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REPORT
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BLACK LUNG BENEFITS REVENUE ACT OF 1977

JULY 12, 1977.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 1538]

The Committee on Finance, to which was referred the bill (S. 1538) to amend title IV of the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established thereunder, to impose an excise tax on the sale or use of coal, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

S. 1538, the Black Lung Benefits Reform Act of 1977, was referred to the Committee on Finance after having been reported by the Committee on Human Resources on May 16, 1977 (S. Rept. 95-209). Because the bill, as reported by that Committee, establishes a coal tax and trust fund to finance the Black Lung Benefits Program, the bill was referred to the Committee on Finance.

Benefit provisions.—The bill, as reported by the Committee on Human Resources, would modify a number of the eligibility criteria with respect to benefits under the black lung benefits program and in particular cases some of the evidentiary requirements. The Committee on Finance has not made any modifications to these aspects of the legislation.

Financing provisions.—Under the present law and under S. 1538, as reported by the Committee on Human Resources, a part of the cost of black lung benefits is charged directly against the former employer of the beneficiary when liability can be established under certain statutory criteria. Where this is not possible, the present law provides for the costs of benefits to be financed out of Federal general revenues. The Human Resources Committee bill would impose an excise tax on the producer's sale of coal, at a rate determined by the coal's British thermal unit (Btu) value. Revenues from this tax would be auto-

matically appropriated to a trust fund, which would pay benefits in cases where there is no "responsible operator" and with respect to all claims in which the miner's last coal mine employment was before January 1, 1970.

The Committee on Finance has modified the excise tax and trust fund provisions of the bill, converting the tax into a tax on coal (other than lignite) at the rate of one percent of the price for which it is sold, and terminating the tax and trust fund provisions after 5 years. In addition, the Finance Committee has added provisions amending the tax status of operators' self-insurance trusts.

The committee recognizes that S. 1538, as a bill originated in the Senate, is not a proper vehicle for a revenue measure such as is recommended in the committee amendment. The committee expects that, if the Senate agrees to those revenue provisions, it will incorporate them as an amendment to a House-originated revenue bill.

II. GENERAL STATEMENT

A. Black Lung Benefits

Present law

The present black lung benefits program provides benefits to miners totally disabled by black lung disease (pneumoconiosis) and to their dependents and survivors.

For claims filed on or before June 30, 1973, benefits are paid out of general revenues and administered by the Social Security Administration. This program (the "part B" program) is permanent; that is, a successful claimant under this program is entitled to benefits for life, or for as long as the claimant remains eligible.

For claims filed after June 30, 1973, for payment on or after January 1, 1974 (the "part C" program, administered by the Department of Labor), benefits are payable by the responsible coal operator (as in traditional workers' compensation programs), if such an operator can be identified, and otherwise from the general revenues.[1] Under this part C program, both the Labor Department's liabilities and the responsible operators' liabilities are terminated after December 30, 1981.

In practice, about 75 percent of the claims filed after June 30, 1973, are being paid from the general revenues. In addition, although the Department of Labor has assigned individual operator responsibility for claims in the remaining 25 percent of the cases, about 200 claims are being paid by operators, as contrasted to some 4,000 being paid by the Department of Labor. Coal companies are contesting 97 percent of the black lung benefits claims for which they have been determined responsible by the Department of Labor. As a result, substantially all of the costs of the part C program are being borne by the general fund of the Treasury.

Amendments by Committee on Human Resources

In addition to making a basic change in the method of financing the black lung benefits program (discussed below, in "B. Taxes, Trust

[1] Under the statute, this program is to be administered by State workers' compensation agencies in those States that have workers' compensation statutes that meet certain minimum standards, or by the Secretary of Labor where such standards are not met. No States have as yet met the minimum requirements; thus, the entire part C program is administered by the Secretary of Labor.

Fund, Etc."), S. 1538, as reported by the Committee on Human Resources, significantly liberalizes benefit provisions so as to increase estimated total part C benefit costs by an average $262 million per year over the next 5 years, provides for the repayment of certain past costs to the general fund of the Treasury, and shifts certain liabilities from the Federal Government to individual mine operators, and vice versa. The most significant of these provisions affecting program costs are described below.

One of these changes would prohibit the Department of Labor from challenging the interpretation of an X-ray submitted by a claimant in support of the claim if read by a Board-eligible or Board-certified radiologist. The Department of Labor would retain the right to challenge an X-ray if there was reason to suspect fraud or if the quality of the X-ray was insufficient to permit a determination. However, in the absence of these factors, the Department would be required to accept the findings as to whether or not the X-ray established the existence of black lung disease, if those findings were made by any Board-certified or Board-eligible radiologist. Under current practice, the findings of the claimant's radiologist may be challenged by a radiologist on behalf of the Labor Department. This change is estimated to increase annual benefit costs by an average of $50 million over the next 5 years (see table 1, below).

A second benefit change in S. 1538 would create a presumption of eligibility for survivors of miners who worked for 25 years or more in coal mining prior to June 30, 1971 and who die on or before the date of enactment of the bill. Benefits would be payable to such survivors unless the Department of Labor establishes that the miner, at the time of his death, was neither totally disabled nor partially disabled from black lung disease. This provision has an estimated average annual benefit cost of $35 million over the next 5 years (see table 1, below).

Title I of the bill includes many other changes to the black lung benefits program. The more significant changes (the additional costs of which are presented in table 1, below) are:

(*1*) *Refiling of previously denied claims.*—The bill would simplify and expedite the refiling of claims under the revised benefit standards by individuals whose claims were previously denied. These claims could be filed without regard to certain time limitations otherwise applicable and could have retroactive effect to the time of the initial claim (but not before January 1, 1974). The cost of this provision has not been separately calculated but is included in the cost estimates for the various benefit liberalizations. Because of the retroactivity involved, those changes are shown as having substantially higher costs in the first 3 years than in later years.

(*2*) *Changes in definitions.*—The bill would modify the definitions of "pneumoconiosis" and "miner". The change in definition of pneumoconiosis is estimated to have no cost. The change in definition of miner would expand the coverage of the program to include workers around a coal mine, processors and transporters of coal, and coal mine construction workers. This has an estimated average cost of about $1 million per year over the next 5 years.

(*3*) *Evidence of disability.*—S. 1538 provides for the Secretary of Labor to revise the regulations defining what constitutes disability

for purposes of the black lung program and setting forth the criteria for determining whether the definition is met. The estimated average cost over the next five years of these new standards is $160 million per year. The bill also includes a number of specific provisions related to eligibility determination. For example, it would prohibit a finding that a miner was not disabled at the time of his death solely on the basis that he was actually employed at that time. Similarly, a miner would be permitted to apply for benefits while still employed (although he would not be permitted to receive the benefits until after his employment terminates). Another provision would permit the use of affidavits in determining the disability of deceased miners in the absence of other sufficient evidence.

(4) *Field offices.*—The bill would authorize the establishment of Labor Department field offices to assist claimants with their claim filing and processing in the field. The estimated average annual cost of this provision is approximately $3 million. The cost of this program would be paid for directly from the Black Lung Disability Fund established by the bill.

(5) *Clinical facilities.*—The bill would make permanent a $10 million annual authorization for the establishment and operation of clinical facilities for the treatment and examination of miners with respiratory impairments. The cost of this program would be paid for directly from the general fund of the Treasury and not from the Black Lung Disability Fund established by the bill. However, medical benefits payable to disabled workers under section 422 may be paid by the Fund to such clinics.

