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EXECUTIVE SESSION

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WEDNESDAY, JUNE 29, 1977

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United States Senate,  
Committee on Finance,  
Washington, D.C.

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

Present: Senators Long, Byrd, Nelson, Curtis and Hansen.

The Chairman. The Committee will come to order. The Senate is in session. I hope that we can conclude action on this black lung bill.

We will have more Senators as we go along.

Why do you not suggest to us, Mr. Chabot, the areas where we can make the decisions? Perhaps we could consider them as you come to them.

What is the first decision that we ought to make?

Mr. Chabot. The first decision is what sort of tax you should have, what the tax base should be, how much you want to raise in the tax.

Let me say, in discussions among the various staffs, we concluded that the most practical way of imposing a tax

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1 that will not bear heavily on any one part of the industry  
2 would be an ad valorem tax. If you wanted to raise the same  
3 amount of money that the Human Resources Committee would have  
4 raised in its bill, a 1 percent tax, a 1 percent ad valorem  
5 tax would be sufficient for this purpose, to raise the same  
6 amount of money over the first five years as the Human  
7 Resources bill.

8 The Chairman. May I suggest this? We have got lignite  
9 all over the country. I know we have a lot if Louisiana. We  
10 are not doing anything with our lignite at all. It is not  
11 nearly as efficient a fuel as the others.

12 The result is very few people are doing anything with  
13 it. I do not think we are going to do anything with it for  
14 a long time to come.

15 Rather than put the tax on the lignite, do we have any  
16 evidence that mining the lignite is causing black lung?

17 Mr. Chabot. My understanding is that lignite is just  
18 about all mined under circumstances that it is expected to  
19 cause very little, if any, black lung. I do not say that there  
20 is absolutely no evidence, but if there is any causal relation  
21 it is a very slight causal relation.

22 The Chairman. My impression is what you get out of lignite,  
23 the revenue you get would work out to \$1 million, or 1/10th  
24 of 1 percent of what you hope to raise with the tax. And,  
25 that being the case, I do not think it is worth fooling around

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with.

Further, it tends to retard any potential there is of anyone opening up lignite deposits and mining them. I would suggest that we leave the lignite out. Limit it to the coal which is a more efficient fuel and one that is being used. Lignite only amounts to 1/10th of 1 percent. I say that there is not much profit in mining lignite as there is in mining coal, because it is not as good a fuel.

Mr. Chabot. Mr. Chairman, as I understand it, it is practical to separate out the lignite, it can be done, and as you have said, the lignite raises very, very little of this total amount. My estimate would be the same, even if you excluded the lignite.

The Chairman. The amount that you would raise from lignite would be negligible?

Mr. Chabot. \$10 million in total over a five-year period out of \$925 million. It makes practically no difference. It probably is less than the margin of error in the estimates.

The Chairman. I want to suggest to the Committee that we leave the lignite out. It is not enough to make any difference. It is not enough to make any significant contribution. The contribution would be negligible compared to the sum of the totality. It would keep us from developing a resource that might eventually have some potential.

In my state we are not mining one ton of lignite, not

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1 any, the way it is now. We have lots of it.

2 If you put a tax on it, it makes it that much less  
3 likely that we will ever get to mine any.

4 Senator Byrd. You would not accomplish anything by put-  
5 ting the tax on it. You get so little from it. I second the  
6 motion.

7 The Chairman. If there is no objection, we will leave  
8 the lignite out.

9 Now, the rest of it would pay for most of the benefits  
10 unless we permit the benefits to include some things that  
11 the Labor Department is recommending against. Is that correct?

12 Mr. Chabot. That is correct. I think that it would be  
13 enough to pay for all of the benefits, if you took out the  
14 two areas that the Labor Department is recommending against,  
15 the rule about prohibition on re-interpreting x-rays and  
16 presumption of eligibility for survivors after the miners worked  
17 in the mines at least 25 years.

18 If you take those two items out and a 1 percent tax,  
19 that would be enough to pay for the entire five-year program,  
20 as we see it.

21 The Chairman. Here is my thought. We do not have  
22 jurisdiction over those two items. That is the Labor  
23 Committee's jurisdiction. I would not suggest that, within  
24 this Committee, that we get involved in that, but someone  
25 might want to offer a Floor amendment to support the position



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1 of the Labor Department, which is basically to say that one  
 2 of these items, as I understand it, on these x-rays -- here  
 3 you have some one come in with his family doctor who says  
 4 he has had an x-ray taken and he is satisfied that the man  
 5 has black lung. In any courtroom procedure, whoever has to  
 6 pay, the thing is entitled to have his doctor look at the x-ray.

