's consistently anti-labor record. But to me, the basic point is his record on civil rights—for that, in many ways, is the test of our quality and integrity as a nation. I will not participate in approving a nomination which could well affect the very essence of what America is supposed to be.

Mr. EAGLETON. Like every Senator, I have given considerable thought to the Haynsworth nomination. I have decided to vote against its confirmation. Let me make clear my reasons for this decision.

The fact that Judge Haynsworth may be a conservative, or that his views on certain matters may differ from mine or from a majority of the Warren court, does not, in my judgment, preclude his sitting on the Supreme Court.

The Senate has the right and the duty to consider the views of Supreme Court nominees on vital national issues. However, we should not seek a uniformity of opinion on the Court, and I believe a nominee should be rejected on this ground only if his views are so extreme as to place him outside the mainstream of American political and legal discourse. Clearly this is not true of Judge Haynsworth.

My opposition to his appointment rests solely on his apparent insensitivity to the canons of judicial ethics established by the American Bar Association. In my judgment, the record made before the Committee on the Judiciary with regard to the Darlington and Brunswick cases clearly evidences an insensitivity on Judge Haynsworth's part to canons 25 and 26, which read as follows:

Canon 25—Business Promotions and Solicitations for Charity: A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected might bring his personal interest into conflict with the impartial performance of his official duties."

Canon 26—Personal Investments and Relations: A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the bench, he should not retain such investments previously made longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

The Canons of Judicial Ethics require, not just that judges be men of integrity, but that they avoid even the "appearance of impropriety." This Judge Haynsworth has not done.

Judge Haynsworth has been nominated to fill the seat left vacant by the resignation of Justice Fortas following allegations of conduct contrary to Canon 25. I cannot in good conscience vote to replace Justice Fortas with Judge Haynsworth.

THE FALLACIES IN THE FINANCE COMMITTEE'S ARGUMENTS FOR REPEAL OF AMMUNITION CONTROLS

Mr. DODD. Mr. President, the Committee on Finance has filed its report on H.R. 12829, the Interest Equalization Tax Extension Act. Section IV of the report on this tax measure is devoted to the repeal of the ammunition controls of the Gun Control Act of 1968.

While no hearings were held on this repeal amendment, it is, nevertheless, on the Calendar to be considered by the full Senate.

While I have already spoken about this matter, I now want to discuss section IV of the committee report in some detail.

In all candor, certain language in that section is in error. It is a misrepresentation, and it is misleading.

Initially, the report states:

Under Chapter 44 of title 18 of the United States Code, the Secretary of the Treasury is required to record the name, age, and address of a person buying any type of ammunition.

Mr. President, that is not true.

The Secretary of the Treasury is not required to record the name, age, or address of a person buying ammunition. That is required of the licensee, the dealer, the seller of ammunition.

Second, the committee report says that the ammunition control regulations from the Treasury Department go considerably beyond this requiring a person purchasing ammunition to give his name, address, and date of birth; the date of purchase, the manufacturer, caliber, gage, or type of component, and the quantity of the ammunition purchased; and the purchaser's driver's license number or other type of identification.

Mr. President, this information is in error. The ammunition purchaser is not required to give information concerning his purchase, it is the licensed dealer who is required to maintain such information in his records.

It is true that the dealer undoubtedly asks the purchaser for a copy of his driver's license, because that is the only way that the dealer can be sure that he is not selling handgun ammunition to minors under 21 or rifle and shotgun ammunition to persons under 18. This is hardly burdensome for, as we all know, most young people in this country must show proof of age when they seek to purchase alcoholic beverages and, in some cases, even cigarettes.

Third, the report goes on to state that the registration of persons purchasing ammunition creates an "enormous and unnecessary administrative burden on the Treasury Department, on firearms dealers, and on the Nation's sportsmen who purchase this type of ammunition."

Mr. President, there is no administrative burden on the Treasury Department that would be relieved if the Bennett amendment were adopted, for it is the licensee who maintains the records of sale or other disposition of ammunition, not the Treasury Department.

Certainly, this is not an enormous bur-

den on the licensee. It is merely prudent recordkeeping.

Further, the report goes on to say that these "requirements do not contribute to an increase in public safety."

Mr. President, I state emphatically that records on ammunition are essential as a law-enforcement tool, because they do indeed contribute to an increase in public safety.

They serve as a deterrent to the purchase of ammunition by juveniles.

They serve as a deterrent to felons who might be very hesitant to have their name and address recorded.

And they serve to assist law enforcement officers in cases where police suspect a particular individual of a specific firearms crime.

The committee report goes on to say that "the ammunition covered by the amendment is the type used mostly in sporting types of firearms. The amendment does not affect the registration requirements under present law related to pistol and revolver ammunition; these are the weapons most commonly used by criminals in the commission of a crime."

Mr. President, I submit that .22-caliber ammunition, which would be exempted by the amendment, is the type used in the Saturday night specials, the inexpensive revolvers that have plagued law enforcement officers throughout this Nation for the last 10 years.

In fact, 30 percent of the handgun murders each year are committed by .22-caliber handguns, and 3,300 murders were committed last year by .22-caliber handguns.

Further, while the committee report tells us that the ammunition in question is used only by hunters and sportsmen, the Violence Commission report tells us that ".22 calibers have very limited utility as hunting weapons." The Violence Commission report also points out that the most common sporting use of .22-caliber ammunition in America is for "plinking at tin cans and bottles," and the Metropolitan Life Insurance Co. tells us that this plinking is a major cause of accidental deaths.

The committee report could mislead the Senate, for it talks only about hunters and sportsmen. It does not say that the ammunition control amendment would help to guarantee that every Minuteman, Nazi, Black Panther, Ku Klux Klansman, and other extremists will soon have 4 billion bullets available "with no questions asked."

The committee report does not tell us, as the Violence Commission does, that the leaders of these extremist groups recommend to their followers that they purchase shotguns, rifles, handguns, and ammunition for political assassination and civil insurrection. And when these anarchists can afford only a single weapon, the preferred gun is the .22 caliber handgun or rifle.

The report states further:

> The Committee is convinced that this amendment accomplishes the dual objective of (a) relieving ammunition dealers and sportsmen of unreasonable burdens in the purchase of sporting-type ammunition, and (b) protecting the public safety by retaining registration requirements with respect to the purchase of ammunition designed primarily for handguns.

The facts speak for themselves:

Ninety percent of all available ammunition will be removed from Federal controls if this amendment is adopted.

And that means that the four billion bullets which will be produced in America this year will be available to lunatics and would-be assassins.

Seventy percent of the ammunition produced in America is .22-caliber rimfire. Tens of millions of people presently own the weapons that will fire such ammunition. We do not know who they are, they may be deliquent "zip-gun" owners, would-be bank robbers and murderers, such as the trio who viciously shot to death four innocent women last Wednesday with a .22 caliber pistol, or any one of the other 3,000 to 4,000 people who will murder Americans in the next 12 months. To remove the present controls would make .22-caliber bullets even more accessible to the unfit and the irresponsible.

Mr. President, section IV of the committee report on H.R. 12829 is so inaccurate that the Senate should insist on hearings before the Bennett amendment is considered. It is only with hearings that the Senate will be able to act intelligently, because only then will it have an accurate committee report.

Mr. President, I ask this for those of us who have worked so long and so hard on the question of controls of firearms and ammunition. I ask this on behalf of a public frightened and threatened by crime in the streets.

Let us not be too easily misled on an issue which is so vital to the safety of our fellow citizens.

THE ANNOUNCED CUTBACK IN MODEL CITIES FUNDING

Mr. KENNEDY. Mr. President, the announcement yesterday that the administration plans to cut drastically the funding of the model cities program can be viewed only with deep concern and regret.

This most important program, enacted in 1966, was adopted after long and careful study in both Houses of the Congress. Its sponsors and supporters quite literally fought to bring this much needed program into being. The model cities program is vital to the Nation's effort to revitalize our cities and to make them economically and socially viable. The restoration of these cities—especially those at the core of major metropolitan areas—is vital to the Nation.

A cutback of $215 million in the funding of a program never adequately funded signals the end of our commitment to the provision of a better life for our citizens who live in urban areas. It signals the end of a newly created Federal-local partnership of progress. The Federal Government cannot continue to demand a commitment from State and local governments if it does not intend to fulfill its own commitment of financial and technical assistance.

We in New England, because our cities are older, know well the value of this program in our effort to restore our cities. In Massachusetts alone, nine cities have made a major commitment of time and personnel and funds to the model city program. These cities—Boston, Springfield, New Bedford, Worcester, Cambridge, Lowell, Lynn, Holyoke, and Fall River—typify most dramatically the need for this program and the hope it held out to their citizens. Forty-one cities across the country have already signed contracts to move their programs into implementation—we are told they will not be affected by this cutback, but can we be sure. More than 100 other cities are participating at some level of planning and development under the promise of this program. Surely, there is no better evidence of the country's need for and response to this program.

I urge the administration to reconsider this action. I hope that Congress will continue to express its commitment to this program, and I will do what I can in this regard.

We are told that our involvement in an unpopular war in Vietnam has no effect on our ability to pay for the domestic needs of this country. Yet plain commonsense tells us that when we spend billions in the central highlands, we will not have those billions for our cities; or that when we spend billions on bombs, we will not have those billions for schools.

Mr. President, as we in Congress look over the last few years and review the landmark legislation we have passed to meet the needs of this country and its citizens, we are constantly aware that we cannot find the appropriations for them. It is plain that we cannot finance a war and finance our needs at home, at least if this experience is any guide.

As we enter 1970's, we simply must find the funds to provide for the domestic needs of the country. To do less than this is to shortchange our children.

ENVIRONMENTAL QUALITY: MONEY TO CLEAN UP OUR WATERS

Mr. TYDINGS. Mr. President, one of the major domestic problems confronting the United States today is the pollution of our waterways. The sad fact is that all of our rivers and streams are in part polluted.

A nation of clean, sparkling waters no longer exists on our land. In its place we have a country of brown and gray waters, often unfit to swim in, and filled with all types of garbage and effluents.

Even in Maryland, which is one of the few States to move ahead forcefully in the area of water resources, the rivers are in less than perfect shape. The Potomac, the Patuxent, the Severn, the Choptank, and the Patapsco are all filled with filth.

In 1966, Congress passed the Clean Waters Restoration Act authorizing substantial sums for construction of water quality treatment facilities. Unfortunately, appropriations have lagged far behind authorizations.

Today, I am told a House committee reported out a $450 million appropriation measure for fiscal year 1970. This is well above the $214 million figure requested

by the administration, but below the $600 million which the Senate committee is expected to approve.

I would just like to remind my colleagues in the Congress that the legislation we passed in 1966 authorized a figure of $1 billion for the construction of water quality plants in fiscal year 1970. According to the information we received in 1966, and I have no reason to doubt it is no longer valid, $600 million is insufficient to meet the real need.

I hope that in our recognition of our responsibility for clean water and our willingness to move ahead of the administration we do not forget that $600 million still falls short of the mark. It does not close the gap between authorizations and appropriations. It does not meet the requirements as Congress itself has defined them, and it will not result in the cleaning up of our waters.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If there be no further morning business, morning business is closed.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The ACTING PRESIDENT pro tempore. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

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

ORDER FOR ADJOURNMENT UNTIL TOMORROW AT 11 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR CURTIS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the disposition of the Journal tomorrow, the distinguished Senator from Nebraska (Mr. CURTIS) be recognized for a period not to exceed 1 hour. I understand the subject of his remarks will be the tax treatment of State and municipal bonds, foundations, and charitable giving.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that tomorrow, at the conclusion of the remarks of the Senator from Nebraska (Mr. CURTIS), there be a period for the transaction of routine morning business.

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

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MODEL CITIES SHOULD HAVE HIGHER PRIORITY THAN SST

Mr. PROXMIRE. Mr. President, the Model Cities Act was passed in 1966. It was a new and unique idea whose purpose was to pull together a wide variety of individual or "ad hoc" Federal, State, and local programs in order to concentrate resources in the urban ghettos of the country.

For 3 years the program has been in the planning stage. Finally, it has arrived at the point where action should take place. The danger has always been that there would be too much talk and too little action. The Douglas Commission in its final report entitled "Building the American City" put the problem very well. I quote the final five paragraphs of part II, chapter 7 of the report entitled "Model Cities" and I remind Senators that this was written late last year:

> The program is in its early stages, but a few crucial issues that may determine its ultimate success or failure are already discernible.
>
> The concept seems to be correct. Under the traditional program-by-program approach, a variety of local agencies administer their own narrow programs with little or no coordination with the needs of other programs and the city as a whole. They are funded by a variety of Federal agencies whose programs, both at the Federal and local levels, are largely independent of each other, and whose funds are often funneled through a State administrative apparatus that adds another layer of autonomous operation.
>
> Instead, under model cities, a comprehensive program is designed at the local level so that the funds and activities can be concentrated to meet the total needs of a community. This is both a desirable and absolutely necessary goal.
>
> If this commendable purpose is to be carried out, however, at least two major pitfalls must be avoided. The first is the danger that the program will become bogged down in the "planning process" and planning terminology at the expense of action. One hears from model city experts and reads in its literature an abundance of language taken from space jargon which might best be termed modern barbarisms. One hears about "target" neighborhoods, "restructuring the delivery systems," and "launching the planning process." One hears very little about how many houses will be built, how often the garbage will be collected, and what kind of schools, health clinics, and job training classes are planned or when they will be open for use.
>
> This may be due in part to the fact that the program is still in its early stages. But one senses that to date there is more interest from the local administrative structure than from the people or the concerned program-oriented groups in the community. There is a danger that the program will be overweighted by the creation of a multitude of new committees or institutions to coordinate, plan, and talk with one another and that needless new layers will be added rather than that existing institutions will be made more efficient.
>
> The second major problem, and one which affects the first, is that of funding. It is vital to fund the amounts authorized for at least two reasons. Unless there are enough funds to carry out programs, model cities will become nothing more than a talking and planning program. It is the promise of funds and the receipt of funds which provide the incentives for cities to focus their efforts in a concentrated area, to develop innovative programs and to foster the active involvement of neighborhood residents.
>
> Funds are vital to success. Without them, no amount of planning will build houses, collect garbage, train the unemployed, or educate children. The promise of the program can result in performance by the cities only if the funds are forthcoming.

Now, however, just at the time when the success of the program is at stake, the Nixon administration has called for a slowdown and a stretchout of $215 million in model cities funds. What is worse, it is said that the slowdown and stretchout are due in large part to bureaucratic delays at HUD.

I ask unanimous consent that an article published in today's New York Times entitled "$215 Million Cut in Model Cities Is Ordered by the Administration," which gives the facts in some detail be printed in the RECORD.

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

> $215-MILLION CUT IN MODEL CITIES IS ORDERED BY THE ADMINISTRATION
>
> WASHINGTON, October 1.—The Nixon Administration has signaled a slowdown and stretchout for the Model Cities urban-aid program by cutting $215-million from planned expenditures this year.
>
> The 42 per cent reduction in spending estimates for the fiscal year ending next June 30 was prompted by two factors: President Nixon's call for $3.5-billion in Government-wide budget cuts and a slow start for the action phase of the Model Cities program.
>
> The rollback from outlay estimates in April of $515-million to $300-million represents bureaucratic delays and not substantive program cuts, officials of the Department of Housing and Urban Development maintain.
>
> The 41 cities that have already signed contracts moving their Model Cities programs from planning to implementation will lose none of their money, the officials say.
>
> Some 150 communities in 45 states, the District of Columbia and Puerto Rico are participating in the program, enacted in 1966.
>
> MANY MAYORS ANGRY
>
> While planning has proceeded for some time, this is the first year for implementing the plans to attack all the causes of poverty and blight within a slum through one integrated plan. The idea is to funnel all the renewal that Federal-local money can buy into target slum neighborhoods.
>
> News of the funding slowdown caught

big-city Mayors by surprise. Many were angry.

In New York, Mayor Lindsay termed it a "disastrous mistake" and an "incredible anti-city action."

In Boston, Mayor Kevin H. White said:

"Cutting back these funds downplays the Model Cities program and thereby establishes a dangerous precedent, because this program, unlike poverty programs and other Federal programs, is the direct responsibility of big-city mayors."

The stretchout stems in part from Republican cancellation of plans left by the Democrats to fund at least 65 cities beginning last July 1.

Boston, for example, was originally scheduled to receive $7.7-million from July, 1969, through June, 1970.

"However, because of various delays in the Federal bureaucracy, the money will not start coming until October, 1969, and this will be our budget through October, 1970," Mayor White said.

Other cities will move into their action phases later in the fiscal year than expected, thereby reducing over-all expenditures, Housing Department officials said. Completion, in turn, will be delayed.

The slowdown is expected to have its heaviest impact on the 34 first-round Model Cities locales that have yet to sign grant contracts and on the 75 second-round choices still in the planning phase.

Mr. PROXMIRE. Mr. President, the success and integrity of this program is at stake. Whether it is to be nothing more than a "jaw boning," program in which local bureaucrats meet to "communicate" with each other, or whether it will be a program to build houses, collect garbage, provide schools, establish health clinics, and train unskilled men and women for jobs, is now at issue.

Once again the question of priorities is at stake. The "go ahead" is given for the SST, the C–5A, the ABM, and manned space flights; but housing is cut. At the present rate more members of the jet set will be flown to Europe on the SST in its first year of operation than the number of housing units for low-income families which will have been built under the model cities program.

Let us get our priorities straight. Let us get the bureaucracy to function. Let us cut back on the frivilous and the marginal programs, excessive military expenditures, and unneeded public works projects. Let us use those savings to meet our most pressing social needs—housing, jobs, schools—to help dampen down inflation, and to reduce the tremendous tax burden which now falls on the American people.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDIING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

Mr. MANSFIELD. Mr. President, to get the ball rolling and try to finally dispose of this bill, whether or not Senators are present, I understand that my distinguished colleague (Mr. METCALF) has an amendment he intends to offer at this time.

The ACTING PRESIDENT pro tempore. The junior Senator from Montana is recognized.

AMENDMENT NO. 177

Mr. METCALF. Mr. President, I call up that portion of my amendment No. 177 on lines 3 and 4 of page 2 thereof and ask that it be stated.

The ACTING PRESIDENT pro tempore. Does the Senator ask unanimous consent that the pending amendment be temporarily laid aside?

Mr. METCALF. I so ask unanimous consent.

The ACTING PRESIDENT pro tempore. Without objection, the pending amendment of the Senator from Kentucky (Mr. COOPER) will be laid aside temporarily, and the amendment offered by the Senator from Montana (Mr. METCALF) will be considered. The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 101, line 9, strike the word "may" and insert in lieu thereof the word "shall".

Mr. METCALF. Mr. President, under the provisions for penalties for violations of the various provisions of this act, it provides that:

The operator of a coal mine in which a violation occurs of a mandatory health or safety standard established by, or promulgated pursuant to, titles I or II of this Act, or of any other provision of this Act, may by order be assessed a civil penalty by the Secretary which penalty shall not be more than $25,000 for each occurrence of any such violation. Each occurrence of any such violation may constitute a separate offense.

Then that section continues to tell how the Secretary or his representative is to determine what the penalty shall be. The size of the coal mine, the number of violations, the frequency of violations, and all those things that determine the good faith in which the man has operated the mine are to be considered.

My amendment provides that if there is a decision that a violation exists, the Secretary shall impose a penalty.

Mr. MANSFIELD. Mr. President, will the Senator yield at that point?

Mr. METCALF. I yield.

Mr. MANSFIELD. Could that penalty be as low as $1?

Mr. METCALF. It could be as low as $1. I have considered some of the problems that have been submitted. Some people have suggested that a penalty of not less than $100 or more than $25,000 be imposed. It seems to me that that is unfair to many operators of small mines, who have operated in good faith but have some safety violations. But, if my amendment were agreed to, every owner of a mine would know that he would be subject to a penalty of at least $1, or something of that sort, for his first violation.

Mr. MANSFIELD. Will the Senator yield further?

Mr. METCALF. I yield.

Mr. MANSFIELD. The idea, as I take it on the basis of the amendment as read and as explained by my colleague (Mr. METCALF), is that even if the fine is as low as $1, it will still serve as a reminder that a judgment has been made, and perhaps in this way will make the mine owner more careful, so that subsequent violations will not occur?

Mr. METCALF. And subsequent violations, of course, would be subject to higher penalties, so that any miner who does violate the safety and sanitary provisions of this act knows that a penalty is going to be imposed—a fair penalty, maybe only, for the first violation, the $1 that my colleague from Montana has suggested; but there will be a penalty imposed.

That is the only purport of my amendment.

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

Mr. METCALF. I am happy to yield to the Senator from Kentucky.

Mr. COOPER. I should like to ask the Senator a question, and then perhaps the manager of the bill may have a comment.

As the senior Senator from Montana has developed, with the Senator's response, there is no provision for a mandatory assessment of any certain sum.

Mr. METCALF. That is correct.

Mr. COOPER. The Secretary can fix any sum he thinks proper, from $1 to $25,000?

Mr. METCALF. A token penalty for a first violation.

Mr. COOPER. When I first read this section, I was concerned as to whether or not an operator charged with a violation would be afforded due process. Is it the Senator's opinion, after studying this section, that an operator would be afforded due process, and that there would be a hearing with the right of appeal to a court?

Mr. METCALF. Of course there would be due process. There would be investigation by the inspector and the determination of a civil penalty, and such determinations are subject to appeal to the Federal courts—the Federal district courts, the circuit courts of appeals, or in extraordinary situations, even the Supreme Court of the United States.

Mr. COOPER. I thank the Senator.

Mr. METCALF. I call attention to the provision of the act that the Secretary should consider the operator's history of violations. The way to get a history of violations is to have a mandatory penalty imposed. If the original penalties are only a dollar there is a part of the history of violations, so that the history of subsequent violations, then, would show a lack of good faith and a refusal to comply with the provisions of the law.

Mr. WILLIAMS of New Jersey. Mr. President, in further response to the inquiry of the Senator from Kentucky, on page 102, paragraph (3), the procedural protection afforded an individual who might have a penalty assessed against him is fully spelled out, as follows:

An order assessing a civil penalty under this subsection shall be issued by the Sec-

retary only after the person against whom the order is issued has been given an opportunity for a hearing and the Secretary has determined by decision incorporating findings of fact based on the record of such hearing whether or not a violation did occur and the amount of the penalty, if any, which is warranted. Section 554 of title 5 of the United States Code shall apply to any such hearing and decision.

So all of the protections are, of course, afforded in the situation where a civil penalty is considered and assessed.

I believe it has been made abundantly clear by the junior Senator from Montana, who offers this amendment, and by the majority leader, that the only amount fixed in the penalty section is the amount of $25,000, which, of course, is manifestly the ceiling; and any amount below that ceiling could be assessed, as was indicated. It is even suggested by the bill that the gravity of the violation, the good faith of the operator, and all other pertinent considerations would go into the assessment of the penalty, which, as the majority leader has suggested, could, under the discretion of the Secretary, go down to a dollar.

Mr. METCALF. And, as the Senator from New Jersey has pointed out, one of the things to be taken into consideration is whether or not the amount of the penalty is warranted, as provided in subsection (3) on page 102.

Mr. WILLIAMS of New Jersey. I will say, Mr. President, that the mandatory nature of the penalties that would arise under the amendment of the Senator from Montana was discussed quite extensively in committee, though not to a voting conclusion; and I believe it is safe to say that the majority of the committee members would be willing that this amendment be a part of the bill as we go from the Senate to a conference with the House of Representatives.

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

Mr. WILLIAMS of New Jersey. I yield.

Mr. COOPER. Mr. President, as a matter of courtesy, I think I should say I have been informed that the senior Senator from New York (Mr. JAVITS) opposed in the committee the making of this civil penalty mandatory. I have been informed that he would like to have consideration of the amendment postponed until he arrives in the Chamber. I extend that courtesy to him and state that fact.

Mr. METCALF. Mr. President, I was on the floor all day yesterday. I had discussed the matter with the senior Senator from New York. I had the amendment offered. It was the lowest numbered amendment of any offered to the pending bill. The amendment has been pending for all of this time. I have been trying to bring it up, and I have been forced to bring it up at this time in order to get consideration of the amendment before the pending bill is passed.

Mr. WILLIAMS of New Jersey. Mr. President, in view of all of the factors and mindful of the committee discussions we have had and the fact that we are now in the 5th day of debate on the pending bill and knowing that the distinguished Senator from Montana has been present on each of those 5 days and ready on all of those occasions to offer his amendment, I do believe that it would be wise at this time to agree with the Senator from Montana that the amendment be agreed to and be part of the conference with the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Montana, on line 9 of page 101 of the bill, to strike the word "may" and insert in lieu thereof the word "shall."

The amendment was agreed to.

The ACTING PRESIDENT pro tempore. The question now is on agreeing to amendment No. 218, offered by the Senator from Kentucky (Mr. COOPER).

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

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Vrginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS—WAIVER OF RULE VIII

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to speak without regard to rule VIII.

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

ACTIVITIES BY MILITANT RADICAL GROUPS—NEW TROUBLE ON COLLEGE CAMPUSES

Mr. BYRD of West Virginia. Mr. President, several events in the news in the past few days concerning activities by militant radical groups should alert us to the new trouble that is brewing on the Nation's college campuses and elsewhere.

It has been observed that coming events cast their shadows before, Mr. President, and I believe that all of us would do well to pay heed now, and law-enforcement authorities should plan a course of action before the situation gets completely out of hand.

We have grown so used to demonstrations and violence that I am afraid many of our people tend to take these things for granted. Perhaps some have been misled by the relative quiet of the summer following the ending of school terms last June.

That may well have been the quiet before the storm, for the events of the past few days indicate serious disorders may lie ahead. I hope that I am proved wrong. But to be forewarned is to be forearmed.

Last week a vicious gang of young thugs, about 20, who said they were members of the SDS, the so-called Students for a Democratic Society, vandalized Harvard University's Center for International Affairs. No one at first seemed to be sure whether they were students or not.

Teachers and students were physically assaulted, and at least two required hospitalization. Windows were smashed, telephones ripped out, a seminar was disrupted, and the so-called anti-imperialist slogans were stenciled on walls while the invaders shouted obscenities.

The gangsters shouted:

Ho, Ho, Ho Chi Minh, NLF is going to win.

As every one knows, NLF stands for the National Liberation Front, which is the political arm of the Vietcong.

Ostensibly these hoodlums were attacking this center for international study because of their opposition to the war in Vietnam. The irony of the situation, however, is that the center has not been known for its support of the war, but on the contrary much of the written material that has come out of the center is said to be critical of U.S. foreign policies in this regard.

As has happened in so many other cases those who are bent on violence commit their depredations without any sensible, reasonable motivation for their actions. They are troublemakers pure and simple and not responsible individuals.

Another indication of what may lie ahead occurred at the University of Maryland. A brawl evolved on that campus when an organizer for the SDS appeared at a student rally with a Vietcong flag. A member of the university's student government, I am glad to say, had the intestinal fortitude to rip it down.

But those who were rallying around that flag screamed through bullhorns:

We are Communists. We support the Vietcong. We want the revolution here.

Their objective was to urge students to go to Chicago to take part in the antiwar demonstrations set for early October.

These incidents to which I have alluded—and there are others which I could cite—should not have surprised anyone who has been reading about the subversive activities of the SDS, although not all of the SDS activities have been publicized. Unfortunately, I am convinced that many of our citizens do not really know how viciously anti-American many of the SDS leaders are.

For example, some recent checking I have done has unearthed the fact that Bernardine Dohrn, former SDS interorganizational secretary, has recently returned from a trip to Cuba where she and other SDS members last month reportedly met with representatives of the Provisional Revolutionary Government—PRG—of South Vietnam.

What trouble they planned at that meeting we can only conjecture. But we know that the SDS has called for militant demonstrations in Chicago from October 8 through October 11. Miss Dohrn has said publicly that the demonstrations will include rallies and marches at the courts and in the schools.

In a press release, she declared that the Chicago demonstrations will be in support of the PRG for the immediate withdrawal of the United States from Vietnam; the immediate release of all black, brown, and all other political prisoners in the United States; independence for Puerto Rico; and an end to the income tax "war surcharge."

The first proposal for the demonstrations in Chicago was made in July in a meeting held in Cleveland, Ohio, called by David Dellinger, national director of

the National Mobilization Committee—NMC—To End the War in Vietnam, now known as the New Mobilization Committee. The demonstrations have been referred to as "Chicago Action."

SDS National Secretary Mark Rudd had proposed Chicago Action to begin around September 24 to coincide with the beginning of the trial of the eight principals indicted for criminal conspiracy to violate Federal antiriot statutes at the 1968 Democratic National Convention, and we have seen that such disorders did occur. Dellinger is one of the eight defendants.

The October dates were substituted so there would be no conflict with student registration at colleges. Rudd declares there needed to be militant demonstrations to "bring the war home" by fighting racism, imperialism, and poverty in the streets of the Nation.

He did not specifically advocate physical confrontation with Chicago police, but others at the Cleveland conference expressed concern about the prospects for violence in Chicago Action. The NMC leadership expressed a desire for Chicago Action to be nonviolent.

A steering committee was appointed to work out differences with SDS. But the committee so far has failed to achieve an agreement. SDS leaders continue in their militant approach to Chicago Action, talking of "some kind of action" inside or outside the Federal court during the trial of the eight defendants, a sample of which demonstrations have already been staged, as we have seen.

Meetings of the committee have been marked by NMC claims that it will not take part in the SDS Chicago Action but will organize its own Chicago Action to include a march on State Street and a massive rock music concert during October 21 through October 25.

Dellinger told the committee that Black Panther Party National Chairman Bobby Seale, one of the eight defendants, will support NMC but not the SDS Chicago Action. Youth International Party—YIPPIE—founders Abbie Hoffman and Jerry Rubin, also defendants, have disagreed with SDS on militant action. The Young Lords and Young Patriots, Chicago street gangs, have rejected the SDS Chicago Action on the grounds it does not have long-range community appeal and would reflect adversely on local groups.

But the SDS has shown no signs of compromise. It has outlined a tentative schedule for Chicago Action to include a "memorial rally" on October 8 for Che Guevara and other revolutionaries; a mobilization of high school, trade school and community college students for an "offensive" against the schools on October 9; an SDS "go after the courts" drive on October 10 to "stop the trial;" and a "big march" on October 11, during which participants "must be prepared to defend ourselves in the event of vicious attacks by Chicago pigs."

SDS leadership considers the Chicago Action a test of the organization's ability to build and carry out a national militant action without the help of other groups. Some leaders, including Rudd, in July expressed doubts that such could be done.

But they have gone ahead without compromise in their demands for a militant Chicago Action which they feel must not fail if SDS is to continue in the vanguard of the revolutionary movement in the United States.

SDS, Mr. President, therefore is organizing from coast to coast for this action and one leader has predicted it will be "pretty bloody" because protesters will "fight back."

American citizens should not be complacent about plans such as these, Mr. President. The time to sound the alarm is now, not after the fire has started.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NUMBER OF AMERICAN TROOPS IN SOUTH VIETNAM

Mr. GORE. Mr. President, in order that the Senate may be informed, on September 11, 1969, there were 508,000 U.S. troops in South Vietnam.

According to the U.S. Defense Department, on September 18 the total had reached 510,200. On September 25, which is the latest report I am able to get, the number had increased to 511,500. I do not wish to draw any conclusions, but merely to state these facts.

There are some other statistics which Senators should find disturbing. The number of U.S. casualties in Vietnam for the week ending September 27 was 1,448. There have been 67,009 casualties of American boys in Vietnam since last January 18.

Mr. President, without desiring to stimulate debate or otherwise to stir controversy, permit me to say this war must end.

The PRESIDING OFFICER. What is the will of the Senate?

CALL OF THE ROLL

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

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk called the roll, and the following Senators answered to their names:

[No. 106 Leg.]

Allen	Goldwater	Nelson
Anderson	Gore	Pearson
Bellmon	Gravel	Pell
Boggs	Griffin	Prouty
Brooke	Hansen	Randolph
Burdick	Hart	Ribicoff
Byrd, Va.	Holland	Saxbe
Byrd, W. Va.	Hollings	Schweiker
Church	Hruska	Scott
Cook	Inouye	Sparkman
Cooper	Javits	Stennis
Cranston	Jordan, N.C.	Talmadge
Curtis	Kennedy	Williams, N.J.
Dodd	Mansfield	Young, Ohio
Eagleton	Mathias	
Ellender	McGee	

Mr. KENNEDY. I announce that the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I also announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. RUSSELL), and the Senator from Virginia (Mr. SPONG), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Aiken	Gurney	Muskie
Allott	Harris	Packwood
Bennett	Hartke	Pastore
Bible	Jackson	Percy
Cannon	Jordan, Idaho	Proxmire
Case	Long	Smith, Maine
Cotton	McCarthy	Stevens
Dole	McClellan	Symington
Dominick	McGovern	Tower
Eastland	Metcalf	Tydings
Fannin	Miller	Williams, Del.
Fong	Mondale	Yarborough
Fulbright	Moss	Young, N.Dak.
Goodell	Mundt	

The PRESIDING OFFICER. A quorum is present.

MESSAGES FROM THE PRESIDENT—APPROVAL OF JOINT RESOLUTION

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on September 30, 1969, the President had approved and signed the following joint resolution:

S.J. Res. 152. A joint resolution to provide for the temporary extension of rural housing programs and Federal Housing Administration insurance authority, and to extend the period during which the Secretary of Housing and Urban Development may establish maximum interest rates on insured loans.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, if I may have the attention of the manager of the bill, the proposer of the pending amendment, and the minority leader, I would like to propound a unanimous-consent request.

I ask unanimous consent that on the pending amendment of the Senator from Kentucky (Mr. COOPER) there be a time limitation of 1 hour, the time to be equally divided between the distinguished senior Senator from Kentucky (Mr. COOPER), and the distinguished Senator from New Jersey, the manager of the bill (Mr. WILLIAMS), and that on any amendments to the Cooper amendment there be a time limitation of one-half hour, the time to be equally divided between the sponsor of the amendment and whoever may be in opposition.

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

Mr. MANSFIELD. I yield.

Mr. JAVITS. I have one question. I do not know whether there would be any ruling on germaneness as to a substitute. We have a substitute.

Is it to be understood the substitute to be proposed by the Senator from New Jersey (Mr. WILLIAMS) and me would be in order?

Mr. COOPER. Mr. President——

Mr. MANSFIELD. I would bow to the Senator from Kentucky in that connection.

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

Mr. MANSFIELD. I yield.

Mr. COOPER. I had raised this question myself with the majority leader; that is, if there should be a question about germaneness and the question of whether or not a substitute can be offered to my amendment.

I would want sufficient time for some argument before a decision is made.

Mr. MANSFIELD. The Senator can be assured of that.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. JAVITS. Mr. President, I do not quite understand the way the matter is left. Do we or do we not have authority to put in the substitute to the Cooper amendment? Is it understood that this amendment will qualify regardless of the germaneness rule, for the purpose of the time limitation?

Mr. COOPER. I would make this suggestion. We have agreed upon a time limitation of 1 hour for my amendment, which is the pending amendment. If there should be an amendment offered to it——

Mr. JAVITS. Or a substitute.

Mr. COOPER (continuing). Or a substitute, it should have one-half hour. That is an hour for the amendment with a half-hour added.

I have not seen the substitute which I understand will be offered. I do want to look at it and if it should be what I understand it will be, I will raise a question as to whether or not it can be offered. I would suggest we have 15 minutes on that matter if it becomes necessary.

Mr. JAVITS. Mr. President, we are entering into a unanimous-consent agreement. I do not have to consent to it and, therefore, the substitute will be in order. There are no conditions necessary. I am anxious to enter into the agreement. I thoroughly agree with the Senator. But this business of setting a precondition on the kind of substitute we will offer is not proper in a unanimous-consent request.

Mr. COOPER. We agree on the time limitation if an amendment is properly laid down.

Mr. JAVITS. Right.

Mr. COOPER. But if a question is raised——

Mr. JAVITS. As to what is germane?

Mr. COOPER. Germanenes or privilege.

Mr. JAVITS. Then, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

What is the pleasure of the Senate?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ALLEN in the chair). Without objection, it is so ordered.

Mr. COOPER. Mr. President, I have asked that the order for the quorum call be rescinded. We have been debating my amendment now for 3 days. This is the largest attendance we have had during those 3 days. If Senators who are in the Chamber will remain, I will finish my argument.

Inasmuch as the amendment is a complex issue and not many of us are from coal mining States, I have prepared and had printed in the RECORD of October 1, page 27949, a short explanation of my amendment and the reasons I have introduced it. I have also had placed on the desk of each Senator the same statement. If the statement has been removed, the statement is in the RECORD of yesterday on page 27949. I do not believe it would take over 3 or 4 minutes to read the statement.

I have spoken on this issue every day for 3 days. Last June, when the matter was being considered in committee, I made a rather lengthy statement on the bill in the Senate and placed in the RECORD at that time statistical records on safety from the Bureau of Mines.

Today I wish to tell the Senate the purpose of my amendment.

The Senate is now considering the Coal Mine Health and Safety Act. It includes proposed amendments to the Coal Mine Safety Act, the last amendment being in 1966.

One section of the bill concerns itself with health standards. We have at last taken note of the fact of the heavy concentrations of coal dust which usually occur in the large mines because of their modern and advanced equipment used at the face of the coal.

Mr. President, these large concentrations of coal dust at the face of the coal are, I have been told, so heavy that a miner cannot see his hands in front of his face. The inhalation of coal dust, day after day, has been a cause for many years—but worse in recent years—of the malady generally known as "black lung."

A section in the bill, which is very strict, is intended to reduce the concentration of coal dust; it will be of help in preventing black lung.

The second section of the bill—and this is the section with which my amendment is concerned—deals with safety standards in the mines to protect the lives and limbs of those who work in the mines.

To recall to Senators who are not on the committee, or who do not come from coal-producing States, let me say that the Bureau of Mines has been an agency of the Government for over 30 years.

In 1941, an act was passed which provided to the Bureau of Mines the authority to make recommendations to the States and to mine operators on appropriate standards of safety, but the Bureau of Mines had no enforcement powers and its function was only advisory.

In 1952, the act was amended to provide standards, to authorize to the Bureau of Mines the authority to write regulations, and also gave the Bureau of Mines enforcement powers in mines employing 15 or more men.

In 1966, the act was further amended and provided to the Bureau of Mines the authority to fix standards and enforcement powers in every mine in this country.

Many States have mine safety laws. My State of Kentucky has a model safety law. The Kentucky Department of Mines and Minerals makes more inspections of mines in 1 year, than the Bureau of Mines does in the entire United States.

Last fall, in Farmington, W. Va., a terrible tragedy occurred. In a mine owned by the Consolidated Coal Co., an ignition or explosion of some type occurred. While the exact causes have not yet been ascertained, 78 miners were entombed and are assumed to have been burned to death or asphyxiated.

That accident shook the conscience of the people of our country. It also shook the Bureau of Mines.

The President of the United States sent to Congress the bill now before the Senate. I am a cosponsor of the bill, but I said on its introduction that from my experience in the past, having worked on three safety bills, and by knowledge of the operations of coal mines in my State, I would reserve the right to offer such amendments as I thought proper. That is the right of every Senator whether or not a sponsor.

From the beginning, the Bureau of Mines, until this time—and I hope that it will continue—has classified mines as either gassy or nongassy.

A mine is classified nongassy as long

as the content of the gas in a specimen of atmosphere tested in a specific way does not exceed one-quarter of 1 percent in volume. This is the law today. Gas must accumulate, according to experience, to about 5 to 15 percent before it can be ignited or exploded.

According to the last records I have been able to secure from the Bureau of Mines, there are 3,192 nongassy mines. That may vary because that was at the end of 1968. The same record listed 392 gassy mines. They are generally larger than nongassy mines, and produce 60 percent of coal mined annually.

But in comparing the safety records of these two classes of mines—there is a vast difference. In the 3,192 mines 52 explosions occurred in 16 years, and 27 deaths.

Any record of deaths is sad. But, considering it is the record of approximately 3,200 nongassy mines operating over a 16-year period, with only 52 explosions, I contend before this body that it is a safety record superior to most industries in this country.

Mr. President, what happened in the 400 gassy mines in the same 16 years? There were 381 explosions which caused 374 deaths, compared to 52 explosions and 27 deaths in nearly 3,200 nongassy mines.

The explosion in Farmington, W. Va.—one explosion killed 78 people—three times as many as have been killed in the 3,200 mines in a 16-year period.

I asked the Bureau of Mines for further information and to give me a list of the mines in which more than one explosion had occurred. I was given a list, and in 48 of the gassy mines there have been more than two explosions. There have been six explosions, and eight explosions, and one mine has had 18 explosions. Yet the Bureau of Mines did not close these dangerous mines.

The explosion in the coal mine in Farmington, W. Va., killing 78 people was most unique. A few years ago, 16 men were killed in the same mine.

It has not been closed.

What does the bill do? It turns to the 3,100 nongassy small mines. The small mine operators and mines have no great companies to speak for them. They do not have the United States Steel Co. They do not have the Consolidated Coal Co. They are not giant companies. The record shows that about 20 companies produce about 40 percent of the coal annually mined in this country. We who come from States with small mines, which may produce 50 tons, 100 tons, 150 tons, or 300 tons a day, must speak for them. We do speak for them. I have placed in the RECORD and before this body the tragic safety record of the 400 gassy mines in this country, and the good safety record in the 3,200 nongassy mines.

What remedy does the Bureau of Mines and the committee propose? They require that the small nongassy mines must buy permissible equipment, whether needed or not, whether it contributes to safety or not, and junk their hard bought conventional equipment. There is no word in the hearings about the expense of the equipment except the testimony of Mr. McDowell of my State who testified that it would cost $240,000 to equip a mine section. After they saw the record, at the last minute the Bureau of Mines provided the committee a series of estimates of cost, which appears in their report.

I would say that anyone with any experience with coal mines would know that the estimates are impractical and in some instances silly. I will give an example. The bureau attempted to divide mines into new classes for the purpose of their estimates: gassy mines, large nongassy mines, and small nongassy mines. It described a large nongassy mine as one which produced 20,000 tons a year, or about 80 tons a day. This is absolutely ridiculous. It speaks the impracticality and the unreliability of their estimates. Those who know mining are aware that if the companies operating in nongassy mines are to stay in business—and a few of them may—they must buy a permissible motor, permissible cars, a permissible loader, a permissible cutting machine. The Bureau of Mines itself estimated that the equipment would cost $266,000, more than Mr. McDowell from Kentucky testified the equipment would cost—$240,000. Yet it speaks of $10,000 or $20,000 as the cost of equipment.

What will be the effect? I say without hesitation that if the bill is passed with this requirement—the requirement that the nongassy mine must install permissible equipment, I do not care how much time is given to the mines to convert—it will put out of business one-half or more of the small mines of this country. It will end the employment of many miners. It will cause the operator to lose his investment. It will put out of business auxiliary industries such as the trucking and equipment industry. It will hurt every community, county, and area in which the small mines are located.

There are about 1,100 in my State. They are scattered throughout eastern Kentucky.

There has hardly been a newspaper or magazine particularly those from the State of my dear friend from New York—that has not sent a writer and photographer to eastern Kentucky to write and picture examples of poverty and desolation. I live in the eastern part of Kentucky. I have long been concerned with the poverty and deprivation there. During the administrations of President Eisenhower and President Kennedy efforts began to be made to do something about the situation. And much has been done. These writers stay a few days, take pictures, go back, and write about the worst examples of poverty in eastern Kentucky.

I would not deny there is poverty. I would not deny there is lack of proper housing. I would not deny there is a lack of proper sanitation in some places. But I stand for those people and defend them. They are an independent and patriotic people. Sometimes but not as often as in the great cities they are violent, but they do not engage in crimes of theft and robbery and similar crimes as in the great urban centers.

I raise this point to emphasize that the chief source of employment in eastern Kentucky is the coal mining industry. Next to West Virginia, Kentucky has the largest coal production in the Union.

If my amendment is defeated, small mines, which are numerous not only in my State of Kentucky, but West Virginia, Tennessee, Virginia, and Alabama, will be closed. The mines will not be employable elsewhere, many of them because they are too old. Those who are employable will have to go to the big gassy mines, the dangerous mines in which nearly 400 have been killed in 16 years.

I will read the list of States concerned:

Alabama has 17 gassy mines; 85 nongassy mines.

Colorado has 23 gassy mines and 36 nongassy mines.