(6) *Responsible operator liability.*—The bill would provide that the Black Lung Disability Fund would pay all eligible claims with respect to miners whose last coal mine employment was before January 1, 1970. In addition, the bill would provide that the Federal Government be reimbursed (from the Fund) for all previous part C payments. The bill also includes a provision which expands the situations under which coal mine operators who acquire mines from previous operators would be required to assume liability (concurrently with the prior operator) for the payment of black lung benefits to individuals previously employed in the mine. This provision has retroactive effect, applying to changes in ownership taking place since December 31, 1969.

Estimates of costs

The estimates of those costs of title I of the bill that are payable from the trust fund are shown below, in table 1. It is estimated that the total costs of the black lung benefits program (part C) under present law (most of which are borne by the Federal Government and part of which are borne by responsible operators) will average $36 million per year over the next 5 years. Title I of the bill is estimated to increase these average annual costs by $262 million over the next 5 years, an increase of more than 620 percent. It is estimated that the average annual expenditures from the Black Lung Disability Fund during the next 5 years would be $242 million, under the bill as reported by the Committee on Human Resources.

The Committee on Finance, though concerned with the additional cost resulting from the benefit liberalizations proposed by the Committee on Human Resources, made no change in these provisions.

Table 1. Estimated trust fund costs of title I of S. 1538, as compared to present costs: fiscal years 1978–1982

[In millions of dollars]

Provision	1978	1979	1980	1981	1982	5-year total
Expanded definition of coal miner	0.3	1.3	1.3	1.4	1.5	5.8
Revised disability standards	105.1	197.6	266.2	112.9	118.7	800.5
Prohibition against reinterpreting X-rays [1]	36.0	69.1	76.9	33.4	34.6	250.0
Presumption of eligibility after 25 years of work	24.9	47.6	61.7	21.2	21.5	176.9
Changed cutoff date for operator liability	3.4	3.8	4.1	0	0	11.3
Medical evaluations	3.6	4.8	3.6			12.0
Administrative costs	14.0	12.0	12.0	7.0	7.0	52.0
Total new costs (operator and Federal)	**187.3**	**336.2**	**425.8**	**175.9**	**183.3**	**1,308.5**
Current law costs (operator and Federal)	34.3	38.8	40.2	34.0	34.0	181.3
Operator liability	−40.2	−70.9	−89.2	−60.9	−63.1	−324.3
Repayment from trust fund to general fund for past Labor Department costs	45.2					45.2
Trust fund liability under S. 1538	**226.6**	**304.1**	**376.8**	**149.0**	**154.2**	**1,201.7**

[1] The Department of Labor previously estimated the 5-year cost of this provision at $832 million. The reduction in this estimate by the Department is based on an assumption that the X-ray interpretations submitted by claimants' radiologists in the future will be more accurate than was previously the case, as a result of training and other technical assistance provided by the Department of Labor.

B. Taxes, Trust Fund, Etc.

1. Tax on Coal (sec. 202 of the bill and new sec. 4121 of the Code)

Present law

Present law does not include any Federal tax on coal extraction or sales, as such. (Profits are, of course, subject to income taxation and, in that context, there are several provisions of particular application to coal.)

Reasons for change

The committee agrees that, in general, the costs of the part C black lung program should be borne by the coal industry. As indicated above, a portion of these costs will continue to be borne by those coal mine operators who are determined by the Secretary of Labor to be "responsible operators" with respect to specific claimants. The remaining costs, in general, are to be borne by the coal mine industry as a whole, through the imposition of an earmarked tax.

The committee amendment imposes a one-percent *ad valorem* tax primarily for the following reasons:

(1) An *ad valorem* tax of this character is relatively simple to administer. This is not to say that such a tax is simple in the abstract, but rather that the Internal Revenue Service and many industries have had extensive experience with such a tax and its imposition here does not appear to present any new problems. In this respect, it was concluded that an *ad valorem* tax would be simpler to administer, both from the point of view of the taxpayers and of the Internal Revenue Service, than any of the other alternatives presented to the committee.[1]

(2) The committee was informed that, in general, the more expensive grades of coal appear to be associated with higher incidences of pneumoconiosis. In general, then, under an *ad valorem* tax, those parts of the coal industry which appear to have greater responsibility for the black lung problem, would be contributing more heavily toward payment of black lung benefits.

(3) The third major reason for the committee's choice of an *ad valorem* tax is that such a tax, especially at the level of one percent, would be unlikely to create any competitive disadvantages among producers of different types of coal.

The committee's amendment exempts lignite from this tax because it was concluded that there is little or no evidence to connect lignite mining with incidence of pneumoconiosis. Also, the small amount of lignite that is mined at present (or is expected to be mined within the next few years) would produce very little revenue for the black lung disability fund, even if lignite were subject to the tax.

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[1] S. 1538, as reported by the Committee on Human Resources, would impose a manufacturers excise tax upon the producer's sale of coal at a rate determined by the coal's heat value per ton. The tax would be 30 cents per ton on coal which has a British Thermal Unit (Btu) value of 11,000 or more per pound, 15 cents per ton on coal which has a Btu value of more than 8,000 and less than 11,000 per pound, and 7.5 cents per ton on coal which has a Btu value of 8,000 per pound or less. Under that proposal, the Btu value would be determined by the Bureau of Mines. Both the Bureau of Mines and the Treasury Department urged the Committee on Finance not to base the tax on Btu value, because of difficulties of administration.

Although the tax provided in the committee's amendment is expected to produce, over the next 5 years, approximately the same revenue as would have been produced under the tax provisions in the bill as reported by the Committee on Human Resources, this revenue is likely to be insufficient, by almost $300 million, to meet the expected obligations of the trust fund for the next 5 years. The committee notes, however, that the revenues generated by the amendment are sufficient to meet trust fund obligations other than obligations arising from two provisions which the Administration has urged be deleted from the bill but which involve the benefit structure of the program rather than its tax and trust fund aspects. These provisions which are opposed by the Administration and for which funding is not provided through the tax on coal in the committee amendment are:

(1) the prohibition against reinterpreting X-rays and
(2) the presumption of eligibility after 25 years' work.

Explanation of the provision

The committee's amendment imposes a one-percent *ad valorem* manufacturers excise tax on the sale of coal by the producer.

Most of the rules generally applicable to manufacturers excise taxes, including the collection provisions, apply to this coal tax. However, the following exemptions which apply to other manufacturers excise taxes do not apply to this tax on coal: sales for further manufacturing, for export, for use as supplies for vessels or aircraft, for the use of a State or local government, or for the use of a nonprofit educational organization. Discretionary authority now granted to the Secretary of the Treasury to exempt sales for the use of the United States from this manufacturers excise tax will not be available in the case of this tax.

As under the general rule applicable to manufacturers excise taxes, use by a producer is treated as a sale by the producer.

Under the general rules applicable to manufacturers excise taxes (sec. 4216(a)), the tax base for coal sold by a producer (rather than used by the producer, as in a manufacturing process) is the sale price f.o.b. mine (or cleaning plant). This is true even if the producer sells on the basis of a delivered price. Where a producer uses coal mined by the producer in a manufacturing process, the tax base will be a constructive price based on sales made f.o.b. mine or cleaning plant by other producers (sec. 4218(e)). For such a producer, the constructive sale price for purposes of the manufacturers excise tax will normally be the same as the constructive price used by the producer for purposes of determining the deduction for percentage depletion.

This tax does not apply to lignite, which is generally the softest and least expensive of the types of coal. The committee intends this exemption to apply to "lignite" as defined in accordance with the standard specifications for the classification of coals by rank of the American Society for Testing and Materials (p. 214, 1976 Annual Book of ASTM Standards, Part 26, D 388).