7 Here it is saying no you cannot look at it. It is like  
 8 saying that only the evidence of the Plaintiff will be heard  
 9 and we will only hear the witnesses for the Plaintiff, we  
 10 will not hear any witnesses for the Defendant.

11 I am not accusing anybody of anything, except if I were  
 12 a lawyer, as I was when I started out, I could win many a  
 13 lawsuit if the other side were not permitted to present any  
 14 witnesses or even to cross-examine mine.

15 It would seem to me that the Labor Department is right  
 16 about that. If we are going to go beyond making mineowners pay  
 17 for a liability which they are permitted to contest by the  
 18 ordinary rules of evidence, if that were the case it ought  
 19 to be done by general appropriations anyway.

20 Senator Curtis. I want to ask a question or two. This  
 21 1 percent, that is on the value of all coal except lignite  
 22 at the mine.

23 Mr. Chabot. FOB mine.

24 Senator Curtis. How would that vary? The anthracite  
 25 coal --



1 Mr. Chabot. The anthracite, as I understand it, anthra-  
2 cite prices nowadays average \$35 a ton. They could go up to  
3 \$45 a ton. Let us take \$45 a ton. 1 percent would be 45 cents  
4 a ton.

5 In the case of the lower grades of sub-bituminous coal,  
6 that nowadays sells for as little as about \$5 a ton in some  
7 cases. In that case it would be a nickel a ton tax.

8 Senator Curtis. It just happens that that type of coal  
9 where the least tax would be collected has the lowest incidence  
10 of black lung.

11 Mr. Chabot. That is my understanding.

12 Senator Curtis. Does this 1 percent tax pay the whole  
13 thing, or is this beyond that amount which is the liability  
14 on the employer?

15 Mr. Chabot. This is the part that is not the liability  
16 on the employer. In other words, when the Labor Department  
17 determines that for a particular claimant, this coal  
18 mine operator was the responsible operator, then that operator  
19 is responsible for paying that claimant.

20 The taxes -- what we are talking about to pay for all of  
21 the other claims where there is no responsible operator or the  
22 responsible operator is out of business and cannot be found  
23 and cannot satisfy the obligations.

24 Senator Curtis. What do you mean by "responsible opera-  
25 tor;" one who is not financially able to pay?

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1 Mr. Chabot. A person may have worked in the mines for  
2 several different companies. The Labor Department has a  
3 system for determining that a particular one of those employers  
4 is responsible if that miner gets black lung. My understanding  
5 is that the approach that they generally use is that the  
6 last person for whom the miner worked in the mines for at  
7 least a year, that one is determined to be the responsible  
8 operator.

9 Then they have to go and find that coal mine operator  
10 and see if that coal mine operator is still in business. If  
11 he is still in business, then they obligate him to pay the  
12 cost of the black lung benefits for that particular claimant.

13 Senator Curtis. The benefits that are to be paid by the  
14 mine owner, what options does this legislation make available  
15 to him to meet those costs?

16 Can he pay that out of current operating expenses, opera-  
17 ting funds of his company? Can he insure? What can he do  
18 in the way of setting up a fund?

19 Mr. Chabot. The bill -- or the present law requires,  
20 the present law authorizes the Labor Department to require  
21 every coal mine operator to either take out insurance, liability  
22 insurance for this, or to qualify as a self-insured coal mine  
23 operator.

24 That part of the statute is outside of our jurisdiction.  
25 That part has not been changed by this bill. So those are the

1 two basic alternatives.

2 The Committee accepted Senator Hansen's proposal last  
3 week which would make it easier, I would suspect, in most  
4 cases, for a coal mine operator to qualify as a self-insured  
5 operator.

6 Senator Curtis. That was some sort of plan that they  
7 could set up a fund to build up the reserves to pay these  
8 claims?

9 Mr. Chabot. Yes, sir.

10 Senator Curtis. Is that the fund that there was a  
11 problem in drafting that? It might fall within the regulation  
12 of ERISA?

13 Mr. Chabot. Yes, we had discussions on it. The Labor  
14 Department has concluded that this does not come under ERISA.  
15 This would be excluded from ERISA because it is basically a  
16 trust fund designed to satisfy obligations that are essentially  
17 workman's compensation obligations. And those funds are  
18 excluded from ERISA.

19 We would go --I was going to, in effect, give you a status  
20 report. We were contemplating going down the tax route so  
21 that we would not have the duplicative jurisdictions and I had  
22 various suggestions to make on that point when we got to it.

