Alaska'' (I.D. 090998A) received on September 17, 1998; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

H.R. 10. A bill to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes (Rept. No. 105–336).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

H.R. 2493. A bill to establish a mechanism by which the Secretary of Agriculture and the Secretary of the Interior can provide for uniform management of livestock grazing on Federal lands.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

(The above nomination was reported with the recommendation that he be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DURBIN (for himself, Ms. SNOWE, Ms. COLLINS, Mr. TORRICELLI, Ms. MIKULSKI, Mr. GRAHAM, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. BINGAMAN, and Mr. INOUYE):

S. 2497. A bill to ban certain abortions; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Ms. MOSELEY-BRAUN):

S. 2498. A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of agricultural cooperatives and to allow declaratory judgment relief for such cooperatives; to the Committee on Finance.

By Mr. GLENN:

S. 2499. A bill to provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ENZI (for himself, Mr. THOMAS, and Mr. BINGAMAN):

S. 2500. A bill to protect the sanctity of contracts and leases entered into by surface patent holders with respect to coalbed methane gas; to the Committee on Energy and Natural Resources.

By Ms. MOSELEY-BRAUN (for herself and Mr. GRASSLEY):

S. 2501. A bill to amend the Internal Revenue Code of 1986 to exempt small issue bonds for agriculture from the State volume cap; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Ms. SNOWE, Ms. COLLINS, Mr. TORRICELLI, Ms. MIKULSKI, Mr. GRAHAM, Ms. LANDRIEU, and Mr. LIEBERMAN):

S. 2497. A bill to ban certain abortions; to the Committee on the Judiciary.

THE LATE-TERM ABORTION LIMITATION ACT OF 1998

Mr. DURBIN. Mr. President, today the Senate is beginning consideration of a very controversial and contentious issue, the veto override of the Partial-Birth Abortion Ban Act.

I will vote to sustain the President's veto of this bill, which I believe is seriously flawed. But to make my position clear and state in positive terms what I believe we should do to address this troubling issue, I am introducing legislation today known as the Late-Term Abortion Limitation Act of 1998.

I am pleased to have a bipartisan group of Senators as original cosponsors of this legislation, including Senators SNOWE, COLLINS, TORRICELLI, MIKULSKI, GRAHAM, LANDRIEU, and LIEBERMAN.

We believe that post-viability abortions should be allowed in only two types of situations—when the life of the mother is in danger or when she faces a medically certified risk of grievous physical injury.

Senators DASCHLE and SNOWE put forward a measure last year that reflected this principle. I support them, and our legislation builds on what they did.

Our bill has one significant difference from the Daschle proposal, an addition that we believe enhances the Daschle amendment. Our legislation would require a second non-treating doctor's certification that the abortion is medically necessary to protect the life of the mother or prevent grievous physical injury. This second certification could be waived only in the case of a medical emergency, and the physician would have to document the nature of the medical emergency.

We believe this approach is one that can be passed in the United States Senate. It is backed by a substantial and bipartisan group of Senators. It is a compromise approach that can bring to a reasonable conclusion the long-running debate over late-term abortion procedures. I urge my colleagues to read the language closely and give it careful consideration as a good faith effort to resolve this troubling issue in a fair and humane manner.

Unlike the Partial Birth Abortion Ban Act, this legislation would actually reduce the number of late-term abortions because, instead of banning only one procedure, the measure would ban all post-viability abortions except when a continuation of the pregnancy risks grievous physical injury to the mother or poses a threat to her life.

At the same time, the legislation holds to the Roe versus Wade standard which makes a clear distinction between abortions occurring before and after viability. Unlike the partial birth abortion ban, our bill preserves this important distinction and is thus more likely to pass court scrutiny. Before viability, a decision to have an abortion must be made by a woman, her doctor, her family, and her conscience. But in the closing weeks of a pregnancy, the court affirms a role for addressing the public concern about late-term abortions and makes it clear that the State can draw the line limiting abortions to the most serious circumstances.

I hope the legislation we are introducing today can help us resolve this debate once and for all, in a manner that is consistent with our laws and the views of most of the American people.

I ask unanimous consent that a summary of the bill and the text of the measure be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2297

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Late Term Abortion Limitation Act of 1998''.

SEC. 2. BAN ON CERTAIN ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

''CHAPTER 74—BAN ON CERTAIN ABORTIONS

''§1531. Prohibition of Post-Viability Abortions.

''(a) IN GENERAL.—It shall be unlawful for a physician to intentionally abort a viable fetus unless the physician prior to performing the abortion—

''(1) certifies in writing that, in the physician's medical judgment based on the particular facts of the case before the physician, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health; and

''(2) an independent physician who will not perform nor be present at the abortion and who was not previously involved in the treatment of the mother certifies in writing that, in his or her medical judgment based on the particular facts of the case, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

''(b) NO CONSPIRACY.—No woman who has had an abortion after fetal viability may be prosecuted under this chapter for conspiring to violate this chapter or for an offense under section 2, 3, 4, or 1512 of title 18.

''(c) MEDICAL EMERGENCY EXCEPTION.—The certification requirements contained in subsection (a) shall not apply when, in the medical judgment of the physician performing the abortion based on the particular facts of the case before the physician, there exists a medical emergency. In such a case, however, after the abortion has been completed the physician who performed the abortion shall certify in writing the specific medical condition which formed the basis for determining that a medical emergency existed.

''§ 1532. Penalties.

''(a) ACTION BY THE ATTORNEY GENERAL.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this chapter in any appropriate United States district court to enforce the provisions of this chapter.

''(b) FIRST OFFENSE.—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter, the court shall notify the appropriate State medical licensing authority in order to effect the suspension of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(b), or shall assess a civil penalty against the respondent in an amount not to exceed $100,000, or both.

''(c) SECOND OFFENSE—Upon a finding by the court that the respondent in an action commenced under subsection (a) has knowingly violated a provision of this chapter and the respondent has been found to have knowingly violated a provision of this chapter on a prior occasion, the court shall notify the appropriate State medical licensing authority in order to effect the revocation of the respondent's medical license in accordance with the regulations and procedures developed by the State under section 1533(b), or shall assess a civil penalty against the respondent in an amount not to exceed $250,000, or both.

''(d) HEARING.—With respect to an action under subsection (a), the appropriate State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine the penalty to be imposed under this section.

''(e) CERTIFICATION REQUIREMENTS.—At the time of the commencement of an action under subsection (a), the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney who has been specifically designated by the Attorney General to commence a civil action under this chapter, shall certify to the court involved that, at least 30 calendar days prior to the filing of such action, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney involved—

''(1) has provided notice of the alleged violation of this chapter, in writing, to the Governor or Chief Executive Officer and Attorney General or Chief Legal Officer of the State or political subdivision involved, as well as to the State medical licensing board or other appropriate State agency; and

''(2) believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

''§ 1533. Regulations.

