EXECUTIVE SESSION

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THURSDAY, OCTOBER 18, 1979

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

The Committee met, pursuant to recess, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long, Chairman of the Committee, presiding.

Present: Senators Long, Talmadge, Nelson, Gravel, Byrd, Bentsen, Baucus, Bradley, Dole, Packwood, Roth, Chafee, Heinz and Durenberger.

The Chairman: This Committee will come to order, please. Let me ask all members to take their seats.

Let us see if we can begin to zero in on things that we are trying to do.

I would hope that we could conclude what we were working on yesterday when we were trying to come together on the business tax credits. We were holding in abeyance our decision on item number four, the hydro-electric, to see if we could work out some arrangement where we could try to put our self-imposed limits on, to the extent that we can, on some of these other things.

As I recall it, we were talking about trying to hold, to put to a limit, on the wood and the coal and Senator Talmadge was suggesting a proposal that would cost about $286 million on the wood part.

As I understand it, the administration does not like that too much, do you?

Mr. Lubick: We do not, Senator, because we believe this is already economically viable and does not need any particular special subsidy. These are processes that already would become very economical because of the price rises. They are established processes, they do not involve the same problems as the others.

The Chairman: Why do we not vote on it and see what the will of the Committee is?

Those in favor of the Talmadge suggestion say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(A chorus of nays)

The Chairman: Well, let's have a show of hands. Actually, we should have a roll call. Why do we not just call the roll? The absentees can record themselves later.

Mr. Stern: Mr. Talmadge?

Senator Talmadge: Aye.

Mr. Stern: Mr. Ribicoff?

(No response)

Mr. Stern: Mr. Byrd?

(No response)

Mr. Stern: Mr. Nelson?

(No response)

Mr. Stern: Mr. Gravel?

(No response)

Mr. Stern: Mr. Bentsen?

(No response)

Mr. Stern: Mr. Matsunaga?

(No response)

Mr. Stern: Mr. Moynihan?

(No response)

Mr. Stern: Mr. Baucus?

Senator Baucus: Aye.

Mr. Stern: Mr. Boren?

(No response)

Mr. Stern: Mr. Bradley?

Senator Bradley: Aye.

Mr. Stern: Mr. Dole?

Senator Dole: No.

Mr. Stern: Mr. Packwood?

(No response)

Mr. Stern: Mr. Roth?

(No response)

Mr. Stern: Mr. Danforth:

(No response)

Mr. Stern: Mr. Chafee?

Senator Chafee: No.

Mr. Stern: Mr. Heinz?

Senator Heinz: No.

Mr. Stern: Mr. Wallop?

(No response)

Mr. Stern: Mr. Durenberger?

Senator Durenberger: No.

Mr. Stern: Mr. Chairman?

The Chairman: Aye.

Senator Bentsen: Aye.

The Chairman: Record Senator Bentsen, aye.

Mr. Stern: Mr. Bentsen, aye.

Senator Dole: We support the administration.

The Chairman: Well, five yeas and four nays and the rest will record themselves.

Now, over here on page 1 on the bottom I have a figure of $10 million for something or other. I do not know what that would be for.

Mr. Shapiro: Senator Matsunaga's.

The Chairman: Did we agree to that? We agreed to that, right?

Mr. Shapiro: Yes, but I think when he comes back, it needs to be rediscussed. We talked to him afterwards. It was not clear whether that dealt with exactly what he had in mind.

The Chairman: You were trying to work out the Byrd amendment.

Senator Byrd: I cannot say that it necessarily is finished, Mr. Chairman. Can we take it up at this time?

The Chairman: Let's vote on it. If it is agreed to, the Treasury can come in with some suggestions of ways to limit it, to confine the amendment the way they want to, rather closely to what Senator Byrd has in mind.

Senator Byrd: Senator Bradley, I might add.

The Chairman: That would cost a little more. That would include someone else.

Mr. Lubick?

Mr. Lubick: It is my understanding -- you can check this out -- that for the construction of the Portsmouth faciity, Senator Byrd, it is not necessary to extend the IDP treatment to the electrical generating facilities.

In that particular facility, the problem is one that is limited to the use of the solid waste disposal facilities and where the customer happens to be the Federal government. And I also understand that the contract is not a take or pay contract so the Federal government is just a customer, like anybody else.

Your proposal, as I understood yesterday on that score, would not involve a Federally-guaranteed obligation. There would seem to be no tax policy reason why we should not permit the solid waste disposal facilities to be financed with industrial development bonds, even though the Federal government is a customer.