23 Senator Curtis. Treasury had a suggestion or two on  
24 language that would assure that it would not be under ERISA.

25 Mr. Chabot. Yes. I have spoken to the Treasury people

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1 and if that is acceptable to the Committee, I think that will  
2 help a great deal, to make sure that there are not abuses  
3 without putting unreasonable restrictions on these trust  
4 funds.

5 Senator Byrd. May I ask a question?

6 The Chairman. Yes.

7 Senator Byrd. As I understand it, the 1 percent ad  
8 valorem tax would raise about one-half of the revenue which  
9 is needed if the Senate approves the bill as reported by the  
10 Human Resources Committee.

11 Mr. Chabot. No. I think that it would raise about  
12 three-quarters of the revenue. I think that you would need  
13 about a 1-1/3 percent tax to raise the revenue needed to finance  
14 the cost of all of the provisions that are in the bill as  
15 reported by the Human Resources Committee.

16 Senator Byrd. If the bill were changed and the recommen-  
17 dations of the Labor Department were accepted, then the 1  
18 percent ad valorem tax would take care of the total cost?

19 Mr. Chabot. Yes, sir, it would, the full cost during the  
20 five-year period.

21 Senator Byrd. Comparing this bill with last year's  
22 bill, this is a much more expensive bill than last year's,  
23 is that correct?

24 Mr. Chabot. In further analyzing this, it appears that  
25 the program is no more generous than last year's bill. The

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whole difference is the matter of the estimates of the cost. We believe that we have much more realistic estimates of the cost.

Senator Byrd. The Labor Department estimates the bill to cost a great deal more than the Human Resources Committee estimated the cost.

Mr. Chabot. Yes, we have had a variety of figures from the Labor Department and from the Congressional Budget Office and Mr. Humphreys of the Finance staff has worked on these. We have come up with a determination which is lower than the Department of Labor's earlier figures and higher than the Congressional Budget Office's figures, which we believe to be a realistic estimate of the figures.

On an aggregate basis over the five years, we estimate that it would cost a little bit over \$1.2 billion.

Senator Byrd. Is that accepting the bill as it came out of the Committee?

Mr. Chabot. Yes, sir, including the provisions that the Department of Labor would rather get rid of. It is that estimate that I say would cost about 1-1/3 percent if we wanted to fund the entire cost.

Senator Byrd. Your estimate as to the belief that it will fund 75 percent of the cost is based on your figures, not on the Labor Department's figures or on the Human Resources figures?



1 Mr. Chabot. We have taken the figures into account, but  
2 we have come to our own conclusions as to what the correct  
3 figures are.

4 Senator Byrd. Thank you.

5 Thank you, Mr. Chairman.

6 The Chairman. Well, why do we not just agree to that  
7 tax? I think it is the best approach. This is what we have  
8 jurisdiction over.

9 I suggest we recommend that. If that is not enough, we  
10 will have to appropriate the difference.

11 Senator Curtis. Are we not going to insist, since we  
12 cannot do it official as a Committee, but that our position is  
13 that we favor the Labor Department's recommendations on these  
14 two points?

15 The Chairman. I think --how could we do that, as far  
16 as jurisdiction is concerned? Could you make a suggestion  
17 about that on the jurisdictional aspect of it?

18 Mr. Stern. You might say that the taxes that are raised  
19 as a result of those benefits would be provided by the bill  
20 written by the Human Resources Committee. The Committee does  
21 not feel that it should be the responsibility of the coal  
22 mine owners, that the tax that you have imposed upon the coal  
23 mine operators does not cover the estimated cost of those  
24 parts of the bill because, should they be enacted, you feel  
25 that they are not really the responsibility of the operators,

1 should be the responsibility of the general funds.

2 You might say something like that, which indicates a  
3 very clear distinction in the Committee's mind.

4 The Chairman. I would suggest, as far as this Committee  
5 is concerned, we do not have jurisdiction.

6 Senator Curtis. We do not have jurisdiction, but I would  
7 like to see them adopt the amendments that go to the general  
8 fund.

9 Could we not say that raising this tax to 1 percent on  
10 the assumption that they would not?

11 Mr. Stern. What you are doing, you base the tax on 1  
12 percent and say, to the extent that benefits are greater than  
13 the amount that is raised by the revenue that you would author-  
14 ize general fund appropriations, and you would say that the  
15 reason you were doing that is because you do not feel that  
16 those benefits should be considered to be the responsibility  
17 of the employer, the coal mine operator.