Iowa has only 5 mines. They are nongassy.

Kentucky has 32 gassy mines and 913 nongassy mines.

Maryland has 33 mines, all nongassy.

Missouri has two mines, which are nongassy.

Montana has 12 mines, which are nongassy.

New Mexico has one gassy mine and seven nongassy mines.

North Dakota has one gassy mine.

Ohio has 18 gassy mines and 55 nongassy mines.

Pennsylvania has 68 gassy mines and 279 nongassy mines.

Utah has 10 gassy mines and 17 nongassy mines.

Virginia has 44 gassy mines and 673 nongassy mines.

The State of Washington has one gassy mine and three nongassy mines.

West Virginia has 132 gassy mines and 908 nongassy mines.

I predict that at least half of the small nongassy mines and up to two-thirds, will be forced out of business, with the consequences I have mentioned.

Mr. President, the pending bill is a very strict bill, and it is a necessary bill. One who votes for the bill, with the adoption of my amendment, will be voting for better standards of health and safety.

I say, with all deference, that lack of information about this problem is nothing strange. I do not know about many serious problems that exist in other States. We have gone as far as we could.

I would call to the attention of all Senators, as I did the manager of the bill, the Senator from New Jersey, and the Senator from West Virginia, that if they will look at the bill, page 48, line 20, section 206, they will see that the subject is "Electrical Equipment Generally"; this section describes all of the electrical equipment, in general, that will be found throughout the mines, such as wiring, power connections, cables, circuit breaking devices, and so forth. This is permissible machinery, and we are not objecting to it, because it can be provided. It is not of great cost, and it could be of help where safety is concerned.

On page 51 of the bill are two sections to which we do not object. One concerns itself with junction and distribution boxes for making power connections past the last open crosscut. This means at the face of the coal, where coal is being mined. The second involves small equipment, such as a hand-held electric drill, blower and exhaust fans, and electric pumps. These are small pieces of equip-

ment that can be carried up to the face. It has been found in several cases that if a permissible drill had been used in a nongassy mine, an explosion might have been prevented, because there is a possibility of drilling into a gas pocket. We accept these requirements.

What we cannot accept is the demand of the Bureau of Mines, and this committee, that these small mines, producing 50, 80, 100, 200, or 300 tons a day, must buy a permissible motor, a permissible loader, and permissible shuttle cars, permissible machines which the Bureau of Mines states cost $266,000. The economic operation of these mines would not permit it, and they would go out of business.

I pointed out the other day that this measure would have another effect upon mining States. The poorer, or usually poorer, families who have managed to hold onto 50 or 100 acres of land with some coal under it, near the top of a hill, have a chance now to lease it to a small operator, or perhaps to mine it themselves. It may be all they have. Long ago, the big companies came into Kentucky, some of the same ones operating big gassy coal mines now. They purchased the lands and the mining rights of the people, some who were not the best educated in the world. They bought their timber, some of the best timber in the United States, white oak and poplar, at 50 cents a tree. Many a man has discovered that he had sold his coal rights and did not know about it. But the people who have been able to hold onto a small acreage that has coal under it will be deprived, if my amendment is defeated, of ever being able to lease the coal or to work it. They are denied the opportunity, but the great companies with the gassy mines can continue to operate.

Another consequence, if my amendment is defeated, is strip mining of the small acreages at the tops of the hills, for they cannot be mined with permissible equipment economically, there is one way they might be mined, which is through strip mining. One who has flown over the areas and seen the country devastated by strip mining, and its effect upon the environment, know what I am talking about; conservationists in the Senate should know.

I call to the attention of my friends from New York and from New Jersey, who are arguing that the nongassy mine should be refitted with permissible machinery, that many of the gassy mines are not fitted wholly with permissible machinery, for example, cutting machines. The Senator from New Jersey admitted this yesterday.

I will give the record. The committee placed in its report: "Summary of Ignitions and Explosions in Gassy and Nongassy Mines, January 1941 to June 10, 1969." It provides the causes of explosions in both categories, gassy and nongassy mines. I hope my friends who argue the imposition of permissible machinery upon all mines will listen.

One of the chief causes of ignitions in gassy mines, as shown on page 372, part 5, is "cutting bits." How many explosions have they caused? 153. This is by nonpermissible machinery used in gassy mines. How many explosions have been caused in the nongassy mines by nonpermissible cutting bits? Two. Two in the nongassy mine compared to 153 in the gassy mines. Yet the bill, unless my amendment is adopted would require the nongassy mines to junk their equipment with cutting bits which have caused two explosions, and put in $75,000 equipment with cutting bits which have caused 153 explosions.

Mr. President, it has been implied in the reports, and it has been said on the floor of the Senate that this is a matter of conscience of weighing safety against property.

I agree that we must do everything practicable and reasonable and possible to provide for the safety of the miners. This bill has many helpful provisions, with this exception. But if we are to talk of placing economic interests above human life and safety, then I ask that we think of the 400 gassy mines, their multiple explosions, up to 18 in which nearly 400 people have been killed. There is nothing in this bill which will close these mines. Only the safe nongassy mines are threatened with closing.

I do not know what the Senate will do with my amendment. I know that the committee opposes it, though some of its members support it. I know those members have worked objectively, and have done their best; but with deference, I feel impelled to say this: as I do not know very much about urban conditions in New York, and New Jersey, except through the news media, nor about the special problems in many States of which their representatives have specific knowledge, I must say to the chairman and other members, "With all your study and your objectivity, you do not know the specific conditions in the mining States, and the practical operation of the mines.

I hope my amendment will be accepted. If it is defeated upon the ground as Mr. O'Leary testified, several years ago, an "academic risk," cannot be taken, then I believe it is right that I offer my amendment to reach the heart of the problem: To close down the gassy mines in which more than one explosion occurred, with multiple deaths, till they are safe. It is a valid answer to the argument of placing material considerations above life and safety. The committee will not vote for such a measure. Millions of dollars are invested in the mines by the Consolidated Coal Co., the United States Steel Corp., the Bethlehem Steel Co., and others. Large investments are involved. These companies employ hundreds of people and pay 40 cents a ton to the United Mine Workers' Benefit Fund, which I think correct. But we must consider safety from both sides of the picture—gassy as well as nongassy mines.

This is the third time I have worked a mine safety bill. Neither of the other bills was as comprehensive as the pending bill. In 1957 and 1958, when I was a member of the Committee on Labor and Public Welfare, former Senator Wayne Morse, a friend of labor and a tremendous worker, accepted my position against that of the Bureau of Mines. He brought a bill to the floor.

At this point, I would like to refer to a statement I made on this debate on September 29, a reference to the large mine operators and the United Mine Workers being together, a United Mine Workers representative in my State informed me, and properly, that my statement could be interpreted to mean some sort of collusion between the mine operators and the United Mine Workers. I did not so intend. While I disagree with the UMW in the bill, with respect to the classification of "gassy" and non-gassy mines, I must state that the UMW has worked hard for safety for its members and all mines. I make this statement in fairness to the United Mine Workers. The bill was not passed because of the opposition of the Bureau of Mines and the United Mine Workers.

Former President John F. Kennedy was then a member of that committee. He supported my position against that of the Bureau of Mines.

Again in 1966, although I was not a member of the committee, former Senator Morse was kind enough to ask me to join his committee in working up a bill, which I did. I make these comments to indicate this is not a new problem—and the Bureau of Mines position is not always sacrosanct.

The Senator from New Jersey yesterday made much of the fact that in late months, since the awful tragedy in West Virginia, the Bureau of Mines has discovered that some mines which had previously been classified nongassy were gassy.

I have said always that the Bureau does not make enough inspections. If they were gassy mines, they should have discovered it a long time ago.

Yesterday I found a statement on my desk. It is an attempted answer to the records of the Bureau of Mines which I had placed in the RECORD contrasting safety records in gassy and nongassy mines.

The statistics supplied me by the Bureau of Mines begin with the year 1952 and extended through 1968. The year 1952 was chosen because it was the first year in which the Bureau of Mines had authority to fix standards for the States and enforce them. Of course, they had records before that date, from 1941 on.

The Senator from New Jersey had printed in the RECORD statistics from 1941 through 1968 on nongassy mines. He did not supply statistics for the gassy mines.

Including the period of 11 years, from 1941 to 1952, 87 ignitions occurred in the nongassy mines instead of 52 ignitions. Instead of 27 men killed, there had been 84. Fifty-seven men had been killed in nongassy mines between 1941 and 1952. However, as I have said, those were the years in which there was no Federal standards and no Federal enforcement.

The statistics on gassy mines for that period were not cited as the statistics on nongassy mines were supplied. I will give the record on gassy mines for the period 1941–68.

There were 600 explosions in the gassy mines in that period. And 1,054 men killed.

We shall see what happens. I hope very much that the Senate will support my amendment.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). The Senator from New Jersey is recognized.

Mr. WILLIAMS of New Jersey. Mr. President, the Senator from Kentucky in his customary manner has spoken with great eloquence and emotion for the small mine operators, the operators of mines that have been designated as nongassy.

Most of the arguments we advance have been made in the debate. I would merely like to say that the whole picture as it comes from all of the coal mines in the country has brought forth a national demand that we in the U.S. Senate, right here and now, enact legislation that will bring a new and significant measure of safety to the men who mine the coal in this country. That is why we are here.

All of the statistics on the gassy and nongassy mines are in the record, as they should be. We have the record on ignitions and explosions that kill and injure men. That record should be here. That is why we are here with what the Senator from Kentucky has described—as I believe it is—a stiff bill.

If anyone deserves stiff standards for safety and improved conditions for health, believe me it is the coal miners of the Nation. The bill will provide them a new degree of safety and a better and healthier atmosphere in which to work.

For many reasons, and certainly with patience and to seek understanding, the members of the committee have worked with the Senator from Kentucky. We understand the economic problems of small mines. Certainly the Committee on Labor and Public Welfare will be the last place in the world where anything will be done to put men out of work. So we have been understanding and patient, and we have responded to the needs of the small mines of the country.

I must say, however, that at the outset we were confused by the anachronism of gassy and nongassy mines. All mines are gassy. The gas can be detected upon entry into some mines. If it cannot be immediately detected, it is latent, buried in the seams of coal beneath the ground, and as the coal is cut, the gas will come out. That is why geologists say and the Department of the Interior say, and the bill provides that all mines should have the same classification. So the distinction of gassy and nongassy is, by the bill, eliminated. It is a wrong distinction. It is an anachronism. It is geologically unsound. Now it has been wiped away.

The committee was mindful of the respect to which any member is entitled. Since January of this year, we have worked patiently, week in and week out, month in and month out, to the point where we have arrived at what our committee thinks is a good bill. We were also mindful of St. Matthew's statement in chapter 5, verse 41:

> And if anyone forces you to go one mile, go with him two miles.

Mr. President, we have gone, and we were glad to go, with the Senator from Kentucky the extra mile.

Now I should like to offer an amendment as a substitute for the pending amendment. It will take us the extra mile. It will take us the 2 miles in an accommodation to all the facts and the understanding we have arrived at from the Senator's presentation.

Mr. COOPER. Mr. President, I raise an objection.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 53, after the period on line 7, add the following sentence: "permits for noncompliance and renewals thereof issued in accordance with the provisions of this paragraph shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after the date of enactment of this Act."

"(6) In the case of any coal mine which is operated entirely in coal seams located above the watertable, which has not been classed under any provision of law as a gassy mine prior to the date of enactment of this Act in which one or more openings were made prior to the date of enactment of this Act, and the total annual production of which does not exceed seventy-five thousand tons annually based on the mines' production records for three calendar years prior to such date, the effective date of the provisions of paragraph (1) (D) of this subsection shall be three years after the operative date of this title, except that any operator of such a mine who is unable to comply with the requirements of paragraph (1) (D) on such effective rate may file with the Panel an application for a permit for non-compliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a hearing, that such application satisfies the requirements of paragraph (8) of this subsection and that such operator, despite his diligent efforts will be unable to comply with such requirements, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of paragraph (1) (D) of not to exceed twenty-four months, as determined by the Panel, from such effective date."

On page 53, line 8, change "(6)" to "(7)"; on page 53, line 21, strike "paragraph" and insert "subsection"; and on page 54, strike lines 4 through 7 inclusive.

On page 56, between lines 12 and 13 insert:

"(12) On and after two years from the operative date of this title, all electric face equipment covered by paragraphs (5) and (6) of this subsection which is replaced or converted shall be permissible and maintained in a permissible condition and, in the event of any major overhaul of such equipment in use on or after two years from such date, such equipment shall be put in and shall thereafter be maintained in permissible condition."

Mr. WILLIAMS of New Jersey. Mr. President, I inadvertently failed to say that I offered the amendment for myself, the Senator from New York (Mr. JAVITS), and the Senator from West Virginia (Mr. RANDOLPH).

The PRESIDING OFFICER (Mr. GRAVEL in the chair). The Chair would like to state that this amendment is not in order. It hits places in the bill that the original amendment does not touch, and therefore, it cannot be offered as a substitute. It could be redrafted, of course, to confine itself to the same areas of the bill.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE LIFE MAGAZINE ATTACK ON SENATOR THURMOND

Mr. ALLEN. Mr. President, a Member of this body has been scurrilously attacked. This attack was launched from the pages of the September 19 Life magazine. This story can best be characterized as having the nature of a diatribe loosely clothed in the trappings of yellow journalism. The purpose and design of this article was to slander Senator THURMOND and to mortally wound the confirmation of Judge Clement Haynsworth to the Supreme Court.

The entire article was fraught with fiction and bereft of fact.

Here are the facts:

Senator THURMOND and Charles E. Simons, Jr., who is now a Federal district judge and a former law partner of Senator THURMOND, purchased a large tract of land in Aiken County, S.C., in 1953, and 452 acres of the tract turned out to be a fine industrial site.

In 1966, the South Carolina Highway Department started condemnation proceedings in Aiken County to take 66 acres of the 452-acre industrial site by eminent domain, for the purpose of building a nonaccess portion of Interstate Highway I–20. Three appraisers in the pay of the highway department found that the highest and best use of the property would be for timber growing purposes, and so they placed the value on the right-of-way as follows: Mr. Norwood of Greenville, $8,585; Mr. Height of Jackson, $9,900; Mr. Willard of Spartanburg, $12,700. It should be noted that all three of these appraisers adopted the highway department's timber cruise of $3,253. This figure was grossly in error and was later raised to $9,000 by the attorney general's office. Two of the appraisers had never appraised any property in Aiken County prior to that time, and none of them considered the property as having any value as an industrial site.

Senator THURMOND and Judge Simons had two outstanding foresters—a Mr. Hatcher, who found the timber on the land alone to be worth $9,717.55, and another forester, a Mr. Billingsly, who valued it at $9,649.00.

The primary value of the land did not lie in its timber-producing capacity, but rather in its inherent and obvious value as an industrial site. This is an important factor and should be borne in mind as one reviews the matter. Three well-qualified experts in the field inspected the property, evaluated it as an industrial site, and were prepared to go into court and testify as follows:

Mr. Buck Mickel, president of Daniel Construction Co., a $400 million company headquartered in Greenville, S.C., and his company's site evaluation expert, Mr. Currie Spivey, appraised the 452 acre tract as an industrial site worth $500 an acre.

Mr. Stathy Verenes, of Aiken, a mem-

ber of the State Development Board and a former member of the planning and development commission of Aiken County, who had been very active in bringing large industry into Aiken County and who had tried to purchase the land on two occasions from Senator THURMOND He was of the opinion that the tract had a minimum value of $500 per acre.

The other, and final, appraiser, Mr. William B. Byrd of North Augusta, S.C., who, as a member of the Aiken County Planning and Development Commission had been active in bringing industry into the Aiken area and owned large woodlands himself, felt the tract had a fair market value of at least $500 an acre as an industrial site.

All three of these experts expressed a strong opinion that the 452-acre tract was a prime industrial site. In reaching their decisions they took into consideration these factors: First, its location on the South Edisto River which had a daily flow of approximately 16 to 18 million gallons of water; second, its topography—it is high ground; third, its location near many populated communities, most of which had no large industry but had large labor supplies; and fourth, availability to natural gas and other public utilities. They all further expressed the opinion, and were prepared to testify in court, that after this tract was divided in half by the highway right-of-way its availability and use as an industrial site would be effectively destroyed.

Lawyers know that in condemnation cases a primary factor to be considered is that of "severance damages". The original tract in question, as I have pointed out, was composed of 452 acres; 66 acres of that land was condemned by the Highway Department. This 66 acres ran right through the middle of the original tract; therefore, the land was severed into two parts and rendered useless as an industrial site. The law provides for damages for lands that have been severed and thereby rendered less valuable.

There were three major factors involved in determining the value of the condemned property: First, the value of the land condemned, which was determined to be $500 per acre; second, the value of the timber lost when the land was condemned; and third, the damage to the remainder of the tract because of the portion taken by condemnation known as severance damages. The damages break down in the following forms:

The loss of 66.04 acres at $500 an acre	$33,020
The value of the timber on the 66 acres	9,640
The severance damages for the remaining 386 acres: 386 acres x $194 (difference between $500 and $306)	74,884
Total damages	117,544

The highway department initially offered to Senator THURMOND and Judge Simons the amount of $10,000 for the 66 acres. When the landowners compared this figure with their total losses of $117,000, it was, of course, refused. The Senator and the judge appealed the case to the highway condemnation board, which raised the bid for the land to $18,892.50. They did not consider this amount adequate, in view of the great disparity between this offer and the real value of the land. The only recourse left the Senator and the judge was to go to court. There is no question that, as a matter of constitutional right, an individual is entitled to the payment of just compensation when his land is taken for public use, and that compensation is to be calculated on the basis of the highest and best use to which the land may be adapted.

Prior to going to trial several offers were made and considered, and ultimately a settlement of $32,500 was arrived at as being acceptable to the attorney general, the highway department, and the Federal Bureau of Roads. Senator THURMOND and Judge Simons felt such offer of settlement was inadequate, but decided to accept it in order to stay out of court if possible because of their positions of public trust.

It is significant to note at this point that the lawyer who represented the State in this matter, Mr. Marion L. Powell, agreed to represent the attorney general for a fee of $2,500, with a special proviso that if he obtained a good result in the case he would be paid an additional fee. After the $32,500 final settlement was consummated, Attorney Powell submitted a bill for an additional fee of $2,500, on the grounds that he had obtained an especially favorable settlement for the attorney general's office in this case. The payment of Mr. Powell's additional fee for the good settlement he obtained was immediately approved by the attorney general and paid by the highway department.

The breakdown of the settlement which was agreed upon by the attorney general's office, Senator THURMOND and Judge Simons, and directed by the court, was as follows: $15,000 for the land and timber, and $17,500 for severance damages to the remainder of the land. This is clear proof that the attorney general's office recognized that the major damage suffered by the Senator and the judge was the destruction of the industrial site potential of the land.

In spite of the fact that the land was valued by competent businessmen and appraisers at $500 per acre, the fact that the State's lawyer was paid a bonus for getting a low settlement, and the fact that the breakdown in the court decree itself showed that the major portion of the damages went to reimburse the landowners for the loss of industrial site potential, Life magazine wrote its ludicrous article.

In spite of these facts, which were clear and fully substantiated, and a matter of public record, Life magazine sent one of its reporters to South Carolina who rambled across the State for some months in an attempt to uncover skeletons in Senator THURMOND'S closet.

It is clear from the evidence that they were not interested in the facts, for if they were they would have printed the story directly from court records; but instead they were so intent on undermining the man's character and reputation that the facts of the case were utilized as nothing more than a skeleton for the story.

Let us look at the fiction.

Life's story made various charges. At one point the article said:

> What they add up to is that Senator Thurmond and Judge Simons received more money for their land than any neighboring owners of similar property received, more money than the land was worth by any appraisal other than their own—in brief, more money by far than they would have received had they not been United States Senator Thurmond and Federal Judge Simons.

This statement is patently false. Some landowners received more money per acre for their land than did Senator THURMOND and Judge Simons, and some received less.

Attention is invited to the information presented by Mr. Currie Spivey of Daniel Construction Co. at the press conference held by Senator THURMOND and Judge Simons in reference to these charges. In his survey of the situation, Mr. Spivey found that some landowners got more and some got less money per acre than the Senator and Judge. This should certainly come as no surprise to anyone, since the value of land is largely a matter of location and adaptability.

Attorney General McLeod of South Carolina, states that at least one property owner of similar land received $500 an acre from a jury trial. There were also other owners who received similar amounts for their land. Highly qualified appraisers familiar with the requirements for industrial sites appraised the property at $500 to $550 per acre.

There were other landowners in the area who received similar amounts for their property and such persons did not hold high office, thus it is incorrect to conclude that this settlement was related to the positions held by Senator THURMOND and Judge Simons rather than the value of the land itself.

The article describes the land as "mostly covered with scrub timber." This is another falsehood. The land had been cleared and planted with pines at the owners' expense. In fact, it has been admitted by the State that the timber on the 66 acres in question had a value of around $9,000, admitting that the earlier timber appraisal of $3,200 was in error.

The Life article attacks the experts who were prepared to testify that the land was a valuable industrial site. The article fails to cite the impressive credentials of these individuals, the reasons for their opinions of its value, and why their opinions would have validity. The article cites the opinions of the highway department witnesses and its own "independent" appraiser, as if their views on the question were the only ones which should be considered. They assume that witnesses appearing on behalf of the State were unbiased, impartial, and highly qualified, but that witnesses appearing for THURMOND and Simons should have carried no weight whatsoever.

The Life article cites the reputations and influence of the landowners and their attorneys, implying that a fair trial could not be held in Aiken County.

It is well known that the reputations and connections of attorneys are a factor in any trial in any county; furthermore, Marion Powell, the lawyer for the State Highway Department, who serves as city

judge in Aiken, enjoys a prestige in the community comparable to that of Mr. Williams and Mr. Surasky, the lawyers for the Senator and the judge.

Also, while the favorable opinion which citizens in Aiken County hold for Senator THURMOND and Judge Simons might be a factor before a jury, to deny the regular recourses of the law to anyone for this reason would be an attack on the jury system itself. Had the case gone to trial, there would have been 2 or 3 days of closely reasoned and highly persuasive testimony by experts for both sides. By the time the jury retired to make its decision, after having been charged by the judge on the relevant law, it is far more likely that the jury's deliberations would have focused on the questions before them rather than on the identity of the landowners.

Life described the matter as "tightly kept as a family indiscretion." However, the entire transaction is a matter of public record, as both Senator THURMOND and Judge Simons knew it would be from the very beginning; furthermore, all of this information has been in the hands of State officials who are part of a Democratic administration and who would have little reason to protect Senator THURMOND.

Upon learning of Life's inquiry, Senator THURMOND and Judge Simons discussed the entire matter completely and in detail with representatives of Life magazine, including Mr. Walsh, who wrote the story. No questions were asked which were not answered, and the Life representatives expressed themselves as completely satisfied with the information provided by THURMOND and Simons.

It should also be noted that Judge Simons went out of his way to make sure Life had access to all records concerning the transaction including a transcript of his testimony. Senator THURMOND's senatorial duties kept him busy in Washington and he did not testify in the case.

In the story, Life also reports the Senator's ownership of three lots in West Columbia, as if something were wrong with this, even though Life could find nothing wrong.

Senator THURMOND purchased the property at a time when a bridge was planned for another location. In fact, he first attempted to buy this property approximately 20 years ago as a proposed homesite.

Life described the view from this site in such a way as to imply the site was unsuitable for building a home when, in fact, the lots command a beautiful view of the river.

Upon learning that authorities were considering locating the bridge on a portion of his property, Senator THURMOND expressed his view to the highway department that he hoped the proposed bridge would return to its original site, but that if this were not feasible, he would sell the property for what he paid for it plus interest.

Life implied that the presence of attorneys and a tape recorder at their interview with Senator THURMOND and Judge Simons indicated that there was something to be covered up.

The Life reporters were explicitly told the attorneys were there to answer Life's questions and were in no way representing THURMOND and Simons for the purposes of the interview.

The Life article also stated that John Ehrlichman at the White House was investigating this matter. This is a fabrication which Mr. Ehrlichman has denied.

The Life article was released the day before the hearings on Judge Haynsworth's confirmation began. It contained snide and untrue references to Judge Haynsworth, completely irrelevant to the subject of the article. The article was written with the purpose of hurting Judge Haynsworth and also as part of a campaign in the northern liberal press to villify Senator Thurmond, because the South has a spokesman who has influence in the Nixon administration.

One may not agree with Senator THURMOND in all matters, but no one can deny that he is an honest man. He did in this matter what he always does—he fought for what he believed to be right, and no man can fault him for that.

STROM THURMOND is a man of sterling character, great courage and limitless capacity; a man who has been honored many times by the citizens of his State, this country, and foreign lands.

It has been reported that a former journalist who was known for his ability to uncover cadavers in the closets of Members of Congress tried for many years to "get something" on STROM THURMOND, and failed to do so. Life merely proved that there is absolutely nothing unsavory about this man. The fact that they could find not one scrap of evidence against him did not stop their tabloid type attack.

In their effort to damage STROM THURMOND, the editors of Life may have done their publication mortal harm; in their effort to hurt his reputation, they tarnished theirs; in an effort to raise questions about his character, they revealed lack of character themselves.

The true motive of Life is revealed in an interview reported by Thomas P. Mayes in the Augusta Chronicle on September 17, 1969, which he held with Judge Julius B. Ness, of Bamberg. In a front page story Mr. Mayes reported:

> The trial judge in Senator Strom Thurmond's recently publicized property condemnation settlement told The Augusta Chronicle that a Life reporter informed him the magazine was "out to get" the Republican legislator.
>
> South Carolina Circuit Judge Julius B. Ness of Bamberg said the magazine contacted him two or three times concerning the case. After repeatedly informing the magazine there was nothing unusual about the settlement. Ness reported, he then asked the reporter why Life was so interested.
>
> He said Life was "out to get Strom Thurmond", the judge continued.
>
> Ness said he does not list himself as a Thurmond supporter.

Mr. President, I have evidence available that the brother journalists of the editor and writer of Life have reached the conclusion that there is no substance to the Life story about Senator THURMOND and Judge Simons.

Numerous editorials supporting the position of Senator THURMOND and Judge Simons have been written by prominent editors all over South Carolina who are objective and fair minded and fully capable of weighing the facts, and their judgment is cleary and overwhelmingly thumbs down for Life, and thumbs up for THURMOND and Simons.

Mr. President, I ask unanimous consent that the following editorials be printed in the CONGRESSIONAL RECORD at the conclusion of these remarks:

"The Smear That Failed", News and Courier, Wednesday, September 24, 1969.

"So Strom's a Tough Fighter", Greenville News, Wednesday, September 17, 1969.

"Strom-Life: Falling Money Will be His", Greenville Piedmont, Wednesday, September 17, 1969.

"Attack on Thurmond Seems Flimsy Case", the Spartanburg Herald, Thursday, September 18, 1969.

"Life's Case Against Strom", Columbia Record, Tuesday, September 16, 1969.

"An Empty Bucket", the Gaffney Ledger, Wednesday, September 17, 1969.

"Strom Needs No Defense", the Ridge Citizen, Thursday, September 18, 1969.

"That's Life, I Reckon!", North Augusta Star, Thursday, September 18, 1969.

"A Strikeout", the Chester Reporter, Wednesday, September 24, 1969.

"Thurmond Taken", Star Reporter, Thursday, September 25, 1969.

"Land For Sale", James Island Journal, Thursday, September 25, 1969.

"A Liberal Smear?", Augusta Herald, Tuesday, September 16, 1969.

"Thurmond 2, Life 0", Charlotte News, Friday, September 19, 1969.

I also ask unanimous consent that documentary evidence prepared by Mr. Currie Spivey, Industrial Site Expert for Daniel Construction Co., be printed in the RECORD following the editorials referred to above.

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

(See exhibit 1.)

Mr. ALLEN. Mr. President, in closing, let me reiterate the primary points.

First, the article charges that Senator THURMOND and Judge Simons received more money than their neighbors for land condemned for the highway right-of-way, because of their influence. This is not true and STROM THURMOND publicly denied it in Columbia, S.C., on September 19, where he said:

> As you know, last Sunday Life magazine published a story which implied that Judge Charles Simons and I used our influence as public officials to get more money for a tract of land that we owned than others got for lands located in the same area when our land was condemned by the state to build a highway. These charges are false, malicious and unfounded and I deny any impropriety or wrongdoing.

It is clear that some landowners got more, some got less, per acre for their land than did STROM THURMOND and Judge Simons.

Second, the purpose of the article was to smear STROM THURMOND, hurt Judge Haynsworth's confirmation by the Senate, and do harm to Judge Simons because he has been mentioned as a possible replacement for Judge Haynsworth on the fourth circuit court of appeals. Although his record is without blemish,

they hope to ruin his chances for elevation to a higher court.

I think Senator THURMOND parried this thrust well when he said:

The heart of the matter is simply that the state of South Carolina and the South in general, for the first time now in modern history, has a voice in Washington, and that voice is being heard.

The northern liberals can't stand that. The northern liberal press aimed its guns at me in Miami, and they haven't stopped shooting yet—they haven't shot me down yet, and they won't—because you just can't stop the truth with a pack of lies.

This is just another barrage in the battle between the anti-South, northern liberals and those of us who come from the South who are standing up for the Constitution and fighting to stop the leftward trend and reverse the flow of power to Washington.

There may be other attacks leveled against conservative constitutionalists like Senator STROM THURMOND, but I am confident that he will continue successfully to defend his reputation and his position with truth and unflinching courage as he has done so ably in this case.

EXHIBIT 1

[From the Charleston (S.C.) News and Courier, Sept. 24, 1969]

THE SMEAR THAT FAILED

Life Magazine's attempt to "get" Strom Thurmond by means of a smear article is a failure. The senator's support in South Carolina hasn't diminished. In the nation at large, Life's innuendoes have gone over like the proverbial lead balloon.

In a sensational article captioned "Strom's Little Acres," Life suggested that Sen. Thurmond's influence enabled him to receive an excessively high price from the State Highway Department for 66 acres in South Carolina which he and Judge Charles Simons Jr. owned.

The senator, like many another landowner, declined the State Highway Department's bid for his property. He took the matter to court, as was his right, and settled for a price below what his attorneys thought acceptable. The reasonableness of the settlement is indicated by the fact that the Highway Department paid its attorney an extra fee because he had obtained an "especially favorable settlement for the Attorney General's office in this case."

Life's crude effort is all the more unworthy because Strom Thurmond has gone to unusual lengths to avoid profiting from influence or knowledge gained in public service. He has said he does not own any securities. He also dissolved his law partnership. This is rare in the U.S. Senate in which many senator-lawyers and their partners back home represent powerful corporations or equally powerful unions.

The damage as a result of the Life article is to Life Magazine. It stands exposed as a dealer in sensational smear journalism.

[From the Greenville (S.C.) News, Sept. 17, 1969]

SO STROM'S A TOUGH FIGHTER

We don't pretend to know what Life magazine was trying to prove in the recent "expose" of money made by Senator Strom Thurmond and Judge Charles Simons Jr. on land condemned for highway purposes.

Life did prove one thing South Carolinians already knew. Strom Thurmond is a tough fighter, always ready, willing and able to stand up for his legitimate rights. In this case he was prepared to go to court over the land price and so wound up with a pretty nice settlement.

His actions in the land case, all of them in the public record, are no different from a thousand previous fights on political issues. Strom Thurmond's rugged individualism and refusal to be pushed around on anything by anybody are why he has become an institution in South Carolina.

So what else is new in life?

[From the Greenville (S.C.) Piedmont, Sept. 17, 1969]

STROM-LIFE: FALLING MONEY WILL BE HIS

(By William F. Gaines)

Life magazine has it that Sen. Strom Thurmond and his former law partner bought a tract of land near Columbia at one price and sold it at a much higher one.

This is bad?

If it is illegal to buy property for investment and later realize a profit on the investment, a great many persons in South Carolina are out of jail who should be in it. The practice is rather common.

The property was bought in the early 1950s. It was condemned for road construction by the State Highway Department in 1956. Senator Thurmond and his partner Charles E. Simons Jr., now a district federal judge, were not satisfied with the price offered. They appealed, and later were paid $492 an acre. The 66 acres involved was part of a 3,000-acre tract which had been bought in several parcels at an average price of $14.35 an acre.

All of this is a matter of public record. Life magazine did not have to dig it out, for the record is open to anyone interested in seeing it.

Life makes a leering point of the fact that owners of adjoining property were accepting $200 an acre for tracts of the same nature.

The difference is that Thurmond and Simon appealed, the other property owners haven't. They have, if they wish, the same recourse.

Thurmond has spent 46 years in public life and service in South Carolina and in the Army. This is the first time he has been under attack for any financial dealing.

A picture of the senator standing on his head appeared in Life while he was honeymooning with his first wife, Jean. An anti-Thurmond man was kidding an ardent Thurmond supporter in Greenville about it.

"I can tell you this," returned the pro-Thurmond man. "Any money that falls out of his pocket will be his own."

Thurmond has always been a man of principle and outspoken conviction. This has earned him friends and this has earned him enemies.

In my opinion, he is incorruptible. We could do with some more like him.

He does not deserve harassment.

[From the Spartanburg (S.C.) Herald, Sept. 18, 1969]

ATTACK ON THURMOND SEEMS FLIMSY CASE

As more light is put on the Strom Thurmond land matter, Life magazine's attack becomes much less journalistic expose and much more an attempt at political assassination.

The Senator won't be helped by the episode. But if this is the best they can do to hang Strom Thurmond, he's got a long political life ahead.

The simple facts are these:

Thurmond and his former partner, U.S. Judge Charles Simons, owned a parcel of land in Aiken County. It happened that an interstate highway went through the property.

They declined the State Highway Department's offer of $200 an acre and prepared to take their case to a condemnation jury. A final settlement came to $492 an acre.

S.C. Atty. Gen. Dan McLeod says he feels the price was too high, but that the state decided not to take the matter to a jury for fear the jury would award considerably more. Sen. Thurmond says he thinks the land is worth at least $750 an acre.

This kind of situation is rather common in land acquisition for highway construction.

The only criticism leveled at Sen. Thurmond is that, being a prominent national figure he is, he should have been willing to sell his land for the same price as others in the vicinity received.

That is a rather flimsy basis for implications of scandal and exercise of improper influence.

There is no indication that Thurmond or Simons attempted to exert special influence.

Inevitably, there must be consideration about the political motives involved in the attack. At immediate question is whether it was intended to adversely affect the Senate's approval of Judge Clement Haynsworth for the Supreme Court; and subsequently the possible appointment of Simons to succeed him on the Circuit Court of Appeals.

One thing about Thurmond is that he is not likely to recoil into silence.

[From the Columbia (S.C.) Record]

LIFE'S CASE AGAINST STROM

Vicious muckrakers and doctrinnaire liberals have been trying for a long time to get something on U.S. Senator Strom Thurmond of South Carolina. Finally *Life*, in its effort to put some "life" into its magazine, has come out with a weak indictment that contradicts itself.

By innuendo rather than fact, it attempts, under the title, "Strom's Little Acres," to show that the Senator did something wrong by demanding and getting more than he was offered by the State Highway Department for Aiken County land for an Interstate right-of-way, and by buying a future homesite in the possible path of a Columbia exit route.

Life says Thurmond and U.S. District Judge Charles E. Simons Jr., received $492 an acre for 66 acres while others received an average of $200 an acre, which was the original offer to the former Aiken law partners.

Thurmond said he valued the land at no less than $750 an acre. Highway appraisers gave it a maximum appraisal of $192 an acre. The Highway Department offered a condemnation price of $200. Thurmond and Simons made a move to take the matter to court.

The state's local counsel advised against fighting the case, saying that a local jury verdict might give the landowners as much as $120,000 for the property. The local state's attorney arranged a $50,000 settlement. The U.S. Bureau of Public Roads, which pays 90 per cent of Interstate highway costs, refused to approve that price.

Before the case went to trial, a compromise was reached on a total of $32,500, or $492 an acre. Thurmond said he thought the land was worth more than $50,000, but he and Simons accepted the lower figure "because of the positions we held with the public."

Life sent an appraiser to look at the property. His comment was, "This land is mainly good for holding the earth together," a cliche used for describing uninhabited badlands, deserts and bald, arid mountains of the West. Everybody in South Carolina knows that the state has no land of this type, that all South Carolina land is valuable, and especially so in booming Aiken County. Land values throughout the state have skyrocketed in recent years.

Thurmond and Simons purchased the 66 acres three years before Congress passed the Federal Highway Act of 1956 authorizing construction of the Interstate System, so no routes had been planned at that time.

The second count in *Life's* case against Thurmond was that he purchased a place to build a home on the West Columbia bank of the Congaree River, overlooking the City of Columbia, and he may receive a windfall profit if a proposed river crossing "nicks the corner" of the property.

Life hints that there was some skullduggery about shifting the site of the river bridge from Gervais Street farther upstream. It found the change in plans to be for "reasons as yet obscure."

A principal "obscure" reason was that Gervais Street is criss-crossed by railroads that often pile up West Columbia-Columbia road traffic. West Columbians registered a strong appeal to move the crossing three blocks northward to avoid the railroad tracks. Incidentally, the plans for location of the crossing have not yet taken definite shape.

Thurmond and Simons bought the Aiken County woodlands as an investment, hoping to make a profit. That was not the case in Thurmond's purchase of the West Columbia lots. "I thought I might wish to retire there," he told *Life*. "Now, if this road runs through there and touches a corner, it would destroy the property as a homesite. I have expressed the hope to the Highway Department that they would not have to run it through there, but if they do have to have the property, all I would expect is the money I put in it, plus interest."

The late Drew Pearson was reported to have tried for years to find some deviation to pin on Thurmond and damage his reputation for integrity, but failed. Political foes attempted it and failed. One of the attempts backfired when Thurmond exposed the fact that the information used in the smear attempt had been stolen from his briefcase by an aide of the government spokesman.

And now *Life*, by suggestion and display, tries to make a mountain out of a mirage.

[From the Gaffney (S.C.) Ledger]

AN EMPTY BUCKET

Life magazine went hunting for a needle in the haystack and is quite frankly stuck by its own needling.

If the magazine, with all of its money, prestige, political power and capable investigator-writers, cannot nail Sen. Strom Thurmond with any more than the latest charges leveled at the senior South Carolina senator, then the winner of this round is Sen. Thurmond.

Life has charged that Sen. Thurmond and another party received exorbitant prices for land they owned which was condemned by the State Highway Department.

The article, in the September 19, 1969 issue of Life, states that Charlie Simons and Sen. Thurmond received twice as much for some property condemned by the S.C. Highway Department as did some other property owners who apparently did not appeal to the courts.

Sen. Thurmond said, "When the property which we purchased in the early 1950's was condemned in 1966, the Highway Department did not offer a fair or just price for destroying a prime industrial site and taking growing timber worth thousands of dollars. We appealed to a court and jury which was our only recourse."

Sen. Thurmond has the same rights as any other citizen to own property and to ask for protection and a decision by a jury. If any injustice was done any of the other land owners, the state or the S.C. Highway Department might be answerable before an individual citizen.

If Life magazine, after an extensive effort to dig up something on the South Carolina senator which might be used against him in an all-out drive to reduce any influence he might have in high places, could find nothing more than this, then they have failed miserably.

There was nothing done in this case that could not have been reported by the smallest newspaper in the state, for everything that was done was conducted in the open, it was all legal and above board.

The fact is that nobody in this state or any responsible person in any state would be interested in reporting something that had been reported in 1966 as a matter of public record and has not changed since.

The fact is that the liberal smears against Sen. Thurmond are having an adverse effect. People who know and those who did not know before, realize more than ever that Sen. Thurmond is a man of integrity and that those who attack him are doing so with political purpose.

We do not always agree with the senior senator from the Palmetto State but we have never, ever had any reason to question his character, uprightness and honesty.

Life writers might look closer home for skeletons in political closets. They might prompt an investigation into some matters which have caused far more damaging accusations to be leveled against certain liberal senators.

Sen. Thurmond has his faults, he is human. He is entitled to the rights and privileges given each and every American. His moral conduct has been beyond reproach for as long as we have known him and of him, and we in South Carolina have known him and of him, far longer than anyone at Life magazine.

If the story was written to sell magazines, we hope it succeeded. If it was meant to damage the character of Sen. Thurmond it failed miserably. If you set out to smear someone . . . be sure you have some dirt in your bucket before you take him on. Life magazine took on Sen. Thurmond with an empty bucket and everybody knows it . . . even Life.

[From the Johnston (S.C.) Ridge Citizen]

STROM NEEDS NO DEFENSE

Strom Thurmond needs no defense from here or elsewhere against the innuendo of slander in a story published in the recent issue of Life Magazine. Anyone who knows Strom Thurmond and Life Magazine can come only to the conclusion that the magazine is out to "get" Senator Thurmond by any means, fair or foul. And that conclusion can be arrived at with no other information than the above. A detailed list of so-called "facts" in the matter is not necessary.

If ever a Shakespearean quotation were applicable, the following is to Life's article: "It is a tale told by an idiot, full of sound and fury, signifying nothing."

In this connection, we note that Wednesday morning's Augusta Chronicle, carried a statement by the trial judge in the case that Life's reporter admitted to him that Life was out to "get" Thurmond. The magazine is a mouthpiece of the Liberal extreme which hates and fears the influence of Senator Strom Thurmond.

In the 46 years of his political life, better men than Life Magazine's reporter have tried the same thing, only to come up against the impregnable wall of Thurmond's private and public integrity. South Carolina politicians have no peers when it comes to unearthing something or anything that would be detrimental to an opponent. And that fact that South Carolina politicians have been unsuccessful for this long is due to a very simple explanation: there is nothing there on which Thurmond's character and integrity may be successfully attacked.

He needs no other defense.

[From the North Augusta (S.C.) Star, Sept. 18, 1969]

THAT'S LIFE, I RECKON

From what we read, it looks like Life magazine is after Our Strom. 'Pears as how that Yankee magazine thinks $492 an acre is too much for some land Strom sold for the interstate right-of-way.

Reckon them Life writers still thinks weuns is just using our land for growin' five cent cotton.

Shore am glad them critturs didn't attend the last meeting of the area school advisory council. One of the things they discussed was how much money a couple of local folks wants fer a access road to the new high school.

Seems as how one feller wants $15,000 fer 2.1 acres and 'nother fellow wants $1500 per acre fer three and a half acres.

Right now, them same acres is bein' used fer cows to graze on.

Shore hope them Life fellers don't find out about this! They might start investigatin' our farmers!

[From the Chester (S.C.) Reporter, Sept. 24, 1969]

A STRIKEOUT

We do not agree with Senator Strom Thurmond on all subjects but we do agree with his characterization of the recent article in Life Magazine as "false, malicious and unfounded." It was a pretty sorry attempt to imply wrongdoing in a situation where the bare facts would not support such a charge.

And these facts were simply that Senator Thurmond and his former law partner, Federal Judge Charles Simons, refused to accept an offer of $200 an acre for land needed by the State Highway Department and settled out of court for $492. This figure, approved by the S.C. Attorney General, was a compromise of their claim that the land was worth at least $750 an acre.

As Senator Thurmond said, he had quit his law firm and stripped himself of all connections that might be considered in conflict with his duties as a Senator, but he did not give up his rights as a citizen to protect his property.

That Thurmond, as a Republican Senator, could force this compromise out of a Democratic regime in South Carolina should have been warning enough to Life that the facts did not cover the insinuations of political pressure and fast-buck dealing contained in the article.

There is a strong suspicion, as Senator Thurmond charged, that Life was sold a bill of goods by Democratic party officials in the hope that his political future would be so damaged that Thurmond could be replaced in the Senate by a good Democrat.

[From the Star Reporter, Sept. 25, 1969]

THURMOND TAKEN

Competent lawyers tell us that Yancey McLeod knows whereof he speaks in his assessment of the value of Senator Thurmond's property, which was the subject of Life's half-baked expose. Such being the case, it appears to us that the senator and his partner, Judge Simons, were taken for up to $40,000 by the state in this transaction.

[From the James Island Journal, Sept. 25, 1969]

LAND FOR SALE

The story behind the story concerning Strom Thurmond's sale of land to the highway department suggests as much indiscretion as the sale itself. There is speculation that it is not a move by liberals out to gain revenge against the South Carolina conservative but rather a maneuver on the part of South Carolina politicians to embarrass Thurmond and lessen his chances for reelection next time around.