Effective dates

This tax will apply to coal sold by a producer after September 30, 1977, and before October 1, 1982.

Revenue effect

It is estimated that the tax imposed by this provision will produce revenues of $145 million in fiscal 1978, $170 million in fiscal 1979, $185 million in fiscal 1980, $205 million in fiscal 1981, and $225 million in fiscal 1982, for a total of $930 million in the next 5 years.

2. Black Lung Disability Fund (sec. 203 of the bill)

Present law

Present law does not include a trust fund for financing black lung benefits. The Federal Government's share of the costs of the present part C program is paid directly out of appropriations from the general fund of the Treasury.

Reasons for change

The Committee on Finance agrees with the Committee on Human Resources that if costs of the part C black lung benefits program are largely to be paid for by a tax on the coal industry, then the tax should be "earmarked" by appropriating the revenues from that tax to a trust fund and then paying for the program out of that trust fund. This is the method now used by the Congress under the Airport and Airway Trust Fund, the Highway Trust Fund, the Unemployment Insurance Trust Fund, and the Social Security Trust Fund.

Explanation of the provision

The committee's amendment establishes a trust fund (the "Black Lung Disability Fund") and automatically appropriates to it amounts equal to the revenues from the coal tax described above. In addition, the amendment appropriates to the trust fund any revenues from the penalty taxes imposed on coal mine operators' trusts, described below.[1] Since those taxes are imposed only if certain statutory standards are violated by those trusts, negligible revenues can be expected from that source. Also, the trust fund is to retain reimbursements from coal mine operators whose obligations are paid by the trust fund, as well as earnings on any trust fund investments. Finally, as in the Human Resources Committee bill, the amendment authorizes appropriations from general revenues as advances to be repaid from later coal tax revenues. Such advances are required since the trust funds' obligations are greatest in the first few years of its existence while the revenues from the coal tax will be lower at the beginning of the 5-year period and higher at the end. It is not the committee's intent that this authorization be viewed as permitting "advances" in excess of what can be expected to be repaid out of the coal tax revenues provided for under the committee amendment.

The fund is required to pay benefits if there is no "responsible operator," or if the operator is in default, and would be required to pay benefits with respect to all claims in which the miner's last coal mine employment was before January 1, 1970. In cases in which the Government has already paid benefits for periods of eligibility since January 1, 1974, the fund must reimburse the Government for these payments. This, in effect, transfers those costs from the Government

[1] The bill as reported by the Committee on Human Resources did not have the penalty tax provisions.

to the industry (by way of the trust fund revenues from the tax on coal).

The expenses of the Department of Labor (and, to a limited extent, where appropriate, the Department of Health, Education and Welfare) in operating and administering the claims program to be financed through the fund are to be paid by the fund. The fund also is to bear the costs of its own administration, as well as the costs incurred by the Treasury Department in collecting the coal tax and administering the provisions of the Internal Revenue Code with respect to that tax. The annual report of the fund is to include a full accounting of these administrative costs and of the personnel required for administration.[2]

The committee's amendment removes from the bill any authority for the trust fund to pay benefits under standby insurance provisions. As described below ("5. Standby Insurance Authority"), the committee concluded that the trust fund should not provide insurance. The committee's amendment also makes it clear that the trust fund is not to pay for the clinical facilities program under section 427(a) of the Federal Coal Mine Health and Safety Act of 1969, since title I (sec. 7(i)) of the bill authorizes a separate appropriation ($10 million per year) for that purpose. This is consistent with the intent of the Committee on Human Resources.

Under the committee's amendment, if the Secretary of Labor determines (in accordance with existing procedures, which provide for administrative and judicial appeals) that a coal mine operator is responsible for the payment of certain benefits, but those benefits have in fact been paid out of the fund, then the coal mine operator is obligated to reimburse the fund. If the operator refuses to reimburse the fund, then a lien is to arise in favor of the United States for the entire amount that the operator is required to repay. This lien attaches to all the assets of the coal mine operator and is given generally the same status as a Federal tax lien. If the operator initiates administrative or judicial appeals as provided under present law, then the lien is not to attach until the termination of the review proceedings.

The committee's amendment authorizes the Secretary of Labor to bring suit in any Federal district court to enforce this lien.[3]

The trustees of the fund are the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare; the Secretary of the Treasury is to be the managing trustee. Receipts of the fund in excess of amounts needed to meet current withdrawals are to be invested only in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. The fund's earnings from these investments are to be credited to and form a part of the fund. The Secretary of the Treasury,

[2] Although these provisions of the committee's amendment are not precisely the same as the trust fund provisions reported by the Committee on Human Resources, the Committee on Finance has concluded that they are essentially consistent with those provisions.

[3] The bill as reported by the Committee on Human Resources authorized the Secretary of the Treasury to bring such suits. The Treasury Department pointed out to the committee that such suits, in the case of actual tax liens, are brought by the Justice Department and not by the Treasury Department. The Labor Department urged that it be given authority to bring such lien enforcement suits, since it was the agency concerned with the general administration of the black lung program and the determinations of liability giving rise to these liens.

in making such investments, is, of course, acting as fiduciary of the fund and is to focus upon the needs of the fund in choosing which investments are appropriate.[4]

Such investments are not to be made unless the fund has sufficient assets to meet current withdrawals, including satisfaction of any obligation of the fund to repay amounts that may have been appropriated from the general fund as "repayable advances". The committee, in authorizing the Secretary to invest in securities bearing interest at prevailing market rates, recognizes that the interest rates on investments by the fund may be different from the interest that the fund is to pay to the general fund of the Treasury on such repayable advances. By requiring that the fund repay those advances before it is free to make investments, the committee's amendment avoids the possibility of "arbitrage situations" arising from possible differences in interest rates.[5]

The committee's amendment removes the proposed standby authority for the fund to provide insurance for coal mine operators to cover their liabilities under the part C black lung benefits program. In the place of that provision, the committee has provided that the Department of Labor itself is to have essentially the same standby authority. The revenues from the coal tax and the other assets of the fund will not be available to pay any insurance liabilities under such a program. These insurance provisions are described below.

Effective dates

The fund is to be established on October 1, 1977, and to pay out obligations on and after that date. Since the coal tax expires on September 30, 1982, the fund will continue in existence for a short time after that date to receive the amounts collected on account of coal tax liabilities which are not paid until after that date. As a practical matter, the fund can be expected to expire shortly thereafter, since the fund would quickly exhaust its revenues.

Revenue effect

The Black Lung Disability Fund provisions will have no effect on the revenues. The revenue effects of the taxes to be appropriated to this fund are shown in connection with the discussions of those taxing provisions.

3. Operators' Trusts for Contingent Liabilities (sec. 204 of the bill and new secs. 501(c)(21), 192, 4985, 4986, and 4987 of the Code)

Present law

As a general rule, the income tax law does not give a taxpayer current deductions for amounts set aside in a self-insurance fund to

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[4] The Secretary of the Treasury is given somewhat broader powers, under the committee's amendment, than under the trust fund provisions reported by the Committee on Human Resources. However, the Committee on Finance concluded that the effect of thus broadening the powers of the Secretary of the Treasury in this instance would be to enhance the earnings potential of the fund without impairing its safety.

