

new energy development while protecting our environment. This bill does not do that. This bill deserves to be defeated. This bill is a bad bill.

I strongly urge my colleagues to vote against this poorly crafted legislation.

## EXHIBIT 1

## TAXPAYERS FOR COMMON SENSE

Type or industry	Authorized spending
Oil and Gas (including MTBE/LUST) .....	\$12.971 billion (including \$414 million scoring of royalty provisions).
Coal .....	\$5.434 billion.
Nuclear .....	\$5.735 billion.
Utilities .....	\$1.355 billion.
Renewables (including R&D) .....	\$4.164 billion.
Energy Efficiency (including R&D) .....	\$4.931 billion.
Auto Efficiency and fuels (including Ethanol) .....	\$1.698 billion.
LIHEAP and Weatherization Assistance .....	\$11.425 billion.
Science Research and Development .....	\$21.850 billion.
Freedom CAR and Hydrogen Research .....	\$2.149 billion.
Miscellaneous .....	\$764 million.
Total Authorization .....	\$72.476 billion.

## BREAKDOWN OF COST ESTIMATES

## Oil and Gas

Title III—\$949 million (direct and royalty exemptions).

Title IX Research and Development—Fossil Fuel \$1.997 billion.

Title XIV Miscellaneous, Subtitle B Coastal Programs—\$5 billion.

Title XV Ethanol—MTBE and other provisions—\$5.025 billion.

= \$12.971 billion.

## Coal

Title IV Coal—\$3.925 billion.

Title IX Research and Development—Fossil fuels \$1.509 billion (specifically allocated to coal).

= \$5.434 billion.

## Nuclear

Title VI Nuclear Matters—\$1.186 billion.

HEALTHY FORESTS RESTORATION  
ACT OF 2003

Mr. FRIST. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (H.R. 1904), to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House disagree to the amendments of the Senate to the bill (H.R. 1904) entitled "An Act to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered*, That the following Members be the managers of the conference on the part of the House:

From the Committee on Agriculture, for consideration of the House bill and the Senate amendments, and modifications committed to conference: Mr. Goodlatte, Mr. Boehner, Mr. Jenkins, Mr. Gutmacht, Mr. Hayes, Mr. Stenholm, Mr. Peterson of Minnesota, and Mr. Dooley of California.

From the Committee on Resources, for consideration of the House bill and the Senate amendments, and modifications committed to conference: Mr. Pombo, Mr. McInnis, Mr. Walden of Oregon, Mr. Renzi, Mr. George Miller of California, and Mr. Inslee.

From the Committee on the Judiciary, for consideration of sections 106 and 107 of the House bill, and sections 105, 106, 1115, and 1116 of the Senate amendment and modifications committed to conference: Mr. Sensenbrenner, Mr. Smith of Texas, and Mr. Conyers.

Mr. FRIST. Mr. President, I ask unanimous consent the Senate insist on its amendments and agree to the request of the House on a conference of the disagreeing votes of the two Houses thereon, and the Chair be authorized to appoint conferees on behalf of the Senate with a ratio of 4 to 3.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Presiding Officer (Mr. SMITH) appointed Mr. COCHRAN, Mr. McCONNELL, Mr. CRAPO, Mr. DOMENICI, Mr. HARKIN, Mr. LEAHY and Mr. DASCHLE conferees on the part of the Senate.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the leader. It, indeed, is good news that this bill is coming over. It is my understanding that we have had successful negotiations. I am very hopeful there will be a bill before us shortly.

I yield the floor.

ENERGY POLICY ACT OF 2003—  
CONFERENCE REPORT—Continued

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I see no other Senators seeking recognition so I will speak for a few moments about one aspect of this bill.

First, I thank my colleague from California for her statement. She has been extremely involved in these issues from the beginning as a member of the Energy Committee. She has taken a leadership role on many aspects of the legislation in trying to see that the provisions we came up with were good for her State and good for the country.

Let me try to talk about one part of the bill. There are 16 titles to the legislation. It does go on for 11 or 12 hundred pages. I want to talk about one of those 16 titles; that is, title XII, which relates to electricity generation and transmission and distribution.

That is a very important part of the bill and one that is complicated and difficult for us to understand but one

we need to focus on because of the extreme importance it has to our economy. In my view, some of the biggest changes in law that are contained in the bill are located in the electricity title. I would also argue that the biggest retreats we are making from consumer protections are perhaps in this section as well.

During the last few years, there have been three very notable publicized developments or events in the electricity industry that have come to our attention as a nation. Not in chronological order, but first, at least in what is on the front page today and what is most immediately in mind when we think about electricity, is the blackout we experienced in the eastern part of the United States and some of the Midwest that shut down nearly a third of our Nation; the problems of how to have a reliable system for transmitting electricity and ensuring that if there is a failure somewhere, it does not cascade to the 18 States that were affected by this blackout, for example. So reliability is a serious issue, and we were made very aware of that. The President's phrase was that this was a wake-up call. I would suggest that this was a wake-up call we have not heeded adequately in the bill. I will go into why I believe that.

A second issue, of course, is what happened in California and the west coast, Oregon and Washington in particular, a couple of years ago when they had the market meltdown there and prices spiraled out of control and people saw their utility bills go up very substantially. Unfortunately, those bills have remained very high. It has had a significant impact on the economy of that part of our country. Some of that, of course, was due to manipulation of those markets, ineffective market rules. That is another area of concern that clearly should be addressed in this legislation.

The third area of concern that I cite is the financial collapse of many utilities, due in large part to the investments they have made in markets that are not central to the business of producing and selling electricity. That financial collapse has become a serious problem for many in our country as well.

This bill, in my opinion, fails to adequately address each of these problems, whether it is a liability or protection of the consumer. In the conference report before us, it blocks implementation of market rules that could prevent market manipulation. There, I am thinking about the provisions in the bill that delay FERC's ability to act not only to issue a standard market design rule, but to issue other orders of general applicability within the scope of that standard market.

It also addresses only one form of market manipulation—round-trip trading. I will get into more of a description about that, but there are other types of market manipulation we should be prohibiting in this bill. It

fails to do so, and it repeals the Public Utility Holding Company Act, which was passed back in the 1930s, without providing the necessary level of protection for consumers, by strengthening the Federal Energy Regulatory Commission's authority to oversee mergers and acquisitions of other entities. It makes the likelihood of blackouts greater by stalling the Federal Energy Regulatory Commission's attempts to create regional transmission entities through the delay of this standard market design, or any other order of general applicability within the scope of that rule, it discourages the construction of needed transmission, and it discourages regional transmission organization formation by imposing an unwise pricing policy called participant funding. I will try to explain the effect of the language related to participant funding and why that has become such a central part of the concern about the bill.

First, let me talk a little about the effects the bill would have on reliability; that is, the blackout problem. The United States-Canada Power System Outage Task Force yesterday released its interim report. The report dealt with the causes of the August 14 blackout both in the United States and Canada. Secretary Abraham had a press conference. I saw him last night on Jim Lehrer's show explaining it again. He has been very aggressive in trying to explain what this report includes.

The report contains no recommendations at this point. It is the first of several reports. It is an interim report. It is primarily technical in nature. It tries to establish a timeline for the events that led up to the blackout and then during the blackout. The report tells the story of a day when the power system was not unusually overloaded, but on which a series of events that you could expect to be controllable led to an outage that cascaded through 18 States in the United States and a number of Canadian provinces. It shut down power to tens of millions of customers, paralyzed our major cities—New York, Cleveland, Detroit. Some areas were blacked out for as long as 3 days, and the economic cost of this was enormous, as we would expect it to be.

I could go into some detail about what the report found, but I am sure everybody can read that in their morning paper. The report doesn't draw many conclusions or make many recommendations. In my reading of it, it is clear that the lack of communication, the lack of coordination of response, the lack of consistency of rules and equipment were major causes of what occurred. If anything is clear, it is that the major transmission system that we depended upon is a large regional machine that is not bound by political borders but is only bound by physics and by commerce. What happens in one part of the country has far-reaching effects on areas that are very far from the initial occurrence. That

fact leads to the inescapable conclusion that the control and management of that transmission system needs to be on a regional basis if it is going to respond to events that happen across these regions.

This event cascaded across two countries, 18 States, 4 transmission regions, 4 reliability councils, and it did all of that in 7 minutes. The FERC, which is the Federal agency that is authorized to oversee this enormously complex part of our economy, has been trying to encourage voluntary regional control and management of the transmission system for nearly 6 years now, since the issuance of order No. 888 in 1998. If the Midwest ISO—independent system operator—is the result of the voluntary process that has been going on over this period—and it is—then it is clear that voluntary process has not worked as it should.

The Midwest ISO is the best that could be negotiated in the voluntary program for this region. It still has 23 different control areas, inadequate communication, inadequate coordination to respond to a series of events such as those that occurred during a 7-minute period on August 14. The FERC has more recently tried to take some stronger steps to be sure that the regional transmission organizations, such as the Midwest ISO, are up to the task of ensuring the reliability of the system. The standard market and design rule that was proposed by the FERC proposed that we have mandatory regional transmission organizations; that is, that FERC could require utilities to join these regional transmission organizations. This bill stops that effort in its tracks. This bill doesn't have any suggestions as to what should be done to accomplish regional transmission control, except further encouragement of these utilities to do it on a voluntary basis. But it stops the effort that is underway today to require utilities to take these steps.

I think the report gives one more strong piece of evidence that the electricity title, as proposed, is unwise and inadequate. The participant funding provisions—let me talk about those because that is an abstruse but important part of this legislation. It is one about which there is substantial controversy. When we wrote the Energy bill in the last Congress, there was substantial controversy about it in the development of this conference report. It is an issue that we need to try to do right.

In my view, provisions in the bill related to participant funding will also have a negative impact on reliability. Let me explain how I conclude that.

This provision in the bill would require that the Commission, FERC, approve participant funding for the expansion of transmission by a regional transmission organization, or by any utility. Now, what participant funding means is that the participant in the market who wants the transmission constructed, or the expansion of trans-

mission constructed, has to pay the full freight for getting it done. The Commission may not authorize the recovery of costs on a rolled-in basis, or it may not rule that the costs should be shared among those who will benefit from the upgrade in transmission, or the expansion of transmission. Unless the native load ratepayers have stated they require the transmission, they are not to be charged for it. This amendment takes the mantle of consumer protection by supposedly protecting retail ratepayers from bearing the costs of transmission system expansions that are built in order to ship power to a far distant region of the country. In reality, there are very few transmission system expansions that are for the benefit only of one user.

In a properly planned system, expansions that take place are ones that support the entire load in the region, including the need to export power from the region where that exists. This provision has three problems.

First, it would cause customers to have to pay for costs they did not cause and for benefits they are not receiving.

Second, it would deprive local customers of the rights to the lines that are built in their area.

Third, it is not always clear or true that only one participant is creating the need for new transmission and benefiting from that transmission.

The restriction on allocating costs to Native load ratepayers sounds good at first blush. The effect, however, is to shift the cost to other ratepayers for facilities that the Native load ratepayers in question are able to use and, in many cases, are benefiting from without having to pay.

One simple example, to try to bring this home to people, is each of us has a couple of filling stations we go to, to fill up our vehicles. If we were asked, Do you need another filling station in your part of the city, most of us would say: No, we don't; we found a way to do this. But if one is built that is convenient for our use, we will use it; we will benefit from it.

The question is, Does everyone hold back and say, I will not suggest the need for expansion of a transmission facility because I am going to be stuck with the whole bill; I will wait until someone else suggests the need and then, of course, I can get the benefit without having to pay my share?

This is supposed to be aimed at generators who want to sell into the competitive market. The real victims, in my view, are the consumers who buy electricity from municipal or cooperative utilities or from utilities other than the ones that are required to pay under this participant funding language.

The likely effect of this policy is that needed transmission would not get built. If customers who need transmission expansion have to pay for the full cost of the expansion, those who need the transmission expansion may

not be able to finance either the purchase or the sale they are contemplating because it becomes prohibitively expensive.

The transmission either doesn't get built or, if it does, it is at a cost that gives the incumbent utility a competitive advantage.

The second effect is the utilities would be encouraged not to join regional transmission organizations or, if they are already members of regional transmission organizations, to leave those, and they are perfectly free to do so under the legislation. This is not my conclusion. This is the conclusion of many experts who have written to us in opposition to this participant funding language.

If the utilities gain this kind of competitive advantage and get their transmission built at no cost to themselves, why should they join a regional transmission organization and talk to others about the need to cooperate and share costs?

This proposal on participant funding is anticompetitive and it is antireliability, in my view. If transmission construction is needed to relieve bottlenecks to prevent blackouts, this provision discourages that.

Under current policy, which the Federal Energy Regulatory Commission issued in 1995, new transmission is paid for by those who benefit from the transmission. If there is a single entity or single group of ratepayers who benefit, then they are the ones who pay. If the system as a whole benefits, then everyone shares in the cost. Often, there is a combination of the two and there is a sharing of the cost. The single beneficiary pays for part of the cost; the rest is rolled into the rates for all of those who use the system.

This provision that is in the bill assumes there is always a single beneficiary rather than there is a benefit to many, as is the case in most circumstances. The provision requires something FERC already has the authority to do. As I said, it can allocate the total cost to one participant. But we should not be legislating the way FERC has to deal with these issues. They should be able to deal with them on a case-by-case basis. The provision prevents them from doing that.

We have letters in opposition to this participation funding language from a great many people. I will cite a few: Public service commissions of Michigan, Minnesota, Wisconsin, Indiana, Pennsylvania, and many other States; utilities in California, Indiana, Ohio, Maryland, Pennsylvania, Delaware, West Virginia, New Jersey, Oregon, Utah, Arizona, Colorado, and many other areas of the country. We have many organizations that have come out in opposition to this provision—from APPA, NRECA, Elcon—Electric Consumers Resource Council, the large industrial customers group including General Motors, Dow Chemical, Air Products, steel companies, aluminum companies—Louisiana, Energy Users

Group, the American Chemical Council, the American Forest and Paper Association, American Iron and Steel Institute, Council of Industrial Boiler Owners, Portland Cement Association, Electric Power Supply Association, Consumers for Fair Competition National Grid, American Transmission Company, International Transmission Company, Electric Power Supply Association, many individual municipal and cooperative utilities, and many others.

Congress, in my view, should not be meddling in this area. It is too complex. It is too dependent upon the facts of individual cases for us to try to be writing legislation directing how FERC allocates cost. We should not legislate what they do in this area. In my view, that is counterproductive.

The bill also contains a delay in the issuance of the standard market design rulemaking which I mentioned before. The delay is until January of 2007. That is a much longer delay than I think is wise. That is over 3 years from now. Clearly, in my view, the Federal Energy Regulatory Commission may well have circumstances to which they need to respond. They may well identify problems for which they need to issue rules of general applicability in that period, and we should not be tying their hands.

The bill would prohibit under its current language "rule or general order of applicability on matters within the scope of the standard market design rule."

The truth is, the standard market design rule covers everything but the kitchen sink. So if you are saying you cannot issue rules of general applicability on matters that are within the scope of that rule, you are basically saying you are blocked from issuing orders for the next 3 years.

What kind of actions could this prevent? It could prevent the Commission from doing its job in many respects. FERC currently has a rule in process on interconnections to the transmission grid. No matter what that rule said, the Federal Energy Regulatory Commission would be prohibited from issuing it.

Other matters that are dealt with in the rule that FERC would be prevented from dealing with in a generic manner are such things as market oversight, market mitigation, transmission pricing, scope of the regional transmission organizations, the adequacy of rules for transactions across regional transmission organization boundaries, and, in short, just about anything the Commission does about transmission or markets, because this standard market design rule, which we are blocking the implementation of, touches on all of those items. All of those subjects are within the scope of that rule, and we are legislating a prohibition not only against the rule but against any rule of general applicability within the scope of standard marketing.

I also believe some of the orders FERC issued in the western market

crisis would be defined as orders of general applicability and would have been prohibited had this language been on the books at the time FERC was trying to deal with that crisis.

If another crisis occurs in the next 2 or 3 years, would we not want FERC to bring order to the market to deal with the crisis? Hopefully, we will not wind up legislating a prohibition on their doing that.

I offered amendments to try to correct this language on the Senate floor. They failed. I offered another amendment when we had our one meeting of the conference on Monday of this week.

That was agreed to by a majority of Senate conferees but was rejected by the House. Then, of course, the Senate conferees receded to that. So I think this is a serious problem that undermines our efforts as a nation to ensure reliability of the system.

Let me go on to this issue of the crisis in western markets, and any possible future market crises that we may face. It is surprising to me how soon we can forget. Just over a year ago, maybe 2 years ago now, we were in the middle of a daily diet of newspaper stories and headlines about the excesses of Enron and other power marketers and their manipulation of California and other western markets. Now it seems as though those shocking stories, that public outcry for Government to do something about that, is all gone, and we are on to other matters.

We have outlined many times before, and many of my colleagues in their statements have outlined, a parade of horrible schemes, deceitful schemes, that were put in place to defraud utilities and to ultimately defraud consumers. The names are well known to all of us: Get Shorty, DeathStar, Ricochet, Black Widow, wash trades. This conference report prohibits wash trades or roundtrip trades, and that is good. I favor that prohibition.

By doing so, the bill acknowledges that the Federal Power Act should protect consumers against fraudulent and deceptive practices, but we only mention one such practice: Roundtrip trading, these wash trades. That is a circumstance where two participants in the market sell to each other the same amount of electricity at the same price in order to make it appear they have more volume of transactions than they really have; there is more going on. This also creates a sales volume for both the sellers. This can be used to pad the reports of stockholders and analysts and make the company look as if it is a better place to invest. This practice should be prohibited.

The other practices involve creating artificial congestion on transmission lines so that one can claim to have relieved the congestion in order to collect a congestion rent. There were a number of colorfully named practices that were of this nature. Those clearly should be prohibited as well.

Some would argue that we do not need to prohibit those; they are prohibited elsewhere. I do not believe that.

When FERC commissioners came before the committee last year, they told us these practices were not prohibited, that there was not much they could do to deal with them. When other Senators seemed not to be concerned about giving this authority, I could not really understand that point of view. Clearly, there can always be other prosecutions for fraud, general fraud and all, but FERC, the agency with responsibility for overseeing this sector of our industry, should have the authority to impose penalties and prohibit these practices. We need to give regulators who are charged with controlling these markets the tools they need to do the job that needs to be done.

Senator CANTWELL from Washington offered, and the Senate approved by a vote of 57 to 39, an amendment that bans all forms of manipulation. Unfortunately, the conference report does not contain that language now, language which was strongly supported in the Senate.

The other problem I mentioned when I started my comments, that I want to say a few more words about, is the problem of the financial meltdowns that we saw as a result of unwise investments by utilities in nonutility ventures and the risk that brings to ratepayers.

The conference report repeals the Public Utility Holding Company Act. I have supported repealing the Public Utility Holding Company Act, and I will explain why. But this conference report repeals that act without providing adequate protection for consumers to replace the necessary protections that were in that act. I have always taken the position that we should repeal the Public Utility Holding Company Act because it is no longer a useful device, but at the same time we should add authority to the Federal Energy Regulatory Commission to review mergers and to review dispositions of property by utilities so we can be sure consumers and ratepayers are protected.

The conference report purports to contain such strengthening of authority, but I would argue that, in fact, it weakens the authority of FERC to review mergers.

There are three problem areas that I see with this language. One is, the jurisdiction over mergers; second, the failure to guard against cross-subsidies, which I think is very important and which was in the bill we passed through the Senate earlier; and third, the language which shifts the burden from the company to the Government if a merger that is occurring is going to be stopped. It automatically occurs if the Government does not act to keep it from occurring under this language, and I think that is bad public policy.

FERC's merger authority is essential in this industry, which has been based on a system of local and regional monopolies but which is moving toward depending almost entirely on a competitive wholesale market for electricity generation.

The industry is highly concentrated. Consolidation of generation and distribution of transmission can prevent the development of a competitive market. One of the key failures in the bill, as I see it, is that the bill does not make the generation of energy or power a subject that is under the jurisdiction of the Federal Energy Regulatory Commission. Without authority over this generation of power, FERC would have to stand by and watch while this industry or parts of it reconcentrate. A single company could acquire every generator in the United States and the Federal Energy Regulatory Commission would have no authority under this act to deal with that problem. Or a single company could acquire every generator in a particular region and the Federal Energy Regulatory Commission would be unable to deal with it. This is surely incompatible with the idea that we want to develop competitive markets.

Even when the transaction is only the sale of a facility, there are serious issues at stake. Many of the utilities that are in the headlines lately are there because they are facing deep financial problems that have come as a result of the utilities spinning off their generation capacity, their powerplants, to affiliates which then are in the unregulated electricity market. Companies such as Xcel and Allegheny are experiencing extreme financial distress because of the activities of their generation and marketing affiliates.

A second failure of the proposal is that it does not require FERC to create real protections against cross-subsidy and encumbrance of assets in the new merged company. In the bill that we passed in the Senate, we had protections against cross-subsidy. We said the Federal Energy Regulatory Commission must determine that if someone is going to buy something that is not part of their utility business, they are not going to be cross-subsidizing some kind of nonutility activity.

Now, that is an essential protection for ratepayers. Otherwise, the ratepayers find their electricity rates going up because the company is losing money in some unrelated business. Clearly, we should protect consumers against that.

The provisions we had in the Senate bill, the one we sent to conference, required that the transaction do no harm either to competition, consumers, or the capacity of regulators to regulate, and it required that the Federal Energy Regulatory Commission determine that there would not be a cross-subsidy to an affiliate company and there would not be an encumbrance of the assets of the utility for the benefit of some affiliate. That is a very important provision which, unfortunately, has been dropped from the bill.

In the past, all generation was owned by utility companies. Clearly, that was under the jurisdiction of the Federal Energy Regulatory Commission. If a utility merged with another utility,

the merger was under the jurisdiction of the Federal Energy Regulatory Commission under the Federal Power Act.

But we are in a new world now, and generation can be separated from the utility company, either sold to a stand-alone generation company or spun off to an affiliate of a holding company that owns the utility, and such sales or spinoffs would not be under their jurisdiction either under the Federal Power Act, since the generation facilities are not under the jurisdiction of FERC, or of course under PUHCA, since we are going to repeal PUHCA, the Public Utility Holding Company Act. So mergers of stand-alone generation companies would not be something FERC could look at.

A third key weakness of the proposal is that it requires FERC to act on a merger within a certain timeframe. It says that within 180 days, FERC needs to act. If FERC determines that is not enough time, it can extend that for another 180 days. But if it does not rule against the merger at the end of the second 180 days, then the merger is approved. That is putting the burden on the wrong end, in my view. I favor requiring FERC to issue an order approving the merger, as is current law. This is a major weakening of current law we are being presented with here.

These are only some of the problems in the electricity title. I have also expressed concerns about the provisions that give the Commodity Futures Trading Commission a role in monitoring markets that cut the Federal Energy Regulatory Commission and States out of such activities; also, over a provision that raises the bar for the Federal Energy Regulatory Commission review on whether contracts are resulting in rates that are just and reasonable. I know others are going to address those problems in their comments.

We have tried, at every opportunity during the long course of this legislation, to correct these problems. We tried to offer amendments that would strengthen the Federal Energy Regulatory Commission's merger authority, amendments to ban all forms of market manipulation, amendments to clarify FERC's authority and to strike participant funding language. We have not succeeded in making those changes. As a consequence, we have a bill that in my view, I regret to conclude but I do conclude, weakens consumer protections and reliability protections with regard to electricity.

There are others here seeking the floor, wishing to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I would like to take some time on this bill. I think we should perhaps divide the time up a little bit here.

Mr. JEFFORDS. Mr. President, if I may? I ask unanimous consent that I be allowed to follow the Senator from Wyoming.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I think we need to take a little time to talk about the purpose of this bill. All we have heard, frankly, is criticism. All we have heard is people being negative about the things that are there. The fact is, what we need in this Congress, and in this country, is a policy. We had a policy last year, you will recall, that had almost all the things about which the Senator from New Mexico talked. It did not pass. We do not have an energy policy with all those things he insists upon getting in there.

We hear from the Senator from California about the problems that happened there. We need to go back and recollect some of the reasons they happened in California. That was because the State didn't allow for the development of energy, it didn't bring any transmission to get it into California, and they had some price controls on the retail but not on the wholesale.

We need to go back and focus a little bit on what our real opportunity and obligation is here, and that is to have an energy policy, a policy that deals with conservation, that deals with alternative sources of energy, that deals with research, so we can continue to use the energy we have now, but which also focuses on domestic production.

We can talk all we want about where we are going to be in the future, and I hope we are with more alternatives and more renewables, but the fact is we will not have those for several years. The immediate need is to make sure we do not become even more dependent on imported oil and gas from places such as the Middle East and Iraq.

I want to take a minute and talk about some of the things that are very positive here because there are very positive aspects to this energy policy, keeping in mind it is an energy policy, keeping in mind, also, that most of us would like to recognize the differences between the regions in the country.

The idea of having FERC control all the details of operations doesn't work. It is not acceptable. That is why it has changed this year, so we can put emphasis on regional organizations so States can concentrate on having things work the way they work in one region that don't work in another region.

That is one of the reasons that standard market design was not acceptable to most people. It has been modified in this bill so it is not laid on the country originally. There are certainly opportunities for FERC to exercise their responsibilities, as they should, but after the States have had an opportunity to work as States and then to work as regions. This is the direction we are seeking to go.

Let me go back just a moment to some of the things we seldom hear people talking about in the Chamber about which, it seems to me, we should be talking. One is energy efficiency. We require a 20 percent reduction in Fed-

eral building energy use by 2013. There is an effort to do something about it in the conservation area. The bill authorizes \$3.4 billion for low-income housing, to be able to assist that housing in being more energy efficient. Our demand for energy—the production of coal, for example, in the last 5 years has doubled our energy. We are continuing to increase our demand, yet we are becoming more restrictive on our production.

We have to balance these things. That is what is done here, is to seek to get more energy efficiency. We seek to establish new energy efficiency standards for commercial and consumer uses of products, such as stoves and refrigerators and those kinds of things. We need to do that.

We also emphasize renewables. The talk here is we don't give enough attention to renewables. As a matter of fact, we do. There are incentive programs authorizing \$300 million for solar programs with the goal of installing 20,000 solar rooftop systems in Federal buildings.

It authorizes over a half billion dollars for biomass projects. These are things that have potential but have not been moved. This is designed to provide incentives so those things can move forward. It authorizes \$100 million in increased hydropower production to increase efficiency of dams.

So we have goals of increasing renewables by 75 percent over just a few years.

Clean coal technology—coal is our largest resource of fossil fuel. It now produces nearly 60 percent of the electricity in this country. It ought to be used as opposed to gas, for example, because we are going to have more of that and gas is more flexible for other uses. But what we want to do is perfect and increase and make better the generation facilities so we can have clean air, so we can protect the environment at the same time that we use this fuel.

The Senator from New Mexico was talking about transmission. Certainly you are going to have to have more of that. You have to start where the fuel is and go to the marketplace. That takes transmission. That takes movement of that kind. So we need to prepare for that, and that is what regional transmission organizations are for, so you can move interstate as you move in regions.

The States can agree on what we do there.

We talk about vehicles and fuels. Advanced vehicle programs: \$200 million for that; and clean schoolbus programs. We are putting a great deal of money into the development of hydrogen for use in automobiles and elsewhere.

This idea that all we are doing is giving credits for production of coal, oil, and gas is not true. That just isn't the case. There are lots of other things in here, as a matter of fact.

We continue to increase funding for the Department of Transportation to work on improving CAFE standards so

we will get better mileage out of the cars. I mentioned hydrogen. It is one of the real opportunities.

As I said, this is a broad policy. It follows what the administration began several years ago to have a policy for the future of energy production for this country. We need to deal with it in a broad way. This bill does.

I understand the people who seem to be concerned about it pick out those little things, and that is all they talk about. But we need to take a look at the broad bill and what it does. One of them, of course, is it gives some incentives for increasing production. That is what we need to do if we are going to continue to have the lights on and continue to drive our cars in the years to come.

