

# TAX ASPECTS OF BLACK LUNG BENEFITS LEGISLATION

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HEARING  
BEFORE THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE  
NINETY-FOURTH CONGRESS

SECOND SESSION

ON

**H.R. 10760**

AN ACT TO AMEND THE FEDERAL COAL MINE HEALTH AND SAFETY ACT TO REVISE THE BLACK LUNG BENEFITS PROGRAM ESTABLISHED UNDER SUCH ACT IN ORDER TO TRANSFER THE RESIDUAL LIABILITY FOR THE PAYMENT OF BENEFITS UNDER SUCH PROGRAM FROM THE FEDERAL GOVERNMENT TO THE COAL INDUSTRY, AND FOR OTHER PURPOSES

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SEPTEMBER 21, 1976



Printed for the use of the Committee on Finance

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## TAX ASPECTS OF BLACK LUNG BENEFITS LEGISLATION

TUESDAY, SEPTEMBER 21, 1976

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (presiding).

Present: Senators Long, Byrd Jr., of Virginia, Haskell, Curtis, Fannin, and Hansen.

The CHAIRMAN. The committee is today holding a hearing on the tax aspects of H.R. 10760 reported by the Committee on Labor and Public Welfare. This bill modifies many aspects of the black lung benefit program for coal miners and their families.

The bill is before the Committee on Finance for consideration of those elements representing an exercise of the Federal taxing power.

Under current law, black lung benefits are charged against the former employer and general revenues.

H.R. 10760 would substitute for general revenues taxing aspects a new assessment of a tax to be levied on coal operations at a rate per ton of coal mined.

[The Committee on Finance press release announcing this hearing, the text of the bill H.R. 10760, a paper prepared by the staff of the Committee on Finance, and the statement of Senator Jennings Randolph follow:]

[Press Release]

COMMITTEE ON FINANCE,  
U.S. SENATE,  
*September 16, 1976.*

### FINANCE COMMITTEE SETS HEARING ON TAX ASPECTS OF BLACK LUNG LEGISLATION (H.R. 10760)

The Honorable Russell B. Long (D., La.), Chairman of the Senate Committee on Finance, announced today that the Committee will hold a hearing on the tax aspects of the black lung legislation, H.R. 10760. The hearing will begin at 10:00 A.M. on Tuesday, September 21, 1976, and will be held in Room 2221 Dirksen Senate Office Building.

The present black lung benefits program provides benefits for miners disabled by pneumoconiosis and for their dependents and survivors. This program is administered by the Department of Labor and the Department of Health, Education, and Welfare. Under current law, black lung benefits are financed partly by charges against coal mine operators (to the extent that individual liability can be established) and partly by the appropriations from Federal general revenues where no individual operator is determined to be liable or where the liable operator is no longer in business.

The bill H.R. 10760 as passed by the House of Representatives would make a number of changes in eligibility standards under the black lung benefits pro-

gram and would also significantly modify the method for financing the program. The House bill establishes a Federal trust fund for this program and provides for financing benefits which cannot be charged to individual operators by payments into this trust fund in the form of assessments levied on all coal operators on the basis of a rate per ton of coal mined.

Since this funding mechanism in the bill as passed by the House as reported by the Senate Committee on Labor and Public Welfare is an exercise of the Federal taxing power, H.R. 10700 has been referred to the Committee on Finance for consideration of these tax aspects of the legislation.

At the hearing on September 21, the Committee will hear testimony from Administration witnesses and from representatives of coal mine workers and of the coal mining industry. In view of the shortness of time remaining before the hearing, it will not be possible to schedule additional witnesses for oral testimony. The Chairman stated, however, that the Committee would be pleased to receive written views from interested persons or organizations.

*Written Testimony.*—Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies by *Tuesday, September 21, 1976*, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.

94TH CONGRESS  
 NUMBER 23

# H. R. 10760

[Report No. 94-1254]

## IN THE SENATE OF THE UNITED STATES

MARCH 3, 1976

Read twice and referred to the Committee on Labor and Public Welfare

SEPTEMBER 16, 1976

Reported by Mr. RANDOLPH, with an amendment, referred to the Committee on Finance until September 24, 1976-

[Strike out all after the enacting clause and insert the part printed in italic]

## AN ACT

To amend the Federal Coal Mine Health and Safety Act to revise the black lung benefits program established under such Act in order to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 ~~SHORT TITLE~~

4 ~~SECTION 1. This Act may be cited as the "Black Lung~~  
 5 ~~Benefits Reform Act of 1975".~~

6 ~~ENTITLEMENTS~~

7 ~~Sec. 2. (a) Section 411 (c) of the Federal Coal Mine~~  
 8 ~~Health and Safety Act of 1969 (30 U.S.C. 921 (c)), here-~~

1 ~~inafter in this Act referred to as the "Act", is amended—~~

2 ~~(1) in paragraph (3) thereof, by striking out~~

3 ~~"and" at the end thereof;~~

4 ~~(2) in paragraph (4) thereof, by striking out the~~

5 ~~next to the last sentence thereof, and by striking out the~~

6 ~~period at the end thereof and inserting in lieu thereof a~~

7 ~~semicolon; and~~

8 ~~(3) by adding at the end thereof the following:~~

9 ~~"(5) if a miner was employed for thirty years or~~  
10 ~~more in one or more underground coal mines such miner~~

11 ~~(or, in the case of a deceased miner, the eligible survi-~~  
12 ~~vors of such miner) shall be entitled to the payment of~~

13 ~~benefits; and—~~

14 ~~"(6) if a miner was employed for twenty five years~~  
15 ~~or more in one or more anthracite coal mines such miner~~

16 ~~(or, in the case of a deceased miner, the eligible sur-~~  
17 ~~vivors of such miner) shall be entitled to the payment~~

18 ~~of benefits.~~

19 ~~The Secretary shall not apply all or a portion of any require-~~

20 ~~ment of this subsection that a miner shall have worked in an~~

21 ~~underground mine if the Secretary determines that conditions~~

22 ~~of such miner's employment in a coal mine other than an un-~~

23 ~~derground mine were substantially similar to conditions in~~

24 ~~an underground mine."~~

1 ~~(b) Section 412(a)(1) of the Act (30 U.S.C. 922~~  
2 ~~(a)(1)) is amended—~~

3 ~~(1) by inserting immediately after “pneumoconio-~~  
4 ~~sis,” the following: “or in the case of a minor entitled to~~  
5 ~~benefits under paragraph (5) or paragraph (6) of sec-~~  
6 ~~tion 411(c) of this title,”;~~

7 ~~(2) by striking out “disabled” the first place it ap-~~  
8 ~~pears therein; and—~~

9 ~~(3) by inserting immediately after “disability” the~~  
10 ~~second place it appears therein the following: “, or dur-~~  
11 ~~ing the period of such entitlement,”.~~

12 ~~(c)(1) Section 414(a) of the Act (30 U.S.C. 924~~  
13 ~~(a)) is amended by adding at the end thereof the following~~  
14 ~~new paragraph:~~

15 ~~“(1) A claim for benefits under this part may be filed at~~  
16 ~~any time on or after the date of the enactment of the Black~~  
17 ~~Lung Benefits Reform Act of 1975 by a minor (or, in the~~  
18 ~~case of a deceased miner, the eligible survivors of such miner)~~  
19 ~~if the date of the last exposed employment of such miner~~  
20 ~~occurred before December 30, 1969.”.~~

21 ~~(2) The Secretary of Labor shall be responsible for the~~  
22 ~~administration of the provisions of section 414(a)(4) of the~~  
23 ~~Act (30 U.S.C. 924(a)(4)), as added by paragraph (1).~~

24 ~~(d) Section 414(c) of the Act (30 U.S.C. 924(c)) is~~

1 ~~amended by inserting immediately after "pneumoconiosis"~~  
2 ~~the following: ", or with respect to an entitlement under~~  
3 ~~paragraph (5) or paragraph (6) of section 411 (e) of~~  
4 ~~this title,"~~

5 ~~(e) (1) Section 421 (a) of the Act (30 U.S.C. 931 (a))~~  
6 ~~is amended by inserting immediately after "pneumoconiosis"~~  
7 ~~the second place it appears therein the following: ", and in~~  
8 ~~any case in which benefits based upon eligibility under para-~~  
9 ~~graph (5) or paragraph (6) of section 411 (e) are~~  
10 ~~involved,"~~

11 ~~(2) Section 421 (b) (2) (C) of the Act (30 U.S.C. 931~~  
12 ~~(b) (2) (C)) is amended by inserting immediately before~~  
13 ~~the semicolon at the end thereof the following: ", except that~~  
14 ~~such standards shall not be required to include provisions for~~  
15 ~~the payment of benefits based upon conditions substantially~~  
16 ~~equivalent to conditions described in paragraphs (5) and~~  
17 ~~(6) of section 411 (e)"~~

18 ~~(f) Section 430 of the Act (30 U.S.C. 938) is amended~~  
19 ~~by inserting "and by the Black Lung Benefits Reform Act of~~  
20 ~~1975" immediately after "1972", by inserting immediately~~  
21 ~~after "section 411 (e) (4)" the following: "and the applica-~~  
22 ~~bility of entitlements based upon conditions described in~~  
23 ~~paragraphs (5) and (6) of section 411 (e)," and by strik-~~  
24 ~~ing out "whether a miner was employed at least fifteen~~

1 years" and inserting in lieu thereof the following: "the period  
2 during which the miner was employed".

3 ~~OFFSET AGAINST WORKMEN'S COMPENSATION BENEFITS~~  
4 ~~SEC. 3. The first sentence of section 412 (b) of the Act~~  
5 ~~(30 U.S.C. 922 (b)) is amended by inserting immediately~~  
6 ~~after "disability of such miner" the following: "due to~~  
7 ~~pneumoconiosis"~~,

8 ~~CURRENT EMPLOYMENT AS A BAR TO BENEFITS~~  
9 ~~SEC. 4. (a) The first sentence of section 413 (b) of the~~  
10 ~~Act (30 U.S.C. 923 (b)) is amended by inserting immedi-~~  
11 ~~ately before the period at the end thereof the following:~~  
12 ~~"or solely on the basis of employment as a miner if (1) the~~  
13 ~~location of such employment has recently been changed to~~  
14 ~~a mine area having a lower concentration of dust particles;~~  
15 ~~(2) the nature of such employment has been changed so as~~  
16 ~~to involve less rigorous work; or (3) the nature of such~~  
17 ~~employment has been changed so as to result in the receipt-~~  
18 ~~of substantially less pay"~~.

19 ~~(b) Section 413 of the Act (30 U.S.C. 923) is~~  
20 ~~amended by adding at the end thereof the following new~~  
21 ~~subsection:~~

22 ~~"(d) (1) A miner may file a claim for benefits whether~~  
23 ~~or not such miner is employed by an operator of a coal mine~~  
24 ~~at the time such miner files such claim.~~

1       ~~“(2) The Secretary shall notify a minor, as soon as~~  
 2       ~~practicable after the Secretary receives a claim for benefits~~  
 3       ~~from such miner, whether, in the opinion of the Secretary,~~  
 4       ~~such minor—~~

5               ~~“(A) is eligible for benefits on the basis of the pro-~~  
 6       ~~visions of paragraph (1), (2), or (3) of subsection~~  
 7       ~~(b); or~~

8               ~~“(B) would be eligible for benefits, except for the~~  
 9       ~~circumstances of the employment of such miner at the~~  
 10       ~~time such miner filed a claim for benefits.”~~

11   ~~APPEALS~~

12       ~~SEC. 5. The last sentence of section 413 (b) of the Act~~  
 13       ~~(30 U.S.C. 923 (b)) is amended by inserting immediately~~  
 14       ~~before the period at the end thereof the following: “, except~~  
 15       ~~that a decision by an administrative law judge in favor of a~~  
 16       ~~claimant may not be appealed or reviewed, except upon mo-~~  
 17       ~~tion of the claimant”~~

18   ~~INDIVIDUAL NOTIFICATIONS~~

19       ~~SEC. 6. Part B of title IV of the Act (30 U.S.C. 911-~~  
 20       ~~et seq.) is amended by adding at the end thereof the follow-~~  
 21       ~~ing new section:~~

22               ~~“SEC. 416. (a) For purposes of assuring that all in-~~  
 23       ~~dividuals who may be eligible for benefits under this part~~  
 24       ~~are afforded an opportunity to apply for and, if entitled~~  
 25       ~~thereto, to receive such benefits, the Secretary shall undertake~~



1 ~~a program to locate individuals who are likely to be eligible~~  
2 ~~for such benefits and have not filed a claim for such benefits.~~

3 ~~“(b) The Secretary shall seek to determine, in coopera-~~  
4 ~~tion with operators and with the Secretary of the Interior,~~  
5 ~~the names and current addresses of individuals having long~~  
6 ~~periods of employment in coal mining and, if such individuals~~  
7 ~~are deceased, the names and addresses of their widows, chil-~~  
8 ~~dren, parents, brothers, and sisters. The Secretary shall then~~  
9 ~~directly, by mail, by personal visit by a delegate of the Secre-~~  
10 ~~tary, or by other appropriate means, inform any such indi-~~  
11 ~~viduals (other than those who have filed a claim for benefits~~  
12 ~~under this title) of the possibility of their eligibility for bene-~~  
13 ~~fits, and offer them individualized assistance in preparing~~  
14 ~~their claims where it is appropriate that a claim be filed.~~

15 ~~“(c) Notwithstanding any other provision of this part, a~~  
16 ~~claim for benefits under this part, in the case of an individual~~  
17 ~~who has been informed by the Secretary under subsection (b)~~  
18 ~~of the possibility of his eligibility for benefits, shall, if filed~~  
19 ~~no later than six months after the date he was so informed,~~  
20 ~~be considered on the same basis as if it had been filed on~~  
21 ~~June 30, 1973.”~~

22 ~~DEFINITIONS~~

23 ~~SEC. 7. (a) Section 402 (f) of the Act (30 U.S.C. 902~~  
24 ~~(f)) is amended by adding at the end thereof the following~~  
25 ~~new undesignated paragraph:~~

1 ~~"With respect to a claim filed after June 30, 1973, such~~  
2 ~~regulations shall not provide more restrictive criteria than~~  
3 ~~those applicable to a claim filed on June 30, 1973."~~

4 ~~(b) Section 402 of the Act (30 U.S.C. 902) is amended~~  
5 ~~by inserting immediately after paragraph (g) the following~~  
6 ~~new paragraph:~~

7 ~~"(h) The term 'fund' means the Black Lung Disability~~  
8 ~~Insurance Fund established by section 423 (a)."~~

9 ~~EVIDENCE REQUIRED TO ESTABLISH CLAIM~~

10 ~~SEC. 8. (a) Section 413 (b) of the Act (30 U.S.C. 923~~  
11 ~~(b)) is amended by inserting immediately after the second~~  
12 ~~sentence thereof the following new sentence: "Where there~~  
13 ~~is no relevant medical evidence in the case of a deceased~~  
14 ~~miner, such affidavits shall be considered to be sufficient to~~  
15 ~~establish that the miner was totally disabled due to pneu-~~  
16 ~~moconiosis or that his death was due to pneumoconiosis."~~

17 ~~(b) The last sentence of section 413 (b) of the Act~~  
18 ~~(30 U.S.C. 923 (b)) is amended by striking out "and~~  
19 ~~(1)," and inserting in lieu thereof "(1), and (n)."~~

20 ~~(c) The second sentence of section 413 (b) of the~~  
21 ~~Act (30 U.S.C. 923 (b)) is amended by striking out the~~  
22 ~~period at the end thereof and inserting a colon and the~~  
23 ~~following: "Provided, That unless the Secretary has good~~  
24 ~~cause to believe (1) that an X-ray is not of sufficient quality~~  
25 ~~or an autopsy report is not accurate, to demonstrate the~~

9

1 ~~presence of pneumoconiosis, or (2) that the condition of~~  
2 ~~the miner is being fraudulently misrepresented, the Secre-~~  
3 ~~tary shall accept such report, or in the case of the X-ray,~~  
4 ~~accept the opinion of the claimant's physician, concerning~~  
5 ~~the presence of pneumoconiosis and the stage of advance-~~  
6 ~~ment of pneumoconiosis."~~

7 ~~CLAIMS FILED AFTER DECEMBER 31, 1970-~~

8 ~~Sec. 9. (a) (1) The first sentence of section 422 (a) of~~  
9 ~~the Act (30 U.S.C. 932 (a)) is amended—~~

10 ~~(A) by inserting immediately before the period at~~  
11 ~~the end thereof the following: "or with respect to en-~~  
12 ~~titlements established in paragraph (5) or paragraph~~  
13 ~~(6) of section 411 (e) of this title"; and—~~

14 ~~(B) by inserting immediately after "except as~~  
15 ~~otherwise provided in this subsection" the following:~~  
16 ~~"and to the extent consistent with the provisions of this~~  
17 ~~part,".~~

18 ~~(2) The last sentence of section 422 (a) of the Act (30~~  
19 ~~U.S.C. 932 (a)) is amended—~~

20 ~~(A) by striking out "benefits" and inserting in~~  
21 ~~lieu thereof "premiums and assessments"; and—~~

22 ~~(B) by striking out "to persons entitled thereto",~~

23 ~~(3) Section 422 (b) of the Act (30 U.S.C. 932 (b)) is~~  
24 ~~amended by inserting "(1)" immediately after "(b)", and~~  
25 ~~by adding at the end thereof the following new paragraph:~~

1       ~~"(2) (A) During any period in which a State work-~~  
2 ~~men's compensation law is not included on the list published~~  
3 ~~by the Secretary under section 421 (b) of this part each~~  
4 ~~operator of a coal mine in such State shall secure the payment~~  
5 ~~of assessments against such operator under section 424 (g)~~  
6 ~~of this part by (i) qualifying as a self-insurer in accordance~~  
7 ~~with regulations prescribed by the Secretary; or (ii) insuring~~  
8 ~~and keeping insured the payment of such assessments with~~  
9 ~~any stock company or mutual company or association, or~~  
10 ~~with any other person or fund, including any State fund,~~  
11 ~~while such company, association, person, or fund is author-~~  
12 ~~ized under the laws of any State to insure workmen's~~  
13 ~~compensation.~~

14       ~~"(B) In order to meet the requirements of clause (ii)~~  
15 ~~of subparagraph (A) of this paragraph, every policy or con-~~  
16 ~~tract of insurance shall contain~~

17               ~~"(1) a provision to pay assessments required under~~  
18               ~~section 424 (g) of this part, notwithstanding the provi-~~  
19               ~~sions of the State workmen's compensation law which~~  
20               ~~may provide for payments which are less than the~~  
21               ~~amount of such assessments;~~

22               ~~"(2) a provision that insolvency or bankruptcy of~~  
23               ~~the operator or discharge therein (or both) shall not~~  
24               ~~relieve the carrier from liability for the payment of such~~  
25               ~~assessments; and~~

1       ~~“(B) such other provisions as the Secretary, by~~  
2       ~~regulation, may require.~~

3       ~~“(C) No policy or contract of insurance issued by a~~  
4       ~~carrier to comply with the requirements of clause (ii) of sub-~~  
5       ~~paragraph (A) of this paragraph shall be canceled prior to~~  
6       ~~the date specified in such policy or contract for its expiration~~  
7       ~~until at least thirty days have elapsed after notice of can-~~  
8       ~~cellation has been sent by registered or certified mail to the~~  
9       ~~Secretary and to the operator at his last known place of~~  
10       ~~business.”.~~

11       ~~(4) Section 422 (b) (1) of the Act, as so redesignated~~  
12       ~~by paragraph (3), is amended—~~

13               ~~(A) by striking out “benefits” and inserting in~~  
14               ~~lieu thereof “premiums and assessments”; and~~

15               ~~(B) by striking out “section 423” and inserting~~  
16               ~~in lieu thereof “section 424”.~~

17       ~~(5) Section 422 (c) of the Act (30 U.S.C. 932 (c)) is~~  
18       ~~amended to read as follows:~~

19       ~~“(c) Benefits shall be paid during such period under~~  
20       ~~this section by the fund, subject to reimbursement to the~~  
21       ~~fund by operators in accordance with the provisions of sec-~~  
22       ~~tion 424 (g) of this title, to the categories of persons entitled~~  
23       ~~to benefits under section 412 (a) of this title in accordance~~  
24       ~~with the regulations of the Secretary and the Secretary of~~  
25       ~~Health, Education, and Welfare applicable under this sec-~~

1 tion, except that ~~(1) the Secretary may modify any such~~  
 2 ~~regulation promulgated by the Secretary of Health, Educa-~~  
 3 ~~tion, and Welfare; and (2) no operator shall be liable for~~  
 4 ~~the payment of any benefit (except as provided in section~~  
 5 ~~421 (f) of this title) on account of death or total disability~~  
 6 ~~due to pneumoconiosis, or on account of any entitlement~~  
 7 ~~based upon conditions described in paragraphs (5) and (6)~~  
 8 ~~of section 411 (c), which did not arise, at least in part, out~~  
 9 ~~of employment in a mine during the period when it was~~  
 10 ~~operated by such operator."~~

11 ~~(6) Section 422 (e) of the Act (30 U.S.C. 932 (e)) is~~  
 12 ~~amended—~~

13 ~~(A) by striking out "required" and inserting in lieu~~  
 14 ~~thereof "made"; and~~

15 ~~(B) by adding "or" immediately after the semi-~~  
 16 ~~colon in paragraph (1) thereof, by striking out " or" at~~  
 17 ~~the end paragraph (2) thereof and inserting in lieu~~  
 18 ~~thereof a period, and by striking out paragraph (3)~~  
 19 ~~thereof.~~

20 ~~(7) Section 422 (f) (2) of the Act (30 U.S.C. 932 (f)~~  
 21 ~~(2)) is amended—~~

22 ~~(A) by inserting "paragraph (4), (5), or (6) of"~~  
 23 ~~immediately after "eligibility under";~~

24 ~~(B) by striking out "section 411 (c) (4)" the first~~

1 ~~place it appears therein and inserting in lieu thereof~~  
2 ~~“section 411 (c)”~~;

3 ~~(C) by striking out “from a respiratory or pulmo-~~  
4 ~~nary impairment”~~; and

5 ~~(D) by striking out “section 411 (c) (4) of this~~  
6 ~~title, incurred as a result of employment in a coal mine”~~  
7 ~~and inserting in lieu thereof “any of such paragraphs”.~~

8 ~~(8) Section 422 (h) of the Act (30 U.S.C. 932 (h)) is~~  
9 ~~amended by striking out the first sentence thereof.~~

10 ~~(9) Section 422 (i) of the Act (30 U.S.C. 932 (i))~~  
11 ~~is amended to read as follows:~~

12 ~~“(i) (1) The Secretary shall promulgate regulations~~  
13 ~~providing for the prompt and expeditious consideration of~~  
14 ~~claims under this section.~~

15 ~~“(2) (A) The Secretary shall promulgate regulations~~  
16 ~~providing for the prompt and equitable hearing of appeals~~  
17 ~~by claimants who are aggrieved by any decision of the Sec-~~  
18 ~~retary.~~

19 ~~“(B) Any such hearing shall be held no later than~~  
20 ~~forty-five days after the date upon which the claimant in-~~  
21 ~~volved requests such hearing. A hearing may be postponed~~  
22 ~~at the request of the claimant involved for good cause.~~

23 ~~“(C) Any such hearing shall be held at a time and a~~  
24 ~~place convenient to the claimant requesting such hearing.~~

1       ~~“(D) Any such hearing shall be of record and shall be~~  
2       ~~subject to the provisions of sections 554, 555, 556, and 557~~  
3       ~~of title 5, United States Code.~~

4       ~~“(B) (A) Any individual, after any final decision of the~~  
5       ~~Secretary made after a hearing to which he was a party,~~  
6       ~~may obtain a review of such decision by a civil action com-~~  
7       ~~menced no later than ninety days after the mailing to him of~~  
8       ~~notice of such decision, or no later than such further time as~~  
9       ~~the Secretary may allow.~~

10       ~~“(B) Such action shall be brought in a district court~~  
11       ~~of the United States in the State in which the claimant~~  
12       ~~resides.~~

13       ~~“(C) The Secretary shall file, as part of his answer,~~  
14       ~~a certified copy of the transcript of the record, including the~~  
15       ~~evidence upon which the findings and decision complained~~  
16       ~~of are based.~~

17       ~~“(D) The court shall have power to enter, upon the~~  
18       ~~pleadings and transcript of the record, a judgment affirming,~~  
19       ~~modifying, or reversing the decision of the Secretary, with~~  
20       ~~or without remanding the case for a rehearing. The findings~~  
21       ~~of the Secretary as to any fact, if supported by the weight~~  
22       ~~of the evidence, shall be conclusive.~~

23       ~~“(E) The court shall, on motion of the Secretary made~~  
24       ~~before he files his answer, remand the case to the Secretary~~  
25       ~~for further action by the Secretary, and may, at any time,~~



1 ~~on good cause shown, order additional evidence to be taken~~  
2 ~~before the Secretary, and the Secretary shall, after the case~~  
3 ~~is remanded, and after hearing such additional evidence if so~~  
4 ~~ordered, modify or affirm his findings of fact or his decision,~~  
5 ~~or both, and shall file with the court any such additional and~~  
6 ~~modified findings of fact and decision, and a transcript of the~~  
7 ~~additional record and testimony upon which his action in~~  
8 ~~modifying or affirming was based. Such additional or modi-~~  
9 ~~fied findings of fact and decision shall be reviewable only to~~  
10 ~~the extent provided for review of the original findings of~~  
11 ~~fact and decision.~~

12 ~~“(F) The judgment of the court shall be final, except~~  
13 ~~that it shall be subject to review in the same manner as a~~  
14 ~~judgment in other civil actions. Any action instituted in ac-~~  
15 ~~cordance with this paragraph shall survive notwithstanding~~  
16 ~~any change in the person occupying the office of Secretary~~  
17 ~~or any vacancy in such office.”.~~

18 ~~(10) In the case of any miner or any survivor of a miner~~  
19 ~~who is eligible for benefits under section 422 of the Act (36~~  
20 ~~U.S.C. 922) as a result of any amendment made by any~~  
21 ~~provision of this Act, such miner or survivor may file a~~  
22 ~~claim for benefits under such section no later than three~~  
23 ~~years after the date of the enactment of this Act, or no later~~  
24 ~~than the close of the applicable period for filing claims under~~

1 ~~section 422 (f) of the Act (30 U.S.C. 932 (f)), whichever~~  
2 ~~is later.~~

3 ~~(b) Section 423 of the Act (30 U.S.C. 933) is amended~~  
4 ~~to read as follows:~~

5 ~~"SEC. 423. (a) (1) There is hereby established in the~~  
6 ~~Treasury of the United States a trust fund to be known as~~  
7 ~~the Black Lung Disability Insurance Fund. The fund shall~~  
8 ~~consist of such sums as may be appropriated as advances to~~  
9 ~~the fund under section 424 (e) (1) of this part, the assess-~~  
10 ~~ments paid into the fund as required by section 424 (g),~~  
11 ~~the premiums paid into the fund as required by section 424~~  
12 ~~(a), the interest on, and proceeds from, the sale or redemp-~~  
13 ~~tion of any investment held by the fund, and any penalties~~  
14 ~~recovered under section 424 (e), including such earnings,~~  
15 ~~income, and gains as may accrue from time to time which~~  
16 ~~shall be held, managed, and administered by the trustees in~~  
17 ~~trust in accordance with the provisions of this part and the~~  
18 ~~fund.~~

19 ~~"(2) Fund assets, other than such assets as may be re-~~  
20 ~~quired for necessary expenses, shall be used solely and ex-~~  
21 ~~clusively for the purpose of discharging obligations of oper-~~  
22 ~~ators under this part. Operators shall have no right, title, or~~  
23 ~~interest in fund assets, and none of the earnings of the fund~~  
24 ~~shall inure to the benefit of any person, other than through~~

1 ~~the payment of benefits under this part, together with appro-~~  
2 ~~priate costs.~~

3 ~~“(b)(1)(A) The fund shall have seven trustees. Ex-~~  
4 ~~cept as provided in subparagraph (B), trustees shall serve~~  
5 ~~for terms of four years.~~

6 ~~“(B) Of the trustees first elected under this subsection—~~

7 ~~“(i) four shall be elected for terms of two years;~~  
8 ~~and~~

9 ~~“(ii) three shall be elected for terms of one year.~~

10 ~~The Secretary shall determine, before the date of the first~~  
11 ~~election under this subsection, whether each trustee office~~  
12 ~~involved in such election shall be for a term of one year or~~  
13 ~~two years. Such determination shall be made through the use~~  
14 ~~of an appropriate method of random selection, except that at~~  
15 ~~least one trustee nominated under paragraph (2) (A) shall~~  
16 ~~serve for a term of two years.~~

17 ~~“(C) Any trustee may be a full-time employee of an~~  
18 ~~operator, except that no more than one trustee may be em-~~  
19 ~~ployed by any one operator or any affiliate of such operator.~~

20 ~~“(2) (A) Two trustees shall be nominated and elected~~  
21 ~~by operators having an annual payroll not in excess of~~  
22 ~~\$1,500,000 (hereinafter referred to as ‘small operators’).~~

23 ~~“(B) Five trustees shall be nominated and elected by~~  
24 ~~all operators.~~

1       ~~"(3) No later than 60 days after the date of the enact-~~  
2 ~~ment of the Black Lung Benefits Reform Act of 1975, all~~  
3 ~~operators shall certify to the Secretary their payrolls for the~~  
4 ~~12-month period ending December 31, 1974. The Secretary~~  
5 ~~shall then publish a list setting forth the number of votes to~~  
6 ~~which each small operator and each operator is entitled,~~  
7 ~~computed on the basis of one vote for each \$500,000 or~~  
8 ~~fraction thereof of payroll. Trustees shall be elected no later~~  
9 ~~than 180 days after the date of the enactment of such Act.~~

10       ~~"(4) Candidates seeking nomination for election to the~~  
11 ~~office of trustee under paragraph (2) (A) shall submit to~~  
12 ~~the Secretary petitions of nomination reflecting the approval~~  
13 ~~of small operators representing not less than 2 per centum~~  
14 ~~of the aggregate annual payroll of all small operators.~~  
15 ~~Candidates seeking such nomination under paragraph (2)~~  
16 ~~(B) shall submit petitions reflecting the approval of oper-~~  
17 ~~ators representing not less than 2 per centum of the aggregate~~  
18 ~~annual payroll of all operators.~~

19       ~~"(5) The Secretary shall promulgate regulations for the~~  
20 ~~nomination and election of trustees. Such regulations shall~~  
21 ~~include provisions for the nomination and election of trustees,~~  
22 ~~including the nomination and election of trustees to fill any~~  
23 ~~vacancy caused by the death, disability, resignation, or~~  
24 ~~removal of any trustee. The Secretary shall certify the~~  
25 ~~results of all nominations and elections. Two or more trustees~~

1 ~~may at any time file a petition, in the United States district~~  
2 ~~court where the fund has its principal office, for removal~~  
3 ~~of a trustee for malfeasance, misfeasance, or nonfeasance.~~  
4 ~~The cost of any such action shall be paid from the fund,~~  
5 ~~and the Secretary may intervene in any such action as an~~  
6 ~~interested party.~~

7       ~~“(6) The trustees shall organize by electing a Chairman~~  
8 ~~and Secretary and shall adopt such rules governing the~~  
9 ~~conduct of their business as they consider necessary or appro-~~  
10 ~~priate. Five trustees shall constitute a quorum and a simple~~  
11 ~~majority of those trustees present and voting may conduct~~  
12 ~~the business of the fund.~~

13       ~~“(c) (1) The trustees shall act on behalf of all operators~~  
14 ~~with respect to claims filed under this part.~~

15       ~~“(2) (A) Except as provided by subparagraph (B),~~  
16 ~~the fund may not participate or intervene as a party to any~~  
17 ~~proceeding held for the purpose of determining claims for~~  
18 ~~benefits under this part.~~

19       ~~“(B) (i) If the fund is dissatisfied with any determina-~~  
20 ~~tion of the Secretary with respect to a claim for benefits under~~  
21 ~~this part, the fund may, no later than thirty days after the~~  
22 ~~date of such determination, file with the United States court~~  
23 ~~of appeals for the circuit in which such determination was~~  
24 ~~made a petition for review of such determination. A copy of~~  
25 ~~such petition shall be forthwith transmitted by the clerk of the~~

1 ~~court to the Secretary. The Secretary thereupon shall file in~~  
2 ~~the court the record of the proceedings on which he based his~~  
3 ~~determination, as provided in section 2112 of title 28, United~~  
4 ~~States Code.~~

5       ~~“(ii) The findings of fact by the Secretary, if supported~~  
6 ~~by substantial evidence, shall be conclusive, except that the~~  
7 ~~court, for good cause shown, may remand the case to the~~  
8 ~~Secretary to take further evidence, and the Secretary there-~~  
9 ~~upon may make new or modified findings of fact and may~~  
10 ~~modify his previous determination, and shall certify to the~~  
11 ~~court the record of the further proceedings. Such new or~~  
12 ~~modified findings of fact shall likewise be conclusive if sup-~~  
13 ~~ported by substantial evidence.~~

14       ~~“(iii) The court shall have jurisdiction to affirm the~~  
15 ~~action of the Secretary or to set it aside, in whole or in part.~~  
16 ~~The judgment of the court shall be subject to review by the~~  
17 ~~Supreme Court of the United States upon certiorari or certi-~~  
18 ~~fication as provided in section 1254 of title 28, United States~~  
19 ~~Code.~~