''(a) FEDERAL REGULATIONS.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this chapter, the Secretary of Health and Human Services shall publish proposed regulations for the filing of certifications by physicians under this chapter.

''(2) REQUIREMENTS.—The regulations under paragraph (1) shall require that a certification filed under this chapter contain—

''(A) a certification by the physician performing the abortion, under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter;

''(B) a description by the physician of the medical indications supporting his or her judgment;

''(C) a certification by an independent physician pursuant to section 1531(a)(2), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, the abortion performed was medically necessary pursuant to this chapter; and

''(D) a certification by the physician performing an abortion under a medical emergency pursuant to section 1531(c), under threat of criminal prosecution under section 1746 of title 28, that, in his or her best medical judgment, a medical emergency existed, and the specific medical condition upon which the physician based his or her decision.

''(3) CONFIDENTIALITY.—The Secretary of Health and Human Services shall promulgate regulations to ensure that the identity of a mother described in section 1531(a)(1) is kept confidential, with respect to a certification filed by a physician under this chapter.

''(b) STATE REGULATIONS.—A State, and the medical licensing authority of the State, shall develop regulations and procedures for the revocation or suspension of the medical license of a physician upon a finding under section 1532 that the physician has violated a provision of this chapter. A State that fails to implement such procedures shall be subject to loss of funding under title XIX of the Social Security Act.

''§ 1534. State Law.

''(a) IN GENERAL.—The requirements of this chapter shall not apply with respect to post-viability abortions in a State if there is a State law in effect in that State that regulates, restricts, or prohibits such abortions to the extent permitted by the Constitution of the United States.

''(b) DEFINITION.—In subsection (a), the term 'State law' means all laws, decisions, rules, or regulations of any State, or any other State action, having the effect of law.

''§ 1535. Definitions.

''In this chapter:

''(1) GRIEVOUS INJURY.—

''(A) IN GENERAL.—The term 'grievous injury' means—

''(i) a severely debilitating disease or impairment specifically caused by the pregnancy; or

''(ii) an inability to provide necessary treatment for a life-threatening condition.

''(B) LIMITATION.—The term 'grievous injury' does not include any condition that is not medically diagnosable or any condition for which termination of the pregnancy is not medically indicated.

''(2) PHYSICIAN.—The term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions, except that any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs an abortion in violation of section 1531 shall be subject to the provisions of this chapter.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

''74. Ban on certain abortions ..... 1531.''.

THE LATE-TERM ABORTION LIMITATION ACT OF 1998—SUMMARY

The Late-Term Abortion Limitation Act of 1998 would ban all post-viability abortions except in cases where both the attending physician and an independent non-treating physician certify in writing that, in their medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. Grievous injury is defined, as in last year's Daschle-Snowe alternative to the partial-birth abortion ban bill, as (1) a severely debilitating disease or impairment specifically caused by the pregnancy of (2) an inability to provide necessary treatment for a life-threatening condition, and is limited to conditions for which termination of the pregnancy is medically indicated. The certification requirements could be waived in a medical emergency, but the physician would subsequently have to certify in writing what specific medical condition formed the basis for determining that a medical emergency existed.

This legislation provides a more effective and constitutional approach to this difficult issue than the partial-birth abortion ban:

This legislation will actually reduce the number of late-term abortions. In contrast, the partial-birth abortion ban will not stop a single abortion at any stage of gestation. The partial-birth abortion ban, by prohibiting only one particular procedure, will merely induce physicians to switch to a different procedure that is not banned. The Late-Term Abortion Limitation Act will stop abortions by any method after a fetus is viable, except when medical necessity indicates otherwise.

This legislation fits clearly within the constitutional parameters set forth by the U.S. Supreme Court for government restriction of abortion. In contrast, the partial-birth abortion ban, by prohibiting certain types of abortions before viability, breaches the court's standard that the government does not have a compelling interest in restricting abortions prior to viability.

This legislation retains the abortion option for mothers facing extraordinary medical conditions such as breast cancer, preeclampsia, uterine rupture, or non-Hodgkin's lymphoma, for which termination of the pregnancy may be recommended by the woman's physician due to the risk of grievous injury to the mother's physical health or life. In contrast, the partial-birth abortion ban provides no such exception to protect the mother from grievous injury to her physical health.

At the same time, by clearly limiting the medical circumstances where post-viability abortions are permitted, this legislation protects fetal life in cases where the mother's health is not at such high risk.

The Late-Term Abortion Limitation Act is similar to the legislation proposed by Senators Daschle, Snowe, and others last year as an alternative to the partial-birth abortion ban bill, with one significant change:

The legislation requires a second doctor to certify the medical need for a post-viability abortion, to ensure that post-viability abortions take place only when continuing the pregnancy would prevent the woman from receiving treatment for a life-threatening condition related to her physical health or would cause a severely debilitating disease or impairment to her physical health.

Enforcement of the legislation is identical to the enforcement mechanism in the Daschle-Snowe alternative. The Justice Department could initiate a civil action against a physician who knowingly violated this law, with penalties of up to $100,000 and/or loss of medical license (up to $250,000 and/or loss of medical license for repeat offenses).

Ms. COLLINS. Mr. President, I am pleased to be joining with my colleagues, Senators DURBIN and SNOWE, in introducing this bill to ban all late-term abortions, including partial birth abortions, that are not necessary to save the mother's life or to protect her from grievous physical harm.

Let me be clear from the outset. I am strongly opposed to all late-term abortions, including partial birth abortions. I agree that they should be banned. However, I believe that an exception must be made for those rare cases when it is necessary to save the life of the mother or to protect her from grievous physical harm. Fortunately, these procedures are extremely rare in my State, where there were just two late-term abortions between 1984 and 1996.

We believe that this debate should not be about one particular method of abortion, but rather about the larger question of under what circumstances should late-term, or post-viability, abortions be legally available. We believe that all late-term abortions—regardless of the procedure used—should be banned, except in those rare cases where the life or the physical health of the mother is at serious risk.

In my view, Congress is ill-equipped to make judgments on specific medical procedures. As the American College of Obstetricians and Gynecologists—which represents over 90 percent of obgyns and which opposes the partial birth abortion ban—has said, ''the intervention of legislative bodies into medical decision-making is inappropriate, ill advised, and dangerous.'' Most politicians have neither the training nor the experience to decide which procedure is most appropriate in a given case. These medically difficult and highly personal decisions should be left for families to make in consultation with their doctors.

The Supreme Court, in Roe v. Wade, has identified ''viability''—the point at which the fetus is capable of sustaining life outside the womb with or without support—as the defining point in determining the constitutionality of restrictions on abortion. While I don't believe that it is appropriate for us to dictate medical practice, I do believe that it is appropriate for Congress to determine the circumstances under which access to late-term abortions—by any procedure—should be restricted.