18 Senator Curtis. I think it would be better to say nothing  
19 than to say that we favor the general fund.

20 The Chairman. Why do you not say 1 percent? Then some-  
21 one can offer an amendment to take care of that part of it.  
22 If they do, we could say that we agree that we are going to  
23 provide the 1 percent and we do not think we ought to have  
24 to pay for these benefits where, if a person is, by any court-  
25 room standard of evidence is not in a position to prove his

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1 crime.

2 Senator Curtis. All right.

3 The Chairman. Without objection, we will then agree on  
4 a 1 percent tax.

5 Senator Byrd. Let me ask one more question, Mr. Chairman.  
6 I realize that the tax, the amount of tax paid, will  
7 vary according to the type of coal and the price of coal, but  
8 as of today, speaking generally, this would mean a tax of  
9 25 cents, would you say, on an average?

10 Mr. Chabot. On an average for the coal that is covered,  
11 it would be about 25 cents. It would start a little bit lower  
12 than that, but run about that.

13 Senator Byrd. Thank you.  
14 The Chairman. All in favor, say aye?  
15 (A chorus of ayes.)

16 The Chairman. Opposed, no?  
17 (No response)

18 The Chairman. That is what we recommend.  
19 What are the other points that we have to decide?

20 Mr. Chabot. One other issue that remained other than  
21 the trust fund was the question of whether the trust fund  
22 should have the authority to offer liability insurance to  
23 coal mine operators. This is a provision that was not in  
24 last year's bill that the Committee dealt with. It was added  
25 by the Human Resources Committee this year.

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As I understand it, the Human Resources Committee and the Department of Labor both want this provision. The concern that I have, if the trust fund offers it without any restriction, then the money that you raised by the tax might end up paying the insurance obligations, and I would suggest that you might give the trust fund authority to write this liability insurance, but require that all the obligations would have to be paid for out of the premiums it receives and whatever earnings it gets on those premiums. The tax fund should be kept separate and available only for the purposes that the tax was raised.

The Chairman. That sounds reasonable enough to me.

Senator Byrd. I think that provision is good. The only aspect that I have some concern about is the policy or principle of having the government get into the insurance business.

Mr. Chabot. The government does now offer a variety of insurance, Federal Despoit Insurance Corporation to insure savings accounts, for example.

Senator Byrd. While you are giving examples, what other examples?

Mr. Chabot. In the same area, of course, the Federal Savings and Loan Corporation.

Senator Byrd. I think that is different from this situation.



1 Senator Curtis. Is the Treasury not opposed to this?

2 Mr. Chabot. Treasury testified in opposition to it.

3 The Department of Labor testified in favor of it. I would  
4 not want to speak for Treasury at the moment.

5 The Chairman. Are you not recommending something at  
6 variance with what Treasury testified against?

7 Mr. Chabot. Yes.

8 This would involve production of the tax, yet the tax  
9 would not be available to be diverted into the insurance  
10 operations and it may be that the Treasury Department would  
11 also prefer that any decisions on the insurance area be  
12 made by the Secretary of Labor rather than by the Secretary  
13 of the Treasury.

14 The Chairman. Could we hear from our representative  
15 on Treasury on this?

16 Mr. Lubrick. We do prefer that if there is insurance that  
17 it not be out of the trust fund.

18 The Chairman. That is what he is suggesting. He is  
19 suggesting what you had in mind.

20 Mr. Lubrick. That is correct. On the issue of whether  
21 there should be insurance, really, I think that is the Labor  
22 Department's province, not ours.

23 Senator Curtis. They have options open to them if they  
24 can get private insurance, they can, can they not?

25 Mr. Chabot. Yes.

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Senator Curtis. They can self-insure.

Mr. Chabot. Yes, sir.

Senator Curtis. They can get benefits of the Hansen amendment.

Mr. Chabot. The benefits of the Hansen amendment, in effect, is the method of meeting those two requirements. Those two requirements would still be in the law.

This insurance that the trust fund would offer would also simply be a method of meeting one of those requirements. Instead of being insured by some private insurance company, they could be insured, perhaps, through this special operation that the Department of Labor is recommending.

Senator Curtis. If they do not use the trust fund, which is tax created, we would have jurisdiction. What jurisdiction do we have in setting up an insurance company, an insurance operation?

Mr. Chabot. Let me say that in the case of ERISA, you will remember we created, in that case jointly with the Labor Committee, but still, we created, a government insurance program, a pension benefits guarantee corporation. We put it in the Labor Department, but at that point it was felt at least that the Finance Committee had jurisdiction to make decisions on that point and such an operation was part of the joint jurisdiction area in the decision-making on ERISA.





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This could be handled by the trust fund, but so long as none of the tax monies were used, since we have jurisdiction over the trust fund, I would think that we could establish it.