[5] The requirement that the fund repay advances to it before it can make investments was not set forth explicitly in the bill as reported by the Committee on Human Resources. However, this requirement is consistent with the bill as reported by the Committee on Human Resources.

satisfy contingent liabilities which may arise in the future. A coal mine operator who cannot deduct amounts set aside in a trust fund or reserve account for liabilities under black lung benefits laws until such amounts are actually used to pay claims, finds that the operator generally can take current deductions for premiums paid on commercial insurance policies covering such contingent liabilities.[1]

Also under present law, a trust established to provide funds to satisfy contingent liabilities does not qualify for tax-exempt status. Thus, the tax law does not provide an exemption for income on assets set aside by a coal mine operator to satisfy liabilities for black lung benefits. By way of comparison, it should be noted that to the extent income and net short-term capital gain on reserves held under a noncancellable accident and health insurance policy issued by a life insurance company are required to be added to the reserve in order to satisfy contingent liabilities, the income and gains are not taxed to the insurer.[2]

In general, private employee welfare plans must comply with Federal standards regarding fiduciaries, investments, and self-dealing or other prohibited transactions, pursuant to the Employee Retirement Income Security Act of 1974 (ERISA). Plans maintained for workmen's compensation or disability insurance purposes are not subject to ERISA.

Reasons for change

Because black lung benefits are payable to both miners and their survivors, the obligation to provide benefits with respect to an employee may continue for a considerable period. It has been estimated by some that the cost of providing these benefits may be between $1.35 and $5.00 per ton of coal (depending upon such factors as the amount of recoverable coal and the age of the miners).

Under the Federal black lung benefits statute, a coal mine operator in a State not deemed to provide adequate workmen's compensation coverage for pneumoconiosis must secure the payment of benefits for which the operator may be found liable under the statute, either through procuring commercial insurance or through self-insuring. At present, no State laws are deemed adequate for this purpose; hence, all operators subject to liability under the statute must obtain insurance or self-insure.

Commercial insurance premiums for a policy covering an employer's liability under black lung laws may cost as much as 25 percent of payroll for an underground mine and 5–10 percent of payroll for a strip mine. Because the insurance policies now available are cancellable by the insurers, an employer cannot be assured that the insurance will remain in force if the insurer determines that the risk of loss is higher than initially contemplated. Consequently, some mine operators wish to self-insure for this liability.

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[1] Insurance premiums may generally be deducted as ordinary and necessary expenses of a trade or business (sec. 162). Health insurance premiums may be deducted (within limits) as medical expenses by individuals who itemize deductions (sec. 213).

[2] Net long-term capital gain is taken into account in computing life insurance company taxable income but may be wholly or partially offset by special deductions allowed to life insurance companies.

In view of the unavailability or high cost of such insurance, the committee has concluded that coal mine operators should be permitted to set up self-insurance programs for contingent liabilities under black lung benefits laws, with similar tax consequences (from the point of view of the operator) as would result if the operator had purchased noncancellable accident and health insurance.[3] In light of the investment limitations plus the self-dealing and other restrictions which are imposed under the committee's amendments to assure that funds held by self-insurance trusts are used exclusively for the required purposes, it is contemplated that the Secretary of Labor will give appropriate credit for amounts so held in trust in determining whether an operator satisfies the requirements of section 423 of the Federal Coal Mine Health and Safety Act of 1969, that the operator either qualify as a self-insurer or obtain insurance to cover its contingent black lung benefit liabilities.[4]

Explanation of the provision

The committee's amendment provides (1) income tax exemption for a qualifying trust used by a coal mine operator to self-insure for liabilities under Federal and State black lung benefits laws and (2) deductions (within certain limits) for amounts contributed to the trust by the operator.

Trusts—Qualification

The bill adds a paragraph (21) to section 501(c) of the Code, describing certain trusts which would qualify for exemption from Federal income taxation. To so qualify, the trust must be created or organized in the United States exclusively for the following purposes: (a) to satisfy in whole or in part the operator's liabilities for black

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[3] The bill's treatment of black lung self-insurance trusts, while a departure from existing general rules, would not represent a unique treatment of contingent liability funds. The Internal Revenue Code includes special provisions permitting life insurance companies to deduct amounts held in reserve for contingent liabilities under life insurance or noncancellable accident and health insurance policies (sec. 801 et seq.). Generally, income earned on assets held in a life insurance company's reserve for policyholder claims is not taxed to the company if the income is required to be added to the reserve.

In addition, the provisions allowing current deductions for contributions to tax-qualified pension plans (especially defined benefit plans) may be regarded as bearing similarities to the concept of deductions for contributions to contingent liability funds. Since the effective date of the relevant provisions of the Employee Retirement Income Security Act of 1974, the pension plan provisions may be regarded as in many respects substantially on a par with contingent liability provisions.

The committee also notes that for a brief period, the Internal Revenue Code of 1954 permitted taxpayers to deduct additions to reserves for estimated expenses (sec. 462). The provision was included in the 1954 Code as originally enacted, but was retroactively repealed in 1955, when it was determined that the revenue loss for the transition period would be excessive. At the time section 462 was repealed, the Secretary of the Treasury noted that the concept of a nontaxable fund for reserves for contingent liabilities was a useful concept, and that the section was being repealed only because of the revenue losses.

[4] The provisions of this bill are not intended to derogate from the authority and responsibility of the Secretary of Labor to prescribe regulations under section 423 of the Federal Coal Mine Health and Safety Act of 1969 as to qualification of an operator as a self-insurer for purposes of that statute.

lung benefits arising under Federal or State statutes;[5] (b) to purchase insurance for the purpose of covering such liabilities in whole or in part; and (c) to pay the administrative and incidental costs of the trust (such as legal, accounting, actuarial, and trustee expenses) incurred in connection with operation of the trust or the processing of black lung claims against the operator.

A section 501(c)(21) trust may pay premiums for insurance to cover the operator's black lung benefits liabilities (1) if the insurance solely covers such liabilities and no other risks or (2) if not, only to the extent of that portion of the premium which has been separately allocated and stated by the insurer as attributable solely to coverage of the operator's black lung benefits liabilities.

The administrative and incidental expenses properly payable by the trust include any excise taxes imposed on the trust under the taxable expenditures provisions (discussed below), plus expenses (such as legal fees), reasonable in amount, incurred by the trust in connection with assertion against the trust of liability for these taxes. A section 501(c)(21) trust may not pay any excise taxes imposed under the self-dealing or excess contributions provisions (discussed below) or any excise taxes imposed on trustees under the taxable expenditures provisions, nor may the trust pay any expenses incurred in connection with assertions of liability for such taxes.

The trust must be irrevocable, with no right or possibility of reversion (either of corpus or income) to the coal mine operator (except for the recovery of excess contributions by the operator, as described below, under *Deductions*). The trust must be established and maintained pursuant to a written instrument. The trust instrument must provide that no part of the corpus or income may be used for purposes other than:

(*a*) those purposes described above,

(*b*) certain permitted investments (described in detail below), or

(*c*) payment into the Black Lung Disability Fund or into the general fund of the Treasury.

If the trust qualifies, its income is not taxable to the operator making contributions to the trust,[6] nor is the income taxable to the trust (except to the extent it is subject to the tax imposed by section 511 on "unrelated business taxable income").

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[5] A section 501(c)(21) trust may be organized and operated for the purpose of satisfying the following liabilities of a coal mine operator, and none other: (1) the operator's liabilities on or with respect to claims for compensation for disability or death due to pneumoconiosis arising under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 and (2) the operator's liabilities on or with respect to claims for compensation for disability or death due to pneumoconiosis arising under State statutes. Thus, a liability of an operator with respect to a claim for compensation for the disability or death of a miner arising under a State workmen's compensation law which provides compensation for disability or death due to other causes as well as pneumoconiosis can be satisfied out of a section 501(c)(21) trust only if and only to the extent that the liability is attributable to disability or death due to pneumoconiosis.