20       ~~“(iv) Any finding of fact of the Secretary relating to~~  
21 ~~the interpretation of any chest roentgenogram or any other~~  
22 ~~medical evidence which demonstrates the existence of pneu-~~  
23 ~~moconiosis or any other disabling respiratory or pulmonary~~  
24 ~~impairment, shall not be subject to review under the provi-~~  
25 ~~sions of this subparagraph.~~

1       ~~“(3) No operator may bring any proceeding, or inter-~~  
2 ~~vene in any proceeding, held for the purpose of determining~~  
3 ~~claims for benefits under this part.~~

4       ~~“(4) It shall be the duty of the trustees to report to~~  
5 ~~the Secretary and to the operators no later than January 1 of~~  
6 ~~each year on the financial condition and the results of the~~  
7 ~~operations of the fund during the preceding fiscal year and~~  
8 ~~on its expected condition during the current and ensuing fis-~~  
9 ~~cal year. Such report shall be included in a report to the Con-~~  
10 ~~gress by the Secretary not later than March 1 of each year~~  
11 ~~on the financial condition and the results of the operations~~  
12 ~~of the fund during the preceding fiscal year and on its ex-~~  
13 ~~pected condition and operations during the current and next~~  
14 ~~ensuing fiscal year. The report of the Secretary shall be~~  
15 ~~printed as a House document of the session of the Congress~~  
16 ~~to which the report is made.~~

17       ~~“(5) (A) The trustees shall take control and manage-~~  
18 ~~ment of the fund and shall have the authority to hold, sell,~~  
19 ~~buy, exchange, invest, and reinvest the corpus and income~~  
20 ~~of the fund. All premiums paid to the fund under section-~~  
21 ~~424 (a) (1) shall be held and administered by the trustees~~  
22 ~~as a single fund, and the trustees shall not be required to~~  
23 ~~segregate and invest separately any part of the fund assets~~  
24 ~~which may be claimed to represent accruals or interests of~~  
25 ~~any individuals. It shall be the duty of the trustees to invest~~

1 ~~such portion of the assets of the fund as is not required to~~  
2 ~~meet obligations under this part, except that the trustees~~  
3 ~~may not invest any advances made to the fund under section~~  
4 ~~424 (c). The trustees shall make investments under this~~  
5 ~~paragraph in accordance with the provisions of section~~  
6 ~~404 (a) (1) (C) of the Employee Retirement Income Secu-~~  
7 ~~rity Act of 1974 (29 U.S.C. 1104 (a) (1) (C)).~~

8 ~~“(B) Any profit or return on any investment or rein-~~  
9 ~~vestment made by the trustees under subparagraph (A)~~  
10 ~~shall not be considered as income for purposes of Federal or~~  
11 ~~State income taxation.~~

12 ~~“(6) (A) Amounts in the fund shall be available for~~  
13 ~~making expenditures to meet obligations of the fund which are~~  
14 ~~incurred under this part, including the expenses of providing~~  
15 ~~medical benefits as required by section 432 of this title, and~~  
16 ~~the operation, maintenance, and staffing of the office of the~~  
17 ~~fund. The trustees may enter into agreements with any self-~~  
18 ~~insured person or any insurance carrier who has incurred~~  
19 ~~obligations with respect to claims under this part before the~~  
20 ~~effective date of this paragraph, under which the fund will~~  
21 ~~assume the obligations of such self-insured person or insur-~~  
22 ~~ance carrier in return for a payment or payments to the~~  
23 ~~fund in such amounts, and on such terms and conditions,~~  
24 ~~as will fully protect the financial interests of the fund.~~

25 ~~“(B) Beginning on the effective date of this paragraph,~~



1 ~~payments shall be made from the fund to meet any obli-~~  
2 ~~gation incurred by the Secretary with respect to claims~~  
3 ~~under this part before such effective date. The Secretary~~  
4 ~~shall cease to be subject to such obligations on such effective~~  
5 ~~date.~~

6 ~~"(7) The trustees shall keep accounts and records of~~  
7 ~~their administration of the fund, which shall include a de-~~  
8 ~~tailed account of all investments, receipts, and disbursements.~~

9 ~~"(8) At no time during the administration of the fund~~  
10 ~~shall the trustees be required to obtain any approval by any~~  
11 ~~court of the United States or by any other court of any act~~  
12 ~~required of them in connection with the performance of their~~  
13 ~~duties or in the performance of any act required of them in~~  
14 ~~the administration of their duties as trustees. The trustees~~  
15 ~~shall have the full authority to exercise their judgment in all~~  
16 ~~matters and at all times without any such approval of such~~  
17 ~~decisions. The trustees may file an application in the United~~  
18 ~~States district court where the fund has its principal office~~  
19 ~~for a judicial declaration concerning their power, authority,~~  
20 ~~or responsibility under this Act (other than the processing~~  
21 ~~and payment of claims). In any such proceeding, only the~~  
22 ~~trustees and the Secretary shall be necessary or indispensable~~  
23 ~~parties, and no other person, whether or not such person has~~  
24 ~~any interest in the fund, shall be entitled to participate in~~  
25 ~~any such proceeding. Any final judgment entered in such~~

1 ~~proceeding shall be conclusive upon any person or other~~  
2 ~~entity claiming an interest in the fund.~~

3 ~~"(9) The trustees may employ such counsel, account-~~  
4 ~~ants, agents, and employees as they consider advisable. The~~  
5 ~~trustees may charge the compensation of such persons and~~  
6 ~~any other expenses, including the cost of fidelity bonds and~~  
7 ~~indemnification and fiduciary insurance for trustees and other~~  
8 ~~fund employees, necessary in the administration of the~~  
9 ~~fund, against the fund.~~

10 ~~"(10) The trustees shall have the power to execute any~~  
11 ~~instrument which they consider proper in order to carry out~~  
12 ~~the provisions of the fund.~~

13 ~~"(11) The trustees may, through any duly authorized~~  
14 ~~person, vote any share of stock which the fund may hold.~~

15 ~~"(12) The trustees may employ actuaries to such extent~~  
16 ~~as they consider advisable. No actuary may be employed~~  
17 ~~by the trustees under this paragraph unless such actuary is~~  
18 ~~enrolled under section 3042 (a) of the Employee Retirement~~  
19 ~~Income Security Act of 1974 (29 U.S.C. 1242 (a)).~~

20 ~~"(d) Nothing in this Act or in the Black Lung Benefits~~  
21 ~~Reform Act of 1976 shall be construed as exempting the~~  
22 ~~fund, or any of its activities or outlays, from inclusion in~~  
23 ~~the Budget of the United States Government or from any~~  
24 ~~limitations imposed thereon."~~

1       ~~(c) Section 424 of the Act (30 U.S.C. 924) is amended~~  
2 ~~to read as follows:~~

3       ~~"Sec. 424. (a) (1) During any period in which a State~~  
4 ~~workmen's compensation law is not included on the list pub-~~  
5 ~~lished by the Secretary under section 421 (b), each operator~~  
6 ~~of a coal mine in such State shall pay premiums into the fund~~  
7 ~~in amounts sufficient to ensure the payment of benefits under~~  
8 ~~this part.~~

9       ~~"(2) The initial premium rate of each operator shall~~  
10 ~~be established by the Secretary as a rate per ton of coal mined~~  
11 ~~by such operator. Beginning one year after the date upon~~  
12 ~~which the Secretary establishes initial premium rates, the~~  
13 ~~trustees may modify or adjust the premium rate per ton of~~  
14 ~~coal mined to reflect the experience and expenses of the fund~~  
15 ~~to the extent necessary to permit the trustees to discharge~~  
16 ~~their responsibilities under this Act, except that the Secre-~~  
17 ~~tary may further modify or adjust the premium rate to ensure~~  
18 ~~that all obligations of the fund will be met. Any premium~~  
19 ~~rate established under this subsection shall be uniform for all~~  
20 ~~mines, mine operators, and amounts of coal mined.~~

21       ~~"(3) For purposes of section 162 (a) of the Internal~~  
22 ~~Revenue Code of 1954 (relating to trade or business ex-~~  
23 ~~penses), any premium paid by an operator of a coal mine~~  
24 ~~under paragraph (1) shall be considered to be an ordinary~~

1 ~~and necessary expense in carrying on the trade or business~~  
2 ~~of such operator.~~

3 ~~"(4) For purposes of this subsection—~~

4 ~~"(A) the term 'coal' means any material composed~~  
5 ~~predominantly of hydrocarbons in a solid state;~~

6 ~~"(B) the term 'ton' means a short ton of two thou-~~  
7 ~~sand pounds; and~~

8 ~~"(C) the amount of coal mined shall be determined~~  
9 ~~at the first point at which such coal is weighed.~~

10 ~~"(b) The Secretary shall advise the Secretary of the~~  
11 ~~Treasury or his delegate of premium rates established under~~  
12 ~~subsection (a), (1). The Secretary of the Treasury or his~~  
13 ~~delegate shall collect all premiums due and payable by oper-~~  
14 ~~ators under subsection (a) (1), and transmit such premiums~~  
15 ~~to the fund. Collections shall be effected by the Secretary of~~  
16 ~~the Treasury or his delegate in the same manner as, and~~  
17 ~~together with, quarterly payroll reports of employers. In~~  
18 ~~order to ensure the payment of premiums by all operators,~~  
19 ~~the Secretary, after consultation with the Secretary of the~~  
20 ~~Interior, shall certify, not less than annually, the names of~~  
21 ~~all operators subject to this Act.~~

22 ~~"(c) (1) In any case in which an operator fails or re-~~  
23 ~~fuses to pay any premium required to be paid under sub-~~  
24 ~~section (a) (1), the trustees of the fund shall bring a civil~~  
25 ~~action in the appropriate United States district court to~~

1 ~~require the payment of such premium. In any such action,~~  
2 ~~the court may issue an order requiring the payment of such~~  
3 ~~premiums in the future as well as past due premiums, to-~~  
4 ~~gether with 9 per centum annual interest on all past due~~  
5 ~~premiums.~~

6 ~~"(2) An operator who fails or refuses to pay any pre-~~  
7 ~~mium required to be paid under subsection (a) (1) may be~~  
8 ~~assessed a civil penalty by the Secretary of the Treasury or~~  
9 ~~his delegate in such amount as such Secretary or his delegate~~  
10 ~~may prescribe, but not in excess of an amount equal to the~~  
11 ~~premium the operator failed or refused to pay. Such penalty~~  
12 ~~shall be in addition to any other liability of the operator un-~~  
13 ~~der this Act. Penalties assessed under this paragraph may~~  
14 ~~be recovered in a civil action brought by such Secretary or~~  
15 ~~his delegate, and penalties so recovered shall be deposited in~~  
16 ~~the fund.~~

17 ~~"(d) The Secretary shall be required to make expendi-~~  
18 ~~tures under this part only for the purpose of carrying out~~  
19 ~~his obligation to administer this part. All other expenses in-~~  
20 ~~curred under this part shall be borne by the fund, and if~~  
21 ~~borne by the Secretary, shall be reimbursed by the fund to~~  
22 ~~the Secretary.~~

23 ~~"(e) (1) There are hereby authorized to be appropriated~~  
24 ~~to the fund such sums as may be necessary to provide the~~  
25 ~~fund with amounts equal to 50 per centum of the amount~~

1 ~~which the Secretary estimates is necessary for the payment~~  
2 ~~of benefits under this part during the first twelve month~~  
3 ~~period after the effective date of this section. Any amounts~~  
4 ~~appropriated under this paragraph may be used only for the~~  
5 ~~payment of benefits under this part.~~

6 ~~"(2) (A) Sums authorized to be appropriated by para-~~  
7 ~~graph (1) shall be repayable advances to the fund.~~

8 ~~"(B) Such advances shall be repaid with interest into~~  
9 ~~the general fund of the Treasury no later than five years~~  
10 ~~after the first appropriation made under paragraph (1).~~

11 ~~"(3) Interest on such advances shall be at a rate deter-~~  
12 ~~mined by the Secretary of the Treasury, taking into consid-~~  
13 ~~eration the current average yield during the month preced-~~  
14 ~~ing the date of the advance involved, on marketable interest~~  
15 ~~bearing obligations of the United States of comparable~~  
16 ~~maturities then forming a part of the public debt rounded~~  
17 ~~to the nearest one eighth of 1 per centum.~~

18 ~~"(f) (1) During any period in which section 422 of~~  
19 ~~this title is applicable with respect to a coal mine an oper-~~  
20 ~~ator of such mine who, after the date of the enactment of this~~  
21 ~~title, acquired such mine or substantially all the assets~~  
22 ~~thereof from a person (hereinafter in this paragraph re-~~  
23 ~~ferred to as a 'prior operator') who was an operator of~~  
24 ~~such mine on or after the operative date of this title shall~~  
25 ~~be liable for and shall, in accordance with this section and~~

1 ~~section 423 of this title, secure the payment of all benefits~~  
2 ~~for which the prior operator would have been liable under~~  
3 ~~section 422 of this title with respect to miners previously~~  
4 ~~employed in such mine if the acquisition had not occurred~~  
5 ~~and the previous operator had continued to operate such~~  
6 ~~mine.~~

7 ~~“(2) Nothing in this subsection shall relieve any prior~~  
8 ~~operator of any liability under section 422 of this title.~~

9 ~~“(g) (1) The fund shall make an annual assessment~~  
10 ~~against any operator who is liable for the payment of bene-~~  
11 ~~fits under section 422 of this title. Such assessment against~~  
12 ~~any operator of a coal mine shall be in an amount equal to~~  
13 ~~the amount of benefits for which such operator is liable~~  
14 ~~under section 422 of this title with respect to death or total~~  
15 ~~disability due to pneumoconiosis arising out of employment~~  
16 ~~in such mine, or with respect to entitlements established in~~  
17 ~~paragraph (5) or paragraph (6) of section 411 (c) of~~  
18 ~~this title.~~

19 ~~“(2) Any operator against whom an assessment is made~~  
20 ~~under paragraph (1) shall pay the amount involved in such~~  
21 ~~assessment into the fund no later than thirty days after re-~~  
22 ~~ceiving notice of such assessment.~~

23 ~~“(3) The provisions of subsection (c) of this section~~  
24 ~~shall apply in the case of any operator who fails or refuses~~

1 ~~to pay any assessment required to be paid under this~~  
 2 ~~subsection."~~

3 ~~(d) Section 421 (b) (2) (E) of the Act (30 U.S.C. 931~~  
 4 ~~(b) (2) (E)) is amended by striking out "section 422 (i)"~~  
 5 ~~and inserting in lieu thereof "section 424 (f)".~~

#### 6 CLINICAL PATHWAYS

7 ~~Sec. 10. The first sentence of section 427 (c) of the~~  
 8 ~~Act (30 U.S.C. 937 (c)) is amended by striking out "of~~  
 9 ~~the fiscal years ending June 30, 1973, June 30, 1974, and~~  
 10 ~~June 30, 1975" and inserting in lieu thereof "fiscal year,~~  
 11 ~~and \$2,500,000 for the period beginning July 1, 1976, and~~  
 12 ~~ending September 30, 1976".~~

#### 13 MEDICAL CARE

14 ~~Sec. 11. (a) Part C of title IV of the Act (30 U.S.C.~~  
 15 ~~931 et seq.) is amended by adding at the end thereof the~~  
 16 ~~following new section:~~

17 ~~"Sec. 132. The provisions of subsections (a), (b), (c),~~  
 18 ~~(d), and (g) of section 7 of the Longshoremen's and Harbor~~  
 19 ~~Workers' Compensation Act (33 U.S.C. 907 (a), (b), (c),~~  
 20 ~~(d), and (g)) shall be applicable to persons entitled to bene-~~  
 21 ~~fits under this part on account of total disability or on account~~  
 22 ~~of eligibility under paragraph (5) or paragraph (6) of~~  
 23 ~~section 411 (c), except that references in such section to the~~  
 24 ~~employer shall be considered to refer to the trustees of the~~  
 25 ~~fund."~~



1         ~~(b) The Secretary of Health, Education, and Welfare~~  
2         ~~shall notify each minor receiving benefits under part B of the~~  
3         ~~Black Lung Benefits Act on account of his total disability~~  
4         ~~who the Secretary has reason to believe became eligible for~~  
5         ~~medical services and supplies on January 1, 1974, of his~~  
6         ~~possible eligibility for such benefits. Where the Secretary~~  
7         ~~so notifies a minor, the period during which he may file~~  
8         ~~a claim for medical services and supplies under part C of~~  
9         ~~such Act shall not terminate before six months after such~~  
10        ~~notification was made.~~

11   ~~TRANSITIONAL PROVISIONS~~

12         ~~Sec. 12. (a) The Secretary of Health, Education, and~~  
13         ~~Welfare, and the Secretary of Labor shall disseminate to~~  
14         ~~interested persons and groups the changes in the Black Lung~~  
15         ~~Benefits Act made by this Act. Each such Secretary shall~~  
16         ~~undertake a program to give individual notice to individuals~~  
17         ~~who they believe are likely to have become eligible for bene-~~  
18         ~~fits by reason of such changes.~~

19         ~~(b) (1) The Secretary of Labor (with respect to part~~  
20         ~~B and part C of the Black Lung Benefits Act) shall review~~  
21         ~~each claim which has been denied, and each claim which is~~  
22         ~~pending, under each such part, taking into account the~~  
23         ~~amendments made to each such part by this Act. Such~~  
24         ~~Secretary shall approve any such claim if the provisions~~  
25         ~~of either such part, as so amended, require such approval.~~

1 ~~(2) Such Secretary, in undertaking the review re-~~  
2 ~~quired by paragraph (1), shall not require the resubmission~~  
3 ~~of any claim which is the subject of any such review.~~

4 ~~(3) Such Secretary shall establish such procedures as~~  
5 ~~he considers necessary or appropriate to determine whether~~  
6 ~~a claimant whose claim is reviewed under this subsection~~  
7 ~~has met the requirements of section 411(c) of the Act~~  
8 ~~(30 U.S.C. 921(c)) relating to years of employment, as~~  
9 ~~amended by section 2(a) of this Act, except that such~~  
10 ~~Secretary shall seek to make any such determination, to the~~  
11 ~~extent practicable, without seeking to obtain access to any~~  
12 ~~record or other information maintained by the Secretary~~  
13 ~~of Health, Education, and Welfare.~~

14 ~~SHORT TITLE FOR ACT~~

15 ~~Sec. 13. Section 401 of the Act (30 U.S.C. 901) is~~  
16 ~~amended by inserting "(a)" immediately after "Sec. 401,"~~  
17 ~~and by adding at the end thereof the following new subsec-~~  
18 ~~tion:~~

19 ~~"(b) This title may be cited as the 'Black Lung Bene-~~  
20 ~~fits Act'."~~

21 ~~MINING ACCIDENT WIDOWS~~

22 ~~Sec. 14. (a) If a minor was employed for seventeen~~  
23 ~~years or more in one or more underground coal mines, and~~  
24 ~~died as a result of an accident in any such coal mine which~~  
25 ~~occurred on or before June 30, 1971, any eligible survivor of~~

1 ~~such minor shall be entitled to the payment of benefits under~~  
2 ~~part B of the Black Lung Benefits Act.~~

3 ~~(b) For purposes of this section, benefit payments to~~  
4 ~~a widow, child, parent, brother, or sister of any miner to~~  
5 ~~whom subsection (a) applies shall be reduced, on a monthly~~  
6 ~~or other appropriate basis, by an amount equal to any pay-~~  
7 ~~ment received by such widow, child, parent, brother, or sister~~  
8 ~~under the workmen's compensation, unemployment compen-~~  
9 ~~sation, or disability laws of the miner's State.~~

10 ~~(c) The Secretary of Labor shall be responsible for the~~  
11 ~~administration of the provisions of this section.~~

12 ~~ADMINISTRATION OF BLACK LUNG BENEFITS ACT~~

13 ~~SEC. 15. (a) (1) The Division of Coal Mine Workers'~~  
14 ~~Compensation is hereby transferred to the Office of the~~  
15 ~~Secretary of Labor.~~

16 ~~(2) The Secretary shall act through the Division in~~  
17 ~~carrying out the provisions of the Black Lung Benefits Act.~~

18 ~~(b) (1) The Secretary, in carrying out the Black Lung~~  
19 ~~Benefits Act, shall establish and operate such field offices~~  
20 ~~as may be necessary to assist miners and other persons with-~~  
21 ~~respect to the filing of claims under such Act. Such field~~  
22 ~~offices shall be established and operated in a manner which~~  
23 ~~makes them reasonably accessible to such miners and other~~  
24 ~~persons.~~

25 ~~(2) The Secretary, in connection with the establish-~~

1 ~~ment and operation of field offices under paragraph (1),~~  
2 ~~may enter into arrangements with other Federal depart-~~  
3 ~~ments and agencies, and with State agencies, for the use of~~  
4 ~~existing facilities operated by such departments and agencies.~~

5 ~~(c) For purposes of this section—~~

6 ~~(1) the term "Division" means the Division of~~  
7 ~~Coal Mine Workers' Compensation established in the~~  
8 ~~Office of Workers' Compensation Programs by the As-~~  
9 ~~sistant Secretary of Labor for Employment Standards~~  
10 ~~under the Secretary's Order No. 13 71 (36 Federal~~  
11 ~~Register 8755); and~~

12 ~~(2) the term "Secretary" means the Secretary of~~  
13 ~~Labor.~~

14 ~~EFFECTIVE DATES~~

15 ~~SEC. 16. (a) This Act shall take effect on the date of its~~  
16 ~~enactment, except that—~~

17 ~~(1) the amendments made by section 2 shall be~~  
18 ~~effective on and after December 30, 1960, except that~~  
19 ~~claims approved solely because of the amendments made~~  
20 ~~by section 2, which were filed before the date of the~~  
21 ~~enactment of this Act, shall be awarded benefits only for~~  
22 ~~the period beginning on such date of enactment;~~

23 ~~(2) the amendments made by sections 4, 5, and 8~~  
24 ~~shall be effective on and after December 30, 1960;~~

1       ~~(3) the amendments made by section 6 shall not~~  
2       ~~require the payment of benefits for any period before~~  
3       ~~the date of the enactment of this Act; and~~

4       ~~(4) the amendments made by section 9 shall take~~  
5       ~~effect on January 1, 1976, except that (A) the Secre-~~  
6       ~~tary of Labor shall establish initial premium rates for~~  
7       ~~operators under section 424 (a) (1) of the Black Lung~~  
8       ~~Benefits Act, as added by section 9 (c) of this Act, no~~  
9       ~~later than January 1, 1976; and (B) such Secretary~~  
10       ~~shall make the estimate required by section 424 (c) (1)~~  
11       ~~of such Act, as added by section 9 (c) of this Act, as~~  
12       ~~soon as practicable after the date of the enactment of~~  
13       ~~this Act.~~

14       ~~(b) In the event that the payment of benefits to miners~~  
15       ~~and to eligible survivors of miners cannot be made from the~~  
16       ~~Black Lung Disability Insurance Fund established by section~~  
17       ~~422 (a) of the Act, as added by section 9 (b) of this Act, the~~  
18       ~~provisions of the Act relating to the payment of benefits to~~  
19       ~~miners and to eligible survivors of miners, as in effect immedi-~~  
20       ~~ately before January 1, 1976, shall remain in force as rules~~  
21       ~~and regulations of the Secretary of Labor, until such pro-~~  
22       ~~visions are revoked, amended, or revised by law. Such Secre-~~  
23       ~~tary shall make benefit payments to miners and to eligible~~  
24       ~~survivors of miners in accordance with such provisions.~~

~~WHITE LUNG STUDY~~

1

2       ~~SEC. 17. (a) The Committee on Education and Labor~~3 ~~of the House of Representatives is authorized and directed~~4 ~~to conduct a study of white lung disease, also known as sili-~~5 ~~cosis or tuberculosis, including, but not limited to, the extent and~~6 ~~severity of the disease in the United States; the relation-~~7 ~~ship, if any, between white lung disease and black lung dis-~~8 ~~ease; the adequacy of current workman compensation pro-~~9 ~~grams in compensating victims of white lung disease; a~~10 ~~review of current mine safety and Occupational Safety and~~11 ~~Health regulations relating to talc mining to determine~~12 ~~whether such regulations are adequate to protect the safety~~13 ~~and health of talc miners; and the need, if any, for Federal~~14 ~~legislation to protect the safety and health of talc miners~~15 ~~or to provide additional compensation for the victims of white~~16 ~~lung.~~17       ~~(b) The Committee shall report their findings and any~~18 ~~legislative recommendations to the Congress not later than~~19 ~~one year after enactment of this Act.~~20 *That this Act may be cited as the "Black Lung Benefits*21 *Reform Act of 1976".*

22

## DEFINITIONS

23       *SEC. 2. (a) Section 402(b) of the Federal Coal Mine*24 *Health and Safety Act of 1969, as amended (30 U.S.C.*

1 801-960) (hereinafter in this Act referred to as the "Act"),  
2 is amended to read as follows:

3 " (b) The term 'pneumoconiosis' means a chronic dust  
4 disease of the lung and its sequelae, including respiratory and  
5 pulmonary impairments, arising out of coal mine employ-  
6 ment."

7 (b) Section 402(d) of the Act is amended to read as  
8 follows:

9 " (d) The term 'miner' means any individual who  
10 works or has worked in or around a coal mine in the extrac-  
11 tion of coal. Such term also includes an individual who  
12 works or has worked in processing or transporting coal, or  
13 in coal mine construction during the period such individual  
14 worked under conditions substantially similar to conditions  
15 in an underground coal mine."

16 (c) Section 402(f) of the Act is amended to read as  
17 follows:

18 " (f) The term 'total disability' has the meaning given  
19 it by regulation of the Secretary of Labor, subject to the  
20 relevant provisions of subsections (b) and (d) of section  
21 413, except that—

22 " (1) in the case of a living miner, such regulations  
23 shall provide that a miner shall be considered totally  
24 disabled when pneumoconiosis prevents him from en-

1       gaging in gainful employment requiring the skills and  
2       abilities comparable to those of any employment in a  
3       mine or mines in which he previously engaged with some  
4       regularity and over a substantial period of time;

5               “(2) in the case of a deceased miner, such regula-  
6       tions shall provide that a miner's employment in a mine  
7       at the time of death shall not be used as conclusive  
8       evidence that the miner was not totally disabled; and

9               “(3) such regulations shall not provide more re-  
10      strictive criteria than those applicable under section 223  
11      (d) of the Social Security Act. The Secretary, in con-  
12      sultation with the National Institute for Occupational  
13      Safety and Health, shall establish criteria for all appro-  
14      priate medical tests under this subsection which accu-  
15      rately reflect total disability in coal miners as defined  
16      in paragraph (1).”.

17      (d) Section 402 of the Act is further amended by add-  
18      ing at the end thereof the following new paragraph:

19               “(h) The term ‘fund’ means the Black Lung Dis-  
20      ability Insurance Fund established pursuant to section  
21      424.”.

22

#### ENTITLEMENTS

23      SEC. 3. (a) Section 411(c) of the Act is amended—

24               (1) in paragraph (3) thereof, by striking out  
25      “and” at the end thereof:



1           (2) in paragraph (4) thereof, by striking out the  
2           period at the end thereof and inserting in lieu thereof:  
3           "; and"; and

4           (3) by adding at the end thereof the following:

5           “(5)(A) in the case of a living miner who was em-  
6           ployed for twenty-five years or more in one or more coal  
7           mines if such miner is partially or totally disabled due  
8           to pneumoconiosis, he or she shall be entitled to the pay-  
9           ment of benefits; and

10           “(B) in the case of a deceased miner who was  
11           employed for twenty-five years or more in one or more  
12           coal mines prior to the date of enactment of the Black  
13           Lung Benefits Reform Act of 1976, the eligible survivors  
14           of such miner shall be entitled to the payment of bene-  
15           fits, unless it is established that at the time of his death  
16           such miner was not partially or totally disabled due to  
17           pneumoconiosis. Eligible survivors shall, upon request  
18           by the Secretary, furnish such evidence as is available  
19           with respect to the health of the miner at the time of his  
20           death.”.

21           (b) Section 411 of the Act is further amended by add-  
22           ing at the end thereof the following:

23           “(c) For the purposes of determining the applica-  
24           bility of the presumptions of subsection (c) of this section,

1 a miner will be deemed to have been employed in a coal  
2 mine for any year in which—

3 “(1) he has four quarters of coverage, as defined  
4 in section 213 of the Social Security Act, as a miner; or

5 “(2) he was continuously on the payroll of a coal  
6 company and was employed as a miner; or

7 “(3) the Secretary determines on the basis of other  
8 evidence that he was employed as a miner.

9 In determining the number of years of a miner's coal mine  
10 employment, the Secretary shall give the miner credit for  
11 the appropriate portion of any year in which he or she  
12 worked only part of a year.”.

13 (c) Section 412(a)(1) of the Act is amended—

14 (1) by inserting immediately after “pneumoconi-  
15 osis,” the following: “or in the case of a miner entitled  
16 to benefits under paragraph (5) of section 411(c) of  
17 this title,”;

18 (2) by striking out “disabled” the first place it  
19 appears therein; and

20 (3) by inserting immediately after “disability,” the  
21 second place it appears therein the following: “, or  
22 during the period of such entitlement,”.

23 (d) Section 414(e) of the Act is amended by—

24 (1) striking out the words “being paid” and insert-  
25 ing in lieu thereof the word “payable”; and

1           (2) inserting immediately after "pneumoconiosis,"  
2           the following: "or with respect to an entitlement under  
3           paragraph (5) of section 411(c) of this title,".

4           (e)(1) Section 421(a) of the Act is amended by  
5           inserting immediately after "pneumoconiosis," the second  
6           place it appears therein the following: "and in the case of  
7           claims for benefits filed on the basis of eligibility under  
8           paragraph (5) of section 411(c),".

9           (2) Section 421(b)(2)(C) of the Act is amended by  
10          inserting immediately before the semicolon at the end thereof  
11          the following: ", except that such standards shall not be  
12          required to include provisions for the payment of benefits  
13          based upon conditions substantially equivalent to conditions  
14          described in paragraph (5) of section 411(c)".

15          (f) Section 411 of the Act is further amended by adding  
16          at the end thereof the following new subsection:

17          "(f) For the purposes of subsection (c)(5) of this sec-  
18          tion, 'partially disabled' means diminished capacity due to  
19          pneumoconiosis to earn the wages which the miner received  
20          at the time of his last coal mine employment.".

21           **EMPLOYMENT NO BAR TO CLAIMS AND BENEFITS**

22          SEC. 4. Section 413 of the Act is amended by adding at  
23          the end thereof the following new subsection:

24          "(d)(1) A miner who is eligible to exercise the option  
25          to transfer to a position of reduced concentration of respirable

1 *dust in the mine atmosphere pursuant to section 203 of this*  
2 *Act, or who has evidence of the development of pneumoconio-*  
3 *sis demonstrated by chest roentgenogram, or who has been*  
4 *employed for ten or more years in a coal mine, may file a*  
5 *claim for benefits before terminating such employment.*

6 *"(2) The Secretary shall notify such a miner, as soon*  
7 *as practicable after filing a claim, whether the miner would*  
8 *be eligible for benefits except for such miner's employment*  
9 *status at the time of filing.*

10 *"(3) If the Secretary makes a determination of eligi-*  
11 *bility or potential eligibility under paragraph (2) of this sub-*  
12 *section, benefits shall be paid as of the month after the month*  
13 *of termination of such miner's coal mine employment."*

14 **EVIDENCE REQUIRED TO ESTABLISH CLAIM**

15 *SEC. 5. (a) Section 413(b) of the Act is amended by*  
16 *inserting immediately before the period at the end of the*  
17 *second sentence thereof a colon and the following: ": Pro-*  
18 *vided, That the Secretary shall accept a board certified or*  
19 *board eligible radiologist's interpretation of a chest roentgeno-*  
20 *gram which is of acceptable quality submitted in support of*  
21 *a claim for benefits under this title if such roentgenogram has*  
22 *been taken by a radiologist or qualified radiologic technolo-*  
23 *gist or technician, except where the Secretary has reason*  
24 *to believe that the claim has been fraudulently represented.*  
25 *Where there is no medical evidence, or where such evidence*

1 is insufficient in the case of a deceased miner, affidavits may  
 2 be taken as sufficient evidence to establish that a miner was  
 3 totally disabled due to pneumoconiosis or that his death was  
 4 due to pneumoconiosis”.

5 (b) Section 413(b) of the Act is further amended by  
 6 adding at the end thereof the following “Each miner who  
 7 files a claim for benefits under this title shall be provided  
 8 an opportunity to substantiate his or her claim by means of  
 9 a complete pulmonary evaluation.”.

10 **TRUST FUND AND OPERATOR LIABILITY**

11 **SEC. 6. (a)** Section 424 of the Act is amended to read  
 12 as follows:

13 “**SEC. 424. (a) (1)** There is hereby established in the De-  
 14 partment of Labor a trust fund to be known as the Black  
 15 Lung Disability Fund (hereinafter referred to as the ‘fund’).  
 16 The trustees of the fund shall be the Secretary, the Secretary  
 17 of the Treasury, and the Secretary of Health, Education, and  
 18 Welfare, all *ex officio*. The Secretary shall be the Managing  
 19 Trustee and shall hold, operate, and administer the fund. The  
 20 fund shall consist of such sums as may be appropriated to  
 21 the fund, assessments paid into the fund as required by section  
 22 424(b), any penalties recovered under section 424(c), and  
 23 any interest, income, gains, or earnings as may accrue to  
 24 the fund.

