

R&D goal of \$2 billion over 10 years was cut, and then further diluted by including earmarked loan guarantees, including one to strip clean coal technology out of an Alaska demonstration project and reconfigure it as a conventional coal plant. The tax provisions, already reduced from a level coal and utility industry experts project as necessary to truly drive technological development, were cut further. That money was shifted to allow the oil and gas industries to receive almost 49 percent of all tax incentives, while coal, which produces more than 50 percent of the nation's electricity, has to be satisfied with only about 10 percent of the benefit of the bill.

What is probably most troubling for my State of West Virginia is that this bill would tilt a playing field that is far from level already dramatically in the direction of western coal. Under this legislation, companies out west that mine coal on public lands will be required to conduct much less stringent environmental analysis, and then be reimbursed by taxpayers for any costs incurred. At the same time, these companies will be able to mine this coal the taxpayers' coal—and pay lower royalties than have been required until now. Coal from the Powder River Basin is already cost-competitive in parts of the eastern United States with coal mined in Appalachia. Finally, this bill includes a completely unjustified repeal of a 4.3 cent per gallon excise tax railroads pay on diesel fuel, which will make it even cheaper for western coal companies to flood the eastern United States with their product.

Further, I am simply astonished that in a bill that gives an unprecedented amount of taxpayer money to special interests, and which purports to support coal, that House conferees not from coal states demanded that a small but critical provision of mine from last year's Senate bill be removed. This provision, which would have added no additional cost to the bill, called upon the Secretary of Labor to hire, train, and deploy as many Mine Safety Inspectors as she is currently authorized to have. This was meant to overcome a decline in the number of mine inspectors, and therefore, in mine inspections, that predates this administration. This situation, where mine inspectors spend far more time on the road traveling between mines than they ever spend inspecting them for compliance with federal health and safety rules, will become untenable if the nearly 25 percent of inspectors scheduled to retire in the next three to five years actually leave the already-depleted workforce. Let me reiterate: No new authorization; no demand for additional personnel to make sure the coal mines in this country are safe for the miners producing the fuel that generates more than half our electricity. Just hire and train them now so that planned retirements do not leave our miners unprotected by qualified Mine Safety Inspectors. Secretary Chao

signed off on the provision last year, and in 2003, Senator DOMENICI included it in his version of the bill. But it's not in the conference report. I wonder how, in an energy bill that is supposed to be about maximizing our domestic production, we can look the other way at miners' safety.

I would be remiss, if I did not give credit where credit is due. I have worked for many years on incentives to promote natural gas development from non-conventional sources. These so-called section 29 credits, including incentives for the capture of coalmine methane and the production of coke, would, respectively, reinvigorate natural gas drilling in the Appalachian Basin, lower the production costs and increase the safety of coal mining, and help the struggling American steel industry get back on its feet. I have advocated for these incentives during my entire career because I understand how much they would help my State of West Virginia. I was proud, both last year and in 2003, to lead a broad bipartisan coalition in the Senate pushing for extension and expansion of section 29. With regard to these provisions I commend the conferees. Unlike many pieces of our bill that went into conference with the House, I believe the section 29 provisions in the conference report have been greatly improved.

I trust that few Senators cast many votes that are decided purely on the numbers. How much something costs, or how much are we willing to give to this industry or that one play into our decisions, to be sure. But for this Senator, at least, figures tend to be obliterated by the people our actions are helping. We had a chance in this conference report to help a group of people I have taken into my heart, and for whom I probably have spent more hours working than any other. I am speaking of retired coal miners and their surviving spouses.

The Coal Act was created to protect the promise of lifetime health benefits for coal miners, who fueled the nation's post World War II economic growth, and who made salary and pension concessions in exchange for those health benefits. The Coal Act fulfilled a promise first made by President Truman in his 1946 agreement with legendary UMWA President John L. Lewis. In response to a coal strike in the late 1980s and a looming crisis in the miners' health funds, the first Bush administration created the Coal Commission to find a long term solution. Those recommendations became the basis for the Coal Act, which protected the health benefits of more than 100,000 retired miners. Today, there are almost 50,000 retired miners and widows who depend on the Coal Act for their health care security—their average age is about 78. Since enactment, the Coal Act has faced many challenges, but the combination of sharply escalating drug costs and a series of negative court decisions have resulted in a serious deficit in the Funds. That deficit will

mean a cut in health benefits next year if Congress does not act to stop it.