We have to have production. We have ways to do that. I happen to come from a production State. We can produce more. At the same time, we can protect the environment.

These are issues that we talk about here in terms of transporting. For instance, we can produce more natural gas in Wyoming, and we can have a pipeline to get it to the marketplace. We are in the process of doing that. This helps considerably. The same thing is true with electric transmission.

There are a great many details which we could go into here. A lot of people have talked about the cost. There is a cost.

Let me tell you very briefly, from a conservation standpoint, that there are tax credits for energy efficiency. That is a pretty good thing to be doing—tax credits for producing electricity from certain renewables. I believe that is the direction we want to move—and fuel-efficient vehicles. Some of these tax credits are going to create more conservation.

We have talked about reliability in relation to the California situation.

There are some incentives for accelerating depreciation; and natural gas-gathering lines so we continue to produce.

These are a great many things of that kind.

Production by marginal wells is one of the areas that needs to be visited. A lot of older wells only produce a few barrels a day. There has to be some incentive to continue to do that. But it is a very important production aspect so we are not totally reliable on imports.

I see others on the floor who are going to be more positive than we have heard for a while. So I will slow down here. But I do suggest that we take a look at our demand for energy and take a look at the growth of demand for energy. Look around in your own family, in your own business, and in your own place where you are sitting right now. How much increased demand do we have for energy? Then take a little look at where we are going to be in 10 or 15 years from now. How are we going to deal with that? That is really what policy is about.

Take a little look at this bill and you will find we are talking about conservation, renewables, and domestic production so we can meet the needs on which all of us would agree.

I yield the floor.

Mr. CRAIG. Mr. President, will the Senator yield for a unanimous consent request?

Mr. THOMAS. Yes.

Mr. CRAIG. Mr. President, I understand Senator JEFFORDS will follow the Senator from Wyoming.

The PRESIDING OFFICER. The Senator is correct.

Mr. CRAIG. The chairman of the full committee has just come to the floor. Senator CORNYN is on the floor ready to speak. Senator JEFFORDS has such time as he will consume. I was going to offer a unanimous consent to allow Senator CORNYN to speak, to be followed by Senator DOMENICI. Is there any objection to that?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CRAIG. I thank the Chair.

Mr. THOMAS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, on Monday, I addressed the Senate to share my concerns about the environmental impact of the Energy conference report. These provisions are a direct reflection of the manner in which this bill was developed and the flawed conference process used to produce it.

Nearly 100 sections of this bill are in the jurisdiction of the Environment and Public Works Committee. We were not consulted on any of these provisions—not on any of them.

In some cases, such as on the issue of nuclear security, the Environment and Public Works Committee reported legislation on a bipartisan basis. The Senate could have taken up the reported bill and passed it.

Instead, they stuck the provisions of the original introduced version of this bill in this report. Now my committee will likely have to go back and clean up this language if the bill becomes law. This could have been avoided, if the conferees had spoken to my committee in the first place.

I am deeply concerned that the conference report before us does not represent the kind of forward-looking, balanced energy policy that our Nation needs. As I mentioned earlier this week, it does not go far enough in reducing our reliance on imported oil. Further, the bill fails to provide appropriate and adequate remedies to prevent a recurrence of the electricity blackout the Northeast experienced this summer or the crisis that the West experienced 3 years ago.

The Energy legislation fails to address other important issues such as a renewable portfolio standard or climate change.

The bill contains waivers of environmental laws, and it provides for un-

justified subsidies and porkbarrel programs. But, worst of all, this bill seriously harms our environment.

On November 7, 2003, I wrote all Members of the Senate listing seven of what I believe to be the most troubling environmental provisions of this conference report. The Environment and Public Works Committee has jurisdiction over all of these items. Six of the seven items outlined in my letter are now in the bill. The bill has not one but two provisions extending compliance deadlines for Federal ozone pollution standards.

I also mentioned in my letter that I was concerned the bill would delay our new Federal mercury emission standards for utilities. It doesn't do that. Instead, it authorizes \$1.5 billion in compliance assistance grants for the utilities. Instead, the bill proposes to pay up to 50 percent of these compliance costs. This is poor policy.

I would like to review the status of some of the other provisions I described in my November 7 letter in more detail.

First, I would like to let colleagues know that the renewable fuels title in the conference report differs significantly from the language reported by the Environment and Public Works Committee in the 107th Congress. The provisions that my committee reported were ones contained in the energy legislation that the Senate passed this year and last year.

This conference report will shield companies that make, use, or market toxic gasoline additive MTBE from Federal and State product liability lawsuits.

Let me repeat that. It will shield companies that make, use, or market the toxic gasoline additive MTBE from Federal and State product liability lawsuits.

MTBE has contaminated ground water in every State of this Nation. This provision was not included in the Senate-passed bill. This provision shifts an estimated \$29 billion in clean-up costs from oil and chemical companies to State and local American taxpayers.

The General Accounting Office estimates that there are at least 150,000 MTBE-contaminated sites nationwide.

Vermont has 851 of those sites. Public and private drinking water systems in my State have been polluted by MTBE. If the water right here in the Capitol building was contaminated with MTBE, we would ban this toxin today.

Even though we know MTBE is environmentally harmful, the conference report dramatically extends the time that this product can be added to our gasoline before we pull it off the market. In fact, it may be extended forever.

Besides the MTBE problem, the renewable fuels provisions in this conference report are deeply flawed.

The Senate's renewable fuels title was a carefully drafted package which

balanced regional interests. Now, it is unbalanced in so many ways.

For instance, the Senate put positive environmental provisions into our renewable fuels package. One provision allowed Northeastern States to require reformulated gasoline statewide.

We also provided the Environmental Protection Agency with the authority to better regulate fuel additives to prevent future MTBE-like situations.

We provided States with authority to reduce the emissions from fuels if too much ethanol was being used. These are all gone.

Although I support renewable fuels and ethanol, this package has changed so dramatically that it is harmful to the air and water. I cannot support using the fuels provisions of the Clean Air Act to damage air quality.

A second item from my letter is the treatment of ozone pollution standards in the conference report.

The conferees have agreed to include an extraneous new provision amending the ozone nonattainment designation process in Title I of the Clean Air Act.

This is the part of the act that officially tells the public how dirty or clean the air is. It tells the public whether their area meets the health-based ozone standards and it determines what must be done to help clean up the air in that area and for its downwind areas.

This is an entirely new provision, it was not considered by either the Senate or the House of Representatives.

This provision, inserted in the secret conference, would allow polluted areas off the hook for controlling ozone pollution for years at a time. It would extend the deadline for compliance with the ozone standard almost indefinitely for many areas.

It would also reach back in time and declare some cities with serious air quality problems as "clean." This whole provision is a direct attack on the Clean Air Act and bad for public health.

As a result, people downwind will suffer. The air of the communities downwind of these "extended compliance" or "reclassified" areas will get dirtier. There will be more asthma and more respiratory problems.

This provision is not the answer to transported pollution. The answer is for this administration to get cracking on protecting air quality.

Changing cities' ozone compliance deadlines under the Clean Air Act does not increase our Nation's alternative energy supplies.

This provision is not an energy policy measure. It does not offer an energy-related solution to compliance with ozone pollution standards, and does not belong in this bill.

The changes put in here by a Congressman from Texas are also unfair to States and cities that have already achieved compliance with the national ozone standards. These States and cities have worked hard and invested resources in controlling their pollution.



All their work will have been for naught.

There are other cities that have been "bumped up" or classified as having more serious ozone problems. EPA has already asked them to undertake more stringent ozone control efforts.

These stronger measures are already required and being implemented in numerous cities throughout the Nation including: Chicago, Milwaukee, Baltimore, Philadelphia, New York, Wilmington, Trenton, Los Angeles, and Sacramento.

Mr. President, in addition to this general assault on public health, the conferees have included one other little gem. EPA is prohibited from imposing any requirements of the Clean Air Act on an area of Southwest Michigan for 2 years.

Obviously, this provision was also not contained in either the Senate or House bills. Nor is it good public health policy.

Not only is the Clean Air Act substantially amended in this bill, but the Clean Water Act is as well. The conferees have included language similar to a provision in the House-passed bill that exempts oil and gas exploration and production activities from the Clean Water Act stormwater program.

The Clean Water Act requires permits for stormwater discharges associated with industrial activity. The conference report exempts oil and gas construction sites from stormwater pollution control requirements.

The scope of the provision is extremely broad. Stormwater runoff typically contains pollutants such as oil and grease, chemicals, nutrients, metals, bacteria, and particulates.

According to EPA estimates, this change would exempt at least 30,000 small oil and gas sites from clean water requirements. That is a terrible rollback of current law.

Another troubling section of this bill is the leaking underground storage tank provisions. This issue is also in the Environment and Public Works Committee jurisdiction.

This is another case where my committee unanimously passed a bill that is stronger than the provisions in this conference report.

The conference report's inspection provisions are so lax that a tank last inspected in 1999 may not be reinspected until 2009. The bill my committee passed, and that I supported, would require inspections of all tanks every 2 years.

While the underground tank program needs reform, the conference report takes a step backward. It allows leaking tanks to remain undetected for years. And, in many cases, it allows the polluter off the hook for cleaning up his own mess.

Let's review what we are debating today: An energy bill. Actually, it is an energy producers' bill; an energy polluters' bill; an energy profiteers' bill.

The three Ps: Producers, polluters, profiteers.

I would like to focus briefly on the polluters.

A senior member of the conference committee reported that, yes, this bill will not reduce our reliance on polluting sources of energy. But it will secure our energy independence.

I agree with the first statement, that with this bill our Nation becomes more addicted to energy sources that pollute. In fact, I would say that this energy bill equals pollution.

Four words and a numeric symbol say it all here on my chart.

Energy bill equals pollution.

This bill pollutes our surface and groundwater by exempting oil and gas development from provisions of the Clean Water Act.

This bill pollutes our drinking water by allowing MTBE, a toxic fuel additive, to seep into our public and private drinking water systems.

This bill pollutes our land by allowing unlimited development of energy installations on public lands, including parks, wildlife refuges, and sensitive areas.

And this bill pollutes our air in so many different ways; primarily by extending pollution compliance deadlines and continuing to avoid serious progress in cleaning up our air.

Pollution, that is what we are voting on in this legislation.

A vote for this bill is a vote for greater pollution.

This is wrong. The American people do not want energy security at the expense of the environment. The word "conservation" and the word "conservative" are closely related. I am an independent Senator, but I consider myself to be a careful legislator.

I seek to be conservative. I try not to support legislation that exploits our natural resources and pollutes our environment. This bill abandons that approach. It is an aggressive, overreaching measure. I oppose this bill, and all other Senators should as well.

Mr. President, one last thing I should note for interested Members is that this Barton ozone provision is not the same as the former Clinton "bump-up" policy. That policy was a case-by-case basis and it applied only to the outgoing 1-hour ozone standard.

Also, the areas receiving the benefit of not being "bumped-up" to a higher nonattainment status under the Clinton policy had to demonstrate that their emissions did not cause problems downwind. That protection appears nowhere in Barton.

This Barton provision completely disrupts the Clean Air Act's designation process and appears to do it indefinitely.

I hope the Congressman from Texas is willing to pay the hospital and doctor bills of all the children whose health he and his Congress will damage if this bad bill becomes law. Every person who votes for cloture and for this bill should also be held responsible.

I ask unanimous consent to have printed in the RECORD a one-page ex-

planation of how the Barton provision is different from the former Clinton policy.

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

**BARTON'S OZONE EXTENSION PROVISION IS FAR DIFFERENT THAN 1994 CLINTON "BUMP-UP" POLICY**

The 1994 policy explicitly states that the policy should apply only where "transport from an area with a later attainment date makes it practically impossible to attain the standard by its own attainment date."

The 1994 policy says that in this situation where it is "impossible" to meet clean air standards due to transport, the attainment date may be extended, but the new attainment date must be "as soon as practicable based on the maximum acceleration practicable for emissions reductions in the downwind area and in the upwind area."

Barton's provision (Section 1443 of H.R. 6) is not limited to situations where transport makes attainment of clean air "impossible." It applies wherever there is a "significant contribution" due to transport.

What does "significant contribution" mean? It is undefined in Barton's provision, but typically significant means "able to be detected or measured." That is a much, much less restrictive standard than the approach under the Clinton administration's 1994 policy.

And unlike the 1994 policy which discusses "maximum acceleration practicable for emissions reductions" in upwind areas, section 1443 does nothing to address upwind sources of air pollution.

Another big difference between the Clinton administration policy and Section 1443 is that Section 1443 is not limited to the one-hour ozone standard. Section 1443 also applies to the eight-hour ozone standard.

In 1998, when EPA revised their transport policy, they knew it would be short-lived. EPA had promulgated a new eight-hour standard in 1997. By applying this policy to the eight-hour ozone standard, Section 1443 will likely have adverse effects on air quality for years and years to come.

EPA has done no analysis regarding the public health impacts of expanding this policy from the one-hour standard to the eight-hour standard.

However, Abt Associates, a leading air pollution consulting firm, found that delaying action meet the 8-hour ozone standard for even one year would result in: Over 387,400 asthma attacks; almost 4,900 hospitalizations due to respiratory distress; and over 573,300 missed school days.

Rep. Barton has contended that this provision would just give EPA the discretion to grant a deadline extension if appropriate and that it would not require a deadline extension. However, the language is mandatory. If section 1443 is enacted, then it creates a new section 181(d)(2) of the Clean Air Act which says EPA "shall extend the attainment date" for downwind areas.

**The PRESIDING OFFICER.** The Senator from Texas.

**Mr. CORNYN.** Mr. President, I want to speak for a few minutes about the Energy bill conference report that is before this body, and specifically address some of the criticisms that have been made against a clean fuel additive that was mandated by Congress under the Clean Air Act, and which was specifically certified for use by the Environmental Protection Agency.

But, first, let me just speak more generally about the need for a national

energy policy in this country. We are a country that likes to consume a lot of energy—whether it is gasoline, natural gas, coal—because it improves our quality of life and because it is key to growth in our economy and our prosperity, which, in turn, creates jobs so people can provide for their families.

At the same time, we are a country that loves and cherishes our environment, whether it is clean water or clean air. We know that by consuming energy we need to also take necessary steps to protect our air and our water and our environment at the same time. We do not want to be forced to choose one or the other. We want, and I believe we can have, both. We can have the energy we need in order to maintain our quality of life and our prosperity and to fuel our economy, and we can also have that energy supply produced and consumed in a way that protects the environment against unreasonable damage.

The reason I support this Energy bill is not because I believe it is perfect. I do not believe there is such a bill, unless the person talking happens to be the author of that bill. That is probably the only bill any of us would agree was perfect, the one that we were able to write by ourselves. But, of course, that is not the way it happens. That is not the way the Founding Fathers conceived of legislation passing.

So what we have is a bill that has some strengths and some weaknesses. But, on the whole, I support this bill because I believe, for the first time in at least 10 years, it means America has the hope for a national energy policy that not only serves our economic interests but serves our national security interests as well.

About 60 percent of the fuel we consume in this country is imported. Over the years, as we have consumed more and more energy, we have also become more and more dependent on imports from other parts of the world. We know one of those locations in the world is the Middle East, which is the subject, of course, of daily news reports. We know how troubled it is. We know how volatile that area of the world is. It means our energy supply is in jeopardy. Thank goodness we have been able to secure a steady supply of fuel, but it is at risk—as much at risk as the next headline, the next news flash, where we learn that some terrorist activity or some disruption of our energy supply is caused by other governments and other people beyond our control.

So I think what we need to do, and what this Energy bill does, is encourage innovation and increase productivity here in America so we are less dependent on imported energy. I think that is a good thing.

What we have right now is a schizophrenic energy policy in this country, one that squanders our strength in terms of our natural resources. It discourages innovation, and it leaves consumers too vulnerable.

There are specifically some interests that relate to my State of Texas in this

bill that I want to talk about, but this is a bill that is not just good for Texas, this is a bill that is good for the entire Nation. It moves us one step forward, and it is one that I believe is in the best interests of the American people.

There has been some criticism of the provisions of this bill as they relate to a chemical called MTBE. The technical term is methyl tertiary-butyl ether.

Now, people may wonder why we are talking about MTBEs, and why it is so important. Well, the truth is, this was mandated, the use of reformulated gasoline, in the Clean Air Act about 20 years ago because what Congress recognized was that unless we could find ways to burn gasoline in a cleaner, more environmentally friendly way, then we were going to have dirtier air.

So Congress mandated the use of reformulated gasoline. American enterprise, as it does so well, innovated, created this product, which has then been used over the last 20 years and has enabled literally millions of people with lung disease, asthma, and the elderly to breathe easier. In other words, this oxygenate, as it is called, this chemical compound, has improved the public health in this country over the last 20 years. We are a better and healthier Nation for it.

As a result of this Federal mandate that reformulated gasoline be used, and that something be innovated and created to allow gasoline to burn cleaner so we may breathe easier, people in my State and around the country began to produce MTBE. And you do not do that overnight. It takes a lot of infrastructure. It takes a lot of investment to produce this particular product.

Indeed, 70 percent of MTBE is produced in the State of Texas and, not coincidentally, it creates a lot of jobs in our State. It is used in parts of the United States which are among the most polluted because we universally recognize that the use of reformulated gasoline and this particular oxygenate is important to reducing pollution and improving the public health.

Well, the problem is—that this Energy bill seeks to identify—in some places we have seen that people who store MTBE in storage tanks have not kept those tanks in good repair and they have leaked this oxygenate into the surrounding environment.

But rather than address their ire and their concern—a concern which I share—at those who maintain leaking tanks, we have people focusing on this chemical compound—which has not been shown to be harmful to public health but which, indeed, has improved the quality of the air we breathe over these last 20 years—people who want to opportunistically claim that this chemical is somehow dangerous, when, in fact, the fault lies with those who do not maintain the tank in which this chemical is stored.

We realize—and common sense would tell us—that whether it is gasoline or whatever the product is, if it is in a leaky tank, once it gets out of that

tank into the surrounding environment, it can cause some harm. Common sense tells us that. But rather than focus on the leaky tanks and the people who have negligently allowed those tanks to leak, we have people who want to aim their crosshairs at the people who produce MTBE, which has improved public health and air quality.

What this bill simply does is provide a safe harbor provision for those who have produced this product, which has improved the public health, and says: We are not going to stab you in the back for doing what the Federal Government asked you to do in the first place.

In other words, the Federal Government said: Please invest your money, Mr. Businessman. Please create this infrastructure to produce this reformulated gas additive that allows our air to be cleaner.

We are not going to let that happen and then years later, when perhaps memories dim and when someone has another idea, to say: Yes, we have you. Now you are going to be liable for money damages because you have done what Congress and the EPA asked you to do. We don't care about the benefit to the public health by producing clean air because now all we are concerned about is getting the people who have, perhaps, the deep pockets.

What we are discussing, in terms of the safe harbor, is a provision that ensures fairness, that preserves the trust that is so important to guaranteeing that we in this country have the benefits of the innovation that the free enterprise system provides and that improves all of our lives.

I hope we are not going to say to those who place their trust in Uncle Sam, when Uncle Sam says, please, Mr. Businessman, innovate and create a product that is going to improve public health, we are not going to allow that to be turned into a liability. There are some who want it to turn into a liability. In fundamental fairness, as well as our collective interest in the innovation that comes in the free enterprise system, when people step up and produce a product from which we all benefit, we should not let that innovation and we should not let that commitment and that trust suffer as a result of this legislation.

I congratulate Chairman DOMENICI and the conference committee for standing strong in the interest of fairness. It is true that over the next 15 years, MTBE will be phased out. There will be other products that will step in to provide cleaner burning gasoline, those that are based on ethanol. But, frankly, unless the safe harbor provision stays in this bill, if I were someone who was going to produce an ethanol-based gasoline additive to produce a cleaner burning fuel, I would be very skeptical about investing the money, about developing a product that will clean our air, because I would worry that just as those who are targeting MTBE, we would be back here 10 or 15



years from now, saying: We caught you. And what are you guilty of? You are guilty of trusting Uncle Sam and Congress. Now we are going to let entrepreneurial lawyers and others make claims regarding the very product that you designed in order to meet the needs of the American people. They are going to sue you for it and try to take everything you have and more.

I don't think that would be fair. I don't think that would be right. Frankly, I wanted to come out here and talk a little bit about how we got to this place because I think anybody who understands the complete story would understand that while this bill phases out MTBE use over the next 15 years, it also, at the same time, preserves the trust that is so important to getting investment in innovative products that make the public health better.

Manufacturers will be extremely reluctant to invest in other additives without some confidence that the Federal Government will not allow those investments to become the basis of future liability.

In short, the bill Chairman DOMENICI and the conference committee have crafted ensures that clean alternative fuels will not be regarded as unreasonably dangerous simply because they comply with Federal mandates. It is important to say, though, that if someone is negligent, whether it is maintaining a leaky tank that contains MTBE or any other product, and it causes harm, they are not protected by the language in this bill in any way. There is no defense or immunity from a suit for negligent conduct.

I have heard some say that MTBE is a threat to public health. As I said, MTBE on the whole has benefited public health. The truth is, it is one of the most widely studied chemicals in commerce, including the pharmaceutical industry. The overwhelming majority of scientific evaluations to date have not identified a single health-related risk from the intended use of MTBE in gasoline. Numerous government and world-renowned independent health organizations to date have found no compelling reason to classify MTBE as even a possible cause of harm to human beings. Because MTBE manufacturers have complied with the requirements of the federally mandated program, MTBE should receive the equivalent legal treatment as ethanol for the reasons I have mentioned: for reasons of fairness and sound energy and consumer policy, and to encourage the kind of investment that ultimately will improve and maintain the public health.

The facts that demonstrate the need for a comprehensive energy policy that this bill represents are overwhelming. Gas prices are at \$1.50 and above in most areas of the country. Natural gas prices at the burner tip are more than \$9 per 1,000 cubic feet. This summer, as we will recall, 20 percent of the Nation faced a total blackout which lasted more than 8 hours. If now is not the

time to pass comprehensive energy legislation, I ask my colleagues: When is? If now is not the time to pass comprehensive energy legislation where America can again have a coherent and comprehensive energy policy that protects our economy and our national security, when will we pass such a bill and embrace such a policy? We should do so without any hesitation and without any further delay.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I was going to go next, but I note the attendance of the distinguished Senator from Louisiana. He would like to speak, and I will yield to him.

Let me make one or two observations regarding the speech just delivered. First, I thank the Senator from Texas for the reasonableness, the rationality of his discussion. He would not believe, the people who have listened to the debate over the last couple of days would not believe the facts as you have described them, which are the facts, with reference to MTBE. This bill does not say if somebody misuses MTBE, negligently spills it, if they have tanks that leak, if they are not careful to keep it where it is supposed to be, it doesn't say those kinds of actions are rendered nonactionable in tort liability.

The safe harbor is very narrow. It says the producer of the product, which has been determined by the Government and to date determined by scientists to be totally safe and very effective, it says those who made the product are not liable for the mere fact of making it and selling it. They are not liable. If it causes harm because of other actions with reference to it, then the hold harmless does not apply. That is what the Senator has been telling us today; plus, he has enlightened us that, even as we speak today, contrary to the elaborate statements regarding people who have been damaged and hurt, the scientists in the Government still say, as a product, it is safe; as a product, it is tremendously effective; and as a product, the Government isn't even considering doing anything about it. They are not out there saying we want to stop it. I have not heard that from the EPA or anyone else—I think because they would have no evidence—that there is anything wrong with the product.

I say to everybody in this country who wants ethanol, ethanol may prove, as an additive, in 15 years to cause some damage. Are we going to go back 15 years and say to the farmers who grew the crops that went into ethanol: You are collectively, as the farmers of America, liable for producing the corn that produced ethanol that produced a problem 15 years later? I doubt it, because I don't think anybody would be down here saying we want to stick all these hundreds of thousands of farmers. But right now we are saying: Have at it, trial lawyers, we hope you can

get after these guys because somebody got hurt. Sue the companies that produced it. People are saying: After all, they are rich companies.

That is not the American judicial system. Liability is not based on whether you have a successful company. As a matter of fact, one of the reasons some people are upset about this safe harbor is that they think the ones with money are the ones that are going to be in this safe harbor; namely, those that produced a product. They don't think there is going to be enough money for them out there in the marketplace where other things have gone wrong. They don't want to have to look for people who had leaky tanks and sue them and their insurance companies. They want to leave that to somebody else, right? They want to go after one of these companies—I don't know which one—and a number of them are in Texas. People will say: There is that old Texas again.

Well, Texas has about 13 companies that produce various products related to this whole area, not just this. Some of them produce this product. If I were the Senator from Texas, I would be right here doing what he is doing. The Senator is not opposed to those companies, right, or embarrassed by them? He is saying: Good luck. He is not embarrassed that they are making money. I assume they pay a salary to people in his State. I assume these towns like them. They are not doing anything to these towns. There is no pollution in the towns where it is being produced.

Those who would kill this bill over this issue have said to the farmers of the United States who want to use their crops to produce ethanol—if you vote this bill down based on this MTBE issue, you are saying to the farmers in your States—there are 12 or 15 of them—that have lots of corn and soybeans: We are taking the trial lawyers over you. You are saying: We have a choice to make and tomorrow morning we will make it, and we will choose the trial lawyers; we want to help them and forget about the farmers. That is the issue, as I see it. This will not end because we are going to go into MTBE today in a little more detail.

I yield to the Senator from Louisiana.

(Mr. GRAHAM from South Carolina assumed the chair.)

Mr. BREAUX. Mr. President, I thank the chairman for the work he has done on this legislation. It has been difficult and time-consuming, and it has occupied a great deal of his time. It seems to me that everything the Energy bill does in terms of traditional oil and gas exploration and development, and what it does in geothermal, encouraging wind power and alternate fuels, has sort of become secondary to the question of MTBE.

I guess Americans who are watching this debate where we are talking about an Energy bill might say the whole thing will rise or fall on what Congress does with MTBE. They would say:

What are you talking about? Energy security, energy efficiency, and lessening our dependence upon foreign imports; that is all part of this legislation. It does a good job in that area. Could it do more? Of course. But it does a good, solid job in working with the issues of electricity and traditional oil and gas development and alternative fuels.

So the question now comes down, for many on my side of the aisle, to what Congress is doing with MTBE. I thought I would try, in a limited way and in a limited amount of time, to explain what I think the issue is.

The legislation establishes for MTBE—which is a fuel additive, to make fuel burn cleaner, like ethanol—the same standards for liability for one who produces it and misuses it as it does for ethanol. What does it mean? The legislation simply says you cannot sue a manufacturer of this fuel additive because it is a defective product if it is made according to the standards to which the Government told them to make it. Congress mandated that people produce MTBE to be a fuel additive so that gasoline would burn cleaner. You can add ethanol or you can add MTBE, and the results are that you have a cleaner product.

Some in this country say: Well, if MTBE gets into the drinking water, the ground water, we ought to be able to sue the manufacturers because they have produced a defective product—even though they have nothing to do with the injuries or the damage that occurred.

What I mean by that is this. Here is an example. Suppose somebody goes down to the local Exxon station and they buy 100 gallons of gasoline, and then that person takes the 100 gallons of gasoline and dumps it into the drinking water system of their hometown. Should someone be able to sue Exxon because they have made a product that this person dumped into the river system or the drinking water system? Of course not. They would be laughed out of court. If the Exxon service station took the 100 gallons of their gasoline and dumped it into the river system, then Exxon, the seller and manufacturer of that product, would be negligent and would be responsible, and you could sue them.

But there are numerous lawsuits brought against the manufacturers of MTBE, not because they did anything wrong with the product they make; the product is made to be put into gasoline to make it burn cleaner. It is made according to the standards set up and required by the Federal Government.

So the legislation says: Wait a minute, you cannot sue the manufacturer for doing what Congress told them to do in making a product that, if used in a correct manner, is very efficient, effective, and helps clean up the environment.