If this is the case, we feel sorry for anyone that has to step that low. Granted that the price paid for Thurmond's land was high, officials have nevertheless admitted that he could have probably obtained more had he chosen to go to court.

If he had purchased the land with prior knowledge of the roadway's being built in that specific location, the criticism would have been justified. Journal readers know that we have been seldom in Senator Thurmond's corner, but in this instance, we feel that he has been the victim of someone's outright greed, either for money or what they felt to be a chance at political power.

As we heard in one commentary, it ap-

pears that the prestigious national press is out to get any and all politicians through picking at anything that they can exaggerate into some sort of sensationalism. Being a public figure exposes a person to constant public view, but it shouldn't require them to suffer the indignities heaped on them by a nit-picking news media that has lost its concept of objective reporting.

Sooner or later the public will wise up that what they are hearing and reading is not really reporting, but a form of trite entertainment, a yellow journalism, designed only to enhance commercial ratings and protect advertising revenue.

We would venture a guess that 90% of America's problems are promoted, if not generated, by this same irresponsible group The sad part is that the group is probably less than 1 percent of the overall news media.

[From the Augusta (S.C.) Herald, Sept. 16, 1969]

A LIBERAL SMEAR?

Charges brought by Life Magazine that Sen. Strom Thurmond (R–S.C.) and Federal Judge Charles E. Simons have profited excessively from the sale of land for use in the Interstate system seem to be about what the senator has called them—"another in series of attempted liberal smears."

Life has said that Thurmond and Simons received $32,500—$492 an acre—for 66 acres of land of a type that brought their neighbors around $200 an acre. The strong implication is that the two former law partners were able to get the higher figure by virtue of their respective high offices.

Both men have categorically denied any wrong-doing. Judge Simons is quoted as saying in response to the article: "We received no more than a fair price for the land—there is no question about that. I don't know what the other landowners got."

For his part, Sen. Thurmond said that upon going to the Senate in 1954 he gave up his law practice, severed all business connections and disposed of such stocks as he held, but "did not and will not surrender my right as a citizen to own property."

That right to own property connotes the right to dispose of property.

The property in question, interestingly enough, was acquired in 1953, at an average price—Life says—of $14.35 an acre. Whatever reason Thurmond and Simons might have had for buying it, that reason could not have had anything to do with any preknowledge of the use to which it actually was put, since even the outline for the Interstate system was not aired until the following year, when President Eisenhower first presented it at the Bolton Landing (N.Y.) Governors Conference on July 12, 1954.

As for whatever price other landholders in the vicinity got for their property, that would seem to be their affair and does not necessarily have any bearing on what Thurmond and Simons were paid. All had access to the courts to appeal the original offer on condemnation, and the two men availed themselves of this right. Apparently, not all of the others did likewise.

It is no dark, deep secret that there has been among liberals of both parties a gnashing of teeth over the amount of influence Thurmond allegedly wields over the Nixon Administration, and his charge of a "liberal smear" would seem to be every bit as valid as is the implication of wrongdoing on his part.

In fact, the Life charge appears to be just another manifestation of that abiding anti-Southernism which has been so roundly condemned by columnist James Jackson Kilpatrick, and which has so colored the opposition in Congress to the Supreme Court appointment of Judge Clement F. Haynsworth of Greenville, S.C. (an appointment which, incidentally, knocked down the shibboleth of Thurmond's supposed "influence," since the man he was backing was passed over).

Someone apparently has dug mightly to discredit the senator, only to come up with a handful of dust. We have a notion the senator will survive the latest attack.

[From the Charlotte (S.C.) News, Sept. 19, 1969]

THURMOND 2, LIFE 0

We yield to none in our distaste for the general run of South Carolina Sen. Strom Thurmond's politics. Perhaps it is significant that one is impelled to make that plain before venturing that Life magazine hasn't laid a glove on the senator in its investigation of his real estate dealings.

The facts as Life sets them forth seem clear and above contest. Thurmond and Federal District Court Judge Charles Simons, a friend and associate, owned 66 acres of land that lay in the path of an interstate highway in South Carolina. A complex chain of events brought Thurmond and Simons to the threshold of a court fight with the state over the value of the land, whereupon the state agreed to pay them more than twice what other landowners in the path of the interstate were getting. In another instance, Life notes, a parcel of Thurmond-owned land fell unexpectedly and conveniently under the end of a new bridge.

"It cannot be stated that Thurmond had foreknowledge of or control over . . . the bridge site," Life says of the point that is essential to make the bridge episode worth more than a glance, which is all Life gives it.

That the outcome of the interstate episode was not fair is indisputable. That the status of Thurmond and Simons as public figures in South Carolina didn't hurt them any in their contest with the state is alleged, and is reasonable to assume. However, it's also true that what happened was neither illegal nor very uncommon. In fact, if we understand correctly, any man with knowledge and money enough to hire a lawyer and fight for his land may receive an increased settlement, simply because government likes to avoid the trouble and expense of court fights.

And that, in fact, is about all Senator Thurmond demonstrably did. He certainly has that right, even if the attendant developments and results might well embarrass a senator who once said "A man in public office has got to appear to be right as well as be right." It's pretty small potatoes, really, unless the people at Life have more to tell. So far they don't seem to have proved much, except that these matters are seldom fair. And they don't seem to have accomplished much, except maybe to further strengthen Senator Thurmond's hold on the heads of South Carolinians and the Senate seat that is theirs.

GENERAL INFORMATION ON SENATOR THURMOND-JUDGE SIMONS TRACT

(a) Topography of 452 Acre Tract is quite suitable for utilization as a building site for a large Industrial Plant prior to Bisection by I–20. Bisection by I–20 has completely negated such utilization by reducing the land area remaining on either side of I–20 to inadequate proportions.

(b) The South Edisto River constitutes an excellent source of raw water as well as an ideal medium for dissipating treated Industrial effluent. (Flow rate reported 16–18 million gallons/day).

(c) Well water experience in the area is excellent. The City of Aiken derives approximately 15% of its potable water from a single well capable of delivery up to 4,000,000 gallons of water per day.

(d) Natural Gas is available at the site.

(e) Railroad is available within 6.8 miles: $914,000 approximate cost times 1.5 equals $1,371,000.00 yearly gross revenue. $1,371,000.00 divided by $300 per car equals 4570 cars per year.

This type railroad revenue could be derived from: (1) Average pulp mill (2) major synthetic fiber plant (3) large heavy chemicals plant (4) large nitrogen plant (5) other miscellaneous large industrial plants.

(f) U.S. Highway No. 1 is located approximately 3 miles west of the site with an excellent network of county road connections. These would normally be paved, according to the industries requirements, by the state or county.

(g) Labor availability in this portion of Aiken County is excellent. There are no major industries in this area of Aiken County or adjoining Edgefield County.

(h) Soil bearing capacity in the area is very good.

(i) Available adjacent land for expansion requirements.

A. PURCHASE PRICES PAID FOR INDUSTRIAL TRACTS ACTUALLY SOLD IN SOUTH CAROLINA SIMILAR TO THE TRACT OF SENATOR THURMOND AND JUDGE SIMONS

Industry	Approximate number of acres	Average price per acre	Year
Nitrogen	316	$787	1961
Synthetic fibers	600	900	1961
Do	2,500	500	1964
Paper	413	552	1965
Synthetic fibers	750	500	1966
Chemical	645	500	1966
Nuclear fuels	1,000	800	1967
Synthetic fibers	1,500	540	1968
Do	260	800	1969

B. AVAILABLE INDUSTRIAL SITES FOR SALE WHICH ARE LISTED BY DANIEL CONSTRUCTION COMPANY AND WHICH ARE SIMILAR TO TRACT OF SENATOR THURMOND AND JUDGE SIMONS

Location	Approximate number of acres	Average price per acre
Greenville	800	$1,000
Dillon	100–300	750–1,000
Timmonsville	448	850
Lake City	150	800
Hartsville	394	600
Jackson	225	500

C. CONDEMNATION PRICES PAID TO AIKEN COUNTY LANDOWNERS BY SOUTH CAROLINA HIGHWAY DEPARTMENT FOR RIGHTS-OF-WAY ON HIGHWAY I–20[1]

Owner	Location	Approximate number of acres	Average price per acre
Dr. W. H. Mathis, Jr.	Belvedere	33	$1,666
W. D. Mathis	do	19	1,736
Julian Roberts	do	35	650
Jenny McKie	North Augusta	90	1,000
Butler Estate	Belvedere	22	1,136
Bennie Willing	Aiken	22	465
John W. Yonce	do	21	514
Lenwood Willing	do	11	500
Ralph Hartley	do	14	581

[1] Same highway on which the tract of Senator Thurmond and Judge Simons is located, and only a few miles away.

D. SITES WITH SIMILAR CHARACTERISTICS ARE MORE SCARCE EACH YEAR DUE TO REQUIREMENTS BY INCOMING AND EXPANDING INDUSTRY—NEW AND EXPANDING INDUSTRY (CAPITAL EXPENDITURES) IN SOUTH CAROLINA

Year	Number of new and expanded plants	Value Of investment
1960	151	$209,759,000
1961	187	217,677,000
1962	187	210,795,000
1963	162	264,208,000
1964	179	281,214,000
1965	226	600,006,000
1966	202	509,012,000
1967	149	305,797,000
1968	201	635,617,000

IN MEMORIAM—JOHN P. WHITE

Mr. KENNEDY. Mr. President, this morning, John P. White—known as Skip to his hundreds of friends—died suddenly and unexpectedly as he was leaving his home in Rockville, Md.

Skip served both his home State of Massachusetts and his Nation over the years with ability, imagination, dedication, and high good humor. His record of public service covers some 35 years, and bears repetition to show the variety of his experience.

He was born in Winthrop, Mass., in 1915, and was educated in the Winthrop public schools, the New Preparatory School, and Boston College.

He served as a legislative aide in the Great and General Court of Massachusetts—the legislature—from 1934 until 1940.

In 1940, he enlisted as a private in the Field Artillery of the U.S. Army, and served with distinction until 1945, by which time he had risen through to the rank of captain.

After his discharge, he returned to the Massachusetts Legislature, this time as legislative counsel and stayed from 1946 to 1953.

Christian Herter was serving as Governor of Massachusetts in 1953, and Skip joined his staff as legislative secretary. Governor Herter and Skip had become friends in the 1930's, and this close association continued in the Massachusetts State House until 1957.

In that year, Skip came to Washington to serve in the Department of State, as a Special Assistant in the office of Congressional Relations. He later became Deputy Assistant Secretary of State for Congressional Relations, and he held this post until his death this morning.

President Kennedy spoke often of his great respect for Skip, whom he had come to know in his work as a member of the Senate Committee on Foreign Relations. This relationship—based both on personal friendship and a working relationship—continued through President Kennedy's life.

I shared this respect for Skip, because of his unlimited capacity for work and unflagging devotion to assisting the Members of Congress with matters relevant to the State Department. In my travels abroad as chairman of the Senate Subcommittee on Refugees and Escapees, for example, Skip was of immeasurable value.

He leaves behind him a large gap in the lives of his many friends. These friends live both in Massachusetts and in Washington, as well as around the world. He was in many ways unique in keeping his old friends while making new ones every day.

I speak for these many friends in saying how much we shall miss him.

To his wonderful wife, Elaine, and his son Scott, now a student at Princeton, I offer my sympathy for their loss, but in consolation to them let me say he leaves warm memories of a rich and full life of service to his country and companionship to his friends.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

The Senate resumed the consideration of the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States.

Mr. JAVITS. Mr. President, I yield to the Senator from New Jersey for the purpose of introducing an amendment.

Mr. WILLIAMS of New Jersey. Mr. President, on behalf of myself and the Senator from New York (Mr. JAVITS), I send to the desk a substitute amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The bill clerk read the amendment as follows:

On page 51, before the period on line 24, immediately before the period insert a semicolon and add the following: "except that, notwithstanding any other provision of this subsection, in the case of any coal mine which is operated entirely in coal seams located above the watertable, which has not been classed under any provision of law as a gassy mine prior to the date of enactment of this Act in which one or more openings were made prior to the date of enactment of this Act, and the total annual production of which does not exceed 75 thousand tons annually based on the mine's production records for three calendar years prior to such date, the effective date of the provisions of this paragraph shall be three years after the operative date of this title, provided that any operator of such a mine who is unable to comply with the requirements of paragraph (1)(D) on such effective date may file with the Panel an application under paragraph 5 of this subsection for a permit for non-compliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a hearing, that such application satisfies the requirements of paragraph (8) of this subsection and that such operator, despite his diligent efforts will be unable to comply with such requirements, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date."

On page 56, between lines 12 and 13 insert:

"(12) On and after two years from the operative date of this title, all electric face equipment covered by paragraphs (5) and (6) of this subsection which is replaced or converted shall be permissible and maintained in a permissible condition and, in the event of any major overhaul of such equipment in use on or after two years from such date, such equipment shall be put in and shall thereafter be maintained in permissible condition."

Mr. WILLIAMS of New Jersey. Mr. President, the substance of this amendment was read prior to the point made by the Senator from Kentucky. The only changes are technical, to make it conform to the amendment for which it would be a substitute.

The PRESIDING OFFICER. Without objection, the Chair recognizes the amendment as now in proper form.

Mr. COOPER. Mr. President, I raise a point of order, and ask for a ruling from the Chair, as to whether the amendment can be offered as a substitute.

The PRESIDING OFFICER. The Chair has just ruled that the amendment can be offered and is in proper form.

Mr. JAVITS. Mr. President, is my name on that amendment?

The PRESIDING OFFICER. Yes, it is.

Mr. JAVITS. And the name of the Senator from West Virginia (Mr. RANDOLPH)?

The PRESIDING OFFICER. Yes; the Senator from West Virginia is also a cosponsor.

Mr. WILLIAMS of New Jersey. Mr. President, it was previously requested. That was an error.

Mr. JAVITS. Mr. President, then, the sponsors are the Senator from New Jersey and I. The name of the Senator from West Virginia (Mr. RANDOLPH) is off.

The PRESIDING OFFICER. The three Senators are sponsors.

Mr. JAVITS. Mr. President, the name of the Senator from West Virginia (Mr. RANDOLPH) is to be stricken, at his request.

The PRESIDING OFFICER. Very well.

Mr. JAVITS. Mr. President, one brief word, and I shall not detain the Senate long.

I heard, with interest, the Senator from Kentucky (Mr. COOPER) refer to my familiarity with the slums of New York, and his lack of familiarity with them and their details, being like my lack of familiarity with conditions in eastern Kentucky. I will, of course, thoroughly agree with the Senator from Kentucky that he knows much more about the mines in eastern Kentucky than I do, just as I know much more about the slums in New York than he does; but he is a U.S. Senator and I am a U.S. Senator. I have to vote on his mines, and he has to vote on my slums. If he were a member of the Committee on Labor and Public Welfare, and he were the ranking minority member of the committee's subcommittee concerned, he would have to use his best judgment, as God gave him to use that judgment. His judgment would not in any way be affected, as mine is not affected, by the fact that I have a deep feeling for those people, not any more or any less than for every other American.

I state frankly that I was persuaded by the evidence, nothing else. If I were a judge on the Circuit Court of Appeals in the District of Columbia, or on the Supreme Bench of the United States, I would have to rely upon the same criterion. I do not think I disappoint the people of my State any more than I think I disappoint the people of the country by so doing.

Here is the nubbin of this case as I see it. There is a universal opinion among the labor people that the distinction between gassy and nongassy mines should be eliminated. It is true that many of the mines the Senator from Kentucky is talking about are very small businesses and are not organized. I do not say that is good or bad. It is a fact of life. I know

that the Senator from Kentucky has argued for years that the United Mine Workers has been in some sort of cahoots with operators with respect to health and safety requirements. I do not know whether it is true or false, but I know as far as labor is concerned, it has requested this regulation for both gassy and nongassy mines.

Couple that with the fact that the Bureau of Mines, an agency of the United States, thinks it should be done and that technically it can be done, and add to it the fact that there have been explosions in nongassy mines. The ratio of explosions between nongassy and gassy mines may be 2 to 20 or 2 to 50, but there have been explosions in nongassy mines, explosions which have kill and maimed miners. Therefore, if we are going to have health and safety, we have to do something about it in mines where there has been not only a hazard but a loss.

So the question comes up: What distinction shall we make between the two?

The Senator from Kentucky is on strong ground in certain respects. I do not think he is on strong ground for advocating that the small mines be left out of this requirement that all equipment be explosion proof, but he is on strong ground when he says they are small mines and they have financial problems. We do not want to put them out of business unless the requirements of safety dictate otherwise.

I know of other businesses, small enterprises, that would do pretty well if we permitted them to operate. For example, firms could make fireworks and sell them. Firms might distill alcohol and sell it illegally. They might engage in narcotics sales. There are many businesses that could exist if we permitted them to, but we have to have a balance between social gain and social loss.

I want to keep those very small mines in business if I can. I am a member of the Small Business Committee, so I have some familiarity with the problems faced by small businessmen.

I know the feeling of the Senator from Kentucky for people, and I know something about the situation. The people there have no better friend than JOHN COOPER of Kentucky. Nor has he any better friends than they. They are fine, honorable Americans. I am sure we should stretch every point he has made. The only question is: What can we do?

I do not see, in all honesty, how we can make this distinction, which would be, not arbitrary, but unjustified from a safety standpoint. I will not use the word "arbitrary." Second, what can we do to help them financially?

There exists a serious difference between the Senator from Kentucky and the committee. We really believe we help by the changes made in this bill, which completely revise the matter of re-equipping mines. The practice used to be that if an operator wanted to have equipment which was permissible, he would have to send it to Pittsburgh for the purpose of its being appraised, analyzed, and tested by the Bureau of Mines. Under the bill, the inspections, and so forth, would take place at the site, with every kind of field improvisation, as we used to call it in the Army, and the machinery would be permissible so long as it came up to the performance standards.

Again the Bureau—and I do not know why it would have any ax to grind—represents that the cost per small mine would be $10,000. That is a tremendous difference from the $240,000 or $260,000 figure the Senator from Kentucky has used. Certainly the cost of $240,000 or $260,000 for many small mines would be confiscatory. I would be the first to say it. But we think we have found a way out of that.

It seems to me there is a case for the Bureau of Mines, not withstanding that at one time the witnesses testified that the cost would be several hundred thousand dollars. Now we are over that hill and we have done something different, which brings the cost down and which means the small nongassy mines can be brought within this framework.

That is our case. I will not be passionate about it. I think I speak for the Senator from New Jersey (Mr. WILLIAMS) when I say that both he and I would be pleased by nothing more than to agree with the Senator from Kentucky (Mr. COOPER). We do agree on practically everything. But sometimes there are sectional interests. Sometimes there are responsibilities such as I carry and such as the Senator from New Jersey carries as members of the Committee on Labor and Public Welfare, where we think we see things clearly and where we are convinced, no matter how warmly we feel about opponents on this question. We can treat our opponents affectionately, but we cannot throw in with them. I cannot in this case. Whatever the Senator does, I must vote for my conviction. Having heard it out and tested it out, I cannot do otherwise.

So, Mr. President, as far as I am concerned, I rest our case with the Senate. In the strain and effort to do something more than we have done before—and we have given much time to this matter—the amendment which the Senator from New Jersey has offered for both of us will give another year of relief. It will give 5 rather than 4 years. It simplifies the application. There is a 3-year moratorium. Then he gets 2 years more on one single application. It can be granted for many reasons, whether it is economic or the ability to acquire the equipment.

Then we have included in the bill the opportunity for small business loans.

Those are the two areas in which we have tried to accommodate the situation; and the substitute, as I say, goes even further than we did in committee: It provides for a simplified procedure and an additional year.

One last thing: I think that one of the most important successes—the Senator from Kentucky does not have to agree with me, and I am not asking him questions—that the Senator from Kentucky could have would be that a distinction is made by this substitute between gassy and nongassy mines in respect to the time allowed. Thus I think the principle as to which Senator COOPER feels so deeply is given some recognition; but we simply cannot go along with him on the basic issue of leaving out the nongassy mines completely, for the reasons I have stated, assuming the Senate agrees with us. We can only give our view. I assume that the Senator from New Jersey (Mr. WILLIAMS) will speak for himself, but I think I have fairly represented the motivation and the attempt which has persuaded us that this is the way the Senate ought to go.

Mr. WILLIAMS of New Jersey. Mr. President, the Senator from New York certainly speaks eloquently for himself, and he speaks for my position also.

I should like to state, very briefly, where we are. The bill as reported, together with the amendment that is now pending, would require, if this amendment were adopted:

First, that all mines now classified as gassy comply as to all electric face equipment within 16 months.

Second, that small, 1-horsepower electric face equipment in all mines be permissible within 16 months.

Third, that the large horsepowered equipment in all mines now classified as nongassy be permissible within a maximum period, depending on the availability of equipment, of 4 years, except that all mines now classified as nongassy which are above the water table, and which annually produce not more than 75,000 tons, shall have up to 5 years, depending on the availability of equipment, to be make their equipment permissible.

Mr. President, I yield the floor.

Mr. BYRD of West Virginia. Mr. President, I should like to ask the distinguished Senator from New York a question.

In what way does his substitute amendment change the language of the bill so as to accommodate the small operator in the economic situation which confronts him, while, at the same time, providing additional safety for the miner?

Mr. JAVITS. First, it gives the smaller operator more time. It gives him a year more than is given to other operators to conform to the standards of the bill.

Second, it gives him a much simplified procedure. In the rest of the bill, after 16 months, the nongassy operator has to make an annual application for more time. Under the substitute, the small operator gets practically a standstill for 3 years without anything, and then another 2 years for some more, but it is a very easy provision for him to take advantage of. So those are two distinctions: one is to time, and the other is to procedure.

Those are the effects of the substitute. As to safety, we wait an extra year. But you have to draw a balance somewhere, and we are really straining to try to accommodate the economics of the situation.

Mr. RANDOLPH. That is right.

Mr. JAVITS. The Senator from New Jersey and I have no doubt as to our rightness on the classification, but we are trying very hard to accommodate the eloquent pleas of the Senators from Kentucky (Mr. COOPER and Mr. COOK), and I am sure others feel the same way.

Economically, there must be some bad news, but we have done the best we can.

Mr. BYRD of West Virginia. Does the Senator feel that, on the basis of the evidence, the small operators can feasi-

bly meet the requirements of the substitute within the time frame that is provided by the substitute?

Mr. JAVITS. We believe so. We believe so very much, because we do place a lot of faith, and I think justly, in the complete change in procedures, which can cut costs enormously, because again that is a two-sided thing: One, you save the enormous costs of shipment and transshipment; and two, you open the door to all kinds of field improvisations. Because if you deal with shipping something to Pittsburgh, they have to assemble it; hence, in essence, it has to be new. But the minute you get inspection on the site, then it can be rehabilitated. It can be a bunch of spare parts or components a fellow gets and puts something together, because you have tremendous latitude for improvisation in the field, and the Department expects that.

They know there will be a big burden of administration, but, again, an effort is being made to accommodate the small operator, and their estimate of the cost is $10,000, as contrasted with the figure stated here of $240,000 or $250,000. I do not know enough about estimates to argue about it; it may be $12,00, $15,000, or $18,000, rather than $10,000, but it is in an entirely different order of magnitude, contrasted with the cost of a bunch of new machinery sent to Pittsburgh for a seal, and so on.

I believe, and the Senator from New Jersey believes with me, that the order of magnitude within that compass, $10,000 or thereabouts, is well within the competence of any operator who really ought to be in business. I mean, we simply cannot stretch the rubberband beyond the point where we are going to risk lives, because we are trying to keep everybody in business. That is really what the balance is, and this is where we struck it.

Mr. COOPER. Mr. President, I do not want my friends from New York and New Jersey to think I am ungrateful. If I did not show proper regard for them in this debate, it was because I feel strongly about this issue, and not because I do not respect them. They are certainly not my enemies. We have been friends throughout the years, and perhaps I can talk that way, at a time when we are celebrating the anniversary of the birth of Gandhi.

There are those in the country today, who cause violence, yet say they are in the tradition of Gandhi. They are not in his tradition. He did not hate those against whom he opposed. He appealed to their goodness, to their common humanity. He loved them.

So, as I have been talking against your positions, I have been appealing to your goodness.

Mr. JAVITS. Mr. President, will the Senator yield? I just want to add one of the most interesting experiences of my life to that.

Mr. COOPER. I yield.

Mr. JAVITS. Golda Meir, in New York, spoke with the deepest feeling of grief for the Arab boys who are falling in the so-called guerrilla warfare against Israel. In the same spirit, she said her heart was grieved and broken just as much for any boy, Arab or Jew, who fell in that kind of struggle.

Mr. COOPER. It is an aspect of greatness and of her greatness.

I must respond to the subject—the substitute. As I understand it, it provides to those mines now classified as nongassy an additional year in which to convert their equipment, if their annual production does not exceed 75,000 tons. A mine producing 75,000 tons would, on the average, produce about 250 tons a day. It is not a large mine. It might or might not be able, over a long period of years, to purchase such equipment. It would depend upon its acreage, its capital, and many factors which none of us can estimate clearly at this time.

I oppose the substitute amendment, because it only postpones the date of closing of many mines.

Mr. President, I urge that the substitute amendment be rejected.

Mr. COOK. Mr. President, I cannot help saying, with all the respect I have for the distinguished senior Senator from New York and the distinguished Senator from New Jersey, that the enthusiasm with which the substitute amendment is being presented can best be described by the fact that 18 States in our Nation mine coal. And from those 18 States come 36 Senators. There is not a single Senator from a coal mining State in the United States that has his name on the substitute amendment.

That is the only statement I want to make in supporting the senior Senator from Kentucky in opposing the substitute amendment.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, I ask unanimous consent that, following a quorum call in which the presence of a quorum will have been ascertained, the proponents of the amendment, represented by the Senator from New Jersey, and the opponents of the substitute amendment, represented by the Senator from Kentucky, have 5 minutes each to conclude the debate on the substitute amendment.

Mr. BYRD of West Virginia. Mr. President, reserving the right to object, is it the intention to have a live quorum?

Mr. JAVITS. That is what I understand the Senator from Kentucky has in mind. Is that correct?

Mr. COOPER. No. I will be satisfied if we have a quorum call.

Mr. JAVITS. Mr. President, I modify my unanimous-consent request to provide that after a quorum call, which will follow immediately upon this unanimous-consent agreement, the time for the quorum call not being charged to either side, when the Senate resumes its deliberations, there be 10 minutes of debate on the substitute amendment, the time to be equally divided and under the control of the Senator from New Jersey (Mr. WILLIAMS) and the Senator from Kentucky (Mr. COOPER).

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. 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. BYRD of West Virginia. Mr. President, on the amendment in the nature of a substitute, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. COOPER. Mr. President, I shall take time only to say that the substitute, although offered on its merits, is also offered to defeat the proposition which I have urged before the Senate; namely, that the classifications of mines should be retained as gassy and nongassy.

The effect of the substitute amendment, if adopted, would be to remove those classifications. The amendment is of no substantial benefit at all to the nongassy mines and the small operators. It would only postpone the date of closing mines.

I urge that the substitute amendment be rejected.

Mr. WILLIAMS of New Jersey. Mr. President, I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am sure that both Senators from Kentucky know of my appreciation of the problem they have presented to the Senate. I am sure that the distinguished senior Senator from Kentucky (Mr. COOPER) recalls that in 1965 and 1966 it was upon my motion that he sat, in effect, as a member of the Committee on Labor and Public Welfare as we considered the problem of the smaller bituminous coal miners of the United States. At that time, I helped to bring that legislation, with the aid of former Senator Morse and others, to the floor, and this is a matter of record.

So the understanding of the Senator from West Virginia, who now speaks, as to the problem is one that I do not believe that anyone—certainly, not the Senator, for whom I have a very cherished affection—would indicate otherwise.

Mr. COOPER. May I say that I agree wholly with the Senator. He and his colleague, Senator BYRD, have been valiant fighters for their sides, their mines, their miners, and for safety.

Mr. RANDOLPH. I thank the Senator.

We come today to this situation in the mine health and safety proposal of 1969. We remember the past, but we are faced with the problem, in so far as possible, at least in degree, regardless of the type of mine, of remembering that it is the health and the safety of the miners that must be considered by the Senate.

For the record, I want to have it understood very clearly that the feeling within the committee and the feeling

within the subcommittee was—I would say 80 percent of the membership of the subcommittee and the committee, as Senator COOPER, I think, would understand in our conversations—for a 3-year period. An amendment to that effect was offered in the full committee. But I appealed, very frankly, to the Senator who offered the 3-year proposal to extend it to 4 years, because I recognized the problem. To a degree it exists in West Virginia, Virginia, Kentucky, and other States. So I was going then beyond what I think the committee really felt in its composite judgment we should do.

Now we come here, and after going from 3 to 4—I think Senator JAVITS would say that I argued the point of 4 years rather than 3—we come up with 5 years.

So there is a very real attempt here not only on the part of the majority but also of the minority of the committee to understand and try to respond to the argument of the Senator from Kentucky. I cannot believe that the Senate, after we have worked for months and months on this measure—we understand the health and safety problems involved—would not think in terms of the constructive substitute which has been offered. I trust that it will pass by a very considerable margin of votes.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS of New Jersey. I yield back the remainder of my time on the substitute amendment.

Mr. COOPER. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the substitute amendment has been yielded back.

The question is on agreeing to the substitute amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METCALF (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished Senator from New Mexico (Mr. MONTOYA). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. MATHIAS (when his name was called). Mr. President, on this vote I have a live pair with the Senator from South Carolina (Mr. THURMOND). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea."

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Georgia (Mr. RUSSELL), and the Senator from Virginia (Mr. SPONG) are necessarily absent.

I further announce that the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. CRANSTON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Iowa (Mr. HUGHES), the Senator from Virginia (Mr. SPONG), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "yea."

I further announce that, if present and voting, the Senator from North Carolina (Mr. ERVIN), would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Oregon (Mr. PACKWOOD) and the Senator from Delaware (Mr. WILLIAMS) are detained on official business.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Kansas (Mr. DOLE). If present and voting, the Senator from Oregon would vote "yea," and the Senator from Kansas would vote "nay."

The pair of the Senator from South Carolina (Mr. THURMOND) has been previously announced.

If present and voting, the Senator from Tennessee (Mr. BAKER) would vote "nay."

The result was announced—yeas 45, nays 31, as follows:

[No. 107 Leg.]

YEAS—45

Aiken	Griffin	Pastore
Anderson	Harris	Pell
Bible	Hart	Percy
Burdick	Hartke	Proxmire
Byrd, Va.	Holland	Randolph
Byrd, W. Va.	Inouye	Ribicoff
Cannon	Jackson	Schweiker
Case	Javits	Scott
Church	Jordan, N.C.	Smith, Maine
Dodd	Kennedy	Symington
Eagleton	McGee	Talmadge
Eastland	Mondale	Tydings
Ellender	Moss	Williams, N.J.
Fong	Muskie	Yarborough
Gravel	Nelson	Young, Ohio

NAYS—31

Allen	Fannin	Mundt
Allott	Fulbright	Pearson
Bellmon	Goldwater	Prouty
Bennett	Goodell	Saxbe
Boggs	Gurney	Sparkman
Brooke	Hansen	Stennis
Cook	Hollings	Stevens
Cooper	Hruska	Tower
Cotton	Jordan, Idaho	Young, N. Dak.
Curtis	Mansfield	
Dominick	Miller	

PRESENT AND GIVING LIVE PAIRS AS PREVIOUSLY RECORDED—2

Mr. Metcalf, against.
Mr. Mathias, for.

NOT VOTING—22

Baker	Long	Packwood
Bayh	Magnuson	Russell
Cranston	McCarthy	Smith, Ill.
Dole	McClellan	Spong
Ervin	McGovern	Thurmond
Gore	McIntyre	Williams, Del.
Hatfield	Montoya	
Hughes	Murphy	

So the amendment of Mr. WILLIAMS of New Jersey in the nature of a substitute for Mr. COOPER's amendment (No. 218) was agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. SCOTT and Mr. JAVITS moved to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment offered by the Senator from Kentucky (Mr. COOPER), as amended by the substitute amendment offered by the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS).

The amendment, as amended, was agreed to

Mr. SCOTT. Mr. President, I now ask the distinguished Senator from New Jersey (Mr. WILLIAMS) to advise us what other amendments may be pending. I understand the distinguished Senator from Vermont (Mr. PROUTY) has an amendment. Are there others?

Mr. WILLIAMS of New Jersey. As far as known here, that is the only amendment that is expected, unless other Senators have amendments that I have not been notified of.

Mr. COOPER. Mr. President, I have an amendment.

Mr. WILLIAMS of New Jersey. So it would be two amendments that we now know of.

Mr. SCOTT. Mr. President, can we have some understanding as to limitation of time, or does the Senator feel he would not want to do that?

Mr. PROUTY. I do not feel that I should agree at this time.

Mr. WILLIAMS of New Jersey. Mr. President, I would be willing to agree to a time limitation. I know the general nature of the amendment of the Senator from Vermont.

Mr. SCOTT. Mr. President, I would request that the Senator from Vermont be next recognized so that, while we have so many Senators present, we may ask for the yeas and nays.

Mr. COOPER. Mr. President, it may be that the Senator from New Jersey will accept my amendment.

Mr. SCOTT. May I then ask that the Senator from Kentucky be recognized?

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. COOPER. Mr. President, I send my amendment to the desk. I hope Senators will remain in the Chamber. I think we can dispose of it in a few minutes.

The PRESIDING OFFICER. The amendment offered by the Senator from Kentucky will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The clerk will proceed to read the amendment.

The assistant legislative clerk resumed the reading of the amendment.

Mr. COTTON. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD of West Virginia. Mr. President, I request that the Chair direct staffers to take seats or leave the Chamber.

The PRESIDING OFFICER. Staff members are so directed.

The clerk will proceed with the reading of the amendment.

The assistant legislative clerk resumed the reading of the amendment.

Mr. YOUNG of Ohio. Mr. President, a point of order. I see in the Senate Chamber a person in a pink shirt who is not a Senator, seated in the second seat, and I ask that he be excluded from the Senate Chamber.

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

Mr. YOUNG of Ohio. I yield.

Mr. JAVITS. Mr. President, he is my assistant. He is here to assist me with the bill. If the Senator insists on removing him, of course——

Mr. YOUNG of Ohio. If the Senator from New York says it is necessary for him to be in the Chamber, of course, I was not aware of it.

Mr. JAVITS. It is.

Mr. YOUNG of Ohio. I was not aware of it. I have no objection.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk resumed the reading of the amendment.

Mr. BYRD of West Virginia. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

The assistant legislative clerk read the amendment, as follows:

On page 92, between lines 15 and 16, insert the following:

"SEC. 302A. Any operator of a coal mine in operation on the operative date of this title which, during the period commencing July 1, 1952, and ending on such operative date, has experienced two or more ignitions or explosions due to methane shall be ordered by an authorized representative of the Secretary to close and cease mining operations in such mine within sixty days following such order. After the operative date of this title, any operator of a coal mine which has experienced, subsequent to July 1, 1952, two ignitions or explosions due to methane shall be ordered by an authorized representative of the Secretary to close and cease mining operations in such mine within sixty days following such order.".

On page 92, line 18, strike out "or 302", and insert in lieu thereof ", 302, or 302A".

On page 93, line 18, strike out the period and insert in lieu thereof a semicolon and the following: "except that the Secretary shall not modify or terminate any order issued pursuant to section 302A the effect of which would enable any such mine closed by such order to commence mining operations, unless the Secretary, following such investigation, has first determined that such mining operations are not likely to adversely affect the health and safety of miners in such mine.".

On page 103, line 15, strike out "or 302" and insert in lieu thereof ", or 302A".

On page 104, line 3, strike out "or 302" and insert in lieu thereof ", 302 or 302A".

Mr. COOPER. Mr. President, I shall explain the amendment very briefly. I know a number of Senators are now in the Chamber who were not present during the debate.

The amendment which was defeated was my amendment. A substitute to it was adopted. My amendment proposed to retain the classification of gassy and nongassy mines. Its purpose was to retain the classification so that the small nongassy mines, which have a fine safety record over 16 years, would not be driven out of business. The amendment was defeated.

There are 3,200 nongassy mines in the United States, producing 40 percent of the coal. There are 400 gassy mines that produce 60 percent of the coal. The effect of the vote just taken will be to drive out of business a large number of small nongassy mines.

But that is done. These employees must go to gassy mines.

The records of the Bureau of Mines show that in the last 16 years there were 52 explosions and 27 miners were killed in those 3,200 nongassy mines.

In that same period of 16 years, there were nearly 400 explosions in those 392 gassy mines, and nearly 400 people were killed. These mines are open.

I placed also in the RECORD statistics from the Bureau of Mines showing that in many of the gassy mines multiple explosions had occurred. Many had six and eight explosions. One had 18 explosions. They are still operating.

In one mine, in one explosion, three times as many people were killed as were killed in 3,200 mines in 16 years.

Safety is the primary consideration.

My amendment proposes that any mine which has a second explosion shall be closed by the Secretary of Interior through the Bureau of Mines, and that it shall not be reopened until the Secretary, with the assistance of the Bureau of Mines, shall have determined that it is, in reason, safe to reopen the mine.

For example, if such a provision had been in effect when the first explosion, at Farmington, which killed 16, the mine could not have been opened again until it was known to be safe. Later 78 persons were killed in the same mine.

My amendment is a safety measure. It will make certain that if a mine has more than one explosion, it will be closed and not allowed to reopen until the Secretary, by proper procedure, has determined that it is safe. The amendment provides for proper procedures and due process under the law.

I hope that the managers of the bill will accept my amendment.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator from Kentucky yield for one or two questions, before we reach the question of accepting the amendment?

Mr. COOPER. I yield.

Mr. WILLIAMS of New Jersey. Do I correctly understand that, as it was first stated, the amendment would close all mines that have had two ignitions since 1952?

Mr. COOPER. No. My amendment would be prospective.

Mr. WILLIAMS of New Jersey. In other words, the history of explosions does not bear upon the provisions of the amendment?

Mr. COOPER. I do not propose: Close every mine that has had more than one explosion in the last 16 years. It is necessary to have due process, and no one can determine why explosions have occurred in the past. So the amendment must be prospective.

Mr. WILLIAMS of New Jersey. Mr. President, if the Senator will yield further, so that we might be completely clear, this is an amendment bearing the Senator's name, and his endorsement is on it, which says:

On page 92, between lines 15 and 16, insert the following:

"SEC. 302A. Any operator of a coal mine in operation on the operative date of this title which, during the period commencing July 1, 1952, and ending on such operative date, has experienced two or more ignitions or explosions due to methane shall be ordered by an authorized representative of the Secretary to close and cease mining operations in such mine within sixty days following such order. After the operative date of this title, any operator of a coal mine which has experienced, subsequent to July 1, 1952, two ignitions or explosions due to methane shall be ordered by an authorized representative of the Secretary to close and cease mining operations in such mine within sixty days following such order."

That says that all mines that have had two ignitions since 1952, as of the operative date, shall close.

My question simply is, how many mines, how many workers, how much production is the Senator seeking to close?

Mr. COOPER. Mr. President, let me answer the Senator's question. When the Senator asked me, I thought it was prospective. I immediately went to the desk for the amendment, and saw that it would become effective as of July 1, 1952. While the Senator from New Jersey was talking, I was striking the language, to make sure that it was prospective.

I intended it to be prospective, and I shall modify the amendment as follows: In the third line of the amendment, after "which," strike out the words "during the period commencing July 1, 1952, and ending on such operative date," and insert in lieu thereof "shall, from the date of enactment of this act, experience two or more ignitions."

Mr. President, I ask that my amendment be modified accordingly.

The PRESIDING OFFICER. The Senator may modify his amendment.

Mr. COOPER. I assure the Senator that that was not my intention, and when he asked me I went immediately to the desk to make certain, I found that the Senator was correct, and I have changed the amendment. It was not my intention to make it retroactive.

Mr. President, before the yeas and nays are ordered, may I say that in a few moments I shall withdraw my proposed amendment. I sent it to the desk to assert my view that it is just as necessary to apply adequate safety procedures to 400 gassy mines owned by strong corporations, mines whose safety record is bad, as to apply severe measures to the small, safe nongassy mines. I withdraw my amendment.

The PRESIDING OFFICER. Without objection, the amendment will be withdrawn.

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD at this point certain provisions in the bill which begin at page 90, line 24, and continue through page 92, line 15, which deal precisely and exactly

with the kinds of conditions toward which I think the Senator from Kentucky was directing his attention, and provide a procedure by which even potentially dangerous mines can be kept under control and closed, if need be, by the Secretary.

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

(h) (1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine, if any. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners, if any, to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated.

(i) Should a mine or portion of a mine be closed by an order issued by the Secretary or his authorized representative for repeated failures of the operator to comply with any health or safety standard established by, or promulgated pursuant to, titles I or II of this Act, the Secretary shall, after all interested parties have been given an opportunity for a hearing, order that all miners who are idled due to the order shall be fully compensated by the operator for lost time, as determined by the Secretary, at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Any order issued pursuant to this section shall be subjected to judicial review under section 304 of this Act.

Mr. BELLMON. Mr. President, the coal mine health and safety bill, S. 2917, is a major step toward providing needed changes in the present law which will benefit the thousands of people employed in this industry. As a former member of the Committee on Labor and Public Welfare when this legislation was written, I strongly support the vast majority of provisions which upgrade health and safety standards of this Nation's coal mines.

However, one provision of this bill, namely section 301(i), may cause extremely difficult administrative problems, will be extremely expensive and, more important, will not result in any increase in safety in the coal mines. This section requires the Secretary of the Interior to permanently station a Federal inspector in those coal mines which liberate excessive quantities of gases which in the opinion of the Secretary are likely to present explosion danger.

The Department of Interior has recently written a letter to me setting forth their objection to inclusion of this provision in any legislation which might be enacted into law. The Department feels that this provision will actually weaken the safety protection afforded the miner. The Department feels that in those mines which will liberate excessive quantities of gases, the permanent presence of a Federal inspector will cause the mine operator to defer to the Federal inspector the responsibility for protecting the miners' safety. Also in those mines which do not liberate excessive quantities of gases, the operator and the miner will have a tendency to relax the maintenance of safety standards.

Mr. President, I ask unanimous consent that a copy of the Department's letter to me be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., October 1, 1969.

Senator HENRY BELLMON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BELLMON: The Department of the Interior is very concerned about one of the provisions contained in S. 2917, reported by the Committee on Labor and Public Welfare.

The provision I am referring to is section 301(i) which is as follows:

"(i) The Secretary shall station Federal inspectors, for the purpose of making mine inspections on each and every day such mine is producing coal, at those underground coal mines which liberate excessive quantities of explosive gases and which are most likely to present explosion dangers in the opinion of the Secretary, based on the past history of the mine and other criteria he shall establish."

While we have some concern regarding the administrative problems, the funding problems, and the problems of attempting to define a mine "that liberates excessive quantities of explosive gases" all of which this provision causes, our greatest concern is that the inclusion of this provision will actually reduce the safety protection afforded the miner.

This Department has repeatedly gone on record as supporting a strong health and safety bill. We believe that the Committee in including this provision in the bill felt that this would increase the safety protection afforded the miners. We are convinced, however, that just the opposite will result. Rather than placing the responsibility on the operator and the miner to maintain the safety standards established by the bill, this provision allows this responsibility in those mines designated as liberating excessive quantities of explosive gases to be deferred to the Federal inspector stationed there by the Secretary. Likewise, in those mines which do not liberate excessive quantities of explosive gases the operator and the miner will have a tendency to relax the maintenance of the established safety standards.

The prime responsibility for safety must rest, as it always has in coal mines or in any other industry, with the day-to-day exercise of care and responsibility by the operator and the miner. The operator must provide safe working conditions and let his foreman and miners know that he believes in and wants them to practice "safety first". The miner, since his supervisor cannot be with him at all times, has the major role in seeing that he works safely—for his own good as well as his co-workers. He must be highly motivated toward safety.

The inclusion of this provision in the bill will significantly weaken the safety protection afforded the miners and will reduce the level of mine safety. Such a result is contrary to the stated intentions and objectives of both this Department and your Committee.

We therefore strongly urge that you delete section 301(i) from the bill.