I think on that part, as a matter of policy, we are agreed -- it is my understanding, if I am not mistaken, that it does not involve the generating facilities beyond the use of the solid waste.

If that is so, that would reduce the revenue impact about $1.2 billion to a fairly nominal revenue impact. If we find that not a serious breach of the rules that the Committee has been holding to with respect to financing through industrial development bonds.

Senator Byrd: There are really two aspects to it. One would permit a municipality to qualify for industrial development, tax-exempt financing of a solid waste disposal facility when it sells energy to the Federal government. Senator Bradley feels that that should be expanded to state and local governments.

Mr. Lubick: I do not believe there is any restriction to selling to state and local governments now. I am not aware of anything. That is not troublesome.

Senator Byrd: There is no problem with that part of it.

Mr. Lubick: No.

Senator Byrd: The second part of it is it would permit the entire solid waste disposal facility, including energy-generating equipment, to qualify for tax-exempt bonds. In other words, not just the steam, but the electricity as well.

Mr. Lubick: The problem with that is if you allow the financing of the generating part, you are allowing the financing of facilities that could be used to produce electricity with any fuel. There is nothing different about the solid waste.

You and we have been trying to hold the line at encouraging the use of solid waste and permitting the financing of that part of the facility. It is my understanding that the Portsmouth facility is just that. If we are limited to the solid waste part, that would solve that particular problem.

The Chairman: Let's see if we can get down to it. Maybe we could work this thing out on the basis that the facility which delivers either gas made from waste or which delivers steam made from waste or which delivers heat made from waste would have the benefit of what Senator Byrd is trying to achieve, but when you take that and you take that heat or take that gas and put it under a boiler, your position is that the boiler, the big generating plant, should not have the tax exemption just because the heat that is delivered to it is coming from a tax exempt source.

Mr. Lubick: Or coming from waste. It could have come from coal, or it could have come from oil. It is the same type facility. But the production through the waste should be all right to be financed.

The Chairman: It seems to me when you get to the point that it is steam, it may be that the steam -- of course, that involves a boiler, you know? If you have to use the waste when you heat water, and at that point you are delivering steam, maybe we could compromise on the basis that you go up to the point where you are delivering steam, but not the point where the team goes through the turbine.

Mr. Lubick: I think that is right. The waste is used to create the steam. We have no problem with that. Then the steam is taken off in pipes.

At that stage, we draw the line.

Senator Byrd: You see, what this facility plans to do is to use the garbage to create, dispose of the garbage in the first place and then to sell the steam. But then, what is left over from the steam, they want to make electricity. That is what you object to, is it not?

Mr. Lubick: It is not the production of the steam. It is the steam going to generate electricity. That part of that facility, if I am not mistaken. You might want to check with Ed. That, I do not think is essential to your particular project. I think it may be to yours.

Senator Bradley: Yes.

The Chairman: Senator Bradley?

Senator Bradley: The point here is whether you allow tax-exempt financing for generators, for boilers, for turbines, if the fuel used is not developed contiguous to the place where it will be used. In other words, if you have a refuse-derived fuel plant right next door to the area that will use the refuse-derived fuel, that is okay, but if you have it some distance away, it is not all right.

Let me tell you the problem that it presents. Take a place like Syracuse, New York, for example, where the city fathers thought it was not ---they did not want to have a refuse-derived fuel plant in the center of the city where the power plant was. Therefore, they said you could not build it there unless you allow for noncontiguous use.

That means that their refuse-derived fuel plant would not qualify for a tax-exempt status. I think that is basically --

Mr. Lubick: I do not think that is quite right. I do not think contiguity is a touchstone.

The problem is that the refuse is converted into some sort of energy. Let's take Syracuse. Assume outside of Syracuse, and convert it into energy, and that is transmitted to the power plant.

The bonds could finance the facility used to convert the refuse into energy just as we would say in the case that you were talking about, Mr. Chairman. The refuse could be converted into energy to produce steam, and then we draw the line.

Whether it is then used to run a generator right there or one in downtown Syracuse would not mak any difference. We think then when you are getting into generating equipment you are not dealing with solid waste anymore. You are dealing with financing generating equipment.

That is what runs up the revenue cost, the $1.2 billion.

The Chairman: Why do we not put a diagram on the blackboard up there. Mike, suppose you help Mr. Lubick make a visual demonstration of what he is talking about? Why do you not just draw a little something up there?

Mr. Lubick: The first thing you want to draw is a garbage heap, Mike.

The Chairman: I have seen a picture. Somebody showed me a picture of one of these machines that they can use to process this garbage and make some energy out of it. All right.

The biomass. Treasury is willing to have the garbage heap, have it tax-exempt.