[6] A trust will not qualify under section 501(c)(21) if it receives any contributions from an insurance company.

Trusts—Status under ERISA

The committee has been informed by the Department of Labor that, in the Department's opinion, a section 501(c)(21) trust would be excluded from coverage under title I of ERISA (the so-called "labor law" provisions) because of ERISA section 4(b)(3), which exempts employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or * * * disability insurance laws * * *." The committee agrees with this interpretation.

The committee's amendment imposes certain investment limitations and prohibitions on "self-dealing" and "taxable expenditures" which the committee believes are appropriate to prevent abuses of section 501(c)(21) trusts.

Investment limitations

Under the committee's amendment, a qualifying trust may invest its funds only in the following: (a) public debt securities of the United States; (b) obligations of a State or local government, other than any such obligation which is in default as to either principal or interest; or (c) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of sec. 101(6) of the Federal Credit Union Act). The bank or credit union, as the case may be, must be located in the United States. These investment restrictions are intended to preclude speculative or other investments of corpus or income which might jeopardize the carrying out of the trust's exempt purposes and permit the committee to simplify the self-dealing restrictions and avoid the necessity of certain other restrictions to prevent potential abuses.

Under the self-dealing restrictions applicable to these trusts, if a bank or an insured credit union is a trustee of the trust or otherwise is a "disqualified person" with respect to the trust (for example, if it owns or is owned by the coal mine operator maintaining the trust) no funds of the trust may be held or invested in checking accounts, savings accounts, certificates of deposit, or other time or demand deposits in that bank or credit union.

"Self-dealing" prohibitions

The bill prohibits any direct or indirect "self-dealing", a comprehensively defined term, between a section 501(c)(21) trust and any "disqualified person" with respect to that trust.

The following transactions are prohibited by the bill:

(1) the sale, exchange, or leasing of property between the trust and any disqualified person (including certain transfers to the trust of property subject to a lien);

(2) the lending of money or other extension of credit between the trust and any disqualified person;

(3) the furnishing of goods, services, or facilities between the trust and any disqualified person (unless furnished to the trust, without charge, exclusively for proper trust purposes);

(4) payment of compensation by the trust to any disqualified person (except for compensation, not excessive in amount, paid for personal services which are reasonable and necessary to carrying out the trust's permitted purposes); and

(5) the transfer to, or use by or for the benefit of, any disqualified person of the income or assets of the trust.

Payments by a section 501(c)(21) trust for purposes of satisfying the operator's liabilities for black lung benefits arising under Federal or State statutes, or to purchase insurance exclusively covering such liabilities, do not constitute either prohibited self-dealing or taxable expenditures (described below). Similarly, payments by an insurance company for purposes of satisfying the operator's black lung benefits liabilities do not constitute prohibited self-dealing merely because the premiums for such insurance have been paid by the trust. If an insurance company constitutes a disqualified person with respect to the trust, however, the self-dealing rules would prohibit the trust from purchasing any insurance from that company.

For purposes of the self-dealing rules, the term "disqualified person" includes (i) a coal mine operator contributing any amount to the trust; (ii) an officer, director, or employee of the operator; (iii) a trustee of the trust (or any person having powers or responsibilities with respect to the trust similar to those of trustees); (iv) a person owning more than 10 percent of an operator in category (i); (v) a member of the family of any individual described in any of the first four categories; and (vi) any entity in which persons described in any of the first five categories own or hold certain specified percentages of voting power or profits or beneficial interest.

Any violation of the prohibitions against self-dealing transactions gives rise automatically to an initial excise tax on the self-dealer (the disqualified person who violated the restrictions), equal to 10 percent of the "amount involved". In addition, an initial excise tax (equal to 2½ percent of the amount involved) is also to be imposed on any trustee or other manager of the trust who participated in the taxable act, but only if the manager participated knowing the act was taxable and if the manager's participation was willful and not due to reasonable cause. In the case of either the trust or the manager, a second level of excise tax at higher rates (100 percent and 50 percent, respectively) is to be imposed if the act is not undone or otherwise "corrected" after issuance of a deficiency notice from the Internal Revenue Service.

"Correction" consists of "undoing" the transaction or (if undoing is not possible) making the trust whole or giving the trust the benefit of the bargain within 90 days after the mailing of the deficiency notice with respect to the first level of tax. For purposes of this sanction, the amount involved is the highest fair market value of the property involved in the transaction during the period within which the transaction may be undone. This provision is intended to impose all market fluctuation risks upon the self-dealer who refuses to comply and to give the trust the benefit of the best bargain it could have made at any time during the period.

The second-level excise tax sanction, imposed only after a notice of deficiency and adequate opportunity for court review and undoing the self-dealing transaction, is intended to be sufficiently heavy to compel voluntary compliance (at least after court review). The committee expects application of this sanction to be rare, but where the parties refuse to undo the transaction, it is expected that this sanction will be applied.

These taxes are treated like income, estate, and gift taxes in the sense that the Internal Revenue Service is required to send deficiency

notices to the self-dealer and the trustee who then have 90 days to petition the Tax Court. The usual statute of limitations for assessment applies—3 years unless there is a substantial omission of tax on the return filed by the trust (6-year statute of limitations) or no return has been filed (assessment at any time). The 90-day period for petitioning the Tax Court and the statute of limitations for assessing and collecting the tax are suspended during any extension by the Service of the time for correcting the self-dealing.

Refund suits for first- or second-level taxes may be brought in the Court of Claims or in a district court (but only if there has been no prior court review of the prohibited act). Also, any refund suit is treated as disposing of all issues relating to any first- or second-level tax arising out of that prohibited act. An opportunity is provided for one court review of a self-dealing transaction, but no more than one review.

The provisions in the bill as to "self-dealing" generally correspond to certain of the restrictions imposed on private foundations by section 4941 of the Code. Accordingly, authorized interpretations of the latter provision may provide general guidance to interpretation of the self-dealing prohibitions under the committee's amendment.[7]

Prohibitions on taxable expenditures

The bill prohibits any expenditures, payments, or investments by a section 501(c)(21) trust other than for proper payment of (a) black lung benefits, (b) administrative expenses, or (c) premiums for insurance covering liabilities for black lung benefits; for permitted investments of trust funds; or for transfer of assets to the Black Lung Disability Fund or to the general fund of the Treasury.

Any violation of the prohibition against "taxable expenditures" will give rise automatically to an initial excise tax imposed on the trust, equal to 10 percent of the amount of the improper expenditure. Since this tax is payable by the trust, the committee's amendment appropriates to the Black Lung Disability Fund amounts equivalent to any amount collected under this tax, and also under the 100-percent second-level tax, described below. In addition, an initial excise tax (equal to 2½ percent of the amount involved) also is to be imposed on any trustee or other manager of the trust who participated in the taxable act, but only if the manager participated knowing the act was taxable and if the manager's participation was willful and not due to reasonable cause. In the case of either of the trust or the manager, a second level of excise tax at higher rates (100 percent and 50 percent, respectively) is to be imposed if the improper expenditure is not recaptured or otherwise "corrected" after issuance of a deficiency notice from the Internal Revenue Service.

The same correction and judicial review provisions apply under the taxable expenditures provision as apply under the self-dealing provision.

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[7] As noted above, the committee intends that a bank-trustee may not invest the funds of a section 501(c)(21) trust in the bank's savings accounts, checking accounts, or certificates of deposit, whether or not such investments would be permitted under section 4941 to a bank-trustee or a private foundation.