Sincerely yours,

RUSSELL E. TRAIN,
Under Secretary of the Interior.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 219

Mr. PROUTY. Mr. President, I send to the desk my amendment No. 219, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. PROUTY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. PROUTY's amendment (No. 219) is as follows:

AMENDMENT NO. 219

Strike out all after line 1, page 6, through line 24, page 7, and insert in lieu thereof, the following:

"FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW

"SEC. 5. (a) There is hereby established a Federal Coal Mine Health and Safety Board of Review which shall be an independent agency. In the exercise of its functions, powers, and duties, the Board shall be independent of the Secretary and the other offices and officers of the Department of the Interior.

"(b) The Board shall consist of five members to be appointed by the President with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. Members of the Board shall be appointed with due regard to their fitness for the efficient discharge of the functions, powers, and duties invested in, and imposed upon, the Board, and two members shall have a background, either by reason of previous training, education, or experience in coal mining technology, one member shall have a background either by reason of previous training, education, or experience in public health, and two members shall be drawn from the public generally. All such members shall not have had any interest in or hold any office in, or connection with, the coal mining industry or any organization representing coal miners for at least one year prior to their appointment and during the term of their appointment. Pending the appointment by the President of members of this Board, the members of the Federal Coal Mine Safety Board of Review, established by the Federal Coal Mine Safety Act, as amended, shall continue as members of the Board in accordance with the provisions of that Act regarding their appointment until they are replaced or reappointed under this section.

"(c) Members of the Board shall be appointed for terms of five years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term and (2) the five members first appointed shall serve for terms, designated by the President at the time of appointment, ending on the last day of the first, second, third, fourth, and fifth calendar years be-

ginning after 1969. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified.

"(d) The Chairman of the Board shall be entitled to receive compensation at a rate equal to that provided for in level IV of the Executive Schedule and section 5316 of title 5, United States Code. The other members of the Board shall receive compensation at a rate equal to that provided for in level V of the Executive Schedule.

"(e) The principal office of the Board shall be in the District of Columbia. Whenever the Board deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place. At the request of an operator of a mine or a miner or the representative, if any, of the miners working in the mine, the Board shall hold hearings or conduct other proceedings under this title, at the county seat of the county in which the mine is located or at any place mutually agreed to by the Chairman of the Board and the operator or miner or representative involved in the proceeding. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the Secretary of the Board.

"(f) The President shall designate from time to time one of the members of the Board as Chairman. The Board shall, without regard to the civil service laws, appoint such legal counsel and hire consultants as it deems necessary. The Chairman shall be the chief executive and administrative officer of the Board and shall, subject to the policies and decisions of the Board, exercise the responsibility of the Board with respect to (1) the appointment and supervision of personnel employed by the Board; (2) the distribution of business among the Board's personnel; and (3) the use and expenditure of funds. Subject to the civil service laws, the Board shall appoint such other employees as it deems necessary in exercising its power and duties. The compensation of all employees appointed by the Board shall be fixed in accordance with chapter 53 of title 5, United States Code.

"(g) For the purpose of carrying out its functions under this title, three members of the Board shall constitute a quorum, and official action can be taken only on the affirmative vote of at least three members. A special panel composed of one or more members, upon order of the Board, shall conduct any hearing provided for in this title and submit the transcript of such hearing to the entire Board for its action thereon. Such transcript shall be made available to the parties prior to any final action of the Board. An opportunity to appear before the Board shall be afforded the parties prior to any final action and the Board may afford the parties an opportunity to submit additional evidence as may be required for a full and true disclosure of the facts.

"(h) Every official act of the Board shall be entered of record, and its hearing and records thereof shall be open to the public. The Board shall not make or cause to be made any inspection of a coal mine for the purpose of determining any pending application.

"(i) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings, which shall provide for adequate notice of hearings to all parties. The existing rules of the Federal Coal Mine Safety Board of Review shall constitute the rules of the Board until superseded or modified by the Board.

"(j) Any members of the Board may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(k) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (j) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

"(l) In the case of contumacy by, or refusal to obey a subpena served upon, any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and, after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Board or to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as contempt thereof."

(2) Strike out all on lines 22 and 23, page 5, and insert in lieu thereof the following:

"(13) 'Board' means the Federal Coal Mine Health and Safety Board of Review established by this Act."

(3) Strike the word "Panel" whenever it appears in the bill and insert in lieu thereof the word "Board".

(4) Strike everything from line 3 through line 24 on page 24 and insert in lieu thereof, the following:

"(d) On or before the last day of any period fixed for the submission of written data or comments under subsection (c) or this section, any interested person may file with the Secretary written objections to a proposed standard, stating the grounds therefor and requesting a public hearing by the board on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and a hearing requested, and shall refer such standards and objections to the Board for review in accordance with subsection (e) of this section.

"(e) Promptly after any matter is referred to the Board by the Secretary under subsection (d) of this section, the Board shall issue notice of, and hold a public hearing for, the purpose of receiving relevant evidence. Within sixty days after the completion of the hearing, the Board shall make proposed findings of fact on such objections and shall file with the Secretary a report incorporating such findings together with its recommendations and with the record on which such findings are based and shall make such report public. Upon receipt thereof, the Secretary, upon consideration of the Board's findings of fact and recommendations, may by decision adopt the Board's recommendations or make new findings of fact and promulgate the mandatory standards with such modifications as he deems appropriate, or take such other action as he deems appropriate. All such findings shall be made public.

"(f) Any aggrieved person may, within thirty days after promulgation in the Federal Register of any mandatory health or safety standards which were referred to the Board under subsection (d) of this section, file with the United States Court of Appeals for the District of Columbia a petition praying that such standards be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary, and thereupon the Secretary shall certify and file in such court the record upon which the Secretary made his decision, as provided in section 2112, title 28, United States Code. The court shall hear such appeal on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The review provided by this subsection shall be the exclusive review available to such person of any such standard and such standards shall not be the subject of any review during any procedure to enforce such standards by the Secretary in the Board or the court. The filing of a petition under this subsection shall not stay the application of the standards complained of, unless the court so orders, upon finding that there is a substantial likelihood that the Secretary's findings are erroneous, and that irreparable injury will result without such a stay."

(5) On line 25, page 24, change "(f)" to "(g)" and on line 3, page 25, change "(g)" to "(h)".

(6) Strike out all from line 17 on page 81 through line 13 on page 82, and insert in lieu thereof the following:

"(d) On or before the last day of any period fixed for the submission of written data or comments under subsection (c) of this section, any interested person may file with the Secretary written objections to a proposed standard, stating the grounds therefor and requesting a public hearing by the Board on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and a hearing requested, and shall refer such standards and objections to the Board for review in accordance with subsection (e) of this section.

"(e) Promptly after any matter is referred to the Board by the Secretary under subsection (d) of this section, the Board shall issue notice of, and hold a public hearing for, the purpose of receiving relevant evidence. Within sixty days after the completion of the hearing, the Board shall make proposed findings of fact on such objections and shall file with the Secretary a report incorporating such findings together with its recommendations and with the record on which such findings are based and shall make such report public. Upon receipt thereof, the Secretary, upon consideration of the Board's findings of fact and recommendations, may by decision adopt the Board's recommendations or make new findings of fact and promulgate the mandatory standards with such modifications as he deems appropriate, or take such other action as he deems appropriate. All such findings shall be made public.

"(f) Any aggrieved person may, within thirty days after promulgation in the Federal Register of any mandatory health or safety standards which were referred to the Board under subsection (d) of this section, file with the United States Court of Appeals for the District of Columbia a petition praying that such standards be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary, and thereupon the Secretary shall certify and file in such court the record upon which the Secretary made his decision, as provided in section 2112, title 28, United States Code. The court shall hear such appeal on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole,

shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The review provided by this subsection shall be the exclusive review available to such person of any such standard and such standards shall not be the subject of any review during any procedure to enforce such standards by the Secretary in the Board or the court. The filing of a petition under this subsection shall not stay the application of the standards complained of, unless the court so orders, upon finding that there is a substantial likelihood that the Secretary's findings are erroneous, and that irreparable injury will result without such a stay."

(7) On line 14, page 82, change "(f)" to "(g)", and on line 17, page 82, change "(g)" to "(h)".

(8) Insert the following between lines 14 and 15 on page 94:

"REVIEW BY BOARD

"SEC. 304. (a)(1) Within thirty days after receipt of an order made pursuant to subsection (a), (b), (c), (h), or (i) of section 302 or of a decision made pursuant to section 303 or of an exception made pursuant to section 401(c) of this Act, as the case may be, an operator or the representative, if any, of the miners of the affected mine may apply to the Board for review of such order, decision or exception.

"(2) The operator or the representative as appropriate, shall be designated as the applicant in such proceeding, and the application filed by him shall recite the order complained of and other facts sufficient to advise the parties of the nature of the proceeding. The Secretary shall be the respondent in such proceeding, and the applicant shall send a copy of such application by registered or certified mail to the respondent and to the operator or the representative, if any, of the miners of the affected mine, as appropriate. Immediately upon the filing of such application, the Board shall fix the time for a prompt hearing thereof.

"(3) The facts found by the Secretary or his authorized representative and recited or set forth in an order issued pursuant to subsection (a), (b), (c), (h), or (i) of section 302 or in a decision issued by the Secretary pursuant to section 303 or in an exception made pursuant to section 401(c) of this Act, as the case may be, shall be prima facie evidence of such facts and the burden of rebutting such prima facie case shall be upon the applicant, but either party may adduce additional evidence.

(4) Upon conclusion of the hearing, the Board shall make findings of fact, and shall issue a written decision incorporating such findings therein affirming, vacating, modifying, or terminating the order issued under subsection (a), (b), (c), (h), or (i) of section 302 or the decision issued under section 303 or the exception made pursuant to section 401(c) of this Act, as the case may be.

"(5) In the case of an application by an operator for review of an order or decision or exception of the Secretary, the representative, if any, of the miners of the affected mine shall be permitted to intervene in the proceeding. In the case of an application by a representative, if any, of the miners of the affected mine for review of an order or decision or exception of the Secretary, the operator shall be permitted to intervene in the proceeding. An operator or representative permitted to intervene shall have the same rights as any other party.

"(b)(1) Within thirty days after receipt of an assessment order made pursuant to section 309(a) of this tile, the operator or the miner may apply to the Board for review of such order.

"(2) The facts found by the Secretary and recited or set forth in said order shall be prima facie evidence of such facts and the burden of rebutting such prima facie case shall be upon the operator or miner, as the case may be, but any party may adduce additional evidence.

"(3) Upon conclusion of the hearing, the Board shall make findings of fact, and shall issue a decision incorporating such finding therein and granting with such modifications as it deems appropriate or denying the petition.

"(c) The Board may permit any interested person to intervene in any proceeding and such person shall have the same rights as any other party, unless the Board otherwise orders.

"(d) Each decision made by the Board shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon issuance of a decision under this section, the Board shall cause a true copy thereof to be sent by registered or certified mail to all parties and their attorneys of record and to the representative, if any, of the miners of the affected mine or other interested person. The Board shall cause each decision to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such decision.

"(e) The Board shall establish procedures to provide for the consolidation of hearings under this section whenever appropriate.

"(f) Pending the hearing required by this section for review of said order or decision or exception, the applicant before the Board may file with the Board a written request for the Board to grant temporary relief with such conditions as it may prescribe from the order or decision, together with a detailed statement giving reasons for granting such relief. The Board, after a hearing in which all parties and the representative, if any, of the miners of the affected mine are given an opportunity to be heard, may grant relief upon a finding that (1) there is a substantial likelihood that the action under review was erroneously issued, (2) the granting of the relief will not adversely affect the health or safety of the miners of the affected mine, and (3) failure to grant the relief will result in serious and irreparable injury.

"(g) In view of the urgent need for prompt decision of matters submitted to the Board under this section, all actions which the Board takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved."

(9) On line 16, page 94, change "304" to "305"; on line 4, page 97, change "305" to "306"; on line 2, page 99, change "306" to "307"; on line 6, page 100, change "307" to "308"; and on line 6, page 101, change "308" to "309".

(10) On line 11, page 103, add the following sentence after the period: "No such petition shall be filed while any review proceedings concerning the assessment order are pending under sections 304 and 305 of this title."

(11) Strike the words "the Secretary or" on line 3, page 95; on line 4, page 95; on line 9, page 95; on line 10, page 95; on lines 13 and 14, page 95; and on line 23, page 96.

(12) Strike everything from the word "issued" on line 16, page 94 through the word "Act" on line 19 of page 94, and insert in lieu thereof the following: "issued by the Board under sections 102, 206(1), and 304 of this Act."

(13) On line 16, page 95, strike the phrase "Secretary under Section 303" and insert in lieu thereof the following: "Board under section 304".

(14) On line 17, page 15, and on line 12, page 56, change "304" to "305".

(15) On lines 21 and 22, page 90, change "303 and 304" to "303 through 305".

(16) Strike out all from the word "Any" on line 13, page 92, through the word "Act" on line 15, page 92, and insert in lieu thereof the following: "Any order issued pursuant to this section shall be subject to review under sections 304 and 305 of this Act."

Mr. PROUTY. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. PROUTY. The purpose of this amendment, Mr. President, is to establish an independent and full-time Board which would provide a prompt and impartial review of actions taken by the Secretary of the Interior and his subordinates in the administration and enforcement of this act. This Board would also pass upon requests for extensions of time to comply with certain provisions of the bill. The Interim Compliance Panel created by the Senate bill to perform this function and composed of representatives of various Federal departments will be eliminated.

The critical need for such a Board has been fully recognized and its adoption repeatedly urged by both President Nixon and former President Johnson. It is also supported by State representatives, the United Mine Workers and the coal industry, to assure a strong and effective enforcement of health and safety provisions while simultaneously providing an immediate, fair and technically sound determination of disputes concerning the application of the law.

The provisions of this amendment are basically those creating a Coal Mine Health and Safety Board of Review which were included in S. 2405, the coal mine health and safety bill introduced by the distinguished Senior Senator from New York (Mr. JAVITS).

The five members of the Board will be full-time Federal employees. They will be nominated by the President, subject to Senate confirmation, but will not be selected as representatives of the workers and the coal industry, respectively, as is the case at present. The amendment provides that two members shall have a background by reason of either previous training, education, or experience in coal mining technology; one member shall have a background in public health; and the remaining two members shall be drawn from the general public.

I believe the need is obvious for an independent Board to review the promulgation of standards, the extensive mine closing orders, and the severe civil penalties authorized in this bill. Such a Board would be consistent—although not identical—with the review board which has functioned with an exemplary record of fairness, objectivity, and approval for over 17 years under the present act. Moreover, it would parallel the independent review boards established only recently by Congress, after careful deliberation, in the closely related field of metal and nonmetallic mine safety and in the broad field of transportation safety. The inclusion of such a board has been vigorously supported by substantially all the immediate parties most knowledgeable and concerned in the advancement of coal mine health and safety, including the administration, the progressive industry members, and the responsible representatives of the coal mine workers.

The rejection of an independent review board, and the substitution in the bill

of such procedures as the hearing and review of disputes by the Secretary whose subordinate issued the order in conflict or found the alleged violation upon which a penalty would be imposed, are manifestly unfair and violative of our deeply rooted concepts of justice. For the Secretary—vested also with regulatory powers under the bill—would serve in each instance as investigator, prosecutor, and also as the sole trial judge and jury—a concentration of authority which shocks our sense of due process of law.

Furthermore, while the bill superficially accords a right of appeal to the courts from decisions of the Secretary, such appeals would be strictly confined to the record made before the Secretary, without the benefit of any findings by an independent board; temporary relief would be essentially unobtainable either before the Secretary or the courts; and the cost of taking an appeal, with the mine forced to remain shut down and the workers unemployed pending the appeal, would be economically prohibitive. Indeed, as is evident from such procedures, the bill is so contrived as to deny any effective protection to the mine operators or the mineworkers from arbitrary or unwarranted actions taken by the Secretary, or his representatives, in the enforcement of the law.

The inclusion of an independent review board, with appeals from the findings of the board to the appellate courts, would obviously correct these grave deficiencies in the bill and would establish a fair and equitable system for the resolution of disputes. Such a board would not, of course, hinder an intensive and vigorous administration, since, apart from other considerations, it would enable the Secretary and his representatives more fully to test the enforceable limits of the act. But most importantly, the ready availability of an efficient, impartial and inexpensive forum to decide conflicts regarding the extremely complex health and safety requirements in the bill would promote the compliance and cooperation of the parties, which, as President Nixon indicated in his message to Congress, provide "the touchstone to any successful health and safety program."

The committee report makes several assertions which it thereafter relies upon as justification for eliminating the present Coal Mine Board of Review. In my opinion, these assertions are unfair and unfounded, and I will comment on some of them briefly.

First. The committee report states that both the Nixon and Johnson administrations proposed that the Coal Mine Board of Review continue in existence "with veto power over the Secretary in enforcement actions."

The truth of the matter is that neither the Board under the present act, the Board which I propose be created, nor any independent review board proposed in any of the bills before the Senate, would grant any veto authority whatsoever to such a board. Rather, the Board would be delegated the authority to resolve disputes concerning orders or penalties issued by the Secretary, and decisions by the Board would be subject to full review by the U.S. Court of Appeals and by the U.S. Supreme Court.

Second. The committee report states that the present Coal Mine Board of Review "on its face appears to be an industry-oriented Board, or a special interest Board."

However, the facts are these. On appeals to the Board from disputed orders issued by the Federal inspectors, the Board has upheld the Federal inspectors in almost 70 percent of the fully litigated cases; and the decisions of the Board have been unanimously sustained in every case considered by the U.S. Courts of Appeals, with the courts even specifically commending the opinions of the Board. Also, most significantly, the Bureau of Mines itself filed only two appeals from Board decisions, one of which was dismissed as untimely, and the other was denied on its merits. Moreover, the present Director of the Bureau of Mines expressly testified before the committee that he agreed with all except one of the Board's decisions issued in the last 17 years, and that the Board "has done a very responsible and respectable job." Consequently, it is obvious that the Board has performed its quasi-judicial functions with complete fairness and impartiality, and has implemented the enforcement of the present act.

Third. The committee report quotes the Director of the Bureau of Mines as characterizing the Board as "an escape valve" for the industry and refers to the Board's own statement before the Appropriations Committee describing itself as "essentially a buffer between the U.S. Bureau of Mines, and the coal industry."

These quotations by the Director and by the Board were lifted wholly out of context, and neither in fact reflected any suggestion of any role by the Board which would weaken the enforcement of the act. More particularly, the Director testified that the Board has been a highly effective forum for the resolving of disputes; that without this "escape valve" for the handling of conflicts, the industry "might well have become litigation oriented"; and that the system of appeals "has worked beautifully" in operation. Likewise, the Board, in its statement before the Appropriations Committee, referred to its adjudication functions as a "buffer between the U.S. Bureau of Mines and the coal industry, in determining the propriety and scope of orders issued under title II of the Federal Coal Mine Safety Act." In the same statement, the Board emphasized that its "assigned mission is the safeguarding of lives and property under the amended Act," and that progress in reducing major disasters "will derive from a more intensive and vigorous enforcement of the present law, and from the active cooperation of the parties concerned."

Obviously, neither the Director nor the Board stated or implied in any manner that it was a function of the Board to weaken the effective enforcement of the act. Indeed, no major disaster has ever occurred in a mine involved in any Board proceeding. The record of the Board, as already noted, has plainly enhanced, not impaired, the effective administration of the act.

Fourth. The committee report quotes Professor Jaffe of the Harvard Law School of stating that "it is difficult to see what legitimate interest is served by subjecting the Secretary's judgment to the final decision of an industry Board."

In the first place, the Board to be created by my amendment is not an industry board. Second, the committee report carefully omits the professor's statement at the outset of his quoted remarks, namely:

> A comprehensive judgment as to the property of the Board Mine Health and Safety Board of Review would require more information than I have.

Moreover, the professor's remarks were strictly confined to S. 1300 and were without reference to the proposed reconstitution of the Board under S. 2405—the Javits bill—or under my amendment.

Finally, contrary to the professor's statement, none of the proposed bills, or my amendment, would subject the Secretary's judgment to any "final decision" of the board, since complete review of the board's decisions would be provided in the U.S. courts of appeals and the Supreme Court.

The "legitimate interest" to be served by the right of appeal to an independent review board, as recommended to the committee by the present and past administrations and by the most experienced and competent authorities in the field of coal mine health and safety, is the success of the entire health and safety program. This interest would be thwarted by the autocratic concentration of legislative, enforcement, and judicial powers in the Secretary under S. 2917, and by the virtual denial, in practice, of any right of review of disputed orders or penalties issued by the Secretary in the enforcement of this bill.

In conclusion, Mr. President, I would like to emphasize again that the administration and the Department of the Interior have favored and continue to favor retention of a Federal Coal Mine Health and Safety Board of Review.

It is also my understanding that the bill being considered in the House provides for such a Board. Although there are differences between the House provisions and this amendment, I believe that the adoption of this amendment by the Senate will lead to the creation of a competent and independent Review Board when we go to conference with the House.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WILLIAMS of New Jersey. Mr. President, with regard to this amendment, I will be very brief. The amendment has only become available for review today. It was not offered in the subcommittee, it was not offered in the full committee, and it comes as new material. It consists of 17 pages of very complex material that would materially affect the entire bill, a bill that has been in evolution and development for better than 9 months and in debate here for 5 days. But I should like to make four important observations.

This amendment would deny small operators an opportunity for judicial re-

view of the Secretary's mandatory standards in enforcement proceedings by permitting only one test of those standards when initially promulgated.

Another point: It would permit the Board, without a full hearing, to reopen a mine which has been closed because of an imminent danger. The committee bill does not permit this to be done, not even by the Supreme Court. One mine, reopened by a court in these circumstances, exploded and killed five miners before the court's action could be rescinded. I would address this observation particularly to the Senator from Kentucky, who has come through with such feeling and concern with respect to the danger and the security of the men who work in the mines. Consider Farmington: Certainly that should have the fullest attention before that mine would be permitted to be reopened for production.

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

Mr. WILLIAMS of New Jersey. I yield.

Mr. PROUTY. I point out that under the provisions of the amendment I have introduced—

> The filing of a petition under this subsection shall not stay the application of the standards complained of, unless the court so orders, upon finding that there is a substantial likelihood that the Secretary's findings are erroneous, and that irreparable injury will result without such a stay.

I think that answers the Senator's question with respect to that point.

Mr. WILLIAMS of New Jersey. I thank the Senator.

Further, it would deny the protections of the Administrative Procedure Act in violations and penalty hearings before the Board.

Another point: It would abolish the Interim Compliance Panel carefully established by the committee to grant operators extensions of time to comply with the dust and permissible equipment sections of the bill. This was very carefully worked out, so that if there were any hardships in compliance, there would be ample opportunity for coal operators to adjust to the requirements of the bill.

In addition, the amendment contains, according to legislative counsel—I have not had an opportunity to read it in word-by-word detail—numerous technical and drafting errors which would of necessity have significant impact on the proposed legislation.

For all these reasons, but particularly because it is a complex matter that has not been considered by the committee that had the responsibility of bringing this major bill to the floor, I strongly oppose this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. PROUTY. Mr. President, first, I am going to suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SAXBE in the chair). Without objection, it is so ordered.

Mr. PROUTY. Mr. President, I wish to quote from the August 1, 1969, issue of the United Mine Workers Journal, page 3:

> We favor the retention of the Federal Coal Mine Safety Board of Review. However, we believe that its structure should be changed. We suggest the Chairman of the Board be an impartial person with no prior association with any segment or organization of the coal mining industry. We strongly favor retention of labor and management representatives on the Board. No one has a more immediate interest in coal mine health and safety than the workers in the mines and the management of the mining operations. We know that some dissatisfaction has been voiced about the Board, much of which has been unfounded. However, we favor retention of the Board for two major reasons.
>
> a. The Board serves as a technically qualified quasi-judicial Board which can render prompt and expert judgment needed in coal mine health and safety matters, and
>
> b. We believe that Federal inspectors are more willing to issue closure orders which are appealable to a Board than they would be if such appeals were taken in the first instance to the federal court.

Mr. President, the proposal I have submitted is not comparable to the present Board, although there is a great similarity to it. Certainly the interim panel which we find in the bill is completely contrary to the wishes expressed by the miners at that particular time and also before the committee.

The mine workers want a professional board. As a matter of fact, the Board proposed by my amendment is much stronger in this respect than the board advocated by the United Mine Workers which would have continued the present special interest Board containing two members selected by the union.

Under this Board neither representatives of industry nor labor are included in the Board or as members of Board. Under the interim panel the five members are composed as follows: One member each from the Department of Labor; Department of Commerce; Department of Health, Education, and Welfare; Department of Interior; and the National Science Foundation. These members are full-time, salaried employees in these departments. They cannot devote the necessary time to the problems, the very grave and important problems, which will have to be considered in view of the legislation which we will soon enact into law.

Under my proposal the Board would consist of two members with a background in coal mining technology, one member with background in public health, and two members representing the general public. They shall not have an interest, have held office in or had connection with the coal mining industry or a union representing coal miners for at least 1 year prior to appointment. Members are to be nominated by the President subject to confirmation by the Senate. The chairman would be designated by the President from among confirmed members. The first members would be appointed for 1, 2, 3, 4, and 5 years, respectively, to establish the rotation principle. Thereafter, all terms would be for 5 years. No more than three members of the Board shall be of the same political party.

Mr. President, I ask unanimous consent to have printed in the RECORD the Comparison of Interim Compliance Panel established in S. 2917 and Federal Coal Mine Health and Safety Board of Review, as proposed in my amendment.

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

COMPARISON OF INTERIM COMPLIANCE PANEL ESTABLISHED IN S. 2917 AND FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW PROPOSED IN PROUTY AMENDMENT

PANEL	BOARD
Size	*Size*
5 Members.	5 Members.
Background	*Background*
One Member each from Dept. of Labor; Dept. of Commerce; Dept. of HEW; Dept. of Interior; Natl. Science Foundation.	Two Members with background in coal mining technology; 1 Member with background in public health; 2 Members representing general public.
Other qualifications	*Other qualifications*
None. No restrictions on prior activities.	Shall not have had interest in, held office in or had connection with coal mining industry or a union representing coal miners for at least one year prior to appointment.
Membership on Board	*Membership on Board*
Automatic if in one of 5 specified federal positions, or if selected by man in one of these 5 positions. Chairman elected by members.	Members to be nominated by President subject to Senate confirmation. Chairman to be designated by President from among confirmed members.
Tenure	*Tenure*
Indefinitely.	First members to be appointed for 1, 2, 3, 4 and 5 years, respectively, to establish rotation principle. Thereafter all terms to be for 5 years.
Political Affiliation	*Political affiliation*
No restrictions. Presumably all 5 would represent party of Administration.	No more than 3 members of the Board shall be of the same political party.
Status of members	*Status of members*
Responsible government officials with full-time duties in other capacities will be part-time Panel members when and if functions of Panel can be fitted in with duties of full-time employment.	Board members will be full-time. Board members to work exclusively on duties and functions of the Board imposed by law.

COMPARISON OF INTERIM COMPLIANCE PANEL ESTABLISHED IN S. 2917 AND FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW PROPOSED IN PROUTY AMENDMENT—Continued

PANEL	BOARD
Compensation	*Compensation*
No additional compensation, as are already paid full-time government employees in other capacities. May be reimbursed expenses.	Chairman to be at Level IV of Executive Schedule—other members at Level V. Also receive expenses.
Administrative authority	*Administrative authority*
When applicants for permits of non-compliance with respect to either dust standards or electrical equipment meet the statutory filing requirements, the Panel will act on the application after all interested parties have been notified and given an opportunity for hearing. Any hearing shall be of record, and the Panel shall make findings of fact and issue a written decision.	1. Rule making authority. 2. Power to issue subpoenas. 3. Official seal judicially noted. 4. Every official act to be a matter of record, and all hearings and records to be open to the public. 5. Authority to take depositions and to pay witness fees.
Functions	*Functions*
1. No.	1. Upon timely request by mine operators or union, Board will hold hearings on orders or decisions of the Secretary, and may affirm, vacate, modify or terminate such orders or decisions, in the following categories: a. Withdrawal orders. b. Findings of other violations. c. Idle pay for miners. d. Permits granting mine operators exceptions to health and safety standards to let accredited engineering institutions experiment with new techniques and new equipment to improve health or safety of miners. e. Imposition of civil penalties upon either coal mine operators or coal miners. The Secretary's findings of fact shall be prima facie evidence of such facts, but subject to rebuttal.
2. No.	2. When timely objections made to proposed mandatory health or safety standard, Secretary shall refer proposed standard to Board for hearing. After hearing, Board makes proposed findings of fact and submits to Secretary together with its recommendations and the record. Secretary may modify

COMPARISON OF INTERIM COMPLIANCE PANEL ESTABLISHED IN S. 2917 AND FEDERAL COAL MINE HEALTH AND SAFETY BOARD OF REVIEW PROPOSED IN PROUTY AMENDMENT—Continued

PANEL	BOARD
Functions	*Functions*
	standard or take any other action on it he deems appropriate, as Board's findings and recommendations are not binding on him. (3) Same.
3. Review and, after giving all interested parties an opportunity for hearing, act upon applications for permits of non-compliance with respect to dust standards and the use of non-permissible electrical equipment of more than 25 horsepower.	
Duration	*Duration*
Will work itself out of existence when law prohibits any further issuance of permits of non-compliance. Six years with respect to dust standards and four years with respect to electrical equipment of more than 25 horsepower.	Will become permanent part of structure administering and enforcing Federal Coal Mine Health and Safety Act.
Support	*Support*
Majority of members on Senate Labor and Public Welfare Committee.	1. The Administration and the Dept. of Interior. 2. State representatives. 3. The coal industry. 4. The United Mine Workers. 5. The prior Administration. 6. The House Committee currently considering similar legislation. The House bill currently provides for a 5-member full-time Board to review notices, orders and penalties, and for 3 additional members to consider granting dust standard exemptions and for research, consultation in setting standards and to assist in coordinating Federal and State health and safety activities.

Mr. PROUTY. Mr. President, I ask unanimous consent to have printed in the RECORD a table making clear the review and appeal procedures.

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

REVIEW AND APPEAL PROCEDURES

PRESENT LAW	S. 2917 WITHOUT PROUTY AMENDMENT	S. 2917 WITH PROUTY AMENDMENT
1. Federal and State inspectors issue order finding safety violations.	1. Federal inspector issues Order finding violation.	1. Federal inspector issues Order finding violation.
2. Operator may request review by Director of Bureau of Mines or operator may request review by Federal Coal Mine Safety Board of Review.	2. Operator or union may obtain review by Secretary of Interior.	2. Operator or union may request review by Secretary of Interior or operator or union may request review by Federal Coal Mine Health and Safety Board of Review.
3. If review requested of Director of Bureau of Mines operator may request the Board to review the Director's Order.		3. If review requested of Secretary of Interior, operator or union may request Board to review Secretary's order.
4. The Board's Order is subject to judicial review in the U.S. Court of Appeals for the circuit in which the mine is located.	4. Operator or union may obtain review of Secretary's Order in U.S. Court of Appeals for circuit where mine is located or in U.S. Court of Appeals for District of Columbia.	4. Operator or union may obtain judicial review of Board's Order in U.S. Court of Appeals for circuit where mine is located or in U.S. Court of Appeals for District of Columbia.

Mr. PROUTY. Mr. President, with reference to actions reviewable by the Board, referred to in my mimeographed statement, which Senators will find on their desks, I read as follows:

1. Closing orders issued by Federal inspectors on ground of imminent danger;

2. Orders issued by Federal inspectors concerning violations which do not constitute imminent danger situations;

3. Orders issued by Federal inspectors finding that violations which do not constitute imminent danger situations are caused by the operator's unwarrantable failure to comply with health or safety standards, and closing orders issued by Federal inpectors on grounds that such violations have been caused by the operators unwarrantable failure to comply with health or safety standards;

4. Closing orders issued by Secretary affirming, or orders setting aside, findings of Federal inspectors that (a) violations exist which do not constitute imminent danger but that (b) reasonable assurance cannot be provided that the continuance of mining under such conditions will not result in an imminent danger, and (c) such conditions cannot be effectively abated through the use of existing technology;

5. Orders issued by the Secretary affirming or vacating orders of Federal inspectors granting full compensation to miners idled by a closing order resulting from an operator's "repeated" failures to comply with health or safety standards.

6. Any of the foregoing orders issued by the Secretary after review where the initial order was made by a Federal inspector rather than the Secretary himself;

7. Any modifications or terminations in previously issued Orders made by the Secretary or federal inspectors;

8. Assessment of civil penalties against mine operators for violation of health or safety standards, and assessment of civil penalties against miners for wilfull violations of safety standards; and

9. Board will act directly on applications for extensions of time to meet applicable dust standards, or to install permissible electrical equipment of more than 25 horsepower, as specified in S. 2917.

(NOTE 1.—All foregoing Board Orders subject to judicial review in Court of Appeals for circuit where mine is located or in Court of Appeals for the District of Columbia.)

(NOTE 2.—Board will also hold hearings on health or safety standards proposed by Secretary upon request of an interested party.)

(After hearing Board will submit its findings and recommendations to the Secretary. They are not binding, however, upon Secretary's decision as to what standards he shall promulgate.)

Standards then promulgated by the Secretary are subject to review only in the Court of Appeals for the District of Columbia. This Court's decision is final unless U. S. Supreme Court grants review.

Mr. President, in addition, the Board will also review exceptions to the health and safety standards granted by the Secretary to mine operators for the purpose of permitting accredited engineering institutions the opportunity to experiment with new techniques and new equipment to improve the health and safety of miners.

It also orders under the Kennedy amendment adopted yesterday, "When the Secretary finds that a miner or a union representative has been discharged for having made charges or for having furnished information under this act."

Mr. President, shortly I shall suggest the absence of a quorum. It will be a live quorum. Then I shall speak very briefly following the quorum and then be prepared to vote, if that is agreeable to the other side.

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

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll, and the following Senators answered to their names:

[No. 108 Leg.]

Aiken	Dodd	Metcalf
Allen	Ellender	Mondale
Allott	Goldwater	Prouty
Bellmon	Hansen	Randolph
Brooke	Hollings	Saxbe
Byrd, Va.	Javits	Talmadge
Byrd, W. Va.	Kennedy	Williams, N.J.
Cook	Mansfield	Williams, Del.
Cooper	McGee	

The PRESIDING OFFICER. A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be instructed to request the presence of absent Senators.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms is instructed to execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Bennett	Gurney	Pearson
Bible	Hart	Pell
Boggs	Hartke	Percy
Burdick	Holland	Proxmire
Cannon	Hruska	Ribicoff
Case	Inouye	Schweiker
Church	Jackson	Scott
Cotton	Jordan, N.C.	Smith, Maine
Curtis	Jordan, Idaho	Sparkman
Dominick	Mathias	Spong
Eagleton	McCarthy	Stennis
Eastland	Miller	Stevens
Fannin	Moss	Symington
Fong	Mundt	Tower
Fulbright	Muskie	Tydings
Goodell	Nelson	Yarborough
Gravel	Packwood	Young, N. Dak.
Griffin	Pastore	Young, Ohio

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the amendment (No. 219) of the Senator from Vermont (Mr. PROUTY).

Mr. PROUTY. Mr. President, I should like to remind Senators that the yeas and nays have been ordered on this amendment. I shall speak only very briefly, and I assume the distinguished Senator from New Jersey will be perhaps even less verbose.

Mr. WILLIAMS of New Jersey. That is accurate.

Mr. RANDOLPH. Mr. President, will the Senator from Vermont yield?

Mr. PROUTY. I yield.

Mr. RANDOLPH. Mr. President, I believe that when this amendment is either voted up or voted down, we can bring this measure to passage. Presumably no other amendments will be offered.

I commend the able Senator from Vermont for the argument he presented earlier this afternoon, so that Senators who have considered this legislation for several days can join with him and others of us who have been attentive to these problems in bringing consideration of this measure to a close. I thank my colleague from Vermont very much.

Mr. PROUTY. Mr. President, first I want to contradict a rumor that has been circulated today to the effect that the Board I propose under my amendment would consist of 10 members, all of whom would be college professors with little or no knowledge or concern for the coal miners of our country.

I point out that that is a false story. I think it was circulated for some reason which I will not go into at the present time. However, it is a malicious and completely false rumor. I think the Members of the Senate should be made well aware of that fact.

Mr. President, the pending bill eliminates the Federal Board of Review and establishes an Interim Compliance Panel. The Panel would consist of five members drawn from various Government agencies and departments, members who have other full-time duties and whose functions—and I hope the Senators will listen to this very carefully—would be limited to passing upon requests for extensions of time to meet the applicable dust and safety standards imposed upon electrical equipment of more than 25 horsepower contained in the pending bill.

Those are the only functions the members of this Interim Compliance Panel would have.

Under my proposal the Health and

Safety Board of Review would have authority to: First, resolve disputes concerning orders and civil penalties, subject to full judicial review by the U.S. courts of appeals and the U.S. Supreme Court.

Second, rule on applications for extensions of time in which to meet applicable dust standards and safety standards imposed upon electrical equipment of more than 25 horsepower which are contained in the pending bill. These decisions are also subject to judicial review in the court of appeals.

Third, hold hearings on proposed health and safety standards promulgated by the Secretary of the Interior upon the request of any interested party. The board's findings and recommendations upon proposed standards will be submitted to the Secretary, but will not be binding in any way upon the standards the Secretary may then decide to promulgate.

The Board under my amendment would be a full-time board whose members would be nominated by the President subject to Senate confirmation. The Board under my amendment would have two members with a background of coal mining technology, one with a background in public health, and two members representing the general public.

This would mean that it would be certainly anything but a fixed interest type of group. It will be a special group devoted to the welfare and the needs of the coal miners and the coal mining industry, and on a full-time basis.

The Board is essentially the same as that proposed by the Senator from New York (Mr. JAVITS) in S. 2405.

The provisions had been worked out and were completely agreeable to the Department of the Interior and the administration.

The concept of the Board of Review was fully supported by President Johnson during his administration and is fully supported by the Bureau of Mines, the Department of the Interior, and the Nixon administration.

The concept is also supported by representatives of the States, by the coal industry, and by the United Mine Workers of America.

Provision for a Board of Review is also included in the bill now pending in the House.

The argument in favor of retaining a Board of Review probably has been most concisely summarized by President Boyle, of the United Mine Workers, in a letter to the Senator from Texas (Mr. YARBOROUGH) under date of July 29.

The letter was reproduced in the United Mine Workers Journal on August 1, 1969. I read excerpts from it:

a. The Board serves as a technically qualified quasi-judicial Board which can render prompt and expert judgment needed in coal mine health and safety matters, and

b. We believe that Federal inspectors are more willing to issue closure orders which are appealable to a Board than they would be if such appeals were taken in the first instance to the federal court.

Mr. President, I will read again one paragraph from my statement delivered earlier:

The rejection of an independent review board, and the substitution in the bill of such procedures as the hearing and review of disputes by the Secretary whose subordinate issued the order in conflict or found the alleged violation upon which a penalty would be imposed, are manifestly unfair and violative of our deeply-rooted concepts of justice. For the Secretary (vested also with regulatory powers under the bill) would serve in each instance not only *investigator*, and *prosecutor*, but also as the *sole trial judge* and *jury*—a concentration of authority which shocks our sense of due process of law.

Mr. President, I yield the floor.

Mr. WILLIAMS of New Jersey. Mr. President, the amendment has been stated earlier. It is an amendment that has broad ramifications. It just came to us today, although we have been working on this matter for months and months.

It is hard to understand, in this brief time. Therefore, I strongly urge the Senate to reject the amendment.

The United Mine Workers did perhaps indicate support for the kind of Board last August which is the subject of the amendment. However, they do not support the amendment at this time.

I ask unanimous consent to have printed at this point in the RECORD a telegram sent to me by W. A. Boyle, president of the United Mine Workers of America, and a letter sent to me by acting director of labor's nonpartisan league by Joseph "Jock" Yablonski, both of whom oppose the Prouty amendment in these communications.

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

UNITED MINE WORKERS OF AMERICA,
Washington, D.C.

HON. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.:

The UMWA's support of the Federal Coal Mine Safety Board of Review was predicated upon the position the Board would be retained in its present form and would exercise its present limited powers of review. It is not the position of the UMWA that the Board should be vested with tremendous new authority far beyond the scope of its present power. The UMWA supports rigid enforcement of a strong coal mine health and safety law. If the Board were vested with virtually unlimited powers over all standards set by the Secretary of Interior and with power to veto any penalties against the operator levied by the Secretary, this could well jeopardize the rigid enforcement of the strong law for which we are fighting. The UMWA expresses grave concern over the retention of the Board if it is to be given such a broad scope of power. The strict enforcement of improved health and safety standards for the coal miner could best be assured if the Secretary of Interior were given the authority as provided in the Senate Committee's bill.

W. A. BOYLE,
President.

LABOR'S NON-PARTISAN LEAGUE,
Washington, D.C., October 2, 1969.

HON. HARRISON A. WILLIAMS, Jr.,
Chairman, Labor Subcommittee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: The new powers given the Federal Board by the Prouty amendment were not considered in the public hearings of the Coal Mine Health and Safety legislation, and the United Mine Workers had no opportunity to testify on the impact of this amendment on the health and safety needs of the mine workers. These new powers in the Prouty amendment are so numerous and so sweeping that I cannot list them all. It is impossible, without a great amount of study, to assess their impact on the coal mine workers of this Nation.

We wish to be clearly on record that we favor the administrative review provisions in the Committee bill which we understand and know would protect the miner's rights to a safe and healthy job. We do not support the board proposed by the Prouty amendment.

The miners workers health and safety bill has been before the Senate for almost 5 days. We urge prompt passage.

Sincerely yours,
JOSEPH "JOCK" YABLONSKI,
Acting Director.

Mr. PROUTY. Mr. President, in response to what the Senator from New Jersey has just stated, I point out that a bill introduced by the Senator from New Jersey (Mr. WILLIAMS), and I believe at the request or with the knowledge and consent, at least, of the United Mine Workers, there was provision for a board of review.

Why all of a sudden the United Mine Workers have changed their opinion at the last moment—and I understand it was this morning or last night—I am at a loss to understand except for the malicious rumor that someone has been circulating to which I referred earlier, that the Board would be composed of 10 members, all of whom would be college professors without any interest or concern for the mine workers or operators.

That is strictly untrue and false, and perhaps malicious would be a polite way in which to refer to it.

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

Mr. PROUTY. I yield.

Mr. MILLER. Mr. President, will the Senator tell us whether the proposal of the Senator from New Jersey provided for a board which was an independent board such as the Senator from Vermont is proposing or whether it provided for a board which would be within a department similar to the former Board?

Mr. PROUTY. Mr. President, I want to be corrected if I am wrong. I think the membership would have been composed of five, two of which would have represented the union, two of which would have represented the operators, and the fifth would have represented the public, so to speak.

It was not a completely independent board such as I am proposing at this time. There is that difference.

Mr. MILLER. Mr. President, I was wondering if that might not be a substantial difference.

Mr. PROUTY. I think the proposal which I have made, which would provide for five full-time and qualified independent members, would protect the interests of both the mine workers and the operators to a much greater degree than was possible under the old Board of Review type they had in which industry and labor were represented or controlled, and it was always referred to as a special interest board. This is completely independent and removed from any influence by the industry or the workers themselves.

Mr. KENNEDY. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MILLER. Mr. President, I am not suggesting that there is not a great deal of merit to the proposal of the Senator from Vermont. I am trying to define why the United Mine Workers would support a board proposal in a bill introduced by the Senator from New Jersey and then all of a sudden not support a board proposal introduced by the Senator from Vermont.

As I understand it, the Senator from New Jersey proposed a board which would be within the department. The Senator from Vermont proposes an independent board outside of the department. Is my understanding correct?

Mr. WILLIAMS of New Jersey. The Senator's understanding is correct.

Mr. MILLER. I think it might be a little beneficial if we could find why the difference. I can understand why a board within the department might have some merit. It enables perhaps the Secretary to exercise some influence in accordance with departmental policy which may be spelled out in legislation; whereas, a separate and independent board might take a position contrary to departmental policy, and I am not sure that that would be good. But at this moment I must say that the Senator from Iowa is a little concerned and confused about the difference.

If either the Senator from New Jersey or the Senator from Vermont can enlighten us, I think it might be helpful.

Mr. PROUTY. I might point out to the Senator from Iowa that President Boyle of the United Mine Workers also spoke in favor of a board of review during the committee hearings, and one that would have two union representatives and two management representatives, and they could pick their own two representatives. That may be the difference.