Mr. Lubick: The garbage is not a Lou Golberg type of thing. The garbage is put in some processing facility where it is shredded and chopped. Draw a chopper and a shredder.

The Chairman: Processed garbage. All right.

Mr. Lubick: They pull out the stuff that is recyclable. A sorter, I guess.

Senator Dole: Like Watergate.

Mr. Lubick: Then the garbage goes into an incinerator. The useful stuff goes into the incinerator.

The incinerator boils water and turns it into steam.

The Chairman: All right.

Mr. Lubick: Now you have -- what is it, a boiler, big boiler there? Up until now, this can all be financed by tax-exempt bonds. Draw some pipes coming out of that boiler and going into a generator, a turbine.

This is all right.

That is a part -- then sort of equipment that can be fueled with coal, oil or gas or what have you. That should not be financed with tax-exempt bonds.

The Chairman: That turbine could be very big.

Mr. Lubick: That is a big revenue loss that has nothing to do with solid waste.

The Chairman: Your thought is that up to the point -- as I understand it, you are willing to go along with them to the point that you have the boiler. You are willing to have them let the steam?

Mr. Lubick: Right.

The Chairman: The point at which they start pushing the steam through the turbine, at that point, you feel that is just like any other generating plant?

Mr. Lubick: That is correct.

Senator Byrd: Bear in mind that this is a governmental facility. It is not a private group that seeks this.

Mr. Lubick: If it is a governmental facility under the industrial development bond rules, there is a whole set of other criteria that you have determined would be appropriate.

There, you get into a question of whether it is local furnishing of electricity. That is the two-county rule, a governmental facility for local furnishing. You have decided that that is all right to be financed.

If it is a big power network, the power authority of the state of New York, going all over the place.

Senator Talmadge: If I may ask a question at that point, Senator Byrd raised a question in my mind. Suppose that is the municipal facility for Richmond, Virginia They have issued revenue bonds and they are selling electrical power to the citizens of Richmond, Virginia. Is that tax-exempt?

Mr. Lubick: That can be tax exempt.

Senator Talmadge: Is it not tax-exempt now?

Mr. Lubick: Yes.

Senator Talmadge: What is the difference between that and what Senator Byrd is asking? Is the only difference the fat that it is going -- that it is selling power to the U.S. government and that makes it taxable?

Mr. Lubick: As I understand it, that is the problem that was raised with respect to Senator Byrd's, that there was a question as to whether the Federal government was guaranteeing it.

Senator Talmadge: Are they guaranteeing it?

Mr. Lubick: It is my understanding they are not.

Senator Talmadge: They are just a customer?

Mr. Lubick: Just a customer.

Senator Talmdge: What is the difference between the U.S. government buying power ---you have pointed out a situation now where every citizen in Richmond, Virginia could buy power. He has the same thing, as I understand it, and the only difference is they are going to sell some power to the U.S. Navy.

Why does that create such a problem for a taxpayer, that he is going to be treated into paying taxes on something because he sells it to the government instead of somebody else?

Mr. Lubick: We have no problem with the sale to the Federal government. Our problem, however, is -- I think they are selling beyond the Federal government too, are they not?

Senator Talmadge: That is my understanding. I am trying to point out the analogy, now. We have a parallel. We have a facility that is selling power to the citizens of Richmond, Virignia and that is tax exempt.

Now, he has eight municipalities, as I understand it, who want to do the same thing.

Mr. Lubick: That is the problem, Senator Talmadge. The line that has been drawn in the statute since 1969 is that to qualify industrial development bonds for the local furnishing of electricity means that you do not have as your customers those beyond a two-county area.

Senator Talmadge: Wait a minute now.

Mr. Lubick: You did not want to subsidize the big utility systems that send their electricity all over, as I undersatnd it.

Senator Byrd: This is not a private utility.

Mr. Lubick: As I understand it they are going to be hooked up to the national power grid. This power will hook up into VEPCO, Virginia Electric Power, and go all over the place. That is why they could not qualify under the local furnishing of electricity.

The one you mentioned where it is purely Richmond, Virginia -- or Richmond and the adjoining county-- is all right because you made the decision in 1969 to permit industrial development financing for local furnishing. Since they could not qualify for local furnishing because they are, in effect, furnishing some power all over Virginia, more than two counties, they wanted to qualify as a solid waste disposal facility, which is a separate matter.

What we are saying is it is all right to qualify as solid waste disposal through the production of steam from the solid waste.

Senator Talmadge: I asked the question is TVA exempt?

Mr. Lubick: Is TVA exempt?