25 “(2) If a miner or widow, child, parent, brother,

1 or sister is entitled to benefits under section 422 and  
2 the Secretary determines that (A) an operator liable for such  
3 benefits has not obtained a policy or contract of insurance, or  
4 qualified as a self-insurer, as required by section 423, or such  
5 operator has not paid such benefits within thirty days of an  
6 initial determination of eligibility by the Secretary, or (B)  
7 there is no operator who was required to secure the payment  
8 of such benefits, the fund shall upon such determination by  
9 the Secretary pay such miner or such widow, child, parent,  
10 brother, or sister the benefits to which he or she is so entitled.  
11 In a case referred to in clause (A), the operator shall be liable  
12 to the fund in a civil action brought by the Secretary and in  
13 an amount equal to the amount paid to such miner or his  
14 widow, child, parent, brother, or sister under this title. In a  
15 case referred to in clause (B), a determination that the fund  
16 is liable for the payment of benefits shall be final. No operator  
17 or representative of operators may bring any proceeding, or  
18 intervene in any proceedings, held for the purpose of deter-  
19 mining claims for benefits under clause (A) or (B), except  
20 that nothing in this section shall affect the rights, duties, or  
21 liabilities of any operator in proceedings under section 422  
22 or section 423 of this title.

23 "(3) No operator shall have any right, title, or interest  
24 in fund assets, income, or other earnings of the fund.

25 "(4) As soon as practicable after the effective date of

1 *this section, the Secretary shall prescribe regulations as he*  
2 *deems necessary to provide for the operation of the fund,*  
3 *the payment of benefits, the establishment of assessment rates,*  
4 *and for the collection of assessments, penalties, and interest*  
5 *owing the fund by a coal mine operator.*

6 *“(5) All assessments, penalties, and interest paid to the*  
7 *fund under this section shall be held and administered by*  
8 *the Secretary as a single fund, and the Secretary shall not*  
9 *be required to segregate any part of the fund assets which*  
10 *may be claimed to represent accruals or interests of any*  
11 *individuals.*

12 *“(6)(A) It shall be the duty of the Secretary of the*  
13 *Treasury to invest such portion of the fund as is not required*  
14 *to meet current withdrawals. Such investments may be made*  
15 *only in interest-bearing obligations of the United States or*  
16 *in obligations guaranteed as to both principal and interest*  
17 *by the United States. For such purpose such obligations*  
18 *may be acquired (1) on original issue at the issue price, or*  
19 *(2) by purchase of outstanding obligations at the market*  
20 *price. The purposes for which obligations of the United States*  
21 *may be issued under the Second Liberty Bond Act, as*  
22 *amended, are hereby extended to authorize the issuance at*  
23 *par of public debt obligations for purchase by the fund. Such*  
24 *obligations issued for purchase by the fund shall have matu-*  
25 *rities fixed with due regard for the needs of the fund and*

1 shall bear interest at a rate equal to the average market yield  
2 (computed by the Secretary of the Treasury on the basis of  
3 market quotations as of the end of the calendar month next  
4 preceding the date of such issue) on all marketable interest-  
5 bearing obligations of the United States then forming a part  
6 of the public debt which are not due or callable until after  
7 the expiration of four years from the end of such calendar  
8 month; except that where such average market yield is not  
9 a multiple of one-eighth of 1 per centum, the rate of interest  
10 on such obligations shall be the multiple of one-eighth of 1 per  
11 centum nearest such market yield. The Secretary of the  
12 Treasury may purchase other interest-bearing obligations of  
13 the United States or obligations guaranteed as to both prin-  
14 cipal and interest by the United States, on original issue or  
15 at the market price, only where he determines that the pur-  
16 chase of such other obligations is in the public interest.

17       “(B) Any obligations acquired by the fund (except pub-  
18 lic debt obligations issued exclusively to the fund) may be sold  
19 by the Secretary of the Treasury at the market price, and  
20 such public debt obligations may be redeemed at par plus  
21 accrued interest.

22       “(C) The interest on, and the proceeds from the sale or  
23 redemption of, any obligations held in the fund shall be cred-  
24 ited to and form part of the fund.

25       “(7) Any profit or return on any investment or reinvest-



1 *ment made by the Secretary of the Treasury shall not be con-*  
2 *sidered as income for the purpose of Federal or State income*  
3 *taxation.*

4       “(8)(A) *Amounts in the fund shall be available for*  
5 *making expenditures necessary for the payment of benefits*  
6 *pursuant to section 424(a)(2), and for all expenses of oper-*  
7 *ation and administration under this part, and for the repay-*  
8 *ment with interest of any advances to the fund. The Secretary*  
9 *is authorized in carrying out his responsibilities under this*  
10 *section to use the personnel and resources of the Department*  
11 *of Labor, subject to reimbursement by the fund, and to use the*  
12 *personnel and resources of any other Federal agency, subject*  
13 *to reimbursement by the fund.*

14       “(B) *The fund shall pay the obligations incurred by the*  
15 *Secretary with respect to all claims filed on or after July 1,*  
16 *1973, and shall repay into the Federal treasury amounts*  
17 *equal to amounts expended for such claims paid prior to the*  
18 *effective date of this section, except that the fund shall not be*  
19 *obligated to pay or reimburse for benefits for any period of*  
20 *eligibility prior to January 1, 1974.*

21       “(9) *The Secretary shall keep accounts and records of*  
22 *administration of the fund, which shall include a detailed*  
23 *account of all investments, receipts, and disbursements.*

24       “(10) *The Secretary may employ such counsel, account-*  
25 *ants, agents, actuaries, and employees of the fund as he*

1 *considers necessary. He shall charge the compensation of*  
2 *such persons and any other related expenses against the*  
3 *fund.*

4 *“(b)(1) Each operator of a coal mine shall pay assess-*  
5 *ments into the fund in amounts sufficient to insure the pay-*  
6 *ment of all benefits pursuant to section 424(a)(2), for all*  
7 *expenses of administration and operation under this part,*  
8 *and for the repayment with interest of any advances to*  
9 *the fund.*

10 *“(2) The initial assessment of each operator shall be*  
11 *established by the Secretary as soon as practicable after the*  
12 *effective date of this section. In establishing the initial and any*  
13 *subsequent assessment for each operator, the Secretary shall*  
14 *classify each type of coal mine operation. The respective rate*  
15 *of assessment for each class of coal mine operation shall be*  
16 *established by the Secretary on an equitable basis and the*  
17 *rate per ton for each class shall take into account such factors*  
18 *as are appropriate, including the productivity of each class*  
19 *of mine operation. The operators within each class deter-*  
20 *mined by the Secretary shall be subject to a uniform assess-*  
21 *ment per ton of coal mined within such class. Beginning one*  
22 *year after the date upon which the Secretary established the*  
23 *initial assessment rate, he shall periodically modify or adjust*  
24 *the assessment rate per ton of coal mined to reflect the income*

1 *and expenses of the fund to the extent necessary to permit the*  
2 *fund to discharge its responsibilities under this Act.*

3 *“(3) For purposes of section 162(a) of the Internal*  
4 *Revenue Code of 1954 (relating to trade or business ex-*  
5 *penses), any assessment paid by an operator of a coal mine*  
6 *under paragraph (1) shall be considered to be an ordinary*  
7 *and necessary expense of carrying on the trade or business*  
8 *of such operator.*

9 *“(o)(1) The Secretary may investigate and gather*  
10 *data regarding such matters as he may deem necessary to*  
11 *determine the assessments to be paid by coal mine operators,*  
12 *and may enter such places and inspect such records (and*  
13 *make transcriptions thereof).*

14 *“(2) In making his inspections and investigations under*  
15 *this section the Secretary may require the attendance and*  
16 *testimony of witnesses and the production of evidence under*  
17 *oath. Witnesses shall be paid the same fees and mileage that*  
18 *are paid in the courts of the United States. In a case of*  
19 *contumacy, failure, or refusal of any person to obey such an*  
20 *order, any district court of the United States or the United*  
21 *States court of any territory or possession, within the juris-*  
22 *isdiction of which such person is found, resides, or transacts*  
23 *business shall, upon the application of the Secretary, have*  
24 *jurisdiction to issue such person an order requiring such*

1 person to appear if, as, and when so ordered, and to give  
2 testimony relating to the matter under investigation or in  
3 question, and any failure to obey such order of the court may  
4 be punished by said court as a contempt thereof.

5       “(3)(A) For the purpose of determining the assess-  
6 ments to be established under this section the Secretary may,  
7 with the consent and cooperation of appropriate State agencies,  
8 utilize the services of State and local agencies and their  
9 employees and, notwithstanding any other provision of law,  
10 may reimburse from the fund such State and local agencies  
11 for such services.

12       “(B) For the purpose of determining the liability of  
13 any coal mine operator under this part, the Secretary may  
14 enter into agreements with any agency of the United States  
15 and may reimburse from the fund any such agency for serv-  
16 ices rendered for this purpose.

17       “(4) Each coal mine operator shall make, keep, and  
18 preserve and make available to the Secretary, such records  
19 as the Secretary may prescribe as necessary or appropriate  
20 for the enforcement of this part. The Secretary may require  
21 the periodic reporting by each coal mine operator of such  
22 information as he may deem necessary for the purpose of  
23 carrying out his responsibilities under this section, and may  
24 specify the method of determining the number of tons of coal  
25 mined by each such operator.

1       “(d)(1) There are authorized to be appropriated to the  
2 fund such sums as may be necessary to provide the fund with  
3 advance amounts which the Secretary estimates are necessary  
4 for the payment of benefits pursuant to section 424(a)(2)  
5 and expenses of operation and administration of the fund  
6 under this section.

7       “(2) Sums authorized to be appropriated by subsection  
8 (d)(1) shall be repayable advances to the fund and shall be  
9 repaid by the fund with interest into the general fund of  
10 the Treasury no later than five years after any appropriation  
11 authorized under subsection (d)(1).

12       “(3) Interest on such advances shall be at a rate deter-  
13 mined by the Secretary of the Treasury, taking into considera-  
14 tion the current average yield during the month preceding  
15 the date of the advance involved, on marketable interest-  
16 bearing obligations of the United States of comparable  
17 maturities then forming a part of the public debt rounded  
18 to the nearest one-eighth of 1 per centum.

19       “(e)(1) If an operator fails or refuses to pay an  
20 assessment required to be paid under this section within  
21 thirty days after notification thereof, or if an operator fails  
22 or refuses to comply with a rule promulgated pursuant to this  
23 section, the Secretary is authorized to bring a civil action in  
24 the appropriate United States district court to require the  
25 payment of such assessment or compliance with such rule.

1 *In any such action, the court may issue an order granting*  
2 *appropriate relief, including but not limited to an order*  
3 *requiring the payment of such assessment in the future, as*  
4 *well as past due assessments, together with 9 per centum*  
5 *annual interest on all past due assessments.*

6       “(2) *An operator who fails or refuses to pay any assess-*  
7 *ment required to be paid under this section shall be assessed*  
8 *a civil penalty by the Secretary in such amount as the*  
9 *Secretary may prescribe, but not in excess of an amount equal*  
10 *to the assessment the operator failed or refused to pay. Such*  
11 *penalty shall be in addition to any other liability of the opera-*  
12 *tor under this Act. Penalties assessed under this paragraph*  
13 *may be recovered in a civil action brought by the Secretary*  
14 *and penalties so recovered shall be deposited in the fund.”.*

15       “(b) *Subsection (i) of section 422 of the Act is amended*  
16 *to read as follows:*

17       “(i) (1) *During any period in which this section is*  
18 *applicable to the operator of a coal mine or mines who on*  
19 *or after January 1, 1959, acquired such mine or mines or*  
20 *substantially all the assets thereof, from a person (herein-*  
21 *after referred to in this paragraph as a ‘prior operator’)*  
22 *who was an operator of such mine or mines, or owner of such*  
23 *assets on or after January 1, 1959, such operator shall be*  
24 *liable for and shall, in accordance with section 423 of this*

1 part, secure the payment of all benefits which would have  
2 been payable by the prior operator under this section with  
3 respect to miners previously employed by such prior operator  
4 as if the acquisition had not occurred and the prior operator  
5 had continued to be a coal mine operator.

6 “(2) Nothing in this subsection shall relieve any prior  
7 operator of any liability under this section whether or not  
8 such prior operator is or was a coal mine operator on the  
9 effective date of this Act or any amendments thereto.

10 “(3) For purposes of this subsection, and notwithstand-  
11 ing the January 1, 1959, time limitation of paragraph (1)  
12 of this subsection, the following rules apply in the case of  
13 certain corporate reorganizations:

14 “(A) If an operator ceases to exist by reason of a  
15 reorganization which involves a mere change in identity,  
16 form, or place of organization, however effected a suc-  
17 cessor operator or other corporate or business entity  
18 resulting from such reorganization shall be treated as the  
19 operator to whom this section applies.

20 “(B) If an operator ceases to exist by reason of a  
21 liquidation into a parent corporation, the parent cor-  
22 poration shall be treated as the operator to whom this  
23 section applies.

24 “(C) If an operator ceases to exist by reason of a

1 merger or, consolidation, or division, the successor opera-  
2 tor or corporation, or business entity shall be treated  
3 as the operator to whom this section applies.

4 "(4) The provisions of this section shall be applicable  
5 with respect to all claims filed on or after July 1, 1973."

6 MISCELLANEOUS

7 SEC. 7. (a) Section 401 of the Act is amended by in-  
8 serting "(a)" immediately following "SEC. 401." and by  
9 adding at the end thereof the following new subsection:

10 "(b) This title may be cited as the 'Black Lung  
11 Benefits Act'."

12 (b) Section 413(b) of the Act is amended (1) by  
13 striking out "(f)," and (2) by striking out "and (l)," in  
14 the last sentence thereof and by inserting in lieu thereof "(l)  
15 and (n),".

16 (c) Section 421(b)(2)(D) of the Act is amended  
17 to read as follows:

18 "(D) any claim for benefits on account of total  
19 disability of a miner due to pneumoconiosis is deemed to  
20 be timely filed if such claim is filed within three years  
21 after a medical determination of total disability due to  
22 pneumoconiosis;"

23 (d) Section 422(e) of the Act is amended by inserting  
24 "or" at the end of paragraph (1) thereof; by striking out  
25 "; or" at the end of paragraph (2) thereof and by inserting



1 *in lieu thereof a period; and by striking out paragraph (9)*  
 2 *in its entirety.*

3 *(e) Section 422(f) of the Act is amended to read as*  
 4 *follows:*

5 *"(f) Any claim for benefits by a miner under this sec-*  
 6 *tion shall be filed within three years after a medical deter-*  
 7 *mination of total disability due to pneumoconiosis."*

8 *(f) Section 427(c) of the Act is amended by striking*  
 9 *out "of the fiscal years ending June 30, 1973, June 30,*  
 10 *1974, and June 30, 1975" and by inserting in lieu thereof*  
 11 *"fiscal year".*

12 *(g) Section 430 of the Act is amended by—*

13 *(1) inserting "and by the Black Lung Benefits*  
 14 *Reform Act of 1976" immediately after "1972"; and*

15 *(2) by striking out the colon and all the language*  
 16 *that follows it and inserting in lieu thereof a period.*

17 **FIELD OFFICES**

18 *SEC. 8. The Secretary of Labor is authorized to establish*  
 19 *and operate such field offices as necessary to assist miners*  
 20 *and survivors in the filing and processing of claims under title*  
 21 *IV of the Federal Coal Mine Health and Safety Act of 1969.*  
 22 *Such field offices shall, to the extent feasible, be reasonably*  
 23 *accessible to such miners and survivors. The Secretary of*  
 24 *Labor may, in the establishment of such field offices, enter*  
 25 *into such arrangements as he deems necessary with the heads*

1 of other Federal departments, agencies, and instrumentalities,  
2 and with State agencies, for the use of existing facilities  
3 and personnel under their control.

4 **INFORMATION TO POTENTIAL BENEFICIARIES**

5 **SEC. 9.** *The Secretary of Health, Education, and*  
6 *Welfare and the Secretary of Labor shall jointly disseminate*  
7 *to interested persons and groups the changes in title IV of*  
8 *the Federal Coal Mine Health and Safety Act made by this*  
9 *Act, together with an explanation of such changes, and*  
10 *shall undertake, through appropriate organizations, groups,*  
11 *and coal mine operators, to notify individuals who are*  
12 *likely to have become eligible for benefits by reason of such*  
13 *changes. Individual assistance in preparing and processing*  
14 *claims shall be offered and provided to potential beneficiaries.*

15 **REVIEW AND TRANSFER OF DENIED AND PENDING**  
16 **CLAIMS**

17 **SEC. 10.** *Title IV of the Act is further amended by add-*  
18 *ing at the end thereof the following new section:*

19 *"SEC. 432 (a) Any person who has filed a claim for*  
20 *benefits under part B of this title prior to July 1, 1973,*  
21 *and whose claim has been finally adjudicated as denied by*  
22 *the Social Security Administration may file a new claim*  
23 *for benefits and, subject to the provisions of section 432(g)*  
24 *of this part, may be awarded such benefits as are appro-*  
25 *priate under this part.*

26 *"(b) The Secretary shall prescribe in the Federal Reg-*

1 *ister regulations as necessary to provide for the expedited*  
2 *processing of any claim filed under subsection (a) of this*  
3 *section. The Secretary of Health, Education, and Welfare*  
4 *shall promptly furnish all pertinent information in his pos-*  
5 *session relating to such a claim to the Secretary.*

6 *“(c)(1) Except as is otherwise provided in this Act, a*  
7 *claim for benefits filed under subsection (a) of this section*  
8 *shall be treated as a new claim for benefits filed under section*  
9 *422 of this title.*

10 *“(2) The survivor of a miner who elects to file a new*  
11 *claim under this subsection, and whose prior claim was*  
12 *denied under part B of this title solely on the basis of the*  
13 *employment of the miner at the time of such miner's death,*  
14 *shall be entitled to receive benefits for all periods of eligibility*  
15 *beginning on January 1, 1974.*

16 *“(3) The survivor of a miner who elects to file a new*  
17 *claim under this subsection, and whose prior claim was denied*  
18 *under this part solely on the basis of the employment of the*  
19 *miner at the time of such miner's death, shall be entitled to*  
20 *receive benefits for all periods of eligibility beginning on*  
21 *January 1, 1974, or the date such survivor filed a prior*  
22 *claim under this part, whichever is later.”.*

23 **EFFECTIVE DATES**

24 *SEC. 11. (a) Except as specified in subsections (b)*  
25 *and (c) of this section, this Act shall take effect on the date*  
26 *of its enactment.*

1       (b) The amendments made by section 2 (a), (b),  
2 and (c); section 3; section 4; and section 5 of this Act shall  
3 be effective as of December 30, 1969, except that claims ap-  
4 proved solely because of the amendments made by section 3  
5 which were filed before the date of enactment of this Act  
6 shall be awarded benefits only for the period beginning on  
7 such date.

8       (c) The amendments made by section 6(a) of this Act  
9 shall be effective as of January 1, 1977, except that section  
10 424(d) of title IV of the Act, as amended by this Act, shall  
11 be effective as of the date of enactment of this Act.

12                               **OCCUPATIONAL DISEASE STUDY**

13       **SEC. 12.** (a) The Department of Labor, in cooperation  
14 with the National Institute for Occupational Safety and  
15 Health, shall conduct a study of all occupationally related  
16 pulmonary and respiratory diseases, including the extent  
17 and severity of such diseases in the United States. Such  
18 study shall further include analyses of (1) any etiologic,  
19 symptomatologic, and pathologic factors which are similar  
20 to such factors in coal workers' pneumoconiosis and its  
21 sequelae; (2) the adequacy of current workers' compensa-  
22 tion programs in compensating persons with such diseases;  
23 and (3) the status and adequacy of Federal health and safety  
24 laws and regulations relating to the industries with which  
25 such diseases are associated.



## BLACK LUNG LEGISLATION (H.R. 10760)

(Prepared by the Staff of the Committee on Finance)

SEPTEMBER 20, 1976.

**Present program.**—The present black lung benefits program provides benefits to miners disabled from black lung disease (pneumoconiosis) and to their dependents or survivors. Payments are made in one of two ways: (1) the Social Security Administration administers a program of benefits paid from general Treasury funds on the basis of claims filed prior to December 31, 1973; or (2) essentially identical benefits are paid through State workmens compensation programs (if they are provided fully equivalent benefits) or by coal mine operators on the basis of claims adjudicated by the Secretary of Labor. Funding is the responsibility of the mine operators as determined by the Labor Department; general Treasury funds are used to the extent that liability cannot be enforced against mine operators.

**Labor and Public Welfare Committee bill.**—The Labor and Public Welfare Committee bill would make extensive changes in the black lung benefits program. Briefly, the bill would make it easier to qualify for black lung benefits and a new tax (an "assessment" under the bill) would be levied to support a new trust fund which would pay benefits when an individual coal mine operator failed to assume its obligation to provide benefits or when it is not possible to fix liability on an individual mine operator. Among the liberalizations included in the bill is a broader definition of black lung disease (pneumoconiosis) to include respiratory and pulmonary impairments resulting from coal mine employment; an expansion of the definition of "miner" to include people who work around coal mines, who process and transport coal and who work at coal mine construction; a redefinition of total disability under which actual employment is not conclusive evidence that a miner was not disabled, and affidavits may be sufficient evidence to establish that an individual had black lung disease when other evidence is lacking or insufficient. In addition, an individual could become entitled to survivorship benefits if the deceased miner had worked in a coal mine for 25 years prior to enactment and a miner who had worked for 25 years in coal mines could become entitled to benefits if he is partially or totally disabled.

**Financing provisions of H.R. 10760.**—As under existing law, coal mine operators will be required to pay the costs of black lung benefits for their former employees to the extent that individual liability can be attributed to a particular mine operator. Where such individual liability cannot be enforced (for example, because the liable mine operator is no longer in business), present law provides for payments to be made from Federal general revenue appropriations. H.R. 10760 would instead fund such benefits from an earmarked tax on coal mining operations. The proceeds from this tax would be paid into a trust fund in the Department of Labor.

**Assessment on coal mining.**—H.R. 10760 does not specify the exact level of assessment or tax to be imposed on coal mining operations beyond stating that it must be at a sufficient level to meet the benefit and administrative costs of the new trust fund. The Secretary of Labor is given complete discretion to set the tax rate applicable. He is required by the bill to make the assessment in terms of a rate per ton of coal mined. The rate may differ "on an equitable basis" among various classes of mine operations, but must be uniform within each such class. The Secretary of Labor is also given the authority to determine the various classifications of mine operations for this purpose, taking into account "such factors as are appropriate, including the productivity of each class. . . ." The Secretary of Labor is authorized to enforce compliance with the new tax and related regulations by civil suit in U.S. district courts or by the assessment of civil penalties.

**Trust fund operations.**—The trust fund is modeled after the social security trust fund. The trustees would be the Secretaries of Labor, Treasury, and Health, Education and Welfare. Although the Secretary of Labor is designated the managing trustee, investments of the funds not needed for current benefit payments or operating expenses would be made by the Secretary of the Treasury. The fund would pay the administrative costs of the program and would pay benefits to the extent that individual mine operator liability could not be established or enforced.

## STATEMENT OF SENATOR JENNINGS RANDOLPH

Mr. Chairman and members of the Committee on Finance, let me first express my gratitude for your expeditious consideration of H.R. 10760, the "Black Lung Benefits Reform Act of 1976" as reported by the Committee on Labor and Public Welfare. In light of the very short time remaining prior to adjournment of the 94th Congress, your cooperation is all the more significant, for without the aid of the Committee on Finance, there is little likelihood that this important legislation will be enacted.

In accordance with your letter of April 30, 1976 to the Chairman of the Committee on Labor and Public Welfare, H.R. 10760 was referred to the Committee on Finance because the Black Lung Disability Fund and the assessment on coal mining operations contemplated in the bill may represent an exercise of the taxing power of the Federal government.

The Committee on Labor and Public Welfare believes that a trust fund to pay benefits to disabled coal miners and eligible survivors of such miners, financed through per-ton assessments on coal mining operations, is a desirable modification of the Black Lung Benefits Program. It is an alteration in the law which represents sound social policy and which will reduce the drain on the Federal Treasury.

Under existing law, coal operators are ultimately responsible for the payment of black lung benefits under part C of title IV of the Federal Coal Mine Health and Safety Act. Following is an explanatory excerpt from the Report of the Committee on Labor and Public Welfare: "Part C is administered by a State Workers' Compensation agency meeting minimum standards, or by the Secretary of Labor where such standards are not met. No States have as yet met the minimum requirements. The responsible coal operator pays benefits as in traditional workers' compensation programs. Under the law, the coal industry is liable for claims filed after June 30, 1973, for payment on and after January 1, 1974. The Department of Labor is responsible for paying benefits when the responsible operator cannot be determined, which is the case currently in about 75 percent of approved claims."

Information available to the Committee indicated that coal operators are now paying benefits of a total of 73 claims, out of a universe of some 90,000 claims filed. I understand that this figure has now increased slightly. Operators have contested about 97 percent of the allowed claims with respect to which the Department of Labor has found a responsible operator.

Clearly, the program is not working as the Congress envisioned that it would in 1969, when the original Act became law, or in 1972, when the Black Lung Benefits Act was adopted. It is the purpose of H.R. 10760, in part, to insure that the program operates in the way the Congress intended.

The coal industry has claimed that H.R. 10760 would result in billions of dollars of liability to the coal industry, and ultimately to the coal consumer. As reported by the Committee on Labor and Public Welfare, however, it is the estimate of the Congressional Budget Office that program cost to the Federal government of the bill, *including amounts payable from the trust fund*, will be as follows:

Fiscal year:	<i>Millions</i>
1977 -----	\$111.5
1978 -----	70.5
1979 -----	73.7
1980 -----	77.8
1981 -----	82.8

This range of dollar amounts suggests strongly that earlier industry estimates are no longer valid with respect to the Committee bill.

The operation of the Black Lung Disability Fund, including the assessment provision, has been explained to the Committee on Finance, and I will not recite it further. The Committee now has enough information before it to make an intelligent analysis of the value of the fund. As ranking majority member of the Committee on Labor and Public Welfare, and as a Senator who represents a State whose people have a substantial interest in this legislation, I urge the Committee on Finance to act favorably and expeditiously on H.R. 10760. I ask

further that the Committee support the trust fund contemplated in the bill, along with its assessment mechanism. After thorough and extensive study, I believe, and the Labor and Public Welfare Committee believes, that the proposal before you is appropriate, reasonable, and necessary.

The CHAIRMAN. Our first witness this morning is Hon. John C. Read, Assistant Secretary of Labor for Employment Standards.

We are pleased to have your statement, sir.

Mr. READ. Thank you, Mr. Chairman.

If there are no objections, Mr. Chairman—

The CHAIRMAN. I would suggest that each witness confine himself to a 10-minute statement, and each Senator to 5 minutes on questions.

Mr. READ. Fine, Mr. Chairman. I would like to submit mine for the record, and summarize it briefly.

The CHAIRMAN. All right.

**STATEMENT OF JOHN C. READ, ASSISTANT SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS, ACCOMPANIED BY ROBERT WEDEMEYER, ACTING ASSOCIATE DIRECTOR OF THE DIVISION OF COAL MINE WORKERS' COMPENSATION, AND MARK SOLOMONS, COUNSEL FOR BLACK LUNG IN THE SOLICITOR'S OFFICE**

Mr. READ. Thank you, Mr. Chairman.

We now have a statute on the books that provides for a black lung program. That program provides benefits for miners and survivors for the crippling and sometimes fatal effects of the black lung disease, pneumoconiosis. It has its roots in the no fault principle—that after fair adjudication and based on the best medical evidence and judgments, financial compensation is appropriate for occupationally related injuries and diseases.

The present statute, Mr. Chairman, is scheduled to end in 1981 which recognizes that the States have traditionally had responsibility for workers' compensation.

I presume, at that time, the responsibility would shift back to the States.

H.R. 10760, the bill before the committee today, makes some very fundamental changes in this program in the present statute. They are, I think, well-summarized in my testimony. I will not get into the details of them.

Let me describe, if I may, three of the basic changes in the bill, and three of the reasons, therefore, why we oppose this particular bill.

Overall, these changes strike us as inappropriate and not particularly useful either to the miner, who deserves adequate protection from pneumoconiosis, or to industry because of the cost attached to it without benefits to the miner. Further, the legislation is inappropriate because of the changes it makes in the fundamental precepts in workers' compensation.

The first set of changes has to do with the evidentiary standards and eligibility requirements of the bill. The combined effect of these changes, which is summarized on page 4 of my testimony, is to move this program, this workers' compensation program, away from the principles on which it is based toward those that I would characterize more like those of a pension program, and toward a situation where, if



you will, seniority, number of years in a mine, becomes very similar to a decision of total disability from pneumoconiosis.

We are concerned that some of the semiautomatic entitlements in this bill would have the effect of taking away from the sound principles of adjudication based on medical evidence and substituting a system based on how many years one has spent in a mine.

Again, I will not go into the details of that. I think they are well-stated in the testimony.

Second, this bill increases the cost of the program five or tenfold, we think, without providing increases in protections for those miners who are crippled with pneumoconiosis. The amendments would increase costs to somewhere in the range of \$160 to \$300 million; half of that sum would be paid by the coal industry through an assessment or a tax administered by the Secretary of Labor on a per ton of coal basis, that is \$80 million to \$150 million.

That same amount—and we have difficulty honing in on the precise figure at this point, although we would put it over \$100 million.—would have to be advanced by the Federal Government through a trust fund that is established by this bill.

While we are not experts in the energy field, Mr. Chairman, we can only assume that this assessment of around \$100 million would be passed on to the consumer and coal energy users.

The third provision of the bill which we must oppose has to do with the establishment at this time of a trust fund for black lung, for pneumoconiosis. The concept here is new and a precedential, revenue-raising and expenditure mechanism. It is proposed at a time when the entire area of occupational disease is under review and appropriately so. Since the report of the National Commission on Workman's Compensation in 1972, the Department of Labor and other departments have been studying and providing technical assistance in the whole area on how occupational diseases should be covered. This work is nearing completion.

We expect growing out of it will be a longer term look at the reforms needed in occupational disease. We believe that to establish a trust fund in black lung at this time would be a precedent that would be very difficult to undo, if the whole area of occupational disease moved in a different direction.

Those are the three areas, Mr. Chairman: the cost, the establishment of the trust fund, and the eligibility requirements, evidentiary standards, that are of deep concern to us.

They are described in my testimony.

With that, Mr. Chairman, my colleagues and I will be happy to answer your questions. Let me introduce them to you.

On my left is Mr. Mark Solomons, counsel for the black lung program in the office of the Solicitor of Labor; on my right is Mr. Robert Wedemeyer, acting associate director in charge of the black lung program.

The CHAIRMAN. Senator Haskell, do you have any questions?

Senator HASKELL. Not at the moment.

The CHAIRMAN. Senator Fannin?

Senator FANNIN. What has been the cost of this program in the last year?

Mr. READ. The cost has been roughly \$30 million over this past year.

Senator FANNIN. Total cost for the program?

Mr. READ. Yes, sir.

Senator FANNIN. There have been figures that far exceeded that. I am wondering how it could be so confusing.

On total disbursements, total costs, everything involved, \$1 billion.

Mr. READ. The program is divided effectively into two parts, part of it is administered by HEW. It may be that when you put the two together that the benefits do go that high.

This bill, as it affects the Department of Labor, in answer to your question—

Senator FANNIN. I understand that. I am concerned about what this does to the overall cost of the program. When we are talking \$30 million, that is one matter; when we are talking over \$1 billion, that is something else.

How do we get the total cost of the program?

Mr. READ. We can provide that for you, unless Mr. Wedemeyer has a more accurate estimate.

Mr. WEDEMEYER. I cannot speak for the Social Security Administration. As I understand it, presently the cost is over \$700 million a year.

Senator FANNIN. \$700 million a year?

Mr. WEDEMEYER. Yes.

Senator FANNIN. Mr. Chairman, I realize what our jurisdictional interest in this bill is. At the same time, I think it is only proper that we know what effect our actions will have on the total, overall cost of the black lung program. The information you are giving now is that \$700 million would cover the total cost for the past year.

What would be the cost estimated for the next fiscal year?

Mr. READ. In terms of the increased cost to the Social Security Administration, we do not have those numbers. Our own numbers, between \$160 million to \$300 million show relatively how the program may increase in size. I do not know if the social security program will experience the same increase.

Senator FANNIN. What is the percentage of increase from your standpoint?

Mr. READ. As we estimated it, a five to tenfold increase.

Senator FANNIN. Mr. Chairman, I would hope we could get figures as to what the overall cost of the program would be before we take action on this matter.

The CHAIRMAN. Let me see if I can get this straight. The Department does not pay for this bill?

Mr. READ. That is correct, Mr. Chairman.

The CHAIRMAN. Would you give us an example or two of wherein, of how the existing program works and what the difference would be that causes you to feel that the bill should not pass?

Mr. READ. All right, sir, I will try.

The CHAIRMAN. Tell us how the present program is working, and then perhaps give us a kind of an example. Give us an example of a case or two that you do not think should be covered, that you believe this bill would cover.

**Mr. READ.** At the present time, when we receive a claim for black lung benefits from the miner, that claim is reviewed by the Department of Labor based upon medical and legal evidence provided by the claimant. The medical part of that evidence is very complex information. It grows out of the fact that the physicians are not well-equipped, Mr. Chairman, to diagnose pneumoconiosis precisely, or in a short period of time. The Department looks at the claim, makes a judgment as to whether or not the miner is eligible for benefits, and then, where we can locate the last responsible mine operator, have that operator pay benefits to the claimant or, where that last operator cannot be identified, have the Federal Government pay benefits.