Some say: No, we want to sue them because it is a defective product. The product is only defective if someone

misuses it. Then they ought to be able to be sued. They should be responsible.

Somebody gave me the analogy of a company that makes baseball bats. If somebody buys a baseball bat and takes it home and beats up his wife or his children, or the wife beats up her husband, then someone should not be able to sue the manufacturer of the baseball bat. Of course not.

The bat, if used for its intended purpose to play the game of baseball, is not a defective product. That is the purpose for which it was manufactured. If someone uses it to cause harm, they should be responsible, not the manufacturer of the bat, not the manufacturer of the product.

If MTBE is used as it is supposed to be used and made according to the standards Congress told it to be made by, it is not a defective product; it is a very valuable product. The legislation simply says if the product is used according to how it should be used, you can't sue the manufacturer because someone else misuses it.

The important thing is that it does not deny an injured person redress or the opportunity to sue if damage is done. The proposed language in the chairman's bill makes it abundantly clear that any claims of negligence or spills or drinking water contamination can go forward in the judicial process. That is part of the chairman's legislation. The only claim that is restricted is suing someone who makes a product according to the formula they are supposed to make it; they cannot be sued for making something that we told them to make in the first place. Not only is that common sense, it is good judicial sense. That is what the bill says.

I read the legislation. I said: What is everybody talking about? Because it can't possibly be true. Guess what. It is not. The lawsuits that are still available to proceed against misuse of these areas are substantial. It specifically maintains claims for environmental remediation costs. You can still sue for drinking water contamination. You can still sue for negligence, for spills, or other reasonably foreseeable events. You can still sue for public or private nuisance. You can still sue for trespass. You can still sue for breach of warranty. You can still sue for breach of contract. And you can still sue for any other liability, other than a liability based on the claim that you made a bad product and, therefore, you ought to be liable for damages. I think that is something no reasonable person would say is needed or necessary.

I was reading the language. You can talk about papers and this group sent out this piece of paper and that group sent out this piece of paper, and we get all this material about "vote against this" and "vote for it." Every now and then it becomes important, I say to the chairman, to actually read the legislation. You cannot put a spin on the words of the legislation. Legislation is not a political document from the

Democratic Policy Committee nor a political document from the Republican Policy Committee. It is the language on which we are going to be voting.

The language says very clearly that "nothing in this subsection"—in the bill—"shall be construed to affect the liability of any person for environmental remediation costs, for drinking water contamination, for negligence, for spills, or other reasonably foreseeable events, public or private nuisance, or trespass, or breach of warranty, or breach of contract, or any other liability other than the liability based on the fact that it is a defective product."

MTBE is not a defective product. If you misuse it, it can cause problems. If you drink it, it could kill you. That is not its intended purpose. If you drink gasoline, it will kill you. That is not its intended purpose. Its intended purpose is to run engines for the economy of this country.

I am well satisfied that we have crafted a section on MTBE liability that is reasonable; it makes legal sense, and it just makes common sense. There may be other reasons not to be for the Energy bill, but it should not be on this particular issue which has been misconstrued by those who say they have concern.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I struck an agreement with a couple of Senators who have been waiting to speak. Senator NICKLES would like to follow me. I ask unanimous consent that he follow me. Secondly, the Senator from California, who was just here a bit ago, asked that she proceed next, and I ask unanimous consent she proceed next.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Let me see what this means. Are we doing this under a particular time?

Mr. DOMENICI. No, we are not.

Mr. LEAHY. The Senator from Vermont would like to speak on two different issues: the energy issue and wants his experiences here in Washington at the time of President Kennedy's assassination. I want to get some idea of time.

Mr. DOMENICI. The Senator can speak after the Senator from California. That is fine. She is right here.

Mr. LEAHY. Mr. President, Senator DOMENICI was saying the Senator from Oklahoma and then the Senator from California. Might I ask the Senator from Oklahoma—I am not going to object—how long will the Senator speak?

Mr. NICKLES. Twenty or thirty minutes.

Mr. LEAHY. The Senator from California?

Mrs. BOXER. Fifteen to twenty minutes.

Mr. DOMENICI. And I am going to speak for 20 minutes now.

Mr. LEAHY. I wonder if I might ask, to make sure in case Senators wish to speak longer, to amend the unanimous consent request so the senior Senator from Vermont could be recognized at a quarter of 2 for up to 20 minutes.

Mr. DOMENICI. I have no objection, but I would like to add, with that agreement, that the distinguished Senator from the State of Kentucky would like to speak, and he will either speak before the Senator from Vermont, if the quarter of 2 has not yet arrived, or after the Senator from Vermont speaks.

Mr. LEAHY. But at quarter of 2, the Senator from Vermont is to be recognized.

Mr. DOMENICI. That is the junior Senator from Kentucky who is asking for time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I sure hope the people in this country and those who have written about MTBE were privileged to hear the few remarks that took place this morning about the issue from the distinguished junior Senator from Texas and the Senator from Louisiana. I don't plan to speak anymore about MTBE now, but before the afternoon is finished, I will speak to it with a little more detail so people will understand that the House asked us to do this, and they didn't ask us for anything unreasonable. This is a very valid approach to a problem that cries out for a solution, other than to turn it loose and let anybody sue however they would like and see what happens.

Having said that, I wish to talk about this bill that is before us from the standpoint of what is going to happen if those who have come to the floor and been so critical of the bill prevail and we don't have this bill.

I don't want to go back and spend a lot of time duplicating the words that have been used about this bill. Suffice it to say, there have been enough negative words used about this bill that one might consider it is the worst thing that ever happened.

I would like to tell each and every one of the Senators and each and every American who is concerned what is going to happen if this bill doesn't pass.

The impression is this is just a big bill that somebody put together that has a lot of pieces to it. We don't like some of them and some of them we think are giveaways, so we ought to just kill it. I am going to use the word "kill" for a little while because I assume those people who have gotten up and talked that way would like to kill the bill.

First, if we kill this bill, fuel diversity efforts that will help reduce our dependency on foreign oil and gas will be killed along with it. In other words, this bill is a conscientious effort to help American industry, large and

small, produce alternative sources of energy for America and, in many instances, to do that, they have been given a tax incentive. All of those alternatives will be dead when this bill is killed, if it is.

The ethanol program, which many have wanted for years—a few in this body don't like it, but let's just take it for what it is—everybody should know the ethanol program is dead, killed, gone, out the window.

Now, there are some who would applaud it, but the overwhelming number of people, and the entire agribelt of America, is cheering that we pass it, not that we defeat it. I, frankly, do not see any way, I say to all the farmers in this country, of ever getting an ethanol bill anywhere like this if this bill is killed.

So to repeat, for those who think we need ethanol to provide an alternative 5 billion gallons a year to the use of crude oil gasoline, and for farmers who want an alternative crop, kill the bill and you have killed that forever.

The renewable fuels provision would replace 5 billion gallons of oil with 5 billion of domestic-produced ethanol. I have alluded to it. It will die with the death of this bill.

Over 800,000 job opportunities for our citizens will go out the window, dead, killed, for those who relish speaking about killing this bill.

Clean coal initiatives, which for the first time say to America, America, you are king, K-I-N-G, King Coal, and we want to provide some incentives so you might use some of that coal. Well, for those who want to kill this bill, "King Coal" will remain a dead product. We can inventory it, we can take note of it, and we can brag that America has coal that will run the country for—I do not know how long. The last time I read something, it would run it for 500 or 600 years. Out the window, no chance to use it because we will be using every other fuel led by natural gas and we will soon be importing liquefied natural gas because there is no way we are going to use our coal.

So let me repeat in simple phrases, "King Coal" will remain dormant but for the small amount being used. Not a new powerplant will be built using coal. It is dead.

Yesterday there was a report by a commission. The commission worked since the Northeastern blackout. They issued a report, and the summary of the report is two or three pages long. What they have concluded, I say to my colleagues, is that the principal reason for the Northeast blackout is that some companies were not following the voluntary reliability standards. Then those who made the study conclude that if this bill is passed, there should not be another blackout because the reliability standards are made mandatory and they will be enforced by criminal penalties. So nobody is going to run around taking a chance with overloading and breaching the reliability standards. Reliability means

that one is doing what is prudent and there is no more reference to the use of these lines.

So let us summarize that one. For the time being, and I think for some time to come, the blackouts in America will remain alive and possible because we will have thrown out the window the reliability standards that are in this bill because some want to make the case on an issue such as MTBE or the like which we are talking about today.

There is regulatory certainty required for the utility industry. If we fail to provide that, FERC, with congressional direction on issues such as standard market design and transmission pricing, will be gone. They will be dead. The repeal of the Public Utility Holding Company Act will be killed.

Some people have said if nothing else was in this bill, the repeal of PUHCA, a 1935 vestige that hangs around over the utility industry, prohibiting investment over some kind of fear that is no longer a reality—and look how long we have been waiting to get rid of PUHCA—I think it would be fair that I could say if this bill is killed, PUHCA is here forever. So industry that is waiting for an injection of money, they can sit by and eke out investment because the principal impediment will still be there. The repeal will have been killed.

There are some who say because their States have had some unlucky or unfortunate situations, such as Enron, that consumer protections are necessary and then, of course, they look at this bill and say, I know what protections I want and they are not exactly the way I want them in the bill, so they come to the floor and say there are no protections. But I say if this bill is killed, you kill the consumer protections in this bill which are against fraud, manipulation, which force increased transparency, which increase penalties for violation of the Federal Power Act and Natural Gas Act, and they close the Enron fraud loophole.

Now, you can throw all of those out the window for people who want to find fault and want to talk about a turkey and want to talk about the goodies in this bill, but I am telling you what you lose when you lose this bill. I am ready for anybody to come and say it is not true.

How are we going to get these if this bill dies? Will the House come marching down the aisle, just having gone through this exercise, and say, oh, well, let's just start next week and do another one? Does the Chair think so? I think not. Do my colleagues think this Senator spent the better part of a year on it, and do they think I am going to march to my committee and start hearings and saying, oh, well, we did the best we could but we better just start over again because we heard so many speeches? Not on your life. The speeches had little to do with the important provisions in this legislation.

They had to do with things that were put in the legislation, as everyone knows, when it is run through both the House and the Senate and individual bodies and then through a conference.

Tax credits—let me say I am aware of the tax credit game, and this bill is filled with tax credits that people wanted and needed and on which I am sure some of my good friends are quite certain we were too generous. I note the presence of my great friend Senator NICKLES and I am sure he is not going to get up and speak about MTBE and we ought to take it out, but he is going to wonder whether we put in too many tax credits.

For every newspaper article and editorial that said: let's kill this bill, it is no good, there are hundreds of letters of support from the people affected. They do not write editorials. They write and tell us their problem.

The people who build and sell windmills and have giant windmill projects going, they are very clear. This is the best thing that ever could have happened to them. We have made permanent the production tax credit that is sending windmills soaring in the United States, and I do not mean soaring in the air, I mean soaring in numbers.

Some ask: Do you really want those, Senator? And I sometimes chuckle. I drive around and see some of them, and I am not sure. But they will build them pretty before they are finished. They will even be good looking. Right now, some people write us letters and say: We don't want any more of those. Some people in Massachusetts wanted us to put something in this bill saying the local community could stop them if they didn't want them. We couldn't get that done if we tried. In any event, the credits for that are gone. If we pass the bill, we will see it soar.

Regarding solar, we received all kinds of congratulations and support from the solar industry, saying it will finally go now. It will go, but it is dead in its tracks when this bill dies, if it dies. I don't think it is going to. At least I hope not.

You can go right on through. Biomass and all the others are anxiously waiting so they can begin to produce alternatives, adding to the totality of what we will use for energy in America.

We have been so bold that we say the next generation, economically speaking, will be the hydrogen generation. I am not sure about that, but this bill starts us down that path. I don't know where we are going to pick up a bill that will put together the kinds of things that are involved, such as \$1.6 billion to start joint ventures with the automobile companies to build this.

Then there is nuclear. France leads the world. While we tremble, they build. While we worry, they have 78 percent of their electricity from nuclear power. While we run around worrying where are we going to put this waste product, do you want to take a

trip to France? They will show you where they put theirs. It is a building that looks just like a schoolhouse.

You walk into it and look around and you ask: Where is the spent fuel?

They say: You are standing on it.

What?

It is right there. It is encased and they put in solvent and put in water, glass put upon it, and they are smart enough to say that will be safe for 50 to 100 years. Guess what. They say: We will find a solution or a use for it in that period of time.

We stopped producing nuclear powerplants, one of the reasons being we don't know what to do with the waste. An engineering problem, and nothing more, has killed nuclear power in America. We have said maybe somebody would like to try it and we will give them some incentive to get around the difficulties involved. I hope we do it this way. Because if we don't, I think we can probably say, during my lifetime—I am not sure about the lifetime of the occupant of the chair, who is a very young Senator and very much waiting around to see this happen. You may see it, but I don't think I will, because you have to give some incentives to get started and then the public will see the new generation, something we ought to have going on in our country.

I could go on. Before I stop, though, I want to talk about Alaska and natural gas. First there was a program—it is not in this bill—to capture crude oil that is in ANWR. We were told: If you put it in the bill, it will be filibustered. Isn't that interesting, Senator NICKLES? You weren't for taking it out; you wanted it in. Now we have left it out and we have somebody filibustering because of the MTBE hold harmless clause.

I wish we had known we were going to have cloture votes down here. Maybe we should have put it in and had cloture on a lot of things, including ANWR. But we didn't put it in, in good faith, because the minority leader said he had enough votes to kill it. So we left it out.

Alaska is loaded with energy. What do we do in this bill if we can't utilize some of their energy? We tried very hard to assure the delivery of natural gas to the lower 48 because it will not be longer than 10 years until we will be short of natural gas and we will be using it from other countries. Won't it be interesting? With a State of ours loaded with natural gas, America, which is using natural gas like it went out of style, will be importing LNG from all over the world. We will say: Here we are again. Instead of getting independent, we are getting dependent.

But we did try our best. This bill says bring it down through a certain area and bring it to Chicago. We said we will help the companies that will build it. We did what we could by way of credits and accelerated depreciation, but as of today we have no assurance that it will be done. We have hope, and at least we have done what we could, and it may

happen. If you throw this bill out, that is not going to happen either. I don't know how long before you get anything going in Alaska, with the kind of fear and trepidation that happens every time you mention capturing some of their resources.

There are many other provisions in this bill. There are all kinds of great research programs. They are misunderstood because they are not paid for; they are authorized. They are saying if, in the future, Congress wants to pay for some additional research in—let's just pick one—nanotechnology, this gives them authority but doesn't pay for it. That is one. If you add it up, you will say this bill costs all these things, but it doesn't cost those things, because those are part of—like when you fund an education bill, you fund it for a lot more than you need and later on you pay for what you can afford.

I could go through some more, but my good friend Senator NICKLES wants to speak. He will be to the point. He will cite some problems with the bill, I am sure, and will also tell us some of the things that are reasonably good about it.

I am glad people have not come down here and made a lot of noise about the whistleblower protection because we did continue protection of whistleblowers, contrary to what some of their main groups are saying. They just wanted more, not continued protection. But we have continued them.

There are at least 10 other major issues we have done that I truly don't believe will get done in the near future. They are more or less moribund—that means dead—if we finish this bill by not voting for cloture and voting for the bill.

I thank the Senator for listening. To the extent there are programs in here that others have worked hard to get in here and are very proud of and I haven't mentioned, please understand I did not mention everything. I mentioned what I could. What I didn't, I am glad, in our spare time, to get on the phone and suggest to others the rest of the things that are here.

I close by saying there are a lot of ways we could have done this bill. We have been chastised, we have been ridiculed, we have been put upon because of the way we put the bill together. All I want to say to my fellow Senators is we got a bill. We tried this before. We have gone through a year, year and a half and got nothing. I started this with the idea we would get a bill and it would be reasonably close to what we would have gotten had we spent much more time collaboratively with many more scribes, many more writers, than we had. I think that is the case. Most people who were interested saw the product long before it came to the floor.

You notice I did not mention electricity reform, other than indirectly. But I will say for those who want FERC to run the entire grid, they will have that if this bill fails. For States

that think we ought to have FERC doing it, they can be gleeful.

We thought we ought to phase it in and we thought we ought to let some States provide differently for themselves, but we made sure they couldn't close out investors who wanted to come into their States and put in utilities. We didn't make it simple, but we let it happen and we let them get their money back, too.

Those are tough issues. You don't get the bill, and you might get what some people like, or you might get that chairman over there who thinks he knows how to run it all by himself. You might get that. I didn't think that is the right way to go. But I didn't have the luxury of writing four versions. We had to write one version the best we could for everybody. We did that.

I yield the floor. I thank the Senate. The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment Senator DOMENICI, the chairman of the committee. He stated at the beginning of the year that he was going to produce a very comprehensive Energy bill, and he has done it. I have been in the Senate for 23 years. I have been on the Energy Committee with Senator DOMENICI for 23 years. This is the most comprehensive piece of energy legislation we have had in that entire time. We have had a lot of people say we need a comprehensive bill, but until now, that hasn't happened.

A couple of years ago, there was an Energy bill on the Senate floor, but the Energy Committee didn't have a markup. Senator DOMENICI, as chairman, decided that wasn't the way to go. He rightly felt the entire Energy Committee should be involved in marking up this bill. We marked it up over a period of months, and took several weeks in committee to report it out. For this open and inclusive committee process I compliment Senator DOMENICI for his methodology in reporting out this legislation which helped insure a solid and bipartisan product. I know he has been criticized for the way the Conference process, but he did allow the committee to work its will, and now we have brought back a very comprehensive piece of legislation to the Senate floor.

I tell my very good friend from New Mexico that I agree with a lot that is in the bill. But I disagree with some of the things in the bill. I am going to support the bill on the whole because I think positive energy legislation is very critical if we want to have a growing economy. You cannot have a growing economy if you do not have viable, sustainable and reasonably priced sources of energy. It is very important that we pass a good bill.

I would like to share with my colleagues that I ran for the Senate back in 1980 because of misguided energy policy that passed the Congress during the Carter administration which I found personally infuriating. In the midst of an energy crisis, the Carter

administration proposed and passed, under a Democratic controlled Congress, several energy measures at that time which only served to worsen the energy related problems afflicting our nation. As a business man living in Ponca City, OK, I thought: What in the world is Congress doing? Everything they were doing, in my opinion, was very shortsighted. Maybe they had good, laudable goals, but they were very shortsighted if you happen to believe in free market principles. The one bill they passed that probably had more to do with me running for the Senate than anything was the windfall profits tax, which Congress passed in 1980. I was a State senator who happened to believe in free markets. The knowledge that my government would pass a law which so disincentivized the production of the very commodity we were most in need of at that time led me to conclude these people were completely out of touch with reality.

Then Congress passed a bill that said we are going to tax domestic production, but we do not tax imports. The net impact of that is you discourage domestic production and you encourage imports. That was about as anti-free enterprise as any piece of legislation I could conceive.

I was so irritated that I ran for office, and ended up serving in the Senate.

I might mention that one of the highlights of my legislative career was when we repealed the windfall profits tax in 1988. Frankly, I was embarrassed it took so long to get it repealed. I introduced legislation every year I was in the Senate to repeal the windfall profits tax. We didn't get it repealed until after it robbed the taxpayers of \$79 billion, but we got it repealed.

We repealed several other pieces of the mistaken energy policy of the Carter era.

In a short sighted attempt to artificially incentivize renewables while ignoring market principals the fuel use tax said you couldn't burn natural gas in utilities and big powerplants. It passed in 1978. We repealed it in 1987.

The Natural Gas Policy Act of 1978 had dozens of different class categories for natural gas. I was pleased to be the principal cosponsor of the 1987 legislation to basically deregulate natural gas. That was a very significant piece of legislation that some people had worked on for decades, and we were finally able to get it through.

I might mention that at that time Bennett Johnson was chairman of the committee. He and Wendell Ford worked in bipartisan ways to basically deregulate natural gas.

I also might tell my colleagues that many people on this floor and many people who have not retired from this Senate said if we do deregulate natural gas, terrible things will happen; natural gas prices will explode. They did just the opposite. Gas prices went down. Oil prices went down after we deregulated oil.

Also, during the Carter administration they passed the bill creating the Synthetic Fuels Corporation to subsidize the creation of synthetic fuel from coal and shale oil. That was passed in 1980, and it expired—thank goodness—I believe in the 1986, but not before it wasted billions of the taxpayers dollars.

It is important that we not pass bad legislation. But it is very important that we pass energy legislation. We are far too dependent on unreliable sources that can choke and strangle our economy. We have seen that happen in 1993. We have seen it happen in other years. We can't allow that to happen. We have become far too dependent on foreign oil. We import over 50 percent, and it is growing towards about two-thirds dependency on foreign oil. That is not acceptable. What can and could and should be done?

The bill that we have before us has a blend of a lot of things. It encourages production and it encourages conservation. It also does a couple of other things—talking about some fixes on the books that need to be replaced.

It reforms PURPA, the Public Utility Regulatory Policy Act. I believe that passed in 1978 as well. We are finally going to repeal it. That required utilities to pay for avoided costs for energy and basically increased utility prices, in many cases by—I was going to say hundreds of millions of dollars. It might be hundreds of millions of dollars for one powerplant over the life of that powerplant or those contracts. I compliment Senator LANDRIEU who worked with me on that. If there is competition, we will repeal it. I appreciate her work.

We are also finally getting rid of PUHCA, the Public Utility Holding Company Act. This passed in the 1930s. Maybe it made sense in the 1930s. It makes no sense, and, frankly, it hasn't made sense for the last couple of decades. We are finally going to get rid of it. By getting rid of that, we will open up, frankly, investment for utilities and energy projects in the billions of dollars. It received almost no attention and no debate. But anybody who has looked at it—it has been mentioned by, I think, everybody from Alan Greenspan to many of the regulators—said get rid of PUHCA. We are finally going to get rid of that regulatory maze that is long overdue.

It is also notable to see what we didn't do in the bill that many of our friends, primarily on the other side of the aisle, wanted to put in this bill. We don't have renewable portfolio standards. If we did, the price of electricity would go up dramatically all across the country. They tried to do it even in the markup earlier this week. We were successful in defeating that. That is a real win for consumers. They forgot to tell you that if you had the renewable portfolio standards of 10 percent, if you do not meet the standard, there is tax. It says you have to pay a tax of 1.5 cents per kilowatt hour—about 50 percent of

the wholesale price of electricity, if you do not meet this standard. That means if you don't make 10 percent, you could have your electricity prices go up by 5 or 10 percent. We defeated that.

We defeated a very onerous corporate average fuel economy standard that people wanted to enact. It would have mandated automobiles to average 40 miles per gallon. That would have eviscerated consumer choice and resulted in our citizens being forced to buy an economy-sized automobile which could prove very unsafe. It would have been a very expensive provision as well in terms of consumer costs and lost jobs in our auto industry. We didn't do that.

We didn't put in the global warming provision that would have greatly increased every person's utility costs, devastated our economy and would have made us uncompetitive internationally. We didn't do those things. I am pleased about that.

We did do some positive electricity provisions that will encourage regional transmission organizations, that will mandate reliability standards which will help us avoid curtailment in the future. It is not fail-safe, but it certainly is a positive step in the right direction.

Senator DOMENICI mentioned several other things in the nuclear field and other provisions in coal that should help us broaden and diversify our energy sources. He mentioned the tax provisions. I voted against the tax portion of this bill when it came out of the Finance Committee. If we were voting on the tax portion of this bill standing alone, I would vote against it now.

On the tax provisions, the administration requested \$8 billion. The Senate Finance Committee reported out \$15 billion, and this bill is \$23.5 billion.

Mr. GREGG. Mr. President, will the Senator yield for a question on that point?

Mr. NICKLES. I would be glad to yield.

Mr. GREGG. I was wondering if the tax provisions as scored violate the budget on that point.

Mr. NICKLES. To answer my colleague's question, the budget points of order lie against the spending, and I expect the tax provisions as well.

Mr. GREGG. I thank the chairman of the committee.

Mr. NICKLES. Mr. President, we scored in the budget, I believe, \$18 billion for this bill. This bill will score close to \$30 billion, for the information of the Senator. It scores that way for a couple of reasons.

One, the tax provision. Also, there is a provision that says brownfield projects can be funded by bonds that cost about \$2 billion, which I think is a terrible way to be financing projects. This is not an appropriations bill.

Senator DOMENICI also mentioned a lot of things are authorized. I hope and pray not everything will be spent that is authorized. I will tell my colleagues that is always the case. We authorize a

lot more money than we appropriate, and thank goodness for that.

I'll mention just a couple of other things. There is also direct spending in this bill. I tell my friend from New Hampshire that this Senator, at least, questions the wisdom of doing it. By direct spending there are new entitlements for two or three items that are created. Coastal impact has an estimated cost of \$1 billion. I predict it will cost a lot more than \$1 billion over the next 10 years. I am sympathetic with those who live on the coast and they have drilling offshore and say they do not get anything. That money goes into general revenue. It should be subject to appropriation. The coastal State should receive some consideration, maybe some compensation. But to have it set up as an entitlement for 10 years and then subject to appropriation is a very poor manner of doing it.

There is deepwater research, \$150 million that is direct entitlement spending for the next 10 years. Again, I don't think that is the way this committee should operate. This is not an Appropriations Committee. The same thing for Denali. They get about \$500 million over the 10 years. That is \$3 billion of direct or entitlement spending that, frankly, should not be in this bill.

Let me touch on a couple of other things that are in the bill that are critically important, and at least in my opinion, if you add this together, make the bill worthwhile. One is the Alaska natural gas pipeline. If you go back historically and read the debates that occurred in this Congress, this Senate, for the Alaska oil pipeline, it was one of the most contentious issues this body had seen in a long time. This Alaska gas pipeline could have been as contentious, but it is not. It is in this bill. It is a \$20 billion project, maybe the largest project in the United States in our history, certainly one of the largest projects ever. It is in this bill with expedited procedures which make that pipeline viable, in my opinion.

We also have a provision that allows the pipeline to be amortized over a shorter period of time, 7 years. That will encourage the construction of the pipeline. That is jobs. That is energy. We have a very significant serious natural gas challenge or shortage or potential shortage and deliverability shortage, getting the product to the consumers in the next several years. Getting this gas that basically is stuck in the northern plains of Alaska to the lower 48 will help alleviate that shortage to the tune of trillions of cubic feet of gas. It is absurd to leave that gas in Alaska, in northern Alaska, untapped, unutilized. This bill will authorize and expedite the construction of that pipeline.

That, to me, is probably the best thing we have in this bill, the most pro-energy item in the bill. We also have some other things that make good sense, that do encourage production. I compliment our colleagues for putting those in the bill.

On balance, we need an energy package. The administration should be complimented for the fact that Vice President CHENEY led a task force and recommended many of these things. They are now in this bill. He has taken a lot of heat for it but, frankly, this country for decades has needed a comprehensive energy package. Vice President CHENEY and President Bush have led the effort to make that happen. Now we are within a day or so of actually passing a bill to do that.

While this bill is far from perfect, while this bill actually does cost too much, while the tax provisions in this bill are far too numerous, in this Senator's opinion, with way too many tax credits—I believe there are 19 new tax credits in the code, and I hate to see the Tax Code cluttered and confused and complicated, substituting the wisdom of tax writers over the free market—I still think on balance the country needs a bill, needs an energy package. I believe this is the best one that this Congress can write, at least at this time. I encourage my colleagues to support this bill.

I yield the floor.

Mr. REID. Mr. President, it is my understanding that it works better if people know when they are supposed to come. The order locked in now is Senator LEAHY will be recognized at 1:45; is that right?

The PRESIDING OFFICER. Senator BOXER has 15 to 20 minutes by unanimous consent.

Mrs. BOXER. There is no particular time set.

The PRESIDING OFFICER. Senator BOXER, Senator LEAHY, 1:45, and Senator BUNNING, either before or after Senator LEAHY.

Mr. REID. That is now the order before the Senate.

The PRESIDING OFFICER (Mr. BUNNING). That is correct.