Trusts—Returns

A trust qualifying under section 501(c)(21) is required to file annual returns with the Internal Revenue Service pursuant to section 6033. Because such returns would include confidential financial data relating to coal mine operators, the committee's amendment exempts such returns from public inspection under section 6104(b). For the same reason, the bill exempts applications for exemption under section 501(c)(21) from public inspection pursuant to section 6104(a)(1).

Deductions for contributions to the trust

Contributions by a coal mine operator to a trust described in section 501(c)(21) will be deductible by the operator for Federal income tax purposes under new section 192, but not in excess of the maximum amount as determined under that section for the operator's taxable year. The amendment provides that, as in the case of employer contributions to qualified trusts for contingent pension plan liabilities, the operator's contributions to the section 501(c)(21) trust are deductible with respect to a particular taxable year (subject to a maximum deduction limitation) if actually made during that taxable year or if contributed on account of that taxable year and actually paid to the trust not later than the time prescribed for filing the operator's income tax return for that year (including extensions thereof). To be deductible, the operator's contribution must be made either in cash or in property of the type which the trust is permitted to hold as an investment (e.g., public debt securities of the United States). If the operator makes a permitted contribution of property, the transfer will constitute a sale or exchange of the property for purposes of the operator's Federal income tax, and the fair market value of the property at the date of transfer will constitute the amount realized. (However, the operator's transfer of such property without consideration will not constitute a sale or exchange of property within the meaning of the self-dealing rules unless the property is subject to a mortgage or similar lien.) A contribution to the trust of the operator's note or other evidence of indebtedness of the operator to the trust does not constitute the making of a contribution by the operator and will not entitle the operator to any deduction.[8]

The operator's deduction for contributions to the trust for the taxable year cannot exceed the *greater* of the following two amounts:

(1) the amount needed for the purposes of the trust described in section 501(c)(21)(A) [9] for the operator's taxable year, reduced by the fair market value of trust assets at the beginning of that taxable year; *or*

[8] The transfer to the trust of any such evidence of operator indebtedness will constitute an act of self-dealing in that it constitutes an extension of credit between the trust and a "disqualified person" (the operator).

[9] These purposes are to satisfy the operator's liabilities for black lung benefits arising under Federal or State statutes, to purchase insurance exclusively covering such liabilities in whole or in part, and to pay proper administrative and incidental costs of the trust. However, only payments with respect to amounts to be paid by the trust are to be taken into account; payments to be made directly by the operator or through insurance obtained by the operator outside the trust are not to be taken into account.

(2) the sum of an amount equal to all proper administrative and incidental expenses of the trust for the operator's taxable year, *plus* the lesser of—

(a) the amount needed to fully fund all expected future black lung benefit payments[10] with respect to approved claims and claims filed and pending as of the end of the operator's taxable year, reduced by the fair market value of the trust assets at the beginning of said taxable year, or

(b) two times the amount needed to fully fund all expected future black lung benefit payments[11] with respect to either claims approved or claims filed during any one of the current and three preceding taxable years. Under this alternative, the operator may base the limit either on claims approved or on claims filed (and still pending as of the end of the year), whichever produces the greater contribution limit.

The amounts described shall be determined using reasonable actuarial assumptions not inconsistent with Treasury regulations. It is intended that the amount necessary to provide the expected future payments due to a claim which is pending and not approved will be determined as the amount necessary to provide the payments expected for an approved claim multiplied by the expected approval rate of pending claims. The expected approval rate of pending claims is to be consistent with the approval rate experienced by the Department of Labor or the State workmen's compensation system, depending on where the claim is pending, unless the operator or the Service can show that a different expected approval rate is justified for that operator, based on sufficient experience to justify such a different rate.

The first of these limitations above assures that the operator in any event will be permitted to contribute to the trust and deduct current expenditures in excess of trust assets at the beginning of the year.

The second limitation has two alternatives. The first of these alternatives allows full establishment of the current values of current claims, both those approved and those filed and still pending. However, in order to prevent an operator from taking a disproportionately large deduction in establishing the trust or from skipping contributions for several years for purposes of building a disproportionately large deduction, the second alternative provides that the deductible amount cannot exceed two times the amount needed to fully fund all future payments with respect to either claims approved or claims filed during the operator's current taxable year or any one of the three prior taxable years, whichever produces the largest amount.

If an operator makes otherwise deductible trust contributions which exceed the maximum limitation for that year, the following rules will

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[10] For purposes of this computation, the term "black lung benefit payments" means payments to satisfy the operator's liabilities for black lung benefits arising under Federal or State statutes, taking into account only payments to be made by the trust, and does not include either payments to purchase insurance covering such liabilities in whole or in part or payments for administrative or incidental costs of the trust.

[11] See footnote [10].

apply under the amendment with respect to the amount of excess contributions:

(*a*) An excise tax (under new sec. 4987) equal to 5 percent of the excess contribution will be imposed on the operator.

(*b*) At the request of the operator, the trust shall repay to the operator an amount not exceeding the excess contribution amount (and that payment shall not constitute either an act of self-dealing or a taxable expenditure), but that repayment to the operator will not avoid the imposition of the excise tax.

(*c*) If the operator does not recapture all of the excess contribution, the remaining excess may be carried over to succeeding taxable years and deducted at that time, subject to the maximum deduction limitation applicable to the particular carryover year.

(*d*) If any portion of that excess contribution cannot be deducted in the particular carryover year because of the maximum deduction limitation for that year, the 5-percent excise tax will be imposed for that carryover year on the portion that remains in excess. This tax on excess contributions is designed to eliminate the advantage the operator otherwise would have from the fact that the trust's earnings on the excess contribution are exempt from income tax.

Effective date

The coal mine operators' trust provisions are effective for taxable years beginning after December 31, 1977. These provisions apply to existing trusts, as well as those created after this date.

Revenue effect

The revenue effect of this provision depends primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, their tax liabilities will be reduced by approximately $40 million annually.

4. Disclosure of Address Information to National Institute of Occupational Safety and Health (sec. 205 of the bill and sec. 6103(m) of the Code)

Present law

Under section 6103 of the Code, as recently amended by the Tax Reform Act of 1976, taxpayer return information (which includes the address supplied by the taxpayer on his or her income tax return) is treated as confidential information not subject to disclosure by the Internal Revenue Service, except as specifically provided in section 6103. While, in certain instances, section 6103 would allow the disclosure of address information supplied by the taxpayer, no provision is made for the disclosure of this information to the National Institute of Occupational Safety and Health ("NIOSH") for any purpose, including that of locating persons previously employed in occupations in which they were, or may have been, exposed to known or suspected hazardous substances.

Reasons for change

The committee recognizes the importance of the notification program conducted by NIOSH in locating, notifying and referring for appropriate medical treatment persons who, in their occupations, are, or may have been, exposed to hazardous substances (such as carcinogens). The committee has been made aware of the substantial increase in cost per capita that would be incurred if NIOSH were not allowed to continue receiving addresses of these persons from the Internal Revenue Service, as it did prior to the passage of the Tax Reform Act of 1976.

In light of the very limited disclosure involved in relation to the continued conduct at a reasonable cost level of a very significant human health program, the committee decided to allow the disclosure of mailing addresses by the Internal Revenue Service to NIOSH solely for the purpose of locating and determining the vital status of a person who is, or may have been, exposed to a hazardous substance and referring the person for medical treatment.

Explanation of provision

Upon written request, the Secretary of the Treasury would be authorized to disclose mailing addresses to officers and employees of NIOSH solely for the purposes of locating and determining the vital status (i.e., whether alive or dead) of persons who, in their occupations, are, or may have been, exposed to a hazardous substance and, if they are alive, to refer them, if necessary, for medical care and treatment.