We had a chance, in the Energy conference, to shore up the Combined Benefit Fund while also helping make states whole with regard to what was owed them in outstanding Abandoned Mine Land contributions. I have heard promises that both Senate and House Chairmen have made to deal with this issue next year, when the AML Fund is up for reauthorization. For the 80-year old miners' widows who are facing a benefit cut next February, they have heard promises before, but in their behalf I must say that I sincerely hope that next year is not too late.

I am not happy that I must vote against this bill. I am sorry for my State of West Virginia, because it deserves better than this bill gives it. I'm sorry that our balanced bill of 2002 has been replaced with this lopsided monstrosity. I will continue to push my colleagues for a balanced and responsible energy policy for this nation, and I look forward to a time, hopefully soon, when I can vote for such a bill.

#### AGROTERRORISM: THE THREAT TO AMERICA'S BREADBASKET

Mr. AKAKA. Mr. President, I rise today to discuss how to prepare our Nation against a terrorist attack on our agriculture. Senator COLLINS, chairman of the Governmental Affairs Committee, is to be commended for holding a hearing last week on a critical issue which has received little congressional attention. I am deeply concerned about our agricultural security. In July and October 2001, I held two hearings on the Nation's preparedness for a bioterror attack. The threat to our agricultural industry by potential terrorists is not imagined; it is very real.

One expert likened the American agricultural industry to a large bulls-eye stamped across the United States. Dr. Peter Chalk, a RAND policy analyst, testified that an attack on American livestock could be extremely attractive to a terrorist for the following four reasons: (1) a low level of technology is needed to do considerable damage, (2) at least 15 pathogens have the capability of severely harming the agriculture industry, (3) a terrorist would not need to be at great personal risk in order to carry out a successful attack, and (4) a disease could spread quickly throughout a city, state, or even the country.

In Afghanistan, hundreds of pages of U.S. agricultural documents were discovered in al-Qaeda's possession. A recent unclassified CIA report confirmed that the September 11th hijackers were attempting to gain knowledge and access to crop-dusting aircraft which could be used to easily contaminate America's food supply.

An agroterrorism attack would have severe economic costs to agricultural producers, State and Federal Governments, and exporters of U.S. food products. The widespread contamination of

American produce or livestock could cause mass panic and long-lasting fear of American produced food products. Dr. Chalk cited a study conducted in California that concluded that “each day of delay in instituting effective eradication and control measures would cost the state \$1 billion in trade sanctions.” The economic repercussions are almost unimaginable.

Yet within the Federal Government, no agency has the clear responsibility for preventing and containing an agroterrorist attack. Over 30 Federal agencies have jurisdiction over some part of the response process. This bifurcation of jurisdiction contributes to confusion among local and State officials as to where to turn for assistance and advice. According to a recent General Accounting Office, GAO, report Federal agencies are confused about the chain of command. The report states that neither the Food and Drug Administration, FDA, nor the Department of Agriculture, USDA, believe that they have the authority to enforce security at U.S. food processing plants. GAO states that “both FDA and USDA have instructed their field inspection personnel to refrain from enforcing any aspects of the security guidelines because the agencies generally believe that they lack such authority.”

When questioned at the Governmental Affairs Committee hearing last week, Dr. Penrose Albright, Assistant Secretary for Science and Technology in the Department of Homeland Security, DHS, indicated that the responsibility of leadership would likely fall to DHS in the event of an intentional attack on the Nation’s agriculture and stated that DHS “takes these responsibilities seriously,” but stopped short of asserting that the new department had overall responsibility. I have asked DHS for clarification on this issue.

Dr. Albright also said that an unintentional contamination of American agriculture would not involve DHS. His response demonstrates a serious deficiency in the Federal Government’s crisis response procedure. If there were an incident, who would lead the response in the hours or days before the cause of an outbreak was known? One agency must shoulder the responsibility for coordinating an immediate response regardless of the cause.

To address these concerns, I introduced two bills, S. 427, the Agriculture Security Assistance Act, and S. 430, the Agriculture Security Preparedness Act, to increase the coordination in confronting the threat to America’s agriculture industry and provide the needed resources. My legislation provides for better funding and a better coordinated response and defense to an agroterrorist attack.