The changes in the bill, in terms of the evidentiary requirements, come to bear on that adjudication process, on that initial determination. There we are being asked through this bill, to relax some of those requirements and make judgments in favor of the coal miner, where we are not permitted to use the kind of evidence that we think we need.

Let me turn to Mr. Wedemeyer, and he can tell you about X-rays and about eligibility criteria that make up this kind of problem for us.

**Mr. WEDEMEYER.** Mr. Chairman, where a claimant relies upon an X-ray to establish a pneumoconiosis condition, we have that film reviewed by a specialist in radiology who has been trained to interpret pneumoconiosis disease. Under the present bill, of course, the right to perform this review would be eliminated.

The Department of Labor feels that the specialist who is trained in the detection of this disease should review each and every one of these cases to verify the results and to ascertain whether or not the film is readable for the condition itself.

The **CHAIRMAN.** Do I understand it—does this bill dispense with the medical evidence of the disability?

**Mr. WEDEMEYER.** No, sir, not actually dispense with it. It limits the degree to which we may review these films; essentially it says that the Department of Labor shall be limited to reviewing the films for the quality of the film itself. Unfortunately, the test to review the quality of the film also entails a review for the disease. It is difficult to separate the two.

In effect, in order for us to review the quality of the film, we would have to have the film reviewed by the same specialist to determine whether or not the film, itself, is of such a quality that the pneumoconiosis could be detected.

The **CHAIRMAN.** In this increase, how much of the increase in costs do you assess as being due to the easier way in which the claim is collected? How do you break down the cost?

How much of it do you put with the new standards for determining that a person is entitled to benefits?

**Mr. READ.** Anticipating that question, I have a summary of how these costs were determined, which I can also introduce for the record.

The **CHAIRMAN.** Is it in your statement?

**Mr. READ.** Not in the statement. I brought it with me.

The **CHAIRMAN.** We will have it printed in the record.

[The material referred to follows:]

## COST OF SENATE DRAFT BILL "BLACK LUNG BENEFITS REFORM ACT OF 1976"

The proposed Black Lung Benefits Reform Act of 1976 contains several amendments to the current Act which increase the total cost of the Black Lung Program but would eliminate all Department of Labor (DOL) financial liability. DOL would continue to be responsible for the administration of Part C of the Act relating to the determination of eligibility of claimants, however, the Trust Fund or operators would be liable for all administrative costs and benefits paid to claimants.

All estimates shown below are based on the DOL population through June 30, 1976 and the costs discussed are in addition to current program costs. It is further assumed that all backlogged claims will be determined in FY 1977 and that any new filings will not be processed until FY 1978. Some SSA claims are discussed in the Entitlement section since information is available with which to make estimates.

### SECTION 2: INTERIM MEDICAL STANDARDS

This section allows the Secretary of Labor to promulgate medical regulations which establish criteria for all medical tests. Assuming that the Secretary adopts criteria equivalent to the interim medical standards utilized by the Social Security Administration (SSA), this provision would prove to be the most costly of all sections of the bill. The estimated cost of this provision in FY 1977 is \$64.9 million. The range of possible cost is between \$37.1 million and \$92.7 million.

### SECTION 3: ENTITLEMENTS

The 25 year entitlement in the draft Senate bill requires that a living miner be partially or totally disabled due to pneumoconiosis. It is assumed that the "partially disabling" impairment will be established in the Regulations by ventilatory standards which will be more liberal than the "interim" medical standards. A study of DOL denials reveals that approximately 4% of the miners have 25 years or more coal mine employment and meet the interim standards. Since new standards in line with the intent of the Senate bill have not been established, only a very rough estimate of the effect of this Section can be made.

It is estimated that 8% of the current DOL miner population would be entitled under Section 3. With a corresponding benefit cost in FY 1977 of \$22 million.

The Social Security Administration (SSA) estimates that there are 16,000 denied miners who allege 25 years or more of coal mine employment. Since none of these miners qualified for benefits under the interim medical standards employed by SSA in adjudicating claims, it is assumed that very few would qualify under the new entitlement. It is estimated that only 5% of these miners would qualify for benefits at a total cost of FY 1977 of \$3.1 million.

Survivors would be allowed benefits under Section 3 if the miner worked at least 25 years in the mines. It is estimated that approximately 5% of the survivors would qualify for benefits. The estimated cost of these claims in FY 1977 would be \$2.1 million.

SSA estimates that approximately 4,400 denied survivors have alleged that the miner worked 25 or more years in the mines. The cost of these claims in FY 1977 is estimated at \$12.2 million.

It must be noted that proof of 25 years of coal mine employment is extremely hard to obtain and that many of the above projected approvals will not be able to prove the necessary years of employment. Survivors especially will find it difficult to prove the necessary years of employment and many of these claims will not be allowed. The total cost of this section is estimated at \$30.4 million however considering the difference between alleged and proved coal mine employment, the lack of in-depth information on the SSA population, and the absence of concrete guidelines of partial disability, a range of between \$30 and \$60 million is estimated.

### SECTION 4: EMPLOYMENT NO BAR TO BENEFITS

This provision alone has no direct cost effect on the Black Lung Program. The miners would still have to qualify for benefits under another provision of the Act. Since DOL currently follows a procedure of examining a miner's claim

before denying benefits on the basis of employment, this provision will have little effect.

Some SSA claims may be affected by this provision but it is estimated that many "still working" miners under that jurisdiction have since stopped work and have been reconsidered by SSA or have filed a claim with DOL.

#### SECTION 5: BAN ON REREADING OF BOARD CERTIFIED OR BOARD ELIGIBLE RADIOLOGISTS

Although there is no reporting requirements for doctors to inform DOL of their Board status, in the opinion of the Division's medical experts few physicians currently servicing the miners meet these requirements. Therefore, it is estimated that the ban on rereadings will raise the approval rate at most 5% and more likely less than 2%. The cost for FY 1977 would therefore be between \$20.7 and \$51.7 million.

#### SECTION 5: AFFIDAVITS PROVISION

This provision will have no significant cost impact on the program.

#### SECTION 6: THE TRUST FUND

The Trust Fund would have to reimburse the Federal Government approximately \$25 million for benefits paid prior to Enactment. The Trust Fund would also pay administrative cost estimated at \$10 million for FY 1977.

#### SECTION 7: ELIMINATION OF STATUTE OF LIMITATIONS ON WIDOWS' CLAIMS

The amendment to Section 422(f) which eliminates the three year statute of limitations will have the effect of raising the approval rate on widows' claims. Since these claims have never been closely examined it is possible that the approval rate could rise between 5% and 25%. The cost of this change is estimated at between \$5.8 and \$29.1 million.

#### SECTION 8: FIELD OFFICE

The cost of establishing Field Offices is estimated at \$2.5 million in FY 1977.

#### SECTION 9: PUBLIC INFORMATION

The ESA Office of Information estimated in 1975 that a comprehensive information program would cost less than \$.1 million.

#### SUMMARY OF COSTS

The total cost of new provisions to the Black Lung Act made by H.R. 10760 we estimate to be between \$131 and \$271 million in FY 1977. Assuming that individual operators have been or will be found responsible for 50% of the cost, the trust fund will then assume liability for 50% of the cost or between \$65 and \$135 million in FY 1977. In addition, since the liability for the cost of benefits under the current program, is estimated at \$30.1 million in FY 1977. The trust fund will have to pay \$15 million (50%) of the current law costs. Thus, the total cost to the fund for FY 1977 are therefore estimated at between \$80 and \$150 million. This includes all administrative costs except the administrative costs of the refiling of approximately 200,000 Social Security Administration denials, which we cannot estimate at this time. The full amount, \$80 million to \$150 million (plus the unestimated administrative costs) will have to be advanced to the trust fund by the government.

The CHAIRMAN. Here is an estimate by the Congressional Budget Office. This looks as if the burden would be \$78.8 million in 1977, about half that in subsequent years, on rereading of X-rays. Can you explain that to us now? I am not sure I fully understand what that point is.

Mr. READ. Mr. Chairman, there is in this bill a retroactive provision which, as I recall it, would allow miners whose claims have been turned down because of a rereading of the X-rays to resubmit their claims.

It may be that the CBO submitted an estimate of the cost of those claims, which I have not seen.

I am not sure of the basis for the \$78 million. In the document which I just handed in for the record, we do get into the costs of the various provisions of the bill, including that.

The CHAIRMAN. This 25-year presumption, according to the Congressional Budget Office, comes to a \$22 million estimate. Could you give us a little more information as to what your attitude on that item happens to be?

Mr. SOLOMONS. Mr. Chairman, the 25-year presumption changes the existing law by permitting a claimant who, in our view, has not submitted adequate medical evidence of total disability due to the disease to receive benefits simply for the reason that the miner has been employed for 25 or more years in the mines. Because of this presumption, there are many claimants whom we have already denied and there are additional claimants who will file in the future who do not have what we consider adequate evidence of disease or disability who will be found to be entitled to benefits by virtue of these new provisions.

The CHAIRMAN. I would like to know whether black lung is related to smoking?

I am led to believe that, although smoking is injurious to your health, if you stop it for a certain period of time, one is supposed to get over the deleterious effect. Is that the case with black lung?

Is black lung a permanent injury that cannot be overcome?

Mr. READ. It is a progressive disease, Mr. Chairman. I do not think—I do not know of any instances where it recedes, unless my colleagues do. It is, in a sense, a permanent disability to portions of the lung, caused by the impact of coal dust on the lung.

The CHAIRMAN. Senator Haskell?

Senator HASKELL. Thank you, Mr. Chairman.

Mr. Read, do you happen to know how many applications for claims have been filed with your Department?

Mr. READ. Yes, sir, I do. Let me get the proper table.

Through August of this year, Senator, there have been 97,000 claims received.

Senator HASKELL. That is for what period of time?

Mr. READ. Since the Department of Labor became responsible for part C of the program in July 1973.

Senator HASKELL. Could you tell me how many of those applications now have matured into claims which are being paid?

Mr. READ. Claims in payment status at this point in time are 3,514.

Senator HASKELL. 97,000 applications have been filed, roughly 3,500 claims are in the process of being paid. Is that correct?

Mr. READ. Yes, sir.

Senator HASKELL. How many of those 3,500 claims are being paid by the operator, and how many by the Federal Government?

Mr. READ. At the present time, I think that the Federal Government is paying 2,800 claims and the operator is paying 101.

Senator HASKELL. First, let us get the cost of the bill that is before us. Have you indicated the cost per ton of the bill before you?

Mr. READ. Senator, we have made an estimate of that cost. I think the range which is in my testimony is between 11 and 33 cents per ton.

Senator HASKELL. What?

Mr. READ. 11 cents to 33 cents per ton, as I recall it.

Senator HASKELL. Let us assume a range between 11 and 33 cents per ton. If my mathematics is correct, coal is selling in the neighborhood of \$16 to \$17 a ton, then the additional cost, assuming the company is going to add the cost on, as you indicated it will, would be somewhere between .8 cents and 1.7 cents.

Now, are you at all familiar with the nature of this disease? Are you at all familiar with whether or not this is a disease that if you work around the mine you almost inevitably get, or is it your position that you do not necessarily get it?

Mr. READ. It is our position, Senator, that there is a chance that you will get the disease by working around the mine. It is clearly occupationally related.

There is sufficient chance that you will not, however, that we believe a full adjudication process before awarding benefits is necessary.

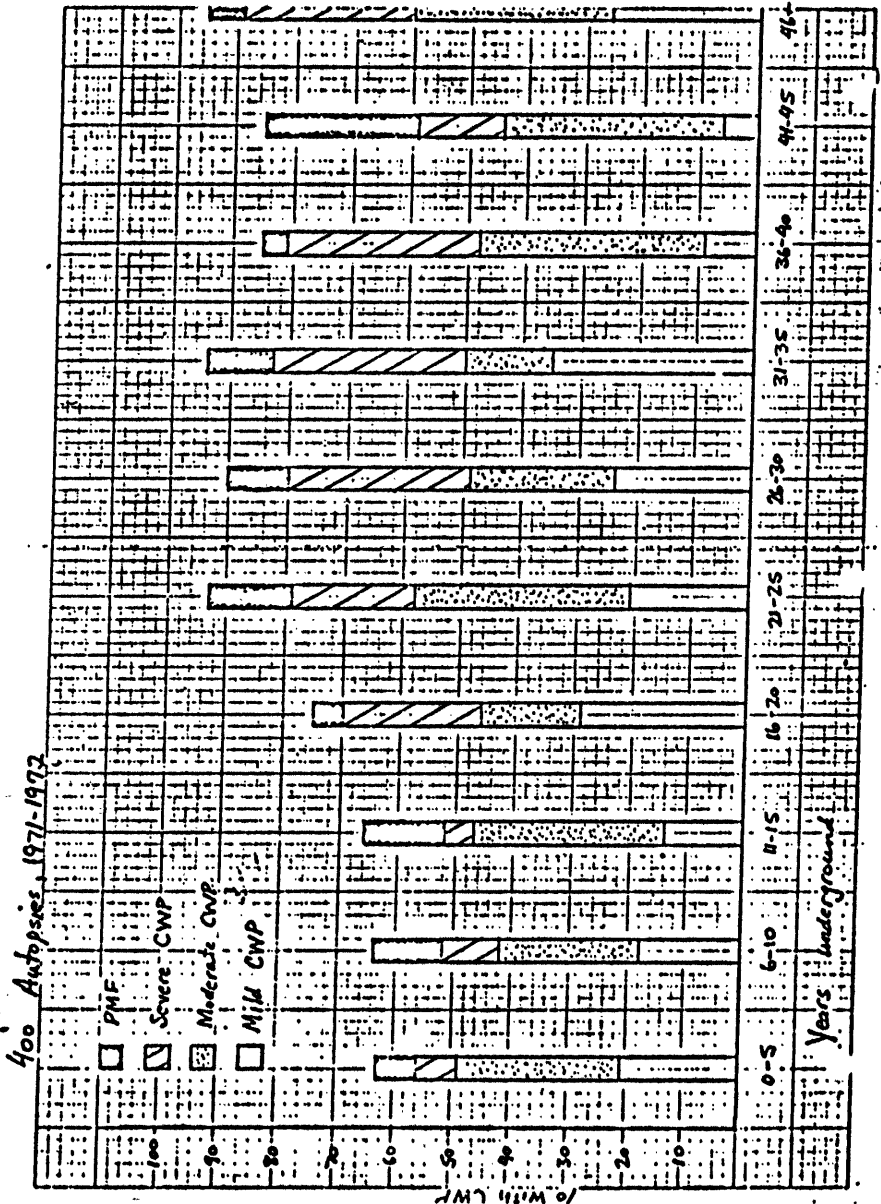
Senator HASKELL. Mr. Chairman, I have a chart here that I will ask permission to insert in the record. It shows a result of 400 autopsies in the period 1971 to 1972. It indicates that people who work underground between 21 and 25 years, over 90 percent have black lung in one form or another.

I will ask that the source of this chart, which is the National Institute of Occupational Safety be noted on it, and I would ask that it appear in the record, if it may.

The CHAIRMAN. Without objection.

[The chart referred to follows:]

STUDY BY THE NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY





Senator HASKELL. In summary, Mr. Read, assuming that this evidence is correct of contracting that disease, and I am told that it is, then something is wrong with our present law. I think that by your own admission, you have told me that 97,000 claims have been submitted and something like 3,500 are being paid.

Now, something is wrong, when over 90 percent of the folks working underground contact this disease over a period of time. I would submit that from my viewpoint, probably not from the administration viewpoint, but from my viewpoint, a 1 percent increase in the price of coal to protect these men from this disease is not excessive.

Have you ever seen anybody with black lung?

Mr. READ. No, sir. I have not.

Senator HASKELL. I suggest that you go along and take a look at some of these folks. Then I do not think that you are going to feel that a 1 percent increase in the price of coal is too much of a price to pay.

Thank you, Mr. Chairman.

Senator FANNIN. Mr. Chairman?

The CHAIRMAN. Senator Fannin?

Senator FANNIN. We are all sympathetic for anyone who would suffer from black lung. I know that the witnesses have stated that the Congress should appropriate money for those with black lung and their families. The issue is, on page 4, you state, "In addition to creating a trust fund, the bill also reduces the evidentiary standards necessary to establish entitlement for the payment of benefits."

I have seen people receiving benefits from black lung in my State of Arizona that retire there. I cannot say that they look any differently than any other people we have out there who are elderly.

I do not think that everybody who has contacted black lung would be vitally affected.

I think your arguments are that you should establish that they do have black lung, that there is evidence of black lung, before payments are made.

Mr. READ. And that they are disabled.

Senator FANNIN. And that they are disabled, that they have some disability from the standpoint of having worked in the mine.

I agree with that. If they have a disability, if they are suffering from black lung, certainly this would be proper.

We are establishing precedents in this black lung program that will apply in the future to many other industries, even the agricultural industry out in the field where contact with dust fertilizers and so forth is made. All of this does have an effect on the worker. I think that if we are not judicious in what we do in this instance a troublesome and mistaken precedent could be established.

I certainly agree that we should do everything we can to see that the people who need medical attention receive it as well as other payments. I certainly do not feel that we should open it up that just because they work in a mine that they are considered having black lung.

There are many, many people—I do not know where the Senator from Colorado got the 90 percent figure. It might be that they would show some effect, 10 percent, 20 percent, whatever it might be.

I think the position that the witness has taken, they do want to have every caution taken to see that people are treated properly, and that we do not have something so widespread that it is going to be immensely expensive and not only that, but unnecessary.

Is that correct?

Mr. READ. That is correct.

Senator FANNIN. Thank you, Mr. Chairman.

Mr. READ. We are not convinced that the increased costs of this bill will go directly to those miners who are suffering the harmful and disabling effects of pneumoconiosis. We see only a relaxation of standards and a possibility, however great or small, that miners who are not disabled by pneumoconiosis nonetheless could be eligible for and would receive benefits under this program.

The CHAIRMAN. I started practice in workman compensation cases, and I know what it is to have a lawyer who has a client who did not have a meritorious claim. Anyone who has practiced very long handles these kinds of cases, and it can go both ways.

I recall a fellow who used to come in the office. It was all he could do to get into the office with his bad back. One time I happened to go down to the adjoining elevator about the same time and happened to see him hit the street. That fellow looked as if he was ready to go run a 100-yard dash.

That was not the way he appeared when he was talking to the doctor or talking to the lawyer about his case.

Of course, doctors do have various ways—a person bends over, it looks like it is going to kill him. The doctor asks him to sit down somewhere.

He puts him in the same position, he just gets there a different way and there does not seem to be any pain at all. The doctor would then conclude that that person does not have any disabling disease.

Here, he was complaining that it was practically killing him to bend over, and here you get him into the same position by a different method and he does not feel any pain at all.

I agree with the principle that where these people are disabled they should be compensated. Now, the question is, are they disabled, are they suffering from black lung? Tell me about this rereading. I do not understand.

Mr. READ. The X-rays that form a part of the medical evidence for pneumoconiosis are sometimes very difficult to read, often impossible to read, if I may say so.

Nonetheless, they are read by the physician who is the claimant's doctor. Because the disease is relatively new, at least in terms of it being entitled to be called a disease, our ability to read X-rays and take a picture of the lungs and determine that it is pneumoconiosis and not emphysema or bronchitis is really, at this point, somewhat limited.

We find it necessary to have the X-rays reread by expert radiologists all around the country who are on contract to us. They are not Federal employees; they are experts in the field.

The bill would permit these rereadings, but would not permit the judgments of these radiologists. The X-rays are read in a dispassionate way, Mr. Chairman, in the adjudication process. The rereading could show the X-ray is of acceptable quality; thereby, the

judgment of the first physician who perhaps knew little or nothing about it, would stand. The second reading could show it is not of acceptable quality, in which case we would go back and do it again.

I do not know if Bob would like to expand on this.

The CHAIRMAN. Could I have your reaction to this?

Mr. WEDEMAYER. Yes, Mr. Chairman.

Mr. Read did explain exactly what we do. We feel this whole process is necessary. The pneumoconiosis disease is a very difficult one to detect. In order to detect it, you must have a top-quality film. A film may be readable for other purposes, such as the detection of a fracture or measure of heart condition. We must have a very high-quality film in order to deduce the presence of pneumoconiosis. For that reason, we now read for two purposes, first of all, to measure the quality of the film, then to determine whether or not the disease is present.

Unfortunately, there are only a few radiologists in the country who can be referred to as rereaders who have undergone training to detect the disease.

To make our decisions accurate, we must use these physicians. We believe it is necessary to use these specially-trained physicians for this purpose.

The CHAIRMAN. What bothers me about that, I find myself asking, does this mean, in effect, that you are barring the Government from getting evidence from presenting its side of the case, if the Government does not believe that the person has black lung and you have a doctor for the patient who contends that he does have black lung, does that have the effect of denying the Government the evidence, or the ability to present the evidence which would have to be in the form of expert testimony to have him look at the X-ray that this person who has the qualifications to examine it and arrive at an opinion does not believe the person has black lung?

Mr. WEDEMAYER. That would be the effect of the provision. We feel that we would be unable to present evidence from these highly qualified rereaders.

Mr. READ. Mr. Chairman, we are not anxious to prove or disprove the existence of the disease. We just want the best evidence we can to objectively and dispassionately make a decision about it. We do not want to show that the miner does not have pneumoconiosis. We want to make the best judgment we can.

The CHAIRMAN. It sounds to me that the plaintiff can present his side of the evidence, but the defendant is barred by law from presenting his side of the evidence.

Is that the way it impresses you?

Mr. READ. In the case of the trust fund, that is the part of the program where the last responsible operator is not identified, that would seem to be the case—that those X-rays would not be submitted as admissible evidence in the adjudication process.

In the case of those adjudications where the last responsible operator has been identified, which we think is about 50 percent of these claims under this new bill, I believe that the operator who was then a part of the process can admit any evidence that he likes, and that the X-rays could become a part of the adjudication process.

Counsel may want to check me on that. There is that bifurcation, that split, if you will, in the program.

Senator HASKELL. Mr. Chairman, I wonder if I could comment on this aspect of it.

I think that the posture is that basically the Labor Department has been in a position of a judiciary. It is the position of this bill, it seems to me, borne out by the facts, that the judiciary, if that is the right word, for the Labor Department, is heavily weighted against making any payments under the program.

The skeletal facts, it seems to me, support that. You have results of a thorough study of black lung by the National Institute of Occupational Safety. We know their procedure using the autopsy is the only way to be absolutely sure whether or not you have black lung.

Their chart prepared by the institute shows that after 20 years, 90 percent of the people have black lung, yet strangely enough of 97,000 applications made, there are only 3,500 being paid. I think that the thrust of this bill is that the folks administering the program are not doing it even-handedly, and that it is about time that we kind of put a little bit on the other side of the scales, and make it even.

I think that is about the posture.

The CHAIRMAN. That is an impressive statement, and an impressive chart.

Are you familiar with this chart?

Mr. READ. I am familiar with those numbers. I have not seen the chart.

The CHAIRMAN. I am not familiar with it, either, but I think you ought to look into it. I would like for you to see if this totals with your information.

If it is true that of those who have worked in a mine for 25 years or more, that it be true that 95 percent of them, or over 90 percent, do have black lung disease, then that just makes a great deal of difference, it seems to me, and it does tremendously buttress the Senator's case.

Senator HANSEN. Would the Senator yield for a question on that point?

The CHAIRMAN. Yes.

Senator HANSEN. I am sorry to be coming in late and to have missed the testimony from our witnesses, but Senator Haskell, did you say that this chart discloses that 90 percent of the persons—I think you used the figure 90 percent, did you not?

Senator HASKELL. That chart is here, Senator. It was prepared by the National Institute of Occupational Safety. It was from autopsies, 400 autopsies in the year 1971-72. I am informed—obviously, I am not a doctor, so I cannot tell from my own knowledge—I am informed that the autopsy is the only way that you can be absolutely sure whether a person has black lung.

Based upon the autopsies on these 400 people, the people who have some degree of black lung are over 90 percent when they have worked underground for 25 years.

Senator HANSEN. Would you make that statement again?

Senator HASKELL. The chart shows that, of those people who work underground 21 to 25 years, over 90 percent of them have black lung in one degree or another. Some obviously have it worse than others, but all of them have black lung. Over 90 percent have black lung.

Yet, Senator, you see what has happened. This gentleman here said that the claim applications have been filed for 97,000 claims, applications have been filed, and only 3,500 claims are being paid.

Assuming that this chart is right, and assuming that he is right on the applications filed and the claims paid, something is wrong.

This is what the bill attempts to redress.

Senator HANSEN. Could I ask what prompted the autopsies being performed on these 400 persons?

Senator HASKELL. I am told it is part of a study of the whole problem of black lung. It has been a problem for many years. It was an effort to make some kind of scientific determination.

Senator HANSEN. I would like to make this statement if I could, Mr. Chairman.

We have had underground mines in Wyoming, as most people know, for a long time and we have had a number of black lung cases. I personally processed every one who has written me and felt that he was suffering from black lung.

We have done our best, I can assure you, to see that they were given the full benefits to which they were entitled.

I am interested in how these 400 persons, upon whose bodies autopsies were performed, were chosen or selected. If a fair sampling was taken from among every person who has worked underground between 21 and 25 years, I would have to say that that is a very impressive statement.

Maybe that is the case. I do not know.

If it is not the case, then I think that it deserves further examination.

The CHAIRMAN. I would like to ask this question about the chart. This has four different categories. What is PMF? A certain percentage of the people have PMF. What does that mean?

The "P" would probably be pulmonary.

Mr. READ. Pulmonary massive fibrosis.

The CHAIRMAN. That would be a severe case, I take it?

Mr. READ. That would constitute complicated pneumoconiosis. There is a presumption of total disability.

The CHAIRMAN. There is another category, severe CWP. What would that be?

Mr. WEDEMEYER. Severe CWP?

The CHAIRMAN. Yes. What would that mean?

Severe CWP; what would that be?

Mr. WEDEMEYER. I do not believe that there is a medical definition, as such.

The CHAIRMAN. I am told that means coal worker's pneumoconiosis. Black lung, right?

Mr. WEDEMEYER. Yes.

The CHAIRMAN. The next category is moderate CWP. That would be moderate—that is a lawyer's category, moderate—coal worker's pneumoconiosis.

Mr. WEDEMEYER. Medically, there are two categories.

The CHAIRMAN. Now, there is the other category, mild CWP. What would you analyze that to be?

Mr. WEDEMEYER. I would assume that would be the simple pneumoconiosis, the early stage of the disease.

The CHAIRMAN. Based upon the number of years, I see a lot of it is accounted for by the mild CWP rather than the more severe categories. That would be 20 percent on the average, it seems, 25 years, one-fifth of it would be in the mild area.

If this chart is an across-the-board sample of coal miners who have passed away, it would still be, I think, very impressive evidence, even if you discount the lower 20 percent, you have around 75 percent who would have the more severe types.

Senator FANNIN. What is the organization?

Senator HASKELL. This is the National Institute of Occupational Safety.

If the chairman would permit, for the benefit of Senator Hansen, you asked certain questions that I cannot answer, as to how the autopsies were selected. I think the evidence should be submitted for the record. We can get that today, and submit it.\*

Senator HANSEN. I think that would be fine. Certainly, if these were just random samplings of persons who have worked in a coal mine at some time or another and it is disclosed that 90 percent of all of those persons, if that is the figure that the Senator quoted, were found to have black lung if they had worked in a mine for not less than 21 years, I will certainly be a supporter of this legislation.

I know a lot of coal miners. In Rawlins, Wyo., we have a very big mining population. Interestingly enough, about the time the so-called captive mines closed down there, the other mines were opening.

The prediction of grass growing in the streets of Rock Springs never came about because the city shifted from coal mining. I will say this. I have attended funerals of good friends of mine down there who mined for a long time. I have to state categorically I do not think most of those were ever subjected to an autopsy.

Some of them died earlier, others lived a long time, like cigarette smokers.

Mr. READ. May I interject a point here?

When workers' compensation put this program in the system generally, it is not only the contraction of the disease, but the disabling effects of the disease that comes to bear on whether you compensate or not. It may be that in the early stages of the disease a miner may be perfectly capable of continuing to work and desires to work by his own choosing. In fact, this does occur.

Workers' compensation generally is provided where there is an occupationally related disease that has a disabling effect. That tends to come back on the Senator's point about data.

Senator, we would like very much to look at this study, too. There is some question, for example, whether you can determine disability by an autopsy. You may tell the existence of the disease, but whether or not that disease, in turn, had a disabling effect on the employee is a question that we must consider.

Senator HASKELL. It should not make him any better.

Mr. READ. That is true.

Senator HANSEN. I appreciate your observation. No one can argue at all with the statement.

If an occupational disease, although it may not be as severe on some persons as on others, does restrict the individual's ability to earn a living, I think there can be no question that he is deserving of benefits.

\*See p. 80.

I would say also if it could be demonstrated on the basis of autopsies that the disease has shortened a person's life, then may be that is not contemplated in the laws that you are charged to administer.

It would seem to me that that is hard to prove, but if it could be proven, I would be most sympathetic about granting benefits.

I have to say that simply to confer benefits on people solely on the basis of their having worked in a mine seems not to me to be a very objective test as to the incidence of black lung.

Mr. READ. That is our view, Senator. Thank you.

The CHAIRMAN. Are you through, Senator?

Senator HANSEN. One further thing.

I have been informed that there has been an examination of this study made by the Committee on Labor and Public Welfare, who had five lung specialists make an examination on this study. May I ask also that that be included into the record?

The CHAIRMAN. Without objection.

[The material referred to follows:]

UNIVERSITY OF CALIFORNIA, SAN DIEGO,  
SCHOOL OF MEDICINE, DEPARTMENT OF PATHOLOGY,  
*La Jolla, Calif., April 2, 1976.*

Mr. DONALD ROSENTHAL,  
*Dirksen Senate Office Building,*  
*Washington, D.C.*

DEAR DON: This is to follow up our telephone conversation today regarding the National Coal Workers' Autopsy Study. There are four main points which should be understood by anyone trying to make use of the data. 1) The NCWAS population of miners is different from that of a controlled epidemiologic survey of working miners and/or retired miners. An example of a controlled study would be the ongoing National Study of Coal Workers' Pneumoconiosis which has selected a representative sample for thorough epidemiologic and medical examinations. There is no way I know of to reliably extrapolate the NCWAS data to the whole population of coal miners. 2) Autopsy sampling of lung is not as complete as an x-ray of the entirety of both lungs, as is done in the epidemiologic surveys of living miners. It is not a random sampling of the lung for sure, and it is probably biased towards the more severely diseased areas of the lung, as is specified in the official instructions of the NCWAS which were distributed to over 10,000 pathologists in this country in 1971. Of the more than 160 pathologists around the country who have submitted cases to the NCWAS, there are probably no two using exactly the same techniques for doing the autopsy or for sampling the lungs for microscopic studies, much less for interpreting the findings. 3) The arbitrary classification of CWP pathology which Drs. Gelderman and Walat and I used in our study of lung cancer does not bear any relationship (necessarily) to the well-established x-ray categories for pneumoconioses nor to any effects on preliminary function, disability or life expectancy. These data would have to be tested using patients on whom suitable physiologic studies would be performed prior to autopsy. 4) At present, there is no accepted definition for CWP pathology, especially regarding its quantitative assessment and any possible relationship to disability or death, except in the cases of complicated CWP, also known as progressive massive fibrosis. NIOSH has done some preliminary work on this problem and a preliminary report was presented to the Coal Mine Health Research Committee in June, 1965. Dr. Jerome Kleinerman in Cleveland is presently in charge of the task force working on these standards for CWP pathology.

As I mentioned, I have just received some further data from the autopsy study regarding analysis of 1,200 cases, of which the 400 you have had reference to are a part. At autopsy, CWP was mentioned 1,175 times and was considered to be the primary cause of death in 38 of those cases. On death certificates for these same patients, CWP was mentioned 614 times and was listed as the primary

cause of death 132 times. The discrepancy indicates lack of criteria at present for determining at autopsy when death is due to CWP.

I hope this information will be of some use to you. Please do not hesitate to contact me for further details or clarification.

Sincerely,

JERROLD L. ABRAHAM, M.D.

The CHAIRMAN. Thank you very much, gentlemen.  
[The prepared statement of Mr. Read follows:]

PREPARED STATEMENT OF JOHN C. READ, ASSISTANT SECRETARY OF LABOR

Mr. Chairman and Members of the Committee: We appreciate this opportunity to present to you the views of the Department of Labor on H.R. 10760, the Black Lung Benefits Reform Act of 1976, as reported by the Senate Committee on Labor and Public Welfare. Accompanying me are Robert Wedemeyer, Acting Associate Director of the Division of Coal Mine Workers' Compensation, and Mark Solomons, Counsel for Black Lung in the Solicitor's Office.

At the outset, I would like to emphasize that the Department of Labor shares the Congressional concern regarding the welfare of miners who have contracted black lung and of their families. The crippling and fatal effects of this disease are well known. In administering our responsibilities under the present law, we exert every effort to assure that miners and their survivors are treated fairly, equitably, and sympathetically in adjudicating their claims for benefits.

Under the present program, which is to terminate in 1981, the Federal government pays benefits to all persons who filed a successful claim prior to July 1, 1973. In the case of those miners or their survivors who filed after that date, the Federal government pays benefits from July 1, 1973 to January 1, 1974 and after that date only if no responsible coal operator can be found. A responsible coal operator has been defined in the regulations to be the last coal mine operator for whom the miner has worked a cumulative one year period. The present law contains presumptions, both rebuttable and irrebuttable, that make it easier for the claimant to prove his case. The claimant has to show total disability due to pneumoconiosis; or his survivor has to show that the miner was totally disabled by pneumoconiosis at the time of his death or that his death was due to pneumoconiosis.