That is what the legislation we are introducing today would do. Our bill goes beyond the partial birth abortion ban, which simply prohibits a specific medical procedure and will not prevent a single abortion. Let me emphasize that point. The partial birth legislation would not prevent a single late-term abortion. A physician could simply use another, perhaps more dangerous method to end the pregnancy.

By contrast, our bill would prohibit the abortion of any viable fetus, by any method, unless that abortion is necessary to preserve the life of the mother or to prevent ''grievous injury'' to her physical health. We have taken great care to tightly limit the health exception in this bill to ''grievous injury'' to the mother's physical health. It would not allow late-term abortions to be performed simply because the woman is depressed or feeling stressed or has a minor health problem because of the pregnancy.

''Grievous injury'' is narrowly and strictly defined by our bill as either a ''severely debilitating disease or impairment specifically caused by the pregnancy,'' or ''an inability to provide necessary treatment for a life-threatening condition.'' Moreover, ''grievous injury'' does not include any condition that is not medically diagnosable or any condition for which termination of the pregnancy is not medically indicated.

This bill includes an additional safeguard. The initial opinion of the treating physician that the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health must be confirmed by a ''second opinion.'' This second opinion must come from an independent physician who will not be involved in the abortion procedure and who has not been involved in the treatment of the mother. This second physician must also certify—in writing—that, in his or her medical judgment, the continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

What we are talking about are the severe, medically diagnosable threats to a woman's physical health that are sometimes brought on or aggravated by pregnancy.

Let me give you a few examples: primary pulmonary hypertension, which can cause sudden death or intractable congestive heart failure; severe pregnancy-aggravated hypertension with accompanying kidney or liver failure; complications from aggravated diabetes such as amputation or blindness; or an inability to treat aggressive cancers such as leukemia, breast cancer, or non-Hodgkins lymphoma.

These are all obstetric conditions that are cited in the medical literature as possible indications for pregnancy terminations. In these extremely rare cases—where the mother has been certified by two physicians to be at risk of losing her life or suffering grievous physical harm—I believe that we should leave the very difficult decisions about what should be done to the best judgment of the women, families and physicians involved.

Mr. President, the legislation we are introducing today is a fair and compassionate compromise on this extremely difficult issue. It would ensure that all late-term abortions—including partial birth abortions—are strictly limited to those rare and tragic cases where the life or the physical health of the mother is in serious jeopardy, and I urge my colleagues to join me in supporting it. This legislation presents an unusual opportunity for both ''pro-choice'' and ''pro-life'' advocates to work together on a reasonable approach.

I also ask unanimous consent that a recent editorial from the Bangor Daily News endorsing our approach be included in the CONGRESSIONAL RECORD at the conclusion of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Bangor Daily News, Sept. 11, 1998]

ABORTION VOTE

Back when the subject of abortion was debated on moral and religious grounds, opponents could disagree while understanding how each arrived at a position. Now that abortion is a vehicle for fund raising there is no room for understanding because understanding doesn't bring in the bucks or whip up the membership.

With the Senate's vote next week on late-term abortion, the Christian Coalition, according to The Washington Post, has directed at five senators radio advertisements, 300,000 postcards and countless automated telephone calls. Two of the five senators are Maine's Olympia Snowe and Susan Collins. The purpose of this extensive campaign is to harass these senators into dropping their support for a compromise measure that allowed late-term abortions to protect against ''grievous injury'' to the physical health of the mother.

But the vote is more about power than pregnancy—Maine had only two third-term abortions between 1984 and 1996, consistent with other states. If abortions were the primary concern, the coalition could with one magazine ad extolling the effectiveness of condoms do more to reduce unwanted pregnancies than this entire Senate campaign. As a bonus, the condom ad might also help reduce sexually transmitted diseases.

The coalition's main goal is to remain relevant now that its best-known leader, Ralph Reed, has moved on. The group has two themes, abortion and gay rights, and even Mr. Reed says gay rights is a sure loser. That leaves the coalition trying to override a presidential veto of a ban on so-called partial-birth abortions, but its lack of sincerity is evident in its refusal to accept an exemption for the physical health of the mother.

Assuming for a moment that telling doctors what procedures they may use to perform an abortion is constitutionally legal—and the court's 1976 Danforth decision says it isn't—this compromise should be seen as a fair way for opponents to agree. The grievous injury provision is not the large loophole that the coalition claims. It is narrowly defined to cover either a ''severely debilitating disease or impairment specifically caused by the pregnancy'' or an ''inability to provide necessary treatment for a life-threatening condition.'' It does not include any condition that is not medically diagnosable or any condition that can be treated without ending a pregnancy.

The grievous injury exemption would allow treatment for such illnesses as leukemia or non-Hodgkins lymphoma, primary pulmonary hypertension, which can cause sudden death or congestive heart failure, and pregnancy-aggravated hypertension, which can cause kidney or liver failure.

Instead of recognizing the humanity in allowing for abortions under the threat of these illnesses, the coalition continues to demand an end to the partial-birth procedure, with an exemption only for the near-certain death of the mother. Banning a procedure, of course, doesn't reduce the number of abortions; it forces physicians to use riskier procedures.

Sens. Snowe and Collins have supported a fair and compassionate compromise in the extremely difficult issue of abortion. They deserve support from constituents who recognize the coalition's agenda as having little to do with unwanted pregnancies and everything to do with power.

By Mr. GRASSLEY (for himself and Ms. MOSELEY-BRAUN):

S. 2498. A bill to amend the Internal Revenue Code of 1986 to clarify the tax

treatment of agricultural cooperatives and to allow declaratory judgment relief for such cooperatives; to the Committee on Finance.

By Ms. MOSELEY-BRAUN (for herself and Mr. GRASSLEY):

S. 2501. A bill to amend the Internal Revenue Code of 1986 to exempt small issue bonds for agriculture from the State volume cap; to the Committee on Finance.

AGRICULTURAL TAX LEGISLATION

● Mr. GRASSLEY. Mr. President, today we introduce two bills that will help farmers. These bills take another step in insuring the viability of family farming into the next century.

This first bill clarifies the laws regarding both Section 521 and Subchapter T agricultural cooperatives. Recent action by the Internal Revenue Service hinders farmers' attempts to form value-added cooperatives and to use these cooperatives as a source of income and stability. Specifically, the IRS changed its position of allowing cooperatives, in connection with their marketing functions, to manufacture or otherwise change the basic form of their members' products without jeopardizing the cooperatives' status.

Farmers value-added cooperatives were designed to encourage farmers to own the businesses that process their products, and to give them the benefit of the finished product. These cooperatives help create new products that benefit farmers. The IRS is choosing to differentiate between using a machine process and using a biological process to manufacture the finished product. There should be no difference—there isn't for business, there isn't for farmers, so there shouldn't be for the IRS.

