the instruction passed as part of the Labor Committee bill seriously in regard to these international agreements. We need to see them demonstrate a greater willingness to recognize the standards used in other countries. As I have stated many times, the Food and Drug Administration in this country does not have a corner on the ability to regulate well.

These are the sort of FDA reforms that I believe will promote a more efficient, higher quality regulatory process at the Food and Drug Administration. I look forward to revisiting these issues, and all of the other aspects of FDA reform, early in the 105th Congress. ●

REACH–BACK TAX RELIEF

● Mr. CONRAD. Mr. President, I am pleased to join Senator COCHRAN in sponsoring this reach-back tax relief bill, S. 2135, to alleviate some of the unintended and inequitable hardships inflicted on certain companies by the Coal Industry Retiree Health Benefits Act of 1992. Our bill would provide substantial relief to numerous small companies. It would also use a small portion of the existing surplus of more than $120 million in the combined health benefit fund created by the act to allow a 2-year moratorium on the reach-back premiums. This 2-year period will give the Congress adequate time to study the current operations of the act and to remedy the inequities of the current law.

In the past, I have said that the Coal Act produced several major achievements. First, it assured retired coal miners and their dependents that their health benefits were permanently secure. The act provided a statutory foundation to carry out the commitment of all of us to see that these benefits are paid. It also provided a necessary legal mechanism to transfer excess pension funds into the health funds. In addition, the act required certain cost-containment measures that greatly increased the cost effectiveness of retirees' health benefit programs.

Despite its significant accomplishments, one feature of the Coal Act—its reach-back funding mechanism—has engendered great hardship and controversy. Many companies, who long ago had withdrawn from the Bituminous Coal Operators Association [BCOA] believing that they had met all of their legal obligations to fund retiree health benefits, found themselves, in 1992, subject to a draconian reach-back premium tax that they could not have foreseen and for which they could not have planned. This retroactive tax enforced by the full power of the Internal Revenue Service and the threat of dramatically compounding penalties has produced severe hardship for many companies subject to it. Some of them are trying to pay it by depleting their assets and hence their ability to generate income. Others have tried to ignore it and are now being subjected to collection suits by the Combined Fund.

The 102d Congress was persuaded that the Bituminous Coal Operators Association could no longer afford to fund retired miners' health benefits on a current basis as it had for the previous 25 years. The Congress was told that miner's health benefits faced a crisis of skyrocketing costs that would bankrupt the miners' benefits fund if the Congress did not act. The Congress was given a choice of either an industry-wide tax or the reach-back tax to fund health benefits. The passage of the Coal Act saves members of the BCOA more than $100 million a year over its prior annual benefit payments.

Fortunately the skyrocketing costs predicted by the BCOA have simply not occurred. The cost containment measures contained in the act and the decline in population of retirees and dependents served by the fund are largely offsetting the inflation in health care costs. Thus, the reach-back tax is simply injuring companies who cannot afford to pay it while giving members of the BCOA a windfall benefit which they do not want to give up.

Mr. President, the problems being caused by the reach-back tax are just beginning. Many original supporters of the Coal Act recognize that it needs some fine tuning. The Cochran-Conrad bill would provide for a GAO study of current operations and a 2-year respite from the reach-back tax, while assuring that the overriding goal of providing health care benefits of retired miners is preserved. I hope that my colleagues on the Senate Finance Committee will give this legislation the early consideration it deserves in the new Congress.●

AUTHORIZING HUD TO REGULATE PROPERTY INSURANCE PRACTICES

● Mr. GRASSLEY. Mr. President, the Department of Housing and Urban Development [HUD] is aggressively pursuing regulation of property insurance practices, supposedly because of the Federal Fair Housing Act [FHA]. HUD takes the position that the FHA, which prohibits discrimination in housing on the basis of race, sex, national origin, and other similar factors, authorizes HUD to regulate property insurance practices that purportedly affect the availability of housing. I strongly disagree with this interpretation by the FHA. I do not believe that HUD has the authority to regulate the insurance industry, let alone have any recognizable expertise in this area.

HUD's insurance-related activities are directly contrary to the longstanding position of Congress that the States should be primarily responsible for regulating insurance. In the McCarran-Ferguson Act of 1945, Congress expressly provided that, unless a Federal law specifically relates to the business of insurance, that law shall not interfere with State insurance regulation. The FHA, while expressly governing home sales and rentals and the services that home sellers, landlords, mortgage lenders, and real estate brokers provide, makes no mention whatsoever of the service of providing property insurance. Moreover, a review of the legislative history shows that Congress specifically chose not to include the sale or underwriting of insurance within the purview of the FHA.