A fundamental part of this program, and indeed of every workers' compensation program, is the use of reliable evidence and medical judgment to adjudicate a claim for benefits. Such tests as x-rays, and pulmonary function studies, as well as a physician's judgment of an occupational relationship, provide the basis for adjudication of claims and, thereby, the integrity of the program. This is a remedial program designed, without the proof of fault, to compensate only those workers who are, after careful diagnosis, determined to have a totally disabling disease called "pneumoconiosis."

The bill before you today would make significant changes in the administration and claims adjudication of the present program. H.R. 10760 creates a trust fund that would pay black lung benefits to claimants who filed after June 30, 1973 for which no responsible operator can be found. The burden of paying these claims would shift to the coal industry. Where the claimant's last responsible coal mine employer can be found, present procedures which assign liability to that operator would be continued. In cases where no such liability can be established, the trust fund, financed by assessments—in effect, taxes on production—on all coal operators, would be liable for benefits. For those claims paid by the government after December 31, 1973, the government would be reimbursed by the fund; the fund would also reimburse the government for all administrative costs that the government will incur in administering the Act in the future.

The trust fund would be administered by the Secretary of Labor, while the Secretary of Treasury would be responsible for certain investment decisions. It would be financed initially by a repayable advance from the Federal treasury. The Secretary of Labor would classify coal mine operators by the type of operation, taking into consideration productivity and other factors, and would assess the industry, by classification, on a uniform per ton of coal basis.

In addition to creating a trust fund, the bill also reduces the evidentiary standards necessary to establish entitlement for the payment of benefits. The bill:



Removes the three year statute of limitations on survivors' claims so that no matter when the miner died, the survivor would be eligible to file a claim for benefits.

Automatically entitles the survivor of a miner to benefits if the miner had worked 25 years in the coal mines prior to enactment of this bill, unless it is established, with the burden on the government, that at the time of his death the miner was not partially or totally disabled due to pneumoconiosis.

Automatically entitles a living miner to benefits if the miner has worked 25 years in the mines at the time of filing and if the miner is partially or totally disabled due to pneumoconiosis.

Prohibits the rereading by the government of x-rays to determine whether an initial reading was correct if the initial reading was by a Board-eligible or Board-certified radiologist and the x-ray was of acceptable quality unless the government had reason to expect fraud.

Increases the weight given to non-medical affidavits as the sole evidence to support the case of the survivor of a deceased miner.

Changes the 1981 termination date of the present part C program to make only new claims' eligibility terminate in 1981; we understand there may be an amendment offered which would go even further and make this a permanent program.

For a number of reasons, the Department of Labor strongly opposes this bill. We do not believe that a trust fund is an appropriate mechanism for the delivery of benefits under this program. Moreover, we do not agree with those provisions which would relax significantly the present qualifications for entitlement to benefits.

The total cost of the new provisions to the Black Lung Act made by H.R. 10760, including accumulated liability for claims already filed, we estimate to be between \$131 and \$271 million in FY 1977; this represents between a five and ten-fold increase in the cost of the program over current costs.

Assuming that individual operators have been or will be found responsible in 50% of the cases, the trust fund will then assume liability for 50% of the cost or between \$65 and \$135 million in FY 1977. In addition, since the liability for the cost of benefits under the current program is estimated at \$30.1 million in that period, the trust fund will have to pay \$15 million (50%) of the current costs. Thus, the total cost to the fund for FY 1977 is estimated at between \$80 and \$150 million. This includes all administrative costs except the administrative costs of the refiling of approximately 200,000 Social Security Administration denials, which we cannot estimate at this time. The full amount, \$80 million to \$150 million (plus the unestimated administrative costs) will have to be advanced to the trust fund by the government.

In establishing the rate of assessment for operators to pay to the trust fund, the Secretary of Labor is directed to classify each type of coal mine operation, and to establish a rate of assessment per ton of coal mined for each class of coal mine, on an "equitable basis", taking into account such "appropriate" factors as the productivity of the class of coal mine operation. Based on the estimates above, each coal operator, if all are assessed equally, will have to pay the trust fund between 13 cents and 25 cents per ton of coal. This does not include the cost to the individual operators of being ruled "responsible", nor does it include the unestimated administrative costs. This increased cost comes at a time when there is an increasing reliance on coal as a source of energy. Much of this added cost will, no doubt, be passed on to the consumer.

While the proposed trust fund represents an innovation in the funding of benefits for the black lung program, we believe that there are serious problems with such an approach. In the first place, a trust fund, which will be operative for the foreseeable future, would create substantial problems for a reintegration of black lung into improved workers' compensation systems at the State level. As originally enacted, the Federal black lung program was a temporary measure to address the special problems created by one occupational disease in one segment of industry. At that time, it was envisioned that the Federal program would terminate and that eventually black lung claimants would be brought within the State workers' compensation systems. This has not happened. Instead, the program was extended by amendments in 1972, and it is now proposed that Federal involvement will not only continue, but will be institutionalized by means of the trust fund.

In the second place, we are concerned about the precedential effect of the creation of a trust fund to deal with one particular occupationally-related diseases. Black lung is only one among a large and increasing number of known occupational diseases. The detection, prevention, and compensation of these diseases present very complex problems to Federal and State benefit programs which are presently the subject of study by the Interdepartmental Workers' Compensation Task Force. In addition, there are concentrated efforts being made to encourage the States to improve their compensation systems and to provide complete coverage of occupational diseases.

We strongly believe that further consideration is necessary in arriving at viable approaches to the problems of compensation for occupational diseases and that the piecemeal approach to occupational diseases offered by this bill is not useful at this time. The need for the comprehensive and systematic development of improvements in the entire area cannot be overemphasized. Occupational disease is a problem of growing concern, national in scope, and affecting the lives and well-being of millions of American workers and their families. In our view, these problems of occupational disease must be considered systematically and comprehensively, and further fragmentation should be avoided.

As I previously indicated, it is not only the trust fund provisions that cause us concern about this bill. Also at issue are the relaxed eligibility and evidentiary standards which, among other things, would increase the cost of benefits and as a consequence the size of the proposed trust fund.

Under the bill, miners would be entitled to black lung benefits after working 25 years in coal mines upon a showing of partial or total disability due to pneumoconiosis. This provision represents a dilution of present eligibility criteria. For the first time, a concept of partial disability is being introduced into the black lung program. Since under black lung there is only one level of benefits, a person suffering only partial disability would receive the same level of benefits as one who was totally disabled.

In addition, survivors of a deceased miner would be entitled to benefits under this bill if the miner had worked in the coal mines for 25 years prior to enactment of the bill, unless it is established by the Government that the miner at the time of his death was not partially or totally disabled due to pneumoconiosis. This limitation upon the survivors' entitlement would, as a practical matter, be of limited utility. Rather, the entitlement would be very close to automatic in most cases, since the burden of establishing that there was no disability would be extremely difficult to meet. As a result, benefits would be paid where there may be only the most tenuous connection between compensation provided by the Act and an occupationally related disability. This approach is contradictory to basic workers' compensation principles, and sets a precedent which would be most inappropriate for a remedial compensatory system.

The x-ray rereading provision of the bill in effect prohibits rereading of an x-ray if the original x-ray was read by a Board-eligible or Board-certified radiologist and is of acceptable quality. Only if there is reason to believe that a claim has been fraudulently presented would there be an exception to this prohibition. This type of provision is inconsistent with sound procedures for evaluation of vital medical evidence. Such a provision will result in a substantial increase in benefit awards for claims of doubtful validity, and increase the costs of the program. It must also be recognized that until recently medical schools did not include coal workers' pneumoconiosis as part of their curriculum. Thus, particularly outside the Appalachian States, even radiologists are not always capable of making accurate readings of x-rays to detect black lung.

This x-ray rereading provision also sets an unacceptable precedent for workers' compensation adjudicatory processes. Under the bill, the initial field reading may be the only admissible evidence (if done by a Board-eligible or Board-certified radiologist) unless, in the Department's judgment, the x-ray is not of acceptable quality. In order for the Department to make the acceptability determination, it is necessary for the x-ray to be submitted to a qualified reader. At the time the reader determines the acceptability of the quality of the x-ray, he will also know if the x-ray in his judgment shows pneumoconiosis. Yet while his decision on acceptability is admissible in the adjudicatory process, his judgment on pneumoconiosis is not. Thus a marked anomaly is created which seriously affects the process by which the validity of claims for benefits is determined.

Further, since the provision would call for reexamination for all denied part C claims and refiled of part B claims, x-rays that had been determined by an established expert to show no pneumoconiosis would have to be discarded and the claim might have to be paid on the basis of already impeached evidence.

Another provision of the bill which causes us concern requires that the Department of Labor entertain claims from miners still employed in the mines who have worked ten years in coal mines, have x-ray evidence of the development of pneumoconiosis, or would be eligible for transfer to a position of reduced concentrations of respirable dust (under section 203 of the Federal Coal Mine Health and Safety Act). The Department of Labor then would notify the miner as to entitlements to benefits. In effect, the Department would be required to issue advisory opinions, which would themselves require virtually a full adjudicatory process for each claim thus received. This requirement as well as several of the other provisions of the bill, would place a serious administrative burden on a program which already has an inherently complex and difficult adjudication process to manage.

In summary, therefore, the Department of Labor must oppose this bill. The creation of a trust fund at this time would be inadvisable. In many respects, workers' compensation as a whole is in a period of reexamination and transition. The ongoing work of the Interdepartmental Workers' Compensation Task Force points to the need for a comprehensive and systematic approach to occupational disease as a whole, and to the larger question of the best way to improve the present workers' compensation systems. A trust fund approach could not only have adverse precedential impact, inviting similar proposals for handling compensation problems for other diseases, but would also represent the kind of fragmentation which would be difficult to undo should occupational disease coverage as a whole move in a different direction.

The relaxed entitlements provisions of this bill represent an undesirable shift away from the remedial purposes of workers' compensation toward a pension-oriented system. The combined impact of these measures on future, systematic improvements to workers' compensation systems could be extremely adverse. This bill in the aggregate does little to improve the plight of the coal miner who has contracted pneumoconiosis; at the same time it requires the payment of benefits to miners who will not have provided what we presently regard as sufficient proof of disability.

Thank you. My colleagues and I would be happy to respond to any questions you may have.

The CHAIRMAN. Next, we will call Mr. Carl Bagge, president of the National Coal Association.

**STATEMENT OF CARL E. BAGGE, PRESIDENT OF THE NATIONAL COAL ASSOCIATION, ACCOMPANIED BY JOHN GIBSON, LEGISLATIVE REPRESENTATIVE, NATIONAL COAL ASSOCIATION AND ROBERT BEIN, JOHNSON & HIGGINS, NEW YORK CITY**

Mr. BAGGE. Mr. Chairman, members of the committee, I am Carl E. Bagge, president of the National Coal Association. I am accompanied this morning by Mr. John Gibson, a legislative representative for the National Coal Association and Mr. Robert Bein of the actuarial firm of Johnson & Higgins of New York City.

We appreciate the opportunity afforded us by this committee to present our views on H.R. 10760, the Black Lung Benefits Reform Amendment of 1976.

I realize that the primary concern of this committee is with the trust fund and tax provisions of this measure and it is therefore on those subjects that I shall focus the major part of my testimony today.

By way of background, I believe it would be helpful to the committee for me to give a brief explanation of the coal industry's position on this measure. We are opposed to any amendments to the existing black lung law. There is no need for Congress to change the existing law and there is no evidence that legitimate victims of coal workers' pneumoconiosis are not now receiving benefits.

Indeed, as the report of the Committee on Labor and Public Welfare points out, over half a million claimants have qualified for benefits under the existing program. That figure represents an approval rate of over 60 percent and the total annual black lung benefits payments are now about \$1 billion annually.

Furthermore, under existing law, individual coal companies are responsible for paying claimants for which they can be shown to be responsible. A leading independent actuarial firm, Johnson and Higgins, of New York City, estimate that this existing potential liability will be about \$1 billion, once all claims are settled.

This bill proposes to extend benefits of the program to a number of workers who are not now entitled to benefits. Any coal miner who is affected by any pulmonary or respiratory impairment arising out of coal mining and who has worked in coal mining for more than 25 years prior to 1981 is entitled to benefits.

Any survivor of a miner who has worked over 25 years in coal mining is entitled to benefits provided that there is no evidence that the miner would not have been entitled to black lung benefits.

All workers who come into contact with coal are entitled to benefits, including surface miners. These miners are covered in spite of the fact that the Appalachian Laboratory for Occupational Respiratory Diseases has recently concluded that there is virtually no incidence of black lung disease among surface miners.

Finally, the coal industry would be liable for retroactive payment of benefits to the branches of the Federal Government who were previously liable and who have already paid these claims. The industry liability would be financed either by individual coal companies or by a fund which is financed by contributions from all coal operators.

We believe it is bad public policy to create a revolutionary new program which gives occupational disease benefits to people who are not victims of the disease and which taxes an industry to finance an obligation which the Federal Government clearly assumed 7 years ago and reaffirmed 5 years ago.

The coal industry is opposed to this entitlement concept and believes that it would create an unwise and potentially far-reaching precedent, affecting all American industry.

With respect to the specific concerns of the Finance Committee, H.R. 10760 enacts a tax on a single industry and directs that the proceeds of this tax be paid into a fund which will compensate certain black lung claimants. This procedure raises two serious policy questions.

First, if this type of program is justified in the coal mining industry, it could be applied to other industries. In a report published earlier this year by the National Academy of Sciences entitled, "Mineral Resources and the Environment, Supplementary Report: Coal Workers' Pneumoconiosis, Medical Considerations, Some Social Implications," the Academy addressed this very issue when it stated:

If either of these alternatives were chosen (granting compensation as a reward for hazardous work or compensating any respiratory impairment suffered by coal miners), it would be reasonable to suggest that similar benefits be extended to workers in other occupations which may be equally or even more hazardous to the lungs than coal mining.

A partial list of such beneficiaries might include workers in cotton mills, asbestos workers, hard rock miners, coke oven workers and steel workers; these workers are subject to a variety of occupationally-related diseases of the lungs: silicosis, berylliosis, aluminosis, talc pneumoconiosis, and so forth, in addition to the assaults of aging and other environmental stress.

... if (such benefits) were extended to workers in other industries, the costs might range from \$20 to \$100 billion annually. Undoubtedly, they would force new and fundamental decisions on society regarding pension and benefit programs.

The point made by this study is that the precedent established by this tax on the coal industry, if applied to how we as a nation are going to handle industrial disease, would cost our society up to \$100 billion annually. That is the precedential effect of our moving in an entirely revolutionary way in handling industrial disease in this Nation.

While H.R. 10760 does not impose all black lung liability on the fund, it sets a precedent which clearly has far-reaching implications. It could be duplicated in the form of a series of potentially costly single-industry-single-disease compensation programs. If these programs were structured as the one in H.R. 10760 originally was, then the costs projected in the NAS report are clearly within the realm of possibility.

The \$100 billion figure is not that farfetched.

We think there is another significant implication to this proposal which should concern the committee. H.R. 10760 is a blueprint for a series of uncontrolled and unaccountable single-industry income supplement programs. These programs would be financed by Federal taxes but would be outside the scrutiny of the agencies of the executive and legislative branches whose function it is to scrutinize the collection and expenditure of Federal funds—this committee, the Appropriations and Budget Committees, the Congressional Budget Office, and the Office of Management and Budget.

These programs would be outside of the scrutiny of the established agencies of Congress and of the administration which affect tax policies.

The trust fund in H.R. 10760 would be such a unique tax funding apparatus. It is financed by charges on coal operators—these are clearly taxes, although they are not so labeled. The Federal government will continue to approve black lung claims, but will have no financial liability.

The industry, either as individual companies or through the fund, will have all the financial liability, but will be barred from participating in the claims approval process.

By separating the authority to approve claims from the natural restraint resulting from the obligation to pay the claims approved, H.R. 10760 has also removed an essential element in the system for controlling the size and cost of the program.

The bill removes another important element in the control system, the element of accountability. Although this program is mandated by the Federal Government and financed, in part, by federally raised money, it is not subject to Federal scrutiny due to the fact that it is entirely paid for by the coal industry.

Although the trust fund is held and managed nominally by the Secretaries of Labor, HEW, and Treasury, all costs, including administrative costs, are borne by the coal industry.

There is no reason and no incentive for the Federal Government to supervise the program and keep it reasonable in size.

This result seems to be particularly unfortunate in light of the congressional budget process which is a laudable attempt by Congress to control and manage Federal spending. H.R. 10760 is a perfect way to circumvent this entire process.

In conclusion, I believe it important that this committee focus on those provisions of this proposed legislation which, in my view, constitute a form of tax legislation which is both historically unique and fundamentally inequitable. The bill proposed the creation of a trust fund, to be funded wholly by industry contributions and, at the same time, administered wholly by the Government.

In this respect, this established new law, contrary to the report of the Senate Labor and Public Welfare Committee which states that H.R. 10760 does no more than restate "the intent of Congress, both expressed and implied, that accompanied the 1972 amendment."

The new trust fund, contrary to existing law, would:

Impose on the coal industry liability where no responsible coal operator can be identified for paying benefits to claimants.

Impose on the coal industry liability whether in the language of the bill, the "operator liable for such benefits has not obtained a (black lung insurance) policy or contract of insurance, or (has) qualified for a self-insurance \* \* \*."

Impose on the coal industry liability where, again in the words of the bill, the coal operator "has not paid (black lung) benefit within 30 days of an initial determination by the Secretary \* \* \*."

In short, this new tax on the responsible members of the coal industry would be increased, through trust fund assessments, in direct proportion to the failure of some operators to (1) either obtain black lung insurance, or (2) become a self-insurer, or (3) pay claims assessed against them by the Secretary within the 30 days.

Additionally, and most importantly, the bill provides, in the words of the Labor Committee, that the responsible operators "will have no right to litigate any questions concerning the assignment of claims to the Fund or the payment of benefits out of the Fund's assets."

These provisions are tantamount to a new method of taxation under which an individual's effective tax rate is increased if his neighbor fails to either pay, or arrange for the payment of, his taxes. Indeed, under the proposed bill, the coal industry would be unable to contest the propriety of the Secretary's assignment of such claims to the fund.

Also, although this measure would require that all coal mine operators pay assessments into this trust fund, nowhere does it provide for participation by operators in the process whereby assessments will be made, claims will be paid, or liability assigned to the fund by the Secretary of Labor. The bill, in effect, would result in action which deprives citizens of their property without a prior evidentiary type hearing by the Government.

In my view, it is not an overstatement to characterize these aspects of the legislation as not only inequitable but contrary to the traditional concepts of due process.

Mr. Chairman and members of this committee, we hope you will recommend to the Senate that the trust fund provisions be stricken from this bill. For the reasons set out above, we believe the taxation scheme contained in H.R. 10760 would be an unfortunate and revolutionary precedent for a comprehensive and expensive income supplement program entirely beyond the control of its congressional creators.

Thank you very much.

The CHAIRMAN. Senator Haskell?

Senator HASKELL. I have one question.

Mr. Bagge, is it your position that the industry should not pay for black lung?

Mr. BAGGE. No, sir.

Our position is that miners who have disabilities resulting from coal worker's pneumoconiosis should be compensated. In 1969, in the Mine Health and Safety Act that set up this program ordained that we shall eliminate the basis for black lung by reducing dust to the level of 2 milligrams per cubic meter of air in the mines. As an industry, we have been spending hundreds of millions of dollars to comply with that requirement.

We believe we are, and the studies of the Government document we are, complying and we have eliminated the basis for this tragic and crippling disease.

We believe, with respect to the men who were exposed to the dust in the past, they should be compensated. We believe the existing program, which is funded at approximately \$1 billion a year, is adequately handling in a conscientious and, we think, responsible way, the legitimate claims of men disabled from the disease.

We support the objectives of that legislation.

Senator HASKELL. What confuses me, you apparently feel your industry should pay for this disease which you characterize, and properly so, as a tragic and crippling disease, yet the gentleman from the Labor Department said that only approximately 5 percent of the black lung claims were being paid by the industry, and the balance by the Federal Government, which means all the taxpayers.

What we are trying to do in this bill is do what we feel is proper, have the industry pay for the claims.

Do you follow?

Mr. BAGGE. I follow.

Congress, when it set up this program, Senator Haskell, in its wisdom, determined that the American public had benefited from lower rates, electric rates, when our society had not recognized this problem.

Therefore, they assumed, as a matter of public policy, the economic consequences of this disease. That was the rationale of this legislation.

It was reaffirmed with the amendments in 1972. We think this was a responsible position. This is the approach Congress took to it, providing, however, that we should take the claims of the incidence of the disease in the future.

We have assumed this responsibility, and under present law, still continue to have them.

Senator HASKELL. Thank you.

The CHAIRMAN. Senator Fannin?

Senator FANNIN. Thank you, Mr. Chairman.

Mr. Bagge, on the first page of your statement, you say,

There is no need to change the existing law, and there is no evidence that legitimate victims of coal workers pneumoconiosis are not now receiving benefits. Indeed, as the Report of the Committee on Labor and Public Welfare points out, over half a million claimants have qualified for benefits under the existing program.

You heard the comment of the witnesses from the Labor Department. I think we are confusing statistics.

Is it not correct we are getting statistics on what is involved, as far as the Labor Department is concerned, confused with what is involved as far as the other departments?

Mr. BAGGE. That is correct.

Senator FANNIN. I think we should clarify that.

As you say, that represents an approval rate of over 60 percent, and the total annual black lung benefits total now \$1 billion annually.

Mr. BAGGE. \$1 billion annually in the aggregate, in the program today. Our position is sincerely that we believe that the men affected by this are being compensated today, and see no basis, in terms of statistics.

If I may take the opportunity to respond to some matters raised earlier in this hearing—I feel constrained to do this—I think the focus of this committee is on the tax aspect of the bill. I would like, if I may, in response to the discussion of incidence rate, to refer the committee to my testimony before the Senate Labor Committee earlier this year and a study by the National Academy of Sciences which, unlike a study of 400 autopsies, takes the incidence of coal workers' pneumoconiosis across the board, region by region, and shows how the incidence occurs based on the number of years worked in the mines, and then it attempts to show that there are three different stages of pneumoconiosis, that 2.1 percent is the aggravated and advanced stage.

If I could, I would like to insert it in the record—it is only two pages. I think it would illuminate the broader picture of the incidence of this, by taking appendix A and appendix B to a study released this year by the National Academy of Sciences that shows precisely with categories, 10 to 19 years of exposure, 20 to 29, 30 to 39 and over 40 years, and it does not show anything like a 90-percent incidence factor, Senator Haskell referred to earlier.

The CHAIRMAN. What does it show?

Mr. BAGGE. Let me, if I may—

The CHAIRMAN. I will ask that it appear in the record of these hearings, because it ought to be in our hearing as well for people to look at and draw their own conclusion.

[The study to be furnished follows:]



**SALIENT STATISTICS OF LIGNITE MINING, BY STATES—UNDERGROUND MINES (NO UNDERGROUND EXPERIENCE):  
STRIP MINES**

	1970	1971	1972	1973	1974
<b>Texas:</b>					
Number of mines.....			3	3	4
Production (net tons).....	4,045,000		6,944,000		7,684,000
Average value per ton.....	W		W		W
Number of shovels and draglines.....	11		11		14
Average number of men working daily.....	244		215		293
Average number of days worked.....	300		321		329
Number of man-days worked.....	73,000		69,000		96,000
Average tons per man per day.....	55.22		100.75		80.50
<b>Shipments of lignite from the mine:</b>					
Shipped by rail <sup>1</sup> .....					
Shipped by truck.....	240,000		244,000		268,000
Used at mine <sup>2</sup> .....					
Mine-mouth generating plants.....	\$,605,000		6,700,000		7,426,000
<b>Total.....</b>	<b>4,045,000</b>		<b>6,944,000</b>		<b>7,684,000</b>
<b>Total, all States:</b>					
Number of mines.....	22	17	19	17	18
Production (net tons).....	5,963,000	6,402,000	10,999,000	14,164,000	15,478,000
Average value per ton.....	\$1.89	\$1.93	\$2.04	\$2.09	( <sup>3</sup> )
Number of shovels and draglines.....	50	40	49	41	44
Average number of men working daily.....	323	322	547	502	686
Average number of days worked.....	240	237	262	283	277
Number of man-days worked.....	78,000	77,000	143,000	142,000	190,000
Average tons per man per day.....	77.02	83.94	76.75	99.70	81.45
<b>Shipments of lignite from the mine:</b>					
Shipped by rail <sup>1</sup> .....	3,587,000	3,411,000	3,544,000	4,018,000	3,908,000
Shipped by truck.....	570,000	216,000	445,000	296,000	396,000
Used at mine <sup>2</sup> .....	1,346,000	66,000	48,000	153,000	12,000
Mine-mouth generating plants.....	480,000	2,709,000	6,962,000	9,698,000	11,172,000
<b>Total.....</b>	<b>5,963,000</b>	<b>6,402,000</b>	<b>10,999,000</b>	<b>14,164,000</b>	<b>15,478,000</b>

<sup>1</sup> Includes coal loaded at mines directly into railroad cars and hauled by trucks to railroad sidings.

<sup>2</sup> Includes coal used at mine for power and heat, made into beehive coke at mine, used by mine employees, used for all other purposes at mines, and transported from mine to point of use by conveyor or tram. 1970-73 figures exclude coal transported from mine to point of use by conveyor or tram.

<sup>3</sup> Average value per ton does not include Texas tonnages.

<sup>4</sup> Cannot be estimated as value per ton; is not reported for Texas and Montana.

W—Withheld to avoid disclosing individual company data.

SALIENT STATISTICS OF PENNSYLVANIA ANTHRACITE MINING

Year	Value			Men employed	Average number of days worked	Net tons per man		Cut by machines (net tons)	Produced by stripping (net tons)	Mechanically loaded underground (net tons)	Apparent consumption (thousand tons)	Foreign trade	
	Production <sup>1</sup> (net tons)	Total (thousands)	Average per ton			Per day	Per year					Exports <sup>2</sup> (net tons)	Imports (net tons)
1890	46,468,641	356,384	\$1.43	126,000	200	1.85	369						
1895	57,999,337	82,019	1.41	142,917	196	2.07	406				45,596	889,655	16,962
1900	57,367,915	85,758	1.49	144,206	166	2.40	398				56,510	1,647,195	158,297
1905	77,659,850	141,879	1.83	165,406	215	2.18	470				55,515	1,853,163	132
1910	84,485,236	160,275	1.90	169,497	229	2.17	498				75,201	2,497,581	38,350
1915	88,598,061	434,252	2.07	176,552	230	2.19	504	1,307,756	1,121,603		81,110	3,384,222	9,180
1920	88,598,249	327,665	4.85	145,074	271	2.28	504				85,785	5,403,749	814
1925	84,437,452	474,164	5.70	160,312	182	2.12	618	938,073	2,054,441		64,061	3,179,006	382,894
1927	80,095,564	420,942	5.62	165,786	244	2.09	386	941,189	1,578,478		74,672	4,029,683	813,956
1928	75,348,069	393,638	5.26	165,259	225	2.15	511	931,650	2,401,356		77,221	3,326,507	119,030
1929	61,817,149	354,574	5.22	160,681	217	2.17	485	1,171,888	2,153,156	2,223,281	71,457	3,406,369	487,172
1930	69,384,837	385,643	5.22	151,501	225	2.16	469	1,289,809	2,422,924	2,351,074	73,650	3,326,272	384,707
1931	59,645,652	296,355	5.11	150,804	208	2.21	487	1,159,910	1,911,766	3,470,158	71,457	3,406,369	487,172
1932	49,856,221	222,375	4.97	139,431	181	2.37	460	1,410,123	2,536,288	4,467,750	67,628	2,551,659	674,812
1933	49,541,344	206,718	4.46	121,243	162	2.54	428	1,587,265	3,813,237	4,384,780	58,408	1,778,308	637,951
1934	57,168,291	244,152	4.17	104,633	182	2.60	411	1,674,223	3,980,973	5,433,340	50,500	1,303,355	607,097
1935	52,158,783	210,131	4.27	109,050	207	2.53	473	1,648,249	4,932,069	6,557,267	49,600	1,034,562	456,252
1936	54,579,535	227,004	4.03	103,269	189	2.68	524	1,981,088	5,798,138	9,284,486	55,500	1,237,610	478,118
1937	51,856,433	197,589	4.16	102,081	192	2.79	595	1,848,095	5,187,072	9,279,057	51,100	1,608,549	571,439
1938	46,099,027	180,600	3.81	99,085	189	2.77	523	1,984,512	6,203,267	10,827,946	53,200	1,678,024	614,639
1939	51,487,377	187,175	3.64	96,417	171	2.79	478	1,588,407	5,696,018	10,683,837	50,400	1,914,173	395,737
1940	51,484,640	205,490	3.99	91,313	183	3.02	553	1,881,894	5,095,341	10,151,669	45,200	1,906,911	362,895
1941	56,368,267	240,275	4.26	88,054	185	3.02	562	1,816,483	5,486,479	11,773,833	49,700	2,500,000	298,153
1942	60,327,729	271,673	4.50	82,121	203	3.04	617	1,855,422	6,352,700	12,326,090	49,000	2,667,632	135,436
1943	60,643,620	306,816	5.06	79,153	239	2.95	705	2,285,640	7,316,574	13,441,987	52,700	3,380,189	74,669
1944	63,701,363	354,583	5.57	77,591	270	2.78	751	1,624,883	89,89,387	14,745,793	56,500	4,438,588	140,115
					292	2.79	815	1,336,082	10,953,030	14,975,146	57,100	4,138,680	166,020
											59,400	4,185,933	11,847

1945	54,933,909	323,944	5.90	72,842	269	42.79	751	1,210,171	10,056,325	13,927,955	51,600	3,691,247	149
1946	60,506,873	413,417	6.83	78,145	271	42.84	770	1,232,828	12,858,930	15,619,162	53,900	6,497,245	9,555
1947	57,190,009	413,019	7.22	79,600	259	42.78	720	1,209,983	12,603,545	16,054,011	48,200	8,509,995	10,350
1948	57,139,948	467,052	8.17	76,215	265	42.81	745	1,016,757	13,325,874	15,742,368	50,200	6,675,914	945
1949	42,701,724	358,008	8.38	75,377	195	42.87	560	557,599	10,376,808	11,858,068	37,700	4,942,670	
1950	44,076,703	392,398	8.90	72,624	211	2.83	597	611,734	11,833,934	12,335,650	39,900	3,891,569	18,289
1951	42,669,997	405,818	9.51	68,995	208	2.97	618	496,085	11,135,990	10,847,787	37,000	5,955,535	26,212
1952	40,582,558	379,714	9.36	65,923	201	3.06	615	386,128	10,696,705	10,034,464	35,300	4,592,060	29,370
1953	30,949,152	299,140	9.67	57,862	163	3.28	535	318,699	8,606,482	6,838,769	28,000	2,724,270	31,443
1954	29,083,477	247,870	8.52	43,996	164	4.02	659	381,424	7,939,680	6,978,035	26,900	2,851,239	5,831
1955	26,204,554	206,097	7.86	33,523	197	3.96	780	393,932	7,703,907	6,660,939	23,600	3,152,313	170
1956	28,900,220	236,785	8.19	31,516	216	4.25	918	480,422	8,354,230	7,308,110	24,000	5,244,349	46
1957	25,338,321	227,754	8.99	30,825	196	4.18	819	292,307	7,543,157	6,657,479	20,800	4,331,785	1,138
1958	21,171,142	187,898	8.88	26,540	184	4.36	798	184,028	6,877,761	5,332,043	19,000	2,279,859	4,363
1959	20,649,286	172,320	8.35	23,294	173	5.12	886	260,502	7,096,343	4,700,542	18,800	1,787,558	2,633
1960	18,817,441	147,116	7.82	19,051	176	5.60	986	225,520	7,112,288	4,044,392	17,600	1,430,156	1,476
1961	17,446,439	140,338	8.04	15,792	196	5.63	1,103	236,166	7,246,646	3,377,778	15,900	1,435,335	7,792
1962	16,893,646	134,094	7.94	14,010	204	5.92	1,208	277,537	6,822,207	3,065,364	14,300	1,801,724	7,625
1963	18,267,384	153,503	8.40	13,498	216	6.27	1,354	240,427	7,467,842	3,665,962	14,100	3,357,340	4,64
1964	17,184,251	148,648	8.65	13,144	214	6.11	1,308	417,080	7,177,188	3,455,034	14,400	1,575,057	NA
1965	14,865,955	122,021	8.21	11,132	204	6.35	1,336	329,328	5,938,982	3,246,034	12,900	850,630	NA
1966	12,941,254	100,683	7.78	9,282	203	6.87	1,395	246,658	5,253,408	2,590,547	11,400	766,025	NA
1967	12,256,063	96,160	7.85	7,750	219	7.21	1,579	146,098	4,780,187	1,997,806	10,800	594,797	NA
1968	11,460,833	87,245	8.48	6,952	217	7.62	1,654	68,300	4,696,163	1,475,000	10,160	518,159	NA
1969	10,472,916	80,770	9.62	5,927	232	7.45	1,728	1,661	125,779	1,326,596	8,909	627,492	NA
1970	9,729,398	85,941	10.83	5,938	234	7.00	1,585	6,018	4,478,350	669,691	8,248	789,499	NA
1971	8,727,325	83,469	11.86	5,880	239	6.20	1,595		4,478,350	593,997	7,336	671,024	NA
1972	7,106,295	85,251	12.00	4,783	216	6.68	1,486		3,453,076	421,202	5,915	743,451	NA
1973	6,829,961	80,260	13.22	4,063	234	7.15	1,673		2,278,977	307,475	5,448	716,546	NA
1974	6,616,866	144,695	21.87	3,847	219	7.87	1,720		2,868,783			735,173	NA

<sup>1</sup> Anthracite mines by independent operators is included in totals beginning with 1951, therefore figures for 1951 and later years are not strictly comparable with those for previous years.