Mr. REID. The only other Senator I know, either Democrat or Republican, who wishes to speak is Senator DURBIN. I ask that he follow Senator BUNNING.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, there is so much to say about this Energy bill, I hope I am able to be coherent on why I think it ought to be defeated.

It is a bill, first of all, that is a tax giveaway to the biggest corporations in this country. Actually, the multinational corporations—\$30 billion is the size of the giveaway; \$30 billion of debt. When this administration came into power, we had a surplus. Now we are reaching a \$500 billion deficit. This is adding \$30 billion to it.

The attitude around here is, just let our kids and grandkids pick up that deficit. It is absolutely the wrong policy for right now.

This bill is an unfunded mandate because it gives a free ride to the makers of a poisonous chemical called MTBE that never was mandated by any government and was the oxygenate of



choice of the oil companies. They knew it was poisonous and they kept on putting it into the gasoline. It has contaminated water systems all over this country. By walking away from this problem and giving a pass to the people who polluted our areas, in my opinion—and this is just my own words—I think it is immoral. That is why we have the cities of this country against this bill, the counties of this country against this bill, the water agencies of this country against this bill.

The more we let this bill hang out there, the more it smells. MTBE smells. This bill has a similar smell, a sour smell, a bad smell, a poison smell.

The chairman of the committee wrote this bill with one other person in a locked room. It is extraordinary. I thought when I went to school that I learned a bill becomes a law this way: They pass a bill in the House, they pass a bill in the Senate. If they are different, there is a conference committee. The conference committee is made up of people from both sides of the aisle, both bodies. They cannot add new and extraneous things into the bill that were not at least in one of the bodies—the Senate or the House. Then it goes back to each respective House of Congress. If it is passed, it goes on to the President's desk. We have a bill, therefore, that would be a compromise, that would be genuine, which would reflect the broad views of the conferees and, therefore, by extension, all sides of the debate reflected among the American people.

What did we have in this case? Two people of the same party from big oil States sitting in a room having a party. And what we are going to have if this bill passes is one huge party, with the biggest corporations in this country, the oil companies, nuclear—believe me, they will not be drinking water tainted with MTBE. They will be drinking the bubbly stuff, and it might even be imported. But it will be expensive. This bill is expensive. Thirty billion dollars is added on to our debt from the very people who say we have to be fiscally responsible.

Then the chairman of the committee says, in a most angry fashion, and it is his right—I am angry, a little bit different type of anger—says in his angry way: If you do not take this, you will never have another Energy bill because I am not going to do it.

This is a government of laws, not men. We can have a good Energy bill if we defeat this bill. We can have one that looks toward the future. We can have an Energy bill that is a 21st century Energy bill, not an Energy bill that is a 20th century Energy bill.

So the sky will not fall for my friends who want ethanol. And I understand they want that. By the way, there are some good provisions in there for my State regarding making ethanol out of rice straw. I worked for those provisions.

I am going to go through this bill: What is good in the bill, what is bad in

it, and what is left out. I worked hard to examine this bill. But when all is said and done, it is an Energy bill that is a giveaway to the special interests of this country. It is an Energy bill which turns its back on people on the west coast who suffered from companies that ripped us off and owe us \$9 billion just in California alone. It is an Energy bill that really just gives a wink and a nod to some of the possible ways that we can work ourselves out of dependence on foreign oil.

Now, again, the chairman of the committee is very ecstatic about this bill, and it is his right. Why wouldn't he be? He wrote it. He likes big oil. He is defending the makers of MTBE. He loves nuclear energy. The last I checked, we still do not have a safe way to dispose of the waste from nuclear powerplants. The last time I checked, in some places in Europe they are beginning to close down nuclear powerplants. Oh, but we are going to build a new one—we, the taxpayers, \$1 billion, as I understand it—in Idaho.

Now we have reports—we were going to send all of our nuclear waste to Yucca Mountain—and now we hear, in Nevada, a new scientific report saying, watch out, that material can leak.

So this is not the time to be subsidizing the building of nuclear powerplants. My God, you would think this is the 1940s after World War II, "Atoms for Peace." It does not work.

By the way, I hope taxpayers understand that what is also in this bill is a 20-year extension of the Price-Anderson Act. What is that, you ask? That takes the nuclear companies off the hook if there is a nuclear accident. They pay for some of the damage but the mammoth amount of damage, which could go escalating to God knows where, you taxpayers are picking up the tab. So first you are building them the nuclear powerplant. Then, if there is an accident, you have to pick up the tab.

This is some Energy bill. This is the worst bill. I cannot think of the names—let's hear what some of the editorials are saying from around the country for this great Energy bill.

USA Today: "Congress forgets promises made in blackout's wake." The Brattleboro Reformer: "It's time to shift gears." The Billings Gazette: "Energy bill lacks critical balance." The Boston Globe: "A polluted energy bill." The Brunswick Times Record: "This energy bill is appalling." That was their word.

The Buffalo News: "Oil and grease. Energy bill fails country as it dispenses favors to the industry." The Cape Cod Times: "Misused energy." Des Moines Register—now imagine, this is in a place where they love the ethanol issue, and even with that, this is what they say: "The MTBE outrage." And I will go into how the MTBE outrage impacts my State.

The Fort Worth Star Telegram: "Coming up short." The Great Falls Tribune: "Senate should stall Energy

Policy Act of 2003." Absolutely they are right. Count me in. I am going to try to stall this bill. I am going to try to kill this bill. I am going to try to stop this bill in every single way I can because it is bad for the people I represent and it is not the kind of bill we want for this country at this time.

Jackson Clarion-Ledger: "A 'P' Perfect Bill: Pork, Politics, Pollution." That is a good one. Lakeland Ledger: "Senate, derail the energy bill." The Los Vegas Sun: "Mixed bag on national energy plan." The Lewiston Sun: "Proposed law is lousy legislation." Their words.

Memphis Commercial Appeal: "Pork barrel bill, not worth the energy." Missoula Missoulian: "Energy bill uses tax dollars for fuel. Legislation larded with massive subsidies is a parity of effective energy legislation." That is from the Deep South.

The Nashua Telegram: "Rushing energy bill is a bad way to set policy." New Jersey Star Ledger: "Defeat GOP energy bill." Orange County Register—and this is in a part of my State that is predominantly Republican—do you know what they write? "Energy bill is a waste."

Palm Beach Post: "A powerless public." The Phoenix Arizona Republic: "Energy overload. Overstuffed bill has it all, except coherent national policy."

I just have to say, the more this bill is subjected to the light of day, out of that closed-door conference committee, with two people from the same party, from big oil States—the longer that bill sees the light of day, the more people will see it.

Now, yes, there are a few good things in this bill. I am going to tell you what they are. I am going to show you what they are. Then I am going to show you what was left out of it. And then I am going to talk about the bad things in the bill.

A good thing: Drilling in the Arctic Refuge in Alaska is not in this bill. As the person who wrote the amendment that stopped it before, I say thank you to all my colleagues on both sides of the aisle who stood tall and said: We will never allow this to be put in an Energy bill. Thank you. That is a good thing.

No offshore inventory of oil—I thank the House on that one. My friend LOIS CAPPS over there was fighting hard. You cannot go into a pristine coastline that is supposed to have a moratorium on it and then drill to see how much oil there is in it. Either it is pristine and it is left alone, and there is a moratorium to keep it left alone, or you might as well just go in and destroy it. The conferees said no to that because that would have been a poison pill, too. So thank you. It is not in there.

Something that is in there that I wrote has to do with incentives for making ethanol from agricultural waste. Now, this is something that is forward looking because we have rice straw and biowaste and sugar waste

from beets and we know we can use that waste to compete with corn ethanol. We think it is exciting. If we can develop those industries in our State, then we do not have to ship that corn ethanol all the way across from the Midwest. That kind of shipping is going to add to the price of gasoline for my people who need to have their cars to go to work.

Energy efficiency by the Federal Government—I am very pleased we have that in this bill. That is an important thing to undertake.

Hybrid car tax credit—ditto. It is good.

Increased funding for energy assistance in LIHEAP—for the poorest of the poor. That is good.

I understand there are some solar tax credits in there, which I think are very important, to put solar energy on some kind of equilibrium. These provisions are very small.

Now, this is what is missing from this bill which would have made it at least relevant to what has happened in our country.

There are no refunds for the people of my State. We have been told by the Federal Energy Regulatory Commission that we have been ripped off, robbed. They have stolen our money with phony schemes to create artificial shortages. You all remember some of those schemes. The fact is, FERC, which can order these refunds, has refused to do so. This administration refuses to order FERC to get those refunds back to our people. Our new Governor has his hands full with tremendous deficits. That is our money, and we want it back. No, they would not go there.

No. 2, there are no long-term contract renegotiations for my State or other States on the west coast. What does that mean? These thieving companies, as they were robbing us blind, and had us over a barrel, negotiated long-term contracts for the future. They said: Oh, we are giving you a good deal. We are going to charge you a lot less than the spot price. Well, we were negotiating with them under duress. It was a phony price. A phony price was out there, and our Governor was trying to get the best deal.

Yes, he got a lot lower than the current price, but it was way over what the market is today. So we are asking for new long-term contracts. We want to do away with those. No, they didn't do that.

No end to electricity market manipulation schemes: Ron Wyden was very good on that point. We had schemes that had every name in the book. They made up names that you can't even believe. The one I hated the most was Get Shorty. Because I am a little person, I hated the name. But they were shorting us of electricity. They were doing all these things, and they were giving them all these names. By the way, why isn't someone in jail on all of that Enron stuff? No, we didn't go there.

No CAFE standards: Unbelievable. It has been pointed out that even China,

that has a bad environmental record—I went there; they are building dams that are destroying mountains and homes and valleys.

I just got sick to see it—has set CAFE standards because they know pollution is bad for their people.

When cars pollute, kids get asthma, workers get sick. And if you can't work, that hurts productivity. It is just common sense. Forget the fact that it is the right thing to do to have CAFE standards and spare the air. No, they couldn't do this.

There is a huge SUV loophole. It was about \$25,000, and in the last tax bill it went up to \$100,000. The Senate tried to bring it back to \$25,000 but the House rejected that effort.

No increased use of renewable sources for electricity: They walked away from the formula that Senator BINGAMAN had gotten into the Senate bill.

By the way, any resemblance between this Energy bill that is before us and the Energy bill the Senate wrote is purely coincidental. This is a completely different bill, written by two people from big oil States, who love nuclear energy and have walked away from fighting for the consumer. It is a sad thing. This is what is missing from the bill.

Now let me tell you what is bad about the bill. Unfortunately, it is a long list. We talked about giveaways to the oil industry. I want to give you a few examples of that: \$10.5 billion in tax breaks would be provided to the oil and gas industries. The bill provides millions of dollars' worth of subsidies to the oil industry by reducing the amount of royalties—that is kind of like rent—that they have to pay to drill off our coasts and on our Federal lands. So they use our Federal land that all the American people own. They are supposed to pay royalties when they find oil there.

This bill provides royalty relief for marginal oil and gas wells or wells that are relatively less productive. They give this royalty relief to oil and gas development off the coast of Alaska as well as deep wells and deep water operations in the Gulf of Mexico.

Wake up, America. If you want to count, listen to these things. One of the things that I find happens, I went on TV and I did an interview on one of the issues we are going to be talking about, MTBE. The person interviewing me said: I know this is very complex but let's discuss it.

It isn't complex. It is pretty simple. This bill is a giveaway to the biggest companies. It walks away from the consumers. It lets the polluters go free. It is a 20th century Energy bill.

People say it is confusing; it is complicated. It is not so complicated. That is the way to say to people: You better tune out the argument; it is too complicated.

America, tune in. It is your future. It is your kids who are going to have to pay this \$30 billion. It is your kids who

are going to have to breathe the dirty air. It is your kids and your cities that are going to have to pick up the tab to clean up MTBE. So listen.

The bill would also reimburse energy companies for their costs to reclaim abandoned wells on Federal lands under a new program forcing taxpayers to pay these costs rather than industry. It would provide a broad liability waiver to oil and gas operators reclaiming sites on Federal lands. So they go on the Federal lands. They mess them up. They pollute them. They walk away.

These are our lands. The bill will take \$150 million from royalties and fund research on ultradeep wells, unconventional natural gas petroleum, and the Federal Government may well give \$50 million extra to this fund. This research would be done to benefit the industry.

You know what, let them pay for their own R&D. They get a great tax break. I am all for it. I give big tax breaks for R&D. We don't have to give them cash on the barrel.

Giveaways to the nuclear industry: I mentioned before the Price Anderson Act. If there is a nuclear catastrophe, don't worry about it, we will pick up the tab. Your children will pick up the tab, my children, my grandchildren. Not the nuclear industry, a 20-year extension.

If it is so safe, why can't they get insurance in the private sector for the possible damage it would do? I believe in checks and balances. The insurance companies are checks and balances. If a nuclear person comes in to an insurance company and sits down and says: Well, I might have an accident.

What would it cost?

Oh, \$100 billion.

Well, I won't cover you for more than \$10 billion. It would just break our back.

Oh, OK.

Maybe that is a signal, Uncle Sam, that this isn't safe yet. No, we are going to back up the nuclear industry for another 20 years. It raises the cap, which is a good thing, but it is still a cap nonetheless. They don't have to pay full insurance premiums. Why should they? This bill is for them. It is not for us.

If there were an accident, nuclear companies don't have to pay the costs of the damages because the taxpayers are on the hook. That is a great idea.

A \$6 billion production tax break is in here for utility companies that operate new nuclear reactors. So while they are closing down nuclear reactors in Europe and while we are reading reports that Yucca Mountain is not safe, we are going to give tax incentives for new nuclear reactors.

It goes on on the nuclear side, but I will move on to one more point here: public health and the environment.

The placing of these nuclear plants is just not going to live up to the highest level of protection. There is concern to me in terms of dumping the waste and

the injuries that could occur due to the fact that we don't know what to do with the waste. These people want to give tax breaks for dirty industry—\$29 billion in tax incentives for the energy industry, and more than 70 percent of the tax breaks go to polluting and mature industries, including coal, oil, gas, and nuclear.

Yes, we gave some tax benefits to some of the new and clean energy but very small in comparison. It is \$1.8 billion for the clean technologies versus \$28 billion; it is about 28 to 1. That is a 20th century Energy bill. Now, we repealed consumer protections in the electricity market. That is another thing that is bad. The most eloquent Senator I have heard on this of all time is Senator MARIA CANTWELL. I am sure if she hasn't spoken already, she will explain to you what this means. I have to say that the Senator from New Mexico, who wrote this bill, with the Congressman from Louisiana, a big oil, big nuclear power State—he said: This is your last chance. You will never get to repeal the Public Utility Holding Company Act if you don't do it today.

I have one word for that: Wrong. We are going to be here every day. If he doesn't like PUHCA, you can try to do it another day, just like he can try to get his nuclear money another day, just like he can do tax giveaways another day, just like he can give a liability waiver to his big oil friends another day. You don't have to pass this bill today. That is the biggest bunch of baloney I have ever heard. We are supposed to be working here all year. We don't have to pass this today or tomorrow or the next day. I hope we will not because this Public Utility Holding Company Act is the main law to protect consumers from market manipulation and fraud and abuse in the electricity sector.

It is unbelievable that we have uncovered evidence about what Enron did, and we are repealing the one law that could help us in the future. It is, to me, outrageous. Again, I will leave that for Senator MARIA CANTWELL to talk about.

We see drilling and development of our public lands. In my State, I have to tell you that this bill has a special interest provision to site a high voltage electricity transmission line through the Cleveland National Forest. The State of California, through the PUC, said, no, it is not needed and not wanted. I wonder why, in the midst of the terrible fire that we just had, we are now going to put a high voltage line through a national forest. Can someone tell me why? Can someone tell me why we would permit the siting of a high voltage electricity transmission line through a national forest?

I will tell you why. It is a special interest provision, and the State didn't want it and the local people didn't want it. The State said no, but somebody put that into the bill. The more you read the bill, the more you learn. The bill would also put the Department

of Energy in charge of permitting rights of way across public lands for utility corridors.

The bill would require the Department of the Interior to process applications for permits to drill for oil and gas on Federal lands within 30 days, even though people said we need more time to look at the facts.

So the USGS would be required to identify restrictions and impediments to oil and gas development. They are allowed to look at fish and wildlife, cultural and historic values, and other public resources. In other words, they can call these things "restrictions" and "impediments" when, in fact, the law has always said they should be respected. Now they are impediments.

Diminished protection for our coasts: The first provision would grant the Secretary of the Interior broad new authority to permit energy development and support facilities anywhere on the Outer Continental Shelf. Authorized facilities would include those that support exploration, development, production, transportation, or storage of oil and gas. There are no standards for issuing or revoking easements, and the provision does not require consultation with the Secretary of Commerce.

There is no requirement that the Secretary of the Interior even consult with the States before making this decision on the Outer Continental Shelf.

I will explain the Outer Continental Shelf. The first 3 miles off of the coast are State waters. Where does the Outer Continental Shelf start? It starts after that. So you can, as a State, put all the restrictions on damaging projects that would occur because you believe your coastline is God-given. You believe your coastline is also an economic resource. You believe that your coastline and your ocean is important to protect the fish because, in fact, it is a big industry in my State. You do all these protective things.

Now they are going to say it is 4 miles out, or 3 miles plus an inch, and they are going to start looking on that Outer Continental Shelf and destroying it. This is what is in there.

They weaken the coastal zone, which is important to weigh in on what should be done.

Section 325 of the Energy bill erodes States' rights to review and respond to Federal decisions affecting coastal waters. Section 330 would also reduce States' rights to review and comment on pipelines and other energy-related projects off their coast by limiting appeals.

It is taking me a long time to tell you what is bad in this bill. There are more things, but I want to give you a sense of some of them.

Clean air rollbacks: Actually, they have amended the Clean Air Act. They have amended the Clean Air Act in this Energy bill. "Great news" for the American people. I am sure they are dancing in the streets that the Clean Air Act has been rolled back in this bill that was written by two people of the

same party from big oil States, behind closed doors, who are threatening that we will never see the light of day on any Energy bill if we don't pass their "masterpiece." The last I heard, every Senator is equal to every other Senator.

There is a provision tucked into this conference report designed to delay cleaning ozone pollution in some of the most polluted areas of our country. Under the Clean Air Act, the schedule is established for areas to clean up their air. How much they have to do, and in what timeframe, depends on how dirty or clean their air is. If these deadlines are missed, an area is bumped up into the worst air quality category. When this happens, a greater amount of air pollution must be reduced and additional requirements are imposed, but on a longer timeframe.

This provision will allow areas to avoid the additional requirement if some of the air pollution comes from upwind areas. Why this provision and why now? Because the Republicans are trying to overturn several court decisions holding that this type of an extension is illegal under the Clean Air Act. Their argument says it is unfair for a community to be forced to clean up air pollution coming from somewhere else.

Unfortunately, it appears that every community with poor air quality can meet this test because ozone pollution travels in the air. Somebody is going to be able to say we don't have to clean up our air because it is coming from somewhere else. Who gets hurt? The people who breathe the air.

Why would we delay cleaning up the air as it gets worse and worse? Do you think a child who is in a hospital because of asthma—do you think the mom will say: Why does my kid have asthma?

And the doctor will say: Because the air is filthy dirty.

And she will say: Oh, my God. That is awful. I am going to write my Senator.

Then the Senator writes and says: Your kid has asthma from dirty air, but it wasn't coming from your community. It came from another community, so please forgive us.

Wrong. This is what is done in this bill. Remember, this was written by two people of the same party from big oil States.

(Mr. SUNUNU assumed the Chair.)

Mrs. BOXER. Mr. President, the net result of this could be that no one will ever have to clean up the air until someone else cleans it up. It is unacceptable. Ozone pollution must be cleaned up. There are 130 million Americans living in communities that violate ozone smog clean air safeguards. Inhalation of smog is linked to respiratory illness, such as asthma, especially for children.

There you have that mother, as a matter of fact, in the hospital with her child because hospital admissions for children due to asthma alone increased 30 percent between 1980 and 1999. Overall admissions for respiratory problems

increased 20 percent in the same time period. We had a 30-percent increase in asthma admissions in hospitals, but only a 20-percent increase for other things.

Let me say to all my colleagues who might be listening, and even to those who might read my remarks, go to any school in your State—it could be a public school, it could be a private school, it matters not—ask the children to raise their hands if they have asthma. Ask them to keep their hands up or new hands for someone who knows someone who has asthma or someone in their family, and you will see almost 40 percent of the children in that classroom respond.

In California alone, there will be 42,000 additional asthma attacks, 499 additional hospital admissions, and 68,000 lost school days. What are we doing in an Energy bill to help those children? Are we going to clean energy? Of course not. Are we even moving to increase the fuel economy of our cars by 2 miles per gallon or 3 or 4 or 5? Are we? No, of course not. This is a bill for big oil. We do a little bit for hybrid vehicles. I am glad. We do a little bit for solar. But \$28 billion to \$1 billion in favor of big oil, big nuclear—big, big, big, big, dirty.

Clean water rollbacks: This might surprise you. This is an Energy bill. We have clean water rollbacks in this bill. The oil and gas industry is exempted from storm water runoff cleanup. This conference report contains language exempting oil and gas construction activities, including roads, drill pads, pipelines, and refineries from obtaining a permit and controlling their pollution runoff as required under the Clean Water Act.

Explain to me why this is necessary. Are these some poor startup companies that need our help and, oh, for a while we will let them be free of these requirements? No, these are multinational big companies that have fought so hard that we no longer have a real, important Superfund Program anymore because they don't even want to be taxed a tiny bit to clean up the mess they made. This bill gives them more rollbacks. They don't have to worry about clean air and clean water.

What is going on here? Then the chairman of the committee says: Oh, there will never be another bill; kill this bill and you will never see another Energy bill. Forget about ethanol. Forget about tax breaks for the things you believe in that might work because you will never get them. You are going to have to swallow all this bad stuff to get a bill.

I want to talk about some more of the bad items, and I will close on the MTBE issue.

Here is a picture of our country. All the States in black—and, Mr. President, I know this is an issue that is near and dear to you—all the States in black are the States that have either ground water contamination from MTBE or drinking water contamination.

The ones with the little orange stickers have drinking water contamination.

Sad to say, my State has an orange sticker. When this came to me, I was stunned to hear that my town of Santa Monica in southern California had lost one-half of its drinking water. When the town tried to figure out what to do about it, they found out it would cost millions of dollars—\$200 million to \$400 million to clean up. This is a small city, relatively speaking in terms of California. We are a big State, but it is a relatively small city—\$200 million.

They said: Oh, my God, what are we going to do? They did what every other city, every other county, every other water agency is going to have to do, be they in New Hampshire, be they in Minnesota, be they in Iowa, be they in Nebraska, be they in Nevada. They went to court. They filed a lawsuit, and they made a claim and said: Please, to the people who put this in our gasoline and it got into our water, please, help us clean it up. That is Santa Monica.

Many of you know of Lake Tahoe. It is a magnificent lake and a beautiful lake. It was getting polluted with MTBE. MTBE was leaking from the boats that were on the water into the lake. They went to court. They tried to sue under three grounds—nuisance, negligence, defective product liability. The judge in that case said on the nuisance claim: You haven't proved nuisance because you have to prove who did what to whom, when, and what day. Negligence, same thing. You have to find the people, you have to track the people. But defective product liability, that makes sense because in discovery they learned—that is a legal term when they are getting ready for the court case—they learned that the makers of MTBE knew this product was bad. As a matter of fact, they joked about it. I forget what exactly they said. One of them said: Major threat to better earnings, MTBE, because they knew some day the truth would come out. They joked about it. We found that out.

Here is the jury verdict on the Lake Tahoe case. They found the makers of MTBE knew beforehand that this was bad. This is the verdict: MTBE was defective in design because they failed to warn of its environmental risks. Gasoline containing MTBE refined by the other defendants at trial was defective in design because the environmental risks from MTBE outweighed the benefits and refiners failed to warn of its known risks. The refiners failed to warn, failure to warn. There is clear and convincing evidence that the companies acted with malice—acted with malice—as they developed, promoted, and distributed their defective MTBE product.

I say in the strongest of terms, when you are told and I am told that these companies acted with malice, why on God's green Earth would we give them a get-out-of-jail-free card in this bill? They acted with malice. They knew it was poison, and now this bill is saying,

this bill that was written by two people of the same party behind closed doors from big oil States: You are off the hook.

I also want to tell you that the cost of MTBE contamination—this is a 2-year old estimate—is \$29 billion. That is what this cost 2 years ago. We are looking at probably 50, 75, to 100 because all those States I showed you before are just now beginning to understand how dangerous this contamination is.

This bill is an unfunded mandate on New Hampshire. This bill is an unfunded mandate on California. This bill is an unfunded mandate on 43 out of our 50 States that have MTBE contamination.

Now, you can dress it up, you can make it look pretty, you can put lipstick on it and rouge, but the bottom line is, it is ugly. It is an ugly thing to do to the people.

I will show my colleagues our little “get out of jail free card.” Here it is: MTBE producers not responsible for pollution, get out of jail free.

Is this why I came to the Senate? No. It certainly is not why the Senator from New Hampshire came, and it should not be why any of us came—to give a “get out of jail free card” to the very polluters who have harmed our people.

Senator DOMENICI talks about how many people are for this bill. I understand that. But the fact is that the League of Cities are against this bill, the National Association of Counties are against this bill, the Water Agency is against this bill, the Association of Metropolitan Water Districts, the U.S. Conference of Mayors, and the list goes on.

This bill should not be passed. This bill should never be passed. This bill is a giveaway to the biggest multinational corporations, to encourage them to do things they should not be doing. This bill rolls back environmental laws.

In summation, there were jokes on the floor about those of us who want to stop this bill because of MTBE, that we are taking some small step here, that this is not important. Well, this is important. When people cannot drink the water coming out of their tap and they have to go buy bottled water, this is important. This is important when people are fearful that their kids are going to get cancer from MTBE.

Remember, no matter what they say, the Government never mandated MTBE. The Government mandated an oxygenate. The oil companies picked MTBE and they kept using it after they knew it was dangerous. By the way, they even used it before an oxygenate was mandated.

If we can just put up that map one more time, I would like the Senator from Vermont to see this because he has not seen it as clearly as this. His State of Vermont has MTBE, as he knows, in the ground water; luckily, we do not think in the drinking water

yet, but who knows. The orange shows the States where it is actually in the drinking water. My friend from Vermont, who stands every day for justice, for the people of this country, understands why we have to stop this bill.

I thank the Chair for his hard work in representing his State so well on this really tough issue, and I hope we have a chance to stop this bill in its tracks, send it back and have it come back without some of these provisions that are so harmful to the very people we are supposed to help, the people of the United States of America.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 1:45 having arrived, the Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair, my neighbor across the Connecticut River in the great State of New Hampshire.

Those of us who have wiled away the time sometimes on long airplane trips reading a bad book, we know a lot of bad books have ghostwriters. Well, a lot of bad bills that come before the Congress also have ghost writers.

If one reads through this 1,100-page Energy bill, they can tell actually who the ghostwriters were: The oil, the gas, the coal, and the ethanol industries that—surprise, surprise—are going to get almost \$200 billion in tax subsidies from this bill. The voices of those ghostwriters echo throughout the bill.

The cost to the taxpayers does not stop there. If taxpayers feel their wallets are getting lighter this week, it is because this bill will cost them another \$70-plus billion in other subsidies over the next 10 years. Unfortunately, the 1,100 pages of this bill are full of special interest giveaways, but they are empty of innovative and sustainable energy policy, a policy that would ensure Americans a clean, reliable, and affordable policy in the future.

Some of our colleagues are trying to sell this bill to the American public as a balanced energy plan, something that would give our Nation energy security over the decades to come. It is not that. It only increases our reliance on unsustainable petroleum-based energy sources. It undercuts recent progress in developing renewable energy sources and technologies that reduce pollution. It undermines the reliability of our electricity markets by opening the door to more manipulation and mergers in stalling regional efforts to improve the transmission grid.