This amendment is not intended to allow the disclosure of the mailing address of taxpayers for any other studies that have been or will be undertaken by NIOSH, except for the purposes stated above.

Effective date

The amendment made by this section becomes effective on the date of its enactment.

Revenue effect

This provision will have no effect on the revenues.

5. Standby Insurance Authority (sec. 15 of the bill and new sec. 435 of the Federal Coal Mine Health and Safety Act of 1969)

Present law

Present law has no provision for authority for any Government agency to provide insurance for the black lung benefit program liabilities of coal mine operators.

Reasons for change

The provisions reported by the Committee on Human resources would provide authority to the Black Lung Disability Fund to issue insurance policies to cover coal mine operators' black lung disability benefits obligations. The Finance Committee was concerned that the assets of the disability fund not be diverted to any such insurance program. Consequently, the Finance Committee's amendment preserves the standby insurance option, but only under authority of the Secretary of Labor as a separate insurance fund and entirely outside of the disability fund.

Explanation of the provision

The Secretary of Labor is authorized to establish and carry out a black lung insurance program to enable operators to purchase insurance to cover some or all of their obligations under the part C benefits program. An insurance program may be established only if the Secretary of Labor determines that insurance coverage is not available, at reasonable cost, to operators. The Secretary of Labor is granted authority to provide by agreement that an insured operator is deemed in compliance with the requirements of section 423 of the Federal Coal Mine Health and Safety Act of 1969, to enter into reinsurance agreements, to provide by regulation for general terms and conditions of insurability, to set premium rates and classes of coverage, and otherwise to manage the program based on accepted actuarial principles. All premiums received by the Secretary are to be paid into the Black Lung Compensation Insurance Fund, which is to be available to pay claims, to pay administrative expenses of carrying out the insurance program and to repay the Secretary of the Treasury for any funds borrowed, at interest, from the general fund of the Treasury. The fund is to be credited with all premiums, fees, or other charges collected in connection with insurance coverage, amounts advanced to the fund from appropriations, and income earned on investments of the fund of moneys in excess of current needs in public debt securities.

Effective date

This provision will take effect on the date of enactment of the bill.

Revenue effect

If this standby authority is exercised, it will produce revenues and expenditures. Since this is only a standby authority, no estimate can be made at this point because of the uncertainty as to when (or whether) the authority will be exercised and the manner in which it would be exercised.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING S. 1538, AS AMENDED

Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and section 252 of the Legislative Reorganization Act of 1970, the following statements are made relative to the budgetary import of S. 1538, as reported by the Committee on Finance.

Inasmuch as the bill was before the Finance Committee only for consideration of its tax and trust fund aspects, the committee believes it appropriate to limit its discussion of budgetary impact to those aspects. The Committee on Finance did not make any provision for this legislation in its budget allocation report relative to the first concurrent resolution on the budget for fiscal year 1978 pursuant to section 302 of the Congressional Budget Act of 1974, since the expenditures under this program arise from benefit provisions within the jurisdiction of the Committee on Human Resources.

The trust fund costs of the program are displayed in table 1, which appears earlier in this report. Budget authority and outlays under the trust fund part of the program for the period 1978–82 should, on the

basis of the bill's benefit provisions, correspond with total trust fund liability as shown on the bottom line of that table. In fiscal year 1978 total budget authority and outlays for budgetary purposes should be reduced to $181.4 million, since $45.2 million represents an interfund transfer having no net impact on the consolidated Federal budget.

Consultation With Congressional Budget Office and Department of Labor on Budget Estimate

The committee's estimates, as shown in table 1, are based primarily on estimates submitted by the Department of Labor on June 21, 1977. The following adjustments have, however, been made: (1) estimated costs relating to clinical facilities and field offices have been deleted since the bill provides for funding these provisions from general revenues and the committee understands and intends that trust fund monies are not to be used for these purposes, whether or not appropriations are subsequently provided; (2) items not included in the Labor Department estimates have been added, namely, administrative costs, medical evaluations, and the repayment from the trust fund to the general fund of past Labor Department costs. The costs of these additional items were estimated by the Congressional Budget Office.

The committee has also received estimates from the Congressional Budget Office. In the main, the most recent estimates of the two agencies are consistent except that the Congressional Budget Office has estimated a significantly lower cost for the provision under which the Labor Department will revise the disability standards of the program. (The CBO estimates of this provision are $170 million lower over the 5-year period and $23.9 million lower in fiscal 1978 than the Department's estimates.) The committee feels it is more appropriate to accept the view of the agency which will be charged with developing and applying the new standards, particularly since the Department supports the legislation with the exception of two provisions the costs of which are not in question.

The committee states that the bill involves individual benefit entitlement and does not provide any financial assistance to States or localities.

Estimates received from the Department of Labor and the Congressional Budget Office are printed below:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY FOR
EMPLOYMENT STANDARDS,
Washington, D.C., June 21, 1977.

Hon. HARRY F. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: This letter is for the purpose of clarifying cost estimates related to S. 1538—the Black Lung Reform Act of 1977.

As you noted at the hearing on June 17 before your Subcommittee, the original cost estimates provided by the Congressional Budget Office and the preliminary estimates made by the Department of Labor differed markedly in several respects. After discussion with the Congressional Budget Office, the Department of Labor has recalculated its estimates for the 5-year period—Fiscal 1978–1982. For purposes of these estimates the annual average benefit for miners and their sur-

vivors is assumed to be $3,970 in Fiscal Year 1978 with 5 percent increases in subsequent years. In addition, all SSA claims found eligible under the provisions of this bill will be paid benefits retroactive to January 1, 1974. Department of Labor claims found eligible under this bill will receive retroactive benefits based on their year of filing under Part C (no earlier than January 1, 1974). For retroactive benefits back to 1974, as of October 1, 1977, the award is $12,800. For benefits back to 1975 the award is $9,820 and back to 1976 it is $6,400. It is assumed that 30 percent of the claims filed under this bill will be completed in 1978, 40 percent in 1979 and the backlog eliminated in 1980.

Section 2(b)

This provision would expand the definition of "miner" and add 500 potential beneficiaries. The estimated cost is $5.8 million.

Section 2(c)

Under this section, the Secretary of Labor will promulgate new regulations regarding total disability. These standards may not be as liberal as the interim medical standards in certain respects. The exact effect of the new standards is difficult to estimate since they have not been developed. However, it was previously estimated that the impact of applying the interim standards to claims denied by DOL would increase the DOL approval rate from the current 7 percent to 37 percent, a difference of 30 percent. Based on the assumption that the impact of the new standards will be somewhere between the current and interim standards, we estimate that at least 15 percent of the claims denied by DOL will be approved under this provision. We have also used the same 15 percent assumption in relation to new claims that will be filed through 1982. Since the SSA population was denied under the interim standards, it is assumed that the only impact of this provision on that group would be caused by the passage of time and the progression of ill health. Therefore, to take account of these factors, it was estimated that 5 percent of denied claims would be approved. Based on these assumptions of the new beneficiaries, 24,200 will come from the 258,000 denied claimant population under parts B and C and 7,500 from the estimated 54,000 new filings through 1982. The total cost is estimated to be $800.5 million.

Section 3

This section provides for the elimination of offsets to workers' compensation benefits for the black lung program. Based upon Social Security estimates, this would affect approximately 3,300 beneficiaries and would increase costs only under part B. Therefore, this provision will have no effect on either the Trust Fund or operator liability.