<sup>2</sup> U.S. Department of Commerce, does not include shipments to U.S. military forces.

<sup>3</sup> Includes some booting coal purchased by authorized operators and prepared at their breakers.

<sup>4</sup> Output per man calculated on authorized tonnages only; booting purchases excluded.

<sup>5</sup> Beginning with 1961, exports to U.S. military forces in West Germany are taken into consideration (i.e., apparent consumption equals production minus exports and shipments to U.S. Armed Forces in West Germany.)

<sup>6</sup> 1963 data includes January to August. Beginning with September 1963, anthracite import data are included with bituminous coal and are not reported separately.

**FUEL AND POWER CONVERSION FACTORS**

A British thermal unit (Btu) is the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

The Btu value of the various components within any one general class of mineral fuel, e.g., coal, oil and gas, can vary considerably depending on the physical properties in each component. For example, the term "bituminous coal," with an accompanying weighted average Btu value per ton, is often employed to include an overall weighted average Btu for bituminous coal, sub-bituminous coal and lignite. The heating value of these coals can vary from some 6,000 Btu per ton of lignite to over 14,000 Btu per ton of bituminous coal. The Btu values of the various components which make up the general categories of crude oil and natural gas can vary from one producing well to another.

The U.S. Bureau of Mines (BOM) has revised some of the weighted average Btu values previously used in estimating the annual Btu value of U.S. production and consumption of mineral fuels, hydroelectricity and electricity from nuclear power. In some instances, for the period 1965-1971, the Btu values vary annually. The following data show the weighted average Btu values used by BOM in computing energy values in Btu equivalents, for the years 1968-1975 (for 1967 and prior years see Data Book, 1972 Edition) :

	1968	1969	1970	1971	1972	1973	1974	1975
<b>Bituminous coal:</b>								
Production (Btu/short ton)-----	25,060,000	24,900,000	24,580,000	24,240,000	24,050,000	24,010,000	23,730,000	23,730,000
Consumption (Btu/short ton)-----	24,860,000	24,660,000	24,220,000	23,960,000	23,750,000	23,650,000	23,670,000	23,670,000
Anthracite (Btu/short ton)-----	25,400,000	25,400,000	25,400,000	25,400,000	25,400,000	25,400,000	25,400,000	25,400,000
Crude petroleum (Btu/barrel)-----	5,585,010	5,800,000	5,800,000	5,800,000	5,800,000	5,800,000	5,800,000	5,800,000
Petroleum products, average (Btu/barrel)-----	5,519,000	5,508,100	5,506,000	5,505,600	5,503,200	5,517,000	5,506,100	5,498,500
Natural gas, wet (Btu/cu. ft.)-----	1,115	1,103	1,102	1,103	1,100	1,093	1,097	1,104
Natural gas, dry (Btu/cu. ft.)-----	1,032	1,031	1,031	1,031	1,027	1,021	1,024	1,024
Hydropower (Btu/kwh)-----	10,398	10,447	10,494	10,478	10,379	10,389	10,389	10,389
Nuclear power (Btu/kwh)-----	10,398	10,447	10,494	10,660	10,660	10,660	10,660	10,660

Petroleum products :	Btu/barrel
Natural gasoline.....	4, 620, 000
Liquefied gases.....	4, 011, 000
Gasoline (including aviation).....	5, 248, 000
Special naphtha.....	5, 248, 000
Jet fuel, naphtha-type.....	5, 355, 000
Jet fuel, kerosine-type.....	5, 070, 000
Kerosine.....	5, 070, 000
Distillate fuel oil.....	5, 225, 000
Residual fuel oil.....	0, 287, 000
Still gas.....	6, 000, 000
Lubricants.....	6, 065, 000
Waxes.....	5, 537, 000
Petroleum coke.....	6, 024, 000
Asphalt and road oil.....	6, 086, 000

*Bituminous coal and lignite.*—Weighted average British thermal unit values are based on exports and consumption in the electricity generation and industrial sectors. Prior to 1965, 20,200,000 Btu/short ton is used.

*Crude petroleum.*—The average Btu value of crude oil is based upon an approximate API gravity of 36°, which is generally accepted as the average gravity of crude oil produced in the United States.

*Natural gas, wet.*—For 1964 and prior years the gross production is multiplied by 1,075 Btu per cubic foot minus the volume of gas used for repressuring, vented, or flared multiplied by 1,035 Btu per cubic foot. The new basis consists of the dry natural gas production which excludes gas used for repressuring, vented, or flared multiplied by the Btu rate for each year shown to which is added the computed energy equivalent of the heat value of natural gas liquids production.

*Natural gas, dry.*—For 1964 and prior years, the conversion factor used is 1,035 Btu per cubic foot. Data for 1965-74 is based on information obtained from the American Gas Association.

*Natural gas liquids.*—For 1964 and prior years, a weighted average Btu based on production is used, derived by converting natural gasoline and cycle products at 110,000 Btu per gallon and LP-gas, including ethane, at 95,000 Btu per gallon. The new procedure differs by converting the ethane production separately at 73,300 Btu per gallon.

Mr. BAGGE. I did not know the committee was going to get into the substance of the issue.

The CHAIRMAN. Give us your interpretation of it.

Mr. BAGGE. What this study shows, and the chart shows, Senator—let us take the 20- to 29-year category here, because in the House bill, that provides an absolute entitlement for 25 years, period. That has been moderated here in the Senate somewhat in the Labor Committee.

Let's take the 20 to 29 category because that seems to be the focus of the committee because of the 25-year entitlement concept.

What this study shows is that the highest incidence for miners working up to less than 30 years in the mine, in anthracite, where we have the real problem—

The CHAIRMAN. Twenty years in the mine?

Mr. BAGGE. Twenty to twenty-nine; appendix B of the National Academy of Sciences report. This national study indicates that the incidence rate is highest in the anthracite region of Pennsylvania where for miners working between 20 and 29 years, the incidence rate is up to 60 to 63 percent. In the Appalachian area, underground Appalachian area, the incidence is about 40 percent—I am reading here across; I cannot be that precise—about 43 percent.

In the Midwest, the incidence factor for the same men working up to less than 30 years in the mine, over 20, but under 29, is approximately 29 percent. In the Midwest it is 29 percent.

In the West, the incidence—it looks like it is 19 percent.

Keep in mind, Senator, that the incidence is different region by region. Appendix A shows the incidence with respect to Anthracite in Appalachia, Midwest and the West, for progressive massive fibrosis which is category three, which is the disabling form of the disease. For anthracite it is 14.3 percent of the total incidence in a disabling form.

In the Appalachia region, it is 2.1 percent. In the Midwest it is 2.9 percent. In the West, there is no incidence at all of the progressive massive fibrosis, which is a disabling form of the disease, and I think this will give a broader perspective, Senator, on the total incidence of the disease, regionally and also with respect to the various categories.

Categories one and two are an entirely different situation than progressive massive fibrosis where the man is totally disabled.

As I say, we cannot legislate coal policy based on anthracite, because anthracite is not, unfortunately, a significant factor in our total coal production today.

The CHAIRMAN. Would it be a higher or a less percent with regard to bituminous?

Mr. BAGGE. In bituminous, it is substantially lower. The problem is, based on these statistics, that in the bituminous mines, in the West and the Midwest, even in Appalachia, we do not have anywhere near the incidence that there is in the anthracite region. It drops down.

The PMF category goes down to 2.9 in the Midwest. I say we cannot legislate social policy based on one form of coal in one region from a sector of the industry that today is not that significant.

We are not producing much anthracite coal in Pennsylvania today, Senator. All I am pleading for is do not make social policy based on anthracite and on the incidences of black lung in the past.

We, as an industry, have cleaned up our mines. You legislated that in 1969. If the mine is not clean, MESA shuts us down, as they should.

They should shut down mines that are not complying. We think any irresponsible operator who today is violating the Federal law should be shut down.

It is our contention simply—I apologize; maybe I am being repetitive here—it is our position, No. 1, that disabled miners should be compensated. We are willing to pay our fair share of that.

No. 2, we think the program is working effectively today, that there is no need for an amendment, certainly not to impose the concept as presumptuous as a 25-year entitlement that has such a profound precedential effect on how we, as a nation, handle industrial disease in this country, which is revolutionary.

I do not think that that is being irresponsible, or that my industry, in responding to this bill, is being irresponsible in taking that position.

Senator FANNIN. Are you familiar with this national occupational safety study? Are you familiar with that organization?

Mr. BAGGE. Senator, I am not acquainted with the chart that Senator Haskell referred to.

Senator FANNIN. Are you familiar with the organization?

Mr. BAGGE. NIOSH? I assume it is in NIH, yes, sir.

Senator FANNIN. You are familiar with that?

Mr. BAGGE. Not really. I say yes only because I think I am and that it is some Federal program.

Senator FANNIN. Is that a Federal organization?

Mr. BAGGE. I do not know, sir. I assume it is created by the Congress. Yes, sir, that is what I am informed.

Senator FANNIN. Thank you.

The CHAIRMAN. Senator Hansen?

Senator HANSEN. I ask that there be included in the record a study—it is just a 2-page letter.<sup>1</sup> I am very frank to admit that I have not read it all.

The letter is written by a Dr. Gerald L. Abraham. Two points catch my eye.

The first is the NCWAS population of miners is different from that of a controlled epidemiologic study of working miners or retired miners.

He says there is no way I know of—I am skipping some—to reliably extrapolate the NCWAS data to the whole population of coal miners.

On the second page, I will read this last concluding paragraph:

As I mentioned, I have just received some further data from the autopsy study regarding analysis of 1,200 cases, of which the 400 you have had reference to are a part.

At autopsy, CWP was mentioned 1,175 times and was considered to be the primary cause of death in 38 of those cases. On the death certificates for these patients, CWP was mentioned 614 times and was listed as a primary cause of death 132 times.

That discrepancy indicates lack of criteria at present for determining at autopsy when death is due to CWP.

I would like to ask our witness two questions. One, when we were talking about surface mining legislation, we tried to clear up some of the problems that linger over from our earlier single-sided attempt to produce things as quickly and as cheaply as possible. We recognized that we have left a lot of environmental destruction which is clearly in evidence, yet, the surface mine operations, what is left of them, constitute a part of that, and another part is the underground mine operations, where the roof is caving in. At that time, we talked Senators Haskell and Fannin will recall, both being members of the Interior Committee—about how that burden should be borne, and I think that it would be fair to say that there certainly was no unanimity in the belief that presently today the industry should be taxed completely to correct the deficiencies of the past. I suspect that if we want to assume a social obligation or a governmental obligation for ill-health as a part of our concern for people everywhere, that that properly ought to be an obligation that is undertaken by all of the taxpayers, and that we should not single out the industry, if that is our desire.

Is that what you are saying?

Mr. BAGGE. Yes indeed, this program reflects that same attitude, Senator Hansen. Congress, recognizing that the public has benefited, decided that the existing generation of coal operators should not bear the burdens of the sins of the past because society benefited during that period of time from cheaper coal prices. It was reflected throughout our entire economy, and that is precisely the point. We are not

<sup>1</sup> See p. 87.



saying now that we should not bear our fair share of the burden. Indeed, present law requires that we pay the price for the existing generation of miners. That is correct.

So the statement you made, I agree with. That is essentially our position, Senator Hansen.

We think it is a responsible position, a position that Congress has taken two times reflecting it. Now, we say you are retroactively placing it on us in midstream. You are retroactively imposing upon us an obligation which society assumed, through legislation, before, and we think that this is wrong.

You are not permitting us even to participate in the administration of that program. We have no right to participate in that under this bill.

We think that this is inequitable; we think it is wrong policy. It is wrong to tax a single industry.

What it boils down to is to tax a single industry for a social problem that Congress has assumed in the past and is now retroactively shifting back to us without a chance to participate in the decisional processes which determine the incidence of the liability.

We think this is wrong social policy, and we think it will be a precedent, Senator Hansen, applied to how our society handles industrial diseases in other areas.

Indeed, the National Academy of Sciences documents that this can be as high as \$100 billion of additional single industry taxes, keeping in mind that Congress and the Executive will have no control at all over its administration.

Senator HANSEN. When you testified on that point, if I understood what you were saying, I gathered that this same concept could include every other segment of industry.

Mr. BAGGE. For example, the brown lung problem in the Southeast in the textile industry.

Senator HANSEN. I have no further questions, Mr. Chairman.

Senator CURTIS. Mr. Chairman?

The CHAIRMAN. Senator Curtis?

Senator CURTIS. Mr. Bagge, there are not many of the 50 States of the Union that have absolutely no mining at all, but Nebraska is one of them. I do not think we have a single citizen who goes below the earth to mine.

There may be some rock quarries; other than that, there is not any. Therefore, if my questions are quite elementary, it is because I need information on the basic problem involved here.

How much money is being spent now for the victims of black lung?

Mr. BAGGE. A billion dollars a year.

Senator CURTIS. A \$1 billion a year.

Mr. BAGGE. A \$1 billion annually is being paid out annually right now for the claims of black lung. Our industry, additionally, has a liability of \$1 billion, which it is obligated now to pay out over the lifetime of the program under the existing law.

Senator CURTIS. I am asking about the existing law.

Mr. BAGGE. That is right.

Senator CURTIS. How old is that law?

Mr. BAGGE. It was enacted in 1969. It was part of the Mine Health and Safety Act.

Senator CURTIS. It has come of age since 1969.

Mr. BAGGE. 1969.

Senator CURTIS. How much was being paid out, say, about the second year?

Mr. BAGGE. I cannot answer that question.

Senator CURTIS. Initially.

Mr. BAGGE. The people from Labor would have to answer that. I would not have that information. I would attempt to supply that for the record.

[The information referred to was subsequently supplied:]

NATIONAL COAL ASSOCIATION,  
Washington, D.C., September 23, 1976.

Mr. MICHAEL STERN,  
Staff Director, Committee on Finance, U.S. Senate,  
Washington, D.C.

DEAR MR. STERN: In his testimony on Tuesday, September 21, Mr. Carl E. Bagge, President of this association, agreed to supply the Committee with information relative to State workers' compensation law coverage of victims of coal workers' pneumoconiosis. I enclose a chart from the *Analysis of Workers' Compensation Laws* published this year by the United States Chamber of Commerce.

This chart shows that forty-nine states cover "all occupational diseases." In addition, the Department of Labor informs us that all coal-mining states except Oklahoma cover black lung victims under their state workers' compensation laws.

I hope that this information is helpful to the Committee. If we may answer any other questions, please let us know.

Sincerely yours,

JOHN A. C. GIBSON,  
Legislative Representative.

Enclosure.

CHART IV

COVERAGE OF OCCUPATIONAL DISEASES

January 1, 1976

ASSOCIATION	ADMINISTRATIVE AGENCY	NATURE OF DISEASE	MEDICAL BOARD	TIME LIMIT ON CLAIM PLEAD	TIME LIMITATIONS ON ELIGIBILITY FOR HEALTH BENEFITS	REGULATIONS CONCERNING BENEFITS	MEDICAL CARE	OCCUPATION
ALABAMA	Courts	Excludes leg. or arm. Super court orders for valuation. Work and indemnity amount of plaintiff's average annual compensation. <sup>1</sup>		1 year after injury or death or 3 years last full calendar year (calendar year) for death cases not made.	Death must occur within 3 years last full calendar year (calendar year) for death cases not made. Indemnity and loss sustained to include within 5 years prior to injury or death or 12 months.		Unlimited	None or for accidents
ALASKA	Industrial Compensation Board	All diseases	No provision	3 years after knowledge and an election to litigate and establish.	1 year after death	None	Unlimited	None or for accidents
ARIZONA	Industrial Claims Court	All diseases, including occupational cancer.	Board of 3 medical examiners may be appointed by Commission. Report within 90 days of death.	One year after disability or death of right.	1 year after accrual of right.	Disability payments	Unlimited	None or for accidents
ARIZONA	Industrial Compensation Commission	19 diseases of growth of disease. Coverage of asbestos and silica includes asbestos in mining operations. <sup>2</sup>		3 years after last exposure or 3 years after death. 2 years after employment to include asbestos in mining operations.	3 years after last exposure, or 7 years of "industrial disease" including "Asbestos disease" in mining operations.		\$ 200,000 maximum may be extended to include occupational cancer.	None or for accidents including occupational disease.
CALIFORNIA	Division of Industrial Accidents. Appeals Board for final award hearing. <sup>3</sup>	All diseases		1 year from injury or last exposure. 3 years after death and 10 years from date 300 weeks after injury.	1 year after injury or 300 weeks of continuing occupational exposure.		Unlimited	None or for accidents including occupational disease.
COLORADO	Industrial Commission of Colorado	All diseases	Panel of 10, compensation or hearing panel for 1 or more. Medical advisory only.	3 years after commencement of the injury or death. 6 years in case of multiple last exposure, 10 years in case of continuous exposure.	3 years after death, 6 years in case of asbestos, silicosis, pneumoconiosis, or 6 months of occupational exposure.	Disability payments, death benefit \$100,000. 12 months after injury.	\$ 200,000 maximum may be extended to include occupational cancer. Final award must be based on the amount of loss.	None or for accidents
CONNECTICUT	Commission on Compensation for Workers' Compensation Act	All diseases		1 year after last manifestation 3 yrs. of death injury within 3 years after death. 10 years after death.		Disability payments if death occurs within 3 years after last manifestation.	Unlimited	None or for accidents including occupational disease.
DELAWARE	Industrial Accidents Board	All diseases, including occupational cancer.		1 year after last manifestation that disability or death occurred or 3 years after death.			Unlimited	None or for accidents including occupational disease.
DISTRICT OF COLUMBIA	Office of Workers' Compensation Programs	All diseases		1 year after injury, death or loss of right.		No provision	Law stated	None or for accidents including occupational disease.
FLORIDA	Industrial Commission	All diseases		1 year after injury, death or loss of right. 2 years after death or death of occupational cancer.	1 year after death, 6 years in case of asbestos, silicosis, pneumoconiosis, or 6 months of occupational exposure.	Disability payments, death benefit \$100,000. 12 months after injury.	Unlimited	None or for accidents including occupational disease.
GEORGIA	State Board of Industrial Accidents	All diseases	Medical Board of 6, hearing 1, industrial	1 year after last injury or death. For multiple exposure 1 year after last exposure or 3 years after death or death of occupational cancer.	1 year after death or 7 years of continuing occupational exposure.	Disability payments	Law stated	None or for accidents including occupational disease.
ILLINOIS	Workmen's Compensation Act	None	None	1 year after knowledge of injury or death or 3 years after death or 300 weeks after injury or death.	1 year after death or 300 weeks of continuing occupational exposure.	Disability payments, death benefit \$100,000. 12 months after injury.	Unlimited	None or for accidents including occupational disease.
INDIANA	Industrial Compensation Law Board	All diseases		1 year after knowledge of injury or death or 3 years after death or 300 weeks after injury or death.	1 year after death or 300 weeks of continuing occupational exposure.	Disability payments, death benefit \$100,000. 12 months after injury.	Unlimited	None or for accidents including occupational disease.
IDAHO	Industrial Accidents Commission	All diseases		1 year after knowledge of injury or death or 3 years after death or 300 weeks after injury or death.	1 year after death or 300 weeks of continuing occupational exposure.	Disability payments	Unlimited	None or for accidents including occupational disease.
KANSAS	Industrial Commission	All diseases. Super law applied to last injury.		1 year after disability or last payment of death. <sup>4</sup>	10 calendar days after death or 10 years after death or 3 years after death.	Disability payments	Unlimited	None or for accidents including occupational disease.
MICHIGAN	Industrial Dept.	All diseases		3 years after death of 1 or more or death. 5 years after death of 2 or more or death of 3 or more or death of 4 or more or death of 5 or more.	3 years after death or 300 weeks of continuing occupational exposure.	Disability payments	Unlimited	None or for accidents including occupational disease.

<sup>1</sup> Excludes cancer except for lung cancer (Board's decision applies to all other cases). 3 years after injury or death.  
<sup>2</sup> Disability must occur within 3 years of last exposure. 3 years after death or death of occupational cancer.  
<sup>3</sup> Death or loss of right to work must occur within 12 months of last exposure.  
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<sup>100</sup> Death or loss of right to work must occur within 12 months of last exposure.

CHART IV □ COVERAGE OF OCCUPATIONAL DISEASES □ January 1, 1976 (continued)

JURISDICTION	ADMINISTRATIVE	PERIOD OF COVERAGE	MEDICAL BOARDS	TIME LOST ON CLAIM FILES	TIME LIMITATION ON ELIGIBILITY FOR DEATH BENEFITS	DEFINITION FOSTER DEATH LAWS	MEDICAL CARE	REEMPLOYMENT
ALABAMA	Industrial Commissioner	All diseases	Medical Board (except occupational diseases), provides for medical examinations for certain new and old diseases	2 years after date of disability. Occupational disease within 3 years after date of disability. For the two other occupational diseases, 1 year after date of disability. For occupational diseases of death and permanent disability, 1 year after date of death.	3 years after last exposure, 7 years after occupational injury, 1 year after occupational death, unless 90 days after death or occupational injury or death have been shown.	As provided in Workers' Compensation Law	Unlimited	Same as for disabilities, no disability benefit.
KANSAS	Workers' Compensation Board	All diseases		1 year after date of disability. Occupational injury from asbestos, dust, or fumes, 1 year after last exposure.	1 year after disability, 3 years, if following occupational activity.	As provided in Workers' Compensation Law	Unlimited	Same as for disabilities.
MISSOURI	Workers' Compensation Board	Disability arising out of or in the course of the occupation, but not occupational diseases		3 years after disability, occupational disease, 10 months from date of death, 10 years of last exposure.	3 years after death	Disability payments	Unlimited	Same as for disabilities, no disability benefit. Payable on condition of death, but disability benefit payable.
LOUISIANA	None	All diseases**	None	Disability claims within 6 months of the date of disability or death. For occupational diseases, 10 months from date of death or 10 years of last exposure.	Disability payments in less than 1 year duration or no compensation. The duration is variable for "occupational" or "professional" or "industrial."	As in Workers' Compensation, requires medical certificate	Unlimited	Same as for disabilities, no disability benefit.
MAINE	Industrial Accident Commission	All diseases, except diseases for loss of hearing**	No provision	2 years after injury or 1 year after death**		Disability payments	Unlimited	Same as for disabilities.
MASSACHUSETTS	Workers' Compensation Board	All diseases, except diseases for loss of hearing**	Board of 3 appointed by Governor, hearing evidence	3 years after disability or death or occupational injury or death. For occupational diseases, 10 months from date of death or 10 years of last exposure.	Disability must occur within 1 year of last exposure. Death must occur within 3 years of occupational disability**		Unlimited	Same as for disabilities, no disability benefit.
MICHIGAN	Division of Industrial Affairs	All diseases**		1 year after injury or death, may be reduced		Disability payments	Unlimited	Same as for disabilities, no disability benefit.
MINNESOTA	Division of Labor	All diseases**		6 months after disability or 1 year after death. 3 years of disability disease, 10 months from date of death.			Unlimited	Same as for disabilities, no disability benefit.
MINNESOTA	Division of Labor	All diseases**		3 years after occupational disability of death and disability.	3 years after disability or knowledge of injury and disability.	Disability payments	Unlimited	Same as for disabilities, no disability benefit.
MISSISSIPPI	Workers' Compensation Board	All diseases		2 years after date of injury or death, death		Same as for occupational injury	Unlimited	Same as for disabilities.
MISSISSIPPI	Workers' Compensation Board	All diseases**		1 year after injury, death, or loss of hearing**		Disability payments	Unlimited to 100 days	Same as for disabilities, no disability benefit.
MISSOURI	Workers' Compensation Board	All diseases**		1 year after injury, death, or loss of hearing**		Disability payments	Unlimited	Same as for disabilities, no disability benefit.
NEBRASKA	Workers' Compensation Board	All diseases		30 days after disability or death**	30 days after disability or death**	Disability payments	Unlimited	Same as for disabilities, no disability benefit.
NEBRASKA	Workers' Compensation Board	All diseases		30 days after injury or death, limited to 100 days if occupational disability**	1 year after last day, death or 3 years if following occupational disability**	Disability payments	Unlimited	Same as for disabilities, no disability benefit.
NEVADA	Nevada Industrial Commission	All diseases for occupational activities**	Medical Board as provided for in Workers' Compensation	30 days after disability or 1 year after death		Disability payments	Unlimited	Same as for disabilities, no disability benefit.
NEW HAMPSHIRE	Commissioner of Labor	All diseases**	None provided	As year after disability. 90 days after injury, death, loss of hearing. Unemployment benefits payable within 3 years from date of death.	Same as for disabilities.	Disability payments	Unlimited	Same as for disabilities.

\*\* By Court decision, Workers' Compensation Act does not apply to occupational diseases. In some states, contribution of medical fees being paid under unemployment.  
 \* Medical procedure for workers with tuberculosis. Requires return, within 3 years after diagnosis of disability.  
 \* State of last residence takes on date of injury. Disease including death due to latency restriction. Some for certain does not begin to date and complete history of disease have been in trace and responsibility to employment.  
 \* Disease covered by general program administered by Department of Health.  
 \* Disease that by displacement or death that is necessary to covering accident claim but that occurs later upon after the accident has occurred. Responsibility and entire time or should have been that the applicant's illness was caused by the accident.  
 \* Hearing and loss of hearing or disability are occupational diseases.  
 \* Also for filing claims for disability due to radiation or pneumoconiosis that not begin the year and disability benefit or should have been covered unemployment and applicants must file for extension 90 day period.  
 \* State doesn't appear to use year of exposure responsibility assignment that unemployment claims have been assigned.  
 \* Occupational health and safety (OSHA) for prevention of disease.  
 \* Employer may exclude type of hearing which he wants to assign.

\*\* Employer may claim in hearing. Courts have 6 months of paid benefits with 4 years of state service.  
 \* Employer may require physical examination of an employee within two months of onset of disability unless 100 days after last day of employment. Federal State Law that prevents ability to hire again.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.  
 \* General procedure for radiation cases. Short long procedure unless 100 days, but example each case if support for hearing under Federal law. Preliminary death claims - 3 years.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.  
 \* Hearing and loss of hearing of certain diseases, such as noise and lead exposure and pulmonary occupational pneumoconiosis.

CHART IV ☐ COVERAGE OF OCCUPATIONAL DISEASES ☐ January 1, 1976 (continued)

JURISDICTION	ADMINISTRATIVE AGENCY	NATURE OF COVERAGE	MEDICAL BOARDS	TIME LIMIT ON CLAIM FILING	TIME LIMITATION ON LIABILITY FOR DEATH BENEFITS	DEFINITIONS FROM BUREAU RECORDS	RESCUE CARE	COMMENTS
NEW JERSEY	Division of Workers' Compensation in the Office of Labor and Industry	All diseases		2 years after injury or death, unless the nature of the disability and its relation to the employment			Unlimited	Same as the schedule
NEW MEXICO		All diseases		1 year after disability or death		Disability payments	Maximum \$4,000	Same as the schedule
NEW YORK	Workmen's Compensation Board	All diseases*		2 years after injury or death, or 60 days after disability, and changes if disability is then not being received. Item of discussion for technical cases	Current contract annual limit on death benefit cannot be used prior to death benefit contractual limit		Unlimited	Same as the schedule, unless the death disability, the contract disability, or, upon and other death benefits
NORTH CAROLINA	Industrial Commission	All diseases, special provisions for loss of hearing†	Board of 3 administered by Commission hearing advisory	3 years after death/loss of hearing or loss of function	3 years after death/loss of hearing or loss of function	Disability payments	Unlimited	Same as schedule, including occupational disability. No death benefit benefits of 100 weeks will be payable for occupational disability
NORTH DAKOTA	Workmen's Compensation Service	All diseases†		Within 60 days of the injury or death incident on the 1st year	1 year after death/loss of function	Unlimited	Unlimited	Same as the schedule, including occupational disability
OHIO	Industrial Commission and Workmen's Compensation Bureau	All diseases	Medical Board unless in special cases. Funding advisory	Within 3 years after disability, death or death benefit paid for injury when a receipt after diagnosis as a loss of death benefit is payable after death	1 year after death	Unlimited	Unlimited	Same as the schedule, including occupational disability
OKLAHOMA	State Industrial Court	All occupational diseases, 20 years of disability, one year later that to establish claim		1 year after injury or death, or within 1 year of cessation of compensation or compensation 1 year after determination of total or permanent disability	6 years from date of accident		See Chart VIII	Same as the schedule
PENNSYLVANIA	Workmen's Compensation Board	All diseases	Medical Board of 7 unless changed; may choose disease board	6 years after loss disability and within 100 days after determination or within 100 days after physician certifies cessation of the disability or 90 days after final insurance for occupational disease	100 days		Unlimited	Same as the schedule, including occupational disability
PENNSYLVANIA	Department of Labor and Industry	All occupational diseases, death or loss of function, hearing or loss of sight, or 2 or all of the above, upon 1st year		2 years after death/loss of hearing or loss of sight, or 2 years after loss of function or 2 years after loss of sight or loss of hearing, whichever is the latest	200 week limitation on loss benefits, 200 weeks of occupational disability, 200 weeks		Unlimited paid occupational disability	Same as the schedule
Puerto Rico	State Industrial Fund	All diseases		Three years from injury, regardless of nature of disability. Last insurance contract term 12 months, or 12 months if no contract disability term. Year following contract term for occupational disability, but subject to 2 years from date of disability, whichever is the latest	100 days		Same as the schedule	Same as the schedule
RHODE ISLAND	Department of Labor, Division of Workers' Compensation	All diseases	Overseer of Labor advises expert physician	3 years after death/loss of hearing or loss of function		Disability payments	\$600 to 700 later may be awarded	Same as the schedule, including occupational disability
SOUTH CAROLINA	Industry of Compensation Commission, Director, Justice in Dispute and Appeal Dept.	All occupational diseases, death or loss of hearing or loss of sight, or 2 or all of the above, upon 1st year	Special Board for occupational diseases, or all medical doctors	1 year from loss disability, occupational disability	1 year from loss disability, occupational disability	Disability payments	Same as Workmen's Compensation	Same as the schedule, including occupational disability, except death benefits payable to 60 weeks
SOUTH DAKOTA	Industrial Commission	All diseases, including hearing disability	A select panel proposed	1 year after death/loss of hearing or loss of sight or 1 year after loss of hearing	1 year after loss hearing disability or 6 years of continuous disability	Disability payments	Same as the schedule	Same as the schedule, including occupational disability
TENNESSEE	Department of Labor, Division of Workers' Compensation	Schedule of 16 diseases including hearing and loss of function, plus "all other diseases"		1 year after disability	1 year after disability or death	Same as Workmen's Compensation	Same as Workmen's Compensation	Same as schedule, including occupational disability

\*Statutory limit on the compensation for hearing or death benefit for any occupational disease except diseases on the open schedule which are not on schedule of loss or death shall be covered between the Commission and the employer as an issue when disability benefit after September 30, 1991. 90 percent benefit to employee and 10 percent by Commission. Special Death Injury schedule in 1972 pending the employer's loss benefit benefit.

† See the last of column 2 years beginning on the date that the employee first or heard hearing or other loss or death loss between the independent hearing and the hearing or death after diagnosis.

‡ Federal Statute in 1963 to the disability or death due to occupational disease for workers in, or receipt in any, other state or jurisdiction.

1. In agreement with, within 1 year after the employee has attempted to begin business in the nature of the disability and 60 weeks on the employment. See: Workers' Compensation Act of 1972, covering hearing disability, including occupational disability.

2. Hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing.

3. Federal Statute in 1972, covering occupational disability, hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing.

4. Federal Statute in 1972, covering occupational disability, hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing.

5. Federal Statute in 1972, covering occupational disability, hearing and loss of sight or hearing, hearing and loss of sight or hearing, hearing and loss of sight or hearing.



Senator CURTIS. Has it gone up?

Mr. BAGGE. Yes, sir, it has gone up markedly.

Senator CURTIS. Under existing law, where does that money come from?

Mr. BAGGE. Under existing law, the money comes from the Treasury. The Federal part of it comes from the Treasury, under existing law.

Our \$1 billion obligation has to come from the price of the coal, hopefully, but in some cases, Senator, we cannot pass it on, because some of our long-term contracts do not have provisions in it for this, and we have to bear it ourselves.

Senator CURTIS. Part of that obligation is on the industry, part on the Treasury?

Mr. BAGGE. That is correct, under existing law.

Senator CURTIS. The Treasury assumed the burden there because of the policy that they were taking care of cases that arose prior to the enactment of the law?

Mr. BAGGE. That is correct.

Senator CURTIS. What is the burden now on the industry in relationship to existing law?

Mr. BAGGE. Our total exposure now? Our actuarial consultants advise us, based on the incidence rate that we perceive, is \$1 billion.

Senator CURTIS. \$1 billion, over what period?

Mr. BAGGE. Over the lifetime of miners in the program. \$1 billion is our actuarial estimate.

Senator CURTIS. An accrued liability?

Mr. BAGGE. A projected liability, not accrued, for accounting purposes.

Senator CURTIS. Has any of that been raised? You say it is a liability, have you paid any of it?

Mr. BAGGE. We are paying it, by either self-insuring or by buying black lung insurance, commercially.