The Senate sent a decent Energy bill to conference. What did we get back? We got a frog. We went from the prince to the frog, not the other way around. The roster of squandered taxpayers' dollars and squandered opportunities in this bill is breathtaking to behold.

Now the American people might have expected us to learn from this summer's blackout. After all, it should be fresh in our experiences and our minds. It cost governments and businesses billions of dollars. We could have used this bill to address what went wrong.

We could have used it to build upon what is right. Incredibly, the bill does the opposite.

New England, where we rely on energy—as all parts of the country do—is also a part of the country where we can get 10, 20, 30 below zero sometimes. We have already created a regional organization to increase reliability of our transmission lines. In fact, that was able to stop the blackout from cascading further into Vermont and other States. Instead of using an organization that we know works as a model, this bill actually discourages utilities in other regions of the country from joining regional organizations. It would also discourage badly needed new investment in the transmission grid.

Apparently, we can only invest in transmission grids if they are in Iraq. We cannot invest in them when they are in our own country.

There is also no prohibition on the price gouging schemes employed by companies such as Enron, even though the Senate, on a wide margin, voted for that.

The bill repeals a 70-year-old law to restrict mergers of utility companies with other companies where they have no expertise. In the past, that has caused financial troubles for utilities and consequently the ratepayers.

One might have hoped the bill could have done more to emphasize technological innovation, promote clean and sustainable energy, but it does not. Instead of working to advance technologies to create jobs and reduce pollution, we have a bill that gives oil, gas, ethanol, and nuclear companies enormous subsidies.

One of the things it does, in my own State of Vermont, is it hands Vermont drivers a double whammy by mandating the use of 5 billion gallons of ethanol by 2012 while threatening deep revenue losses in the highway trust fund. Under this bill, Vermonters and drivers in other States can expect higher prices at the pump due to this mandate and more potholes in the road due to the trust fund cuts.

We have heard talk about MTBE producers. We know this protects producers of the gasoline additive MTBE from liability, but in Vermont and around the country States and communities face multimillion-dollar bills for cleaning up the MTBE that is already in the ground water. And, to stop the cases filed, the Energy bill makes the provision retroactive. It wipes out cases filed in September by several New York communities, cases filed by the State of the distinguished Presiding Officer, New Hampshire. The list goes on and on but so do the echoes of the ghostwriter's voice in this bill.

This turkey would waive environmental analyses for energy projects on public lands, exempt them from the Clean Water Act, Safe Drinking Water Act, open coastal areas to oil and gas development, reduce support for clean coal technology, and this bill will sim-

ply mean that more toxic pollutants like mercury will get dumped on Vermont's forests and our lakes and our rivers.

Shortly after the administration entered the White House, it closed the doors to the public and they started to put together the energy industry's wish list of subsidies—environmental and consumer protection rollbacks. If we pass this bill, we are going to say Christmas came before Thanksgiving for these special interests.

I don't see how, at a time when we are justifying drastic cuts to vital social programs, we can push through a \$100 billion counterproductive budget buster for the energy industry.

As I said, many a bad book has a ghostwriter, and so do many bad bills. When you read through this 1,100-page energy bill, it is clear who the ghostwriter were: the oil, gas, coal and ethanol industries that—surprise, surprise—would reap almost \$20 billion tax subsidies from this bill. The voices of these ghostwriters echo throughout this bill.

But the cost to taxpayers does not stop there. If taxpayers feel their wallets getting lighter this week it's because this bill will cost them another seventy-plus billion dollars in other subsidies over the next 10 years.

Unfortunately, the 1,100 pages are full of special interest giveaways but empty of innovative and sustainable energy policy that will ensure Americans clean, reliable and affordable power in the future.

Some of our Republican colleagues are trying to sell this bill to the American public as a balanced energy plan to give our Nation energy security over the decades to come. It is not.

It will only increase our reliance on unsustainable, petroleum-based energy sources. It undercuts recent progress in developing renewable energy sources and technologies that reduce pollution. It undermines the reliability of our electricity markets by opening the door to more manipulation and mergers and stalling regional efforts to improve the transmission grid.

The Senate sent a decent energy bill to conference, and we got back a frog. The roster of squandered taxpayers' dollars and squandered opportunities in this bill is breathtaking to behold.

The American people could have expected that we could have learned from this summer's blackout—still fresh in our experience and on our minds—and used this bill to address what went wrong and build upon what went right.

Incredibly, this bill does the opposite. In New England, we have already created a regional organization to increase reliability of our transmission liens. It was able to stop the blackout from cascading farther into Vermont and other States. Instead of using this organization as a model, this bill actually discourages utilities in other regions of the country from joining regional organizations. It could also discourage badly needed new investment in the transmission grid.

The bill also does not do enough to protect consumers and ratepayers from manipulation of energy markets. There is no prohibition on the price-gouging schemes employed by companies like Enron, even through the Senate supported such protections by a wide margin.

The bill repeals a 70-year-old law to restrict mergers of utility companies with other companies where they have no expertise. In the past, this practice has caused financial troubles for utilities and consequently, the ratepayers.

The American people could have hoped that this bill would do more to emphasize technological innovation that would promote clean and sustainable energy. Instead, it barely holds on to the status quo in incentives for renewable and energy efficiency. If we are going to avoid future blackouts, we have to decrease demand on the electricity grid as well as make improvements to it.

But instead of working to advance technologies to create jobs and reduce pollution, we have a bill that gives oil, gas, ethanol and nuclear companies enormous subsidies.

At the same time, this bill fails to address one of the biggest energy and environmental issues facing our country: how to improve fuel efficiency standards for cars and trucks. In fact, the bill actually would enlarge a loophole for huge SUVs that will actually encourage more people to buy these gas guzzlers. We all have heard of the SUV dealerships that actually use the existing tax loophole in their TV ads.

The bill also hands Vermont drivers a double whammy by mandating the use of 5 billion gallons of ethanol by 2012, while threatening deep revenue losses to the Highway Trust Fund. Under this bill, Vermonters and drivers in other States could expect higher prices at the pump due to this mandate, and more potholes in their roads due to the Trust Fund cuts.

While the bill fails to take any steps forward on energy policy, it takes a giant step backward on environmental protections. When the Clinton administration strengthened the requirements for reducing smog around cities, it was hailed as a major step toward reducing asthma and other chronic illnesses. Well, by postponing these ozone attainment targets, no one will be breathing easier after this bill except the special interests.

Although you won't be able to see much through the smog when you're looking up, you might see more when you're looking down, and what you see will be unwelcome.

This bill includes several new provisions that let polluters off the hook when it comes to reducing contaminants in groundwater and drinking water. It protects producers of the gasoline additive MTBE from liability if their product is found to be defective. In Vermont and around the country, States and communities face multi-million dollar bills for cleaning up the

MTBE that already has leached into the groundwater.

At least one court has already found MTBE producers liable for these clean-up costs because of product defects, and several other cases are pending. To make sure these cases are stopped, the energy bill makes the provision retroactive, wiping out cases filed in September by several New York communities and New Hampshire.

The list goes on and on, and so do the echoes of the ghostwriters' voice in this bill. This turkey would waive environmental analysis for energy projects on public lands. It would exempt oil and gas drilling from requirements of the Clean Water Act and Safe Drinking Water Act. It would open coastal areas to oil and gas development. It also would reduce support for clean-coal technology in favor of the conventional dirty power plants.

This will simply mean that more toxic pollutants like mercury will get dumped on Vermont's forests, lakes and rivers.

Days after this administration entered the White House, they closed the doors to the public and started to put together the energy industry's wish list of subsidies and environmental and consumer protection rollbacks. Well, Christmas came early this year for the special interests.

The energy bill now before Congress is stuffed with everything on that wish list, plus just about everything else that these special interests could dream up when they were given the chance.

The bill before us now costs three times more than the proposal that the administration first put on the table 2 years ago.

When you look at the list of special-interest giveaways, it is no wonder the bill was written behind closed doors.

The President and the Congress had a real opportunity to produce a bill that would lead the Nation toward balanced, sustainable, clean energy production. This bill fails on all counts.

Instead, we have 1,100 pages worth of policies that will increase our dependence on fossil fuels, prop up wealthy energy corporations, repeal consumer protections and threaten environmental and public health. I do not see how my Republican colleagues can any longer justify their drastic cuts to vital social programs while pushing through this \$100 billion, counterproductive budget-buster for the energy industry.

TRIBUTE TO JOHN FITZGERALD KENNEDY

I would like to talk for a moment about a more personal matter. Here we are today, November 20, 2003, just two days away from November 22. I think back to 40 years ago on November 22, 1963. I was living in Washington, D.C., at that time, as a young law student. My wife, Marcelle, and I were living in a small basement apartment. She was working as a nurse at the VA hospital, then called Mount Alto, up on Wisconsin Avenue, where the Russian Em-

bassy is now. I was going to Georgetown Law School downtown here in Washington.

They say that anybody who was old enough to remember on that November 22 remembers exactly where they were when they heard the news about President Kennedy's assassination. That is true of anybody I have ever spoken with.

I was in the law school library and one of my classmates, who was not a supporter of President Kennedy, came in and told me the President had been shot. I told him this was really not funny, and then I realized he was crying. He was a person who had never voted for President Kennedy but realized the enormity of what had happened. When I saw his tears, I knew it had to be true.

My wife and I did not own a car at the time. I went outside and hailed a cab to head back to our apartment. My wife had worked the whole night before, and she was home asleep. I did not want to call her. I wanted to tell her in person what had happened.

I think I probably got in the only cab in all of Washington that did not have a radio. You can imagine my frustration as we started through the Washington traffic. As we drove down K Street, where many stockbrokers have their offices, we could see the screen that normally displayed stock prices was blank. That was an obvious signal that they had closed the markets in New York.

I saw Mrs. Kennedy's brother-in-law. As he would be chauffeured in a Rolls-Royce to his brokerage house each morning, I would watch with envy from the bus as I went to work. I saw him running into the street, frantic, trying to hail a cab. I saw a police officer directing traffic with tears coming down his face.

When I got to our apartment, I banged on the door and woke up my wife. We turned on the television to see the now famous announcement by Walter Cronkite—taking off his horn-rimmed glasses, announcing the President was dead.

Just a short time before, President Kennedy had given a speech at American University, a speech that I thought laid out his focus for that term and what most people believed would be a second term. That was the speech in which he said, "We must make the world safe for diversity." I would like to include a copy of this speech with my statement.

We should think about this quote these days. President Kennedy said, "make the world safe for diversity." He did not say we should make the world an exact copy of the United States. If everybody knew they could follow their beliefs and they could follow their system of government, it would be a safer world. But that was not to be.

I remember the next day when my wife and I stood on Pennsylvania Avenue with a half a million people watching as the cortege went from the White



House up to the Capitol. It was silent. It was so silent that as we stood there, we could hear the traffic lights. Even though the street was blocked off, the traffic lights were still operating, and from eight lanes away, you could hear the click of the lights as they changed. This is with half a million or more people on that street.

Where we were standing, near the National Art Gallery, almost from the moment the cortege left the White House, we could hear the noise of the drums and the horses. I remember vividly the riderless horse, the boots turned backwards. It was a very spirited horse. I recall his name was Black-jack. He was skittering, his feet dancing on the pavement. I can still hear the click, click of his hooves. I remember a car going by with then-Attorney General Robert Kennedy in it, his chin on his hand, just staring straight ahead, not seeing any of the crowd. And, of course, I remember the coffin being brought here to lie in state in the Rotunda.

We heard the distinguished majority leader at that time, Mike Mansfield, a very close friend of John Kennedy, give a eulogy. He spoke of President Kennedy's and Jacqueline Kennedy's wedding rings. She took her husband's ring from his finger. It was 40 years ago, but I remember it so well.

I did not meet Senator Mansfield until more than 10 years later when I was the Senator-elect from Vermont. I got to know him well and realized the depth of his affection and his friendship for President Kennedy, with whom he had served in the Senate. It must have been so difficult for him to give that eulogy.

For two days, there were people—not just officials from Washington, D.C., but people from all over the country—who were stretched literally for miles, waiting to pay their respects. I can still see them huddled in their coats with frost from their breath in the air as they stood in line all night.

We stayed at our apartment to watch the funeral, because we were expecting our first child. We felt the crowd would have made it too difficult to go back downtown.

At the funeral, there were heads of state marching from 1600 Pennsylvania Avenue to St. Matthews. There were Prime Ministers, Presidents, Kings, Princes, and dictators. Someone came up with the idea of having the representatives march based on the name of their country. The head of France marched next to head of Ethiopia. Emperor Haile Selassie of Ethiopia marched next to Charles de Gaulle.

The interesting thing about this is the way the world came together. In fact, for a while there was a rumor that Premier Khrushchev might come. Remember, this was the height of the Cold War. This was when President Kennedy and Premier Khrushchev had stared across oceans at each other during the Cuban missile crisis. Khrushchev was dissuaded from coming by

security considerations. Instead, he personally went to the American Embassy to sign the book of condolences. This was the kind of unity that was felt around the world.

Actually, I cannot think of any time when we felt that kind of unity and support for the United States, until the tragedy, 38 years later, of September 11.

Everybody watched the television, listened to the radio, or stood downtown to watch the funeral. We saw on television planes fly by in a missing man formation followed by Air Force One tipping its wing in salute. We ran outside just in time to see the planes which we had seen seconds before on television fly over our heads.

Looking around, everybody else had run outside too. We stood there, neighbors and strangers.

At that time, there was so much optimism, so much hope, even though it was at the height of the Cold War, and even though we had just experienced the Cuban missile crisis. After the death of President Kennedy, we felt so much of this optimism was lost.

I saw the unity come back after September 11. I don't know if the optimism will ever come back fully. We were optimistic of many things.

In my lifetime, we have seen so many wonderful advances in science. When I was young, we had to worry about polio. Our children and my two grandchildren will never have to worry about those kinds of things. Our country has had many wonderful advances and much to be optimistic about. There was unity and support from around the world for the United States right after that event, as there was right after September 11. We are now in a time where that unity is missing. I hope it will come back.

I hope this weekend all Members of this body—most of us are old enough to remember that day—I hope we stop and think what is best for this country. It is time to start working together more closely, with more support for each other and the country, and it is time to help restore some of the optimism. We are a great country. We have survived world wars, civil wars, Presidential assassinations, and terrorist attacks. We can survive much more—if not for ourselves, for our children and for our grandchildren.

Mr. President, I ask unanimous consent to print President Kennedy's 1963 commencement address delivered at American University.

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

REMARKS OF PRESIDENT JOHN F. KENNEDY, JR. AT AMERICAN UNIVERSITY, WASHINGTON D.C., JUNE 10, 1963

President Anderson, members of the faculty, Board of Trustees, distinguished guests, my old colleague, Senator Bob Byrd, who has earned his degree through many years of attending night law school, while I am earning mine in the next 30 minutes, ladies and gentlemen:

It is with great pride that I participate in this ceremony of the American University,

sponsored by the Methodist Church, founded by Bishop John Fletcher Hurst, and first opened by President Woodrow Wilson in 1914. This is a young and growing university, but it has already fulfilled Bishop Hurst's enlightened hope for the study of history and public affairs in a city devoted to the making of history and to the conduct of the public's business. By sponsoring this institution of higher learning for all who wish to learn whatever their color or their creed, the Methodists of this area and the nation deserve the nation's thanks, and I commend all those who are today graduating.

Professor Woodrow Wilson once said that every man sent out from a university should be a man of his nation as well as a man of his time, and I am confident that the men and women who carry the honor of graduating from this institution will continue to give from their lives, from their talents, a high measure of public service and public support.

"There are few earthly things more beautiful than a University," wrote John Masfield, in his tribute to the English Universities—and his words are equally true here. He did not refer to spires and towers, to campus greens and ivied walls. He admired the splendid beauty of the University, he said, because it was "a place where those who hate ignorance may strive to know, where those who perceive truth may strive to make others see."

I have, therefore, chose this time and this place to discuss a topic on which ignorance too often abounds and the truth is to rarely perceived—yet it is the most important topic on earth: world peace.

What kind of peace do I mean? What kind of peace do we seek? Not a Pax Americana enforced on the world by American weapons of war. Not the peace of the grave or the security of the slave. I am talking about genuine peace—the kind of peace that makes life on earth worth living—the kind that enables man and nations to grow and to hope and to build a better life for their children—not merely peace for Americans but peace for all men and women—not merely peace in our time but peace for all time.

I speak of peace because of the new face of war. Total war makes no sense in an age when great powers can maintain large and relatively invulnerable nuclear forces and refuse to surrender without resort to those forces. It makes no sense in an age when a single nuclear weapon contains almost ten times the explosive force delivered by all of the allied air forces in the Second World War. It makes no sense in an age when the deadly poisons produced by a nuclear exchange would be carried by the wind and water and soil and seed to the far corners of the globe and to generations unborn.

Today the expenditure of billions of dollars every year on weapons acquired for the purpose of making sure we never need to use them is essential to keeping the peace. But surely the acquisition of such idle stockpiles—which can only destroy and never create—is not the only, much less the most efficient, means of assuring peace.

I speak of peace, therefore, as the necessary rational end of rational men. I realize that the pursuit of peace is not as dramatic as the pursuit of war—and frequently the words of the pursuer fall on deaf ears. But we have no more urgent task.

Some say that it is useless to speak of world peace or world law or world disarmament—and that it will be useless until the leaders of the Soviet Union adopt a more enlightened attitude. I hope they do. I believe we can help them do it. But I also believe that we must re-examine our own attitude—as individuals and as a Nation—for our attitude is as essential as theirs. And every graduate of this school, every thoughtful citizen who despairs of war and wishes to bring

peace, should begin by looking inward—by examining his own attitude toward the possibilities of peace, toward the Soviet Union, toward the course of the Cold War and toward freedom and peace here at home.

First: Let us examine our attitude toward peace itself. Too many of us think it is impossible. Too many of us think it is unreal. But that is dangerous, defeatist belief. It leads to the conclusion that war is inevitable—that mankind is doomed—that we are gripped by forces we cannot control.

We need not accept that view. Our problems are manmade—therefore, they can be solved by man. And man can be as big as he wants. No problem of human destiny is beyond human beings. Man's reason and spirit have often solved the seemingly unsolvable—and we believe they can do it again.

I am not referring to the absolute, infinite concept of universal peace and good will of which some fantasies and fanatics dream. I do not deny the values of hopes and dreams but we merely invite discouragement and incredulity by making that our only and immediate goal.

Let us focus instead on a more practical, more attainable peace—based not on a sudden revolution in human nature but on a gradual evolution in human institutions—on a series of concrete actions and effective agreements which are in the interest of all concerned. There is no single, simple key to this peace—no grand or magic formula to be adopted by one or two powers. Genuine peace must be the product of many nations, the sum of many acts. It must be dynamic, not static, changing to meet the challenge of each new generation. For peace is a process—a way of solving problems.

With such a peace, there will still be quarrels and conflicting interests, as there are within families and nations. World peace, like community peace, does not require that each man love his neighbor—it requires only that they live together in mutual tolerance, submitting their disputes to a just and peaceful settlement. And history teaches us that enmities between nations, as between individuals, do not last forever. However fixed our likes and dislikes may seem the tide of time and events will often bring surprising changes in the relations between nations and neighbors.

So let us persevere. Peace need not be impracticable—and war need not be inevitable. By defining our goal more clearly—by making it seem more manageable and less remote—we can help all peoples to see it, to draw hope from it, and to move irresistibly toward it.

Second: Let us re-examine our attitude toward the Soviet Union. It is discouraging to think that their leaders may actually believe what their propagandists write. It is discouraging to read a recent authoritative Soviet text on Military Strategy and find, on page after page, wholly baseless and incredible claims—such as the allegation that “American imperialist circles are preparing to unleash different types of wars . . . that there is a very real threat of a preventive war being unleashed by American imperialists against the Soviet Union . . . (and that) the political aims of the American imperialists are to enslave economically and politically the European and other capitalist countries . . . (and) to achieve world domination.”

Truly, as it was written long ago: “The wicked flee when no man pursueth.” Yet it is sad to read these Soviet statements—to realize the extent of the gulf between us. But it is also a warning—a warning to the American people not to fall into the same trap as the Soviets, not to see only a distorted and desperate view of the other side, not to see conflict as inevitable, accommodations as

impossible and communication as nothing more than an exchange of threats.

No government or social system is so evil that its people must be considered as lacking in virtue. As Americans, we find communism profoundly repugnant as a negation of personal freedom and dignity. But we can still hail the Russian people for their many achievements—in science and space, in economic and industrial growth, in culture and in acts of courage.

Among the many traits the peoples of our two countries have in common, none is stronger than our mutual abhorrence of war. Almost unique, among the major world powers, we have never been at war with each other. And no nation in the history of battle ever suffered more than the Soviet Union suffered in the course of the Second World War. At least 20 million lost their lives. Countless millions of homes and farms were burned or sacked. A third of the nation's territory, including nearly two thirds of its industrial base, was turned into a wasteland—a loss equivalent to the devastation of this country east of Chicago.

Today, should total war ever break out again—no matter how—our two countries would become the primary targets. It is an ironical but accurate fact that the two strongest powers are the two in the most danger of devastation. All we have built, all we have worked for, would be destroyed in the first 24 hours. And even in the Cold War, which brings burdens and dangers to so many countries, including this Nation's closest allies—our two countries bear the heaviest burdens. For we are both devoting massive sums of money to weapons that could be better devoted to combating ignorance, poverty and disease. We are both caught up in a vicious and dangerous cycle in which suspicion on the other, and new weapons beget counter-weapons.

In short, both the United States and its allies, and the Soviet Union and its allies, have a mutually deep interest in a just and genuine peace and in halting the arms race. Agreements to this end are in the interests of the Soviet Union as well as ours—and even the most hostile nations can be relied upon to accept and keep those treaty obligations, and only those treaty obligations, which are in their own interest.

So, let us not be blind to our differences—but let us also direct attention to our common interests and to means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the world safe for diversity. For, in the final analysis, our most basic common link is that we all inhabit this plant. We all breathe the same air. We all cherish our children's future. And we are all mortal.

Third: Let us re-examine our attitude toward the Cold War, remembering that we are not engaged in a debate, seeking to pile up debating points. We are not here distributing blame or pointing the finger of judgment. We must deal with the world as it is, and not as it might have been had history of the last eighteen years been different.

We must, therefore, preserve in the search for peace in the hope that constructive changes within the Communist bloc might bring within reach solutions which now seem beyond us. We must conduct our affairs in such a way that it becomes in the Communists' interest to agree on a genuine peace. Above all, while defending our vital interest, nuclear powers must avert those confrontations which bring an adversary to a choice of either a humiliating retreat or a nuclear war. To adopt that kind of course in the nuclear age would be evidence only of the bankruptcy of our policy—or of a collective death-wish for the world.

To secure these ends, America's weapons are non-provocative, carefully controlled, de-

signed to deter and capable of selective use. Our military forces are committed to peace and disciplines in self-restraint. Our diplomats are instructed to avoid unnecessary irritants and purely rhetorical hostility.

For we can seek a relaxation of tensions without relaxing our guard. And, for our part, we do not need to use threats to prove that we are resolute. We do not need to jam foreign broadcasts out of fear our faith will be eroded. We are unwilling to impose our system on any unwilling people—but we are willing and able to engage in peaceful competition with any people on earth.

Meanwhile, we seek to strengthen the United Nations, to help solve its financial problems, to make it a more effective instrument of peace, to develop it into a genuine world security system—a system capable of resolving disputes on the basis of law, of insuring the security of the large and the small, and of creating conditions under which arms can finally be abolished.

At the same time we seek to keep peace inside the non-communist world, where many nations, all of them our friends, are divided over issues which weaken western unity, which invite communist intervention or which threaten to erupt into war. Our efforts in West New Guinea, in the Congo, in the Middle East and in the Indian subcontinent, I have been persistent and patient despite criticism from both sides. We have also tried to set an example for others—by seeking to adjust small but significant differences with our own closest neighbors in Mexico and in Canada.

Speaking of other nations, I wish to make one point clear. We are bound to many nations by alliances. These alliances exist because our concern and theirs substantially overlap. Our commitment to defend Western Europe and West Berlin for example, stands undiminished because of the identity of our vital interests. The United States will make no deal with the Soviet Union at the expense of other nations and other peoples, not merely because they are our partners, but also because their interests and ours converge.

Our interests converge, however, not only in defending the frontiers of freedom, but in pursuing the paths of peace. It is our hope—and the purpose of Allied policies—to convince the Soviet Union that she, too, should let each nation choose its own future, so long as that choice does not interfere with the choices of others. The communist drive to impose their political and economic system on others is the primary cause of world tension today. For there can be no doubt that if all nations could refrain from interfering in the self-determination of others, then peace would be much more assured.

This will require a new effort to achieve world law—a new context for world discussions. It will require increased understanding between the Soviets and ourselves. And increased understanding will require increased contact and communications. One step in this direction is the proposed arrangement for a direct line between Moscow and Washington, to avoid on each side the dangerous delays, misunderstandings, and misreadings of the other's actions which might occur at a time of crisis.

We have also been talking in Geneva about other first-step measures of arms control, designed to limit the intensity of the arms race and to reduce the risks of accidental war. Our primary long-range interest in Geneva, however, is general and complete disarmament—designed to take place by stages, permitting parallel political developments to build the new institutions of peace which would take the place of arms. The pursuit of disarmament has been an effort of this Government since the 1920's. It has been urgently sought by the past three Administrations. And however dim the prospects may be

today, we intend to continue this effort—to continue it in order that all countries, including our own, can better grasp what the problems and possibilities of disarmament are.

The one major area of these negotiations where the end is in sight—yet where a fresh start is badly needed—is in a treaty to outlaw nuclear tests. The conclusion of such a treaty—so near and yet so far—would check the spiraling arms race in one of its most dangerous areas. It would place the nuclear powers in a position to deal more effectively with one of the greatest hazards which man faces in 1963, the further spread of nuclear arms. It would increase our security—it would decrease the prospects of war. Surely this goal is sufficiently important to require our steady pursuit, yielding neither to the temptation to give up the whole effort nor the temptation to give up our insistence on vital and responsible safeguards.

I am taking this opportunity, therefore, to announce two important decisions in this regard.

First: Chairman Khrushchev, Prime Minister Macmillan and I have agreed that high-level discussions will shortly begin in Moscow looking toward early agreement on a comprehensive test ban treaty. Our hopes must be tempered with the caution of history—but with our hopes go the hopes of all mankind.

Second: To make clear our good faith and solemn convictions on the matter, I now declare that the United States does not propose to conduct nuclear tests in the atmosphere so long as other states do not do so. We will not be the first to resume. Such a declaration is no substitute for a formal binding treaty—but I hope it will help us achieve one. Nor would such a treaty be a substitute for disarmament—but I hope it will help us achieve it.

Finally, my fellow Americans, let us examine our attitude toward peace and freedom here at home. The quality and spirit of our own society must justify and support our efforts abroad. We must show it in the dedication of our own lives—as many of you who are graduating today will have a unique opportunity to do, by serving without pay in the Peace Corps abroad or in the proposed National Service Corps here at home.

But wherever we are, we must all, in our daily lives, live up to the age-old faith that peace and freedom walk together. In too many of our duties today, the peace is not secure because freedom is incomplete.

It is the responsibility of the Executive Branch at all levels of government—local, state and national—to provide and protect that freedom for all of our citizens by all means within their authority. It is the responsibility of the Legislative Branch at all levels, wherever that authority is not now adequate, to make it adequate. And it is the responsibility of all citizens in all sections of this country to respect the rights of all others and to respect the law of the land.

All this is not unrelated to world peace. “When a man’s ways please the Lord,” the Scriptures tell us, “he maketh even his enemies to be at peace with him.” And is not peace, in the last analysis, basically a matter of human rights—the right to live out our lives without fear of devastation—the right to breathe air as nature provided it—the right of future generations to a healthy existence?