Senator Curtis, if we believe that you do not have jurisdiction, since the bill came from the Human Resources Committee, the only other alternative would be to just modify it, to keep the liability insurance provisions that they have put in because they would clearly have jurisdiction.

I think this is one of the shared jurisdiction areas that the Finance Committee could make its decision about.

Senator Curtis. Did they put one in the bill?

Mr. Chabot. Yes, sir. That is why the issue is before us.

Senator Byrd. Would it be practical to say that this would not be available unless private insurance was not available?

Mr. Chabot. We could put such a restriction in. I would tend to think that one of the functions that the Labor Department and the Human Resources Committee wants this authority to serve is, if the private insurance industry insists on very high premiums and the trustees of the Department of Labor believe that adequate insurance ought to be able to be offered for lower premiums, that the Department of Labor could, in effect, through this system make it clear



1 to the insurance industry that if they insist on the higher  
2 premiums then they will get competition from the Department  
3 of Labor through this insurance operation.

4 I would think that they would view it as a method of  
5 holding down the premium cost for the coal industry.

6 Senator Byrd. That is the only principle that concerns  
7 me. If you apply it to this, maybe automobile insurance will  
8 get too high and the Department of Labor will think that is  
9 too high. I think it is too high myself.

10 Senator Curtis. Why do you not let this operator know  
11 that they have this catch-all tax and the bill is approved and  
12 they have a handsome provision? Why proceed to set up a  
13 government insurance scheme at this point when we do not know  
14 that it is going to be needed?

15 Mr. Chabot. This does not require that insurance be set  
16 up. This simply gives them the authority to set it up if  
17 they believe that the circumstances warrant it and they can  
18 work out a system that works in a mechanical manner. They  
19 have not given any assurance that they believe, at this point,  
20 that such a system can be set up, but they would like the  
21 authority to institute it if it seems appropriate, and if  
22 they can figure out when it does work.

23 Senator Curtis. That may be more objectionable than  
24 doing it ourselves.

25 The Chairman. Is that in the House bill? Does the House

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bill have something about this insurance?

Mr. Chabot. The House bill has a different structure. I do not believe that it has this insurance operation in it.

The Chairman. Human Resources put it in?

Mr. Chabot. Yes, sir.

The Chairman. What you are recommending, then, as I understand it is just that in view of the fact that they put it in, you want to protect the tax fund?

Mr. Chabot. The tax part of the trust fund.

The Chairman. That is what Treasury wants to do? Since they put it in, they have jurisdiction to put it in. All we are trying to do is be fiscally responsible, saying that we do not want to jeopardize the trust fund.

It seems to me that all you are doing is just amending it in the direction of fiscal responsibility. I do not see with the Treasury support -- and if that is what we are doing, I do not see why we do not do that. Otherwise, we have the Human Resources Committee recommending one thing, the Finance Committee recommending just the opposite, that you not do it.

I think we would be in a much better posture to say, let them go ahead and recommend that this insurance be made available and just sea that it not jeopardize the trust fund. Treasury supports that.

Senator Hansen. I probably do not understand -- I am

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certain I do not. Just as a general proposition, when the government concludes that private industry is not doing their job at a reasonable enough cost -- I am always a little skeptical. It seems as though the government does not have a really good track record in trying to objectively reach such a conclusion, and I do not want to raise the issue about who should have jurisdiction, but we do have some responsibility in this Committee in trying to protect, maybe not only protect, but at least be concerned about, the fiscal integrity of the government. Whenever government takes over an obligation, I am inclined to think that there is always the inherent tendency to add to those forces that fire inflation.

The Chairman. My thought is, as far as I am concerned, it is all right with me to knock the whole thing out. We do not have jurisdiction over it. They do.

We do have jurisdiction enough to say, if this stays in here, it should not jeopardize the trust fund. I suggest we agree to that. If somebody wants to knock the whole thing out, that is all right with me.

Senator Curtis. What does our staff say about our authority to knock it out?

Mr. Chabot. Since the Human Resources Committee has authority to give somebody at least the jurisdiction to establish an insurance system, if we knock it out, I suppose it is within our jurisdiction to do it. In effect, you go



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1 the Floor with the two Committees, the two reporting  
2 Committees, disagreeing on what are the elements of the bill.

3 If all we are doing is restricting it to the matter that  
4 the Chairman indicated, then I think we have a situation  
5 where we have acted totally within our jurisdiction and I  
6 would suggest then that the result that we would report would  
7 be not a conflict between the two committees, but each  
8 committee working through its own jurisdiction.