The second bill that we are introducing today will take Aggie bonds out from under the private activity bond cap. Aggie bonds are an important tool for first time farmers. Removing them from the existing cap will greatly enhance the opportunities for beginning and less established farmers and ranchers to acquire affordable, low cost credit for agricultural purchases. Most industrial revenue bonds are typically issued for millions of dollars, underwritten, rated and sold to investors. Aggie bonds, which cannot exceed $250,000, are not underwritten, are not rated, and are not sold to investors. Rather, they are sold to local lenders who finance beginning farmers with a lower than normal interest rate. Several states would like to start offering Aggie bonds but cannot because their volume cap is already used for non-agricultural projects. Many other states, including my state of Iowa, cannot meet the demand for Aggie bonds.

These are two bills that will help farmers now, and always. These offer immediate help, and are part of the tax code restructuring that we must enact to make the playing field fair to America's farmers. I want to thank Senator MOSELEY-BRAUN for working with me on these important pieces of legislation.●

● Ms. MOSELEY-BRAUN. Mr. President, I am pleased to introduce two bills today with my distinguished colleague from Iowa, Senator GRASSLEY, that will benefit farmers in rural America.

As my colleagues may be aware, farmer-owned cooperatives play a major role in providing food and fiber to consumers. These cooperatives also provide their farmer-owners with additional market stability and help to strengthen farm income.

Current tax law states that farmers, fruit growers, or ''like associations'' that are organized and operated on a cooperative basis for the purpose of marketing the products of its members or other producers shall be exempt from federal income tax if those cooperatives are developed for the purpose of marketing the products of the members or other producers, and turning back to the members proceeds of the sales, less marketing expenses.

Farmers nationwide are joining together in self-help efforts to develop cooperatives and to develop new uses for the commodities that they grow, but recently the Internal Revenue Service (IRS) ruled that in certain instances, some forms of value-added farmer-owned cooperatives are not tax exempt. The Grassley/Moseley-Braun bill would overturn that IRS ruling and amend the current section of the tax code to explicitly cover these types of cooperatives.

Another concern that farmers have shared with me is the future of agriculture and the ability of their children and other beginning farmers to enter into farming as a way of life. I have worked in the Senate to change federal policies that will lower the obstacles for younger farmers who enter into farming as a profession.

One such program is the ''Aggie Bonds'' program. In the 103rd Congress, I cosponsored the law that granted a permanent tax exemption for these bonds. I also worked to include provisions in the Small Business Tax Relief Act of 1996 to widen eligibility for the bonds, increasing the amount of land a beginning farmer may own to qualify for the loan.

Today my Iowa colleague and I introduce a bill that further improves this successful program by exempting aggie bonds from the volume cap on industrial revenue bonds. Currently, Federal law allows states to issue tax exempt industrial revenue bonds that are earmarked for purchases of farmland, equipment, breeding livestock, as well as farm improvements by new or beginning farmers. The Farm Service Agency (FSA) also has authorized State chartered, non-profit corporations to make guaranteed mortgage and farm operating loans. Unfortunately, the aggie bond program and the FSA guaranteed farm mortgage programs have size limits of $250,000 and $300,000 respectively.

Given the rise in property costs, these limits fail to provide meaningful funds for small farm purchase or often time prevent certain classes of farmers from obtaining credit. In addition, aggie bonds are subject to statewide ''caps'' applicable to both small farmers and established users.

Most industrial revenue bonds are typically issued for million of dollars, underwritten, rated and sold to investors. Aggie bonds, which cannot exceed $250,000, are not underwritten, are not rated, and are not sold to investors; they are sold to local lenders who finance beginning farmers with a lower than normal interest rate. Most of the private-activity bond volume is used by large corporations for manufacturing or for multi-family housing. Aggie bonds are used by beginning farmers and ranchers.

Several states, such as Illinois, has discovered that the volume cap is already used up by non-agricultural projects, and many states cannot meet the demand for Aggie Bonds.

Exempting Aggie Bonds from the volume cap would greatly enhance the opportunities for young or beginning, less established farmers and ranchers to acquire affordable, low cost credit for agricultural purchases such as land, livestock, machinery, and farm improvements. The Moseley-Braun/Grassley bill exempts aggie bonds from the volume cap.

These two bills will help farmers in Illinois, Iowa, and all of rural America. I hope my colleagues will join us in supporting these bills and I urge their swift passage in the United States Senate.●

By Mr. GLENN:

S. 2499. A bill to provide for a transition to market-based rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority, and for other purposes; to the Committee on Energy and Natural Resources.

POWER MARKETING ADMINISTRATIONS REFORM ACT

● Mr. GLENN. Mr. President, today, I introduce the Power Marketing Administration Reform Act, a bill that will require the Power Marketing Administrations, or PMAs, to sell power at market rates. The Tennessee Valley Authority, or TVA, will also be included in the bill's requirements. My bill is a companion to H.R. 3518, introduced by Representatives BOB FRANKS (R–NJ) and MARTY MEEHAN (D–MA) in the House.

PMAs have failed to recover their operating costs for too long. My colleagues in the Senate are well aware of my activities to rectify this discrepancy that has brought about a fiscal shortfall and significant environmental damage. I have been joined by many in this Chamber in requesting reports from the Government Accounting Office, the Congressional Budget Office, and the Inspector General of the U.S. Department of Energy, the federal department that oversees the operation of the PMAs. All of the reports on the

PMAs and the TVA have indicated severe financial problems.

According to the Congressional Budget Office, in a report released in March, 1997, selling PMA electricity at market rates rather than at the currently subsidized rates will raise approximately $200 million per year, money that will be returned to the U.S. Treasury. Later in 1997, CBO concluded that eliminating this costly subsidy would complement steps already taken by Congress to deregulate energy markets and to reduce government interference in market operations.

When the PMAs were established during Franklin Roosevelt's administration, they served a useful and necessary purpose. Jobs were created for a nation that was struggling out of a horrible depression. Areas that could not afford the cost of purchasing power lines and generators for their residents were provided electricity at below market rates. At that time, below market sales were a good idea that allowed many more Americans than could afford electricity to enjoy its benefits. CBO concludes that over the past sixty years, many of the concerns that brought about the federal government's role in supplying power have diminished greatly. Nearly 60% of federal sales go to just four states: Tennessee, Alabama, Washington, and Oregon. In fact, nonfederal dams produced an average of 20% more electricity per unit of capacity than did dams supplying the PMAs.