While we proceed to safeguard our national interests, let us also safeguard human interests. And the elimination of war and arms is clearly in the interest of both. No treaty, however much it may be to the advantage of all, however tightly it may be worded, can provide absolute security against the risks of deception and evasion. But it can—if it is

sufficiently effective in its enforcement and if it is sufficiently in the interests of its signers—offer far more security and far fewer risks than an unabated, uncontrolled, unpredictable arms race.

The United States, as the world knows, will never start a war. We do not want a war. We do not now expect a war. This generation of Americans has already had enough—more than enough—of war and hate and oppression. We shall be prepared if others wish it. We shall be alert to try to stop it. But we shall also do our part to build a world of peace where the weak are safe and the strong are just. We are not helpless before that task or hopeless of its success. Confident and unafraid, we labor on—not toward a strategy of annihilation but toward a strategy of peace.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I thank you.

I rise to talk about the Energy conference report and urge my fellow Senators to support this bill. We have waited for a comprehensive Energy bill for too long. I am pleased that we have before us a good energy policy bill which we can send to the President of the United States.

The conference bill is not perfect. I don’t believe I have voted for a perfect bill in the last 17 years. But no bill we ever pass around here is perfect. But it is a good compromise that will help our country meet its future energy needs. This agreement will mean more jobs and more money in American’s pocketbooks and create more than a million jobs across this country. We are already on the upturn of an economic recession. This bill will help kick our economy into high gear.

A good energy policy must strike a balance between energy production and conservation. This bill does just that by including increased energy production while also doing more to encourage conservation and smarter energy use.

I know this bill was difficult to get out of conference. I watched my chairman for almost 2 months suffer with this bill. Under his leadership and the leadership of Senator GRASSLEY, we have before the Senate a solid piece of legislation that provides energy policy and tax incentives to promote production and energy efficiencies throughout and the use of cleaner burning fuels.

In the wake of our ongoing problems in the Middle East, now more than ever a sound energy policy is a critical part of our national security. We must have a reliable source of energy and we must cut our reliance on foreign oil. Presently we depend on foreign nations, including the Middle East, for nearly 60 percent of our Nation’s oil supply. While we appear to be moving away from combat in Iraq, we still have many problems there. There is still a lot of uncertainty in the Middle East. We need to increase our own production of energy because it is more important than ever right now. It is too important and there is too much instability in the world not to pass this bill.

We do not want the United States of America at the mercy of other countries just to keep our engines running and our lights on. This Energy bill will help increase our energy independence by increasing domestic production of energy and reducing our reliance on foreign sources.

This bill allows for and encourages through tax credits more oil and more natural gas exploration. The bill also includes clean coal provisions that I helped write, to increase domestic production, while also improving environmental production soundness. In my home State this means jobs, a lot of jobs, and a cleaner place to live.

Clean coal technology will result in a significant reduction in emissions and a sharp increase in energy efficiency.

I am proud to be from a coal State. Generations of Kentuckians have made their living in the coal fields and coal mines of Kentucky. For the last decade, coal in Kentucky was on the downturn because of legislative and regulatory policies from the Federal Government which forced electricity generation to invest in natural gas-fired facilities instead of coal.

I am glad to see we have turned things around and are taking steps to make sure coal continues to play a vital role in meeting our future energy needs. This focus on clean coal is good for the environment. It is certainly good for the economy and for putting folks back to work.

The Energy bill encourages research and development of clean coal technology by authorizing nearly \$2.6 billion in appropriations for the Department of Energy to conduct programs to advance new technologies. Almost \$2 billion will be used for the clean coal power initiatives where the DOE will work with industry to advance efficiencies, environmental performance, and cost competitiveness of new clean coal technologies.

The energy tax package includes \$2.5 billion for coal-fired companies to invest in clean coal technologies and pollution control equipment. I am pleased to see that the bill also authorized an additional \$2 billion for clean air programs which will encourage the use of pollution control equipment and the next generation of clean coal generators.

The 21st century economy will require increased amounts of reliable, clean, and affordable electricity to keep our Nation running. This bill recognizes that coal must play an important role in our energy future.

Today, more than half our Nation’s electricity is generated from an abundant low-cost domestic coal. We have over 275 billion tons of recoverable coal reserves. This is nearly 30 percent of the world’s coal supply. That is enough coal to supply us with energy for more than 250 years.

This Energy bill also includes fuel provisions that I pushed hard for that will help make fuel burn cleaner. The bill requires the use of 5 billion gallons

per year of renewable fuels such as ethanol and biodiesel in gasoline by the year 2012. The bill also provides tax credits to encourage the use of these fuels. Increasing the use of alternative fuels will help farmers while also increasing domestic energy production and lessening our dependence on foreign oil.

The bill also addresses electricity. Kentucky is the second lowest electric rate State in the Union. It just fell below Idaho. Much of Kentucky's low rates come as a result of our coal production. The low rates also come from Kentucky's decision to put Kentucky consumers first before consumers outside of the State.

I do not believe this bill goes far enough to prevent FERC from implementing SMD permanently or preventing mandatory RTOs. I do believe this bill is a good compromise. The bill delays until 2007 FERC's plan to create its SMD and allows companies to participate in RTOs voluntarily.

Some of the electric provisions are especially good for Kentucky. More than one-third of Kentucky's electricity comes from rural electric cooperative distributors. This bill will help the consumer-owners of Kentucky's 26 electric cooperatives to stay in business and maintain the State's status as having the lowest residential or second lowest residential rates in the country.

I worked hard in the Senate Energy Committee to ensure that the small rural electric cooperatives in Kentucky are not subject to expensive FERC jurisdiction that could raise consumers' rates without improving the reliability of the electric utility system. This is a big issue for our cooperatives in Kentucky that serve only a few thousand customers and do not have bulk transmission.

This bill specifically codifies RUS borrowers' existing exemption from FERC regulation and expands the exemption to include small electric cooperatives that sell less than 4 million megawatts of electricity per year. This is also called the small utility exemption.

The bill also minimizes other new regulatory burdens on cooperatives. I am pleased to see this bill does not include new regulatory programs such as environmental mandates that would have raised consumers' electric rates.

I hope the Senate passes the Energy bill this week so we can make our environment, economy, and national security stronger.

Thank you, Mr. President, for the time, and I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is to be recognized.

Mr. DURBIN. Mr. President, I am happy to yield to the Senator from New Mexico, who has asked permission to speak for a few moments.

I say to the Senator, whatever time you would like, I would be happy to yield for that purpose.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico.

Mr. DOMENICI. Thank you, Mr. President. I will not take too long.

I wish to speak a moment to the Senator from Kentucky.

First, I say to the Senator, I chair the Energy Committee, and I am very pleased that Kentucky has contributed you to the committee. You bring to us an enthusiastic approach to America's self-sufficiency, not the gloom and doom of: We can't make it, we can't do it. You are always there saying: We ought to do it. Why don't we do it?

I am very pleased we were able to put in this new law a series of provisions that permit the Senator to come to the floor and speak with optimism about coal of the future, coal and America's future. Of course it is parochial but it is national.

The Senator's State is a coal producer but it is a part of America. Kentucky is a State in the Union. Your State does not want to go down in coal. As I understand it, you want coal to go up. You do not want "King Coal" dead. You want "King Coal" alive.

The first thing I want to do is say to the Senator, it is very interesting to see how you interpret this and how others interpret it—that all these coal provisions are a giveaway to big business. I did not hear the Senator mention big business once, not because they are not going to be involved, but I think it is because the Senator understands you are not going to produce new, clean coal generators with non-profit organizations.

I guess the Senator assumes, as I do, that some coal company is going to apply to the Department of Energy to do this. Is that not right, I ask the Senator?

Mr. BUNNING. Absolutely. The Senator is absolutely right.

Mr. DOMENICI. So one can stand up and say: There must have been great lobbying from the coal companies.

Well, the coal companies did not have to lobby. All we had to do was have a brain and to know there is coal and say: Well, what are we going to do so somebody will invest money in coal, servicing our country in a bigger and better way?

If it turns out some choose to come to the floor and label that indecent lobbying by a big company, I am sorry, we could have done this if no coal company ever visited us, I assure you.

I say to the Senator, we have Senators like you who told us about it.

Mr. BUNNING. I assure the Senator from New Mexico that I was not lobbied by coal companies. But I sure was lobbied by the small electric producers in Kentucky.

Mr. DOMENICI. Absolutely. The truth is, whatever you lobbied for as a Senator, that is your privilege. Nobody could say you should not work for coal in this bill, that you ought to just abandon it, that you should not do that because that is representing an inter-

est. Of course. Well, if there are no interests, there is nothing going on. Right? We just as well might go to sleep and forget about it.

Another thing that is interesting, we have had at least three Senators come to the floor, including my cohort from New Mexico, saying they are against electricity provisions because they wanted FERC to have more power.

Now, I did not have the luxury of making speeches about FERC. I had to write something. And here we have one Senator saying FERC should have run the whole electric system in the country. Right?

Then we have this Senator. He is over here saying: You almost went too far, where we skinned back on FERC's power. We said it can phase in over time. Right?

You were not sure of that. If you had been writing it, and did not have anybody else pressuring you, you would have written it more in favor of your State. But, you see, I did not have the luxury of writing one for each State, one that affects you up the road.

Then there is another State—such as Pennsylvania—saying: We don't do business like they do. We want a whole different electricity provision. I heard that. I could not write one for them, too. Right?

Mr. BUNNING. Fifty different ones.

Mr. DOMENICI. The last time they used to write two was before the Civil War. They wrote one for the South and one for the North. But I told them: Why don't you cut it in four pieces and we will write four of them? Right? But there aren't four countries; there are just the States. So we did the best we could. I think it is a good provision.

Now, what else about it? I share with you, right now, on the electric provision that here is the study. So everybody can see it—it is the first time it has been on the floor of the Senate. It is entitled "Interim Report: The Causes of the August 14th Blackout in the United States and Canada." I do not think I will ask that it be printed in the RECORD. I will refer to it. We have gone through it and we have looked at what they said.

Let me say to my friend, it says that the principal reason we had a blackout was that all of the States, with their various utility systems, had what are called reliability standards.

Now, I am not a technician, but reliability means something pretty common and ordinary. I can talk reliability at home in an evening with my wife. We talk a lot about this, and she should know what that is. Reliability standards means that you appropriately and prudently load your electric wires so they are not so overloaded that something happens, or that they are clean and they do not have things imposing upon their reliability.

This said it was nothing dramatic. It was not that we have an old, wornout system. Somebody said we had a Third World system. No, no, we do not. We have a first world system, not a third

world system. When we have a black-out, it is big news. That is because we have a first-rate system. You know the third-rate systems nobody cares about because they are not working anyway.

So the truth is, this little report says the biggest reason it went out was reliability.

Well, guess what. For all the things we did so wrong in this bill, one of the principal things we provided was mandatory reliability standards. No more cheating, fudging, hiding a little, and overloading the lines during heavy use, and saying: Well, nobody will do anything—except when it blows out. Then we all find out.

So I say to everybody, we did the report. You wondered what happened. You got the study. You got a bill. The bill says, if you pass this bill, it is fixed. Right?

Mr. BUNNING. Right.

Mr. DOMENICI. Contrary-wise, do what some have suggested, throw the bill out, and you are right back where we were. You are right back where we were. You can sit around and wait for a blackout, just playing with your hands, worrying, sweating, saying: When will it occur?

At least this bill says we know why it occurred, and we are not going to let it occur again. The Feds are going to fine anybody who is lazy and loafs around and doesn't clean up the lines. In fact, the report is pretty good that they are going to be on them to get the trees off the lines. That would be good news; we don't have to go out there line by line. But that is part of the reliability.

The point I make is, for every issue people have raised on the floor that this bill doesn't do or fails to do, on the other hand it does and it doesn't fail to. Every time people say "we don't like it because," there is something in it to say, "but we do like it because." I regret that it can't be every single Senator taking the floor and saying: Everything in it is precisely what I want.

I am glad we have people such as the Senator from Kentucky who knows that can't happen.

Mr. BUNNING. I thank the Chair.

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, obviously, I am in opposition to this Energy bill. The Senator from New Mexico is my friend. We go nose to nose and toe to toe and fight on a lot of issues. We are in real disagreement over this bill. But I respect him and like him very much. When we do come together on issues such as mental health parity, it is a wonderful feeling for us to be on the same side fighting together. Unfortunately, today that may not be the case, but tomorrow I hope it is. I have a great deal of respect for him and for all the hard work he and his staff and so many others put into this legislation.

What I like about Senator DOMENICI—I guess most of all—is his candor.

He tends to play cards with the cards face up. You know what you are dealing with. He is very honest and plain-spoken. That is a refreshing virtue and quality in this world of politics. He was quoted on the floor the other day, talking about this Energy bill:

We know that as soon as you start reading the language, we are duck soup.

That is what he said. I have to say to the Senator from New Mexico that I have read some of the language. It looks like a duck, it walks like a duck, and it sounds like a duck. It is a duck. And we are in the soup if we enact it.

There are provisions in this bill that are very good for America and very good for my home State, provisions which I have long fought for throughout my congressional career: Expanding the use of ethanol, expanding the use of biodiesel. These are positive steps to help farmers, rural communities, to clean up air pollution in a sensible way, to provide energy resources which are not being used as much as they should. You might not expect to hear that from a Senator from Illinois because we have the largest ethanol production in the Nation. I have been honored to represent a congressional district that includes Decatur, IL, home of Archer Daniels Midland, the largest single ethanol producer in the Nation.

I came to this issue with some knowledge and with an inclination to try my best to expand ethanol. Throughout my public career, I have done it. I have been chairman of the congressional alcohol fuels caucus. I have introduced legislation, sponsored it. I have led efforts with letters and speeches, just about all you can do to promote ethanol. If it is enacted, the ethanol provision in the bill will be the most dramatic expansion in the Nation's history. I certainly support it.

To all of my friends in the farm community back home who are disappointed because I oppose this bill, trust that my commitment to ethanol is not going to change. I am just going to hope that the next venue, the next opportunity to discuss ethanol, will be in a much different bill, a much better bill.

Sadly, what is included in this bill, beyond the ethanol provisions and the biodiesel provisions and efforts to look for new ways to burn coal in an environmentally safe way, many of the provisions are very bad, very troublesome.

Tomorrow we will have a vote. That vote will decide whether this bill goes forward to final passage. It really is the key vote. It is going to be close, probably within one or two Senators' votes. They will decide what happens to this Energy bill. It is my hope that the Senators who are on the fence now or worried about the vote will consider several things.

First, we can do better. If this is supposed to be an Energy bill for America's future, we can do so much better. Take any family in your State, wherever you are from—Tennessee, Illinois,

New Mexico, or Delaware—sit down with them and say: When it comes to the energy future of America, what is the first thing we ought to look at? My guess is that most of those individuals, with no particular scientific or technical knowledge, will say: How about all the gasoline we are burning in our cars and trucks? That is the most obvious use of energy in America.

It is the No. 1 use of imported petroleum products, conversion into gasoline to fuel our cars and trucks. So you would assume that in this lengthy bill, the first chapter of the bill would relate to how we can burn this gasoline more efficiently, how we can reduce our consumption of gasoline, how we can make our cars and trucks more fuel efficient so there is less pollution and less dependence on foreign oil.

Most Americans would assume that.

Well, there is bad news. You can search this new law that is being proposed, page after page after page for 1,400 pages, and find precious little, if any, reference to fuel efficiency and fuel economy of America's cars and trucks. Why? How can we in good faith say to the American people that we are concerned about our energy security and energy independence without addressing the fuel efficiency of our cars and trucks?

There was a time, in 1975, when the average fuel efficiency was about 14 miles a gallon. Congress passed a law that almost doubled that fuel efficiency to 27.5 miles a gallon by 1985. That was 18 years ago. You ask yourself: How good are we today? Have we improved on that mark? Are we doing better than 27.5 miles a gallon on average? The answer, sadly, is no. We have gone in the opposite direction. We are closer now to 22 miles a gallon.

What has happened in 18 years? No leadership—not from Congress, not from the President—no leadership that leads us to more fuel efficiency. Instead, we have left it to the forces of the marketplace. There are many here who believe that is all we need to worry about; let the market work its will.

The market has worked its will and, as a result, we are selling cars that are less and less fuel efficient. We are importing more oil from overseas and burning it to fuel heavier, less fuel-efficient vehicles. In fact, this Congress, if it has shown any leadership, has gone in the opposite direction. We have created tax incentives for people to buy the most inefficient cars and SUVs in America, these monstrous Humvees that come rolling down the highway. We are going to give you a great big tax credit if you will buy those. Do you know why? Those big old monsters get between 9 and 15 miles a gallon. We will give you an incentive to buy those.

Yet when it comes to incentives to buy fuel-efficient cars, hybrid vehicles, we are going to have to phase that out. We do have a deficit.

Isn't that upside down? Shouldn't we be thinking about encouraging more

fuel-efficient vehicles if we truly want to lessen our dependence on Saudi Arabia and Middle Eastern oil? That is obvious to most people in the State I represent. It is obvious to most Americans. It certainly was not obvious to the sponsors of this Energy bill. They wrote this bill listening to Detroit. The automobile manufacturers in Detroit—I have worked with them on a number of issues—are just plain wrong on this. They have fought tooth and nail every proposal to bring more fuel-efficient vehicles to America.

Do you want to hear the irony of this situation? The irony was brought out by a disclosure—quoting here from the Baltimore Sun of November 19, 2003. Listen to what they wrote:

Chinese leaders are worried about their nation's growing dependence on imported oil. What's more, pollution from such fossil fuels threatens to become a parallel concern as China's booming economy matures.

So they've hit upon an obvious energy strategy that somehow has eluded U.S. lawmakers: conservation.

In what should be an embarrassing juxtaposition for leaders here, China is moving to impose tighter fuel-efficiency rules on cars and SUVs than the U.S. requires, while Congress is adopting an opposite approach—boosting domestic production of fossil fuels to meet all-but-unchecked demand.

... adds insult to injury by subsidizing the purchase of monster gas-guzzlers, such as the Humvee.

They conclude:

The Senate still has a chance to stop this monstrosity [the Energy bill]. It should take a cue from China and prepare for the future, instead of squandering precious resources trying to maintain an unsustainable past.

Chinese thinking on energy is very clear, I might say. It is the thinking of American politicians that is inscrutable. How in the world can we be talking about energy independence and ignore fuel efficiency for the cars and trucks we drive? That, sadly, is the reality of this legislation. That is why it cannot be taken seriously. You cannot believe this is the best the Congress in America can produce to deal with energy, without addressing that issue.

There is another issue here which I think goes to questions of justice and fairness, maybe even morality. I hate to raise that question, but we hear a lot about morality and virtue and values on the floor of the Senate. Occasionally, we should apply those same words to the legislation we consider. That relates to section 1502 of this legislation.

Section 1502 of this legislation has created a "get out of jail free card" for the producers of MTBE. What is MTBE? It is a substance that has been added to gasoline for years in America to reduce the tailpipe emissions and to make your engine run more smoothly. It is what is called an oxygenate. You probably didn't even know it was there. But it is blended with gasoline for those purposes, as an oxygenate. It is a product of waste products of the oil-processing procedure. So it is a pretty cheap commodity. It has been blended, for years, with gasoline in the United

States. Other oxygenates include ethanol, which I referred to earlier, and, like alcohol, it is benign and doesn't really threaten the environment.

But MTBE—this additive—turns out to be extraordinarily dangerous. It is a poison, a toxic substance which, if it leeches into a water supply, can make it undrinkable, at best, and dangerous, at worst, leading those who consume it to a greater likelihood of serious illness and disease, even the potential of cancer.

So what has happened across the United States is that the oil companies that use MTBE as an additive learned that when the underground storage tank at your gas station started to leak—little drips day after day—ultimately, that MTBE-blended gasoline would reach the water table under the ground, and the water supply of the community where the gas station was located. As it reached the water supply, it didn't biodegrade but continued to be toxic and lethal. As a result, the consumers, the families, the children, and the schools that consume this water were at a public health risk.

Well, this contamination has now spread across the United States. It is in Illinois and in many other States. Let me show you how bad this is.

Here is a map showing States with MTBE contamination in ground drinking water. The Presiding Officer's State of Tennessee does not have contamination in drinking water but does have contamination sites. Tennessee has 1,394 MTBE contamination sites. Illinois, where I live, has 9,546 MTBE contamination sites. Look at this map of America. You can see that where MTBE has reached the ground water, and now the drinking water, we have the public health hazard that has swept across America. Only six States in the continental United States have not been touched by this. Hawaii has not but Alaska has. Alaska's drinking water has been contaminated as well.

Why is this important? Because, for the first time in my memory, and I have asked my legal staff to keep looking—I may be wrong—we have decided to put into legislation protection from liability for product liability cases that are filed against MTBE producers. If you are an oil company that had MTBE blended with your gasoline and it ended up contaminating drinking water, causing a public health hazard, this bill, in section 1502, says, for you, you are in luck, you get a "get out of jail free card."

How can we do this? How can we, in all fairness, say the corporations and businesses that made a conscious decision to use this additive, and because of the use of this dangerous substance are endangering the public health and lives of Americans, will somehow be free of liability?

One of the first things we decided in America—those who sat down and, in their wisdom, created our Constitution—was that we would do away with royalty; we weren't going to give peo-

ple titles such as "princes" and "viscounts" and whatever it happened to be in the old country. No, in America it is different. There is no royalty. We are all the same. People are treated the same. The highest and the lowest in rank in America are held accountable.

But that is not the case when it comes to this Energy bill because if you happen to be an oil company with MTBE contamination, we are going to treat you like royalty with a "get out of jail free card." We are going to say that you are not going to be held responsible as will the business next door selling another product. That is just plain wrong.

Senator DOMENICI came to the floor and said repeatedly—understand, he turns the cards over so there is no doubt what is going on. He says: Understand what this bargain was. If you want ethanol, you want to sell more ethanol—the oil companies hate ethanol; they don't make ethanol. In order for them to go along with this bill, in order for the oil company giants to agree to promoting ethanol in America, we had to give them this MTBE waiver of liability. Those are not my words. I think they are an accurate paraphrase of Senator DOMENICI's words, repeated many times on the floor of the Senate. He said: If you don't give the oil companies this protection from liability for their own wrongdoing, from product liability lawsuits, frankly, there is going to be no ethanol in your future.

Isn't it a sad outcome that we would turn our backs on 153,858 MTBE contamination sites in America and say to the communities, to the towns and cities, the subdivisions and the families, to the individuals who are harmed by this MTBE: We are sorry, you will not have a day in court. You will not be able to hold the people accountable who ended up endangering your family. Why? Because we had to strike a political deal. We had to say that when it came to using ethanol—which is a benign substance, environmentally acceptable—we had to swallow hard and say to the makers of MTBE and the oil producers that we are going to let them off the hook.

Do you know what else is in this bill? It is not just a protection from liability. Imagine this, if you will. We provided in this bill that you can continue to sell MTBE in the United States until 2014. Now, here is a substance that we know is damaging the environment in 153,858 contaminated sites, and this bill gives the companies the express permission to continue to sell it in America. It goes on to say that any Governor or the President can stop the MTBE ban for any State or region, which means 2014 is not a real deadline. Then, to add the ultimate insult, it gives to the industry \$2 billion to transition away from MTBE.

My mind is spinning to think that Congressman DELAY of Texas, who supposedly is the author of this, was so audacious as to walk into the conference



and say: Here is the deal, my friends. This lethal chemical in gasoline can continue to be sold in this country for 11 or 12 more years, and any Governor or President can extend the sale of that beyond that period; any company that wants to stop selling it is going to get a Federal subsidy to a total tune of \$2 billion; and, furthermore, while this MTBE additive continues to contaminate water supplies and endanger public health, we are going to make sure that those who are injured, the innocent victims across America, cannot go to court and sue under a product liability claim.

How can we do this? How can we in good conscience do this? How can we ignore this section of the bill, this outrageous section of the bill?

Frankly, this is good reason to say to our friends who have worked long and hard on this conference report: Enough; send this bill back for more work. Remove this outrageous section about MTBE. Protect innocent American families and communities, and do it now.

There are those who argue, frankly, that there are other lawsuits that can be filed, that you don't have to use the product liability theory. Here is a lawsuit that was filed in Lake Tahoe, CA, South Tahoe Utility District v. ARCO, Atlantic Richfield Company. Here is what the jury verdict was in the case.

Lyondell—the maker of the MTBE additive—Lyondell's MTBE was defective in design because Lyondell failed to warn of the environmental risks.

They went on to say: Gasoline containing MTBE refined by the other defendants at trial was defective in design because the environmental risks of MTBE outweigh the benefits and the refiners failed to warn of its risks.

They went on to say: There is clear and convincing evidence that Lyondell and Shell acted with malice as they developed, promoted, and distributed their defective MTBE products.

What this tells us is that the companies which were sued knew they had a dangerous product, they continued to make it, continued to sell it, and continued to endanger people. Not only are they clearly guilty under a product liability standard, they are guilty, I think, in the worst scenario. As I recall from law school, it is whether they knew or should have known. This is not a "should have known" situation. The wrongdoers with MTBE actually were found, in this case, to have known it was a dangerous product.

Yesterday, I came to the floor and talked about this MTBE issue. I no sooner left the floor than the oil industry decided to put out a rebuttal to the remarks I had made on the floor. It is a lengthy rebuttal, but I would like to address the elements in it.

Frankly, they were plain wrong and the record should be set straight. I stated in my floor statement yesterday and I repeat again today, there were alternatives to MTBEs in the 1990s. Some would have you believe we had no

choice when it came to oxygenate; it was MTBE or nothing. But listen to this: The MTBE manufacturers knew conclusively by 1984 that MTBE was a dangerous product that could contaminate water wells throughout the United States. They misled the Environmental Protection Agency in direct responses to inquiries in 1986 when they claimed they were unaware of MTBE water contamination.

Because of this deception by the MTBE companies about the dangers of their product and their efforts to discredit anybody who said otherwise, the industry increased its production at the expense of the alternative oxygenate, ethanol.

It should be noted, MTBE, as I said earlier, is a waste product, cheaper than ethanol. Had the manufacturers of MTBE disclosed the truth about MTBE contamination, the ethanol industry would have done quite well, and Congress might or could have prohibited this product at a very early stage. But because of the active deception of the MTBE industry, starting with their knowledge in the 1980s of the danger of their product, this didn't happen.

I went on to say that MTBE was found to be a probable cause of cancer. I spent a lot of my years on Capitol Hill fighting the tobacco companies. I know how they work. The MTBE gang is up to the same bag of tricks. They are now starting to dispute medical evidence as to whether MTBE is dangerous.

The industry, in rebuttal to my remarks, said:

MTBE is one of the most widely studied chemicals in commerce, including pharmaceuticals, and that the overwhelming majority of scientific evaluations to date have not identified any health-related risk to humans from the intended use of MTBE in gasoline.

Then they go on to cite "numerous government" and "world-renowned independent health organizations" having found no sufficiently compelling reason to classify MTBE as carcinogenic.

Let me tell you, the MTBE industry, like the tobacco industry, when it comes to playing games with medical evidence, is plain wrong. The University of California at Davis concluded that MTBE is a known animal carcinogen.

In addition, the director of the General Accounting Office's Office of Natural Resources and Environment testified before Congress in May 2002 and stated:

An interagency assessment of potential health risks associated with fuel additives to gasoline, primarily MTBE, concluded that while available data did not fully determine risk, MTBE should be regarded as a potential carcinogenic risk to humans. . . . A primary rule in epidemiology is "Absence of evidence of risk is not evidence of absence of risk."

The data has been coming in leading community after community, jury after jury, to conclude that this dangerous product might or could have endangered the health of Americans.

The removal of MTBE, as I said yesterday, is a growing problem. Their industry spokesman said:

It's more water soluble and can be transported more readily in soil and water than other gasoline constituents.

I will tell you this: The largest MTBE manufacturer in the United States, Lyondell, has already been forced to revise its product safety bulletin and state, in their own industry safety bulletin:

A relatively small amount of MTBE, less than 1 part per billion, can impart a displeasing taste and odor to water.