I think what they apparently want to do is to place the Secretary of the Interior in such a position that he becomes a virtual czar. The Secretary of the Interior does not want that authority. He thinks that with a board we can iron out some of these disputes and differences without going to court.

The present Board has done an excellent job over the years, and I think the proposal I am suggesting will be even superior, certainly with the new responsibilities. We are making the Board a full-time group with the added responsibilities which are imposed upon someone by the provisions in this bill. I think they should be full time and highly expert in the field.

Mr. MILLER. Mr. President, will the Senator yield further?

Mr. PROUTY. I yield.

Mr. MILLER. I see the Senator from New Jersey in the Chamber. Perhaps he would rather answer.

Did the proposal in the bill introduced by the Senator from New Jersey provide for a full-time board?

Mr. WILLIAMS of New Jersey. To which bill is the Senator from Iowa referring?

Mr. MILLER. The Senator from Iowa is referring to the bill which I understand the Senator from New Jersey introduced, which provided for a board.

Mr. WILLIAMS of New Jersey. I believe that is true. Months, months ago, I, as chairman of the Subcommittee on Labor, which had jurisdiction over this matter, introduced a bill. The Senator from West Virginia introduced a bill. We came out with the pending bill. We feel that with the authority in this bill, the Secretary will be in a position of Secretaries of other departments. Orderly procedures will be preserved, and it will be far more effective and more efficient in the objectives of reaching what the bill is all about—coal mine health and safety.

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

Mr. MILLER. Mr. President, I should like to continue for a moment.

I just want to say to my friend the Senator from New Jersey that I appreciate his answer, but I do not think I have yet got the answer.

Mr. WILLIAMS of New Jersey. The answer is that I support the pending bill, and it comes after months and months of day-in and day-out study. I had a bill in at the beginning of our study. In the evolution of study and discussion, this is our end product, the pending bill.

Mr. MILLER. Perhaps I should make my question more clear.

I am interested in this point. The Senator from Vermont has stated that the United Mine Workers supported this Board concept. The Senator from New Jersey a few moments ago read to the Senate a telegram signed by the United Mine Workers indicating opposition to this amendment. What I am trying to find out is whether there has been a change or whether there was a different ball game.

Mr. WILLIAMS of New Jersey. The Board proposed by the Senator from Vermont has vast, sweeping powers that were never understood because it was never heard; and the mine worker representatives, speaking for their membership, certainly are not going to support something the effect of which they do not know. It is a broad, sweeping Board, and they are worried about it, as I am worried about it, as the Senator from West Virginia is worried about it. All of us are worried about it.

Mr. MILLER. I can understand somebody being worried about something they do not know anything about; but I understand that the bill of the Senator from New Jersey provided for a Board and that the United Mine Workers supported that bill. Now the Senator from Vermont says he is proposing a bill with provision for a Board in it. Why does the United Mine Workers not support this?

So far, I have this distinction: The Senator from New Jersey had a bill which provided for a Board within the department. The Senator from Vermont is providing for a Board which is outside of the department—separate and independent. I am trying to find out whether that is the only difference and, if that is the only difference, what that difference means.

Mr. WILLIAMS of New Jersey. So far as this Senator is concerned. I am supporting the pending bill, which is the end product of 9 months—believe me—hard work.

Mr. MILLER. I thank the Senator.

Mr. RANDOLPH. Mr. President, will the Senator yield 30 seconds?

Mr. PROUTY. I yield.

Mr. RANDOLPH. I wish to say, in response to the helpful discussion of the Senator from Iowa, that there were eight bills before the subcommittee. I introduced three bills. In the introduction of those bills, I never committed myself to all provisions of all of them. But we felt it necessary, as we broke ground here in connection with the health and safety of miners, to have before us many viewpoints—whether it was the viewpoint of the Johnson administration, the viewpoint of the Nixon administration, the viewpoint of the operator, the viewpoint of the coal mining union, or that of other interested citizens.

I think the chairman of our subcommittee has said what I have said in other words; but I wanted to make it clear that in the introduction of three of the eight bills before us, I sought to supply alternative subject matter on which we could exercise our judgment in bringing a constructive measure to this body.

We studied and debated many options in arriving at the bill reported to this forum and amended in part here.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COOK (when his name was called). On this vote I have a live pair with the Senator from Alaska (Mr. STEVENS). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. ERVIN), the Senator from New Mexico (Mr. ANDERSON), the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. HUGHES), the Senator from New Mexico (Mr. MONTOYA), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the

Senator from Tennessee (Mr. BAKER), the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS) and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Maryland (Mr. MATHIAS) is detained on official business.

If present and voting, the Senator from Tennessee (Mr. BAKER) would vote "yea."

The pair of the Senator from Alaska (Mr. STEVENS) has been previously announced.

On this vote, the Senator from Kansas (Mr. DOLE) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting the Senator from Kansas would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Maryland (Mr. MATHIAS). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Maryland would vote "nay."

The result was announced—yeas 24, nays 53, as follows:

[No. 109 Leg.]

YEAS—24

Allen	Dominick	Jordan, Idaho
Allott	Fannin	Miller
Bellmon	Fong	Packwood
Bennett	Goldwater	Pearson
Boggs	Gravel	Prouty
Cooper	Gurney	Tower
Cotton	Hansen	Williams, Del.
Curtis	Hruska	Young, N. Dak.

NAYS—53

Aiken	Holland	Percy
Bible	Hollings	Proxmire
Brooke	Inouye	Randolph
Burdick	Jackson	Ribicoff
Byrd, Va.	Javits	Saxbe
Byrd, W. Va.	Jordan, N.C.	Schweiker
Cannon	Kennedy	Scott
Case	Mansfield	Smith, Maine
Church	McCarthy	Sparkman
Dodd	McGee	Spong
Eagleton	Metcalf	Stennis
Eastland	Mondale	Symington
Ellender	Moss	Talmadge
Fulbright	Mundt	Tydings
Goodell	Muskie	Williams, N.J.
Griffin	Nelson	Yarborough
Hart	Pastore	Young, Ohio
Hartke	Pell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Cook, against.

NOT VOTING—22

Anderson	Hatfield	Montoya
Baker	Hughes	Murphy
Bayh	Long	Russell
Cranston	Magnuson	Smith, Ill.
Dole	Mathias	Stevens
Ervin	McClellan	Thurmond
Gore	McGovern	
Harris	McIntyre	

So Mr. PROUTY's amendment (No. 219) was rejected.

Mr. BYRD of West Virginia. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from West Virginia proposes an amendment, on page 101, line 16 after the comma insert the following: "whether the operator was at fault".

Mr. BYRD of West Virginia. Mr. President, under section 308, an operator of a coal mine shall be penalized for violations occurring of a mandatory health and safety standard.

I am not opposed to penalties being assessed against operators where the operators are clearly at fault. The language in my amendment would merely require that, before a penalty could be applied, there be a finding that the operator was indeed at fault.

Mr. WILLIAMS of New Jersey. Mr. President, we have thoroughly discussed this amendment with the Senator from West Virginia. It would require the Secretary to consider the fault of the operator, or his lack of fault, in determining the amount of the penalty. It is acceptable to us.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

Mr. METCALF. Mr. President, I was the author of an amendment that required a mandatory penalty and, of course, I do not want a mandatory penalty to be placed upon a coal operator who is penalized for the inadvertent act of a coal employee. I want only a penalty for the coal operator who is responsible for his own actions. Many times it is the inadvertence of an employee which is responsible for a violation, and I feel that the Senator from West Virginia has made a contribution.

Mr. BYRD of West Virginia. I thank the distinguished Senator from Montana.

Mr. JAVITS. Mr. President, personally I am opposed to a mandatory penalty. Perhaps, had I been here this morning, I might have taken action against it. But I have thought it over, and I know how strongly the Senator from Montana (Mr. METCALF) feels about it. Therefore, I have not sought to undo it. Thus, it was left open to me to move for reconsideration. I express my appreciation for that to the leadership, but I do think that what the Senator from West Virginia (Mr. BYRD) is trying to do now lends another quality to it. It is unfortunate that, nonetheless, the Secretary must still levy a penalty, if it is only $1. But as it is a civil penalty, I do not feel so exercised about it.

I think the amendment of the Senator from West Virginia is very useful. When it goes to conference we will have to study the amendment in the context of what results from the conference, as to both amendments. I am sure that both of us appreciate that I, for one, will have to come back to each of them, if we have to make some shift from that position.

Mr. ALLEN. Mr. President, I offer an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from Alabama proposes an amendment, on page 101, line 11, between "be" and "more" insert the following "less than $1 nor".

Mr. ALLEN. Mr. President, in the colloquy this morning, at which time the imposition of the civil penalty was made mandatory rather than discretionary, it was stated by the distinguished junior Senator from Montana (Mr. METCALF) that a fine of as little at $1 could be imposed under the language of the section. That is true, because the penalty provided by section 308 shall not be more than $25,000. Of course, under that language, a penalty of as little as $1, or 1 cent, for that matter, could be imposed. With such a tremendous ceiling for this penalty, a ceiling of $25,000, it would seem that the Secretary might be somewhat reluctant to impose a penalty of as little as $1.

The purpose of my amendment is to give legislative sanction by legislative act rather than by colloquy in the CONGRESSIONAL RECORD to the imposition of a penalty as low as $1. That is the purpose of my amendment.

Mr. METCALF. Mr. President, will the Senator from Alabama yield?

Mr. ALLEN. I yield.

Mr. METCALF. The very able Senator from Alabama was in the chair during the course of the colloquy when I offered my amendment. It was very plain from both the majority leader and on my part that we anticipated there would be penalties of only $1—that is, a token penalty at times. Thus I feel that the Senator from Alabama, in nailing this down as part of the legislation, has made a contribution.

Mr. ALLEN. I thank the Senator from Montana.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

The bill was read the third time.

Mr. METCALF. Mr. President, we are reaching a landmark in industrial health legislation in approval of the Federal Coal Mine Health and Safety Act of 1969. Coal mining is one of the most hazardous occupations. It has been in many ways a tragic industry. Death, disease, unemployment, and poverty have plagued many of the coal areas. We are recognizing and acting on some of the problems in this legislation.

I believe that the members of the Senate Committee on Labor and Public Welfare, who have worked so long and carefully on this bill deserve our thanks. I am especially mindful of the efforts of the distinguished Senator from New Jersey (Mr. WILLIAMS), chairman of the Senate Labor Subcommittee. Because of his leadership, fairness, and persistence, the health standards and working conditions in American industry are substantially improved. I want to express my appreciation to him, and to note with gratitude the reception accorded my amendments regarding enforcement, inspection, and sanitary facilities.

I believe that this legislation marks the beginning of a new era in coal development. My State, which is also the State of our distinguished majority leader (Mr. MANSFIELD) is very much a part of that new era. At least 10 percent of the Nation's coal reserves lie in Montana. Sen-

ator MANSFIELD, Congressman OLSEN, Congressman MELCHER, Governor Anderson, and I are jointly cosponsoring a 2-day coal symposium at Eastern Montana College in Billings, November 6 and 7. We believe that coal development will be of great import to our State's future. We want to encourage that development, we want to protect our environment as we proceed with development, and we want the people who mine Montana coal to be protected by the type of legislation which Congress is in the process of approving.

Mr. President, I ask unanimous consent to insert at this point in the RECORD the press release announcing the Montana coal symposium and a background paper which Governor Anderson and the Montana congressional delegation have prepared.

There being no objection, the press release and background paper were ordered to be printed in the RECORD, as follows:

[From the Montana congressional delegation and State of Montana, Sept. 24, 1969]

TWO-DAY COAL SYMPOSIUM IN BILLINGS, NOVEMBER 6 AND 7

Eastern Montana College, Billings, will host a two-day symposium, November 6 and 7, designed to attract national attention to development of Montana's vast coal reserves.

The symposium will also examine protection of environment and preservation of Montana's prime recreational assets as coal resources are developed.

Announcement of the symposium was made jointly today by Governor Forrest Anderson, Senator Mike Mansfield and Lee Metcalf and Representatives Arnold Olsen and John Melcher.

Dr. Will Clark, Chairman of the Division of Science and Mathematics at Eastern and the immediate past president of the National Conservation Education Association, will coordinate the symposium.

Speakers and panelists will include representatives of industry, the Federal and State government and conservation organizations.

Topics to be discussed will include construction of mine-mouth plants, regional electric power pooling, conversion of coal to synthetic hydrocarbons, magnetohydrodynamics (direct conversion of coal to electrical energy), plant location in relation to water supplies, slurry pipelines (pipelines which carry coal mixed with water), freight rates, barge transportation, use of unit trains to transport coal to distant markets, strip mining, land reclamation, air and water pollution and safeguarding of areas of archeological and historical importance.

Montana has some 221 billion tons of lignite, sub-bituminous and bituminous coal reserves, averaging more than 2,300 tons to the acre. At least 14 billion tons are considered capable of economic strip mining. Montana's reserves amount to about one-tenth of the Nation's total.

The Congressional delegation and the Governor summarized the goal of the symposium in these words:

"Montana's vast coal reserves offer an opportunity for economic development unprecedented since the discovery of the 'Richest Hill on Earth' in Butte. But, as was the case in Butte, development poses threats to Montana's beautiful environment that cannot be ignored. The purpose of the Montana Coal Symposium will be to look at how modern technology can best utilize Montana coal—and, at the same time, how the development can take place with minimal damage to the environment."

Speakers and panelists will be announced at a later date. Persons may reach Dr. Clark, symposium coordinator, at Eastern Montana College, Billings, 59101, phone—406–657–2343.

BACKGROUND PAPER, MONTANA COAL SYMPOSIUM, BILLINGS, MONT., NOVEMBER 6 AND 7, 1969

Montana's vast coal reserves offer an opportunity for economic development unprecedented since the discovery of the "Richest Hill on Earth" at Butte. But, as was the case in Butte, development poses threats to Montana's beautiful environment that cannot be ignored. The purpose of the Montana Coal Symposium will be to look at how modern technology can best utilize Montana coal—and, at the same time, how the development can take place with minimal damage to the environment.

Coal offers two commodities to modern man: the energy that can be produced through burning it or its products, and the chemicals that can be derived from it. The greatest potential today appears to be a conversion of coal to energy or energy products—although chemical production could very possibly be an auxiliary industry.

Energy can be secured from coal in two basic ways. One is conversion to electrical energy, and this industry today is by far the largest user of coal in Montana. The other is conversion of coal to synthetic hydrocarbons—gasoline or a natural gas substitute—and this represents a great potential, although the necessary technologies are still in the developmental stage.

POWER FROM COAL

The Nation's power needs, especially in heavily-populated areas, are growing rapidly. Markets in the populated Midwest and in the Pacific Northwest are burgeoning. These areas a short time ago were looking to the atom for the future's major power source. However, rapidly escalating nuclear fuel and plant costs, plus a number of unsolved conservation problems, have cast a shadow over the future of nuclear generators—at least for the next few years.

Montana coal may fill the gap. Preliminary studies show extra- or ultra-high-voltage transmission lines—"electrical superhighways"—between the Pacific Northwest and the Midwest to be economically feasible. The lines will probably pay for themselves through allowing giant bulk power exchanges between two regions. When you add the economic benefits of low-cost Montana coal to the formula, the lines become even more desirable. Not only would they provide for power exchanges between the two regions, but they also would carry power produced in Montana. Montana coal would be "shipped by wire" to these two great markets.

An Office of Coal Research report strongly indicates that power carried from generators in Montana to Pacific Northwest markets would be highly competitive with power produced in nuclear plants right at the markets.

Power has traditionally been produced from coal through burning of coal to produce steam to turn a turbine—which, in turn provides torque to a generator. This technique has disadvantages. It is not very efficient (although it is more efficient than the similar process that is used in nuclear plants) and it creates thermal pollution—the heating of water that is used to condense the steam. This kind of pollution can be devastating to the balance of life in a stream or lake or even in an ocean, at least locally.

A promising new technique that might eliminate thermal pollution, or reduce it greatly, is magnetohydrodynamics, called MHD for short. Briefly, MHD converts burning coal directly to electrical energy without any of the intermediate steps. It is far more efficient than the old steam-turbine technique and it thus does not create as much waste heat. The Office of Coal Research is ready to go ahead with an MHD pilot plant research program if it can get appropriations. The program has been endorsed by the Office of Science and Technology and by the Montana Congressional Delegation. Montana might be an ideal site for the pilot plant.

Power from Montana coal does not necessarily have to be produced in Montana. There is also a great potential for shipping coal via rail to populous markets. Already Montana coal is going to northern Minnesota for this purpose. That the coal is hauled 800 miles, and is still competitive, proves its strength in the marketplace.

SYNTHETIC FUELS

Coal is mostly carbon. Add hydrogen and you have hydrocarbons, the basic of all modern fuels, including natural gas, gasoline and fuel oils.

Hydrogen *can* be added to coal this way. The Germans relied on "Braun coal," a substance much like Montana lignite, for producing fuels when they ran short of petroleum during World War II.

The Nation's petroleum will not last forever, even with the fabulous Arctic Slope discovery in Alaska. Oil companies know this, and they and the Office of Coal Research have been working on techniques to "hydrogenate" coal into hydrocarbons. A number of processes have been developed for this purpose—OCR recently issued a report on a Cresap, West Virginia, pilot plant operated by Consolidated Coal Company. There is little doubt now that an economic process will be developed, and oil companies have been securing leases on coal in Montana, Wyoming and elsewhere.

A Rapid City, South Dakota, pilot plant will be used to study the potential for conversion of coal to a substitute for natural gas, the reserves of which are rapidly being depleted.

COMBINED PLANTS

Combined electric and synthetic hydrocarbon plants may offer a great potential for Montana coal. It is possible that "char," a byproduct of the coal-to-gasoline process would make a good fuel for powerplants.

Chemicals might also be produced in such a plant. Petroleum in recent years has become the major source of such chemicals, but coal may once again be a major contender in the chemicals industry.

WATER

One of Montana's aces in the hole in attracting coal-based industry is water. The State has abundant supplies—from the Yellowstone and Missouri Rivers and their tributaries, Yellowtail Reservoir on the Big Horn River is a major possibility, and Fort Peck Reservoir on the Missouri may also be.

Water may be the key to coal development. Every process described above requires cooling water and water for other purposes—although MHD needs less than most.

CONSERVATION

There are large conservation problems associated with coal production and development, but they can be solved with modern technology.

Coal in Montana in modern times is obtained from strip mines. These mines create deep gullies and accompanying mounds of earth, called "spoil banks." A major conservation issue is the extent to which countryside must be restored after strip mining. Not only are the spoil banks unsightly, but they also often contribute to water pollution and other kinds of environmental damage. Modern technology has developed ways to level the spoil banks—but the cost is high, and choices must soon be made.

Burning coal for many purposes creates "fly ash," a fine, abrasive residue, and various gaseous pollutants, including sulfur and nitrogen oxides. Montana coal possesses a tremendous advantage over other coals in that its sulfur content is very low and it produces less of the damaging sulfur oxides.

Nonetheless, there will be a problem of air

pollution from power plants and other coal-using installations. Technology can now remove the particulate pollutants, the fly ash, without too much difficulty. But processes for removing the gaseous pollutants are still embryonic. With increasing nationwide, even worldwide, air pollution, it is necessary that solutions be found soon, even for installations that will be located on remote Montana prairies.

Eastern Montana, wherein most of the coal reserves lie, is an especially rich paleontological and archeological field, with ancient remains of prehistoric Indian life and rich fossil beds, which would be ruined by indiscriminate strip mining.

This background paper on the Montana coal symposium at Eastern Montana College, Billings, was prepared for members of the Montana Congressional delegation and the Governor of Montana. Additional copies are available from them or Dr. Will Clark, Symposium Coordinator, Eastern Montana College, Billings, Montana 59101.

Several Senators requested the yeas and nays on passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

I further announce that the Senator from Iowa (Mr. HUGHES), and the Senator from Washington (Mr. MAGNUSON) are absent on official business.

I further announce that, if present and voting, the Senator from New Mexico (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from California (Mr. CRANSTON), the Senator from North Carolina (Mr. ERVIN), the Senator from Tennessee (Mr. GORE), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Minnesota (Mr. MCCARTHY), and the Senator from Georgia (Mr. RUSSELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. MURPHY), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. FANNIN) and the Senator from Maryland (Mr. MATHIAS) are detained on official business.

If present and voting, the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. FANNIN), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), the Senator from Alaska (Mr. STEVENS), and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 73, nays 0, as follows:

[No. 110 Leg.]

YEAS—73

Aiken	Griffin	Pearson
Allen	Gurney	Pell
Allott	Hansen	Percy
Bellmon	Hart	Prouty
Bible	Hartke	Proxmire
Boggs	Holland	Randolph
Brooke	Hollings	Ribicoff
Byrd, Va.	Hruska	Saxbe
Byrd, W. Va.	Inouye	Schweiker
Cannon	Jackson	Scott
Case	Javits	Smith, Maine
Church	Jordan, N.C.	Sparkman
Cook	Jordan, Idaho	Spong
Cooper	Kennedy	Stennis
Cotton	Mansfield	Symington
Curtis	McGee	Talmadge
Dodd	Metcalf	Tower
Dominick	Miller	Tydings
Eagleton	Mondale	Williams, N.J.
Eastland	Moss	Williams, Del.
Ellender	Mundt	Yarborough
Fong	Muskie	Young, N. Dak.
Fulbright	Nelson	Young, Ohio
Goldwater	Packwood	
Goodell	Pastore	

NAYS—0

NOT VOTING—27

Anderson	Gore	McClellan
Baker	Gravel	McGovern
Bayh	Harris	McIntyre
Bennett	Hatfield	Montoya
Burdick	Hughes	Murphy
Cranston	Long	Russell
Dole	Magnuson	Smith, Ill.
Ervin	Mathias	Stevens
Fannin	McCarthy	Thurmond

So the bill (S. 2917) was passed, as follows:

S. 2917

An act to improve the health and safety conditions of persons working in the coal mining industry of the United States

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 "Federal Coal Mine Health and Safety Act of 1969".

FINDINGS AND PURPOSE

SEC. 2. Congress declares that—

(1) the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner;

(2) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;

(3) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(4) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry and cannot be tolerated;

(5) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(6) the disruption of production and the loss of income to operators and miners as a result of coal mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(7) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Surgeon General and the Secretary of the Interior to develop and promulgate improved mandatory standards to protect the health and safety of the Nation's coal miners; (2) to require that each operator of a coal mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to the States in the development and enforcement of effective State coal mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupationally caused diseases in the industry.

MINES SUBJECT TO ACT

SEC. 3. Each coal mine, the products of which enter commerce, or the operations or products of which affect commerce, shall be subject to this Act, and each operator of such mine and every miner in such mine shall comply with the provisions of this Act and the applicable standards and regulations of the Secretary and the Surgeon General promulgated under this Act.

DEFINITIONS

SEC. 4. For the purpose of this Act, the term—

(1) "Secretary" means the Secretary of the Interior or his delegate;

(2) "Surgeon General" means the Surgeon General, United States Public Health Service in the Department of Health, Education, and Welfare, or his delegate;

(3) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(4) "State" includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(5) "operator" means any owner, lessee, or other person who operates, has control of, or supervises a coal mine;

(6) "agent" means any person charged with responsibility for the operation of all or part of a coal mine or the supervision of the miners in a coal mine;

(7) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(8) "miner" means any individual working in a coal mine;

(9) "coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(10) "work of preparing the coal" means

the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous, lignite, or anthracite coal, and such other work of preparing such coal as is usually done by the operator of the coal mine;

(11) "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

(12) "accident" includes a mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of, any person; and

(13) "Panel" means the Interim Compliance Panel established by this Act.

INTERIM COMPLIANCE PANEL

SEC. 5. (a) There is hereby established the Interim Compliance Panel, which shall be composed of five members as follows:

(1) Assistant Secretary of Labor for Labor Standards, Department of Labor, or his delegate;

(2) Director of the Bureau of Standards, Department of Commerce, or his delegate;

(3) Administrator of Consumer Protection and Environmental Health Service, Department of Health, Education, and Welfare, or his delegate;

(4) Director of the Bureau of Mines, Department of the Interior, or his delegate; and

(5) Director of the National Science Foundation, or his delegate.

(b) Members of the Panel shall serve without compensation in addition to that received in their regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Panel.

(c) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare, Secretary of Commerce, the Secretary of Labor, and the Secretary of the Interior shall, upon request of the Panel, provide the Panel such personnel and other assistance as the Panel determines necessary to enable it to carry out its functions under this Act.

(d) Three members of the Panel shall constitute a quorum for doing business. All decisions of the Panel shall be by majority vote. The chairman of the Panel shall be selected by the members from among the membership thereof.

(e) The Panel is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with the provisions of this Act. The provisions applicable to hearing examiners appointed under section 3105 of title 5 of the United States Code shall be applicable to hearing examiners appointed pursuant to this subsection.

(f) (1) It shall be the function of the Panel to carry out the duties imposed on it pursuant to sections 102 and 206(1) of this Act. The provisions of this section shall terminate upon completion of the Panel's functions as set forth under sections 102 and 206(1) of this Act.

(2) The Panel shall make an annual report, in writing, to the Secretary for transmittal by him to the Congress concerning the achievement of its purposes, and any other relevant information (including any recommendations) which it deems appropriate.

TITLE I—MANDATORY HEALTH STANDARDS FOR COAL MINES

PART A—INTERIM MANDATORY HEALTH STANDARDS FOR CONTROLLING DUST AT UNDERGROUND COAL MINES

SCOPE AND COVERAGE

SEC. 101. (a) The provisions of sections 102 and 103 of this title shall be interim mandatory health standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory health standards promulgated by the Secretary in accordance with health standards established by the Surgeon General for such mines to become effective after the operative date of this title. Any orders issued in the enforcement of the provisions of this part shall be subject to review as provided in title III of this Act.

(b) Among other things, it is the purpose of this title to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of dust concentrations in the atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.

(c) (1) Within one year after the date of enactment of this Act, the Surgeon General shall develop and submit to the Secretary and the Congress recommendations as to the maximum permissible total exposure of individuals to coal mine dust during a working shift. Such recommendations shall be revised by the Surgeon General as necessary.

(2) Within three years after the date of enactment of this Act, and thereafter as needed, the Secretary shall publish as provided in subsection 105(c) of this title a schedule specifying the times within which mines shall reduce the total personal exposure to dust on a working shift to the levels recommended by the Surgeon General. Such schedule of the Secretary shall be based upon his determination of what is the minimum time necessary for these levels to be technologically feasible and the availability of equipment. The levels so specified by the Secretary shall be the dust standards applicable to coal mines under this Act.

(3) Within 6 months after the date of enactment the Surgeon General shall establish, and the Secretary shall publish, as provided in subsection 105(c) of this title proposed mandatory standards establishing maximum noise exposure levels for all coal mines.

DUST STANDARD AND RESPIRATORS

SEC. 102. (a) (1) Effective sixty days after the operative date of this title, each operator shall continuously maintain the concentrations of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 3.0 milligrams of dust per cubic meter of air, except that, where a permit for noncompliance has been issued to an operator as hereinafter provided, such operator shall continuously maintain the concentration of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 4.5 milligrams of dust per cubic meter of air or, if a lower concentration is prescribed in such permit, at or below such lower concentration. In mining operations where the coal dust contains more than 5 per centum quartz, the dust standard shall be determined in accordance with a formula to be prescribed by the Surgeon General.

(2) Effective three years after the date of the enactment of this Act, each operator shall continuously maintain the concentrations of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 2.0 milligrams of dust per cubic meter of air, except that, where a permit for noncompliance has been issued to an operator as hereinafter provided, such operator shall continuously maintain the concentration of respirable dust in the atmosphere of the active workings of the mine during each shift at or below 3.0 milligrams per cubic meter of air or, if a lower concentration is prescribed in such permit, at or below such lower concentration.

(b) (1) Any operator who determines that he will be unable, using available technology, to comply with the 3.0 milligram standard established by subsection (a) (1) of this section, or the 2.0 milligram standard established by subsection (a) (2) of this section, upon the effective date of such standard, may, no later than sixty days prior to the effective date of the standard with respect to which such application is filed, file with the Panel an application for a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the standard established by subsection (a) (1) of this section, the application satisfies the requirements of subsection (c) of this section, the Panel shall issue to the operator a permit for noncompliance. If, in the case of an application for a permit for noncompliance with the standard established by subsection (a) (2) of this section, the application satisfies the requirements of subsection (c) of this section, and the Panel, after all interested persons have been notified and given an opportunity for a hearing, determines that the applicant will be unable to comply with such 2.0 milligram standard, the Panel shall issue to the operator a permit for noncompliance. Any such permit so issued shall entitle the permittee during a period which shall expire at a date fixed by the Panel, but in no event later than twelve months after the effective date of such standard, to maintain continuously the concentrations of respirable dust in the atmosphere in each active working place during each shift to which the extension applies at a level specified by the Panel, which shall be at the lowest level which the application shows the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(2) (A) Except as provided in paragraph (3) of this subsection, in any case in which an operator, who has been issued a permit (including a renewal permit) for noncompliance under this section, determines not more than ninety days prior to the expiration date of such permit, that he still is unable to comply with the 3.0 milligram standard established by subsection (a) (1) of this section or the 2.0 milligram standard established by subsection (a) (2) of this section, he may file with the Panel an application for renewal of the permit. Upon receipt of such application for renewal of a permit, the Panel, if it determines, after all interested persons have been notified and given an opportunity for a hearing, that the application is in compliance with the provisions of subsection (c) of this section, and that the applicant will be unable to comply with such standard, may renew the permit for a period not exceeding six months. Any hearing held pursuant to this subsection shall be of record and the Panel shall make findings of fact and shall issue a written decision incorporating its findings therein.

(B) Such renewal permit shall entitle the permittee, during the period of its effectiveness, to maintain continuously during each shift the concentrations of respirable dust in the atmosphere at any active working place to which the renewal permit applies at the lowest level which the conditions, technology applicable to such mine, and other available and effective control techniques and methods will permit, as determined by the Panel, but in no event shall such level exceed 4.5 milligrams of dust per cubic meter of air during the period when the 3.0 milligram standard is in effect, or 3.0 milligrams of dust per cubic meter of air during the period when the 2.0 milligram standard is in effect.

(3) Except to the extent otherwise provided in subsection (k) of this section, no permit or renewal permit for noncompliance shall entitle any operator to an extension of time beyond thirty-six months from the date of enactment of this Act to comply with the 3.0 milligram standard established by subsection (a) (1) of this section, or beyond seventy-two months from the date of

enactment of this Act to comply with 2.0 milligram standard established by subsection (a)(2) of this section.

(c) Any application for an initial or renewal permit for noncompliance made pursuant to this section shall contain—

(1) a representation by the applicant and the engineer conducting the survey referred to in paragraph (2) of this subsection that the applicant is unable to comply with the dust standard applicable under subsection (a)(1) or (a)(2) of this section at specified active working places because the technology for reducing such dust concentrations at such place is not available, or because of the lack of other effective control techniques or methods, or because of any combination of such reasons;

(2) an identification of the active working places in such mine for which the permit is requested; the results of an engineering survey by a certified engineer of the dust conditions of each active working place of the mine with respect to which such application is filed and the ability to reduce the dust concentrations to the level required to be maintained in such working place under this section, together with a copy of such engineering survey; a description of the ventilation system of the mine and its capacity; the quantity of air regularly reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms of each such active working place; the method of mining; the amount and pressure of the water, if any, reaching the working face; the number, location, and type of sprays, if any; actions taken to reduce the dust concentrations; and such other information as the Panel may require; and

(3) statements by the applicant and the engineer conducting such survey, of the means and methods to be employed to achieve compliance with the applicable dust standard, the progress made toward achieving compliance, and an estimate of when compliance can be achieved.

(d) The Secretary shall cause to be made such frequent spot inspections as he deems appropriate of the active workings of underground coal mines for which permits for noncompliance have been granted under this section for the purpose of obtaining compliance with the provisions of this title. The Secretary shall also make spot inspections of all active workings in underground mines to insure compliance.

(e) Any operator or representative of miners aggrieved by a final decision of the Panel with respect to an application for an initial or renewed permit for noncompliance may file a petition for review of such decision in accordance with the provisions of section 304 of this Act:

(f) Each operator shall take samples of the atmosphere of the active workings of the mine to determine the atmospheric concentrations of respirable dust. Such samples shall be taken by any device approved by the Secretary and in accordance with the methods and at locations and at intervals and in a manner prescribed by him. Such samples shall be transmitted to the Secretary, in a manner prescribed by the Secretary, and analyzed and recorded by him in a manner to assure that the dust levels established by, or permitted under, this section are not exceeded and to enable him to cause an immediate inspection of any mine whenever such samples indicate that the concentration of dust therein exceeds such level. If, upon the basis of such samples or additional samples taken during an inspection, the Secretary or his authorized representative finds that the concentrations of respirable dust in any active workings in a mine exceed the level required to be maintained under this section, the Secretary or his representative shall issue a notice to the operator or his agent, a copy of which shall be transmitted to the Panel and to a representative of the miners in the mine, fixing a reasonable time to take corrective action, which time shall not exceed seventy-two hours, and the operator of the mine shall take corrective action immediately in order to bring such concentrations at or below the level required to be maintained under this section. If, upon the expiration of such time, the Secretary or his authorized representative finds that such action has not been completed and the violation has not been abated, he shall issue an order requiring that while such corrective action is underway, no work, other than that necessary to take such action and to obtain valid samples of the atmosphere of the active workings of the mine to determine the atmospheric concentrations of respirable dust, shall be permitted until the dust concentrations in such mine have been reduced to or below such required level. As soon as possible after an order is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, determined by him to be knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentrations. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the coal mine.

(g) The dust resulting from drilling in rock shall be controlled by the use and maintenance of dust collectors, by water or water with a wetting agent, or by ventilation or other means approved by the Secretary. Miners who are engaged in drilling in rock and exposed for short periods to inhalation hazards from gas, dust, fumes, or mist shall wear respiratory equipment. When the exposure is for prolonged periods, other measures to protect such miners or to reduce the hazard shall be taken.

(h) Respirators shall be worn by all persons for protection against exposures to concentrations of dust in excess of the levels required to be maintained under this section. Use of respirators shall not be substituted for environmental control measures. Each mine shall maintain a supply of respirators adequate to comply with the provisions of this section.

(i) References to respirators, dust collectors, or respiratory equipment in this section mean respirators, dust collectors, and equipment approved by the Secretary in accordance with health standards established by the Surgeon General.

(j) References to specific concentrations of dust in this title mean concentrations of respirable dust if measured with an MRE instrument or equivalent concentrations of dust if measured with another device approved by the Secretary. As used in this title, the term "MRE instrument" means the gravimetric dust sampler with four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(k) At any time within two years following the date on which the 2.0 milligram standard established by subsection (a)(2) of this section becomes effective, the Secretary may, after having given the Congress advance written notice not less than one hundred and twenty days prior thereto and in accordance with health standards established by the Surgeon General, extend the time within which all underground coal mines are required to comply with such standard, if the Secretary determines that the technology or other effective control techniques or methods for reducing such dust concentrations to the level required by such standard is not available. Such extension shall be effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which a written plan of such extension is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that that House does not favor the extension plan.

(l) For the purpose of subsection (k) of this section—

(1) the continuity of a session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(m) Any extension plan transmitted to the Congress pursuant to this section shall be received and acted on by the Congress in the same manner as that provided for reorganization plans under chapter 9 of title 5 of the United States Code.

(n) The Secretary and the Surgeon General shall, from time to time, but in no event less than twice annually, submit a written report to the Congress setting forth the progress made toward achieving absolute compliance with the standards established by subsection (a) of this section, and an estimate of the time as to when such compliance can be achieved.

(o) The Secretary or his authorized representative may require a greater quantity of air than the minimum required under section 204(b) of this Act when he finds it necessary to protect the health of miners in a coal mine. Where line brattice or other approved devices are installed, the space between such device and the rib shall, in addition to the requirements of section 204(c)(2) of this Act, be adequate to permit the flow of sufficient volume of air to reduce the concentrations of respirable dust at each active working face.

MEDICAL EXAMINATIONS

SEC. 103. (a) The operator of an underground coal mine shall establish a program approved by the Surgeon General under which each miner working in such underground coal mine will be given, at least annually, beginning six months after the operative date of this title, a chest roentgenogram and such other tests as may be required by the Surgeon General. The films shall be taken in a manner to be prescribed by the Surgeon General and shall be read and classified by the Surgeon General and the results of each reading on each such miner shall be available to the Surgeon General and, with the consent of the miner, to his physician and other appropriate persons. The Surgeon General may also take such examinations and tests where appropriate and may cooperate with the operator in taking of such examinations and tests on a reimbursable basis. Each operator shall cooperate with the Surgeon General in making arrangements for each miner in such mine to be given such other medical examinations as the Surgeon General determines necessary. The results of any such examination shall be submitted in the same manner as the aforementioned films. In no case, however, shall any such miner be required to have a chest roentgenogram or examination under this section without his consent.

(b)(1) On and after the effective date of the 3.0 milligram standard established by section 102(a)(1) of this title, any miner who, in the judgment of the Surgeon General based upon such reading or medical examinations, shows evidence of the development of the pneumoconiosis shall be assigned by the operator, for such period or periods as may be necessary to prevent further development of such disease, to work, at the option of the miner, in any working section or other area of the mine, where the mine atmosphere contains concentrations of respirable dust of not more than 2.0 milligrams of dust per cubic meter of air.

(2) On and after the effective date of the 2.0 milligram standard established by section 102(a)(2) of this title, any miner so showing such evidence of the development of pneumoconiosis shall be assigned in accordance with the provisions of paragraph (1) of this subsection to any working section or other area of the mine where the mine atmosphere contains concentrations of respirable dust at a level, below 2.0 milligrams of dust per meter of air, determined by the Secretary, in accordance with health standards established by the Surgeon General, to be necessary to prevent further development of such disease.

(3) Any miner assigned to work in any other working section or other area of the mine pursuant to paragraphs (1) or (2) of this subsection shall receive for such work the regular rate of pay received by other miners performing comparable work in such section or area, or the regular rate of pay received by such miner immediately prior to his assignment, whichever is the greater.

PART B—PROMULGATION OF MANDATORY HEALTH STANDARDS FOR ALL COAL MINERS

HEALTH STANDARDS; REVIEW

SEC. 105. (a) In accordance with health standards established by the Surgeon General from time to time and the procedures set forth in this section, the Secretary shall promulgate mandatory health standards for the protection of life and the prevention of occupational diseases in coal mines.

(b) In the development of such standards, the Surgeon General shall consult with other interested Federal agencies, representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, the State, such advisory committees as he may appoint, and where appropriate, foreign countries. In addition to the attainment of the highest degree of health and protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this and other health regulations.

(c) The Secretary shall from time to time publish any such proposed standards and the schedule provided for in subsection 101(c)(2) of this title in the Federal Register and shall afford interested persons a period of not less than thirty days after publication to submit written data or comments. Except as provided in subsection (c) of this section, the Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, promulgate such standards or schedule with such modifications as he and the Surgeon General may deem appropriate. Not later than twelve months after the date of enactment of the Act, the Secretary, in accordance with health standards established by the Surgeon General, shall propose mandatory health standards for surface coal mines and surface work areas of underground coal mines and shall publish such proposed standards in the Federal Register.

(d) On or before the last day of any period fixed for the submission of written data or comments under subsection (c) of this section, any interested person may file with the Secretary written objections to a proposed standard or schedule, stating the grounds therefor and requesting a public hearing by the Secretary on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards or provisions of the schedule to which objections have been filed and a hearing requested, and shall review such standards, schedules, and objections in accordance with subsection (a) of this section.

(e) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (d) of this section, the Secretary shall issue notice of and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the Secretary shall make findings of fact and may promulgate the mandatory standards with such modifications, or take such other action, as he and the Surgeon General deem appropriate. All such findings shall be public.

(f) Any mandatory standard or schedule promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(g) All health standards established by the Surgeon General pursuant to this title shall, at the time of their transmission by him to the Secretary for disposition by him in accordance with the provisions of this title, be published in the Federal Register.

TITLE II—MANDATORY SAFETY STANDARDS FOR COAL MINES

PART A—INTERIM SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SCOPE OF COVERAGE

SEC. 201. (a) The provisions of sections 202 through 218, inclusive, of this title shall be interim mandatory safety standards applicable to all underground coal mines until superseded in whole or in part by improved mandatory safety standards promulgated by the Secretary for such mines pursuant to section 219 of this title. Such interim standards shall be enforced in accordance with the provisions of title III of this Act.

(b) The purpose of this title is to provide for the immediate application of mandatory safety standards developed on the basis of experience and advances in technology and to prevent newly created hazards resulting from new technology in coal mining. The Secretary shall immediately initiate studies, investigations, and research to further upgrade such standards and to develop and promulgate new and improved standards promptly that will provide increased protection to the miners, particularly in connection with hazards from trolley and trolley feeder wires, signal wires, the splicing and use of trailing cables, and in connection with improvements in vulcanizing of electric conductors, improvement in roof control measures, methane drainage in advance of mining, improved methods of measuring methane and oxygen concentrations and the use of improved underground power equipment, including diesel power.

(c) In any case in which an exception to a standard established by this part is authorized by the provisions thereof, such exception shall be made only upon a finding by the Secretary that it is warranted under the criteria established in the provision authorizing such exception, and that the granting of the exception would not pose a danger to the safety of miners. Such findings shall be made public and shall be available to a representative, if any, of the miners at the affected mine.

(d) In any case where the provisions of sections 202 to 218, inclusive, of this title provide that certain actions, conditions, or requirements shall be carried out as prescribed by the Secretary, the provisions of section 553 of title 5 of the United States Code shall apply unless the Secretary otherwise prescribes.

GENERAL STANDARDS

SEC. 202. (a) Telephone service or equivalent two-way communication facilities shall be provided between the surface and each landing of main shafts and slopes and between the surface and each working section that is more than one hundred feet from the mine portal.

(b) Smoking shall be prohibited underground. No person shall carry smoking materials, matches, or lighters underground. Smoking shall be prohibited in or around oil houses, explosives magazines, or other surface areas where such practice may cause a fire or explosion. The operator of a coal mine shall institute a program, approved by the Secretary, at each mine to insure that any person entering the underground portion of the mine does not carry smoking materials, matches, or lighters.

(c) Each operator shall make arrangements in advance for obtaining emergency medical assistance and transportation for injured persons. Emergency communications shall be provided to the nearest point of assistance. Selected agents of the operator shall be trained in first aid and first aid training shall be made available to all miners. Each mine shall have an adequate supply of first aid equipment located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. In fulfilling each of the requirements in this subsection, the operator shall meet at least minimum standards established by the Surgeon General. Within two months after the operative date of this title each operator shall file with the Secretary a plan setting forth in such detail as the Secretary may require the manner in which such operator has fulfilled the requirements in this subsection.

(d) A self-rescue device approved by the Secretary shall be made available to each miner by the operator which shall be adequate to protect such miner for one hour or longer. Each operator shall train each miner in the use of such device.

(e) The Secretary may require in any coal mine that rescue chambers, properly sealed and ventilated, be erected at suitable locations in the mine to which men could go in case of an emergency for protection against hazards. Such chambers shall be properly equipped with first aid materials, an adequate supply of air and self-contained breathing equipment, an independent communication system to the surface, proper accommodation for the men while awaiting rescue, and such other equipment as the Secretary may prescribe. A plan for the erection, maintenance, and revisions of such chambers and the training of the miners in their proper use shall be submitted by the operator to the Secretary for his approval.

(f) Upon the basis of research demonstrating that underground illumination will imwithin eighteen months after the operative date of this title, prescribe standards for illumination by permissible lighting for all active workings in a mine.

(g) Every operator of a coal mine shall establish a program, approved by the Secretary, of training and retraining of qualified and certified persons needed to carry out functions prescribed in this Act.

(h) The Secretary shall prescribe improved methods of assuring that miners are not exposed to atmospheres that are deficient in oxygen.

(i) The Secretary may require each operator of a coal mine to establish a check-in and check-out system that will provide positive identification of every person underground, and provide an accurate record of the miners in the mine. Such record shall be kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazard and shall bear a number identical to an identification check that is securely fastened to the lamp belt worn by the person underground. The identification check shall be made of a rust resistant metal of not less than 16 gage.