9 Senator Byrd. The bill calls for three trustees, does it  
10 not?

11 Mr. Chabot. Yes, sir.

12 Senator Byrd. Including Treasury?

13 Mr. Chabot. Yes, sir.

14 Senator Byrd. Why not let the three trustees make the  
15 decision, than the Labor Department make a decision?

16 Mr. Chabot. We can establish it that way. My impression  
17 had been that Treasury would rather be out of the picture in  
18 this area, but once again, I would rather not speak for  
19 Treasury on this point.

20 Mr. Lubrick. We would prefer not to be involved in the  
21 insurance business. We would suggest that perhaps you may  
22 want to disassociate the insurance entirely from the trust  
23 fund and if Labor is to set up an insurance program, make  
24 sure that it is soundly funded as an entirely separate  
25 program from the trust fund. It would then be responsible

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1 for making sure that adequate premiums are collected to  
2 cover the benefits.

3 The Chairman. Can you do it that way?

4 Mr. Chabot. I believe that we can.

5 Senator Hansen. That would make better sense, as far  
6 as I am concerned. It would not jeopardize the trust fund  
7 on the basis of an overdraft because of the insurance program.

8 Mr. Lubrick. It would have to be thought of as a  
9 soundly financed insurance program, with the premiums covering  
10 the pay-outs.

11 Senator Hansen. I would agree with that.

12 Senator Byrd. Do you not think that that would be better?

13 The Chairman. All in favor, say aye.

14 (A chorus of ayes)

15 The Chairman. Opposed, no?

16 (No response)

17 The Chairman. The ayes have it.

18 What other issue do we have to decide?

19 Mr. Chabot. We have, as we left the Hansen amendment  
20 last week, we had indicated that we were not sure as to whether  
21 a trust fund set up under those provisions would come under  
22 ERISA. As I indicated earlier today, the Labor Department,  
23 which administers the Labor title of ERISA, concluded that  
24 these trust funds would not come under the Labor title because  
25 they flow under an exemption for workman's compensation trust.



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Under those circumstances, what we were going to do is proceed along a tax route and create provisions to prevent self-dealing.

We thought that we would use, as the basis for our approach, the provisions that we had enacted a number of years ago in the private foundation area. It obviously would have to be modified to deal with this, for example, the payment by one of these trusts of the obligations of the coal mine operator which, under the proper foundation concept, would be self-dealing.

This obviously should not be self-dealing because this is the whole purpose of these trusts.

There are a whole batch of other private foundation provisions that would be completely irrelevant to this fund, and which we would not include in this area.

The Treasury had suggested that one way of reducing the likelihood of abuses in this area would be if these trusts would be limited, as the trust fund is, to investing only in public debt obligations. Then we would not have problems about employer securities, whether or not they are loans back to the employer directly or indirectly. We would not have problems about these funds being used as a part of takeover programs to takeover another company.

It would substantially simplify the provisions.

We would also have to supply a number of technical



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omissions. Specifically, we would have to state in the law that the deduction was allowed for a contribution to the trust fund. There are several other areas in the trust rules that we would have to override to make these things work.

We also have to establish an effective date for this because the Hansen amendment, as originally introduced, did not have an effective date.

I would suggest taxable years beginning after December 31, 1977; in other words, beginning at the start of 1978. I believe that if we push the Treasury Department that it is a reasonable possibility that the regulations will then get out in time for the start-up of this operation so that people would know what detailed laws they are operating under.

Since the Committee had, in effect, given the staff broad authority because of the uncertainty of the law, this is by way of a progress report. The effective dates provision is something that had not been decided upon before, and I think that it would take a Committee decision on that matter.

Mr. Lubrick. It was our suggestion that, rather than involving these new trust funds in all of the complicated provisions, the private foundations, the pension funds under ERISA, prohibited transactions, jeopardy investments, excess business holdings and self-dealings, if we restricted the trust fund to investing in governmental obligations and bank accounts, certificates of deposit, you would not have



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any chance for abuse and basically if one of these trust funds earned 7 percent tax-exempt yield, that is 14 percent before tax, that is about what a private insurance company would be investing in anyway. You would have the advantage of saving the individual employer the loading funds charged by an insurance company. He would get an adequate return; the employees would be assured that the money was invested in safe obligations and there would not be any need to introduce pages upon pages of complexities of prohibited transactions.

It would be a lot simpler and make the whole thing much more workable.

We would also suggest, if we had a provision for deductions to an employer who has elected this self-insurance trust fund that all payments that he makes ought to be made out of the trust fund. We ought not to have him making deductible payments on his own, like the bad debt reserve is presently: you get your deduction from the addition to the reserve and the payments are made out of that.