The U.S. Geological Survey has determined MTBE is the second most frequently detected pollutant in the United States, second only to chlorine, which is intentionally added to water, to give you an idea of how pervasive this issue is.

I also stated that the defective product claim is the most effective to secure relief against MTBE. The industry denies it. Yet what we have found is this: We have had to, in most communities across America, dig up gasoline storage tanks because they leaked. It was through the Leaking Underground Storage Trust Fund—the LUST fund—that a lot of this was paid for. We did it because we found this leaking gasoline was contaminating underground wells and aquifers.

The point I make is this: Despite our best efforts to dig up these underground storage tanks, the problem across America has not abated. About half of the States have reported finding MTBE they can still attribute to leaking tanks and suspect it came from other sources, even above-ground tanks to store fuels.

The point I would like to make is this, for those who are attempting to rebut my remarks of yesterday: The problem with MTBE has not gone away and is not likely to go away soon. What this legislation is designed to do is to hold those wrongdoers, those producers of MTBE, harmless from liability in product liability lawsuits for selling an inherently dangerous and defective product, a product which the industry has known since 1984 would contaminate water supplies and endanger public health.

This, in my mind, is the ultimate in irresponsibility. Frankly, I would like to say to my friends in the farm community who have said to me, You have to look the other way; we have to allow ethanol to expand even if it means endangering the lives of people from contaminated water in public water supplies—I would like to say to them, remember what you said yourself.

The president of the Illinois Farm Bureau, Ron Warfield, a good friend of mine, called and spoke to me about this issue. He has testified before Congress, and he said:

We recognize the urgency of ending MTBE use to protect drinking water supplies.

Mr. Warfield went on to state:

MTBE has adverse human health and environmental impacts.

He went on to state:  
The farm bureau's belief—

This is the Illinois Farm Bureau—

that any legislation that addresses MTBE must be national in scope. Allowing States that have different programs will not allow us to achieve our national energy goals.

This bill goes directly against the Illinois Farm Bureau's position. This bill says, when it comes to MTBE we are going to allow them to escape liability. We, who have said for years that MTBE was a dangerous contaminant, cannot forget our own word.

My colleague in the Senate, Senator FITZGERALD, I believe in 2002, introduced legislation to ban the use of MTBE and to move toward the use of a safer oxygenate, specifically the use of ethanol. My colleagues in the House of Representatives, Congressman SHIMKUS from Illinois, and Congressman Ganske, introduced similar legislation.

Senator FITZGERALD said in his press release, March 6, 2000: Despite relatively limited MTBE use in Illinois, the Illinois EPA reports that at least 25 communities across the State have detected the chemical in their water supply, and three towns have had to discontinue use of wells as a result of MTBE contamination.

That is a quote from Senator FITZGERALD's press release in March of 2000. He understood the seriousness of this risk. He understood the danger to Illinois and its communities. Frankly, the situation has not gotten better. It is worse.

Taking a look at this chart, we can see that in Illinois we have 9,546 contaminated MTBE sites, including drinking water sites. So for my colleagues, Senator FITZGERALD, Congressman SHIMKUS, my friends at the Illinois Farm Bureau, and other farm organizations, I hope they can understand how this bill, frankly, makes a mockery of what we have said in the past.

If we have said, under oath at times, that MTBE is dangerous to the public health, how can we in good conscience now support this bill, which includes section 1502, which lets the producers of MTBE off the hook? How can we say to the communities and families of Illinois, or any other State affected, that we are going to limit their opportunity to come to court?

Yesterday, Senator DOMENICI likened lawsuits against MTBE producers to lawsuits against McDonald's because a woman was scalded when hot coffee was spilled on her lap. I might say to the Senator, there is all the difference in the world between the two of them. The lawsuit against the MTBE producers is a lawsuit based on the fact that this industry had knowledge, almost 20 years ago, that what they were selling was environmentally dangerous. They continued to sell it. They deceived the Government. They secreted information away from the public, and now they are trying to escape liability for their fraud and trickery.

Why should we be party to their fraud? Why should we say that they

will not be held accountable for their wrongdoing? Is it not a premise of law and the rule of law in America that each and every individual and business will be held accountable for their wrongdoing? Why, then, do we cut this wide swath and say that these contaminants, the companies that made them, and the lawsuits that might come from them, should somehow be changed by this law? That is fundamentally unfair. Why would we do that at the same time that we offer \$2 billion in taxpayer money to these companies as they phase out the use and production of that product?

I can think of plenty of businesses in my State of Illinois, or the States of New Mexico, West Virginia, and Texas, that are struggling to survive, that could use a Federal subsidy to get through a transition. We are not giving them a subsidy, but we are giving a subsidy to the oil and chemical companies that make MTBE a \$2 billion subsidy. That, to me, is unconscionable, unreasonable, and indefensible. It is good reason for us to stand and oppose this bill.

When we look at the States that are affected by this—New Mexico, 1,126 contaminated sites; the State of West Virginia, 1,333 contaminated sites; Texas, 5,678 contaminated MTBE sites, and the list goes on and on—it says to each one of us that this crisis is not over. This crisis will continue. If we fail to hold the wrongdoers accountable, others will pay the price. There will be injured individuals and families who will have to bear the brunt of this environmental crime. There will be cities, towns, villages, and States which will have to pay to put infiltration systems in, new water systems and clean-up because of these polluters.

Why is it that this administration, and its friends in Congress, are dedicated to polluter protection instead of the basic principle that polluters should pay?

Polluters should pay for their own pollution. This is a classic example. Section 1502, which absolves in product liability lawsuits MTBE manufacturers from their responsibility and their liability, I think that is classic in terms of special interest legislation.

As I mentioned at the outset, Senator DOMENICI said there was a real danger—and let me quote him directly: We know as you start reading the language, we are duck soup. That is what Senator DOMENICI said on the Senate floor.

Well, we have read the language and, as we read it, we are saddened and troubled that in the Senate we would have such an egregious carve-out, such a blatant effort to reward one special interest group. I understand Congressman TOM DELAY's political strength, his persuasive ability, but to think that he could walk into a conference and force this provision into this conference committee is something that I do not think we should accept.

This is what we have to face. Those of us from States with MTBE contami-

nation cannot walk away from our responsibility. We have to acknowledge that this bill, so long as it contains this provision, needs to be defeated. This bill must be stopped in its tracks. We must say to those who spent so much time on it, they need to go back and tell Congressman DELAY, the oil companies, and those who are pushing for this provision, that this is patently unacceptable and it is, frankly, unprecedented in American law that we would exempt one company from its own wrongdoing. But that is exactly what we are doing.

Once we have removed this offensive provision, we need to sit down and write a real Energy bill, an Energy bill which tries to encourage alternative fuels and renewable fuels, an Energy bill which focuses once and for all on "conservation," which seems to be a blasphemous word in this administration, in this Congress, but one that most Americans understand. We need an Energy bill that deals with fuel efficiency and fuel economy. Sadly, this bill does not.

We need an Energy bill that looks to reducing our dependence on imported oil in the future. Maybe we should invite the Chinese to come over and give us some guidance on how we could move toward conservation and fuel economy and less dependence on foreign oil because, frankly, they understand it far better than we do. We need an Energy bill that does not have to get passed by being larded up with a gusher of giveaways. If one wants to talk about oil exploration, there is a gusher of giveaways in this bill, giveaways to cities, towns, States, Congressmen, and Senators. Is that what it takes to develop an energy policy in America? I hope it does not.

I am no newcomer to Capitol Hill, and I understand that sometimes one has to keep the process moving along and they have to help one State or this region or one industry or that industry, but when it goes to this extreme, when it goes to the extreme of absolving a polluting and contaminating industry from their legal liability in products liability lawsuits for contamination of 153,000 sites across America, then it has gone entirely too far.

I urge my colleagues to join me in opposing the motion for cloture. If that motion is stopped, this bill is stopped. When it is, it can go back to conference.

Let us hope that for the first time we will have an open process. This whole energy policy started when Vice President CHENEY created a secret task force with secret meetings, producing a secret bill, leading to the administration's energy policy. It continued apace through the congressional process and returned to secrecy when two individuals, my friend the Senator from New Mexico and the Congressman from Louisiana, Mr. TAUZIN, sat down in a room without other Members and without anyone from the minority party and wrote this bill.

The reason there is such resistance today is the fact that this was not an open process. It should have been more open. Had it been more open, I do not believe anyone could, in good conscience, have proposed this MTBE exclusion from liability. You could not have brought this out in public with a straight face. But in private you can, and that is what happened.

Now the bill is on the floor and America gets a chance to read it. Having read it, I urge those who happen to be from the States with contamination of MTBE—and I put this map up here for those who are following the debate, for my colleagues to note. If your State is in black on this map, you know you have MTBE contamination. If it has one of those gold circles as well, it is contamination of drinking water.

If you vote for this legislation, you are saying to the people living in your State and your communities: We are closing the opportunity for you to go and hold the people accountable who have created this environmental disaster in your State.

I wouldn't want to go home and try to explain that. And I am not, because, frankly, I am going to oppose this bill so long as it contains this provision.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from New Mexico.

Mr. DOMENICI. Under the order, the distinguished Senator from Texas is next; is that correct?

The PRESIDING OFFICER. There is no order.

Mr. DOMENICI. She has been waiting. I assume she asks she be next. Will the Senator let me use 5 minutes before she proceeds?

Mrs. HUTCHISON. Certainly.

Mr. DOMENICI. Mr. President, I want to take 5 minutes on the issue my good friend from Illinois raised here today. Has anybody thought how in the world there would be MTBE being used in all these different parts of the United States even today, even today? Has anybody wondered why it is still being used? Because it is still valid according to the laws of our land, and it is approved by the Environmental Protection Agency. This MTBE product was produced because the U.S. Government sought an additive to be applied to gasoline so it would be cleaner than gasoline without it.

I want to assure everybody in this country. The Senator makes it sound as if the product is an illegal product. If he doesn't, then I would sure say, if per se this product is this dangerous, it ought to be banned. But isn't it interesting?

He could say it should be, but the truth is, it is not. It has not been, and there has only been a little ripple of talking around here about perhaps shutting it down.

Why has there been none? Why is the Environmental Protection Agency, not just this one, the one in the Clinton and the one before that—why did they not do something about it? The reason

is there is nothing wrong with the product. The product is being used. If it is used right, it is a good product. We are going to do better when we do ethanol.

But the good Senator from Illinois—I don't know how many times he will come back to the floor, how many times the Senator from Illinois will return to the floor to speak about MTBE. But his State is the second largest producer of corn in America, and the reason he is down here talking about MTBE is because he is scared of his farmers because he is not going to vote for the thing they want more than anything else—ethanol. That is what they want. He has been working on it. I have been working on it. Everybody has been working on it. And this Senator has decided, the Senator who just spoke, from Illinois, decided he would rather defend the trial lawyers who want to go after the companies that produce MTBE.

I also assure you that the language in this bill does not say that anybody is immune from liability. It merely says you can't sue the producer of the product just because they produced the product.

What is happening is it is being used improperly. When it is used improperly, it is producing all these ill effects across the country.

Does that mean we sue the people who produced it? I repeat, it is a legal product that has been approved by the Environmental Protection Agency. The United States of America approved it and now it is being used but people don't use it right. Underground tanks leak and it leaks into the water system. Does that mean the company 2,000 miles away that manufactured the product should be responsible to clean up those water systems? Of course not.

But I guarantee they are chomping at the bit to do it—do what? Not to sue the people whose tanks leaked because they are not fat enough. They are chomping to sue the big oil company that manufactured it for the last 20 years.

Now I want to read the statute. The statute says: No product shall be deemed defective—

if it does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act. . . . If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs—

Clean up the water, sewer systems and water systems.

It says:

Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events,

public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

Frankly, there is no defective product. You can go on saying where it is all over America and that is because it is legal to use it. But it is not legal to abuse it. When people abuse it, should we really, as a nation, say the people who manufactured it are liable for all the consequences? I think not. That is all we did in this legislation.

If the distinguished Senator is so worried about this, I suggest he ought to vote for this bill and take care of the ethanol producers in his State and other States. He may be the deciding vote that decides we are not going to have ethanol. I wouldn't like to be in that position. I tell you, not on a weak proposition that the reason I did it was to protect the big lawyers who want to file these lawsuits. I say to all of them: File your lawsuits. When this thing is over with, file your lawsuits. It is just that you will not be able to sue the company that made the product which is legal and allowed. You can sue anybody else who caused the damage.

It is like somebody who drinks some soup in a restaurant and somebody in the restaurant, instead of putting soup in the bowl, they put some poison in it. You drank it and got sick.

Do you sue Campbell's Soup Company for producing the soup or do you go look for the people who put the poison in it?

The truth is, maybe we would all like to see MTBE go away. But that is not the issue. The issue is whether or not we should deny the passage of an Energy bill and ethanol for the farmers of this country, a great, giant substitute for the crude oil that we are going to use; whether we are going to do that or not.

If we are not, we surely ought not do it based upon the excuse that a valid product licensed by the United States improperly used is causing damage to people and we don't want to let them sue the people who produced the product but let them sue anybody else—the leaking tank owner, the distributor who distributed it wrongly, or anybody else who caused this—just because you made a legal product and somebody got hurt later on down the line, go back and sue the company that made it legally, validly, under what one might say is almost a license from the Federal Government.

I thank the Senator from Texas for yielding. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Senator from New Mexico for shepherding this very important and very complicated bill to the floor.

I have to say I have been in the Senate for 10 years, and I have tried to get an Energy bill through the Senate during all of that time. We have never been able to do that until the Senator from New Mexico became chairman of

the committee. What he has produced is a balanced bill. There are many things in it that I don't like. There are many things in it that I am sure every one of us in this Chamber would do a little differently. But we are a legislative body, and people have the right to have differing views and come together in compromises.

When we are making the decisions about how we are going to vote on legislation, we have to determine if the good outweighs the bad and if the bad is going to be unchangeable or more harmful than we should allow. I think the good definitely outweighs the bad in this bill.

I was going to talk about the MTBE issue. I couldn't talk about it any better than the Senator from New Mexico. People forget that MTBE was a mandate from the Federal Government. It came as a result of a mandate to produce oxygenated gasoline to try to reduce smog in our country and reduce pollution. The manufacturers came forward with MTBE. It is a perfectly safe product if used properly. In fact, it did have the intended consequences of reducing pollution.

The reason it is going to be phased out is that it has been misused, it has leaked into water supplies, all of which is very bad. But I don't think making the manufacturers of a product that was produced at the insistence and mandate of the Federal Government is good public policy. I think the MTBE issue has been used as a stalking horse for people who do not like other parts of the bill.

In fact, I think this is a good Energy bill. We must have an energy policy that addresses the issue of self-sufficiency for our country.

Between 1950 and 2000—50 years—overall energy consumption in the United States increased three-fold. We currently account for 24 percent of consumption worldwide. Yet, while demand has drastically increased, domestic exploration and the development of renewable sources have not kept pace. What we are doing today and tomorrow and as long as it takes to pass this bill, I hope, is promoting conservation, promoting increased efficiency, promoting reduced consumption, and promoting increased production from traditional sources. Some forms of energy are limited. They will exhaust themselves over time. But others are replaceable.

In this bill, we encourage the replaceable sources. Geothermal technology offers a clean, sustainable energy created by the harnessing the Earth's heat. Geothermal resources can be found in shallow ground or in hot water and rock miles below the Earth's surface. Hydropower, currently the largest source of renewable power in the United States, yields electricity from flowing water. Solar energy harnesses sunlight to generate electricity, provide hot water to heat and cool, and light buildings. Wind energy is created by 16-ton turbine engines capturing the wind with two or three giant blades to

generate electricity. These turbines can be seen on hilltops where there is strong wind and not too much turbulence.

These are becoming increasingly a common sight in my home State of Texas, one of the Nation's leaders in wind energy production.

All of these sources are clean, natural, and renewable, and they can play a greater role in our Nation's energy policy. This legislation provides incentives for nuclear power. This has been overlooked in recent decades.

Since 1978, no new nuclear plants have been built in our country. Fear of accident and extraordinary insurance costs have made nuclear energy a costly venture. While European nations have safely developed sophisticated nuclear capability, the United States has let development of this important source lag. By encouraging the development of nuclear energy, we will give American companies a kick start that will create the high-paying technology and construction jobs and provide probably the biggest source of clean energy to meet our high demand.

One of the parts of the bill that I wrote is tax credits for marginal wells. Marginal wells are the 10-barrel-a-day wells, or less. When there are wells that produce a million barrels, thousands of barrels, a 10-barrel-a-day well is a small well. It takes a lot of capital to go out and drill a well. If a producer believes it is going to be a very small well, that producer is going to be less likely to incur the costs of drilling. But in fact, these little bitty wells, if they are going at full capacity in our country, and if we encourage them, can bring up the same amount of oil and gas as we import from Saudi Arabia every day. These little wells can be drilled by small business people. They can create jobs in the oil fields, and they can become a significant source of oil and gas for our country.

We have tax credits for these small wells if the price goes below \$18 a barrel. These people will go out of business at \$18 a barrel. They cannot make it. They can't break even. They will have to close the well, which is also expensive, and let their people go. So you have a loss of jobs. With a credit for marginal wells, when the price goes below \$18 a barrel, you can encourage these people to go ahead and drill the well, put people to work and keep producing oil and gas for our country. Hopefully, the price goes back up—and, of course, the price is up right now. So it wouldn't even take effect right now. But it gives that floor so that the little guys will take the chance to go ahead and drill that well.

This provision was modeled after a Texas law that has also been quite successful in waiving certain State taxes for the little guy to keep those wells going.

The other thing it does is allow expensing for delayed rental costs, and G and G—which is the geological and geothermal exploration. These are ex-

penses that are incurred, and in any other business they are able to be written off. They would be able to in this bill as well.

It encourages deep drilling in the Gulf of Mexico, which is quite expensive. We have had incentives over the last few years for this deep drilling. It has become the largest source of oil and gas we have in our country except for Alaska. Of course, we are not able to drill in ANWR. So this is a very significant resource for us, the Gulf of Mexico.

All of these are provisions I put in the bill because I believe that keeping the small businesses in business is a very important part of energy self-sufficiency in our country and creating jobs.

There is a national security issue. When 60 percent of our oil is imported—and we know how volatile the largest sources of those imports are in the Middle East—we know our country is going to be in a very bad fix if we lose those resources because of volatility or the war on terrorism. Our economy will be affected adversely. That will affect our jobs. It will affect our factories. It will affect our small business costs if we don't have our own sources of energy. That is why the Senator from New Mexico and the people on the committee who worked to forge this bill were addressing our national security interests as much as those who work on the defense issues.

If we are energy self-sufficient, that means our economy will not be in upheaval if we have a huge loss in the ability to import foreign oil, and therefore the price goes up and it becomes prohibitively expensive. We need to have our own sources of energy. We need to be dependent on ourselves. We need to keep the jobs for energy in our own country. That is why this bill is a good bill. It is not a perfect bill. No one said it is. I would not have written it this exact way, but it is a good bill. It will make us more energy self-sufficient, which also means we will be more secure in our country, more secure in our economy, and we will keep the jobs coming which are so important to keeping our economy strong and to have the recovery we have all been looking for to occur in the next year.

I support this bill. I hope people will look at the big picture. I hope people will look at the rhetoric on MTBE and overlook some of the things they do not like in the bill by looking at the good things that will increase production, increase the renewable energy sources, increase the clean energy, and decrease our consumption all at the same time so we will have a better energy policy for our country.

We have been working on this for over 10 years. The time has come. We will be able to fix things that do not work. We always do that with major legislation that is passed. The time has come. We have the capability to act now. I hope we will not lose it.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from West Virginia.

Mr. BYRD. Madam President, we have before the Senate the long-awaited Energy bill. For the more than 3 years of its making, we have been led to believe this was to be the piece of legislation that would go a long way toward solving our Nation's energy problems. But instead of providing for our Nation's energy security and stability, this bill does little more than codify back-room bargaining, underwrite the administration's corporate contributions, and further deepen our deficit ditch.

This bill is a monstrosity of gifts for special interests. Its passage will mean another lost opportunity to shore up our Nation's energy security, provide for future economic growth, and protect consumer interests.

The White House and Republican advocates may argue that this bill is national, comprehensive, and strategic. It is not. Advocates argue that this is a premier jobs bill and that hundreds of thousands of new jobs will be magically created because of the Pixie dust that is sprinkled throughout the bill. But these are empty assertions. This Energy bill will be neither an economic shot in the arm nor a jobs booster.

The White House and its secretive energy task force have done their utmost to dictate the terms of energy legislation for more than 3 years now. This energy conference bill is that dismal result. The Republican energy bill negotiators took a page out of the Vice President's playbook by not undertaking their deliberations in an open, transparent, and bipartisan manner. When well-placed corporate heads have a greater voice at the conference table than the minority Members of Congress, then we have truly sold our Nation's energy policy to the highest bidder. This conference was a shameful example of how the big moneyed interests who are bosom pals of this administration, continue to elbow out the best interests of the American people.

The American people should also know that the White House and Republican proponents who have so often avowed the free market system and fiscal responsibility are essentially ignoring those policies in this bill today. During the deliberations on energy legislation, the White House raised concerns about unrealistic authorizations and indicated its support for only \$8 billion in tax incentives. But now the Bush administration wholeheartedly welcomes and strongly supports this bill regardless of its budgetary impact.

The Congressional Budget Office estimates that the deficit will be deepened to the tune of \$25.7 billion because of mandatory spending and unbalanced tax incentives. This Energy bill, like so many bills that Congress has passed, is another empty promise. The White House's only major goal is to tick off a campaign pledge, regardless of its contents or lack thereof.

Furthermore, this bill is replete with unrealistic new authorizations that go far beyond the reality of our limited and shrinking budgetary resources.

Passage of this bill is far from a guarantee that the money will flow. How many authorization bills have been passed during the tenure of the Bush administration pledging huge sums of moneys that never came into being? How easy it is to vote to authorize funding, to make a splash in the headlines, and raise hopes about the funds that will flow from Washington, but when it comes to actually putting money in the budget and supporting the promised funding levels in the appropriations bills, this administration jumps ship again and again and again. One need only look at the No Child Left Behind program to see how this game of bait and switch is practiced and played.

What complicates the matter further is the number of new programs that have been created in this bill. In a perfect world I would like nothing better than to be able to support a plethora of energy programs that truly advance our neighbor's ability to produce and use energy more cleanly and efficiently. But realistically, this legislation only creates more programs that will have to compete for the same pot of money, and that pot of money is ever dwindling. Instead of focusing on our Nation's highest energy priority needs, longstanding programs—programs that are working—could well be severely fractured and diluted for years to come. That is not progress. In the end, this bill will just be another empty soapbox for the President to stand upon even though the necessary resources to carry out our energy programs will never materialize.

I certainly recognize that there are several important and useful provisions that have been included in this legislation, including a number of specific clean coal programs which I have supported. These and several other provisions have had bipartisan support in the Senate in both the 107th and 108th Congresses. Yet, in the aggregate, this bill will not help us to achieve our energy, economic, and environmental goals and, in many cases, will create even bigger problems down the road.

I have long advocated developing a complimentary approach toward our energy and environmental policies. Yet I have serious concerns about this bill's liability waivers, exemptions, and alterations to longstanding environmental laws, and limited consumer protection provisions. Furthermore, like several major tax cut bills and the homeland security legislation, special deals have been stuffed into the nooks and crannies of this bill. Yet some of the matters that rightfully should have been dealt with in this legislation are glaringly absent.

I speak, for example, of the coal miners Combined Benefit Fund. Nearly 50,000 retired coal miners and their dependents are facing an imminent crisis.

These miners, who live in every State, are in danger of having their health care benefits cut due to a financial emergency in the fund, created by law, to pay those benefits. These are elderly men and women—women for the most part. Most of these are elderly widows who are truly among America's most vulnerable citizens. Yet among all the billions of dollars to help oodles of special, corporate interests in this bill, I find not a penny—not one penny—to help these elderly Americans, most of whom, as I say, are widows.

For the past 2 years, as the ranking member of the Appropriations Committee, as the Senator who has been on that Appropriations Committee longer than any other Senator in history, I have come to the aid by providing relief to that fund through several appropriations transfers of funds.

The Appropriations Committee was not the committee of jurisdiction. Other committees in the Senate are the committees of jurisdiction, not the Appropriations Committee. But I have come to the aid, with the support of my friends on both sides of the aisle in that committee, and especially I remember the support that was rendered on my behalf and on behalf of the coal miners and retired miners by Senator TED STEVENS, my Republican friend.

These were transfers that did not cost any State any money to clean up its abandoned mine lands. Yet these retirees and their dependents, most of them probably in very ill health and frail health—I believe the average age of these retirees is in the high seventies, probably near eighty—are being held hostage in some cold-hearted game of chicken. There was a chance in this bill to help them. There was a chance to provide a fix for the program that Congress designed to fulfill our promise to them, but the conferees failed to make that fix. The effort was killed by too many greedy hands grabbing for their own piece of the pie.

I hope the Senate and House committees of jurisdiction—not the Appropriations Committee; the Appropriations Committee has helped time and again—I will act next year to ensure that our Government keeps its promise to these retired miners. Certainly, compassion for the old and the sick should prevail over greed.

It pains me to conclude that this energy conference report, in its totality does not fully integrate four fundamental principles of good energy policy; namely, energy security, fiscal soundness, consumer protection, and environmental balance.

Despite its rhetoric, this White House's lip service and corporate coddling have been the sum total of this White House's energy policy. It began with the Vice President's National Energy Policy plan and concluded with the exclusion of Democrats from the energy conference.

As the Sun begins to shine on this leviathan, I hope that Americans will understand that this Energy bill will do

little to resolve our energy problems, and if it passes, it could very well turn out to be a Pandora's Box.

Madam President, this legislation comes to us at the end of a session, and the Republican majority is attempting to serve up this elaborate and expensive dessert. But these are just empty calories—a delicious photo opportunity for the President, rich filling for industry lobbyists, but, in the end, only empty calories and heartburn for the American taxpayers. Sadly, when all is said and done, the American people will continue to stand in the bread line, hungry for a comprehensive national energy strategy.

Madam President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. Madam President, I have listened very carefully to the distinguished Senator from West Virginia and his characterization of this legislation. I have to come to a different conclusion because I believe this legislation before us today is a first giant step. We have been talking about this now for not months but years. I can tell you right now that the problem we are having with energy in America is a very serious problem.

I am from a State that is a production State. We have produced shallow and marginal wells for a long period of time. Sometimes people don't realize how significant this source of energy is. Statistically this is true: If we had all of the marginal wells that have been plugged in the last year flowing today, it would equal more than we are currently importing from Saudi Arabia. That is a huge amount.

I started out, before most of the people in this Chamber were born, in the industry, in the oil business. I was a tool dresser on a cable tool rig. That is the way we used to go after oil, particularly shallow oil, where you would have to take a bit out. You would stand with it, white hot, and sledgehammers on both sides, sharpen it, and then go back and pound. We pulled a lot of oil out of the ground at that time.

If you think about the economy that resulted from all that production, there were good jobs. In the Osage area of my State of Oklahoma, northeastern Oklahoma, we had a lot of shallow wells. I can remember going in to Pawhuska, OK, at noontime to eat lunch. You would have to wait in line 15 minutes to pay your bill. It was because this industry was so viable. Today it is almost a ghost town.

With the passage of this bill, there are incentives in here. Nobody talks about them. There are some things I wish were in this bill. No one is more familiar with the necessity to get into

some of the drilling at ANWR, and certainly we need to be doing that. But just look at some of the opportunities that are in the bill.

This bill has an incentive to get back into marginal well production, and that could open up a huge domestic supply of oil and lessen our reliance upon foreign countries. That reminds me of something I often say: Our reliance upon foreign countries for our oil supply is not an energy issue. It is a national security issue.