HUD's assertion of authority regarding property insurance is a major threat to State insurance regulation. In August 1994, HUD announced that it was undertaking a new rulemaking that would prescribe use of the disparate impact theory in determining property insurer's compliance with the FHA. Although HUD has stalled on the promulgation of such disparate impact rules, it remains firm in its position that the disparate impact test applies under the FHA, and that the FHA applies to insurance.

Under the disparate impact theory, statistics showing that a practice has a disparate impact on a particular protected group may suffice to establish a prima facie case of discrimination, without any showing of discriminatory intent. The use of this theory may be appropriate in certain contexts, but in the area of insurance, it is wholly inappropriate and, in fact, potentially harmful.

The disparate impact theory assumes unlawful discrimination based solely on statistical data. Thus, under a disparate impact approach, statistics showing differences in insurance coverages by geographic area, wholly attributable to different risks in those areas, could be assumed to reflect racial bias merely because of a correlation between race and geographical locations.

The application of the disparate impact test to property insurance practices could undermine the ability of State regulators to ensure, as they are required by law to do, that the companies under their jurisdiction remain solvent. If insurers accept loss exposures to protect themselves against charges of disparate impact, or if they classify risky loss exposures as lower-risk exposures for this purpose, they may incur financial problems, because premiums collected may be far lower than the amount needed to cover losses incurred, and policy holders' surplus will have to be used to pay claims. If an insurer engages frequently in such improper underwriting, its surplus can be drained to the point of insolvency.

It is precisely for the purpose of preventing insolvencies while providing a means to make insurance more available that the States have adopted Fair Access to Insurance Requirements [FAIR] plans. HUD's disparate impact approach is flatly inconsistent with these congressionally authorized plans. Generally, the FAIR plans make property insurance available to applicants who have been rejected by the voluntary insurance market so that higher risks may be allocated equitably among insurers operating in a State. The FAIR plans thus help to prevent

individual insurer insolvencies by providing for risks to be spread among all property and casualty insurers.

HUD's disparate impact approach fails to take account of the careful balancing of objectives reflected in the FAIR plans. Indeed, HUD's approach completely ignores the key difference between unfair discrimination and sound insurance underwriting practices that take the actual condition of the property into consideration. Clearly, it is unfair to discriminate on the basis of race, color, religion, sex, familial status, national origin, or handicap. But what HUD fails to recognize is that it is not unfair—indeed it is legally required by the States—for an insurer to evaluate the condition of the property and determine the risk. State insurance statutes not only deem these risk assessments to be legal, but indeed require them to prevent unfairness.

States and the District of Columbia have laws and regulations addressing unfair discrimination in property insurance. The State legislatures have debated and enacted a wide variety of antidiscrimination provisions to ensure that an insurer does not use race or other improper factors in determining whether to provide a citizen property insurance. The States are actively investigating and addressing discrimination where it is found to occur. In light of these comprehensive protections against discrimination, HUD's insurance-related activities are yet another example of unnecessary and duplicative Federal bureaucracy.

Let HUD enforce FAIR, and let the States regulate the insurance industry. ●

EDWARD McGAFFIGAN, JR.

● Mr. BINGAMAN. Mr. President, when the Senate convenes in January, lots of familiar faces will be gone for one reason or another, and those of us returning will take up our work without the company and help of so many who are important to us and to this institution.

Because the Senate acted so quickly and responsibly on one matter before the August recess, one of my staff members is already gone, off to what is sure to be another outstanding period in an already distinguished career. Late in August, Ed McGaffigan was sworn in as a Commissioner on the Nuclear Regulatory Commission. Many of my colleagues and their staffs are well acquainted with Ed, and hold him in high regard, as do all of us in my office who have valued his company and counsel over the years.

Ed was among the first people I hired when I came to the Senate in 1983. Recommended to me by Joe Nye, Ed was then the assistant director of the White House Office of Science and Technology Policy. Prior to his work in the White House, he had been in the Foreign Service for 7 years, 2 of which were spent as science attaché at the American Embassy in Moscow.