According to a General Accounting Office report entitled, ''Federal Electricity Activities,'' released in October, 1997, in fiscal 1996, Bonneville, the three other PMAs, and the Rural Utilities Service cost the American taxpayer $2.5 billion. In the four year period from 1992 to 1996, the government's net costs were $8.6 billion. In March, 1998, the GAO released an additional study entitled, ''Federal Power: Options for Selected Power Marketing Administrations' Role in a Changing Electricity Industry.'' Among the conclusions in this report were that for that same four year period from 1992–1996, the federal government incurred a net cost of $1.5 billion from its involvement in the electricity-related activities of Southeastern, Southwestern, and Western. Up to $1.4 billion of nearly $7.2 billion of the federal investment in assets derived from these activities is at some risk of nonrecovery.

As for fairness in lending, the GAO found that the interest paid by the PMAs on their outstanding debt (3.5%) is often substantially below the rate that the U.S. Treasury incurred while providing funding to the PMAs (9%), resulting in a shortfall on interest alone of 5.5%. And rates charged by these PMAs were 40% or more below market rates.

Mr. President, it is important to note that my bill does not close the PMAs or the TVA. Rather, it helps them to transition to a market-based operation whereby the vast majority of consumers who do not benefit from PMA below-cost power sales will no longer be penalized so that a few large power companies can purchase cheap, bulk power. My bill will provide for full cost recovery rates for power sold by the PMAs and the TVA. To accomplish this goal, PMA and TVA rates will be recalculated and resubmitted to the Federal Energy Regulatory Commission (FERC) for approval.

In addition, the bill requires that PMA and TVA transmission facilities are subject to open-access regulation by the FERC, and that regulation will be strengthened by authorizing FERC to revise such rates. Cooperatives and public power entities will be given the right of first refusal of PMA and TVA power at market prices. Revenue accrued from the revisal of these rates will go first to the U.S. Treasury to cover all costs. The residual amount will then be disbursed by formula to the Treasury to mitigate damage to fish and wildlife and other environmental damage attributed to the operation of PMAs and the TVA, and to support renewable electricity generating resources.

Mr. President, these figures speak for themselves. In an era where the Congress has taken great strides toward eliminating the government's involvement in private industry, the PMAs are a white elephant. Sixty years after its inception, public power is less expensive, more accessible, and more widely available than ever before. There is no reason for the government to continue this wasteful subsidy to the fiscal detriment of the American people and the U.S. Treasury. I urge my colleagues to join me and my colleagues, Senators MOYNIHAN and REED of Rhode Island, in supporting this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.●

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2499

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Power Marketing Administration Reform Act of 1998''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the use of fixed allocations of joint multipurpose project costs and the failure to provide for the recovery of actual interest costs and depreciation have resulted in—

(A) substantial failures to recover costs properly recoverable through power rates by the Federal Power Marketing Administrations and the Tennessee Valley Authority; and

(B) the imposition of unreasonable burdens on the taxpaying public;

(2) existing underallocations and underrecovery of costs have led to inefficiencies in the marketing of Federally generated electric power and to environmental damage; and

(3) with the emergence of open access to power transmission and competitive bulk power markets, market prices will provide the lowest reasonable rates consistent with—

(A) sound business principles;

(B) maximum recovery of costs properly allocated to power production; and

(C) encouraging the most widespread use of power marketed by the Federal Power Marketing Administrations and the Tennessee Valley Authority.

(b) PURPOSES.—The purposes of this Act are to provide for—

(1) full cost recovery rates for power sold by the Federal Power Marketing Administrations and the Tennessee Valley Authority; and

(2) a transition to market-based rates for the power.

SEC. 3. SALE OR DISPOSITION OF FEDERAL POWER BY FEDERAL POWER MARKETING ADMINISTRATIONS AND THE TENNESSEE VALLEY AUTHORITY.

(a) ACCOUNTING.—Notwithstanding any other provision of law, as soon as practicable after the date of enactment of this Act, the Secretary of Energy, in consultation with the Federal Energy Regulatory Commission, shall develop and implement procedures to ensure that the Federal Power Marketing Administrations and the Tennessee Valley Authority use the same accounting principles and requirements (including the accounting principles and requirements with respect to the accrual of actual interest costs during construction and pending repayment for any project and recognition of depreciation expenses) as are applied by the Commission to the electric operations of public utilities.

(b) DEVELOPMENT AND SUBMISSION OF RATES TO THE COMMISSION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 1 year after the date of enactment of this Act and periodically thereafter but not less frequently than once every 5 years, each Federal Power Marketing Administration and the Tennessee Valley Authority shall submit to the Federal Energy Regulatory Commission a description of proposed rates for the sale or disposition of Federal power that will ensure the recovery of all costs incurred by the Federal Power Marketing Administration or the Tennessee Valley Authority, respectively, for the generation and marketing of the Federal power.

(2) COSTS TO BE RECOVERED.—The costs to be recovered under paragraph (1)—

(A) shall include all fish and wildlife expenditures required under treaty and legal obligations associated with the construction and operation of the facilities from which the Federal power is generated and sold; and

(B) shall not include any cost of transmitting the Federal power.

(c) COMMISSION REVIEW, APPROVAL, OR MODIFICATION.—

(1) IN GENERAL.—The Federal Energy Regulatory Commission shall review and either approve or modify rates for the sale or disposition of Federal power submitted to the Commission by each Federal Power Marketing Administration and the Tennessee Valley Authority under this section, in a manner that ensures that the rates will recover all costs described in subsection (b)(2).

(2) BASIS FOR REVIEW.—The review by the Commission under paragraph (1) shall be based on the record of proceedings before the Federal Power Marketing Administration or the Tennessee Valley Authority, except that the Commission shall afford all affected persons an opportunity for an additional hearing in accordance with the procedures established for ratemaking by the Commission under the Federal Power Act (16 U.S.C. 791a et seq.).

(d) APPLICATION OF RATES.—

(1) IN GENERAL.—Beginning on the date of approval or modification by the Commission of rates under this section, each Federal

Power Marketing Administration and the Tennessee Valley Authority shall apply the rates, as approved or modified by the Commission, to each existing contract for the sale or disposition of Federal power by the Federal Power Marketing Administration or the Tennessee Valley Authority to the maximum extent permitted by the contract.

(2) APPLICABILITY.—This section shall cease to apply to a Federal Power Marketing Administration or the Tennessee Valley Authority as of the date of termination of all commitments under any contract for the sale or disposition of Federal power that were in existence as of the date of enactment of this Act.

(e) ACCOUNTING PRINCIPLES AND REQUIREMENTS.—In developing or reviewing the rates required by this section, the Federal Power Marketing Administrations, the Tennessee Valley Authority, and the Commission shall rely on the accounting principles and requirements developed under subsection (a).

(f) INTERIM RATES.—Until market pricing for the sale or disposition of Federal power by a Federal Power Marketing Administration or the Tennessee Valley Authority is fully implemented, the full cost recovery rates required by this section shall apply to—

(1) a new contract entered into after the date of enactment of this Act for the sale of power by a Federal Power Marketing Administrator or the Tennessee Valley Authority; and

(2) a renewal after the date of enactment of this Act of an existing contract for the sale of power by a Federal Power Marketing Administration or the Tennessee Valley Authority.