ROOF SUPPORT

SEC. 203. (a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each mine and the means and measures to accomplish such system. The roof and ribs

of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof-control plan and revisions thereof suitable to the roof conditions and mining system of each mine and approved by the Secretary shall be adopted and set out in printed form within sixty days after the operative date of this title. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every six months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan. A copy of the plan shall be furnished to the Secretary or his authorized representative and shall be available to the miners or their authorized representatives.

(b) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.

(c) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the mine as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof boltholes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

(d) When installation of roof bolts is permitted, such roof bolts shall be tested in accordance with the approved roof control plan.

(e) Roof bolts shall not be recovered where complete extractions of pillars are attempted, where adjacent to clay veins, or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

(f) Where miners are exposed to danger from falls of roof, face, and ribs the operator shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.

VENTILATION

SEC. 204. (a) All coal mines shall be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment shall be examined daily and a record shall be kept of such examination.

(b) All active underground workings shall be ventilated by a current of air containing not less than 19.5 volume per centum of oxygen, not more than 0.5 volume per centum of carbon dioxide, and no harmful quantities of other noxious or poisonous gases; and the volume and velocity of the current of air shall be sufficient to dilute, render harmless, and to carry away flammable or harmful gases and smoke and fumes. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms of any mine shall be nine thousand cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand cubic feet a minute. The Secretary or his authorized representative may require in any coal mine a greater quantity of air when he finds it necessary to protect the safety of miners. In robbing areas of anthracite mines, where the air currents cannot be controlled and measurements of the air cannot be obtained, the air shall have perceptible movement.

(c)(1) Properly installed and adequately maintained line brattice or other approved devices shall be used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement. When damaged by falls or otherwise, they shall be repaired promptly.

(2) The space between the line brattice or such other device and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

(3) Brattice cloth used underground shall be of flame-resistant material.

(d)(1) Within three hours immediately preceding the beginning of a coal-producing shift, and before any workmen in such shift enter the underground areas of the mine, certified persons designated by the operator of the mine shall examine a definite underground area of the mine. Each such examiner shall examine every active underground working section in that area and shall make tests in each such working section for accumulations of methane with means approved by the Secretary for detecting methane and shall make tests for oxygen deficiency with a permissible flame safety lamp or other means approved by the Secretary; examine seals and doors to determine whether they are functioning properly; examine and test the roof, face, and rib conditions in the active underground working sections; examine active roadways, travelways, and all belt conveyors, approaches to abandoned workings, and accessible falls in working sections for hazards; examine by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and in normal volume; and examine for such other hazards and violations of the standards established by, or promulgated pursuant to this title, as an authorized representative of the Secretary may from time to time require. Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory standard established by, or promulgated pursuant to, this title, or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "Danger" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine. No person, other than an authorized representative of the Secretary or a State mine inspector or persons authorized by the mine operator to enter such place for the purpose of eliminating the hazardous condition therein, shall enter such place while such sign is so posted. Upon completing his examination, such mine examiner shall report the results of his examination to a person, designated by the mine operator to receive such reports at a designated station on the surface of the mine or underground, before other persons enter the underground areas of such mine to work in such coal-producing shift. Each such mine examiner shall also record the results of his examination with ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(2) No person (other than certified persons designated under this subsection) shall enter any underground area, except during a coal-producing shift, unless an examination of such area as prescribed in this subsection has been made within eight hours immediately preceding his entrance into such area.

(e) At least once during each coal-producing shift or more often if necessary for safety, each active underground working section shall be examined for hazardous conditions by certified persons designated by the mine operator to do so. Any such conditions shall be corrected immediately. If such conditions cannot be corrected immediately, the operator shall withdraw all persons from the area affected by such condition, except those persons whose presence is required to correct such conditions. Such examination shall include tests with means approved by the Secretary for detecting methane and with a permissible flame safety lamp or other means approved by the Secretary for detecting oxygen deficiency.

(f) Examinations for hazardous conditions, including tests for methane, and for compliance with the standards established by, or promulgated pursuant to, this title shall be made at least once each week by a certified person designated by the operator of the mine, in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and insofar as safety considerations permit, abandoned workings. Such weekly examination need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date at the places examined, and if hazardous conditions are found, such conditions shall be reported promptly. Any hazardous condition shall be corrected immediately. If a hazardous condition cannot be corrected immediately, the operator shall withdraw all persons from the area affected by the hazardous condition, except those persons whose presence is required to correct the conditions. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(g) At least once each week, a qualified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in any pair or set of developing entries and the last open crosscut of any pair or set of rooms, the volume being delivered to the intake end of each pillar line, and the volume at the intake and return of each split of air. A record of such measurements shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, and the record shall be open for inspection by interested persons.

(h)(1) At the start of each coal-producing shift, tests for methane shall be made at the face of each working place immediately before electrically operated equipment is energized. Such tests shall be made by qualified persons. If more than 1.0 volume per centum of methane is detected, electrical equipment

shall not be energized, taken into, or operated in such working place until the air contains no more than 1.0 volume per centum of methane. Examinations for methane shall be made during such operations at intervals of not more than twenty minutes during each shift, unless more frequent examinations are required by an authorized representative of the Secretary. In conducting such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If the air at an underground working place, when tested at a point not less than twelve inches from the roof, face, or rib, contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall not contain more than 1.0 volume per centum of methane. While such ventilation improvement is underway and until it has been achieved, power to face equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions will be carried out under the direction of the operator or his agent so as not to endanger other active workings.

If such air, when tested as outlined above, contains 1.5 volume per centum of methane, all persons shall be withdrawn from the area of the mine endangered thereby, and all electric power shall be cut off from such area of the mine, until the air in such area shall not contain more than 1.0 volume per centum of methane.

(i) (1) If, when tested, a split of air returning from active underground working sections contains more than 1.0 volume per centum of methane, changes or adjustments shall be made at once in the ventilation in the mine so that such returning air shall not contain more than 1.0 volume per centum of methane. Tests under this paragraph and paragraph (2) of this subsection shall be made at four-hour intervals during each shift by a qualified person designated by the operator of the mine. In making such tests, such person shall use means approved by the Secretary for detecting methane.

(2) If, when testing, a split of air returning from active underground working sections contains 1.5 volume per centum of methane, all persons shall be withdrawn from the area of the mine endangered thereby, and all electric power shall be cut off from such area of the mine, until the air in such split shall not contain more than 1.0 volume per centum of methane.

(3) In virgin territory, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air prescribed in subsection (b) of this section, if the air in the split returning from such workings does not pass over trolley or trolley feeder wires, and if a certified person designated by the mine operator is continually testing the methane content of the air in such split during mining operations in such workings, it shall be necessary to withdraw all persons and cut off all electric power from the portion of the mine endangered thereby only when the air returning from such workings contains more than 2.0 volume per centum.

(j) Air which has passed by an opening of any abandoned area shall not be used to ventilate any working place in the mine if such air contains 0.25 volume per centum or more of methane. Examinations of such air shall be made during the preshift examination required by subsection (d) of this section. In making such tests, a qualified person designated by the operator of the mine shall use means approved by the Secretary for detecting methane. For the purposes of this subsection, an area within a panel shall not be deemed to be abandoned until such panel is abandoned.

(k) Air that has passed through an abandoned panel or area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

(l) An authorized representative of the Secretary may require in any coal mine that electric face equipment operated therein be equipped with a methane monitor approved by the Secretary and kept operative and in operation.

(m) Idle and abandoned areas shall be inspected for methane and for oxygen deficiency and other dangerous conditions by a certified person with means approved by the Secretary as soon as possible, but not more than three hours, before other employees are permitted to enter or work in such areas. However, persons, such as pumpmen, who are required regularly to enter such areas in the performance of their duties, and who are trained and qualified in the use of means approved by the Secretary for detecting methane and in the use of a permissible flame safety lamp or other means for detecting oxygen deficiency are authorized to make such examinations for themselves, and each such person shall be properly equipped and shall make such examinations upon entering any such area.

(n) Immediately before an intentional roof fall is made, pillar workings shall be examined by a qualified person designated by the operator to ascertain whether methane is present. Such person shall use means approved by the Secretary for detecting methane. If in such examination methane is found in amounts of more than 1.0 volume per centum, such roof fall shall not be made until changes or adjustments are made in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane.

(o) Within six months after the operative date of this title, and thereafter, all areas in all active mines in which the pillars have been extracted or areas which have been abandoned for other reasons shall be effectively sealed or shall be effectively ventilated by bleeder entries, or by bleeder systems or an equivalent means. Such sealing or ventilation shall be approved by an authorized representative of the Secretary.

(p) Pillared areas ventilated by means of bleeder entries, or by bleeder systems or an equivalent means, shall have sufficient air coursed through such areas so that, before entering another split of air, the return split of air shall not contain more than 2.0 volume per centum of methane, when tested at the point it enters such other split.

(q) Where areas are being pillared on the operative date of this title without bleeder entries, or without bleeder systems or an equivalent means, pillar recovery may be completed in the area to the extent approved by an authorized representative of the Secretary if the edges of pillar lines adjacent to active workings are ventilated with sufficient air to keep the air in open areas along the pillar lines below 1.0 volume per centum of methane.

(r) Each mechanized mining section shall be ventilated with a separate split of intake air directed by overcasts, undercasts, or the equivalent, except an extension of time, not in excess of twelve months may be permitted by the Secretary, under such conditions as he may prescribe, whenever he determines that this subsection cannot be complied with on the operative date of this title.

(s) In all underground areas of a coal mine, immediately before firing each shot or group of multiple shots and after blasting is completed, examinations for methane shall be made by a qualified person with means approved by the Secretary for detecting methane. If methane is found in amounts of more than 1.0 volume per centum, changes or adjustments shall be made at once in the ventilation so that the air shall not contain more than 1.0 volume per centum of methane. No shots shall be fired until the air contains not more than 1.0 volume per centum of methane.

(t) Each operator of a coal mine shall adopt a plan within sixty days after the operative date of this title which shall provide that when any mine fan stops immediate action shall be taken by the operator or his agent (1) to withdraw all persons from the working places, (2) to cut off the power in the mine in a timely manner, (3) to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period as set forth in the plan after the working places and other workings where methane is likely to accumulate are reexamined by a certified person to determine if methane in amounts of more than 1.0 volume per centum exists therein, and (4) to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time. The plan and revisions thereof approved by the Secretary shall be set out in printed form and a copy shall be furnished to the Secretary or his authorized representative.

(u) Changes in ventilation which materially affect the main air current or any split thereof and which may affect the safety of persons in the coal mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts to make the change and shall not be restored until the effect of the change has been ascertained and the affected areas determined to be safe by a certified person.

(v) The mine foreman shall read and countersign promptly the daily reports of the preshift examiner and assistant mine foremen, and he shall read and countersign promptly the weekly report covering the examinations for hazardous conditions. The mine superintendent or assistant superintendent of the mine shall also read and countersign the daily and weekly reports of such persons.

(w) Each day, the mine foreman and each of his assistants shall enter plainly and sign with ink or indelible pencil in a book approved by the Secretary provided for that purpose a report of the condition of the mine or portion thereof under his supervision which report shall state clearly the location and nature of any hazardous condition observed by them or reported to them during the day and what action was taken to remedy such condition. Such book shall be kept in an area on the surface of the mine chosen by the operator to minimize the danger of destruction by fire or other hazard, and shall be open for inspection by interested persons.

(x) Before a mine is reopened after having been abandoned or declared inactive by the operator, the Secretary shall be notified and an inspection shall be made of the entire mine by an authorized representative of the Secretary before mining operations commence.

(y) In any coal mine opened after the operative date of this title, the entries used as intake and return airways shall be separated from belt and trolley haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt and trolley haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries to protect the health of miners and to insure that the air therein shall not contain more than 1.0 volume per centum of methane. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened prior to the

operative date of this title which has been developed with more than two entries, that the conditions in the entries, other than haulage entries, are such as to permit the coursing of intake or return air through such entries, (1) the belt and trolley haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate working places, and (2) when the belt and trolley haulage entries are not necessary to ventilate the working places, the operator of such mine shall limit the velocity of the air coursed through the belt and trolley haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, to protect the health of miners, and to insure that the air therein shall not contain more than 1.0 volume per centum of methane.

COMBUSTIBLE MATERIALS AND ROCK DUSTING

SEC. 205. (a) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall not be permitted to accumulate in active underground workings or on electrical equipment therein.

(b) Where underground mining operations create or raise excessive amounts of dust, water, or water with a wetting agent added to it, or other effective method approved by an authorized representative of the Secretary, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(c) All areas of a mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless an authorized representative of the Secretary permits an exception. All crosscuts that are less than forty feet from a working face shall be rock dusted.

(d) Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a mine and maintained in such quantities that the incombustible contents of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible contents in the return aircourses shall be not less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dusts shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane, where 65 and 80 per centum, respectively, of incombustibles are required.

(e) Subsections (b) through (d) of this section shall not apply to underground anthracite mines subject to this Act.

ELECTRICAL EQUIPMENT—GENERAL

SEC. 206. (a) The location and the electrical rating of all stationary electrical apparatus in connection with the mine electrical system, including permanent cables, switchgear, rectifying substations, transformers, permanent pumps, trolley wires and trolley feeders, and settings of all direct-current circuit breakers protecting underground trolley circuits, shall be shown on a mine map. Any changes made in a location, electrical rating, or setting shall be promptly shown on the map when the change is made.

(b) All power circuits and electrical equipment shall be deenergized before work is done on such circuits and equipment, except, when necessary, a person may repair energized trolley wires if he wears insulated shoes and lineman's gloves. No work shall be performed on medium- or high-voltage distribution circuits or equipment except by or under the direct supervision of a competent electrician. Switches shall be locked out and suitable warning signs posted by the persons who are to do the work. Locks shall be removed only by the persons who installed them.

(c) Electric equipment shall be frequently examined by a competent electrician to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected.

(d) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that the rise in temperature resulting from normal operation will not damage the insulating materials.

(e) All joints or splices in conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All joints in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(f) Cables shall enter metal frames of motors, splice boxes and electric compartments only through proper fittings. When insulated wires other than cables pass through metal frames the holes shall be substantially bushed with insulated bushings.

(g) All power wires (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof, or ribs.

(h) Power wires and cables, except trolley wires, trolley feeder, and bare signal wires, shall be insulated adequately and fully protected.

(i) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(j) In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground portion of the mine and within five hundred feet of all other places where main power circuits enter the underground portion of the mine.

(k) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(l) (1) One year after the operative date of this title—

(A) all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible;

(B) all handheld electric drills, blower and exhaust fans, electric pumps, and other such low horsepower electric face equipment as the Secretary may designate within two months after the operative date of this title, which are taken into or used inby the last open crosscut of any coal mine shall be permissible;

(C) all electric face equipment which is taken into or used inby the last open crosscut of any coal mine classified as gassy prior to the operative date of this title shall be permissible; and

(D) all other electric face equipment which is taken into or used inby the last open crosscut of any other coal mine shall be permissible; and except that, notwithstanding any other provision of this subsection in the case of any coal mine which is operated entirely in coal seams located above the watertable, which has not been classed under any provision of law as a gassy mine prior to the date of enactment of this Act in which one or more openings were made prior to the date of enactment of this Act, and the total annual production of which does not exceed seventy-five thousand tons annually based on the mine's production records for three calendar years prior to such date, the effective date of the provisions of this paragraph (1) (D) shall be three years after the operative date of this title: *Provided*, That any operator of such a mine who is unable to comply with the requirements of paragraph (1) (D) on such effective date may file with the Panel an application under paragraph 5 of this subsection for a permit for noncompliance ninety days prior to such date. If the Panel determines, after notice to all interested persons and an opportunity for a hearing, that such application satisfies the requirements of paragraph (3) of this subsection and that such operator, despite his diligent efforts will be unable to comply with such requirements, the Panel may issue to such operator such a permit. Such permit shall entitle the permittee to an additional extension of time to comply with the provisions of this paragraph of not to exceed twenty-four months, as determined by the Panel, from such effective date.

(2) The operator of each coal mine shall maintain in permissible condition all electric face equipment, required by this subsection to be permissible, which is taken into or used in by the last open crosscut of any such mine.

(3) Each operator of a coal mine shall, within two months after the operative date of this title, file with the Secretary a statement listing all electric face equipment by type and manufacturer being used by such operator in connection with mining operations in such mine as of the date of such filing, and stating whether such equipment is permissible and maintained in permissible condition or nonpermissible on such date of filing, and, if nonpermissible, whether such nonpermissible equipment has ever been rated as permissible, and such other information as the Secretary may require.

(4) The Secretary shall promptly conduct a survey as to the total availability of new or rebuilt permissible electric face equipment and replacement parts for such equipment and, within six months after the operative date of this title, publish the results of such survey.

(5) Any operator of a coal mine who is unable to comply with the requirements of paragraph (1) (D) of this subsection within one year after the operative date of this title may file with the Panel an application for a permit for noncompliance. If the Panel determines that such application satisfies the requirements of paragraph (8) of this subsection, the Panel shall issue to such operator a permit for noncompliance. Such permit shall entitle the permittee to an extension of time to comply with such requirements of paragraph (1) (D) of not to exceed twelve months, as determined by the Panel, from the date that compliance with the provisions of paragraph (1) (D) of this subsection is required.

(6) (A) Any operator of a coal mine issued a permit under paragraph (5) of this subsection who, ninety days prior to the termination of such permit, determines that he will be unable to comply with the requirements of paragraph (1) (D) of this subsection upon the expiration of such permit may file with the Panel an application for renewal thereof. Upon receipt of such application, the Panel, if it determines, after notice to all interested persons and an opportunity for a hearing, that such application satisfies the requirements of paragraph (8) of this subsection and that such operator, despite his diligent efforts, will be unable to comply with such requirements, may renew the permit for a period not exceeding twelve months. Any hearing held pursuant to this paragraph shall be of record and the Panel

shall make findings of fact and shall issue a written decision incorporating its findings therein.

(B) Any permit issued pursuant to this subsection shall entitle the permittee to use such nonpermissible electric face equipment referred to in paragraph (1)(D) of this subsection, as specified in the permit, during the term of such permit.

(7) Permits for noncompliance issued under this subsection shall, in the aggregate, not extend the period of noncompliance more than forty-eight months after the date of enactment of this Act.

(8) Any application for a permit of noncompliance filed under this subsection shall contain a statement by the operator—

(A) that he is unable to comply with paragraph (1)(D) of this subsection within the time prescribed;

(B) listing the nonpermissible electric face equipment being used by such operator in connection with mining operations in such mine on the operative date of this title and the date of the application by type and manufacturer for which a noncompliance permit is requested and whether such equipment had ever been rated as permissible;

(C) setting forth the actions taken from and after the operative date of this title to comply with paragraph (1)(D) of this subsection, together with a plan setting forth a schedule of compliance with said paragraph for each such equipment referred to in such paragraph and being used by the operator in connection with mining operations in such mine with respect to which such permit be required and the means and measures to be employed to achieve compliance; and

(D) including such other information as the Panel may require.

(9) No permit for noncompliance shall be issued under this subsection for any nonpermissible electric face equipment, unless such equipment was being used by an operator in connection with the mining operations in a coal mine on the operative date of this title.

(10) As used in this subsection, the term "permissible electric face equipment" means all electrically operated equipment taken into or used in by the last open crosscut of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the Secretary's specifications, to assure that such machines will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the Secretary's specifications, to prevent, to the greatest extent possible, other accidents in the use of such equipment. The regulations of the Secretary in effect on the operative date of this title relating to the requirements for investigation, testing, approval, certification, and acceptance of electric face equipment as permissible shall continue in effect until modified or superseded by the Secretary, except that the Secretary shall provide procedures, including, where feasible, field testing, approval, certification, and acceptance by an authorized representative of the Secretary, to facilitate compliance by an operator with the permissibility requirements of paragraph (1) of this subsection within the period prescribed.

(11) Any operator or representative of miners aggrieved by a final decision of the Panel under this subsection may file a petition for review of such decision in accordance with the provisions of section 304 of this Act.

(12) On and after two years from the operative date of this title, all electric face equipment covered by paragraphs (5) and (6) of this subsection which is replaced or converted shall be permissible and maintained in a permissible condition and, in the event of any major overhaul of such equipment in use on or after two years from such date, such equipment shall be put in or shall thereafter be maintained in permissible condition.

(m) Any coal mine which, prior to the operative date of this title, was classed gassy and was required to use permissible electric face equipment and to maintain such equipment in a permissible condition shall continue to use such equipment and to maintain such equipment in such condition.

(n) All power connection points, except where permissible power connection units are used, outby the last open crosscut shall be in intake air.

(o) Each undergrounded, exposed power conductor that leads underground shall be equipped with lightning arresters of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arresters shall be connected to a low resistance grounding median on the surface which shall be separated from neutral grounds by a distance of not less than twenty-five feet.

(p) No device for the purpose of lighting any underground coal mine which has not been approved by the Secretary or his authorized representative, or open flame, shall be permitted in any underground coal mine, except under the provisions of section 212(d) of this title.

(q) An authorized representative of the Secretary may require in any coal mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

TRAILING CABLES

SEC. 207. (a) Trailing cables used underground shall meet the requirements established by the Secretary for flame-resistant cables.

(b) Short-circuit protection for trailing cables shall be provided by an automatic circuit breaker of adequate current interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(c) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(d) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have spices that heat or spark under load shall not be used. As used in this subsection, the term "splice" means the mechanical joining of one or more conductors that have been severed.

(e) When permanent splices in trailing cables are made, they shall be—

(1) mechanically strong with adequate electrical conductivity and flexibility;

(2) effectively insulated and sealed so as to exclude moisture; and

(3) vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(f) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(g) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

GROUNDING

SEC. 208. (a) All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded. Metallic frames, casing, and other enclosures of electrical equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively.

(b) The frames of all offtrack direct current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at safe voltages by methods approved by an authorized representative of the Secretary.

(c) The frames of all high-voltage switchgear, transformers, and other high-voltage equipment shall be grounded to the high-voltage system ground.

(d) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them.

(e) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

UNDERGROUND HIGH-VOLTAGE DISTRIBUTION

SEC. 209. (a) High-voltage circuits entering the underground portion of the mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with relaying circuits to protect against overcurrent, ground fault, a loss of ground continuity, short circuit, and undervoltage.

(b) High-voltage circuits extending underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit. At the point where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed out by the automatic breaker and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(c) The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(d) High-voltage systems shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

(e) Underground high-voltage cables shall be equipped with metallic shields around each power conductor. One or more ground conductors shall be provided having a cross sectional area of not less than one-half the power conductor or capable of carrying twice the maximum fault current. There shall also be provided an insulated conductor not smaller than No. 8 (AWG) for the ground continuity check circuit. Cables shall be adequate for the intended current and voltage. Splices made in the cable shall provide continuity of all components and shall be made in accordance with cable manufacturers' recommendations.

(f) Couplers that are used with medium-voltage or high-voltage power circuits shall be of the three-phase type with a full metal-

lic shell, except that the Secretary may permit, under such guidelines as he may prescribe, couplers constructed of materials other than metal. Couplers shall be adequate for the voltage and current expected. All exposed metal on the metallic couplers shall be grounded to the ground conductor in the cable. The coupler shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(g) Single-phase loads, such as transformers primaries, shall be connected phase to phase.

(h) All underground high-voltage transmission cables shall be installed only in regularly inspected aircourses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley and other low-voltage circuits.

(i) Disconnecting devices shall be installed at the beginning of branch lines in high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is de-energized when the switches are open.

(j) Circuit breakers and disconnecting switches underground shall be marked for identification.

(k) Terminations and splices of high-voltage cable shall be made in accordance with manufacturers' specifications.

(l) Frames, supporting structures, and enclosures of substation or switching station apparatus shall be effectively grounded to the high-voltage ground.

(m) Power centers and portable transformers shall be deenergized before they are moved from one location to another. High-voltage cables, other than trailing cables, shall not be moved or handled while energized.

UNDERGROUND LOW- AND HIGH-VOLTAGE ALTERNATING CURRENT CIRCUITS

SEC. 210. (a) Low- and medium-voltage power circuits serving three-phase alternating current equipment shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall provide protection for the circuit against overcurrent, ground fault, short circuits, and loss of ground circuit continuity.

(b) Low- and medium-voltage circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all electric equipment supplied power from that circuit. The grounding resistor shall be of the proper ohmic value to limit the ground fault to 25 amperes. The grounding resistor shall be rated for maximum fault current continuously.

(c) Low- and medium-voltage circuits shall include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail safe ground check circuit shall cause the circuit breaker to open when either the ground or the pilot check wire is broken.

(d) Disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnectd. Trailing cables for mobile equipment shall contain on or more ground conductors having a cross sectional area of not less than one-half the power conductor and an insulated conductor for the ground continuity checks circuit. Splices made in the cables shall provide continuity of all components.

(e) Single phase loads shall be connected phase to phase.

(f) Circuit breakers shall be marked for identification.

(g) Trailing cable for medium voltage circuits shall include grounding conductors, a ground check conductor and ground metallic shields around each power conductor or a grounded metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

TROLLEY AND TROLLEY FEEDER WIRES

SEC. 211. (a) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(b) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(c) Trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

(d) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires, unless the wires are placed 10 feet or more above the top of the rail; (2) on both sides of all doors and stoppings, and (3) at man-trip stations. The Secretary or his authorized representatives shall specify other conditions where trolley wires and trolley feeder wires shall be adequately protected to prevent contact by any person, or shall require the use of improved methods to prevent such contact. Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

FIRE PREVENTION

SEC. 212. (a) Each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. The Secretary shall establish minimum requirements for the type, quality and quantity of such equipment, and the interpretations of the Secretary relating to such equipment in effect on the operative date of this title shall continue in effect until modified or superseded by the Secretary.

(b) Underground storage places for lubricating oil and grease shall be of fireproof construction. Except for specially prepared materials approved by the Secretary, lubricating oil and grease kept in all undergound areas in a mine shall be in portable, fireproof, closed metal containers.

(c) Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return.

(d) All welding, cutting, or soldering with arc or flame in all underground areas of a mine shall, whenever practicable, be conducted in fireproof enclosures. Welding, cutting, or soldering with arc or flame in other than a fireproof enclosure shall be done under the supervision of a qualified person who shall make a diligent search for fire during and after such operations and shall, immediately before and during such operations, continuously test for methane with means approved by the Secretary for detecting methane. Welding, cutting, or soldering shall not be conducted in air that contains more than 1.0 volume per centum of methane. Rock dust or suitable fire extinguishers shall be immediately available during such welding, cutting, or soldering.

(e) Fire suppression devices meeting specifications prescribed by the Secretary shall be installed on underground equipment within one year after the operative date of this title. In lieu of such devices, fire resistant hydraulic fluids approved by the Secretary may be used in the hydraulic system of unattended equipment.

(f) Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other effective means approved by the Secretary of controlling fire shall be installed at main and secondary belt-conveyor drives. Where sprays or foam generators are used they shall supply a sufficient quantity of water or foam to control fires.

(g) Underground belt conveyors shall be equipped with slippage and sequence switches.

(h) After every blasting operation performed on shift, an examination shall be made to determine whether fires have been started.

BLASTING AND EXPLOSIVES

SEC. 213. (a) Black blasting powder shall not be stored or used underground. Mudcaps (adobes) or other unconfined shots shall not be fired underground.

(b) Explosives and detonators shall be kept in separate containers until immediately before used by the miners. In underground anthracite mines, (1) open, unconfined shake shots may be fired, if restricted to battery starting when methane or a fire hazard is not present, and if it is otherwise impracticable to start the battery; (2) open, unconfined shake shots in pitching veins may be fired, when no methane or a fire hazard is present, if the taking down of loose hanging coal by other means is too hazardous; and (3) tests for methane shall be made immediately before such shots are fired and if methane is present when tested in 1.0 volume per centum such shot shall not be made until the methane content is reduced below 1.0 per centum.

(c) Except as provided in this subsection, in all underground areas of a mine only permissible explosives, electric detonators of proper strength, and permissible blasting devices shall be used and all explosives and blasting devices shall be used in a permissible manner. Permissible explosives shall be fired only with permissible shot firing units. Only incombustible materials shall be used for stemming boreholes. The Secretary may, under such safeguards as he may prescribe, permit the firing of more than twenty shots and allow the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. This section shall not prohibit the use of compressed air blasting.

(d) Explosives or detonators carried anywhere underground by any person shall be in containers constructed of nonconductive material, maintained in good condition, and kept closed.

(e) Explosives or detonators shall be transported in special closed containers (1) in cars moved by means of a locomotive or rope, (2) on belts, (3) in shuttle cars, or (4) in equipment designed especially to transport such explosives or detonators.

(f) When supplies of explosives and detonators for use in one or more working sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, located at least twenty-five feet from roadways and power wires, and in a dry, well rock-dusted location protected from falls of roof, except in pitching beds, where it is not possible to comply with the location requirements, such boxes shall be placed in niches cut into the solid coal or rock.

(g) Explosives and detonators stored near the working faces shall be kept in separate

closed containers, which shall be located out of the line of blast and not less than fifty feet from the working face and fifteen feet from any pipeline, powerline, rail, or conveyor, except that, if kept in niches in the rib, the distance from any pipeline, powerline, rail or conveyor shall be at least five feet. Such explosives and detonators, when stored, shall be separated by a distance of at least five feet.

HOISTING AND MANTRIPS

SEC. 214. (a) Every hoist used to transport persons at an underground coal mine shall be equipped with overspeed, overwind, and automatic stop controls. Every hoist handling platforms, cages, or other devices used to transport persons shall be equipped with brakes capable of stopping the fully loaded platform, cage, or other device; with hoisting cable adequately strong to sustain the fully loaded platform, cage, or other device; and have a proper margin of safety. Cages, platforms, or other devices which are used to transport persons in vertical shafts shall be equipped with safety catches that act quickly and effectively in an emergency, and the safety catches shall be tested at least once every two months. Hoisting equipment, including automatic elevators, that is used to transport persons shall be examined daily. Where persons are regularly transported into or out of a coal mine by hoists, a qualified hoisting engineer shall be on duty while any person is underground, except that no such engineer shall be required for automatically operated cages, platforms, or elevators.

(b) Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

(c) Hoists shall have rated capacities consistent with the loads handled and the recommended safety factors of the ropes used. An accurate and reliable indicator of the position of the cage, platform, skip, bucket, or cars shall be provided.

(d) There will be at least two effective methods approved by the Secretary of signaling between each of the shaft stations and the hoist room, one of which shall be a telephone or speaking tube.

(e) Each locomotive and haulage car used in an underground coal mine shall be equipped with automatic brakes, where space permits, speed reduction gear, or other similar devices approved by the Secretary which are designed to stop the locomotives and haulage cars with the proper margin of safety.

MAPS

SEC. 215. (a) The operator of an active underground coal mine shall have in a fireproof repository located in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard, an accurate and up-to-date map of such mine drawn on scale. Such map shall show the active workings, all worked out and abandoned areas, excluding those areas which have been worked out or abandoned before the operative date of this title which cannot be entered safely and on which no information is available, entries and aircourses with the direction of airflow indicated by arrows, contour elevations, elevations of all main and cross or side entries, dip of the coalbed, escapeways, adjacent mine workings within one thousand feet, mines above or below, water pools above, and either producing or abandoned oil and gas wells penetrating the coalbeds or any underground area of such mine and such other information as the Secretary may require. Such map shall be made or certified by a registered engineer or a registered surveyor of the State in which the mine is located. Such map shall be kept up to date by temporary notations, and such map shall be revised and supplemented at intervals prescribed by the Secretary on the basis of a survey made or certified by such engineer or surveyor.

(b) The coal mine map and any revision and supplement thereof shall be available for inspection by the Secretary or his authorized representative, by coal mine inspectors of the State in which the mine is located, and by any miner and his authorized representative, and by operators of adjacent coal mines. The operator shall furnish to the Secretary or his authorized representative, upon request, a copy of such map and any revision and supplement thereof. Additional copies shall be made available to the Secretary or his authorized representative upon request.

Any such map or revision and supplement thereof shall be confidential and its contents shall not be divulged to any person other than those mentioned in this subsection without the consent of the operator of the mine covered by such map, except that such map or revision or supplement thereof may be used by the Secretary to carry out any provision of this Act and in any proceeding, investigation, or hearing conducted pursuant to this Act.

(c) Whenever an operator permanently closes such mine, or temporarily closes such mine for a period of more than ninety days, he shall promptly notify the Secretary of such closure. Within sixty days of the permanent closure of the mine, or, when the mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the Secretary a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified as true and correct by a registered surveyor or registered engineer of the State in which the mine is located and shall be available for public inspection.

ESCAPEWAYS

SEC. 216. (a) At least two separate and distinct travelable passageways to be designated as escapeways, at least one of which is ventilated with intake air, shall be provided from each mine working section continuous to the surface, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground portion of the mine of surface fires, fumes, smoke, and flood water. Adequate facilities approved by the Secretary or his authorized representative shall be provided in each escape shaft or slope to allow persons to escape quickly to the surface in event of emergency.

(b) Not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such work shall be prosecuted with reasonable diligence.

(c) When only one mine opening is available, owing to final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(d) In the case of all coal mines opened after the operative date of this title, the escapeway required by subsection (a) of this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine.

MISCELLANEOUS

SEC. 217. (a) Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barrier shall not be less than three hundred feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations, or unless the Secretary or his authorized representative requires a greater barrier.

(b) Whenever any working face approaches within fifty feet of abandoned workings in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned workings of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within two hundred feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least twenty feet in advance of the working face and shall be continually maintained to a distance of at least ten feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing face will not accidentally hole through into abandoned workings or adjacent mines. Boreholes shall be drilled not more than eight feet apart in the rib of such working place to a distance of at least twenty feet and at an angle of forty-five degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of persons working in such places.

(c) Persons underground shall use only permissible electric lamps approved by the Secretary for portable illumination.

(d) On and after the operative date of this title, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction. Unless structures prior to such date located within one hundred feet of any mine opening are of such construction, fire doors shall be erected at effective points in mine openings to prevent smoke or fire from surface sources endangering miners underground. These doors shall be tested at least monthly to insure effective operation. A record of such tests shall be kept and shall be available for inspection by interested persons.

(e) Adequate measures shall be taken to prevent methane and coal dust from accumulating in excessive concentrations in or on surface coal-hauling facilities, but in no event shall methane be permitted to accumulate in concentrations in or on surface coal-handling facilities in excess of limits established for methane by the Secretary within one year after the operative date of this title, and coal dust shall not accumulate in excess of limits under title I of this Act. Where coal is dumped or near air-intake openings, provisions shall be made to avoid dust entering the mine.

(f) An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that the face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

(g) After the operative date of this title, the opening of any mine that is declared inactive by the operator or is abandoned for more than ninety days shall be sealed by the operator in a manner approved by an authorized representative of the Secretary.

(h) The Secretary may require any operator to provide adequate facilities for the miners to change from the clothes worn underground, store such clothes from shift to shift, and for sanitary and bathing facilities.

(i) Where the Secretary finds that sanitary conditions so require, sanitary toilet facilities shall be provided in all underground mines. Such facilities will be located at places designated by the Secretary or his authorized representative.

DEFINITIONS

SEC. 218. For the purpose of this title and title I of this Act, the term—

(1) "certified person" means a person certified by the State in which the coal mine is located to perform duties prescribed by such title (provided that the State standards meet at least minimum Federal requirements established by the Secretary); except that, in a State where no such program of certification is provided, such certifiation shall be by the Secretary;

(2) "registered engineer" or "registered surveyor" means an engineer or surveyor registered by the State pursuant to standards established by the State meeting at least minimum Federal requirements established by the Secretary, or if no such standards are in effect, registered by the Secretary;

(3) "qualified person" means an individual deemed qualified by the Secretary to make tests or measurements, as appropriate, required by such titles;

(4) "permissible", as applied to—

(A) equipment used in the operation of a coal mine, except as otherwise provided in subsection 206(1) of this title, means equipment to which an approval plate, label or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire;

(B) explosives, shot firing units, or blasting devices used in such mines, means explosives, short firing units, or blasting devices which meet specifications which are prescribed by the Secretary; and

(C) the manner of use of equipment or explosives, shot firing units, and blasting devices, means the manner of use prescribed by the Secretary;

(5) "rock dust" means pulverized limestone, dolomite, gypsum, anhydrite, shale, talc, adobe, or other inert material, preferably light colored, (1) 100 per centum of which will pass through a sieve having 20 meshes per linear inch; and 70 per centum or more of which will pass through a sieve having 200 meshes per linear inch; (2) the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light blast of air; and (3) which does not contain more than 5 per centum of combustible matter or more than a total of 5 per centum of free and combined silica (SiO_2);

(6) "coal mine" includes areas of adjoining mines connected underground;

(7) "anthracite" means coals with a volatile ratio equal to .12 or less; and

(8) "low voltage" means up to and including 660 volts; "medium voltage" means voltages from 661 to 1,000 volts; and "high voltage" means more than 1,000 volts.

PART B—PROMULGATION OF MANDATORY SAFETY STANDARDS FOR ALL COAL MINERS

SAFETY STANDARDS; REVIEW

SEC. 219. (a) The Secretary shall, in accordance with the procedures set forth in this section, develop, promulgate, and revise as may be appropriate, mandatory safety standards for the protection of life and the prevention of injuries and occupational diseases in a coal mine.

(b) In the development of such standards, the Secretary shall consult with other interested Federal agencies, representatives of State agencies, appropriate representatives of the coal mine operators and miners, other interested persons and organizations, and such advisory committees as he may appoint. In addition to the attainment of the highest degree of safety protection for the miner, other considerations shall be the latest available scientific data in the field, the technical feasibility of the standards, and experience gained under this Act and other health and safety regulations.

(c) The Secretary shall from time to time publish any such proposed standards in the Federal Register and shall afford interested persons a period of not less than thirty days after publication to submit written data or comments. Except as provided in subsection (d) of this section, the Secretary may, upon the expiration of such period and after consideration of all relevant matter presented, promulgate such standards within his jurisdiction under this Act with such modifications as he may deem appropriate. Proposed mandatory safety standards for surface coal mines and surface work areas of underground coal mines shall be developed and published by the Secretary not later than twelve months after the date of enactment of this Act.

(d) On or before the last day of any period fixed for the submission of written data or comments under subsection (c) of this section, any interested person may file with the Secretary written objections to a proposed standard, stating the grounds therefor and requesting a public hearing by the Secretary on such objections. As soon as practicable after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specifying the proposed standards to which objections have been filed and a hearing requested, and shall review such standards and objections in accordance with subsection (e) of this section.

(e) Promptly after any such notice is published in the Federal Register by the Secretary under subsection (d) of this section, the Secretary shall issue notice of and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearing, the Secretary shall make findings of fact and promulgate the mandatory standards with such modifications, or take such other action, as he deems appropriate. All such findings shall be public.

(f) Any mandatory standards promulgated under this section shall be effective upon publication in the Federal Register unless the Secretary specifies a later date.

(g) All interpretations, regulations, and instructions of the Secretary in effect on the operative date of this title, not inconsistent with any provision of this Act, shall continue in effect until modified or superseded in accordance with the provisions of this Act.

TITLE III—ENFORCEMENT

INSPECTIONS AND INVESTIGATIONS

SEC. 301. (a) Authorized representatives of the Secretary shall make frequent inspections and investigations in coal mines each year for the purpose of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) developing safety standards, (3) determining whether an imminent danger exists in a coal mine, and (4) determining whether or not there is compliance with the mandatory health and safety standards established by, or promulgated pursuant to, title I or II of this Act or with any notice, order or decision issued under this Act. In carrying out the requirements of clauses (3) and (4) of this subsection in each underground coal mine, such representatives shall make inspections of the entire mine at least four times a year. No advance notice of any inspection required by this subsection shall be given to any operator of a coal mine or his agents.

(b) For the purpose of developing improved health standards, the Surgeon General or any authorized representative of the Surgeon General shall have a right of entry to, upon, or through, any coal mine.

(c) For the purpose of making any inspection or investigation under this Act, the Secretary or any authorized representative of the Secretary shall have a right of entry to, upon, or through, any coal mine.

(d) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal or State agency.

(e) For the purpose of making any investigation of any accident or other occurrence relating to health or safety in a coal mine, the Secretary may, after notice, hold public hearings, and may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) In the event of any accident occurring in a coal mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems appropriate, supervise and direct the rescue and recovery activity in such mine.

(g) In the event of any accident occurring in a coal mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(h)(1) Whenever a representative of the miners has reason to believe that a violation of a mandatory health or safety standard promulgated by the Secretary exists, or an imminent danger exists, in a coal mine, such representative shall have a right to obtain an immediate inspection by notifying the Secretary or his authorized representative of such violation or danger. Any such notice shall promptly be reduced to writing, signed by the representative of the miners, and a copy shall be provided the operator. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title.

(2) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger pursuant to paragraph (1) of this subsection, (B) has filed, instituted or caused to be instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(3) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against

by any person in violation of paragraph (2) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party, to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue an order requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any decision issued by the Secretary under this paragraph shall be subject to judicial review in accordance with the provisions of section 304 of this Act. Violations by any person of paragraph (2) of this subsection shall be subject to the provisions of sections 307 and 308(a) of this Act.

(4) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(i) The Secretary shall station Federal inspectors, for the purpose of making mine inspections on each and every day such mine is producing coal, at those underground coal mines which liberate excessive quantities of explosive gases and which are most likely to present explosion dangers in the opinion of the Secretary, based on the past history of the mine and other criteria he shall establish.

(j) At the commencement of any inspection of a coal mine by an authorized representative of the Secretary, the authorized representative, if any, of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the Secretary on such inspection.

FINDINGS, NOTICES, AND ORDERS

SEC. 302 (a) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

(b) Except as provided in section 102(f), if, upon any inspection of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard established by, or promulgated pursuant to, title I or II of this Act, but the violation has not created an imminent danger, he shall find what would be a reasonable period of time within which the violation should be totally abated and thereupon issue a notice to the operator or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or subsequently extended, an authorized representative of the Secretary finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that the violation has been abated.

(c)(1) If, upon the inspection of a coal mine, an authorized representative of the Secretary finds that any mandatory health or safety standard established by, or promulgated pursuant to, title I or II of this Act is being violated, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in the notice given to the operator under subsection (b) of this section or subsection (f) of section 102 of this Act. If, during the same inspection or any subsequent inspection of such mine within ninety days after the issuance of such notice, a representative of the Secretary finds a violation of any such mandatory health or safety standard and find such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (d) of this section, to be withdrawn from, and to be debarred from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, a withdrawal order shall promptly be issued by a duly authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) of this subsection until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) of this subsection shall again be applicable to that mine.

(d) The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order;

(2) Any public official whose official duties require him to enter such area; and

(3) Any consultant or any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order.

(e) Notices and orders issued pursuant to this Act shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard established by, or promulgated pursuant to, title I or II of this Act and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(f) Each notice or order issued under this Act shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the Secretary issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative.

(g) A notice or order issued pursuant to this Act may be modified or terminated by an authorized representative of the Secretary. Any such modification or termination of an order shall be subject to review under sections 303 and 304 of this title in the same manner as the order being modified or terminated.

(h)(1) If, upon any inspection of a coal mine, an authorized representative of the Secretary finds (A) that conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representative of the miners of such mine, if any. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners, if any, to present information relating to such notice.

(2) Upon the conclusion of such investigation and an opportunity for a hearing upon request by any interested party, the Secretary shall make findings of fact, and shall by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in subsection (d) of this section, to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated.

(i) Should a mine or portion of a mine be closed by an order issued by the Secretary or his authorized representative for repeated failures of the operator to comply with any health or safety standard established by, or promulgated pursuant to, titles I or II of this Act, the Secretary shall, after all interested parties have been given an opportunity for a hearing, order that all miners who are idled due to the order shall be fully compensated by the operator for lost time, as determined by the Secretary, at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Any order issued pursuant to this section shall be subjected to judicial review under section 304 of this Act.

REVIEW BY THE SECRETARY

SEC. 303. (a)(1) An operator notified of an order issued pursuant to sections 102(f) or 302 of this Act, or any representative of miners in any mine affected by such order or any modification or termination of such order pursuant to section 302(g) of this title may apply to the Secretary for review of the order within thirty days of receipt thereof

or within thirty days of its modification or termination. The applicant shall send a copy of such application to the representative, if any, of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of the operator or the representative of miners in such mine, to enable the operator and the representatives of miners in such mine to present information relating to the issuance and continuance of such order.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and he shall issue a written decision vacating, affirming, modifying, or terminating the order complained of or the modification or termination of such order and incorporate his finds therein.