If, in fact, he wanted to use the trust fund to purchase some private insurance, I see no reason why that could not come out of the trust fund, too. He would run his whole system out of the trust fund. It seems to me it would make it a much more simple and more workable arrangement.

Mr. Chabot. I would agree with the Treasury Department recommendations on these points. It would help to simplify these



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1 provisions a good deal.

2 The Chairman. That is one way to do it. For lack of a  
3 better way, why do we not do it.

4 Senator Hansen. I am not sure I heard every recommenda-  
5 tion that Mr. Lubrick may have made. I have two interests,  
6 or rather, one major one, and that is that we ought not to  
7 limit the investments of these funds to U.S. debt obligations.

8 Mr. Lubrick. I did not say U.S. I suggested that we  
9 ought to devise investments that would be liquid and not  
10 subject to all of these necessities for restrictions. I  
11 would suggest any governmental obligation or governmental  
12 agency, bank account, savings account, certificates of  
13 deposit, things of that nature, that this type of thing in  
14 the private area is generally invested in.

15 Senator Hansen. If I understand what you are saying,  
16 Mr. Lubrick, I do not think that we disagree on that point.  
17 It does seem as though one of the advantages of wider invest-  
18 ment on this question affords an opportunity of a higher rate  
19 of return and gives the added plus of putting money into the  
20 private sector.

21 As you have explained this last point, I would assume  
22 that you would agree with that idea.

23 Mr. Lubrick. I do. The only thing I wanted to get away  
24 from was the necessity to draft rules dealing with speculative  
25 investments or self-dealing. If we have a list --

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Senator Hansen. I think we are in agreement.

The Chairman. Without objection, we will agree to those recommendations.

Now, Senator Nelson wanted to bring up one matter and we will yield to him for a moment.

Senator Nelson. Mr. Chairman, I have an amendment that I would like to have added to one of the tariff bills, one that is pending. It involves authorizing NIOSH to have access to the IRS' records or get from IRS the address of people who have been exposed to carcinogenic agents so that they can be notified.

NIOSH -- they used to be able to do that, and inadvertently when we were tightening up the access to forms, we left NIOSH out as an authorizing agency.

Senator Hansen. What is NIOSH?

Senator Nelson. National Institute of Occupational Safety and Health. They are now notifying people, but it is costing them \$20 per person to get that name and address. For 30 cents, that would be the cost if it came from the IRS.

We passed it in the Senate last year. It got to the House. The House dropped it out, not recognizing its importance.

I have here what I can submit, a colloquy involving Mr. Ulmann who said yes. The Chairman is very conscious of the



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problem. It was not the intention of the conferees. I am in full accord with the gentleman. It is a problem that we need to take care of.

All this would do is list NIOSH as one of the authorized Federal agencies that may have the address of a taxpayer for purposes of notifying that taxpayer as to their exposure to a carcinogenic agent. They do not get access to any aspect of the tax return. It is the address alone.

We passed it, the House is prepared to pass it.

The Chairman. Just to notify you that you might have cancer.

Senator Hansen. For a matter of clarification, your interest now is that the government may have information that would be extremely valuable to its citizens, yet because of certain restrictions in the availability of information there is no way to communicate that knowledge to a typical taxpayer?

Senator Nelson. That is correct. You have a person working in a plant, exposed to vinyl chloride, left that plant, went someplace else ten years ago. We know they have been exposed to vinyl chloride for some period of time. Now they are trying to locate them. They are spending about \$20 per person to locate them. What they want is to be given that name.

Senator Hansen. An industry-sponsored movement?

Senator Nelson. The National Institute of Occupational



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1 Safety and Health wants that access to the address alone.  
 2 Senator Hansen. They are trying to find those people?  
 3 Senator Nelson. So that they can locate the people and  
 4 get information as to whether they do have cancer. If not,  
 5 they will at least be able to inform them they have this  
 6 exposure and probably ought to have a physical examination.  
 7 Senator Hansen. Would that go as far as to tobacco  
 8 smoking? It is a carcinogen..

9 Senator Nelson. I do not think this one is aimed at  
 10 that.

11 Senator Hansen. Where do you draw the line?

12 Senator Nelson. Everybody who smokes knows that he has  
 13 been exposed to that. These people do not know.

14 Senator Hansen. Some of us refuse to admit it.

15 Senator Nelson. They cannot find these people. They are  
 16 having a hard time finding them.

17 Senator Hansen. I see.

18 Senator Nelson. I need to run over --

19 The Chairman. Why do you not offer it on the bill we  
 20 have now? Offer it on the black lung. It seems to me as  
 21 though it is relevant. All we are trying to do is help black  
 22 lung and help those people who have cancer.