I have been before this committee before, asking for equitable tax treatment of these trust funds. You see, we are not even clear with the IRS whether our payments into a black lung trust, our own company trust, is even deductible for income tax purposes.

The last time I appeared before this committee, I asked for an amendment that would clarify that issue. One of the tragedies for my people who are trying to comply with the law, is IRS is not permitting us to deduct the payments that we make into a fund, irrevocable, irrefutable fund for black lung, and we are denied the right to deduct that as a business expense in the year in which it has accrued.

This is another problem.

Senator CURTIS. This fund that you have set up, do you pay that direct to the victims of the disease, or is it general through the Government?

Mr. BAGGE. Paid directly, sir. We pay that directly through our individual corporate black lung trust fund.

Senator CURTIS. Are there any figures as to how much you have paid out in a given year?

Mr. BAGGE. I am not privy to that, Senator Curtis. I am not privy to the individual company accounts. As a trade association, we are not privy to those numbers.

Senator CURTIS. Is it a sizable figure?

Senator HASKELL. If the Senator would yield for a moment, if the Labor Department man is still in the room, I think he told me that something under 10 percent of the claims were being paid by the companies, the balance by the Federal Government.

If he is in the room, I would like him to verify that figure. I guess he is gone. The record will show it.

Mr. BAGGE. I am told, because of the uncertainty with respect to this, that the individual member companies, my member companies, are putting away substantial dollars in order to make a trust viable, and it will never come back to them.

This is our contention with IRS.

Senator CURTIS. What the industry is now struggling with is a program that would take care of those cases that are being caused now and in the future?

Mr. BAGGE. That is correct, sir.

Senator CURTIS. That is a sizable item in the company's budget?

Mr. BAGGE. Indeed it is, sir. I am also told in addition to the Federal program and in addition to our own trust, individual trust, we are paying out millions and millions of dollars into State programs as well. In addition to the Federal program, we are also paying millions into State programs for black lung.

Senator CURTIS. For the record, would you supply the States that are requiring that?

Mr. BAGGE. I am told almost all of them. We will supply the States for the record, Senator.\*

Senator CURTIS. Now I want to ask some questions about the proposal that is before us.

This tax, how would it be levied, if this proposal were to be enacted?

Mr. BAGGE. The tax would be levied by the Secretaries of HEW, Labor, and Treasury.

Senator CURTIS. A tax on what?

Mr. BAGGE. The tax would be on tonnage. It is supposed to be on tonnage. According to the bill, it is a tonnage tax, but then it provides for categories which the Secretaries of Labor, HEW, and Treasury can make. Categories, it is not too clear to me, which would have the incidence of the tax fall differently, either by region, the nature of the coal, whether it is subbituminous or bituminous. It is not too clear.

There is a considerable latitude and discretion given to them to determine the formula by which the tax would be generated.

Senator CURTIS. You mean, unlike our present IRS Code that the Congress would not determine the category and the rates of tax to be imposed in the various categories?

Mr. BAGGE. That is correct; that is right.

Senator CURTIS. Who does the Congress delegate that to?

Mr. BAGGE. If you pass this bill, you are delegating it to the Secretaries of HEW, Treasury and Labor.

Senator CURTIS. Does the proposed act fix any maximum tax?

Mr. BAGGE. No, sir.

Senator CURTIS. No maximum?

Mr. BAGGE. No, sir.

\*See p. 107.



Senator CURTIS. Does the proposed bill authorize these agencies to levy a tax on an operation to take care of cases that have arisen in the past for individuals who are no longer employees?

Mr. BAGGE. Yes, sir.

Senator CURTIS. Without any limits?

Mr. BAGGE. Yes, sir.

Senator CURTIS. Now, does it do away with the existing program where the Federal Government does put the sizable fund of \$1 billion a year into the program?

Mr. BAGGE. In part, because it takes claims where there is no known last responsible operator, which are now the obligation of the Federal Government under existing law, and puts those claims into the fund generated by the tax.

Senator CURTIS. All right.

Now, when these agencies are delegated the power by Congress to fix rates in categories, then to whom is the tax paid?

Mr. BAGGE. It is paid to the fund.

Senator CURTIS. Who runs the fund?

Mr. BAGGE. Labor, HEW and Treasury.

We have no participation in the fund whatsoever.

Senator CURTIS. Does it go to the Treasury of the United States, as do other tax receipts?

Mr. BAGGE. No, sir. It goes to the fund.

Senator CURTIS. Who runs the fund?

Mr. BAGGE. HEW, Treasury and Labor. That is why I make the point that this is totally outside of the scrutiny and control of Congress and of the executive department, on issuing the funds, how far you can go on this. You are writing a blank check to the Secretaries of Labor, HEW and Treasury to tax an industry, a single-industry tax, to do what they want to with us, to set up their own categories.

We have no participation either in the administration of the fund. We cannot appeal the decisions made.

This, we say, is revolutionary.

Senator CURTIS. The Congress has levied taxes for special purposes in the past. The social security tax, a tax in reference to the conservation of birds and game, unemployment taxes. I believe that all of those receipts go to the Treasury and to the Treasury alone. I think that is correct.

Mr. BAGGE. Not this tax.

Senator CURTIS. This one is different?

Mr. BAGGE. This one, as I say, is a departure.

Senator CURTIS. How do they get money out of this fund? When money flows out of the social security tax, it flows out according to an exact benefit formula enacted by Congress.

How would money flow out of this fund if this proposed legislation were enacted?

Mr. BAGGE. I think this is delegated to the discretion of the Secretaries of HEW, Treasury and Labor.

Mr. GIBSON. Senator Curtis, the fund would pay these claims for which there was no last responsible operator which would be assigned to it by the Secretary of Labor.

The benefits levels are set by the Black Lung Benefits Act. I believe they are 50 percent of the Federal GS-2 pay level. That is an arbitrary figure. They range from about \$150 for a single claimant to a little over \$300 for a family for the life of the claimant. That is a monthly check.

Senator CURTIS. Monthly?

Mr. BAGGE. Yes.

Senator CURTIS. So the existing law does, by law, set the schedule of benefits.

Mr. BAGGE. Sets the schedule of benefits.

Senator CURTIS. Would this proposed law in any way change this?

Mr. BAGGE. No, sir. Not to my knowledge.

Senator CURTIS. It would be paid out by this fund operated by three agencies?

Mr. GIBSON. That is right.

Senator CURTIS. After the tax is collected, what part does the Congress play?

Mr. BAGGE. None. Absolutely none. That is why I am saying it is wholly outside the scrutiny of the Federal Government.

Senator CURTIS. I thought that I had my answer to this situation in respect to collecting the tax. Congress would neither fix the categories nor the rates.

Mr. BAGGE. No, sir.

Senator CURTIS. What is anthracite coal used for primarily at the present time?

Mr. BAGGE. I do not represent the anthracite producers. I know its production is very low. I know it is used in the anthracite region in the retail market, I am sure. It is used in the industrial market. It is such a highly desirable coal that I doubt its market is in the utility industry, although there may be some instances where some smaller plants would be using it for steam generation as well.

Senator CURTIS. Of the total coal consumption in the United States at the present time, how much of it is anthracite.

Mr. BAGGE. Practically none.

Senator CURTIS. Would you guess it is 5 percent, 10 percent, 20 percent?

Mr. BAGGE. I cannot believe that it is more than 1 to 5 percent of the national production.

Senator CURTIS. One to five percent?

Mr. BAGGE. Total national production, I would guess.

Senator CURTIS. Am I to understand—

Mr. BAGGE. Two million tons, I am told.

Senator CURTIS. Two million tons?

The total production is 647 million.

Mr. BAGGE. Last year. We have 2 million tons of anthracite, I am advised.

Senator CURTIS. Is the acute and severe difficult problem in reference to black lung clearly greater in the anthracite than the rest of the coal industry?

Mr. BAGGE. Yes, sir.

The study by the National Academy of Sciences, which was a national study, clearly evidences that it has to be four to five times

greater, if not more, in anthracite compared to other coal production in all other regions, and also, the incidence of the most severe form of black lung, which is the disabling category.

It is proportionately higher by a factor of 14.3 percent compared to 2.9 percent, the next highest category, in the Midwest.

Senator CURTIS. Would the midwestern coal producers pay the same price as the anthracite people?

Mr. BAGGE. Under this proposal we do not know for certain what the answer is to that question, because we do not know, if this bill is passed, how the categories under the formula would be applied. We do not know the answer to that.

Senator CURTIS. Nor do you know how much difference there would be in the tax after the categories are established?

Mr. BAGGE. This is correct.

Senator CURTIS. And the bill does not set down any guidelines for that?

Mr. BAGGE. No guidelines. There are no guidelines, just categories that the bill provides that can be used as a means of classification.

Senator CURTIS. Does anybody dispute the fact that collection of this money is a tax?

Mr. BAGGE. Not to my knowledge. I do not see how you can, with any degree of integrity, even call it something else. It remains a tax.

Senator CURTIS. That is all, Mr. Chairman.

Senator HASKELL [presiding]. Senator Byrd?

Senator BYRD. Mr. Bagge, you mentioned that the decision of the three Secretaries could not be appealed under the new legislation. How does that differ from the present situation in regard to appeal?

Mr. BAGGE. I do not think I understand the point. Mr. Gibson will answer it.

Mr. GIBSON. Mr. Bagge was referring to the fact that a decision by the Secretary of Labor to assign a case to the fund is apparently not appealable. That is the way the bill seems to read.

Under existing law, presumably as the law would continue under this bill, an individual operator has a full right of appeal of assignment responsibility for an individual black lung claim.

What we are concerned about is that, although all coal companies would pay into this fund, there is no mechanism that we have to say that this claimant should be the responsibility of Operator X and not the fund. The problem would become particularly acute where you had an irresponsible operator who, for whatever reason, would not pay the claim.

The Secretary of Labor would have no incentive to go out and pursue that operator. The case would be assigned to the fund, and that would be the end of that. We would end up paying for it.

Mr. BAGGE. We have no appeal of that decision. That is a final decision. We have no appeal.

Even if there is an irresponsible operator, that is a final determination.

Senator BYRD. From your point of view, is there a change or two that could be made that would be acceptable?

Mr. BAGGE. No, sir.

Our basic position, Senator Byrd, is that there is no need for legislation in this area. I do not see any amendment here that would make the bill acceptable, or even workable.

Senator BYRD. Thank you.

Senator HASKELL. Thank you, Mr. Bagge, very much.

I am informed—I did not know, I could not remember, but the Department of Labor gentleman testified that 101 claims are now being paid by the industry out of 3,500, the balance being paid by the taxpayers generally out of the Federal Treasury.

I just wanted to mention that, for benefit, since you did not know the figure.

Mr. BAGGE. Thank you.

Senator HASKELL. Thank you very much.

I am going to call out of order, now, since the batting average here has been sort of in favor of the industry so far. I think maybe rather than have the gentleman from the Independent Coal Operators whom I assume will take the same position. I am going to ask, out of order, Gail Falk, who is a consultant to the United Mine Workers on black lung benefits to come forward.

#### STATEMENT OF GAIL FALK, CONSULTANT TO THE UNITED MINE WORKERS ON BLACK LUNG BENEFITS PROGRAM

Ms. FALK. Thank you, Senator.

My name is Gail Falk. I live in Charleston, W. Va., and for approximately 5 years I have spent a substantial amount of my time as an attorney representing victims of black lung disease on Federal and State compensation claims.

For 3 years, I was staff attorney for the United Mine Workers of America and their legal expert in the area of black lung.

My prepared testimony today does not deal with the issues of entitlement that have been the subject of a number of the questions here today. Before referring to my prepared testimony, which I will try to summarize, I would just like to address myself to some of the things that have either been misstated or confused on the record.

First of all, with respect to Mr. Bagge's statement about the burden upon the industry of insuring themselves against both State and Federal liability for black lung benefits, the law at present, and the bill which is before you, both specifically provide that any State benefits paid on pneumoconiosis are subtracted from Federal benefits, so there is not, in fact, double liability, just an attempt to make sure that someone will qualify for one or the other if he is disabled by the disease, not double liability.

Second, as Senator Haskell mentioned, it is very unclear to me what the industry means by a \$1 billion responsibility. I suppose that means through eternity.

The fact is that at the present time, the only black lung benefits being paid under the Federal program by the coal industry are 101 claims. That was the statement here by the Department of Labor.

Senator HANSEN. What was that number again?

Ms. FALK. 101.

Senator HANSEN. Only 101 persons who qualify for claims under black lung?

Ms. FALK. Let me make it clear: the Federal black lung program is in two parts, the coal miners who applied before July 1, 1973, had their

claims adjudicated by the Social Security Administration. Those benefits were paid and are continuing to be paid from the U.S. Treasury.

This bill would not change those claims that have already been approved. It is those claims in the neighborhood of 350,000 claims that have been approved. That is the body of claims for whom benefits amount to about \$700 million a year.

What the Department of Labor has told you, since July 1, 1973, in what it called the part C program, they have received 90,000 claims. They have approved less than 4 percent of their claims. That is what they told you this morning.

They have only approved benefits in about 3,500 claims. Out of those 3,500 claims that they have approved, the Federal Government is paying and continues to pay most of those claims, and the coal operators are only paying 101. That 101 is the total number being paid at the present time by the coal industry.

It is because of that imbalance that the House committee which originally considered this bill, felt that some mechanism for shifting more of the burden to the industry was necessary, and the mechanism decided on was the present legislation.

Senator HANSEN. To be sure I am following the witness—I appreciate her testimony—you conclude that the House committee's feeling was, when it examined the number of claims and the number of persons who were receiving help for the effects of the disease, an inordinate burden was being borne by all of the taxpayers, and less than a fair amount of that was being paid by the industry, since only 101 persons were receiving help directly from the industry?

Ms. FALK. That is correct.

The congressional intent, when this bill was passed in 1969 and amended in 1972 was to have a two-phased program, the first phase being borne by the taxpayers in general, the second being paid by the industry. But in fact, for a variety of reasons that are technical and substantial, in fact, the Federal Government has been stuck with the major responsibility for those small number of claims that have been approved under the part C program.

I think I can clear up a little bit about this national autopsy study.

It is not something that Senator Haskell just pulled out of his hat. I do not know why the Department of Labor or Mr. Bagge said it was a surprise, or new to them. It appears as an appendix to the House report that accompanied H.R. 10760.

It is based upon a national autopsy study that was authorized by Congress. What that national autopsy study provides is when any coal miner dies his survivors have a right to have an autopsy, a fairly thorough autopsy, paid for with Federal funds, by NIOSH on the condition that that the results of that study can be reviewed by a Government pathologist and the results can be used for epidemiological purposes.

What the letter you referred to from Dr. Abraham said is that there is a manner of chance in who selects that study. My personal experience, and also just logically, what you would expect, is that the families who choose to have an autopsy tend to be families where the miner, during his lifetime, has been denied benefits.

In other words, if the miner was granted benefits during his lifetime, the widow or the orphan will automatically receive continuing black lung benefits, so that family really has no particular interest in receiving an autopsy, unless there is some separate reason why they wanted one.

The main reason why somebody would want to participate in the autopsy study would be if the claim had been denied. If anything, the bias in participation in that study would be from people who are slightly less sick with the disease during their lifetime.

That is why the results of that study is so astonishing.

Senator HANSEN. I know a number of miners, I know families of a number of miners in Wyoming, and as a consequence of knowing those fine people, I would have to say that my guess is that a majority if they were to have participated in this sort of autopsy to which the report alluded, would honestly feel that their deceased indeed suffered from black lung.

I know a lot of people who have not contended that they have black lung, who live perfectly normal lives a long time after retirement. I do not think you would find those.

Ms. FALK. It is a disturbing thing for a family to approve an autopsy. Ordinarily, a family would not want to have an autopsy unless there was some purpose for it, such as for a claim purpose.

Senator HANSEN. I would think that a far greater number of those families would honestly be motivated to participate because of the strong conviction that indeed their deceased suffered from the disease. At least, that is my feeling.

Ms. FALK. An abstract of the participants in that study was done, and I could provide that to the committee. Even though the study was not selected in a random way, a profile of the participants in the study indicates that it was really quite representative of the working and deceased coal miner population in terms of what we consider to be the significant variables in terms of age, in terms of type of coal mining, smoking history, and so on.

The participants in the national autopsy study are fairly representative.

Senator HANSEN. That was the question I was asking Senator Haskell about. I was not trying to impugn the conclusions reached by the doctors who had performed the autopsies, but rather, I was wondering about the total objectivity of accepting the process.

Ms. FALK. I would like to say a couple of words about the National Academy's study, which Mr. Bagge referred to. If you are going to put into the record, anything from that study, I hope that you will also give us an opportunity to submit for the record some of the numerous critiques which have been written of that study.

It has been subject to criticism from a wide variety of professionals for some reasons.

First of all, the figures he referred to are only studies of working miners. Anybody who has become too sick to continue to work is not in that prevalent study that he cited, so that in itself puts a very substantial bias into the prevalence.

He said that nobody in the West had PMF, progressive massive fibrosis. Basically, we know that there are cases of PMF in the West. What that evidently means is that anybody in the West who works in

a high-altitude area just had to quit working long before his disease reached the PMF level.

Second, the NAS study of prevalence is based solely on X-ray. That is exactly the point that is made by that autopsy study and is embodied in some of the judgments in House bill 10760, at least the form that the Senate committee reported out, we feel—and it is our experience—that the X-ray also misses pneumoconiosis. When the miner dies and the autopsy is performed—

Senator HANSEN. If I may interrupt the witness once more, Mr. Chairman, I may not have understood what Mr. Bagge said. He was making the comparisons of the prevalence of PMF in the eastern anthracite mines and other mines in the West. I thought he said that the bill is written, so anyone who is exposed to the mines at all, in any way, would fall within the legislation.

I thought that he said that there was no indication that strip mining operations or surface mining had resulted in this disease.

Maybe that is not right. That is what I thought he said.

Ms. FALK. He made that statement as well.

Senator HANSEN. He is saying that there is no PMF of anyone in the West?

Ms. FALK. He summarized the National Academy study in that way, yes.

In any case, without getting into a great debate on the methodology used in that study, I just want to point out to the committee that there are serious questions about exactly what the study does and does not prove.

At the conclusion of my testimony, if you would like more information on the whole issue of rereaders and X-ray reading, I would be glad to answer questions on that.

I would like to briefly go through my testimony, skipping over sections that have been covered today.

I think that it is obvious on reflection that this bill comes to this committee after extensive hearings, debates and revisions during the past 3 years in the House Committee on Education and Labor on the House floor, and most recently in the Subcommittee on Labor and the Committee on Labor and Public Welfare.

At every stage, a debate similar to the debate here today has taken place, and at every stage, the body involved has again reaffirmed the underlying principles that coal workers disease continues as a disease of the present, and not just as a disease of the past; that the present black lung benefits programs contain serious inequities; as a result of these inequities, thousands of coal miners and their survivors are unable to qualify for benefits, and will be unable to qualify in the future, even though they are precisely the victims of the disease whom Congress intended to assist by this program.

Again, the statistics are statistics, but when you have a program where 97,000 people are applying, feeling that they are entitled to benefits and less than 4 percent of them are being approved, I think that something is off there.

Continued congressional action is needed in this area because no State has acted to bring its workers' compensation law into compliance with the Federal standards for the black lung benefits program.

Our purpose here this morning is not to relash these principles or to discuss the reasons for the changes in certain entitlement provisions which were the focus of the deliberations by the Committee on Labor and Public Welfare. Rather, our testimony is limited to the new black lung disability insurance fund which would be created by the bill, and to the tonnage tax which would be imposed to support the fund.

The CHAIRMAN [presiding]. If I might interrupt at that point, the committee, of course, did conduct hearings and they certainly have a right to reach their opinion. It is my impression, however, that that committee—I know from the point of view of Democrats is very much labor oriented. So much so that the conservative Democrats fight like fury to stay off the committee, feeling that if they get on there, they are going to make the labor unions feel that they are stepping on the other fellows' toes, and they are out of place, and therefore, they prefer not to be on the committee.

I honestly think that an adversary hearing between two competing sides, that this committee is better qualified to pass on it. I like to think that we have some very good liberal representation on our committee, some of whom are on the Labor Committee, by the way, and we have our share of conservatives and moderates.

I personally have tried to see that we do have a pretty balanced committee, and I think it reflects about the same balance as the Senate itself, so while when we get out there on the Senate floor on this issue, we are all the same, every Senator is going to do what he thinks he ought to do, because no matter what committee he happens to serve on in the Senate, when we are looking at something, a costly program, we certainly—I know I feel like asking relevant questions, such as, for example, what is the point in not taking a look to see what these X-rays show, as testified to by the Labor Department?

What is the point in that?

Here is an estimate of first year costs, \$63 million, just rereading of X-rays. First-year costs, \$78 million. Thereafter, about \$33 million or \$34 million.

What is the point in saying that you will not let one of these people reading these X-rays express an opinion as to what that X-ray reveals?

Ms. FALK. Again, this issue was debated a good deal in the Labor Subcommittee, and there were radiologists that testified there—of course, I am not a radiologist, but I will indicate my layman's understanding of the issue.

The issue is not whether medically competent evidence should be accepted or not, but first of all, trying to set some limits.

Well, the situation right now is that claims take 2, 3, 4 years to be decided, and one of the tremendous bottlenecks is that the Department of Labor has concluded that only a certain kind of doctor called a rereader can be a final arbiter of what an X-ray says.

These rereaders have taken a certain kind of test, but they are by no means the only, or in many cases, even the most prominent radiologists in the country who are experts in coal workers' pulmonary disease.

Because of the Labor Department's insistence in using only these special rereaders, first of all, there is a great delay in the claim, second of all, we did an analysis of the rereaders and found that nearly all



of them were located outside of the coalfields. That meant that they have a practice that does not involve treating coal miners.

The whole system of having a very well-trained and well-qualified radiologist in the coalfields look at an X-ray and say, in my opinion, this miner is suffering from pneumoconiosis and then have the X-rays sent to Maine or California and have somebody out there say, look at a picture, and say, I do not think he does, for the doctor in Maine or California, for his opinion to be accepted, even though the original doctor was a Board-certified radiologist with a practice in the coalfields, creates, first of all, huge resentment among our coalfield doctors and furthermore, it has created a great deal of suspicion among all of us associated with the program.

I think what the bill before you says, if the opinion of the first doctor, if the first doctor was a Board-eligible or Board-certified radiologist, his opinion would be accepted.

The CHAIRMAN. It would seem to me that if a doctor who worked in the coalfield area and he were more or less favorable to miners' claims than some other doctor and was called as a defense witness from time to time, just because he was less favorable to the coal miners' claim, it may be the local coal miners would run him out of town.

Ms. FALK. Our coal miners need doctors too much. The coal miners are desperate for medical care. One of the purposes of this bill is not to have our doctors' time entirely taken up in legal battles, but to free some of the doctors' times for providing medical care.

The coalfield areas are seriously affected. The coal miners will not run any doctors out of town.

The rereading procedure has greatly increased the cost of the program. Each of these rereaders is paid a substantial fee for rereading the X-rays. It causes great delay. It means that many of them have to be preceded by depositions. We have to get doctors in to look at the X-rays.

Our feeling, and the feeling of the committee, was that we are not saying any doctor, we are saying a trained radiologist. When you have a trained radiologist, let us take his opinion unless there is some reason to think that either the X-ray is of not adequate quality—the bill provides an exception in that case—or if the Secretary believes there is some reason for fraudulent representation of claims. He also, in that case, has the authority to question the opinion.

Part of the reason for that, in 1972, Congress provided that no claim should be denied on the basis of a negative X-ray. There was an intention to shift attention away from the X-ray as primary focus for decisions, and that is because I think general agreement in a large segment of the medical community that the X-ray is a toll, but a very limited tool, in detecting disease among coal miners.

Nothing in here says that it is trying to place greater weight on the X-rays. In fact, our emphasis has been the X-rays should be one of many things considered. In light of that general goal, we think that taking the original radiologists' opinion, if he is a qualified radiologist, is one way to cut down on the great delay, expense and litigation of these cases.

Of course, in the bill before you, the United Mineworkers does not agree with this aspect of the bill. Where a responsible operator is involved, that responsible operator has every right to send the coal miner

to a radiologist of his choice, and a hearing officer, if there is a disagreement will make that judgment as to which radiologist to accept.

It does not mean you may not have still conflicting opinions. You will not have this process we have now of sending the same X-ray to five or six doctors and none but the first has even seen the coal miner, but each of them is giving an opinion about what the X-ray shows.

Shall I continue now?

The CHAIRMAN. Yes.

Ms. FALK. I am on page 2 of the testimony.

When Congress first enacted the black lung benefits program, it established a two-phase program. This is what I have already described, and I will skip over that aspect.

Despite this intended scheme, however, the Federal Government—and ultimately the American taxpayer—continues to bear a substantial financial burden for part C claims. According to the second annual report of the Secretary of Labor on administration of Black Lung Benefits Act of 1972, for calendar year 1975, submitted to Congress in July 1976 a responsible operator had been found liable for payment in only one-third of the cases initially approved for payment.

The testimony of the Department of Labor today indicates even fewer numbers of cases are actually being paid by the operators.

When the House Committee on Education and Labor began the deliberations which resulted in the House version of H.R. 10760 the committee's paramount concern was to terminate continuing Federal liability for part C claims. This concern is reflected in the caption of H.R. 10760, which describes the purpose of the amendments as being "to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes."

Because of the insuperable practical and legal impediments to holding companies liable which were no longer in existence, it was determined that responsibility for these claims in which no responsible operator could be located should be shared by the coal industry as a whole.

As a mechanism for meeting this shared responsibility, the drafters of the black lung bill in the House proposed to establish a national trust fund to which all coal mine operators would contribute. This fund was named the black lung disability insurance fund.

It is worth noting that, in the House, both the UMWA and substantial segments of the coal industry supported the concept of a national trust fund to pay for part C claims.

I will skip over the aspects of the testimony on pages 3 and 4 that simply describe the operation of the fund, and start again on page 5.

If the Secretary of Labor is vigilant in carrying out his responsibility to see that all currently operating coal mines insure their potential liability under the act, the number of new claims for which the trust fund will be liable will decrease sharply within 2 or 3 years of enactment of these amendments.

As it appears in both the House and the Senate versions of H.R. 10760, the fund is of importance basically to provide a mechanism for payment of claims of miners who left the coal mine industry in the past and for whom no currently existing coal mine operator can be held liable.

Future claims of miners who are employed now should be adequately insured, and the trust fund should be of minimal importance in paying the claims of these miners.

In this respect, the version of the fund which is before you represents a substantial compromise between the previously expressed preferences of both the UMWA and the National Coal Association for a trust fund which would have paid all part C claims and the preference of other segments of the coal industry for continuation of the present system for payment of claims.

- Despite broad agreement that it is desirable to impose upon the coal industry total financial responsibility for part C claims, there has been bitter disagreement within the industry about the best method for allocating this responsibility. This is natural, since there are a wide range of interests within the industry, depending upon whether a company is large or small, young or old, and whether its workforce is young or old; depending upon the grade and market value of the coal it produces; depending upon whether it is labor intensive or capital intensive; depending upon the proportion of its employees who develop pneumoconiosis and the conscientiousness with which it has implemented measures to prevent pneumoconiosis.

As a national union, with members in every type of coal mine in the country, we feel that the tonnage basis for the assessment in the bill before you is the best basis for assessment. Tonnage has served well for 30 years as the basis for payments into the UMWA Health and Retirement Funds, the joint industry-labor operated trust funds which provide pension and health benefits to employees under the National Bituminous Coal Wage-Agreement.

This long experience in imposing and collecting a tonnage assessment from a significant portion of the industry will provide an invaluable source of experience to the Secretary of Labor, and since a significant proportion of the industry is already making payments based on tonnage, accounting will be simplified.

Furthermore, tonnage is more readily determinable than many of the other potential bases for assessment. Finally, as a union dedicated to improved safety, we prefer a tonnage assessment to a payroll assessment because we would not like to see any further encouragement to the industry to cut corners on personnel.

We recognize however that a uniform tonnage tax could just put an undue burden upon certain classes of coal mines where the market value of the coal is low and where the incidence of pneumoconiosis is also low.

An example of this are the lignite mines. Pneumoconiosis does appear among lignite miners, but its prevalence is far lower than among bituminous or anthracite miners.

At the same time, lignite sells for many dollars less per ton than bituminous or anthracite coal. Thus, a uniform tonnage tax would be substantially more burdensome for the lignite mines, and the burden would have no relationship to the problem Congress was intending to solve.

In recognition of this type of problem, the bill before you gives the Secretary of Labor authority to classify coal mining operations and to impose different assessment rates upon different classes. The complex factors involved in establishing such rates and the probable need

for frequent revisions of the rates in light of experience and changing circumstances makes the broad legislative delegation of this function to the Secretary reasonable, and, in fact, virtually necessary.

The UMWA believes, however, that the Secretary should have been instructed explicitly to consider a coal mine's record of compliance with the Federal dust standards, as well as other factors, in determining the rate of assessment. The broad delegation of authority to the Secretary makes an amendment for this purpose unnecessary.

The Secretary, if he wanted to, could take that factor into consideration, however, we do request that the committee make particular note of this factor in any report that it may make on the bill.

Finally, although the issue of constitutionality has not been addressed this morning, I think that it is important to call the committee's attention to a very recent decision of the U.S. Supreme Court in *Usery et al. v. Turner Elkhorn Mining Co. et al.*, decided July 1, 1976. The Supreme Court issued a major opinion containing a broad discussion of the constitutionality of the congressional scheme for providing benefits to black lung victims.

In addition to upholding the constitutionality of all eligibility provisions of the act which were challenged by the operators in this suit, the Court dealt at length with those aspects of the law which imposed liability upon the operators for miners who left coal mine employment prior to passage of the act. A large proportion of the beneficiaries of the black lung disability insurance fund would presumably fall in this category.

I do not need to read the Court language. The Court basically said that it is perfectly constitutional for Congress to impose liability for coal miners who became disabled in the past. It is very significant, in terms of what has been said here this morning, in that suit that a tax on all coal mine operators presently in business would have been a more rationale way to allocate responsibility for claims arising out of the past, and the system of imposing liability upon individual operators. Either method of imposing liability is constitutional, said the Court, and it is up to Congress to decide which method is wiser.

Thank you.

The CHAIRMAN. Thank you very much for a very thoughtful statement. We will give careful consideration to it.

Is Mr. James L. Kilcullen here?

Mr. Kilcullen, I want to hear your testimony. Perhaps the other Senators want to hear it also.

I would like to suggest that we take a brief, 10-minute recess so we can go over to vote, and then we will proceed to hear your testimony.

We will stand in recess for 10 minutes.

[A brief recess was taken.]

Senator HASKELL. I wonder, Ms. Falk, if you could come up again. Probably Senator Long asked you these questions while I was over voting, but I would like to get more of your comments on that National Academy of Science study that Mr. Bagge was talking about. We always have studies coming out of our ears around here. Perhaps you could comment on that a little bit.

Then perhaps there are other places that we can go which would indicate the incidence of black lung disease, working in the underground mines.

You might comment on any additional studies that you know of. Ms. FALK. I did make some comments on the National Academy report.

Senator HASKELL. Would you mind repeating them for my benefit?

Ms. FALK. The primary objection of those figures is that the survey includes only working miners, which means that any miner who has become too sick to consider working in the mines is not included in that survey.

Furthermore, the figures are based only upon X-ray studies. I think nobody would dispute that there is a far higher prevalence of pneumoconiosis discovered by autopsy than revealed by X-ray, so we think that by definition, by limiting the figures to X-rays, they seriously underrepresent the amount of pneumoconiosis.

Furthermore, we have more technical criticisms of the ways in which the X-rays were interpreted that are embodied in some critiques that have been presented by the United Mine Workers and a number of physicians to the National Academy, which I offered to make available to the committee.

Senator HASKELL. Does the National Academy recognize those shortcomings? They acknowledged that that was a shortcoming?

Ms. FALK. I do not think so. They based their findings, their medical conclusions, almost entirely upon information presented to them by Dr. Keith Morgan. Dr. Morgan is an extremely controversial doctor in this area. He has testified in opposition to black lung legislation, both on a State and Federal level on many occasions. That is one of our critiques of the study, that they placed so much reliance upon his conclusions, which I am sure are his own good faith opinions, but they represent one particular spectrum of medical opinion, but they represent one particular spectrum of medical opinion in this country.

There is a great deal of opinion—

Senator HASKELL. Opinion on the other side?

Ms. FALK. Right.

Senator HASKELL. Thank you very much. I think that is all I need. [The prepared statement of Ms. Falk follows:]

#### TESTIMONY OF THE UNITED MINE WORKERS OF AMERICA

The Black Lung Benefits Reform Act of 1970, H.R. 10760, comes to this committee after extensive hearings, debates and revisions during the past three years in the House Committee on Education and Labor, on the House floor, and, most recently, in the Subcommittee on Labor and the Committee on Labor and Public Welfare.

At each stage in the legislative journey of this bill the underlying reasons for the amendments have been reaffirmed:

1. Coal workers' pneumoconiosis is a disease of the present, and not just of the past. It is an insidious and devastating disease which continues to cripple coal miners despite improvements in efforts and techniques to control coal dust in the mines.

2. The present black lung benefits program contains serious inequities. As a result of these inequities thousands of coal miners and their survivors are unable to qualify for benefits and will be unable to qualify in the future even though they are precisely the victims of the disease whom Congress intended to assist by this program.

3. Continued Congressional action is needed in this area because no state has acted to bring its workers' compensation law into compliance with the federal standards for the black lung benefits program.