The Agriculture Security Assistance Act would assist States and communities in responding to threats to the agriculture industry. The measure authorizes funds for communities and states to increase their ability to handle a crisis. It also encourages animal

health professionals to participate in community emergency planning activities to assist farmers in strengthening their defenses against a terrorist threat.

The Agriculture Security Preparedness Act would enable better inter-agency coordination within the Federal Government. The legislation establishes senior level liaisons in the Departments of Homeland Security and Health and Human Services to coordinate with USDA on agricultural disease emergency management and response. The bill also requires DHS and USDA to work with the Department of Transportation to address the risks associated with transporting Animals, plants, and people between and around farms.

No doubt a terrorist attack on American agriculture could have a devastating effect on the United States. Our Nation’s capability to counter such an attack is increasing, but more needs to be done. My two bills would help our Nation act now so that a future agroterrorist attack can be avoided or quickly responded to before the damage in lives or livestock is too great. I urge my colleagues to support this overdue legislation.

#### OVERTIME PAY

Mr. HARKIN. Mr. President, we are sent here to do the people’s business, but one critical piece of the people’s business is missing in this omnibus bill that was filed today. There is one shameful omission.

Both Houses of Congress, on a bipartisan basis, voted for my amendment to block the administration’s proposed new rule on overtime. Both Houses voted to block the administration’s radical rewrite of the Nation’s overtime laws. That amendment passed 54 to 45 in the Senate, and 221 to 203 over in the House. The Congress of the United States spoke up—clear as a bell—and said, “No, the administration must not strip overtime rights from 8 million American workers.”

The administration refused to accept this act of defiance by Congress. The administration ordered its foot soldiers in the House of Representatives to strip this provision from the omnibus. Senator SPECTER and I fought to keep it in, but the administration refused any cooperation or compromise. In the end, just like that, the administration nullified the clear will of both Houses of Congress and the American public.

I believe this is an abuse of power, and there is a clear pattern to this abuse of power. Time and again, we see this administration dictating to Congress, nullifying the work of Congress, running roughshod over the will of Congress.

This administration seems to believe in Government by one branch—the executive branch. When the executive branch speaks, the administration’s allies in Congress must obediently fall in line. And, time and again, they do.

They act as a rubber stamp. They give the President a blank check.

This is dangerous to our constitutional system. The Founding Fathers did not talk about blank checks. They talked about checks and balances. In the Federalist Papers they specifically talked about the danger of allowing any one branch to reign supreme.

Instead of independent, coequal branches of Government, today the executive branch does, indeed, reign supreme. Time and again, this administration dictates to Congress, and Congress submits—even when both Houses of Congress have previously voted to the contrary.

The problem with having the executive branch dictating to the legislative branch—the problem with discarding checks and balances—is that it results in bad public policy, and that is exactly what we see here, today.

Both Houses of Congress, with bipartisan majorities, voted to block the administration’s proposed overtime rule. This was the right thing to do. It was the correct public policy choice because this new rule is a stealth attack on the 40-hour workweek, pushed by the White House without a single public hearing. It will effectively end overtime pay for dozens of occupations, including nurses, police officers, firefighters, clerical workers, airtraffic controllers, social workers, and journalists.

This proposal is a slap in the face to the millions of American workers who depend on overtime pay to support their families and make ends meet. We’re not talking about spare change, here. We are talking about taking away some 25 percent of the income of many American workers.

Now that Congress’s vote and voice have been nullified, we are hearing that the Department of Labor could issue this new rule in the coming weeks. But I am here to serve notice that I will not give up, nor will others who have fought this.

The American people will not allow us to drop this issue. They have been watching this issue closely, because it hits so close to home. I pledge that I will offer the overtime amendment to every piece of legislation until we succeed.

Let’s be clear. This is not just about reversing a destructive, misguided measure. It is also about this Congress asserting its independence and refusing to have its votes nullified at the whim of this administration.

#### BLOCKING THE ENFORCEMENT OF OUR NATION’S GUN SAFETY LAWS

Mr. LEVIN. Mr. President, the House-passed version of the Commerce, Justice and State Departments Appropriations Bill included provisions that, if adopted, would severely hamper efforts of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) to enforce our nation’s gun safety laws.