23 Senator Hansen. I do not have any objection at all to  
 24 its being put on here, unless it would defeat the black lung  
 25 amendment. Then I would get very concerned.

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1 Senator Nelson. It passed last year.  
 2 Senator Hansen. Do you have any objection?  
 3 Senator Byrd. It seems all right to me.  
 4 Senator Nelson. I would offer it as an amendment. Let  
 5 me say, so there will be full disclosure, we discussed it  
 6 with IRS, they wanted some change in our language and, second-  
 7 hand from my staff, the IRS says they will not oppose it, but  
 8 they are not saying they are for it. We took an IRS amend-  
 9 ment to it.

10 The Chairman. You would include the IRS amendment?  
 11 Senator Nelson. Yes.

12 The Chairman. All in favor, say aye?  
 13 (A chorus of ayes.)

14 The Chairman. Opposed, no?  
 15 (No response)

16 The Chairman. The ayes have it.

17 What else -- this would be at the end of the bill -- now,  
 18 what else is there on the black lung?

19 Mr. Chabot. It is just a matter of pointing out to the  
 20 Committee that this bill is an S. bill, not an H.R. bill. It  
 21 has tax provisions in it, which means after the Senate Floor  
 22 has worked its will on it we could not, as a practical matter,  
 23 a Constitutional matter, send it over to the House, so you  
 24 may want to note that fact in the Committee Report.

25 You should, in any event, be aware of the fact that it.

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1 presumably is going to have to stick around until an  
2 appropriate bill comes in from the House on which these  
3 provisions could be put.

4 The Chairman. What bill do we have that we could add it  
5 on to?

6 Mr. Stern. You have other bills in Committee. I do not  
7 know, whether it would be too practical to separate the tax  
8 provisions of the bill out from the benefit provisions to make  
9 the tax necessary. In any case, I think you are dependent on  
10 the House passing some form of black lung bill.

11 You should keep the tax provisions in the same bill.

12 The Chairman. If they want to call the bill up and pass  
13 it, we ought to have in mind some bill that we could discharge  
14 from the Committee and add that bill to.

15 Mr. Stern. In that case, I would recommend -- you have  
16 a bill that permits duty-free entry of horses until June  
17 30, 1978. If you want to simply report that with that  
18 amendment, put it on the calendar so we could have it available,  
19 you could do that.

20 The Chairman. We do not need to report that bill. What  
21 we can do is just ask consent. If the bill passes, just  
22 ask consent that the Committee be discharged from further  
23 consideration of that bill and then let this bill, that we  
24 simply strike all after the enacting clause and substitute  
25 this bill for it. We can go to conference -- and there would

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have to be a conference on it anyway, I think. When we go to conference we could agree -- or else, you could just add this to the House bill.

We know of no objection to the House bill, do we?

Mr. Stern. No.

The Chairman. If we put the bill on the calendar, I can see everybody who has one of those revenue amendments wanting to put a hold order on this bill and that really starts attracting business.

If we keep the bill in the Committee, when the time comes after the bill passes, just discharge the Committee. If we could agree that that is the approach that we will take, we will discharge our Committee of this bill and then pass it on the other bill.

If we do it that way, we would not have a hold order. They are not likely to put a hold order on a bill that is not out there, you know?

The reason for the hold order against the bill, you have an amendment there but you want to provide some relief for someone else, so everybody has some friend who has tax trouble that he would like to do something about. When we put a bill on the calendar, it starts attracting these hold orders.

It would be well to discharge it when that bill passes.

Meanwhile, we may have some other business.

Senator Byrd. When the black lung bill passes?





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Senator Long. That is what I mean.

Meanwhile, we may report some other revenue bills out, such as the one we have here, after considering it, and you do not know. We might want to put some Committee amendment on those bills.

If there is no objection, then, we will keep that procedure available to us. Then, we will vote on reporting this bill.

I am not saying that this bill is perfect, but within the limits of our jurisdiction, we have done about as best we can for it.

I suggest that we report the bill.

Senator Byrd. I am glad to vote to report the bill. I would like to give it more study when it reaches the Floor.

The Chairman. All in favor of the reporting of the bill, say aye?

(A chorus of ayes)

The Chairman. Opposed, no?

(No response)

The Chairman. Then we will report the bill.

Thank you very much, gentlemen. I think that takes care of today's business.

We will recess, subject to the call of the Chair.

(Thereupon, at 11:05 a.m. the Committee recessed, to reconvene subject to the call of the Chair.)

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