(g) TRANSITION TO MARKET-BASED RATES.—

(1) IN GENERAL.—If the transition to full cost recovery rates would result in rates that exceed market rates, the Secretary of Energy may approve rates for power sold by Federal Power Marketing Administrations at market rates, and the Tennessee Valley Authority may approve rates for power sold by the Tennessee Valley Authority at market rates, if—

(A) operation and maintenance costs are recovered, including all fish and wildlife costs required under existing treaty and legal obligations;

(B) the contribution toward recovery of investment pertaining to power production is maximized; and

(C) purchasers of power under existing contracts consent to the remarketing by the Federal Power Marketing Administration or the Tennessee Valley Authority of the power through competitive bidding not later than 3 years after the approval of the rates.

(2) COMPETITIVE BIDDING.—Competitive bidding shall be used to remarket power that is subject to, but not sold in accordance with, paragraph (1).

(h) MARKET-BASED PRICING.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Energy shall develop and implement procedures to ensure that all power sold by Federal Power Marketing Administrations and the Tennessee Valley Authority is sold at prices that reflect demand and supply conditions within the relevant bulk power supply market.

(2) BID AND AUCTION PROCEDURES.—The Secretary of Energy shall establish by regulation bid and auction procedures to implement market-based pricing for power sold under any power sales contract entered into by a Federal Power Marketing Administration or the Tennessee Valley Authority after the date that is 2 years after the date of enactment of this Act, including power that is under contract but that is declined by the party entitled to purchase the power and remarketed after that date.

(i) USE OF REVENUE COLLECTED THROUGH MARKET-BASED PRICING.—

(1) IN GENERAL.—Revenue collected through market-based pricing shall be disposed of as follows:

(A) REVENUE FOR OPERATIONS, FISH AND WILDLIFE, AND PROJECT COSTS.—Revenue shall be remitted to the Secretary of the Treasury to cover—

(i) all power-related operations and maintenance expenses;

(ii) all fish and wildlife costs required under existing treaty and legal obligations; and

(iii) the project investment cost pertaining to power production.

(B) REMAINING REVENUE.—Revenue that remains after remission to the Secretary of the Treasury under subparagraph (A) shall be disposed of as follows:

(i) FEDERAL BUDGET DEFICIT.—50 percent of the revenue shall be remitted to the Secretary of the Treasury for the purpose of reducing the Federal budget deficit.

(ii) FUND FOR ENVIRONMENTAL MITIGATION AND RESTORATION.—35 percent of the revenue shall be deposited in the fund established under paragraph (2)(A).

(iii) FUND FOR RENEWABLE RESOURCES.—15 percent of the revenue shall be deposited in the fund established under paragraph (3)(A).

(2) FUND FOR ENVIRONMENTAL MITIGATION AND RESTORATION.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the ''Fund for Environmental Mitigation and Restoration'' (referred to in this paragraph as the ''Fund''), consisting of funds allocated under paragraph (1)(B)(ii).

(ii) ADMINISTRATION.—The Fund shall be administered by a Board of Directors consisting of the Secretary of the Interior, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, or their designees.

(B) USE.—Amounts in the Fund shall be available for making expenditures—

(i) to carry out project-specific plans to mitigate damage to, and restore the health of, fish, wildlife, and other environmental resources that is attributable to the construction and operation of the facilities from which power is generated and sold; and

(ii) to cover all costs incurred in establishing and administering the Fund.

(C) PROJECT-SPECIFIC PLANS.—

(i) IN GENERAL.—The Board of Directors of the Fund shall develop a project-specific plan described in subparagraph (B)(i) for each project that is used to generate power marketed by the Federal Power Marketing Administration or the Tennessee Valley Authority.

(ii) USE OF EXISTING DATA, INFORMATION, AND PLANS.—In developing plans under clause (i), the Board, to the maximum extent practicable, shall rely on existing data, information, and mitigation and restoration plans developed by—

(I) the Commissioner of the Bureau of Reclamation;

(II) the Director of the United States Fish and Wildlife Service;

(III) the Administrator of the Environmental Protection Agency; and

(IV) the heads of other Federal, State, and tribal agencies.

(D) MAXIMUM AMOUNT.—

(i) IN GENERAL.—The Fund shall maintain a balance of not more than $200,000,000 in excess of the amount that the Board of Directors of the Fund determines is necessary to cover the costs of project-specific plans required under this paragraph.

(ii) SURPLUS REVENUE FOR DEFICIT REDUCTION.—Revenue that would be deposited in the Fund but for the absence of such project-specific plans shall be used by the Secretary of the Treasury for purposes of reducing the Federal budget deficit.

(3) FUND FOR RENEWABLE RESOURCES.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the ''Fund for Renewable Resources'' (referred to in this paragraph as the ''Fund''), consisting of funds allocated under paragraph (1)(B)(iii).

(ii) ADMINISTRATION.—The Fund shall be administered by the Secretary of Energy.

(B) USE.—Amounts in the Fund shall be available for making expenditures—

(i) to pay the incremental cost (above the expected market cost of power) of nonhydroelectric renewable resources in the region in which power is marketed by a Federal Power Marketing Administration; and

(ii) to cover all costs incurred in establishing and administering the Fund.

(C) ADMINISTRATION.—Amounts in the Fund shall be expended only—

(i) in accordance with a plan developed by the Secretary of Energy that is designed to foster the development of nonhydroelectric renewable resources that show substantial long-term promise but that are currently too expensive to attract private capital sufficient to develop or ascertain their potential; and

(ii) on recipients chosen through competitive bidding.

(D) MAXIMUM AMOUNT.—

(i) IN GENERAL.—The Fund shall maintain a balance of not more than $50,000,000 in excess of the amount that the Secretary of Energy determines is necessary to carry out the plan developed under subparagraph (C)(i).

(ii) SURPLUS REVENUE FOR DEFICIT REDUCTION.—Revenue that would be deposited in the Fund but for the absence of the plan shall be used by the Secretary of the Treasury for purposes of reducing the Federal budget deficit.

(j) PREFERENCE.—

(1) IN GENERAL.—In making allocations or reallocations of power under this section, a Federal Power Marketing Administration and the Tennessee Valley Authority shall provide a preference for public bodies and cooperatives by providing a right of first refusal to purchase the power at market prices.

(2) USE.—

(A) IN GENERAL.—Power purchased under paragraph (1)—

(i) shall be consumed by the preference customer or resold for consumption by the constituent end-users of the preference customer; and

(ii) may not be resold to other persons or entities.

(B) TRANSMISSION ACCESS.—In accordance with regulations of the Federal Energy Regulatory Commission, a preference customer shall have transmission access to power purchased under paragraph (1).