I remember back many years ago, during the Reagan administration, when Don Hodel was Secretary of Energy and later Secretary of the Interior. He and I had a little dog and pony show. We would go around the country and talk to them about how the outcome of every conflict, every war back to and including the First World War was dependent on who was in control of the energy supply. We talked about the Malay Peninsula. We talked about the submarines coming into the Caribbean to knock down the ships so we could not get to our refineries.

This is something I thought surely people would understand. They didn't understand it. By the way, the fact that we are looking at an energy policy today, this should not really be a partisan issue. I kind of laugh when I hear some of my colleagues on the other side of the aisle saying we don't need an energy policy. I tried to get Ronald Reagan to have an energy policy. He didn't do it. I tried with the first President Bush. I said: Let's get an energy policy. Let's have, as a cornerstone of that policy, a maximum amount that we are willing to depend on foreign countries for our ability to fight a war. He didn't do it. We didn't do it during the Clinton administration. But this President is.

I talked to this President when he was running for office. I said: Will you commit to an energy policy so we can lessen our dependence on foreign countries for our ability to fight a war? Back when Don Hodel and I were going around, we were 38-percent dependent upon foreign countries. Now it is approaching 60 percent. So it is very serious.

Why is it people wouldn't realize that after the Persian Gulf War in 1991, why wouldn't it be indelibly imprinted upon the hearts of every American that we could no longer be dependent upon the Middle East for our ability to fight a war? Yet it didn't seem to help. We picked up a few extra votes but not enough to get a real policy.

I chair the Environment and Public Works Committee. There are a lot of issues that are within the jurisdiction of my committee that are very significant and that are in this bill. One is, it allows hydraulic fracturing to be used by not just Oklahoma but by all States. This is a way of extracting oil out of tight formations. It is something we need to be addressing. It is addressed in this bill.

This clarifies the exemption for oil and gas production from storm water

discharge permits. Congress provided this exemption years ago, and a misinterpretation of the exemption had threatened to stop a lot of the small, local production. This clarifies that and will get us back into producing.

This provides a 5 billion gallon ethanol requirement for motor fuel. If anyone ever says there is not enough renewable energy in this bill, they have not really read this title of the bill. I started working on this issue over 5 years ago, and I am glad to see that a compromise was developed to increase the amount of renewables while ensuring that our Nation's refineries are not adversely affected.

In my committee, we had the renewal of the Price-Anderson bill. We passed it. It is now a part of this bill. So a lot of the things that would otherwise have been on individual bills or have been on a comprehensive bill from my committee are in this bill.

It is necessary to have reauthorization of Price-Anderson in order to provide the protections so we can go after the other sources of oil such as nuclear sources. This establishes a nuclear security program. I think we all, after 9/11, recognize that.

In the committee I chair, we had all the security bills. We had a wastewater security bill. We had a nuclear security bill. We had a chemical security bill. They are all there for the purpose of protecting those vital elements of our economy from a potential terrorist attack. We went ahead and put the nuclear security bill in this. If we don't pass this, it is going to certainly heighten the risk that is out there on something happening to a nuclear plant. So after a lot of effort, we finally have that in here.

This bill provides \$300 million for the EPA's clean schoolbus program, another one that came out of my committee.

I am saying there is a lot more to this bill. It doesn't go far enough. I can't look at the lovely acting President in the chair without thinking about ANWR and about going up there. I just wish people who are so concerned about disrupting the environment or something up there in those slopes would go up and look at it. It is not a pristine wilderness. It is a mud flat. All the local people want it.

Here we are down here—we are a lot smarter here in Washington—saying no, in spite of the fact it would alleviate some of our reliance upon foreign countries for our ability to fight a war. We are smarter than they are up in Alaska. We know what is good for them in spite of what they want.

I am very proud of both Senators from the State of Alaska for understanding this, for explaining it. I feel sorry for them that we have such arrogance in this body that we feel we know more about their business than they do.

Our Nation is at the point where access is prohibited to almost every major reserve of oil and gas on our Nation's shores. Furthermore, extremist



environmentalists have declared war on oil and gas wells in the interior of our Nation.

I have had occasion, as I am sure the manager of this bill, Senator DOMENICI, has had numerous occasions to debate people on the other side. We know we have a crisis in energy in this country. Yet there are those on the other side who say: We don't want nuclear energy. We don't want fossil fuels. We don't want oil. We don't want coal. Now they don't even want windmills because they will disturb some migratory bird path.

We have to have it. Look at the flight of industry and business that is going overseas. Right now we have chemical companies that fear they are going to end up not being able to use coal as a source of energy, one that we are depending upon for more than 50 percent of our energy in America today. They have gone over into other countries such as western Europe where they have nuclear energy, where some of the countries, 80 percent of their energy comes from nuclear sources.

This bill is a modest start. But if we don't do this, after being rejected since 1980 and before having an energy policy in America, this crisis we are facing right now is going to be even more serious. It is a modest beginning and one on which certainly, at the very least—I say this to the Republicans—we should at least have a chance procedurally to have an up-or-down vote.

Let's remember what we went through last week for some 39 hours. The big debate there was, let's just get to the point where we can have an up-or-down vote. That is all we want on this, an up-or-down vote. I would hope that some of those individuals who may not be in support of this legislation will at least vote to allow us to have that up-or-down vote.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Madam President, I wish to continue what I think has been a fairly lively and informative discussion on the Energy bill which is before us. A lot of the time has been focused, of course, on the language which exempts the manufacturers of MTBEs from liability and which does it in a retroactive way which is extremely penal to those States that decided to use their rights to try to protect the ground water of the populace by bringing lawsuits and, as a result, will now be barred from those lawsuits, not only prospectively but actually *ex post facto*.

That seems to be an outrage in and of itself, of course, coupled with the fact an additional \$2 billion is going to be

spent to subsidize the companies that are producing the MTBE. That just adds insult to injury. The list of issues involving MTBE goes on and on, and they have been explored at considerable length on the floor.

I want to return to another element of this bill that concerns me, and that is the fact that it is extremely profligate in its use of Federal tax dollars and especially the manner in which those tax dollars are used.

It would be appropriate to have an energy policy in this country. That is absolutely necessary, in fact. If we are going to have an energy policy, it ought to be based on three basic purposes: One, it should be based on reducing consumption through, hopefully, conservation; two, it should be based on producing renewables that can be used over and over and, therefore, reduce our reliance on international oil; and, three, it should be based on the need to create more production of resources that can be used for energy.

All of those elements should have some sort of marketplace relevance. In other words, you can't suddenly go out and pervert the marketplace by essentially saying you are going to pick a winner and that winner, even though it may not be commercially viable and even though it may not be even environmentally viable, will be given a dramatic increase in support from the Federal Government simply because it happens to be the item of the day for those folks who happen to be writing this bill.

Unfortunately, that is the way this bill is put together. It is a hodgepodge of little interests—some of them rather large interests, some of them extremely large interests—that were able to get to the table and get their interests taken care of but not in an orderly way, not in a way that had an overarching theme, such as creating conservation, creating renewables, and creating production but, rather, in a manner that says we are going to pick winners and losers; certain segments are going to be the winners, and certain segments are going to be the losers; certain regions are going to be winners to the detriment of other regions; and essentially we are going to try to logroll this bill through the Senate even though on its face it has no relationship to national energy policy.

The list is quite long of items which you have to say, if you are going to try to be kind, are arbitrary—arbitrary at best—but they invade the taxpayers' wallet.

Let me read a few of them: \$2 billion for companies in Texas and Louisiana to compensate for their phaseout of the gasoline additive MTBE. I find that to be one of the most outrageous since those companies are also, at the same time, demanding they be held basically free of any liability for having produced MTBE which is such a huge detriment to the country—\$2 billion in tax deductions for oil and gas companies for purposes of geological and geo-

physical expenditures; \$500 million for a new loan program for the oil and gas industry to demonstrate and encourage new technology. The program leaves it to the discretion of the Secretary and the loan recipients to establish interest rates and loan repayment schedules.

You have to admit, that is creative. The last time I went into a bank, I, as the borrower, did not get to pick my loan payment rate and my repayment schedule. These are very creative people who sat around this table taking care of your tax dollars.

There is \$2 billion in taxpayers' money to be used for cleaning up gasoline and chemical spills from leaking underground storage tanks, a worthy goal, until one learns this fund will even fund cases where the polluter can be identified, letting the polluting individual or company off the hook and putting the hook into the American taxpayer.

There is \$2.9 billion in corporate welfare for some of the wealthiest corporations in the fossil fuel industry; \$800 million for a loan to build a coal gasification plant in Minnesota; \$1.1 billion for the first-ever production tax credit for coal.

The bill expands the solar energy and geothermal investment tax credit to include clean coal investment. That is a unique view of renewables. That is creative use of the term "renewables"—to throw solar and geothermal in with clean coal; \$1.5 billion for loan guarantees for coal plants, more than \$1.4 billion over the next 5 years.

The bill establishes a federally funded research and development program to ensure coal remains a cost-competitive source of electrical generation as a chemical feedstock and for transportation fuels. This is a classic example of trying to control the marketplace arbitrarily with tax dollars.

Basically, what we are saying is even if it doesn't work competitively, we are going to subsidize it, and we are going to force it to work in the marketplace to the tune of these billions and billions of dollars. That list goes on.

One of the most interesting ones is what they did with the abandoned mines land fund. This fund collects fees on all coal mines in the United States to clean up the dangerous mines abandoned before 1977. That is an extremely worthy goal. Obviously, we don't want the mines out there, and the damage they do to the environment is significant.

Over \$6 billion is needed to mitigate the environmental damage from these abandoned mines, but there is only \$1 billion in the fund today. This proposal would reauthorize the fund for another 15 years, reduce the fee to mining companies by 20 percent, and transfer \$275 million from the fund to address the deficit in the United Mine Workers Combined Benefit Fund and direct 10 percent of the Federal mineral leasing moneys to address the money owed from the AMI fund to Wyoming and Montana.

Over the next 3 years, the proposal would cost approximately \$1.4 billion, but the mines would not get cleaned up because the money would have been siphoned off for these special projects. That is what is called special interest governance. Two billion dollars in the provision could defray some of the costs incurred by utility companies in installing pollution control equipment in old coal-burning plants to comply with the clean air bill. That sounds reasonable except for the fact we have to realize that these plants have been exempt from the Clean Air Act now for over a decade and they were given the exemption so they could work their way into being clean.

Other plants have come online, with the consumer paying the costs of having those plants be clean-air-producing plants. So consumers are paying for new plants but now they are going to get to pay twice—not the local consumers but the region of the whole country is going to get to pay twice for the old plants that do not meet the responsibility and have refused to upgrade their responsibility. Picking winners and losers again in the marketplace in a way that is extremely arbitrary and simply reflects the fact that certain interests were at the table that had the ear of the people who were effective in developing the bill.

Ethanol is a program that has taken on a life of its own. Regrettably, that life is paid for by the whole country, especially by parts of the country which see no significant benefit from this product, at an extraordinarily high cost.

Since 1978, the U.S. Government has granted a multitude of tax incentives and subsidies to promote the growth of the domestic ethanol industry. The industry and its supporters, including suppliers of ethanol—the primary input, corn—maintain that ethanol is an effective and environmentally sound way to substitute for gasoline. However, the huge subsidies given out year after year have benefited few besides the corn growers and the ethanol producers, which are often very large companies.

Despite the claims, ethanol has neither reduced our dependence on foreign oil nor has it significantly reduced pollution. Taxpayers' repeated payments in the form of subsidies to corn growers and ethanol producers, and the opportunity it costs, serves no other purpose than to artificially prop up the price of corn and the ethanol industry.

The list of subsidies that have been developed over the years is rather staggering. In the last farm bill, we put \$26 billion into that bill over a 6-year period to assist people who grow corn. This is independent of the ethanol issue. That is \$4.3 billion a year. Maybe that is legitimate. The farm program has some serious problems, but maybe that \$4.3 billion was legitimate.

It turns out that is just the beginning, because this bill doubles the mandate for the minimum use of ethanol to

5 billion per year, costing the American taxpayer, because ethanol is not an efficient way to produce energy, an extra \$6 billion. That means that \$6 billion comes from taxpayers across the country in the form of higher prices to pay for an ethanol product which was already subsidized under the farm bill to the tune of \$26 billion. Then on top of that, we have to pay to create two new research programs in this bill for ethanol.

One would think, after we had put \$26 billion in the farm bill and \$6 billion out of the taxpayers' pockets through the direct subsidy of the gasoline, they would have at least had the courtesy to pay for their own research. That is what most market-oriented products do; they go out and they research and determine whether they can produce the product. And they do not charge that research to the Federal Government. They charge it to their end product users, which is us again and we have to pay for it. But, no, that is not the case. We have to pay \$12 million in this bill to create two new research initiatives.

Then, on top of the \$5.9 billion in subsidies, and the \$26 billion in farm subsidies, we also have to give \$750 million to the ethanol producers for the cost of building their production facilities.

This is the most incredible program. First, we underwrite the raw material with tax dollars, probably to a point where we actually see the net income of the people who are actually producing the raw materials. That otherwise would be described as a national socialist approach to an economy, certainly not a market economy. Then we have to get people to pay to subsidize the purchase of the product to the tune of \$6 billion, and then we have to pay \$750 million to build the facilities to produce the product. The list just goes on and on.

On top of all of this, there is another \$2 billion of tax credit which goes to the producers of this product in this bill. They were not happy with the fact that the small producers were going to get this tax credit so they had to expand it, so they picked up a whole group of new producers which are much bigger people in the way of income. They essentially doubled the small producer language in this bill. So we now have fairly significant people getting this huge credit. On top of the farm subsidy, on top of the subsidy for purchasing the gas, on top of the subsidy for building the production facilities, on top of the subsidy for researching the production facilities, we have a tax credit.

It is truly an amazing act of largess on the part of the American taxpayer. We all feel very good about this, I am sure. We have been able to pursue a policy in this bill that is essentially spending these types of dollars on our friends who produce this product and manufacture this product. The problem is that by doing this type of a commitment to this product and the producers

of the product and the manufacturers of the product, we have totally perverted the marketplace.

We have essentially picked a winner, ethanol, and we have said that winner is going to get so heavily subsidized, and then require that the product be used, plus used in a way that is extremely detrimental to an area such as New England because in New England ethanol cannot be shipped in. It does not transport through pipelines because it is too corrosive in the pipelines. It does not transport by truck or train because it is too explosive. So it has to be put on a ship in the gulf and taken around the Gulf of Mexico and brought up the coast into the ports in the Northeast. So on top of all of the other subsidy that is in this product, we pay a much higher price for this product which we are forced to buy under this bill. It is truly not energy policy. It is simply an initiative to take care of an interest group that may be very legitimate and they are very nice people, and they certainly have good representatives in the Senate and in the Congress generally, but they cannot defend this product as being a competitive product in the arena of what we should be looking at for various options for fuel with this type of subsidy level. There are no market forces at all involved in this product. It is totally a subsidized event, subsidized by all the taxpayers in the United States for the benefit of the few who produce the product. Truly, it is a classic example of how not to do an Energy bill because it totally takes the market out of the exercise.

Then you get into the special interest projects in this bill. We have heard a little discussion of those. We have these green bond proposals. I think the Senator from Arizona pointed out that one of them would build a Hooters restaurant somewhere in Louisiana. That is paid for in this bill with taxpayers' money. You have \$1 billion for coastal impact, almost all of which flows to Louisiana. That is basically a special interest initiative. You have a hydrogen research project for a Freedom Car, which is \$2.1 billion. The President asked for \$1.2 billion, but the lobbyists and somebody decided that just wasn't enough to take care of this interest group.

That sort of reflects this whole bill. The President asked for \$8 billion in tax credits, a reasonable number. It was within the budget. I want to come back to that. Instead, we ended up with a \$25 billion tax credit bill, three times the price the President asked, and we don't end up with a better energy policy. We didn't get three times better energy policy than what the President proposed because those tax credits are all being used basically to artificially manage the marketplace and to create events within the marketplace which were not able to stand on their own, and as soon as the tax credit goes away, you will not have that production capability because those products

are not viable and they are not competitive for the most part.

In a speech I earlier gave on this bill, I pointed out I went through this once before. We all went through this in the 1980s. At the end of the oil crisis and an embargo in the 1970s, we tried subsidizing different forms of energy at extremely high levels to see if we could not bring them on line and make them competitive commercially. We did shale oil and solar and wind and geothermal. We even did something, I forget the name of it, where we put a ship out in the ocean and ran a pipe in the water and the pipe got cold and we piped it back around. There was some technical name for that. We were building ships to do that.

None of these technologies, except maybe solar and wind, survived, and solar and wind survived in a much different framework than the direction the initial tax incentives pushed them. That is because they were not competitive because, even with those subsidies, they could not compete in the marketplace with the products that were out there beside them.

So, once again, we are seeing that in this bill. It is not energy policy. It is picking winners and losers for the purpose of gaining economic advantage for one sector of the economy over another, one group of people over another, one manufacturing group over another. We have the \$1.1 billion proposal to construct an advanced reactor hydrogen cogeneration project in Idaho—\$500 million is for the construction, and then we pay \$635 million, or as much as is necessary, in order to operate the plant. It is bad enough that we are going to pay to build the plant. But on the face of it, if you are going to have to spend \$635 million to operate the plant, you have to conclude the plant isn't too viable as an exercise.

We went through this all, by the way. Idaho had another one of these projects which I suspect is interrelated to this, although I don't know it, which didn't fly because it was too heavily subsidized.

The window is open at the bank of the American taxpayer and their checkbook, with item after item of fairly questionable attempts to try to pick winners and losers in the nuclear industry and to do some things which are of questionable value. I could go through the list, but the list has become fairly public and it probably isn't necessary to review it.

There are a couple of other specific ones. It has been reported that the bill for some reason effectively mandates permanent use of the controversial Cross Sound Cable between Connecticut and Long Island. You tell me what that has to do with energy policy. That is an issue between Connecticut and Rhode Island, and Connecticut is a little upset that we are suddenly stepping into their jurisdiction and making that decision for them.

The Energy bill would build a project on the Iron Range, a \$1 billion plus

Excel Energy Powerplant for the Iron Range. Well, it is \$800 million of loan guarantees for that project. It is probably a good project, but it is hard to understand why we should have picked that project, to put that level of tax dollars into this bill.

The list goes on and on, regrettably, to the point of excess in the area of picking winners and losers, and doing it in a way which has no comprehensible relationship to what one might consider to be producing an energy policy that had a rationale behind it, versus an exercise in simply going into a room and listening to the people who are whispering in your ear on the day when you are writing the bill.

That is a big problem, the fact that the bill is not structured very well as an energy policy bill and doesn't address in a thoughtful way or a comprehensive way consumption of renewables or production.

There are some production initiatives in this bill which do make sense. I think the Alaska pipeline initiative would probably be very good for this country. I wish they had included ANWR.

But overall this bill is just a hodgepodge, and it is excessive. The fact is that it exceeds the President's request by almost three times, which brings me to the next point. This bill is in violation of at least four budget points of order. That is how excessive it is. The bill violates a spending point of order, it violates a tax point of order, it violates a pay-go point of order, to say nothing of the fact that it violates rule XXVIII.

Why? Because it is totally out of touch with our own budget as a Federal Government. We put in place a Federal budget. We put in place a plan for how much we could spend in developing an energy policy, and then we ignore it in this bill. There is no fiscal responsibility at all reflected in this bill but just the opposite in the way it spends money and in the way it treats the budget which we have passed as a Congress. It is hard for me to understand how the administration could endorse a bill which exceeds their level of spending and tax policy by such a significant number.

We have heard numerous complaints about Congress overspending in a variety of areas. This bill just drives through that barrier as if it weren't even there and proceeds on down the road.

The bill has a lot of problems. It has the problem that it is an attack on a region, New England specifically, in the MTBE language. It has the problem that it is not comprehensive in its approach, or at least coordinated in its approach. It is a hodgepodge of various interest initiatives, some of which may score well, some of which may not, but there is certainly no coherence with them.

It is filled with initiatives which are clearly counterproductive to using a marketplace approach, which I think

should be the approach we as Republicans would want to use, where we test the product and determine whether or not it can compete in the market, and then we give it support to draw it into the market. But we don't say you don't have to worry at all about the market, as we do in this bill, with a number of different initiatives and production capabilities.

It is expensive. It exceeds the budget by a significant number.

It is hard to defend a bill like this, it seems to me. So that is why I hope when we get around to the issue of closure, or even the issue of points of order, people will take a very serious look at the failures of this bill on those various accounts.

Madam President, I yield the floor and make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FEINGOLD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Madam President, I rise today to share my concerns about this Energy bill. An Energy bill is a serious matter. I strongly believe the country needs to achieve a balanced national energy policy.

I did not make my decision to oppose this bill lightly, but unfortunately this bill is even worse than the Senate version. I cannot support it.

Although my remarks will be very brief, my reservations about this bill run deep.

I oppose this bill for several reasons. For one thing, the price tag of this bill troubles me. According to the Congressional Budget Office, this bill will cost the taxpayers \$31 billion and is not offset anywhere else in the budget. Our national deficit has ballooned over the past several years, so it is even more imperative that we be fiscally responsible with taxpayers dollars.

In addition to the bill's fiscal implications, I am deeply concerned that the bill repeals the Public Utility Holding Company Act. This critical act protects consumers against abuses in the utility industry. Repeal of PUHCA would leave rate-payers vulnerable and spur further consolidation in an industry that has already seen a number of mergers. Two large holding companies have been created in Wisconsin alone in recent years. Furthermore, the bill does not protect consumers from Enron-style electricity trading practices and market manipulation. The Senate recently went on record in support of an amendment by Senator CANTWELL to bar such abusive practices and I am disappointed that the bill fails to include similar protections. I also doubt that the bill will prevent blackouts like that we experienced last August—this is one of the country's most pressing energy problems, yet the bill does little to address it.

In the area of boutique fuels, the bill also falls badly short. Everyone in my state of Wisconsin is familiar with price spikes during the shift from the spring to winter fuel supply. Wisconsin has pushed for national standards for federally mandated reformulated gasoline blends, or RFGs, to try to broaden the supply and reduce price hikes during RFG shortages. The current bill will just authorize a study about the problem, not solve it. We had a genuine bipartisan effort to try to do this. I cannot understand for the life of me why this was not included in the conference report.

Also, the bill has serious and unwelcome environmental impacts. For example, the bill undercuts the Clean Air Act by postponing ozone attainment standards across the country. This issue was never considered in the House or Senate bill, but it was inserted in the conference report. This rewrite of the Clean Air Act is not fair to cities like Milwaukee that have devoted significant resources to reducing ozone and cleaning up their air. And, as asthma rates across the country increase, this provision could severely undercut efforts to safeguard the air quality of our citizens.

In addition to undermining air quality protection, the bill allows for siting of transmission lines in national parks, grants exemptions from the Clean Water Act and Safe Drinking Water Act for oil and gas companies, and pays oil and gas companies for their costs of compliance with the National Environmental Policy Act. I am also concerned that the liability exemption for MTBE is retroactive to September 5, 2003, which will nullify about 100 ongoing lawsuits. MTBE is found in all 50 States, and high levels are affecting drinking water systems all over the Midwest, including 5,567 wells in 29 communities in Wisconsin, even though the state only used MTBE gasoline for the first few weeks of the phase I program that began in January 1995. As a result of this bill, taxpayers are going to have to foot the \$29 billion bill for the national MTBE cleanup.

This bill fails to reduce our reliance on fossil fuels. The Senate energy bill contained a requirement that power companies provide at least 10 percent of their power from renewable energy sources like wind, water, and solar power. The technical term is a renewable portfolio standard. The current bill doesn't contain any renewable portfolio standard. There's no doubt that we can and should do better on renewable energy to reduce our dependence on foreign fossil fuels.

Although, I support many of the renewable fuel provisions in the bill regarding ethanol, I am troubled by the fact that the bill also depletes vital highway funds for States by siphoning money from the volumetric ethanol excise tax credit.

The content of the bill is problematic, but so is the process of how it was written. My Democratic colleagues

who served on the conference had only 48 hours to review the 1,700-page report before the Monday conference meeting. They were virtually shut out of the negotiation process. I regret that the manner in which the current bill was drafted—in secret, closed meetings, without adequate time to review it. This is no way to come up with a balanced national energy policy.

For these reasons, I oppose this bill and I will oppose cloture. I appreciate the need to develop a new energy strategy for this country. I disagree strongly, however, with the measures taken in this bill. This is a bad bill, it's bad for Wisconsin, and it's bad for the Nation's taxpayers.

I thank my colleagues from Oregon and my colleague from New Jersey for their courtesy in letting me give my remarks.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

#### UNANIMOUS CONSENT REQUEST

Mr. WYDEN. Madam President, on behalf of myself, Chairman GRASSLEY, Chairman LOTT, and Senator BYRD, I ask unanimous consent the Rules Committee be discharged from consideration of S. Res. 216; that the Senate proceed to its immediate consideration; the resolution be agreed to, and the motion to reconsider be laid upon the table, without any intervening action or debate.

Mr. BURNS. Madam President, reserving the right to object, and I will object, this is mistimed to be considering this rule change on this piece of legislation. On behalf of some Senators on this side of the aisle I will have to object to the Senator's request.

The PRESIDING OFFICER. The objection is heard.

Mr. WYDEN. Has the Senator objected? I was under the impression you reserved the right to object.

Mr. BURNS. I reserved the right to object, and I did object.

Mr. WYDEN. Madam President, in light of the objection, on behalf of myself, Chairman GRASSLEY, Chairman LOTT, and Senator BYRD, I ask unanimous consent that no later than March 1 of 2004 the Rules Committee be discharged from further consideration of S. Res. 216, if not reported, and that the Senate proceed to the consideration of S. Res. 216 at a time determined by the majority leader following consultation with the Democratic leader.

Mr. BURNS. I object.

The PRESIDING OFFICER. The objection is heard.

#### MORNING BUSINESS

Mr. WYDEN. Madam President, I ask unanimous consent there now be a period of up to 20 minutes of morning business under my control to discuss S. Res. 216.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ENDING SECRET HOLDS

Mr. WYDEN. Madam President, my good friend from Montana and I have worked together on so many issues. He has objected to this bipartisan resolution which would give the Senate a chance to end one of the most pernicious practices in Washington, DC, and that is the practice of secret holds.

Walk down Main Street anywhere in the United States, and I bet you would not find one out of a million Americans who know what a secret hold is. The hold does not appear anywhere in the dictionary. It is not even in the Senate rules. Yet it is one of the most powerful weapons that any U.S. Senator has. It is, of course, a senatorial courtesy whereby one Senator can block action on a bill or nomination by telling the respective Democrat or Republican leader that he or she would object. The objection does not have to be written down, and it does not have to be made public.

It is a little bit like the seventh inning stretch in baseball. There is no official rule or regulation that talks about it, but it has been observed for so long that it has become a tradition.

Now, the capacity to use this hold, which is in secret—there is no transparency, no accountability—the prospect of using these secret holds is notorious and has given birth to several intriguing offspring: The hostage hold, the rolling hold, and the May West hold. Suffice it to say, at this time of the year secret holds are more common than acorns around an oak tree.

Senator GRASSLEY and I have been working on this for almost 7 years. I am extremely proud that the chairman of the Rules Committee, Senator LOTT, has joined us on this matter. Senator BYRD is a cosponsor. There is no one in this body who has a better understanding of the rules than Senator BYRD, and Senator BYRD has made it clear this practice is out of hand. It is out of hand because the rules are designed to expedite the business of the Senate and not hold it up.

What we heard earlier in the objection to the effort to end secret holds is emblematic of what has happened. The objection was based on the idea that now was not a good time for the Senate to address this. It is never a good time to address it if you are in favor of doing business behind closed doors. If you are in favor of doing the public's business without accountability, it is never a good time. If you are in favor of doing business in secret, of course, we are never going to bring it up in the Senate.

The minority leader, Senator DASCHLE, has been supportive of this effort from the very beginning. From the very first day I went to him to discuss this, he said: You are right. The hold is an important power for a member of the Senate, but it ought to be exercised with some accountability.

So there was no objection from this side of the aisle. Unfortunately, we had an objection from the other side. I