From February 1983 until August 1996, Ed handled defense, national security, technology, and foreign policy issues in my office, as well as nonproliferation and export control policy, and personnel and acquisition reform. Early on, he was recognized by staff and constituents alike as a high-minded individual of bedrock honesty and great intelligence. I once heard our former colleague, Lloyd Bentsen, say that there is a special bond forged between a new Senator and the people who help him or her get started. Setting up an office, sorting out the priorities, and learning to say ''yes'' or ''no'' at the proper time on this floor take a certain devotion and effort of will on the part of all concerned. Ed McGaffigan was one of those who helped me get started here, and I could not have guessed that how valuable this intense, brilliant man would become to me, the people of New Mexico, and, indeed, the people of this country because of his service to the Senate. I could not have known how much we would all come to depend on his intellect, his great curiosity, and his unswerving commitment to truth.

Emerson, who was a student at the Boston Latin School more than 100 years ahead of Ed, anticipated him and knew his value in his essay on ''Power,'' when he wrote: ''Concentration is the secret strength in politics, in war, in trade in short in all management of human affairs * * *. A man who has that presence of mind which can bring to him on the instant all he knows, is worth for action a dozen men who know as much but can only bring it to light slowly.''

Mr. President, Ed McGaffigan has concentrated his career on public service. We are fortunate that this is so, and fortunate, too, that we have in him not just a superb public official, but a true friend. ●

IMPORTANCE OF OPEN LANDS NEAR TETON NATIONAL PARK

● Mr. SIMPSON. Mr. President, I rise today to speak for a few moments on an issue that is so very dear to the hearts of every citizen in my State—indeed most citizens of our Nation: I speak of the importance of open spaces.

Now, I believe it is safe to say that some of us take our open spaces for granted—a charge that applies—especially so —to those of us inhabiting our Nation's western regions. Most of us, upon taking an objective look at our Western States, conclude the dire environmentalist warnings of imminent coast to coast asphalt are shrill, exaggerated and foundationless. And yet, as with any other hysterical manifestation, there is a kernel of truth hidden beneath the hyperbole.

My State is blessed with many spectacular vistas, but perhaps none more so than the stunning Grand Teton mountains. Unless you have seen them yourself, you simply cannot appreciate their visual impact. They seem to come rearing up out of the prairie to tower high above our heads before plunging straight back down into the prairie again. In the valley beneath them lies the city of Jackson Hole. This is a city that has experienced booming growth in recent years as people from all over the Nation search for places to raise their families and make their fortunes that are not overtaxed, overregulated, or crime or pollution ridden. It has been both Wyoming's blessing and its curse to fit this bill so perfectly, and nowhere is this troubling dichotomy better exemplified than in the city of Jackson Hole.

Traditionally a ranching area, that town has now become a tourist mecca. But as pleased as environmentalists are to see land use industries give way to tourism, this same phenomenon has resulted in the destruction of heretofore open ranchlands which have been sold off bit by bit to the developers. It is an unfortunate and oh-so slippery slope. For the more development which takes place in the valley at the base of the Tetons, the higher the land values—and their accompanying property taxes—climb. The higher the property and estate taxes climb, the more difficult it is for these generations old ranching families to stay in business. This represents a far more serious situation than many eastern Members of this body can possibly realize. Cattlemen have long been the hapless holders of one of the most razor thin profit margins of any industry in this Nation. Today, they are going out of business left, right and center, Mr President, and the last thing they do before they turn out the lights for good, is to sell off their property bit by bit to real estate developers who then build expensive homes that only the wealthy can afford—we call them ''log cabins on steroids.''. The view of those mountains is spectacular and these developers and real estate agents charge for it accordingly.

Mr. President, the critical importance of preserving these incredible views—euphemistically referred to as ''view sheds'' by the land managers—available to all is of no small import to my State or the Nation. We need to be more business friendly. We need to keep our tax appetites under control. We absolutely need to reduce contrived regulation on our cattle industry and we need to ensure its access to Federal and State grazing lands and reasonable grazing fees. Above all, we must work to keep our ranchers ranching and our open lands open, in order to prevent the developers from overrunning this fragile and magnificent part of our Earth. ●

SCOTT CORWIN

● Mr. HOLLINGS. Mr. President, as I noted earlier, committee staff have been working night and day all throughout this month to produce an acceptable omnibus appropriations bill. This has been a real hardship on the staff, but most of all on one of our majority staff on the Commerce, Justice,