(3) COMPETITIVE BIDDING.—If a public body or cooperative does not purchase power under paragraph (1), the power shall be allocated to the next highest bidder.

(k) REFORMS.—The Secretary of Energy shall require each Federal Power Marketing Administration to implement—

(1) program management reforms that require the Federal Power Marketing Administration to assign personnel and incur expenses only for authorized power marketing, reclamation, and flood control activities and not for ancillary activities (including consulting or operating services for other entities); and

(2) annual reporting requirements that clearly disclose to the public, the activities of the Federal Power Marketing Administration (including the full cost of the power projects and power marketing programs).

(l) CONTRACT RENEWAL.—Effective beginning on the date of enactment of this Act, a Federal Power Marketing Administration shall not enter into or renew any power marketing contract for a term that exceeds 5 years.

(m) RESTRICTIONS.—Except for the Bonneville Power Administration, each Federal Power Marketing Administration shall be subject to the restrictions on the construction of transmission and additional facilities that are established under section 5 of the Act entitled ''An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes'', approved December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 890)).

SEC. 4. TRANSMISSION SERVICE PROVIDED BY FEDERAL POWER MARKETING ADMINISTRATIONS AND TENNESSEE VALLEY AUTHORITY.

(a) IN GENERAL.—Subject to subsection (b), a Federal Power Marketing Administration and the Tennessee Valley Authority shall provide transmission service on an open access basis, and at just and reasonable rates approved or established by the Federal Energy Regulatory Commission under part II of the Federal Power Act (16 U.S.C. 824 et seq.), in the same manner as the service is provided under Commission rules by any public utility subject to the jurisdiction of the Commission under that part.

(b) EXPANSION OF CAPABILITIES OR TRANSMISSIONS.—Subsection (a) does not require a Federal Power Marketing Administration or the Tennessee Valley Authority to expand a transmission or interconnection capability or transmission.

SEC. 5. INTERIM REGULATION OF POWER RATE SCHEDULES OF FEDERAL POWER MARKETING ADMINISTRATIONS.

(a) IN GENERAL.—During the date beginning on the date of enactment of this Act and ending on the date on which market-based pricing is implemented under section 3 (as determined by the Federal Energy Regulatory Commission), the Commission may review and approve, reject, or revise power rate schedules recommended for approval by the Secretary of Energy, and existing rate schedules, for power sales by a Federal Power Marketing Administration.

(b) BASIS FOR APPROVAL.—In evaluating rates under subsection (a), the Federal Energy Regulatory Commission, in accordance with section 3, shall—

(1) base any approval of the rates on the protection of the public interest; and

(2) undertake to protect the interest of the taxpaying public and consumers.

(c) COMMISSION ACTIONS.—As the Federal Energy Regulatory Commission determines is necessary to protect the public interest in accordance with section 3 until a full transition is made to market-based rates for power sold by Federal Power Marketing Administrations, the Federal Energy Regulatory Commission may—

(1) review the factual basis for determinations made by the Secretary of Energy;

(2) revise or modify those findings as appropriate;

(3) revise proposed or effective rate schedules; or

(4) remand the rate schedules to the Secretary of Energy.

(d) REVIEW.—An affected party (including a taxpayer, bidder, preference customer, or affected competitor) may seek a rehearing and judicial review of a final decision of the Federal Energy Regulatory Commission under this section in accordance with section 313 of the Federal Power Act (16 U.S.C. 825*l*).

(e) PROCEDURES.—The Federal Energy Regulatory Commission shall by regulation establish procedures to carry out this section.

SEC. 6. CONFORMING AMENDMENTS.

(a) TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR.—Section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7152(a)(3)) is amended by striking the last sentence.

(b) USE OF FUNDS TO STUDY NONCOST-BASED METHODS OF PRICING HYDROELECTRIC POWER.—Section 505 of the Energy and Water Development Appropriations Act, 1993 (42 U.S.C. 7152 note; 106 Stat. 1343) is repealed.

SEC. 7. APPLICABILITY.

Except as provided in section 3(l), this Act shall take apply to a power sales contract entered into by a Federal Power Marketing Administration or the Tennessee Valley Authority after July 23, 1997.●

By Mr. ENZI (for himself, Mr. THOMAS, and Mr. BINGAMAN):

S. 2500. A bill to protect the sanctity of contracts and leases entered into by surface patent holders with respect to coalbed methane gas; to the Committee on Energy and Natural Resources.

COALBED METHANE PATENT HOLDERS PROTECTION LEGISLATION

Mr. ENZI. Mr. President, I rise today, with my colleagues, Senator CRAIG THOMAS of Wyoming, and Senator JEFF BINGAMAN of New Mexico, to introduce a very important bill for our western States and for others that have a lot of federally-owned coal. We have been working with other members, members of the Energy Committee, and with the Department of Interior to put together a good consensus bill.

On July 20, the 10th Circuit Court of Appeals, in a final en banc decision, ruled that methane gas produced out of coal seams is part of the coal itself, and not actually a gas. That means instead of belonging to the owner of the oil and gas, as it has for the past 80 years, it may now belong to the owner of the coal. In Wyoming, the owner of the oil and gas is often different from the owner of the coal—which in most cases is the Federal Government.

What does that mean? In my home county, the Federal Government owns only about 55% of the oil and gas, but it owns 95% of the coal. That means, in many places where these two resources occur together, there are separate owners. This decision is poised to strip away a majority of the private ownership of gas in Campbell County. It could be an immediate transfer of $250 million over thirty years from private owners to the government—a loss of income and economic activity that will destroy the economy in my home town.

The effects will be widespread because this decision would overturn a decades-old U.S. Government policy. This Interior policy has acted as the basis for thousands of gas contracts across the west. People have been using since 1981 to govern the development of their contracts and leases. Today, the Circuit Court's decision places all of those contracts in legal limbo. That limbo threatens the livelihood of entire regions in the States like Wyoming, Colorado, Utah and New Mexico.

WHO CURRENTLY OWNS THE GAS?

For those of my colleagues who haven't been deeply involved in western public lands energy issues—across the west, oil and gas is often owned separately from the coal. It may also be separate from hardrock minerals, and over time through sale, can also be separate from the surface rights. This system of split mineral estates is the result of many layers of Federal statutes that granted varying levels of patents to homesteaders.

The particular problem before us, arises out of the Coal Land Acts of 1909 and 1910. Those statutes specified that homesteaders could retain surface rights (including the oil and gas) but reserved the coal to the U.S. Government. Now the question about whether methane is a gas, or coal, leads to questions of ownership.