Section 4

This section requires the review of all claims denied solely because the miner was working and prohibits the denial of those claims solely on that basis. This provision, in and of itself, will not increase the approval rate. Claims that are determined to be approvable based on this review are counted in other sections which provide the basis for their approval.

Section 5

This section provides that the Secretary of Labor shall accept the opinion of a board-certified or board-eligible radiologist with regard

to the reading of a chest X-ray. Our initial estimate was based on various assumptions gained from current experience with reading and reviewing X-rays. However, the Secretary will be given new authority under this bill to establish medical standards for testing and the Department plans to make a concerted effort to provide opportunities for physicians to obtain specialized information and guidance regarding the diagnosis of pneumoconiosis. We have therefore revised our estimates to take these factors into consideration. In addition, it is assumed that all X-rays will be read by radiologists. Within these parameters, the number of positive readings will be significantly lower than assumed in our previous estimate. On the other hand, it is assumed that the number of positive readings by these radiologists will be slightly higher than is our current experience utilizing expert readers. Based on these assumptions, we estimate that 2 percent of the DOL denied and new claims and 5 percent of the SSA denied claims will be approved. The total number of new beneficiaries will be 8500—7700 from the denied and pending DOL and SSA populations and 800 from new filings. The total cost is estimated to be $250 million.

Section 6

This section both establishes the trust fund and clarifies the conditions under which an operator can be found liable for claims. Although identification of responsible operators will be facilitated because of this section, the establishment of the January 1, 1970 employment cutoff date will significantly decrease the number of claims for which a responsible operator will be sought. Under the current law, it is estimated that responsible operators can be identified in 30 percent of approved claims. The cutoff date will reduce this percentage to 20 percent in 1978 through 1980. The additional cost to the trust fund due to this provision will be $11.3 million.

Section 7(b)

This section provides for an entitlement for widows of miners who worked 25 years in the mines prior to June 30, 1971. Data on DOL denials have shown that 17.4 percent have alleged 25 or more years of coal mine employment. Applying this percentage to both the DOL and SSA widow denial populations, it is estimated that 3500 DOL survivor claimants and 5100 SSA survivor claimants will be allowed under this provision. Because the 25 years must have occurred before June 30, 1971, the percentage applied to new claims was significantly decreased to 5 percent of the prospective widow claimants, resulting in an estimated 500 beneficiaries. The total cost of this provision is estimated at $176.9 million.

Section 7(i)

This section authorizes $10 million each year for black lung clinical facilities. Thus, the total for the 5-year period is $50 million.

Section 8

This section authorizes the Secretary of Labor to establish necessary field offices to assist claimants with filing and processing. The total cost is estimated to be $14.8 million.

Total costs

The incremental costs of the provisions of the bill for the 5 years from 1978 through 1982 is slightly over $1.3 billion. This amount does not include estimates of increased administrative costs as a result of this bill. (Our preliminary estimates indicate that the administrative costs will range from $15 to $20 million per year. These costs will include the review of pending and denied cases and transfer of cases to the Department of Labor from the Social Security Administration.) In addition, there is a current program cost of $181.3 million over the 5-year period, a proportion of which will have to be assumed by the trust fund. Of the total of nearly $1.5 billion, responsible operators will assume costs totalling $324.3 million. Thus, the amount the trust fund will be responsible for will be close of $1.2 billion.

Sincerely,

DONALD ELISBURG,
Assistant Secretary.

Cost estimates of S. 1538 [1]

[In millions of dollars]

	1978	1979	1980	1981	1982	Total 5-yr costs
Section:						
2(b)—Definition of coal miner	0.3	1.3	1.3	1.4	1.5	5.8
2(c)—New medical standards set by DOL	105.1	197.6	266.2	112.9	118.7	800.5
5—Limitation on X-ray rereadings	36.0	69.1	76.9	33.4	34.6	250.0
6—Date of last employment for individual operator liability	3.4	3.8	4.1	0	0	11.3
7(b)—25 yr presumption for survivors	24.9	47.6	61.7	21.2	21.5	176.9
7(i)—Clinical facilities	10.0	10.0	10.0	10.0	10.0	50.0
8—Establishment of DOL field offices	2.6	2.8	3.0	3.1	3.3	14.8
Total new bill costs	182.3	332.2	423.2	182.0	189.6	1,309.3
Current law costs	34.3	38.8	40.2	34.0	34.0	181.3
Operator liability	−40.2	−70.9	−89.2	−60.9	−63.1	−324.3
Total trust fund costs	176.4	300.1	374.2	155.1	160.5	1,166.3

[1] Does not include increased administrative costs which would result from this bill.

Revenue effect of tax and trust fund provisions

The budget effects of section 202 of this bill, which imposes the tax on coal, is estimated to produce revenues of $145 million in fiscal 1978, $170 million in fiscal 1979, $185 million in fiscal 1980, $205 million in fiscal 1981, and $225 million in 1982.

The revenue effect of section 204 of the bill, relating to operator's trusts for contingent liabilities depend primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, it is estimated that revenues will be reduced by approximately $40 million annually. Section 203 of the bill, relating to the Black Lung Disability Fund, and section 205 of the bill relating to disclosure of information to the National Institute of Occupational Safety and Health are estimated to have no revenue impact.

Tax expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement. The changes made by this bill involve increased tax expenditures for operators' trusts for contingent liabilities. The increased tax expenditures depend primarily on the extent to which coal mine operators will elect to establish operator trust funds. There is no adequate information available as to the extent to which operators will make such election. Assuming that these operators establishing trust funds deposit $100 million in the fund annually in excess of their current payment for black lung benefits, tax expenditures will be increased by approximately $40 million annually.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill. S. 1538, as amended by the committee, was ordered favorably reported by voice vote.

IV. REGULATORY IMPACT OF THE BILL

In compliance with paragraph (5) of Rule XXIX of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of S. 1538, as amended.

A. *Numbers of individuals and businesses who would be regulated.*—The committee estimates that 5,000 coal mine operators in the United States will be affected by this bill.

B. *Economic impact of regulation on individuals, consumers, and business affected.*—Section 202 of the bill imposes an *ad valorem* tax on the sale of coal by the producer. Since the coal tax is an excise tax, it is added to the price of coal to the first purchaser. The impact of the tax on the consumer will be an increase in price of up to one per-

cent of the value of coal (at the minehead) used to produce goods and services.

Currently, the general Treasury is paying for most black lung benefit payments. To the extent this bill shifts this cost to the Black Lung Trust Fund, the cost of black lung benefits is shifted from the general taxpayer to the coal-consuming public.

C. *Impact on personal privacy.*—The provisions of this bill make negligible changes in those provisions of Federal law affecting the personal privacy of taxpayers except for section 205 of the bill, which would authorize the Secretary of the Treasury, upon written request, to disclose mailing addresses to officers and employees of the National Institute of Occupational Safety and Health (NIOSH) solely for the purposes of locating and determining the vital status (i.e., whether alive or dead) of persons who, in their occupations, are, or may have been, exposed to a hazardous substance and, if they are alive, to refer them, if necessary, for medical care and treatment.

Except for the purposes stated above, this amendment is not intended to allow the disclosure of the mailing address of taxpayers for any studies that have been or will be undertaken by NIOSH.

Determination of the amount of paperwork.—The bill will require coal mine operators to file tax returns and pay taxes on the first sale or use of the coal they produce. In addition, operators who choose to take advantage of the provisions of section 204 of the bill, relating to operators' trusts for contingent liabilities, will have to keep records and file return information relating to such trusts.

V. CHANGES IN EXISTING LAW MADE BY THE BILL

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the committee amendment, as reported).

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