(c) In view of the urgent need for prompt decision of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with the adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under sections 102(f) or 302 (b) or (c) of this Act or from any modification or termination of any order under subsection (g) of section 302 of this Act, together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, under such conditions as he may prescribe, if—

(1) a hearing has been held in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to the applicant; and

(3) such relief will not adversely affect the health and safety of miners in the coal mine.

JUDICIAL REVIEW

SEC. 304. (a) Any decision issued by the Secretary under sections 302(h), 302(i), 303, or 401(c) of this Act or by the Panel under sections 102 and 206(1) of this Act shall be subject to judicial review by the United States court of appeals for the circuit in which the affected mine is located, or the United States Court of Appeals for the District of Columbia Circuit, upon the filing in such court within thirty days from the date of such decision of a petition by the operator or a representative of the miners in any such mine aggrieved by the decision praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary or the Panel, as the case may be, and thereupon the Secretary or the Panel shall certify and file in such court the record upon which the decision complained of was issued, as provided in section 2112 of title 28, United States Code.

(b) The court shall hear such petition on the record made before the Secretary or the Panel, as the case may be. The findings of the Secretary or the Panel, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any decision or may remand the proceedings to the Secretary or the Panel for such further action as it may direct.

(c)(1) In the case of a proceeding to review any decision issued by the Secretary under section 303 of this Act, except a decision pertaining to an order issued under section 302(a) of this Act, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(C) such relief will not affect the health and safety of miners in the coal mine.

(2) In the case of a proceeding to review any decision issued by the Panel under sections 102 or 206(1) of this Act, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if—

(A) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief; and

(B) the person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding.

(d) The judgment of the court shall be subject to review only by the Supreme Court of the United States upon a writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the decision of the Secretary or the Panel.

(f) Subject to the direction and control of the Attorney General, attorneys appointed by the Secretary may appear for and represent him in any proceeding instituted under this section.

POSTING OF NOTICES AND ORDERS

SEC. 305. (a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine and a bulletin board at such office or at some conspicuous place near an entrance of the mine in such manner that notices and orders required by law or regulation to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice or order required by this title to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) The Secretary shall cause a copy of any notice or order or decision required by this Act to be given to an operator to be mailed immediately to a duly designated representative of miners in the affected mine, and to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine.

(c) In order to insure prompt compliance with any notice or order issued under this Act, the authorized representative of the Secretary may deliver such notice or order to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice or order.

(d) Each operator of a coal mine shall file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine and such official shall receive a copy of any notice, order, or decision issued under this Act affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health or safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

RECORDS

SEC. 306. (a) All accidents and, except in any abandoned panels or areas of an underground coal mine which are inaccessible or unsafe for inspections, all unintentional roof falls, whether or not death or injury results, shall be investigated by the operator to determine the cause and the means of preventing a recurrence. Records of such accidents and roof falls, and all ignitions, whether or not death or injury results, and records of such investigations shall be kept and such records shall be made available to the Secretary or his authorized representative and the appropriate State agency. The operator shall file with the Secretary at such intervals as he may prescribe, but at least annually, a report of all accidents, roof falls, and ignitions, together with a statement of the hours worked during such reporting period.

(b) Every operator of a coal mine and his agent shall establish and maintain, in addition to such records as are specifically required by this Act, such records and make such reports and provide such information, as the Secretary may reasonably require from time to time to enable him to perform his functions under this Act. The Secretary is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically prohibited by this Act, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this Act may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

INJUNCTIONS

SEC. 307. The Secretary may institute a civil action for relief including a permanent or temporary injunction, restraining order, or any other appropriate order, in the district court of the United States for the district in which a coal mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Surgeon General or his authorized representative, in carrying out the provisions of this Act, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident, injury, or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Surgeon General in furtherance of the provisions of this Act, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Surgeon General determines necessary in carrying out the provisions of this Act. Each court shall have jurisdiction to provide such relief as may be appropriate. In such actions, subject to the direction and control of the Attorney General, attorneys appointed by the Secretary may appear for and represent him.

PENALTIES

SEC. 308. (a)(1) The operator of a coal mine in which a violation occurs of a mandatory health or safety standard established by, or promulgated pursuant to, titles I or II of this Act, or of any other provision of this Act, shall by order be assessed a civil penalty by the Secretary which penalty shall not be less than $1 nor more than $25,000 for each occurrence of any such violation. Each occurrence of any such violation may constitute a separate offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations of health or safety standards or other such provisions, whether the operator was at fault, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance, after notification of such a violation. No penalty shall be assessed under this subsection pending the completion of proceedings for review of an order or decision under this title.

(2) Any miner who willfully violates the mandatory safety standards established by, or promulgated pursuant to, title II of this Act, relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assesesd by the Secretary, which penalty shall not be more than $1,000 for each occurrence of such violation.

(3) An order assessing a civil penalty under this subsection shall be issued by the Secretary only after the person against whom the order is issued has been given an opportunity for a hearing and the Secretary has determined by decision incorporating findings of fact based on the record of such hearing whether or not a violation did occur and the amount of the penalty, if any, which is warranted. Section 554 of title 5 of the United States Code shall apply to any such hearing and decision.

(4) If the person against whom the penalty is assessed fails to pay the penalty within the time prescribed in such order, the Secretary shall file a petition for enforcement of such order in any appropriate district court of the United States. A copy of the petition shall forthwith be sent by registered or certified mail to the respondent and to the representative, if any, of the miners in the affected mine and thereupon the Secretary shall certify and file in such court the record upon which the order sought to be enforced was issued. The petition shall designate the person against whom the order is sought to be enforced as the respondent. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Secretary or it may remand the proceedings to the Secretary for such further action as it may direct. The court shall hear the case on the record made before the Secretary and the findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Subject to the direction and control of the Attorney General, attorneys appointed by the Secretary may appear for and represent him in any action to enforce an order assessing civil penalties under this paragraph.

(b) Any operator who willfully violates a mandatory health or safety standard established by, or promulgated pursuant to this Act, or violates or fails or refuses to comply with any order issued under sections 102(f) or 302 of this Act, or any final decision issued under this title, except decisions under subsection (a) of this section or section 301(h)(3), shall, upon conviction, be punished by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both, except that if the conviction is for a violation committed after the first conviction of such person, punishment shall be by a fine of not more than $50,000, or by imprisonment for not more than five years, or both.

(c) Whenever a corporate operator (1) violates a mandatory health or safety standard established by, or promulgated pursuant to, this Act, or violates any other provision of this Act, or (2) violates, fails, or refuses to comply with an order issued under sections 102(f) or 302 of this Act or any final decision issued under this title, except a decision under subsection (a) of this section or section 301(h)(3), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statements or representations in any application, records, reports, plans, or other documents filed or required to be maintained in accordance with this Act or any mandatory health or safety standard promulgated thereunder or in connection with the violation of any such standard or any order issued under this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both.

TITLE IV—ADMINISTRATION

RESEARCH

SEC. 401. (a) The Secretary and the Surgeon General shall conduct such studies, research, experiments, and demonstrations as may be appropriate—

(1) to improve working conditions and practices, and to prevent accidents and occupational diseases originating in the coal mining industry;

(2) after an accident, to recover persons in a coal mine and to recover the mine;

(3) to develop new or improved means and methods of communication from the surface to the underground portion of the mine;

(4) to develop new or improved means and methods of reducing concentrations of respirable dust in the mine;

(5) to develop new and improved sources of power for use underground, including diesel power, which will provide greater safety; and

(6) to determine the improvement to health or safety that illumination will produce and to develop such methods of illumination by permissible lighting.

(b) The Surgeon General shall conduct studies and research into matters involving the protection of life and the prevention of diseases in connection with persons, who although not miners, work with or around the products of coal mines in areas outside of such mines and under conditions which may adversely affect the health and well-being of such persons.

(c) The Secretary is authorized to grant an operator, on a mine-by-mine basis, an exception to any of the provisions of this Act for the purpose of granting accredited engineering institutions the opportunity for experimenting with new techniques and new equipment to improve the health and safety of miners. No such exception shall be granted unless the Secretary finds that the granting of the exception will not adversely affect the health and safety of miners.

(d) The Surgeon General is authorized to make grants to any public or private agencies, institutions and organizations, and operators or individuals for research and experiments to develop effective respiratory devices and other devices and equipment which will carry out the purposes of this Act.

(e) There is authorized to be appropriated to the Secretary of the Interior such sums as will be necessary to carry out his responsibilities under this section and section 202(b) of this Act at an annual rate of not to exceed $20,000,000 for the fiscal year ending June 30, 1970, $25,000,000 for the fiscal year ending June 30, 1971, and $30,000,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year thereafter. There is authorized to be appropriated annually to the Surgeon General such sums as may be necessary to carry out his responsibilities under this section. Such sums shall remain available until expended.

TRAINING AND EDUCATION

SEC. 402. (a) The Secretary shall expand programs for the education and training of coal mine operators, agents thereof and miners in—

(1) the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in coal mines, and

(2) in the use of flame safety lamps, permissible methane detectors, and other means approved by the Secretary for accurately detecting gases.

(b) The Secretary shall, to the greatest extent possible, provide technical assistance to each operator of a coal mine in meeting the requirements of this Act and in further improving the health and safety conditions and practices at such mine.

STATE PLANS

SEC. 403. (a) In order to assist the States where coal mining takes place in developing and enforcing effective health and safety laws and regulations applicable to such mines consistent with the provisions of section 407 of this Act and to promote Federal State coordination and cooperation in improving the health and safety conditions in the Nation's coal mines, the Secretary shall approve any plan submitted under this section by such State, through its official coal mine inspection or safety agency, which—

(1) designates such State coal mine inspection or safety agency as the sole agency responsible for administering the plan throughout the State and contains satisfactory evidence that such agency will have the authority to carry out the plan;

(2) gives assurances that such agency has or will employ an adequate and competent staff of trained inspectors qualified under the laws of such State to make mine inspections within such State;

(3) sets forth the plans, policies, and methods to be followed in carrying out the plan;

(4) provides for the extension and improvement of coal mine health and safety in the State, and that no advance notice of an inspection will be provided any operator or agent of an operator of a coal mine;

(5) provides such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section;

(6) provides that the designated agency will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require; and

(7) meets additional conditions which the Secretary may prescribe by rule in furtherance of and consistent with the purposes of this section.

(b) The Secretary shall approve any State plan or any modification thereof which complies with the provisions of subsection (a) of this section. He shall not finally disapprove any State plan or modification thereof without first affording the State agency reasonable notice and opportunity for a hearing.

(c) Whenever the Secretary, after reasonable notice and opportunity for a hearing, finds that in the administration of an approved State plan there is (1) a failure to comply substantially with any provision of the State plan, or (2) a failure to afford reasonable cooperation in administering the provisions of this Act, the Secretary shall by decision incorporating his findings therein

notify such State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect.

(d) Any State aggrieved by the Secretary's decision under subsection (c) of this section may file within thirty days from the date of such decision with the United States Court of Appeals for the District of Columbia a petition praying that such action be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary, and thereupon the Secretary shall certify and file in such court the record upon which the Secretary made his decision, as provided in section 2112, title 28, United States Code. The court shall hear such appeal on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or remand the proceedings to the Secretary for such further action as it directs. The filing of a petition under this subsection shall not stay the application of the Secretary's decision, unless the court so orders.

(e) The Secretary is authorized to make grants to any State where there is an approved State plan (1) to carry out the plan, including the cost of training State inspectors; and (2) to assist the States in planning and implementing other programs for the advancement of health and safety in coal mines. Such grants shall be designed to supplement, not supplant, State funds in these areas. The Secretary shall cooperate with such State in carrying out the plan and shall, as appropriate, develop facilities for, and finance a program of, training of Federal and State inspectors jointly. The Secretary shall also cooperate with such State in establishing a system by which State and Federal inspection reports of coal mines located in the State are exchanged for the purpose of improving health and safety conditions in such mines.

(f) The amount granted to any State for a fiscal year under this section shall not exceed 80 per centum of the sum expended by such State in such year for carrying out the State coal mine health and safety enforcement program.

(g) There is authorized to be appropriated $3,000,000 for fiscal year 1970 and $5,000,000 annually in each succeeding fiscal year to carry out the provisions of this section which shall remain available until expended. The Secretary shall provide for an equitable distribution of sums appropriated for grants under this section to the States where there is an approved plan. The Secretary shall coordinate with the Secretaries of Labor and Health, Education, and Welfare in making grants under this section.

RELATED CONTRACTS AND GRANTS

SEC. 404. In carrying out the provisions of sections 201(b), 401, and 402 of this Act, the Secretary and the Surgeon General may enter into contracts with, and make grants to, public and private agencies and organizations and individuals.

INSPECTORS; QUALIFICATIONS; TRAINING

SEC. 405. The Secretary may, subject to the civil service laws, appoint such employees as he deems requisite for the administration of this Act and prescribe their duties. Persons appointed as authorized representatives of the Secretary shall be qualified by practical experience in the mining of coal or by experience as a practical mining engineer or by education. Persons appointed to assist such representatives in the taking of samples of dust concentrations for the purpose of enforcing title I of this Act shall be qualified by training or experience. The provisions of section 201 of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251, 270) shall not apply with respect to the appointment of such authorized representatives of the Secretary or to persons appointed to assist such representatives, and, in applying the provisions of such section to other agencies under the Secretary and to other agencies of the Government, such appointed persons shall not be taken into account. Such persons shall be adequately trained by the Secretary. The Secretary shall develop programs with educational institutions and operators designed to enable persons to qualify for positions in the administration of this Act. In selecting persons and training and retraining persons to carry out the provisions of this Act, the Secretary shall work with appropriate educational institutions, operators, and representatives of employees in developing adequate programs for the training of persons, particularly inspectors. Where appropriate, the Secretary shall cooperate with such institutions in carrying out the provisions of this section by providing financial and technical assistance to such institutions.

ADVISORY COMMITTEE

SEC. 406. (a)(1) The Secretary shall appoint an advisory committee on coal mine safety research composed of—

(A) the Director of the Office of Science and Technology or his delegate, with the consent of the Director;

(B) the Director of the National Bureau of Standards, Department of Commerce, or his delegate, with the consent of the Director;

(C) the Director of the National Science Foundation or his delegate, with the consent of the Director; and

(D) such other persons as the Secretary may appoint who are knowledgeable in the field of coal mine safety research.

The Secretary shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Secretary on matters involving or relating to coal mine safety research. The Secretary shall consult with and consider the recommendations of such committee in the conduct of such research, the making of any grant, and the entering into of contracts for research.

(3) The chairman of the committee and a majority of the persons appointed by the Secretary pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(b)(1) The Surgeon General shall appoint an advisory committee on coal mine health research composed of—

(A) the Director, Bureau of Mines, or his delegate, with the consent of the Director;

(B) the Director of the National Science Foundation or his delegate, with the consent of the Director;

(C) the Director of the National Institutes of Health or his delegate, with the consent of the Director; and

(D) such other persons as the Surgeon General may appoint who are knowledgeable in the field of coal mine health research.

The Surgeon General shall designate the chairman of the committee.

(2) The advisory committee shall consult with, and make recommendations to, the Surgeon General on matters involving or relating to coal mine health research. The Surgeon General shall consult with and consider the recommendations of such committee in the conduct of such research, the making of any grant, and the entering into of contracts for research.

(3) The chairman of the committee and a majority of the persons appointed by the Surgeon General pursuant to paragraph (1)(D) of this subsection shall be individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(c) The Secretary or the Surgeon General may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. The Secretary or the Surgeon General, as the case may be, shall appoint the chairman of each such committee, who shall be an individual who has no economic interests in the coal mining industry, and who is not an operator, miner, or an officer or employee of the Federal Government or any State or local government. A majority of the members of any such advisory committee appointed pursuant to this subsection shall be composed of individuals who have no economic interests in the coal mining industry, and who are not operators, miners, or officers or employees of the Federal Government or any State or local government.

(d) Advisory committee members, other than employees of Federal, State, or local governments, while performing committee business shall be entitled to receive compensation at rates fixed by the Secretary or the Surgeon General, as the case may be, but not exceeding $100 per day, including travel time. While so serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

EFFECT ON STATE LAWS

SEC. 407. (a) No State law in effect upon the effective date of this Act or which may become effective thereafter shall be superseded by any provision of this Act or order issued or standard established or promulgated thereunder, except insofar as such State law is in conflict with this Act or with any order issued or standard established or promulgated pursuant to this Act.

(b) The provisions of any State law or regulation in effect upon the effective date of this Act, or which may become effective thereafter, which provides for more stringent health and safety standards applicable to coal mines than do the provisions of this Act or any order issued or standard established or promulgated thereunder shall not thereby be construed or held to be in conflict with this Act. The provisions of any State law or regulation in effect upon the effective date of this act, or which may become effective thereafter, which provide for health and safety standards applicable to coal mines for which no provision is contained in this Act or any order issued or standard established or promulgated thereunder, shall not be held to be in conflict with this Act.

(c) Nothing in this Act shall be construed or held to supersede or in any manner affect the workmen's compensation laws of any State, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under State laws in respect of injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

ADMINISTRATIVE PROCEDURES

SEC. 408. Except as otherwise provided in sections 201 (d), 303 and 308(a) of this Act, the provisions of sections 551–559 and sections 701–706 of title 5 of the United States Code, shall not apply to the making of any order or decision pursuant to this Act, or to any proceeding for the review thereof.

REGULATIONS

SEC. 409. The Secretary, the Surgeon General, and the Panel are authorized to issue such regulations as each deems appropriate to carry out any provisions of this Act.

ECONOMIC ASSISTANCE

SEC. 410. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (4) a new paragraph as follows:

"(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern operating a coal mine in effecting additions to or alterations in the equipment, facilities, or methods of operation of such mine to requirements imposed by the Federal Coal Mine Health and Safety Act of 1969, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of such Act is amended by inserting "or (5)" after "paragraph (3)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(5)," after "7(b)(4),".

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

TITLE V—INTERIM EMERGENCY COAL MINE HEALTH DISABILITY BENEFITS

PURPOSE

SEC. 501. Based on a recent study conducted by the United States Public Health Service, Congress finds and declares that there are a significant number of inactive coal miners living today who are totally disabled and unable to be gainfully employed due to the development of complicated pneumoconiosis while working in one or more of the Nation's coal mines; that there also are a number of surviving widows and children of coal miners whose death was attributable to this disease; that few States provide benefits for disability from this disease to inactive coal miners and their dependents; and that, in order to give the States time to enact laws to provide such benefits or to improve those laws where token or minimal benefits are provided, it is, therefore, the purpose of this title to provide, on a temporary and limited basis, interim emergency health disability benefits, in cooperation with the States, to any coal miner who is totally disabled and unable to be gainfully employed on the date of enactment of this Act due to complicated pneumoconiosis which arises out of, or in the course of, his employment in one or more of the Nation's coal mines; to the widows and children of any coal miner who, at the time of his death, was totally disabled and unable to be gainfully employed due to complicated pneumoconiosis arising out of, or in the course of, such employment; and to develop further and detailed information and data on the extent to which past, present, and future coal miners are or will be totally disabled by complicated pneumoconiosis and unable to be gainfully employed, on the extent to which assistance to such miners and their dependents is needed, and the most effective method for assuring such assistance.

INTERIM DISABILITY BENEFIT STANDARDS

SEC. 502. The Secretary of Health, Education and Welfare (hereinafter referred to in this title as "the Secretary") shall develop and promulgate interim disability benefit standards governing the determination of persons eligible to receive emergency coal mine health disability benefits under this title and the methods and procedures to be used in disbursing such benefits to such persons. Such standards shall take into consideration the length of employment in coal mines considered sufficient to establish a claim for such benefits; reasonable and equitable means, methods, and procedures for filing and establishing proof of disability, consistent with the purpose of this title, by the coal miner or, as appropriate, his survivor to enable such person to receive benefits as soon as possible after enactment of this Act; and such other matters as the Secretary deems appropriate. Such standards shall be effective upon publication in the Federal Register, unless the Secretary prescribes a later date which date shall not be more than ninety days after the operative date of this title. The provisions of section 553 of title 5 of the United States Code shall apply to the promulgation of such standards.

ASSISTANCE TO STATES

SEC. 503. (a) Upon publication of the interim disability standards by the Secretary under this title, the Secretary shall enter into agreements with any State pursuant to which he shall provide financial assistance, in accordance with the provisions of this title, to the States to carry out the purpose of this title, and the States shall receive and adjudicate, in accordance with such standards, claims for interim emergency coal mine health disability benefits from any eligible person who is a resident of such State. Such State shall also agree to pay one-half of such benefits during the fiscal years ending June 30, 1972, and June 30, 1973. Such agreements shall, in addition to such other conditions as the Secretary deems appropriate, include adequate assurances that the State shall provide such fiscal control and fund accounting procedures as may be appropriate to assure proper disbursement and accounting of grants made to the State under this section; and that the State will make such reports to the Secretary, in such form and containing such information, as the Secretary may from time to time require.

(b) Beginning after the effective date of any agreement entered into with a State under this section and ending on June 30, 1973, the Secretary, subject to the provisions of this section shall, from sums available therefor for any fiscal year, make grants to such State equal to the estimated sums needed by such State to pay all such benefits to eligible persons through June 30, 1971, and to pay one-half of such benefits to eligible persons during the fiscal years ending June 30, 1972, and June 30, 1973. No benefits shall be paid under this section to an eligible person if the State, after the enactment of this Act, reduces the benefits for disability caused by complicated pneumoconiosis to which such person is otherwise entitled under such State's laws or regulations. Benefits paid to an eligible person under this section shall be reduced by an amount equal to any payment made to such person under any other provision of law for a disability directly caused by complicated pneumoconiosis arising out of, or in the course of, employment in one or more of the Nation's coal mines.

(c) Interim emergency coal mine health disability benefits shall be paid under this section to persons determined by the State pursuant to such standards to be eligible to receive such benefits. Such benefits shall be paid as soon as possible after a claim is filed therefor and eligibility determined, except that such benefits shall terminate when such person is no longer eligible, or on June 30, 1973, whichever date is first. The amount of benefits payable to an eligible person under this section shall be determined as follows:

(1) In the case of total disability, such eligible person shall be paid benefits during the period of such disability up to a rate equal to 50 per centum of the minimum monthly payment to which an employee in grade GS-2 with one or more dependents, who is totally disabled, is entitled under the provisions of sections 8105 and 8110 of title 5, United States Code;

(2) In the case of the death of a miner resulting from such disease, an eligible widow shall be paid benefits at the rate the deceased miner would be entitled to receive such benefits if such miner were totally disabled until such widow dies or remarries; and

(3) In the case of any eligible person entitled to benefits under clauses (1) or (2) of this subsection who has one or more dependents, such benefits shall be increased at a rate of 50 per centum of the benefits to which such person is entitled under clauses (1) or (2) of this subsection, if such person has one dependent, 75 per centum, if such person has two dependents, and 100 per centum, if such person has three dependents; except that such increased benefits for a child, brother, sister, or grandchild, shall cease if such dependent dies or marries or becomes eighteen years of age, or if over age eighteen and incapable of self-support becomes capable of self-support.

(d) There is hereby authorized to be appropriated from funds in the Treasury for the fiscal year ending June 30, 1970, not to exceed $10,000,000, and for the fiscal year ending June 30, 1971, not to exceed $30,000,000, and for the fiscal years ending June 30, 1972, and June 30, 1973, not to exceed $15,000,000 annually for the purposes of this title. If the amounts appropriated for any fiscal year are less than the amounts necessary to enable the Secretary to make the full amount of grants to all States which have entered into agreements with him under this title, the grants to each State for such fiscal year, and the payments to eligible persons required to be made during such fiscal year under such agreements, shall be proportionately reduced.

STUDY

SEC. 504. The Secretary shall immediately undertake a study to determine the extent to which coal miners are or will be totally disabled due to complicated pneumoconiosis developed during the course of employment in the Nation's coal mines and unable to be gainfully employed; the extent to which the States provide benefits to active and inactive coal miners and their dependents for such disability; the adequacy of such benefits, the need for, and the desirability of, providing any Federal, State, or private assistance for such disability; the need for, and the desirability of, extending the provisions of this title for persons eligible for benefits under this title; and such other facts which would be helpful to the Congress following completion of this study, as the Secretary deems appropriate. In carrying out this study, the Secretary shall consult with, and, to the greatest extent possible, obtain information and comments from, the Secretary of the Interior, the Secretary of Labor, and other interested Federal agencies, the States, operators, representative of the miners, insurance representatives, and other interested persons. The Secretary shall submit a report on such study, together with such recommendations, including appropriate legislative recommendations, as he deems appropriate, to the Congress not later than October 1, 1970.

TITLE VI—MISCELLANEOUS

JURISDICTION; LIMITATION

SEC. 601. In any proceeding in which the validity of any interim mandatory health or safety standard set forth in this Act is in issue, no justice, judge, or court of the United States shall issue any temporary restraining order or preliminary injunction restraining the enforcement of such standard pending a determination of such issue on its merits.

OPERATIVE DATE AND REPEAL

SEC. 602. The provisions of titles I through III and title V of this Act shall become operative one hundred and twenty days after enactment. The provisions of the Federal Coal Mine Safety Act, as amended, are repealed on the operative date of those titles, except that such provisions shall continue to apply to any order, notice, or finding issued under

that Act prior to such operative date and to any proceedings related to such order, notice, or finding. All other provisions of this Act shall be effective on the date of enactment of this Act.

SEPARABILITY

SEC. 603. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORTS

SEC. 604. Within one hundred and twenty days following the convening of each session of Congress, the Secretary and the Surgeon General shall submit through the President to the Congress separate annual reports upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of coal mine health and safety, and any other relevant information, including any recommendations either deems appropriate.

Mr. WILLIAMS of New Jersey. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay it on the table was agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized, in the engrossment of the bill, to correct any technical or clerical errors.

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

Mr. WILLIAMS of New Jersey. I also ask unanimous consent that Senators may add remarks for the RECORD within 5 days.

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

Mr. MANSFIELD. Mr. President, while I was unable to attend the opening sessions of the debate on this measure which is designed to up-date our coal mine industry and provide miners with long-needed protection, it was with great pleasure that I witnessed the highly thoughtful debate today. The overwhelming passage of this measure represents a splendid achievement for the miners of our Nation.

Much of the credit, I must say, belongs to the distinguished Senator from New Jersey (Mr. WILLIAMS). All of us appreciate the long hours he devoted to preparing this measure both in committee and while it was pending before the Senate. The high caliber of that preparation was exhibited in the wide acceptance of the proposal. We are grateful.

Our thanks go also to the distinguished senior Senator from New York (Mr. JAVITS) who joined constructively and with characteristic cooperation to assure this fine success. Other Senators played vital roles, as well. Noteworthy was the contribution of the distinguished Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD). Representing a great mining State they understand well the grave problems of unsafe mines and mining operations. They contributed immensely to the discussion.

Of course, the distinguished senior Senator from Kentucky (Mr. COOPER) must be singled out for his contribution. Though his views differed to some extent with some features of the proposal, he urged his position with great advocacy and the deep sincerity which was always welcome. The same may be said for his colleague, the distinguished junior Senator from Kentucky (Mr. COOK). The Senator from Vermont (Mr. PROUTY) also deserves our gratitude for his contribution to the discussion and for cooperating to assure final disposition with such efficiency.

Finally, I wish to thank all Members of the Senate for their cooperation. I think each of us may take great pride in the passage of this measure. We have gone on record unequivocally in support of this great issue.

Mr. RANDOLPH. Mr. President, by a unanimous vote, the Members of the U.S. Senate have committed themselves to improve the health and safety of the coal miners of the United States. As one of the Senators representing West Virginia, the State with the greatest tonnage of coal produced annually and the one with the largest number of miners employed in the production of that coal, I wish to express my personal and official appreciation to my colleagues in the Senate, and, especially, to my fellow members of the Committee on Labor and Public Welfare. I commend the able chairman of the Committee on Labor and Public Welfare (Mr. YARBOROUGH) and I am grateful beyond expression of words for the attention given to this vital subject by our tireless and diligent colleague from New Jersey (Mr. WILLIAMS), the chairman of the Subcommittee on Labor, who has spent many, many hours, days, and weeks managing this vital legislation in subcommittee, in full committee, and in this forum. He had excellent cooperation by his majority colleagues.

My words of commendation for him go equally to the very able Senator from New York (Mr. JAVITS), the ranking minority member of both the Committee on Labor and Public Welfare and of the Subcommittee on Labor, and to his colleagues on the minority side.

We wrote, within the subcommittee and the committee, and now we have successfully completed in the Senate itself, a bill which I believe will enhance very much the health and safety of the Nation's coal miners. It is legislation which, although very stringent and very strict in its provisions, and likely to be very expensive to administer and to comply with, should be effective and workable. This is very important not only to those who operate the mines and to the workers in the mines, but also to people generally in the United States.

This measure is in no wise a timid contribution to the strengthening of industrial safety. It is a commitment, as I stated in my first sentence—a commitment by this Congress to a job that needed to be done. It is my hope that, in conference with the House of Representatives, after a companion measure has been passed there, we can resolve as quickly as possible the differences between the measures, and place upon the desk of the President of the United States legislation important not only to miners and operators, but to the well being of the consuming public of the United States as well.

I conclude by associating myself with Chairman WILLIAMS' appropriate and thoroughly justified words of appreciation and commendation for the able and dedicated staffs of the Subcommittee on Labor and of the full Committee on Labor and Public Welfare. They performed admirably under stress and with loyalty to the cause of better health and safety for coal miners—a cause for which we were all working with devotion. I likewise commend the members of committee members' staffs for their very real assistance.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I shall just be 30 seconds. I appreciate everything that the Senator from West Virginia has just said about me. I know that the Senator from New Jersey (Mr. WILLIAMS) feels the same way. We could not have accomplished this effort without the work of the Senators from the coal-mining States, the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD), the Senator from Kentucky (Mr. COOPER), and his tremendous fight for the operators of the nongassy mines in the mountains of eastern Kentucky, the Virginia Senators, and others who had the expertise. Senator WILLIAMS and I were the objective fellows who found the facts and worked out a bill, but I wanted at this point to pay my tribute to the Senators from the coal-mining States.

Mr. YARBOROUGH. Mr. President, I want to thank the distinguished Senator from New Jersey for his leadership on this bill. I am proud to report that this is the second safety bill, to protect American labor, to come out of the Labor Subcommittee this year, under the chairmanship of the distinguished Senator from New Jersey (Mr. WILLIAMS)—first the construction safety bill, and now the mine safety bill. These are two notable productions of that subcommittee. Despite the fact that some people say Congress is not moving, Mr. President, I say that the Senate is moving, and we have gotten through two of the most important safety bills for the benefit of workers in this country in many years.

The passage of this bill has been accomplished with the cooperation, as has been stated, of the Senator from New York (Mr. JAVITS), the ranking minority member of the committee, and the Senators from the coal-producing States, notably the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Pennsylvania (Mr. SCHWEIKER), who coming as he does from the coal-mining State of Pennsylvania, was very active.

Mr. President, in the midst of our deliberations on this bill, word was spread through the news media to the effect that the people, the workers in the mines and the coal producers, had lost interest, and nobody wanted the bill. Nevertheless, the committee and the subcommittee, and then the Senate, moved ahead with this measure to protect these coal miners from black lung and other such ailments. I wish to thank the mem-

bers of the subcommittee and every member of my Committee on Labor and Public Welfare for their excellent efforts. Week after week, while this matter was under consideration, we always had a quorum present.

Several Senators addressed the Chair.

Mr. BYRD of West Virginia. Mr. President, I wish to compliment the able Senator from New Jersey (Mr. WILLIAMS) on the splendid and effective manner in which he has managed the coal mine safety bill, and to express my appreciation for the diligence and the dedicated effort that he has put into the tedious and tiring deliberations on this measure over a long period of many months. At all times he has been very sympathetic, patient, and understanding. He has worked very hard.

I wish also to commend the able Senator from New York (Mr. JAVITS) on the very fine and sincere work that he has contributed. He truly has been most helpful and cooperative, and very effective. I commend all the other Senators who have worked so long on this very difficult measure. Especially, I would commend my colleague (Mr. RANDOLPH) who has lived so closely with this legislation from the beginning. He has certainly given his best.

My part in the measure, Mr. President, was confined almost entirely to the compensation amendment, which the Senate adopted on Tuesday by a vote of 91 to 0. I am not a member of the committee, but I did cosponsor that amendment with Mr. RANDOLPH and others, and I feel that my efforts in behalf of that amendment were of some assistance. I am happy, again, Mr. President, to commend the Senators who have worked so long and so hard on this very difficult and important bill, especially those on the committee.

Mr. SPONG. Mr. President, as a Senator from a coal-producing State, I would like to associate myself with the remarks of commendation made regarding the Senator from New Jersey (Mr. WILLIAMS) and the Senator from New York (Mr. JAVITS) for their efforts resulting in the unanimous adoption of a Coal Mine Health and Safety Act. In behalf of the coal miners of Virginia, I thank the floor managers of the bill and the other Senators who have labored so long on this legislation.

I have had recent opportunity to talk with Virginia miners—some of them victims of accidents, others of lung disease resulting from their occupation.

The Senate has taken a step today toward improving the conditions for safety in the mines and reducing the chances for contraction of pneumoconiosis by workers in the coal mines.

Mr. KENNEDY. Mr. President, I congratulate the Senator from New Jersey (Mr. WILLIAMS) for his outstanding leadership as he has led this important legislation through to passage today. His activities, and the final result today, are very impressive. I commend, as well, the Senator from New York (Mr. JAVITS), the Senator from Kentucky (Mr. COOPER), the Senator from Vermont (Mr. PROUTY), and the Senators from West Virginia (Mr. RANDOLPH and Mr. BYRD).

CIVIL SERVICE RETIREMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 333, S. 2754.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 2754) to amend subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. MANSFIELD. Mr. President, with the concurrence of the distinguished chairman of the committee, I should like to yield at this time to the distinguished minority leader.

LEGISLATIVE PROGRAM

Mr. SCOTT. Mr. President, may I ask the distinguished majority leader what is the order of business from here on out? What is to be done on the pending measure, and what does the majority leader plan thereafter?

Mr. MANSFIELD. Mr. President, in response to the questions raised by my distinguished colleague, the minority leader, there is a hope—how good it is I do not know—that we might be able to finish the pending business tonight. Whether or not we finish it tonight or tomorrow, it will be followed by the John F. Kennedy Center bill, Calendar No. 316, and that, in turn, will be followed by the District of Columbia revenue bill, Calendar No. 427, and that in turn by S. 7, Calendar No. 346, the water pollution control bill.

It is anticipated that either tonight or tomorrow morning, we will bring up for reconsideration the Peace Corps measure, which I understand has been cleared all around.

That, to the best of my knowledge, is the situation as we see it.

Mr. SCOTT. I thank the distinguished majority leader.

CIVIL SERVICE RETIREMENT

The Senate resumed the consideration of the bill (S. 2754) to amend subchapter III of chapter 83 of title V, United States Code, relating to civil service retirement, and for other purposes.

Mr. McGEE. Mr. President, I sent to the desk amendments to the pending measure, S. 2754, and ask unanimous consent that the amendments be agreed to en bloc. These are perfecting amendments in language, or updating of dates, recommended by the administration, and have nothing to do with the substance or any controversial parts of the bill. I ask unanimous consent that they be agreed to en bloc.

The PRESIDING OFFICER. The clerk will state the amendments.

The assistant legislative clerk proceeded to read the amendments.

Mr. McGEE. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments will be printed in the RECORD.

The amendments are as follows:

On page 8, line 7, change the section designation from "SEC. 201." to "SEC. 201. (a)".

On page 8, line 12, strike out the words "period of" and insert in lieu thereof the word "total".

On page 8, line 12, insert the following new subsection "(b)":

"(b) Subsection (c) of section 8333 of title 5, United States Code, is amended to read as follows:

"(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of title have been deducted or deposited with respect to his last five years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this chapter, with respect to his total service."

On page 12, in lines 1 and 16, strike out the word "consecutive".

On page 14, beginning on line 6, strike out all down through line 14 and insert in lieu thereof the following:

"(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment is receiving an annuity under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

Mr. McGEE. Mr. President, the pending legislation relates to civil service retirement.

The PRESIDING OFFICER. The Chair would inquire of the Senator from Wyoming if he wishes that these amendments be agreed to prior to his presentation.

Mr. McGEE. If that is in order, Mr. President.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

The Senator from Wyoming may proceed.

Mr. McGEE. Mr. President, this legislation is a result of neary 3 years of careful study and recommendation by the Committees on Post Office and Civil Service to enact legislation resolving the financial difficulties of the civil service retirement and disability fund and to make certain improvements in the benefits offered employees of the Federal Government through the retirement plan.

Each Senator has on his desk a copy of the public hearings which our Subcommittee on Retirement held on this legislation, as well as a copy of the committee report recommending enactment; so I will not dwell at length on the intricacies of the bill except to describe briefly the major purposes involved.

Title I relates to resolving the long-standing problem of adequately financing the civil service retirement system. Ever since its creation in 1920, the system has had a financial liability which was not properly funded. This was caused originally by permitting credit for all civil service performed prior to August 1, 1920, and it has over the years accumulated a total unfunded liability of

$57.7 billion. It is "unfunded" because the amount of money collected from the employees and contributed by the Government, when invested at interest, will not pay the debt which the Government owes to all employees.

Let me point out that none of this liability results from any failure on the part of our civil service employees to pay their share. They have always paid whatever the law required, originally 2.5 percent of their gross salary, and now 6.5 percent of their gross salary.

The liability is solely the result of the Government's failure to live up to its part of the bargain. In the early years, no money was contributed by the Government to the fund. After 1928 the amount contributed was not sufficient to meet fully the future costs, and it was not until 1957 that Congress by law required agency contributions at a rate equal to the employee's contribution. So all that time, the fund lost earnings on money that would have been invested had it been contributed by the Government, and we call that the "lost interest on the unfunded liability." In addition, changes in the retirement law, statutory salary increases, inclusions of new groups of employees, and other liberal changes in the law create additional unfunded liability because no contribution is made to pay the cost of crediting past service.

Title I seeks to resolve this problem permanently. In the first place, the lost interest on the unfunded liability as well as the amount of annual annuity payments based on military service will be paid directly from the Treasury into the retirement fund. To soften the impact upon the budget, we will start at 10 percent and gradually move up to full payment over a 10-year period. By fiscal year 1980, the Treasury will pay directly to the fund approximately $3 billion each year, and at that time the unfunded liability will cease to grow any larger on account of the loss of interest.

Second, title I authorizes the Congress to appropriate each year whatever amount of money is necessary to prevent an increase in the unfunded liability resulting from statutory changes in the retirement law or salary increases which affect the future liability of the fund. These payments would be amortized over a 30-year period at a level rate. At the end of 30 years, the payments would come to an end and because of the payments, the unfunded liability would not have increased.

That is title I in a nutshell. Our committee has worked for several years on this problem. The status of the fund has been a serious problem. We must act now to insure the future stability of the retirement program so that those who retire from the Federal service will never have their annuities jeopardized. The Bureau of the Budget, the Civil Service Commission, the House of Representative's Committee on Post Office and Civil Service, all of the members of the House Appropriations Subcommittee on Independent Offices, and the Senate Committee on Post Office and Civil Service endorse and support this remedy for the unfunded liability.

The requirement that the Treasury pay the annual cost of crediting military service for civil service retirement purposes was given our very careful consideration. The idea first arose some years ago when the then chairman of the Senate committee, Senator Olin Johnston, recommended that the Department of Defense be required to reimburse the fund for the military service added to an employee's retirement credit. Our committee considered that proposal and we also considered charging the cost to the Veterans' Administration. But in the last analysis, we determined that the cost for military service should not be borne by any one agency of the Government. It is a benefit to those who have served in the Armed Forces, which is a general responsibility of the Government. Originally, Congress' idea was to credit such service for men who had their career in the Federal civil service interrupted on account of war. Congress deemed that they should not lose retirement credit under such circumstances if they returned to the Government and retired on a civil service annuity. There are thousands of employees in those circumstances; but there are also thousands of employees whose career was military rather than civilian, and who retire after 30 years in the Army or the Navy, and come into the civil service. Subsequently, after 5 years' civilian service, they may be eligible to retire and have their entire military service credited toward civil service retirement if they give up their military retired pay, or if they were retired from the military on account of a combat-connected disability.

The result is that nonveteran employees pay a portion of their contribution for a retirement benefit which they do not receive and which in many cases will pay a retirement benefit to a retired officer or enlisted man who spent 20 or 25 or 30 years in the Armed Forces. I am sure my colleagues have heard a number of complaints from constituents concerning this particular quirk in the law. With that in mind, our committee recommends that the Government generally pay this cost, that it not be charged to the Army or the Navy or the Veterans' Administration or the retirement fund itself. As in the case of the interest on the unfunded liability, the impact of the payment would be softened by amortizing it over a 10-year period, beginning at about $9.5 million and increasing to about $195 million over a 10-year period.

Finally, Mr. President, title I increases the amount of contribution by employees and each agency of the Government. Presently, employees, including congressional employees, pay 6.5 percent of the gross annual pay into the retirement program, and each agency contributes 6.5 percent of its payroll into the system. Members of Congress pay 7.5 percent of their annual salary, and an equal amount is contributed by the appropriations available for congressional operations.

Under the new rate, each employee will contribute 7 percent of pay, effective in January 1971, each congressional employee will contribute 7.5 percent, and each Member will contribute 8 percent. The total additional contribution into the system will be about $240 million a year, based on next year's payroll. The total contribution will be 14 percent, and the total cost of the program after the effective date of the amendments in title II, will be 13.98 percent of payroll.

Title II makes certain very basic changes in the Civil Service Retirement Act to improve the system. Five of these were included in the bill which passed the House a couple of weeks ago:

First, changing the high 5 to the high 3 for computing civil service annuities;

Second, including accumulated sick leave as service for an employee who retires with sick leave to his credit;

Third, adding 1 percent to the cost-of-living adjustments for annuitants which are made from time to time on the basis of Consumer Price Index.

Fourth, permits the widow of a Federal employee who died or retired before the act of July 18, 1966, to remarry and continue to receive her annuity if she is past 60 years of age; and

Fifth, permits an employee of the Congress to receive the 2.5-percent computation formula for all years of service. He would pay an additional 1 percent for this improved formula.

In addition to these changes the Senate bill exempts up to $3,000 of civil service annuity from Federal income taxation, and improves the survivor annuity protection for employees or disability-retired employees.

Some of these features are well known to all Members. Changing the high 5 to the high 3 is an effort to make more relevant the annuity which an employee receives in relation to the salary he was receiving at the time of his retirement. There is not anything magic about the high 5. It has been in the law for 39 years, and it is time to recognize that retirement annuities should be as closely related to the standard of living the employee was purchasing and enjoying at the time of his retirement as we can make them.

Adding sick leave to an employee's retirement credit resolves a very basic problem, because although employees are paid for their accumulated annual leave at the time of retirement, they give up all of their sick leave. One result is that employees tend to call in sick quite frequently in the last year or two before they retire. When an employee retires on disability, it is standard practice to use up all of his sick leave before leaving office. So the Government pays at full value for accumulated sick leave in many cases. In other cases, an employee who has enjoyed good health and good conscience gives up 2,000 hours or so of accumulated sick leave for which he receives no credit or compensation.

The additional 1-percent adjustment in annuities recognizes that our national productivity continues to increase, and that there is more to maintaining a reasonable standard of living after retirement than just chasing after the consumer price indicators.

The change in the retirement computation for the employees of the Congress makes their retirement computation identical to that of Members of Congress—2.5 percent for congressional serv-

ice, and 2.5 percent for up to 5 years of military service. For this they will pay an extra 1 percent each year.

The exclusion of up to $3,000 of civil service annuities from Federal income taxation is a goal that retired civil service employees have sought for many years. It is just hard to explain to people back home that civil service annuities are taxed as ordinary income, while social security is tax free, railroad retirement is tax free, and income from investments on municipal bonds is tax free. That does not create a very good impression upon a retired civil service employee who is trying to get by on $2,000 or $3,000 a year and is paying taxes on it. This is an amendment to the Civil Service Retirement Act and is very similar, except for the dollar amount, to the bill, S. 2087, which I introduced on May 8, 1969, and which was referred to the Committee on Post Office and Civil Service.