In Wyoming today, gas producers—through lease agreements with federal, state and private owners in Wyoming—produce over a billion cubic feet of methane gas per month. These leases are between the producers and the owners of the gas and many of them have been in effect for as long as twenty years and more. In New Mexico and Colorado, they are producing over 75 billion cubic feet of gas per month under the same system. This Court decision—which would attach the methane to the coal owner or lessee—jeopardizes all of the gas leases that govern these wells—including the federal gas leases.

HOW SERIOUS IS IT?

The effect of this decision will have a profound impact in certain regions. Consider some of these effects:

1. For the farm families who have secured mortgages with their royalties, this invalidation could deprive them of much needed lease income and force them into bankruptcy.

2. For the small community banks who hold those loans, a number of bankruptcies could jeopardize their solvency.

3. For the producing companies operating—or planning to operate—on those leases, this could delay their production—and all the jobs that come with it—for a year or more. So while the judicial system is sorting out the ownership issue, drilling and servicing companies are going to go belly up. Oil exploration has stalled because of low prices, so if they can't drill for cheap gas, there isn't much business.

I received a letter in my office the other day from a small bank in Buffalo, Wyoming. In the letter, they discussed the effects this decision may have on interest owners and various trusts held by their bank. The advisory committee for one particular trust voted to suspend all further royalty payments to the trust beginning September 1. That decision was made based on the tax consequences and on the potential liability of having to repay royalties should any retrospective decisions be made.

Another constituent contacted me to tell me that his multi-million lease agreement—that he had worked on for more than a year—had just fallen apart because this court decision had clouded the title. The investors had been unwilling to go through with the deal.

These stories are just the start of a devastating series of consequences that will arise out of this decision. Each breakdown will have a multiplying effect on unemployment and loss of confidence in western states.

This is a very serious situation, Mr. President, but it is one that can be stabilized.

Today, we are offering a bill that would grandfather the leases that have been negotiated, in good faith, according to the explicit policies of the U.S. Government. The amendment would ensure that existing leases to produce methane—or natural gas out of the coalseam, as some of the older leases read—remain valid and that there is no future assertion of ownership by the Federal Government on these parcels.

The amendment applies only to federally owned coal. It would not have any effect on tribally owned or state-owned coal. We have worked this out with the Chairman of the Indian Affairs Committee, Senator CAMPBELL from Colorado.

Furthermore, we have worked with the coal companies, who have valid concerns about their existing and future leases to mine federal coal. We have made it clear that nothing in this bill should be construed to limit their ability to mine federal coal under valid leases, nor should anything be construed to expand their liabilities to coalbed methane owners covered by the bill.

The timing of the decision means we will be working to move this bill as soon as possible. Next year, we will pursue a more in-depth review of the situation. This body will need to conduct hearings and look at ways to work out problems with future leases and with conflicting resource use issues. These are details that demand very careful consideration.

For now, however, we should take this opportunity to provide some certainty for people with existing agreements. This is a statement of support for the sanctity of those contracts—and a statement of support for the economies in our states.

In closing, I would like to thank the Republican and Democratic members of the Senate who have been so important in helping us to work out this legislation. A special thanks to the Indian Affairs Committee for helping us craft language to accommodate tribal lands and a special thanks to the Department of Interior, who is helping us to protect eighty years of doing business. They have also helped us remove the possibility of devastating private property takings, retroactive liabilities, and mountains of litigation.

Mr. THOMAS. Mr. President, I rise today to strongly support this legislation designed to protect contracts and leases of surface patent holders for coalbed methane. This legislation, which my colleague Senator ENZI and I are jointly introducing along with our House colleague Congresswoman CUBIN, is vitally important to coalbed methane producers and lease holders in Wyoming and will address a problem which arose due to an appellate court decision rendered earlier this summer.

On July 20, 1998, the Tenth Circuit Court of Appeals turned years of precedent and practice on its head by ruling that coalbed methane should be classified as a coal-by-product rather than a form of natural gas. That decision was completely contrary to past interpretation, and will severely impact coaled methane lease holders in Wyoming and throughout the nation. The ruling will also delay completion of leases and drilling, which will negatively impact our state's economy.

The court's decision is particularly troubling for producers because the Office of the Solicitor at the Department of Interior had issued two earlier opinions regarding ownership of coalbed methane in federally-owned coal, which were directly opposite to the appellate court's ruling. Both in 1981 and in 1990, the Solicitor's office issued options which stated that coalbed methane was not part of the federally-reserved coal protected under the 1909 and 1910 Coal Lands Acts. Now, leaseholders and producers, who believed they were acting in good faith and compliance with federal law, are faced with the troubling possibility that their leases may be revoked.

The legislation that we are introducing today is designed to remedy many of the problems caused by the appellate court's decision. This bill would protect current contracts and leases of surface patent holders for coalbed methane gas. The measure does not address future leases or contracts and only deals with folks who are already engaged in the production of coalbed methane gas or who have leased land for drilling and exploration. It is a fair and reasonable proposal and would simply protect people who acted in compliance with the law as it was interpreted by the Department of Interior.

Mr. President, I hope the Senate will take quick action on this measure and approve it as quickly as possible. Coalbed methane production is a growing and vibrant part of Wyoming's economy and we need to take action to ensure that the lives of folks who rely on stable production of coalbed methane are not completely disrupted. Producers acted in good faith and in compliance with the law as they knew it. We should not punish them for actions beyond their control and should work to ensure that the blood and sweat which they invested into their businesses is not swept away by the actions of the court.

ADDITIONAL COSPONSORS

S. 555

At the request of Mr. ALLARD, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 555, a bill to amend the Solid Waste Disposal Act to require that at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund be distributed to States to carry out cooperative agreements for undertaking corrective action and for enforcement of subtitle I of that Act.

S. 712

At the request of Mr. MOYNIHAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 712, a bill to provide for a system to classify information in the interests of national security and a system to declassify such information.

S. 751

At the request of Mr. SHELBY, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 751, a bill to protect and enhance sportsmen's opportunities and conservation of wildlife, and for other purposes.

S. 2049

At the request of Mr. KERREY, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 2049, a bill to provide for payments to children's hospitals that operate graduate medical education programs.

S. 2180

At the request of Mr. LOTT, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2180, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

S. 2208

At the request of Mr. FRIST, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2208, a bill to amend title IX of the Public Health Service Act to revise and extend the Agency for Healthcare Policy and Research.

S. 2341

At the request of Mr. DEWINE, the names of the Senator from New York (Mr. D'AMATO), the Senator from Texas (Mrs. HUTCHISON), and the Senator from Louisiana (Mr. BREAUX) were added as cosponsors of S. 2341, a bill to support enhanced drug interdiction efforts in the major transit countries and support a comprehensive supply eradication and crop substitution program in source countries.

SENATE CONCURRENT RESOLUTION 108

At the request of Mr. DORGAN, the names of the Senator from Kentucky (Mr. FORD) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of Senate Concurrent Resolution 108, a concurrent resolution recognizing the 50th anniversary of the