Our purpose here this morning is not to rehash these principles or to discuss the reasons for the changes in certain entitlement provisions which were the

focus of the deliberations by the Committee on Labor and Public Welfare. Rather, our testimony is limited to the new Black Lung Disability Insurance Fund which would be created by the bill, and to the tonnage tax which would be imposed to support the Fund.

#### REASONS FOR ESTABLISHING THE FUND

When Congress first enacted the black lung benefits program as part of the Federal Coal Mine Health and Safety Act of 1969, it established a two-phase program. Claims filed during the first years of the program are paid in full from the U.S. Treasury, and are a federal responsibility throughout the lifetime of the disabled miner and even after his death, so long as he has eligible dependents. Claims filed during this initial period of full federal liability—that is, claims filed before January 1, 1974—are referred to as Part B claims.

Both in 1969, and again in 1972 when the law was amended, the Congress felt strongly that, after the initial period, financial responsibility for black lung benefits should shift to the coal industry. Thus, the law now provides that claims filed on or after January 1, 1974<sup>1</sup> should be paid by the operator or operators who are determined to be liable for the development of the miner's disease, whenever a responsible operator can be located. These claims are referred to as Part C claims.

Despite this intended scheme, however, the federal government—and ultimately the American taxpayer—continues to bear a substantial financial burden for Part C claims. According to the Second Annual Report of the Secretary of Labor on Administration of the Black Lung Benefits Act of 1972 (for calendar year 1975), submitted to Congress in July 1976, a responsible operator had been found liable for payment in only one-third of the cases initially approved for payment.<sup>2</sup> This means the federal government is paying the total bill for two out of every three Part C claims.

When the House Committee on Education and Labor began the deliberations which resulted in the House version of H.R. 10760, the committee's paramount concern was to terminate continuing federal liability for Part C claims. This concern is reflected in the caption of H.R. 10760, which describes the purpose of the amendments as being "to transfer the residual liability for the payment of benefits under such program from the Federal Government to the coal industry, and for other purposes." Because of the insuperable practical and legal impediments to holding companies liable which were no longer in existence it was determined that responsibility for those claims in which no responsible operator could be located should be shared by the coal industry as a whole. As a mechanism for meeting this shared responsibility the drafters of the black lung bill in the House proposed to establish a national trust fund to which all coal mine operators would contribute. This fund was named the Black Lung Disability Insurance Fund. It is worth noting that, in the House, both the UMWA and substantial segments of the coal industry supported the concept of a national trust fund to pay for Part C claims.<sup>3</sup>

#### HOW THE TRUST FUND WOULD OPERATE

In the version of H.R. 10760 which was reported by the Committee on Labor and Public Welfare, and which is before this committee for its consideration, the Fund would have three trustees: the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Health, Education and Welfare. To cover the initial months of operation of the Fund, a loan would be made from the general fund of the Treasury in such amount as was requested as necessary by the Secretary of Labor. This loan would be repaid to the Treasury over a five-year period, with interest.

The Fund would be supported on an ongoing basis by an assessment against every coal mining operation in the nation. The assessment would be a rate per ton of coal mined. The rate would not be uniform for all coal mines but would be based upon classifications established by the Secretary of Labor. Any assessment paid by a coal operator would be considered an ordinary business expense under Section 162(a) of the Internal Revenue Code.

<sup>1</sup> As of Jan. 1, 1974, responsible operators also became liable for claims of miners filed between July 1, 1973 and Dec. 31, 1973.

<sup>2</sup> Second Annual Report, p. 12.

<sup>3</sup> Statement by Carl Bagge, president, National Coal Association, before the House Subcommittee on Labor Standards, Mar. 13, 1975.

The Secretary of Labor would be the managing trustee of the Fund. He would have authority to hold, operate and administer the Fund and would be responsible for determining and collecting the assessment from all coal operators. He would be authorized to employ such personnel as were necessary to the operation of the Fund, and to charge the compensation of any personnel he so employed to the Fund. He would also be authorized to contract for the services of any federal, state, or local agency. The Secretary of the Treasury would be responsible for investing the assets of the Fund not needed for current withdrawals.

Determinations of eligibility and liability would be made as they are now by claims examiners in the Department of Labor. Not all Part C claims would be paid out of the Trust Fund. If a responsible operator were located, the operator would be liable. Payments from the Fund would be paid to two classes of eligible miners and survivors: A) Cases in which the operator had failed to obtain insurance to cover his liability as required by law, or had not begun payment of benefits within 30 days of an initial determination of eligibility by the Secretary of Labor; and B) Cases in which no responsible operator could be located. In the first category of cases the operator would retain his rights under law to protest the initial determination by the Secretary of Labor of eligibility and liability; he would be liable to repay to the Fund, with interest, payments lawfully made by the Fund to his former employees. In the second category of cases the Secretary of Labor's initial determination of eligibility and Fund liability for payments would be final.

If the Secretary of Labor is vigilant in carrying out his responsibility to see that all currently operating coal mines insure their potential liability under the Act, the number of new claims for which the Trust Fund will be liable will decrease sharply within two or three years of enactment of these amendments. As it appears in both the House and Senate versions of H.R. 10760, the Fund is of importance basically to provide a mechanism for payment of claims of miners who left the coal mine industry in the past and for whom no currently existing coal mine operator can be held liable. Future claims of miners who are employed now should be adequately insured, and the trust fund should be of minimal importance in paying the claims of these miners. In this respect, the version of the Fund which is before you represents a substantial compromise between the previously expressed preferences of both the UMWA and the National Coal Association for a trust fund which would have paid all Part C claims, and the preference of other segments of the coal industry for continuation of the present system for payment of claims.

#### JUSTIFICATION OF THE METHOD OF ASSESSMENT

Despite broad agreement that it is desirable to impose upon the coal industry total financial responsibility for Part C claims, there has been bitter disagreement within the industry about the best method for allocating this responsibility. This is natural since there are a wide range of interests within the industry depending upon whether a company is large or small, young or old, and whether its workforce is young or old; depending upon the grade and market value of the coal it produces; depending upon whether it is labor intensive or capital intensive; depending upon the proportion of its employees who develop pneumoconiosis and the conscientiousness with which has implemented measures to prevent pneumoconiosis.

As a national union with members in every type of coal mine in the country, we feel that the tonnage basis for the assessment in the bill before you is the best basis for assessment. Tonnage has served well for 30 years as the basis for payments into the UMWA Health and Retirement Funds, the joint industry-labor operated trust funds which provide pension and health benefits to employees under the National Bituminous Coal Wage Agreement. This long experience in imposing and collecting a tonnage assessment from a significant portion of the industry will provide an invaluable source of experience to the Secretary of Labor, and since a significant proportion of the industry is already making payments based on tonnage, accounting will be simplified. Furthermore, tonnage is more readily determinable than many of the other potential bases for assessment. Finally, as a union dedicated to improved safety, we prefer a tonnage assessment to a payroll assessment because we would not like to see any further encouragement to the industry to cut corners on personnel.

We recognize, however, that a uniform tonnage tax could put an undue burden upon certain classes of coal mines where the market value of the coal is low and where the incidence of pneumoconiosis is also low. An example of this are the lignite mines. Pneumoconiosis does appear among lignite miners, but its prevalence is far lower than among bituminous or anthracite miners. At the same time lignite sells for many dollars less per ton than bituminous or anthracite coal. Thus a uniform tonnage tax would be substantially more burdensome for the lignite mines, and the burden would have no relationship to the problem Congress was intending to solve.

In recognition of this type of problem, the bill before you gives the Secretary of Labor authority to classify coal mining operations and to impose different assessment rates upon different classes. The complex factors involved in establishing such rates and the probable need for frequent revisions of the rates in light of experience and changing circumstances makes the broad legislative delegation of this function to the Secretary reasonable, and, in fact, vitally necessary. The UMWA believes, however, that the Secretary should have been instructed explicitly to consider a coal mine's record of compliance with the federal dust standards, as well as other factors, in determining the rate of assessment. The broad delegation of authority to the Secretary makes an amendment for this purpose unnecessary. However, we do request that the Committee take particular note of this factor in any report it may make on the bill.

#### CONSTITUTIONALITY OF THE FUND

We are fortunate to have a very recent decision of the United States Supreme Court for guidance in answering questions which have been raised relating to the constitutionality of the purposes and operation of the Fund. In *Usery et al. v. Turner Elkhorn Mining Co. et al.*, decided July 1, 1976, the Supreme Court issued a major opinion containing a broad discussion of the constitutionality of the Congressional scheme for providing benefits to black lung victims.

In addition to upholding the constitutionality of all eligibility provisions of the Act which were challenged by the operators in this suit, the Court dealt at length with those aspects of the law which imposed liability upon the operators for miners who left coal mine employment prior to passage of the Act. A large proportion of the beneficiaries of the Black Lung Disability Insurance Fund would presumably fall in this category.

With respect to the underlying argument that Congress lacked power to impose liability for disability which was not anticipated at the time of employment, the Court said, "Our cases are clear that legislation readjusting rights and burdens is not unlawful because it upsets otherwise settled expectations." Slip opinion, at 12.

The Court's rationale for upholding the retrospective application of the present law applies directly to the Fund under consideration here: "We find, however, that the imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor—the operators and the coal consumer." *Id.*, at 13-14

Most significantly for this committee's deliberations, the operators argued in *Turner Elkhorn* that a tax on all coal mine operators presently in business would have been a more rational way to allocate responsibility for claims arising out of the past than the system of imposing liability upon individual operators. Either method of imposing liability is constitutional, said the Court, and it is up to Congress to decide which method is wiser. Slip opinion, at 14.

Senator HASKELL. Mr. Kilcullen, could you come up, please?

The CHAIRMAN [presiding]. Now we will hear from Mr. John L. Kilcullen.

#### STATEMENT OF JOHN L. KILCULLEN, GENERAL COUNSEL, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION

Mr. KILCULLEN. Thank you, Mr. Chairman.

Mr. Chairman, I am here on behalf of the smaller coal producers, of which the National Independent Coal Operators association repre



sents about 1,000 small and medium-sized coal producers, mainly located in the Appalachian States of Pennsylvania, West Virginia, Kentucky, Virginia, Ohio and Tennessee.

We feel that this legislation, as proposed here now, is absolutely unnecessary. The black lung program has been in effect for almost 7 years.

In the first 3-year period, the first 3½ years of that time, about 600,000 applications for black lung benefits were filed. At the time that the statute was passed in 1969, there were fewer than 100,000 underground coal miners.

The original estimates were that out of the entire reservoir of older coal miners who had left coal mining employment there would probably be 50,000 who would qualify for disability, who would be disabled and qualify for disability benefits under the statute.

Three years later, there were some 350,000 claims that had been approved. The cost of the program had multiplied by 10 times the original estimates.

It is hard to conceive, really, that any miner who is totally disabled by pneumoconiosis has not filed and has not been approved for benefits under the liberal standards, the liberal medical standards and the multitude of presumptions that are contained in the legislation.

Every benefit of the doubt is given to the claimant.

It would be hard to conceive of any benefit program that has been more liberally applied than this one. Yet here we are 7 years after the initial legislation, and Congress is now again proposing to change the whole structure of the program and to reopen, to permit the reopening of all of the claims that were previously considered by HEW and were denied.

Some 200,000 denied claims could be refiled under this legislation, as well as many other additional claims of widows whose husbands died years and years ago, many years prior to the enactment of this law.

Like many other Federal welfare programs, this program has been carried to excess. Its original intent was to reach those men who were genuinely disabled by the coal miners pneumoconiosis, but it has now been stretched and expanded to the point where it is purporting to reach people who are not disabled, who would be qualified simply because they were employed in the coal mines for a certain number of years, and they could still be working.

This makes a travesty of this kind of benefit program. In effect, the bill would give a healthy coal miner with 25 years of employment greater disability compensation than the compensation of a miner who had lost his legs in a mine accident, or suffered a broken back, who would be only entitled to draw the standard workman's compensation that is allowed under State law.

As I say, these would be healthy miners, still employed, drawing their full pay, and would still be entitled to draw lifelong benefits on some theory that they have some partial disability due to pneumoconiosis.

We think that this is stretching the statute way beyond its original intent, and the cost of it to the small coal mine operator will be tremendous.

At the present time, the small coal operator in the State of Kentucky, for example, pays \$57.37 per hundred dollars of payroll for workman's compensation coverage. Approximately \$25 of this is the cost of the Federal black lung coverage.

In other words, 25 percent of his total payroll already goes toward the insurance coverage for black lung. In addition to that, of course, he has had the cost of meeting the dust standards of the act which imposed a limit of 2 milligrams of dust per cubic meter of air, which is the tightest standard of any country in the world. The finding of Congress at the time that they enacted this standard was that this stringent standard would abolish black lung or coal workers pneumoconiosis for the future.

So what we are concerned with here now are miners who left the industry many years ago and whose claims would now be considered on the basis of the number of years of employment, without any general evidence of disability.

Senator Haskell inquired of the Labor Department representatives regarding the number of claims that have been filed since July 1, 1973, under the so-called employer liability sections.

It was pointed out that there were 97,000 claims filed, and only 3,514 claims have been paid. I think, however, that the Department representatives neglected to point out that of these 97,000 claims that have been filed, the great majority of them are claims that were previously denied under the HEW program. These are refilings, these are people who had their claims denied.

Senator HASKELL. Do you know this of your own knowledge to be a fact?

Mr. KILCULLEN. I have been told this by the Department of Labor.

Senator HASKELL. Why do you not get the Department to send in a supplementary letter over the signature of the same gentleman who was here, if this is in fact a fact.

Mr. KILCULLEN. I assume that they have not misrepresented the facts to me.

Senator HASKELL. We would just like not to have to depend on hearsay.

The CHAIRMAN. I will instruct the staff to contact the Labor Department.

Mr. KILCULLEN. In addition to these claims that have been refiled that were previously denied for lack of adequate medical evidence of disability, another large group of those 97,000 claims are claims of widows whose husbands may have died 20 years ago.

Under the act, a claim of a widow must be filed within 3 years from the date of the miner's death. Among these 97,000 claims are many claims of widows whose husbands died 20 to 25, 30 years ago.

I have been involved in some of the black lung hearings on individual cases, and many of these claims—in fact, I know specifically of claims of miners who have left the mines 50 years ago.

I handled one case recently where the miner left the mines in 1926, and in 1958, when he was 65 years old he applied for social security benefits and retired. He did no work after that.

In 1974, when he was 86 years old, he filed a claim for black lung benefits. The Department of Labor approved that claim, and the employer, in that situation, who has gone out of business in the mean-

time but still had an active company in another field, contested the claim.

Now this is the reason why so many of these claims are contested. The Department of Labor has taken an extremely liberal attitude toward approving claims. I cannot conceive, for example, that a man who was 86 years old and left the coal mines 50 years ago can legitimately come in now and make a claim for total disability due to pneumoconiosis, but this is an example of the manner in which this law has been applied by the Department of Labor.

I give you this example because anyone who contends that the Department of Labor has applied this act in a manner to the disadvantage of the claimants does not know what he is talking about.

They have applied this thing in such a ridiculously liberal manner that the vast number of their claims, of their determinations, are being contraverted.

You cannot blame the coal industry for contraverting these claims, because, as I say, the situations are so absurd that anybody in his right mind could not accept that kind of determination.

The Department of Labor here has estimated that the cost of the trust fund arrangement that would be provided for under H.R. 10760 ranges from 11 cents to 33 cents a ton, which, as Senator Haskell points out, is a fairly small amount of money in relation to the selling price of coal, which today I think is in the range of \$15 a ton. But this estimate, I believe, like all estimates that have been made in the past, falls far short of what the actual costs would be.

The original estimate of this program, I think, for the whole life of it, was supposed to be about \$250 million, and so far it has now exceeded \$4 billion.

If these 200,000 claims that have been denied are refiled, and they are approved under the standards that this act would provide, I feel that the cost could go up to \$1.50 a ton, or better.

The estimates, all estimates in the past have been so low that experience has proved that they were way out of line.

Again, as I pointed out, the cost of this assessment would be only a small part of it, because the mine operator is paying into the State program as well and, in Kentucky, as I say, he is paying \$57 per \$100 of payroll, so that the cost burden that is being imposed right now is, I think, probably higher, undoubtedly higher than any other industry experiences.

We feel that there is no necessity for this bill, this legislation, at this time at all. I am personally convinced that any miner who is genuinely disabled by pneumoconiosis has long since filed his claim and has been receiving benefits.

The CHAIRMAN. Thank you very much.

Senator HASKELL. Thank you, Mr. Chairman.

I assume that you would share Mr. Bagge's view that it is proper for the coal industry to bear the burden of benefits when the disease is proved. Would that be correct or would you not share that view?

Mr. KILCULLEN. We are talking about a number of factors, Senator. We are talking about whether the industry now should be liable for payment of benefits to miners who left coal mining many, many years ago.

Senator HASKELL. Let me give you a supposition, an example. Let us assume that I worked in a number of mines for 40 years, varying coal mines, and now I claim that I have black lung my claim to be paid out of general revenues, or should the industry pay it?

Mr. KILCULLEN. You are talking now about a current miner, a man who is currently—

Senator HASKELL. Me. For 40 years I have worked in the coal mines, and now I claim I have black lung. I go and make application for benefits. Assuming my application is meritorious, who should pay?

Mr. KILCULLEN. You are a current coal miner? You are employed now in the coal mines?

Senator HASKELL. That is right.

Mr. KILCULLEN. The current law takes care of you.

Senator HASKELL. Who do you think should pay?

Mr. KILCULLEN. The employer. That is what is provided in the present law.

Senator HASKELL. Let me pursue this a little bit, because I really wonder if the present law does. The testimony of the Department of Labor was that of the current 3,500 claims it found only 101 claims were being paid by industry, the balance out of general revenues.

Does that square with our assumption?

Mr. KILCULLEN. I can explain the reason for that.

The claims began to be filed in July of 1973. It takes approximately 2 years for the Department of Labor to process the claims and to notify the claimant and the responsible operator as to what determination has been made.

There are thousands and thousands of claims that are backed up in that manner.

I think that of the 97,000 claims that they have received only about thirty some thousand of them have actually been processed, so you have to change the numbers when you get down to those.

Then they make the determination, and they notify the coal mine operator that he has been determined to be the responsible mine operator, and again, most of these cases—I would say 90 percent of these cases, are miners who have left the industry before the act was passed.

I have handled literally hundreds of these cases, and I have seen them. I would say that much more than 90 percent of these claims are claims of miners who have left the industry, or widows of miners who died years ago.

Now, the Department of Labor takes one of these claims like the 86-year-old man, as I say, who left coal mining in 1926, and they find out he has some evidence of disease and X-rays that show some evidence of penumoconiosis. They notify the coal mine operator that he is obligated to pay benefits.

The operator files what is known as a controversion of the claim. The case is then sent over the Office of Administrative Law Judges to be assigned for a hearing, and it may sit over there for 6 months, or a year, before it is assigned for a hearing. And then I have had hearings that were completed a year ago, and we still have not received a decision from the hearing officer.

So that there is a whole pipeline full of these cases where the coal mine operator will ultimately have to pay the benefits.

Senator HASKELL. Let me ask you one more question. Do you think that this idea of a tonnage tax is a good way for the industry to pay?

Mr. KILCULLEN. I do not think so, at this point. I think that—

Senator HASKELL. Did you ever think so?

Mr. KILCULLEN. It might have been originally, if this is the way that the program had originally been set up, I think that it might have had some merit, but at this stage of the game—

Senator HASKELL. I am told, sir, that you argued before the Supreme Court of the United States and said that this is the way that the industry should pay the tax. I may be misinformed.

Mr. KILCULLEN. I did not argue this case before the Supreme Court.

Senator HASKELL. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me get a thing or two clear in my mind.

You make reference to this 2 milligrams per cubic meter of air as being the standard that you say is the most stringent requirement ever imposed on any coal mining in the world.

What was it prior to the time that these standards came in? What degree of air pollution did we have in an earlier period? I would just like to get some relative feel of the thing?

Mr. KILCULLEN. In 1969 when this act was passed, there were no dust standards in the United States. Great Britain had more experience with coal dust and pneumoconiosis. All the original work in this field was done in Great Britain by the medical profession there.

They had come to the conclusion that a dust level of 4.5 milligrams was about the tolerable level of dust in the atmosphere of the mine. Many of the British mines were operating with levels of 7, 8, 9 milligrams per cubic meter.

Our Congress decided that, instead of taking the British standard of 4.5 they would go down to a level of 3 milligrams for the first year and a half, and then down below that to 2 milligrams to insure, to be absolutely certain that there would be no dust exposure.

Now, the industry has met those standards. At that time, it was believed that it was an impossible standard. Many of the mining engineers felt that it would be totally beyond the capacity of the techniques available, the state of art, as it were, to ever reach that 2 milligram level.

But by tremendous effort, the industry has done this. They have changed the whole ventilation procedures in the mines. They introduced all kinds of dust control procedures, so that they have brought it down, now, to a level that everyone assumes will preclude the possibility of any miner ever getting pneumoconiosis from working in a coal mine.

The CHAIRMAN. You do not think that men should be getting black lung hereafter with this low dust level, or very few?

Mr. KILCULLEN. That was the whole theory of the bill, Senator, that it would wipe out the pneumoconiosis.

The CHAIRMAN. Could you advise me on this re-reading of X-rays. I think you heard the testimony on that subject.

Mr. KILCULLEN. Yes.

The CHAIRMAN. Looking at it from the point of view of a mine operator, how does that look to you, where those who reread the X-rays are denied the right to express an opinion on what the X-ray shows?

Mr. KILCULLEN. I think that it is outrageous to write that kind of a requirement into the statute. What could happen is that a miner would go to his family doctor, a GP, and have an X-ray taken, and

if the person had no experience at all in pulmonary medicine, a radiologist, a just radiologist, who is just a technician, would take a look and say, I see some dark spots on there, I diagnose that as coal workers' pneumoconiosis.

That person may be totally unequipped to make such a diagnosis. He is just a technician, a radiologist. If that kind of evidence could be conclusive, it would mean that anybody—there would be all kinds of fraud in the program, obviously. Anybody can go out and arrange for an X-ray and get somebody to say that it has some dark spots on it.

What the Labor Department and HEW have done in the past, when they get an X-ray of that type, they have it reread by a person who is supposedly an expert in diagnosing, reading X-rays for coal workers' pneumoconiosis, and then in the process of doing this, they have eliminated, as Mr. Read testified, have eliminated many cases where obviously there was no evidence on the X-ray, and it had been misread by the technician.

I think that, if this were written in the law in this way, it would just open the door to all kinds of fraud.

The CHAIRMAN. It has been said among lawyers—and I am sure you are familiar with the saying—that doctors have the advantage over lawyers. Doctors can bury their mistakes. We lawyers tend to have mistakes on the record for many years to come, to confront us, but could we not get at least some indication over a period of time as to who is right and who is not right generally on these diagnoses in view of the fact that if people have black lung, I do not suppose they are going to have a very long life expectancy with it.

It seems to me if the autopsies of the people who have passed away tend to confirm what medical evidence was correct and which one might be wrong. Is that correct, or not? Do you think that an autopsy could tell whether a person really had black lung after his death?

Mr. KILCULLEN. The autopsy could show whether there were deposits of carbon in the lung, yes, but I do not know whether the doctors could determine whether that was the cause of death. It might be other causes.

The CHAIRMAN. Do I take your answer to mean that even if they find carbon in the lung, that that might not necessarily mean that it was disabling?

Mr. KILCULLEN. That is correct. The medical profession is very much divided on this question of what is pneumoconiosis and what is disabling pneumoconiosis.

The act has a presumption that if the X-ray shows a spot that is greater than 1 centimeter in diameter then that is classified as disabling pneumoconiosis. The presumption is that the person is totally disabled.

I have seen cases where the miner left the mines, let us say 25 years ago, and went to work in a steel mill or an aircraft factory, or someplace like that, or an automotive plant in Detroit, and they are still working.

I have one case where a man is making \$21,000 a year still working and he had an X-ray which was read by the Department of Labor showing this 1 centimeter or greater category. They qualified him for benefits and they notified the former mine operator that had employed him 25 years ago. I think he left the mines in 1950. They notified the mine operator that he had to begin paying benefits to this man.

Here is a man working full-time, making \$21,000 a year, and the Labor Department determines, as they have to under the statute, that he is totally disabled, totally disabled by pneumoconiosis.

When you see this program from the inside, you see how much absurdity there is.

The CHAIRMAN. When you say that, you remind me a little bit of a case in Louisiana. My father was one of those lawyers who fought to obtain a ruling that a person could be regarded as totally and permanently disabled by virtue of, let us say, loss of a hand, if the kind of work that he was doing required two hands, and so while he might be able to do many kinds of employment other than that, he could no longer do that kind of work, and that is still the case law in Louisiana.

So a man working on the railroad losing a hand could not do the same kind of work, therefore, he was totally and permanently disabled from doing that kind of work. One of the most successful businessmen in Baton Rouge is a man who worked on the railroad, lost a hand, felt very sorry for himself because he could no longer work on the railroad and did not know anybody who would be willing to hire a man with one hand. Well, he did what he could do, and eventually he owned a laundry and went into other endeavors and became one of the more successful and wealthy men in the community.

To a large extent, his wealth was traced to the accident on the railroad. If that had not happened, he would have been a railroad worker the rest of his life. Now he is a banker and big businessman because he could not do that type of work.

But we do have that kind of workman's compensation law in Louisiana, that one could be regarded as totally and completely disabled because he loses a hand. But you are contending here in some cases you may have people who have only a slight disability and could do all kinds of work, who might be drawing full benefits under the black lung program.

Mr. KILCULLEN. That is correct.

I was also making the point that the existence of these opacities that are characterized as complicated pneumoconiosis are not necessarily disabling, because many people who have those large opacities are fully employed without any limitation on their earning capacity.

The CHAIRMAN. It would certainly shorten their life, would it not? If a person had this disease, it would shorten his life.

Mr. KILCULLEN. I am not even sure of that. I have seen cases of men 90 years old, Senator, who have been qualified for black lung benefits. I spoke of one 86-year-old. I know of another case where the man is 90 years old.

The 86-year-old man had a category A opacity, which is the 1 centimeter, and he has been out of the coal mines for 50 years. That obviously had not shortened his life. I do not suppose it has.

The CHAIRMAN. If I may interject one story, a friend of mine told me they kept telling his grandfather if he did not quit drinking it would kill him. The grandfather died at age 110. The whiskey finally got him.

Well, thank you very much for your testimony here today. We will try to analyze this, and make these recommendations.

[The prepared statement of Mr. Kilcullen follows:]

## STATEMENT OF JOHN L. KILCULLEN, GENERAL COUNSEL OF THE NATIONAL INDEPENDENT COAL OPERATORS' ASSOCIATION

Mr. Chairman and Members of the Committee: We appreciate this opportunity to present the views of the National Independent Coal Operators' Association in opposition to H.R. 10760, the so-called Black Lung Benefits Reform Act of 1978.

The National Independent Coal Operators' Association represents approximately 1,000 small and medium sized coal producers in the states of Pennsylvania, West Virginia, Ohio, Kentucky, Virginia, Tennessee and Iowa. The great majority of the members operate underground mines, and would thus be most directly impacted by this proposed legislation.

Since the Federal Coal Mine Health and Safety Act was passed in 1969 the small mine operator has expended massive effort and expense in order to come into compliance with the multitude of new safety and health requirements imposed under the Act and the regulations promulgated by the Secretary of the Interior. We believe they have done a remarkable job in this respect, and that the health and safety conditions in the small mines are equal to and in many instances superior to those in some large and more profitable mines. The small mine operator has an excellent performance record in meeting the statutorily mandated respirable dust level of 2.0 mgm. per cubic meter of air—the most stringent dust limit imposed upon coal mines anywhere in the world. Because of this, we can confidently say that the air in these mines presents no hazard to the health of the miners, and for this reason, coal workers' pneumoconiosis should be regarded as having been effectively eliminated as an occupational disease for currently employed miners.

In spite of this the small mine operators are still required to pay enormous premiums for workmen's compensation and occupational disease coverage, at a level fantastically higher than that of any other industry. For example in the state of Kentucky the mine operator pays \$57.37 per \$100 of payroll for workmen's compensation and occupational disease coverage. In other words, he has to add to his payroll costs another 57.37% to pay for workmen's compensation and occupational disease coverage. Thus, in spite of his efforts to achieve a dust-free atmosphere in his mine he is still being penalized by excessive costs for black lung coverage.

Now, for the third time in seven years Congress is proposing to lay an even heavier burden upon the mine operator to compel him to pay black lung benefits to miners who are not disabled by black lung, and may still be working and earning full pay. In order to finance these additional benefits the mine operator will be required to pay into a Trust Fund in the U.S. Treasury an assessment imposed upon each ton of coal he produces. No one can state with certainty what this assessment may be, but a conservative estimate indicates that it may well be in the range of \$1.50 to \$2 a ton. In addition, the small mine operator will still be obligated to carry insurance coverage to reimburse the Trust Fund for benefits paid out by the Fund on the claim of any miner or former miner he employed. It is thus obvious, that the economic impact will impose a tremendous burden upon the small coal mine operator, and will make it vastly more difficult for him to remain in competition with the larger producers.

There is another important factor. The actuarial exposure of the small operator is greater because of the fact that the average age of miners employed in small mines is substantially higher than in the larger mines. Many of the miners employed in small mines are there because their age, education level and physical condition excludes them from employment in large mines. Consequently, if the 25 year entitlement provision of this bill goes into effect the small mine operator will be exposed to a disproportionately higher number of claims than the large commercial producers, and the cost burden could mean economic disaster to him.

Apart from the economic factors, however, this proposed legislation makes a mockery of the concept of compensation for occupationally related illness or disease. It is indeed difficult to believe that responsible members of Congress would even consider enacting legislation containing such a hodgepodge of irrelevant, imprudent, unjustified, discriminatory, and probably unconstitutional, provisions. This legislation is so poorly drafted that it is difficult for even the most experienced lawyers to construe or to determine the scope of its applicability in specific types of situation. In fact we doubt that even the drafters of the legislation have any clear concept of how it will apply in different situations. We have talked with some Congressional Committee staff members who freely admit that they cannot answer many of the fundamental questions regarding the application of this legislation.



Although this legislation masquerades as a workmen's compensation program, it violates every basic principle established under workmen's compensation laws over the past fifty years. The provisions of this bill which would provide for entitlement for benefits on the basis of period of service, and without evidence of actual disability, is a perversion of the workmen's compensation idea, and if it is adopted as a precedent for other occupational disease legislation it will be a grievous injustice to employers as well as to the workers who are genuinely eligible for and entitled to workmen's compensation for disability or occupational disease incurred in the course of their employment.

In effect, this bill would give a healthy coal miner, with 25 years of employment, greater disability compensation than the compensation benefits of a miner who lost his legs or broke his back in a mine accident. It will permit many coal miners to draw combined benefits greatly in excess of the amount they made when they were employed. The New York Times in an editorial has referred to this bill as "a rip-off in the mines", and it is indeed a rip-off not only of the mine operator but also of the general public who would pay higher taxes and higher utility bills as a result. The Wall Street Journal in an editorial on March 25, 1976 pointed out that although it was well intentioned in the beginning the black lung legislation is rapidly developing into a general give-away—a gravy train—which will encourage workers in other industries to demand similar handouts. The National Academy of Sciences has estimated that if disability payments similar to those proposed for black lung are granted to workers in other industries already demanding such benefits, costs would range upwards of \$100 billion a year. The Wall Street Journal comment summarized the issue by noting that "It is one thing to rectify injustice, but something else again to invoke bunkum above compassion in order to bestow special favors on a politically influential segment of the population."

This proposed legislation, if adopted, would cause righteous anger and bitterness among disabled workers who are truly the victims of occupational injuries or disease, and whose disability benefits are far below the benefits which would be paid to a miner with no genuine disability whatever.

Other features of this bill violate all concepts of justice, equity and due process of law. In this respect we call the Committee's particular attention to the provisions for adjudication of black lung claims. Claims filed under this procedure would be determined by the Department of Labor on an ex parte basis without any opportunity for the employer to controvert or dispute the claim. An appeal from any such determination by the Department could be made only by the claimant in the event the determination was adverse to him. The employer would have no right of appeal from a determination in favor of the claimant. This feature of the bill would effectively eliminate the procedural protections of the Administrative Procedure Act which were designed to establish reasonable rules of fair administrative processes in proceedings before federal government agencies. We predict with absolute certainty that this feature of the bill will be challenged in the courts, with every reasonable expectation that it will be held to be in violation of the due process and equal protection clauses of the Constitution.

For some reason which we find difficult to comprehend Congress in recent years has had a tendency to carry to excess many programs which in their initial concept were sound humanitarian programs designed to correct hardships and economic distress. Inevitably these programs have been expanded and liberalized to the point where they become either a national scandal or a travesty of government bungling. This is precisely the case with the black lung program. It was initially designed to reach those unfortunate people who are disabled by coal workers' pneumoconiosis. The National Independent Coal Operators' Association sincerely favors such a program, and has been instrumental in obtaining amendments to state occupational disease acts to include coal worker's pneumoconiosis. There are already excellent programs in the various states which are benefitting tens of thousands of miners and their families. In addition there are a half million people drawing benefits under the federal black lung program. There is, therefore, no demonstrated need for further expansion of the federal law in this area, particularly in the terms in which H.R. 10760 would do so. It is an invitation to fraud and deceit and a contempt for the laws of the land.

We therefore urge that this committee, and the Senate reject this irresponsible, unreasonable and discriminatory legislation.

[Whereupon, at 1:35 p.m. the committee recessed to reconvene at the call of the Chair.]