This exclusion of up to $3,000 would be in lieu of the retirement credit now provided by the Internal Revenue Code. Under that law, any pension or annuity payment which is not taxed must be subtracted from the retirement credit. The effect of our amendment, therefore, would be to replace the retirement credit for civil service annuitants only, thus giving them a tax benefit equal to the difference between the $3,000 exclusion and the tax credit they now receive, which is now a maximum of $228. The impact on revenue would not be substantial because retired employees past 65 who are married to a spouse past 65 have very little taxable income anyway.

Finally, the bill revises very substantially the survivor annuity benefits for a widow of a Federal employee who dies or who has retired on account of physical disability and thereafter dies.

Under existing law, the widow and children of an employee who has less than 5 years' service receives no benefit at all if her husband dies. If an employee has 5 years of service, his widow is entitled to a percentage of his earned annuity; and since civil service retirement is a system based on long service and average salary, the earned annuity of a young employee is very small. After 10 years, his earned annuity is just 16¼ percent of his average salary. After 20 years, it is just 36¼ percent of his average salary; and when you give the widow 55 percent of that, she will not get rich. The examples cited on pages 6 and 7 of the committee report indicate how drastic the financial impact of the death of a short-term employee is upon his wife and children.

For some time our committee has attempted to work out legislation acceptable to all to provide for a transfer of credit between civil service retirement and social security. Nothing acceptable has been developed. We shall continue that effort, but in the meantime, we must resolve the problem for the survivors now. Our bill does this, and I think it is a most significant improvement in the retirement program.

The amendments provide that when an employee dies after completing 18 months' service under the Civil Service Retirement Act, he has a vested annuity for survivor annuity purposes only. His widow is entitled to at least 55 percent of 40 percent of his average salary or 55 percent of his annuity projected to age 60, whichever is less; and his children would be entitled to the lesser of $900, 60 percent of his average salary divided by the number of children, or $2,700 divided by the number of children. The effect of our amendments are to make very substantial improvements in the survivor annuity protection offered an employee who has at least 18 months' service, but not more than 22 years of service. This is where the retirement program for civil service employees is now gravely deficient and that is where we have aimed our corrections.

The cost of the bill as reported from the committee is about $205 million in direct transfer from the Treasury to the civil service retirement fund in the coming fiscal year, that is fiscal year 1971. The normal cost of the system is increased by about one-fifth of 1 percent of Federal payroll. One percent of Federal payroll was about $22 billion as of June 30, so the extra cost which, of course, will be fully paid for under the financing portion of the bill is $44 million a year. That is $2 million a year less than the provision of the bill passed by the House of Representatives. The difference relates primarily to changing the method of financing military service credit.

The unfunded liability of the system would be increased by $1.4 billion as a result of the liberalizations in title II, but the overall liability of the fund would be reduced because of the direct Treasury funding for military service credit. The net result would be a decrease in the liability of the fund of about $3.3 billion.

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

Mr. McGEE. I yield.

Mr. FONG. Mr. President, I congratulate the distinguished Senator from Wyoming for his leadership in bringing to the Senate this very constructive bill. This bill really stabilizes, for the first time, the retirement system and assures that our civil service employees will be paid in the future. It also adds a few changes to the law that are very desirable.

Mr. President, the Civil Service Retirement Amendments of 1969, contained in S. 2754 and presently under debate, contains critical and very necessary changes in the U.S. civil service retirement system and fund. The bill was reported out unanimously by the Senate Committee on Post Office and Civil Service.

I strongly urge my Senate colleagues to approve the proposed legislation.

For 22 years the U.S. Civil Service Commission has urged Congress to approve legislation eliminating or stabilizing the Federal retirement fund's unfunded liability. The Senate report on S. 2754 explains in detail the reasons for this huge deficit, now totaling $61,000,000,000, and the committee's proposal to correct the present intolerable situation which if allowed to continue will bankrupt the Federal retirement fund in 18 years.

The Federal retirement fund was established in 1920 to provide retirement income for all Federal employees. The initial employee contribution of 2½ percent was to be matched by Federal Government contribution of an equal amount. The 2½ percent employee-agency contribution was increased periodically until in 1956 the present 6½-percent contribution rate became effective. During the entire history of the Federal retirement system, all Federal employee contributions have been paid in full and have approximated one-half the normal cost.

In contrast to the specific requirements for employee contributions, the act, prior to 1958, stated in effect that the Federal Government's share would be financed by the submission of appropriation estimates to Congress necessary to finance the system and to continue the act in full force and effect. As a result, a number of different methods were employed over the 48 years the plan has been in existence to take care of the Government's contributions.

During the first 8 years of the plan, no agency appropriations were enacted and benefit disbursements were financed entirely by employee contributions. From 1929 to the end of World War II, although Government contributions were generally recommended by the President in amounts sufficient to cover normal costs and to amortize the unfunded liability then existing, the amounts actually appropriated varied. Congress enacted lower appropriations than those recommended by the President on five occasions, higher amounts twice, and on one occasion approved the full amount requested by the President in his budget.

In 1958, the present funding procedures were enacted. Under it, each Federal agency contributes to the fund from its appropriations for payment of salaries, amounts equal to deductions from the salaries of its employees for retirement at the rate of 6½ percent. This achieved the objective of assuring annual income approximating normal cost. However, these contributions failed to meet fully the Government's portion of retirement costs because it did nothing to reduce the unfunded liability caused by insufficient appropriations in previous years.

A review of the system shows that the major causes for the present unfunded liability of approximately $61 billion have been: First, creditable service for which neither the employee nor the employer contributed, such as military service creditable for civilian retirement; second, general wage increases which result in benefits based on a higher pattern of salaries than that upon which at least a portion of contributions is based; third, liberalizations applying to benefits based on past and/or future service without a commensurate increase in contributions; and fourth, loss of compounded interest income which would have been earned if the accrued liability had been fully funded.

Because employee contributions during the 1930's and 1940's exceeded benefit payments, the potential impact of an unfunded liability was obscured. However, with stabilized employment, inadequate employer contributions and in-

creased benefit payments, the annual trust fund revenues within the foreseeable future would be unable to meet benefit payments.

Under the present funding practices the assets of the fund which presently total $20,500,000,000 will increase to $23 billion in 1975 while the deficiency will simultaneously approach $80 billion. In 1975 the disbursements will begin to exceed the annual income of $3.8 billion. Thereafter, disbursements will continue to escalate over a relatively static income and will result in a declining fund balance. At that time, in order to meet benefit payments, all disbursements in excess of current income will have to come from the fund balance. Without additional funding, that balance will be depleted by 1987.

Thereafter, disbursements will exceed income by $3,500,000,000 and will require direct appropriations to meet benefit payments. By year 2000, the necessary direct annual appropriations would approach $5,000,000,000. This would be in addition to the approximate $3,000,000,000 employee-agency contributions.

PROPOSED NEW FUNDING PROCEDURE

Under the provisions of S. 2754, the normal cost financing of equal employee-agency contributions would be retained. Normal cost in this sense is defined as that level percentage of annual employee pay which, invested at interest, is required to cover the costs of benefits earned each year starting for each employee at the time of appointment.

The present inadequate contributions and the normal cost financing of the combined contribution rate from 13 to 14 percent of payroll—7 percent each from employee and agency, effective January 1970. The congressional employee rate of 6½ percent would be increased to 7½ percent, and Members of Congress would contribute an additional one-half percent, to 8 percent.

The present normal cost of present benefits is equivalent to 13.86 percent of civilian payroll for the Federal Government. The increased benefits plus the modified reimbursement procedure for military service credit contained in the bill would increase the cost coverage by 0.12 percent, for a total of 13.98 percent of current payroll. The result is an overfinancing of slightly less than .02 percent of payroll.

Although the system's unfunded liability has grown to $61 billion in 1969, and can be attributed to numerous liberalizations of benefits, recurring salary increases, and several automatic cost-of-living adjustments to annuities, the major growth of the unfunded liability is attributable to the loss of interest on the unfunded liability. This approximates $2 billion each year.

The bill would eliminate this loss by providing for direct appropriations of this interest. However, for the first year the Secretary of the Treasury would transfer to the retirement fund a sum equivalent to 10 percent of the interest on the then-existing unfunded liability; and thereafter an additional 10 percent for each successive fiscal year until 1980. After 1980, the amount transferred annually will be the equivalent of the full interest thereon.

This formula, though not reducing the unfunded liability, will provide the interest to make the fund operationally solvent. This is the thrust of title I of the bill.

Should future incremental unfunded liabilities result from benefit liberalizations, general salary increases, extension of coverage to new groups of employees, or newly authorized annuity increases, they would be fully financed by the Federal Government through direct appropriations to the fund, in equal annual installments, over 30-year periods. The Government would assume full responsibility for additional deficiencies thus created, and, by amortization, preclude further increases in the unfunded liability.

Title II of the bill makes certain liberalizations in the Federal Retirement Act. It would: use "high 3" instead of "high 5" for computing civil service annuities; permit adding sick leave accumulated at the time of retirement to the period used in computing annuities; add 1 percent to cost-of-living increases for annuities; make the remarriage provisions of the 1966 Amendments to the Federal Retirement Act partly retroactive; improve survivor benefits for employees and retired disabled employees who die in service or after disability retirement; exempt up to $3,000 of civil service retirement annuity from Federal income taxation; and permit congressional employees to receive 2½ percent credit for all years of congressional employment in computing their annuities rather than limiting congressional service credit to 15 years.

Both the House and the Senate Committees on Post Office and Civil Service have labored hard on this legislation in an attempt to find the best solution to the critical problems which face the Federal retirement system.

The matter of correcting the funding deficiency of the Federal retirement system must be faced by Congress now. We sincerely believe that we have found a good solution. We have also written into S. 2754 some much needed benefits, but at the same time we have held the cost down below the amounts to be contributed by the employees and their employing agencies. Under the bill the benefits of the entire fund will still be .02 points under the 14 percent of payroll contributions.

I strongly urge favorable action on this measure.

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

Mr. McGEE. I am glad to yield to the distinguished Senator from Florida.

Mr. HOLLAND. I am not clear as to the exemption of $3,000 of retirement pay from the provisions of the Federal income tax. I assume that that means an overall amount of $3,000 and not $3,000 per year.

Mr. McGEE. No; this would be from income in a given year.

Mr. HOLLAND. Does the Senator mean $3,000 in every year would be exempted?

Mr. McGEE. Would be exempted from the income tax; yes.

Mr. HOLLAND. The bill is not clear on that. It does not say that this exemption takes effect every year. It appears from the way the bill reads—at least to this Senator—that it is an overall, one-time exemption.

Mr. McGEE. I am having the staff check the language in the bill, and then I will respond to the Senator.

Mr. HOLLAND. My second question on the same point, which I think the Senator can answer while that is being checked, is this: Does this provision affect the provision of the present law under which there is exempt from income tax the full amount that any Member of Congress has paid in up to the time that that amount is fully paid?

Mr. McGEE. It does not affect that existing provision so far as Congress is concerned.

Mr. HOLLAND. The $3,000-per-year exemption, or whatever it is, does not apply to Members, then, but only to civil service retirees?

Mr. McGEE. The first $3,000 applies to all.

Mr. HOLLAND. Does this mean that retired Members of Congress get not only the right to receive everything they have paid in—which, of course, is a very large amount and figured over a large number of years—but also $3,000 a year?

Mr. McGEE. No. As I understand the Senator's point, if I understand it correctly, he still is entitled to all his entitlements in what he has paid in, that this only would obtain to his calculations on paying an income tax annually, and that he would be exempted from the first $3,000 of obligations in the tax computation.

Mr. HOLLAND. Let me state it in a hypothetical way: Suppose a retiring Member of Congress had paid in $10,000 to the retirement fund. Under present law—at least as the Senator from Florida understands it—up to the time his retirement pay had equaled $10,000, he would have no income tax to pay, because, in effect, it would simply be a repayment of savings accumulating to his account. Do I correctly understand that this would still be the case under the proposed legislation?

Mr. McGEE. The Senator's understanding is correct.

Mr. HOLLAND. How does the $3,000, then, come into the figure?

Mr. McGEE. It comes in after that point.

Mr. HOLLAND. Does it mean that the $3,000 is a supplement to the return of the $10,000 or that it is not applicable during the time the $10,000 is being repaid, or just how does it apply?

Mr. McGEE. The $10,000 figure the Senator is using is regaining capital. This is a $3,000 exemption on income.

Mr. HOLLAND. Then, this would be in addition to the return of the $10,000 saved?

Mr. McGEE. Yes. The $10,000 capital would be unaffected.

Mr. HOLLAND. One would get back the $10,000 he had paid in, and, in addition to that, in each year he would be entitled to a $3,000 exemption?

Mr. McGEE. Exemption; correct.

Mr. HOLLAND. What is the philosophy behind that, may I ask the distinguished Senator?

Mr. McGEE. The basic reason for that

was that most of the annuitants are not confronted with that situation, and this was aimed at protecting the across-the-board annuitants who are in a very low income retirement fund category.

Mr. HOLLAND. Is the Senator suggesting that the able committee was seeking to discourage Members of the House and the Senate from staying here for many years?

Mr. McGEE. To my knowledge, the committee never entertained such a thought.

Mr. HOLLAND. I thank the Senator for that clear statement in the RECORD.

Mr. McGEE. May I respond to the Senator's earlier question in regard to the language in the bill and what it means.

On page 13, in subsection (f) of section 207——

Mr. HOLLAND. Is the Senator referring now to the bill or to the report?

Mr. McGEE. To the bill.

The thrust of the exemption allowance puts it on an identical basis with the Social Security and the Railroad Retirement Acts at the present time.

On page 13, the language reads:

> An amount, not to exceed $3,000 each year which is received by an annuitant or a survivor annuitant under this subchapter . . . which would be included as gross income for purposes of the Federal income tax laws, shall not be included as gross income under such laws.

Would the Senator feel that that would remove the uncertainty?

Mr. HOLLAND. I think it would remove the uncertainty, but it would make the $3,000 not applicable to retirees who would have to receive $10,000 or $20,000, or even more, before they got back what they had put in. Apparently, this $3,000 does not begin to apply at all until one has received back his entire contribution to the fund.

Mr. McGEE. The income tax law itself, I understand, separates the income capital from the exemption category.

Mr. HOLLAND. I thank the Senator. I believe we have it reasonably clear now. In other words, if a retiree were entitled to receive, let us say, $20,0000 a year, having been here a good while, he could set off that first year the $10,000 that he had contributed, if that was the amount, and, in addition, claim an exemption of $3,000 as against the remaining part of the income which would be gross taxable income.

Mr. McGEE. Yes, that is my understanding of it.

Mr. HOLLAND. I think that is a clear explanation. Whether that approach is justified, is another thing.

I hope the Senator will make very clear what is implied, because I do not believe that Congress is trying to increase its rights as above what it had before, in the passage of this measure.

Mr. McGEE. No. The intent was to try to keep it as simple as we could and yet take care of the typical annuitant, who is generally in the $3,000, $4,000, or $5,000 category, which leaves him a very minimal sum.

Mr. HOLLAND. I say again that the Senator is suggesting that the Members of the Senate and the House stay here a very short period.

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

Mr. McGEE. I yield.

Mr. FONG. The reason for the $3,000 exemption is that if one is a social security retiree, all the amount he receives as a social security beneficiary is not taxable. People who work for the Federal Government are not under social security but do receive a retirement income, and we feel that the $3,000 is the equivalent amount that the people under social security are getting.

Mr. HOLLAND. The theory of the social security law is that the citizens have paid for insurance and they are getting payments because they have paid for insurance.

Mr. FONG. This will be the same.

Mr. HOLLAND. That is not true in this case, though. The Members of Congress pay on a portion of their retirement. They pay, as I recall it, half of the pool. They have been paying 7 percent each year for a long time—I do not remember how long—and that amounts to a very considerable sum. But the Federal Government pays an equal amount, as I recall.

Mr. FONG. The same is true with respect to the individual. The employer pays half and the employee pays the other half.

Mr. HOLLAND. Perhaps I was thinking about the matter solely from the standpoint of the self-employed person, because that has been my own situation, except for membership in the Senate; and, of course, there is no employer to pay the other half when a person is self-employed.

Mr. McGEE. That is correct. Here our real concern was the 9 million-plus annuitants that we felt had long since merited this kind of exemption in order to keep it equitable for them.

Mr. HOLLAND. From a quick reading of the report and several sections of the bill applying thereto it is made clear there is no change in the existing law as to the way surviving widows are affected. Am I correct in that?

Mr. McGEE. There is a small change in the way surviving widows are affected. It enables them to keep their annuities if they remarry, provided they are over 60 years of age.

Mr. HOLLAND. I am not speaking of that. I am speaking particularly of Members, because of the impression that Members would be particularly concerned with this point. My understanding is, leaving aside the question of remarriage which the Senator mentioned, there is no change whatever in the right of a surviving widow.

Mr. McGEE. There is no improved benefit. Surviving widows would still be affected by the 1-percent addition on the cost-of-living index.

Mr. HOLLAND. That is the 1-percent addition for every 3-percent upping of the consumer price index.

Mr. McGEE. The Senator is correct.

Mr. HOLLAND. I think it is a good provision. I congratulate the committee for having added it. I think most of the bill is good; maybe all of it is good.

Mr. McGEE. The Senator from Florida has been very helpful.

(At this point, Mr. SPONG assumed the chair.)

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

Mr. McGEE. I have told the Senator from Delaware I will yield to him.

Mr. President, I yield briefly to the Senator from Indiana.

Mr. HARTKE. Mr. President, first I wish to congratulate the distinguished Senator from Wyoming for his leadership in this field. It has been my privilege so serve as the chairman of the subcommittee and to hold hearings on this measure.

The question raised by the Senator from Florida concerning taxation points out a deepening crisis that exists in the entire field of caring for the aged. I did not think this bill is the answer as far as the problems of these people are concerned. In many cases we have a combination of circumstances surrounding former employees which is rather tragic.

They have never been able to achieve comparability with people in private industry, so that even by taking the high 3 years instead of the high 5 years they are being told they will be paid a percentage on reduced capability that they would have had in the field of private employment. There should not be any penalty for anyone who serves in the Government. I know many people seem to attach an undesirable stigma to people who work for the Government. I find that most people who work for the Government are sincere people. They want to provide service, and they would like to be treated on a comparable basis, not only while they are working, but after they retire.

Anyone who studies the actual amount of money that will be provided under this bill will be shocked because it comes pretty close to the poverty level. This is a problem the country will have to face up to soon. We have two circumstances combining. First, because of the better health of the Nation we have people living longer than they used to; and, second, the increase in cost for people after retirement is frequently the total cost for them to take care of themselves. Frequently people in retirement do not have anyone around to take care of their ordinary affairs. They may have to hire people to care for them and to take them places. The person in retirement usually cannot drive a car any longer. My statement with respect to costs is especially true in the field of medical treatment and drugs.

This is a problem which is very acute in the Nation and affects all the aging. The situation is compounded for the civil service employee so I really feel that in this case we are not righting a wrong; we are correcting some of the inequities, but we have much farther to go.

I hope we will not be content to say that the Committee on Post Office and Civil Service considers this to be the answer to the problem. The answer lies beyond.

This is not a problem which is special to the Government, but I think the Government has a responsibility. Certainly, when people retire it should not be the first time in their lives that they are poor. Unfortunately in America today

many old people are saying for the first time, "I did not become poor until I became 65." Mr. President, that is tragic, indeed.

I hope we pass the bill quickly and then go about the business of trying to determine what we are going to do about the acute problem of the aging.

Mr. McGEE. Mr. President, the Senator's point is well taken and no one speaks with greater perception and depth of understanding than the Senator from Indiana. The Senator has spent a great many years with this problem, and the thrust of his comments just now have been that this is not the place where we stop. This is only another of the steps we are taking, and that should have been taken in many cases long ago. But at least we are finally moving in this direction. I agree with the Senator.

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

Mr. McGEE. I am glad to yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, I am glad this entire discussion has come up. I certainly appreciate the comments of the Senator from Indiana. I doubt if the average citizen knows right now that each Member of the House and Senate is paying $3,000 on his retirement fund out of each year's earnings besides the full income tax which everybody pays, subject only to a $3,000 allowance for living in Washington, which costs most of us nearly $10,000.

I think it is good for these matters to be placed in the RECORD because they more clearly explain the situation.

The next thing I would like to say is I think there is another fact not generally known to our people and that is that workers on the Hill, for Congress, are not in the same situation as civil service workers in that when their Senator or House Member is defeated, their jobs stop the day he goes out of office. There is no right to stay on and there is no vested right to remain, as there is in civil service. I think employees of Congress are thoroughly entitled to be regarded as in a different classification. They are placed in a different classification under the present law and would be by this law. I am glad they are. Of course, they pay a little bit more for the protection they get and under this bill this practice would continue. But it is well for the RECORD to show that employees of Congress are not in the favored protected and secure position that civil service workers are. I believe that is shown by this bill and the different treatment accorded for the different groups of employees.

I thank and congratulate the Senator.

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

Mr. McGEE. I yield.

Mr. YARBOROUGH. Mr. President, as a member of the Committee on Post Office and Civil Service, who has served on that committee longer than any other Member of the Senate, I congratulate our chairman, the distinguished senior Senator from Wyoming, for the great care he has taken with the bill, for the diligence with which he attended all hearings, and his work in bringing the measure to the floor of the Senate. I commend him for his work on the bill.

There is one provision in particular that I desire to mention and that is the provision for crediting Federal employees for unused sick leave time.

I introduced that measure in Congress after Congress. We were unable to move it. I hope that it is passed some time. In some respects this provision is more generous than my proposal.

The provision for unused sick leave, I think, is for the benefit of the Federal Government. Figures show that of Federal employees who work for 30 years, one-half use up all the accumulated sick leave and one-half end up with about 44 days in unused sick leave. The able, efficient, and experienced employee works for years and years and does not use any sick leave time. The Government profits on those employees who work year after year and do not use their sick leave because those employees get no credit. These people have worked faithfully and they do not take sick leave and, therefore, they lose 44 days when they retire. When there is an experienced employee who takes a couple of weeks off for sick leave and his substitute is brought in there is a general loss—we had testimony on that year after year—by losing 2 weeks' time of the most efficient employee. This is the experience of private business in America. This is going to make money for the Federal Government.

I congratulate the chairman of the committee on having that provision in the bill.

I want to associate myself with the remarks of the distinguished Senator from Florida. In talking to people in my State, I find that they have no concept of the fact that our payments for retirement are more than $300 a month. They have heard something about Federal judges, which they get from the lawyers and other laymen, that a Federal judge pays nothing into his retirement system and that after 5 years of service, if he is at the proper age, he can retire at full pay.

I do not think that the service of a judge is so much more patriotic, more arduous, and more difficult that we should have to vote ourselves a harsh retirement system and vote for them such a generous retirement system. But that is a fact.

I want people to know that whereas a judge pays nothing into his retirement fund and after 5 years of service, if he is old enough, he can retire on full pay, we must pay $3,400 a year into the fund, which gives us only 2½ percent of credit for a year's service. When we compute that in with other deductions and limitations, we can take the year's service and it adds up that we will not get that 2½-percent credit in our retirement. If one should pass away, then his widow will draw only one-half the pension, which will not be 2½ times the number of years served. In other words, this is a limited retirement compared to retirement either in Federal service or outside of it.

Mr. President, as the able Senator from Florida has pointed out, it is well for people to know that Senators are also having income tax deductions taken from their checks, just as the rest of American workers do. Many people think that somehow or other we enjoy some free largesse here, that we get things tax free. I think it is well to have that in the RECORD, too, that our income tax payments come out of our salary checks, and they are heavy, with hundreds of dollars taken out every month for retirement, and hundreds of dollars taken out for income tax, so that the take-home pay of every Member of Congress is reduced drastically from what a person might imagine it is from the gross amount we get.

Mr. President, S. 2754 is a measure which is badly needed. I am hopeful that the Senate will not only pass this bill today but that we would do so without amendment.

This measure has a particularly fond place in my legislative heart for, aside from its basic provision and many financial reforms, it also provides a formula for the addition of unused sick leave to actual length of service in computing annuities. This provision is not as extensive as my own unused sick leave bill, S. 1276, but it is a big step in the right direction. I have fought for this principle for some 6 years now since I introduced my first bill on the subject in 1963, and I am very pleased that we were able to include this principle in this vital legislation.

As has been stated, the basic thrust of S. 2754 is toward financial reform of the system. The financing of the civil service retirement program has been an obvious and continuing problem for a number of years. For years the reports of the actuary have been grim forecasts of impending financial disaster, each succeeding report being more pessimistic than the preceding. For example, in 1958 the unfunded liability of the program was estimated to be about $18.1 billion and over the years the estimates have risen so that it is now about $57.7 billion. Current forecasts are that the civil service retirement fund will have a zero balance in about 18 years if no changes are made in the benefits provided or the financing.

Though these financing reforms are generally supported, it cannot be said that the bill is without controversial features. It is a matter of record that the administration is in general agreement with the financing provisions but objects to the benefit improvements which would be provided.

For my part, I believe that the extensive study that has gone into the preparation of the bill indicates that it would provide adequate income to pay for all presently scheduled benefits and an orderly method of financing future benefits.

In addition to the "high-3-year average" formula for computing annuities, a provision of the original bill, Senator McGEE and the full Post Office and Civil Service Committee have added three amendments that are the basic difference between the House and Senate bills. I strongly urge the retention of these amendments in the final bill.

One of these amendments would create a vested survivor right after 18 months' service rather than the 5 years now required. Another would exempt up to $3,000 of an annuity from Federal taxation. In effect, both these amendments merely extend to Federal employees rights now enjoyed by social security recipients.

The third McGee amendment would require an annual payment to the retirement fund to cover the costs of extending credit for military service in figuring the final annuity. The military service credit was the idea of the Congress and the cost should not be charged to the fund as a whole. This amendment would rectify this previous oversight.

Upon extensive examination of this measure and a careful study of the problems it is designed to meet, your Committee on Post Office and Civil Service reported S. 2754 unanimously. I urge the Senate to give S. 2754 a similar vote of confidence today.

Mr. President, with this retirement matter coming up year after year, with different provisions in it, I must commend the able Senator from Wyoming for a very skillful job in combining in this bill the many things in our Federal retirement system which need correcting.

As the Senator from Indiana said, it is not perfect. It is difficult to get a perfect bill with all differences of opinion ironed out. But this is a very splendid piece of work and the Senator from Wyoming is entitled to great credit for bringing such a bill to the floor of the Senate.

Mr. McGEE. Mr. President, I want to thank my friend from Texas for his kind comments and would say to him that I always stand very humbly at a time like this, remembering how very much he contributed to the thinking on the bill which reflected the effective way which his years of seniority on the committee made it possible to serve as guidance.

My chairmanship on the committee is the consequence of some of the flukes in our committee system. But it does represent a responsibility, nonetheless. Without men like the Senator from Texas, the Senator from Indiana, the Senator from Utah, the ranking minority member, the Senator from Hawaii, and the Senator from Delaware, we would, I think, have gone off on many occasions in different directions that might not always have turned out to be the wisest ones.

It is the combined vigilance on the part of members of the committee which has made it possible to arrive at what I think is substantially a sound piece of legislation.

Mr. YARBOROUGH. The distinguished Senator from Wyoming just said that he is chairman of the committee by what might be called one of the flukes in our committee system.

Let me say that if his chairmanship is a fluke, then it is one of the luckiest flukes the Senate has had happen to it in a long time.

Mr. McGEE. I thank the Senator from Texas.

Mr. President, I have said all I can say at this time and, therefore, I yield the floor.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. WILLIAMS of Delaware. Mr. President, I want to agree with the chairman, the Senator from Wyoming (Mr. McGEE), on one point; and that is, that title I is long overdue recognition of the insolvency of the civil service retirement fund. Title I provides a method for reimbursing the fund and placing it in a more solvent position.

Mr. President, there are some questions in title II on which I raise questions, particularly the one mentioned by the Senator from Florida. He referred to section 207 on page 18 regarding the $3,000 special tax exemption, or an amount not to exceed $3,000 each year for the annuitant. The bill states that this extra $3,000 will be excluded from the gross income, and it amends section 8355 of title 5 of the United States Code. Under existing law the Treasury Department allows credit for the amount of the pension that repesents a return on the payments made by the employee and the other is treated as income.

That is approximately the formula under which it has been taxed heretofore.

As is pointed out, when an employee has recovered all of his original payments to the fund the remainder now is taxable income.

It is interesting to note that this $3,000 special exemption has no effect, as I see it, on a married couple drawing a pension of $5,000 or $6,000 a year. It really does not begin to take effect until the pension has crossed the $6,000 annual figure. Let us face it, this is not a tax break for the low-income employee.

What disturbs me is not so much the question of whether the $3,000 exemption should be approved but rather why it does not apply to all retirees, whether they be in private industry or government service. Why give a $3,000 extra tax exemption on retirement income just to Federal employees? I think that all American citizens who are living on retirement are in the same category and are therefore entitled to the same kind of treatment.

True, retirement payments are exempt under social security, but the social security fund is financed by the employee and the employer—one-half is taken out of his paycheck, and the other half is paid by the employer. But the employer figures that as part of his wage. It is deferring the income. Social security has a much lower formula for computing benefits than it is under this more favorable formula of civil service.

I think there should be a question in the minds of all of us when considering changing the revenue code, can the Government afford to give this $3,000 retirement exemption on pensions? If it can then the next question is, should it be made available to employees of the U.S. Government only, or should the tax break be made available to all taxpayers in America?

Mr. President, I do not think it can be justified to single out the employees of the U.S. Government, whether we be Members of Congress or serving in some other capacity, for a special tax exemption that is not extended to all other retired American citizens.

For that reason I think that if this is going to be considered it should be considered as an amendment to the tax revenue bill which will come before the Senate later this year. As a part of that bill Congress can consider how far we reduce the tax for all pension funds. Let us be sure that all the people will be treated alike, and let us not establish a special group of tax-exempt citizens by virtue of their having been employed by the U.S. Government.

Mr. McGEE. Mr. President, will the Senator let me respond to that question?

Mr. WILLIAMS of Delaware. I will in just a moment.

Mr. McGEE. Oh, I thought the Senator had asked a question. Excuse me.

Mr. WILLIAMS of Delaware. We have on the Senate calendar, a tax bill which has long been deferred and which proposes to lower taxes for those in the so-called poverty or low-income groups. That bill has not been acted upon. If it were it would to a large extent reduce the need for the bill we have before us now.

Any tax reduction that is approved by the Senate should apply equally to all taxpayers and not to a select group, which happens to include Members of Congress.

Another point I wish to make is that the tax reduction proposal in section 207 is to amend the Revenue Code in a Senate bill, a procedure which heretofore the Senate has not recognized as being proper. The Revenue Code can be amended only by a bill that has come from the House or by amendments offered thereto in the Senate. That is the customary procedure. Let the Ways and Means Committee of the House or the Finance Committee of the Senate consider the merits of the proposal and relate it to all the other taxpayers.

For that reason, I suggest that it would be wise to strike section 207 from the bill and let it be considered in the regular tax bill later.

Mr. President, I wish to make a point of order that section 207 is an amendment to the Revenue Code, as attached to the Senate bill, which is not in order under our rules.

Mr. McGEE. Mr. President, if it is permissible, am I in order to respond to the point raised by the Senator from Delaware?

Mr. WILLIAMS of Delaware. Mr. President, I will withhold it.

The PRESIDING OFFICER. Will the Senator from Delaware withhold his point of order?

Mr. WILLIAMS of Delaware. I will withhold it, yes.

Mr. McGEE. Mr. President, the Senator raises several good points here. I would like, as best I can recollect them now, to respond to them as they appear to me.

I think the Senator is so right that here we have a special group that has been kind of "selected out" for this package—Federal employees—but I think it is important to remember that they were "selected out" long ago and denied that $3,000 allowance while social security annuitants were getting it and while Railroad Retirement annuitants were getting it. That is the kind of selectivity

we have witnessed here in the program. So I think there is a second side to the coin in who is playing favorites.

I agree that there is great merit in having a uniform application of this provision to all retirees, but the jurisdiction of this committee is over civil service retirees. We did not pretend to try to tell the income tax service how to administer the law. We did not intend to invade some other committee's jurisdiction. Our intent was to live up to our responsibility, and that was to address ourselves to the problem of Federal civil service annuities in this particular instance in the bill, in section 207, on page 13, which amends section 8345 of title 5 of the United States Code. This is the Civil Service Retirement Act. It is not the Internal Revenue Code. We believe, therefore, it is still very much in order.

Finally, I would suggest that a year ago, or earlier this year, when a bill that I introduced provided for this very specific allowance—S. 2087—the bill was referred to the Senate Committee on Post Office and Civil Service. And because of the jurisdiction and concern of that committee over civil service annuities, I would have to take issue with my friend from Delaware in regard to the legitimacy of a point of order's being sustained. The Finance Committee has jurisdiction over tax matters. The House can originate revenue bills. But we believe this to be in the civil service annuity category and properly within the jurisdiction of the Committee on Post Office and Civil Service.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

Mr. McGEE. I yield.

Mr. WILLIAMS of Delaware. Perhaps I do not understand the English language. I will ask the Senator this question: Is not the purpose of section 207 to exempt from Federal income taxes $3,000 of annuitants' pensions?

Mr. McGEE. The purpose of this provision is to try to make it possible for an annuitant to survive on the basis of his annuity.

Mr. WILLIAMS of Delaware. Is not the purpose of this provision to exempt from Federal income taxes the first $3,000 of an annuitant's pension? Is not the purpose of the section to exempt the Federal employee from taxes on $3,000 of his pension?

Mr. McGEE. From the first $3,000.

Mr. WILLIAMS of Delaware. Of taxes?

Mr. McGEE. Yes.

Mr. WILLIAMS of Delaware. So that makes it a tax bill.

Mr. McGEE. If the Senator will permit me to quote the English language, that is quite a jump in adding that up to a tax bill.

Mr. WILLIAMS of Delaware. It is quite a jump, and it is a benefit that is not extended to any other group——

Mr. McGEE. I mean the Senator's conclusion that it is a tax.

Mr. WILLIAMS of Delaware. On September 4, 1969, the Senator's committee was served notice by the chairman of the Finance Committee (Mr. LONG), and I refer the Senator to the remarks of the Senator from Louisiana appearing on page 24287, wherein the Senator from Louisiana points out how it would amend the Revenue Code and raises a question of jurisdiction.

Today before the Finance Committee we had testimony on this very proposal, based on an amendment introduced by the Senator from Connecticut (Mr. RIBICOFF). His amendment deals with this matter in a broad way. It would affect not only Government employees but all annuitants, including private industry as well. We had testimony on that point before our committee today.

What I am saying, without debating the merits or demerits of this proposal, is that I think whatever we do should be done for all retirees who are living on pensions. I am merely suggesting that we should wait until we get the tax bill, and then whatever we do we treat all taxpayers alike.

When the Senator from Wyoming has finished his statement I will renew my point of order because there is no question that the purpose of this provision is to exempt from Federal income taxes the first $3,000 of pensions of civil service annuitants.

Mr. McGEE. Mr. President, may I say to my distinguished colleague from Delaware that we were not aware that there had been any great move in the Finance Committee to concern themselves with civil service annuitants or their annuities. I think that is understandable because that matter belongs in the Committee on Post Office and Civil Service.

The staff advises me that the Internal Revenue Code of 1954 contains a provision—I believe sponsored by the Senator from Delaware—to the effect that part-time postal employees cannot attach that to their civil service status.

I think this is a case of looking at both sides of the coin. I would suppose that was subject to some kind of point of order, since it would reflect invading the jurisdiction of the Committee on Post Office and Civil Service. But that really should not be the issue of a point of order here. The issue ought to be whether this is a correct procedure, with the Post Office and Civil Service Committee having jurisdiction.

In view of the absence of any real effort anywhere else to look into the interests of our civil service annuitants, and because of the precedent set by the Senator himself in adding to the Internal Revenue Code of 1954 a provision that influenced civil service directly, without having to do with the income tax element, it would seem to me that this factor also should be weighed on the scale of decisionmaking in terms of his point of order.

Mr. WILLIAMS of Delaware. When the Senator says the Finance Committee is not concerned with the civil service employees I remind him that the Ribicoff amendment deals with the pensions of all annuitants, including private industry as well as civil service employees. It does not single out one special group for recognition; it deals with all of them, just as all other tax bills should do.

Mr. President, I renew my point of order against section 207, as appearing on page 13 of the bill, on the basis that it is an amendment to the Internal Revenue Code in a Senate bill.

The PRESIDING OFFICER. In response to the Senator from Delaware, the Chair would say that his point of order raises a constitutional question, and that the Chair has no authority to rule on a point of order involving a constitutional question. Therefore, the Chair refers the point of order and the question to the Senate.

The question is, Is it the judgment of the Senate that the point of order is well taken?

Mr. WILLIAMS of Delaware. I ask for a division, Mr. President.

The PRESIDING OFFICER. A division is requested. Will Senators who believe the point of order is well taken stand and be counted?

Mr. WILLIAMS of Delaware. Mr. President, I suggest the absence of a quorum.

Mr. McGEE. Mr. President, I did not hear the second part of the question.

The PRESIDING OFFICER. The question is, will Senators who believe the point of order is well taken stand?

Mr. McGEE. I thought they had stood, and the Chair had made a follow-up statement.

The PRESIDING OFFICER. All those opposed.

Mr. WILLIAMS of Delaware. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. MANSFIELD. Mr. President, will the Senator withhold that?

Mr. WILLIAMS of Delaware. I will withhold it, but I will be requesting the yeas and nays. I might ask, is the Senator willing to have a vote on it tonight?

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. 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. MANSFIELD. Mr. President, I have talked with the interested parties on this measure now pending, and I am about to propound a unanimous-consent request.

UNANIMOUS-CONSENT AGREEMENT

I ask unanimous consent that, at the conclusion of morning business tomorrow, there be a time limitation of 30 minutes on the pending constitutional question which has been referred to the Senate for decision, and that the time be equally divided between the distinguished senior Senator from Wyoming, the manager of the bill (Mr. McGEE), and the distinguished senior Senator from Delaware (Mr. WILLIAMS), who raised the point of order.

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

The unanimous-consent agreement was subsequently reduced to writing, as follows:

Ordered, That at the conclusion of the morning business on October 3, 1969 during the further consideration of the point of order against Section 207 of S. 2754 Civil Service Retirement bill, debate be limited to 30 minutes to be equally divided and controlled by the Senator from Wyoming (Mr. McGEE) and the Senator from Delaware (Mr. WILLIAMS).

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. WILLIAMS of Delaware. For the information of the Senate, there will be a record vote on that question.

Mr. MANSFIELD. Yes, I think there should be.

Mr. McGEE. Mr. President, will the Senator yield until I can propound another thought here?

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

The PRESIDING OFFICER (Mr. HOLLAND in the chair). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SPONG. I ask unanimous consent that the order for the quorum call be rescinded.

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

TELEVISION NEWSPAPER OF THE AIR

Mr. SPONG. Mr. President, WETA, channel 26, launches a daily newspaper-of-the-air tonight—Thursday, October 2—with editors and reporters from the Washington Post and the Evening Star. This is an example of public television's ability to respond effectively to an emergency community need, the channel 26 newspaper-of-the-air will be broadcast in color, 7 to 8 p.m., 10 to 11 p.m.

Newspaper-of-the-air will cover the day's most important events in the fields of foreign and national news; District of Columbia, Virginia, and Maryland news; entertainment, sports, and other news features; with incisive reports and analysis of leading Washington reporters.

I make this announcement for the information of Senators who may be interested.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 6 o'clock and 50 minutes p.m.) the Senate adjourned until tomorrow, Friday, October 3, 1969, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate October 2, 1969:

AGENCY FOR INTERNATIONAL DEVELOPMENT

Samuel C. Adams, Jr., of Texas, to be an Assistant Administrator of the Agency for International Development, vice R. Peter Straus, resigned.

U.S. DISTRICT JUDGE

R. Dixon Herman of Pennsylvania to be U.S. district judge for the middle district of Pennsylvania, vice Frederick V. Follmer, retired.

U.S. ATTORNEY

S. John Cottone, of Pennsylvania, to be U.S. attorney for the middle district of Pennsylvania for the term of 4 years, vice Bernard J. Brown.

U.S. MARSHAL

Thomas Edward Asher, of Kentucky, to be U.S. marshal for the eastern district of Kentucky for the term of 4 years, vice Archie Craft.

William C. Black, of Texas, to be U.S. marshal for the northern district of Texas for the term of 4 years, vice Robert I. Nash.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 2, 1969:

NATIONAL COUNCIL ON THE ARTS

Nancy Hanks, of New York, to be Chairman of the National Council on the Arts for a term of 4 years.

U.S. ATTORNEYS

Duane K. Craske, of Guam, to be U.S. attorney for the district of Guam for the term of 4 years.

James H. Brickley, of Michigan, to be United States attorney for the eastern district of Michigan for the term of 4 years.

Bart M. Schouweiler, of Nevada, to be U.S. attorney for the district of Nevada for the term of 4 years.

Edward R. Neaher, of New York, to be U.S. attorney for the eastern district of New York for the term of 4 years.

William W. Milligan, of Ohio, to be U.S. attorney for the southern district of Ohio for the term of 4 years.

Blas C. Herrero, Jr., of Puerto Rico, to be U.S. attorney for the district of Puerto Rico for the term of 4 years.

Stanley G. Pitkin, of Washington, to be U.S. attorney for the western district of Washington for the term of 4 years.

U.S. MARSHALS

Gaylord L. Campbell, of California, to be U.S. marshal for the central district of California for the term of 4 years.

Rex Walters, of Idaho, to be U.S. marshal for the district of Idaho for the term of 4 years.

George R. Tallent, of Tennessee, to be U.S. marshal for the western district of Tennessee for the term of 4 years.

William A. Quick, Jr., of Virginia, to be U.S. marshal for the western district of Virginia for the term of 4 years.

Rex K. Bumgardner, of West Virginia, to be U.S. marshal for the northern district of West Virginia for the term of 4 years.

EXTENSIONS OF REMARKS

ROSCOE I. DOWNS

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1969

Mr. NATCHER. Mr. Speaker, Roscoe I. Downs is not only an outstanding Kentuckian but he is also one of the great newspapermen of our Commonwealth.

This veteran of the journalistic field began his newspaper career in 1906 and from that time on he has made sure that his readers are provided with a fair, honest, and unbiased presentation of the news. His strong and frank editorials have won for him numerous honors and have made the newspaper he has published since 1945, the Hancock Clarion in Hawesville, Ky., invaluable in attracting and accelerating the industrial growth of this particular area.

Mr. Downs is one of the most respected and admired gentlemen in the Second Congressional District of Kentucky and certainly I am delighted that the Kentucky Press Association recently gave special recognition to their eldest member for his many years of splendid newspaper work.

Mr. Speaker, I am pleased at this point to insert in the RECORD the article which appeared in the July 1969 issue of the Kentucky Press, the voice of the Kentucky Press Association, honoring Mr. Downs. The article follows:

DOWNS HAS ENJOYED LONG ASSOCIATION WITH KPA

Teddy Roosevelt was president of the United States and the Kentucky Press Association was only 38 years old when Roscoe I. Downs became a member of KPA and attended his first summer convention.

At 84, Downs is editor of the Hancock Clarion at Hawesville and still adheres to 6-day a week work schedule. His editorials have won for his paper several awards over the years and even today are a force in his community.

It was in June of 1907 that Downs and his bride, the former Miss Winnie Cullin, honeymooned at the KPA convention at Estill Springs, Irvine, Ky. They were married at Livermore on June 16, 1907 and immediately began the journey to Louisville where they joined other Western Kentucky editors for the trip by special railway car to Irvine and the convention.

The bride and groom escaped the hazing of the press group by concealing the fact of their newly wedded state. A Courier-Journal reporter, however, learned of the couple's secret during the trip home after the convention and wrote a story of how the entire KPA had been fooled.

Downs can probably lay claim to the oldest membership in KPA. His membership has not been continuous, over the 62 year period, he has spent several years in other states. Consecutive membership has been since 1945 and in 1952 he was voted a Life Member of the association.

In 1906 he edited the Livermore News in McLean County. The name of the paper was later changed to The Kentucky Citizen.

After having closed the paper at Livermore, Downs continued his career on various newspapers, first the Dixon Journal and later the Corydon (Ind.) Republican. His next