Senator Talmadge: Yes. Is that tax exempt?

Mr. Lubick: They issue taxable bonds?

Senator Talmadge: Is it taxable or tax-exempt?

Mr. Lubick: Taxable.

Senator Talmadge: They are taxable?

Mr. Lubick: Right. Federally taxable. I believe they are exempt from the state.

Sentoar Talmadge: Let me pursue this one step further. The only thing that triggers this is that there are eight governments instead of one? Is that what makes it taxed?

Mr. Lubick: No.

What makes the bonds not eligible for industrial development financing under the local furnishing of electricity exception that they go beyond that and they are furnishing it over a broader area.

Then they try to qualify for a separate exemption, the solid waste exception.

Senator Talmadge: If Fulton County, Georgia issued tax-exempt bonds and went into the business of producing power they would be tax-exempt, correct?

Mr. Lubick: Only if it were limited.

Senator Talmadge: Within Fulton County?

Mr. Lubick: That is correct.

Senator Talmadge: Is that the rule?

Mr. Lubick: That is the rule.

Senator Talmadge: Supposing Cabb County, which is a contiguous county, did the same thing, sold the power. Would it be taxable or tax-exempt?

Mr. Lubick: Tax-exempt.

Two counties.

Senator Talmadge: If they have five more counties, where does the tax treatment come in?

Mr. Lubick: Once you go beyond two counties --

Senator Talmadge: Two counties is the limitation. Two governments are exempt; three governments, are taxes added?

Mr. Lubick: That is correct?

Senator Talmadge: Why?

Mr. Lubick: Because you drew the line to cover and to protect the small facilities and you did not want to subsidize this way all furnishing of power throughout these very large utility systems.

Senator Gravel: Which are more efficient.

Mr. Lubick: Being more efficient they have more access to capital markets and they do not need the special subsidy through tax-exempt bonds, which Senator Gravel has many other problems. If you load the country up with all of these utilities floating tax-exempt bonds, the state and local governments would have very serious problems.

Senator Gravel: What you would have you would load up the country with very cheap power and that is what the people in this country would want.

Mr. Lubick: Cheap power and expensive schools.

Senator Gravel: The schools would not be so expensive because it costs less to heat them.

The Chairman: The point Mr. Lubick is making here, let's just understand the point that Treasury is making because I just want to be sure that both sides are thoroughly understood. I would like to help Senator Byrd to achieve what he is trying to do, but I would also like to understand the Treasury's position.

We should try to understand the whole picture while we are at it and hope that we can work it out for the best answer.

The Treasury position is if we did everything, if we financed the energy things that we would like to finance with tax-exempt bonds, the interest rate on tax-exempt would be a great deal higher than it is because you use up the market.

Mr. Lubick: That is correct. We have seen illustrations where we have put out a regulation closing off the advance refundings last year and, instantly, with that regulation the whole tax-exempt market went down about a quarter of a point when the rest of the interest market was going up.

So it is very sensitive to the quantity of obligations that are out there and what this means, the state and local governments, which legitimately rely upon the tax-exempt financing for their running of the governments, for their sewage systems, for their schools, for their fire departments, for their police departments, for their City Hall facilities, all of those thins would become more expensive. If are more expensive, state and local taxes will rise and it will lead to more revolts of the type that we saw in Proposition 13.

Essentially that is the problem. To the extent that you permit the tax exemption to be used to finance private enterprise, private businesses, you dilute the benefit of tax-exempt financing for the legitimate and normal and historic and customary governmental functions.

That is essentially our problem.

All of these things are good. Everybody wants to make it cheaper, but the fact of the matter is that, as a way of subsidizing, it is inefficient. Twenty-five cents of every dollar used for tax-exempt financing is going, not to the benefit of the muncipality, not to the benefit of the enterprise that is financing it.

It is going for other taxpayers who buy the bonds. The customers of the bonds. That is just not a diret way to provide.

Senator Byrd: Let me ask a question, if I may at this point.

Would your problem be solved if the legislation were to require that 90 percent be sold to a governmental unit?

Mr. Lubick: Yes.

Senator Byrd: I so modify.

Mr. Lubick: I still think --

Senator Gravel: You do not want to lose sight of the principle you are after. That is what Senator Talmadge brought up. That is once and for all, if we can solve this ridiculous two-county rule -- if it is two governments you get an advantage, three governments you do not -- the Treasury has been philosophically opposed to IDPs from day one and they would like to see none issued in the country.

The information that Mr. Lubick is putting out is at variane with what I have. They feel that there could be a substantial expansion of these kinds of bonds to absorb in the investment community without effect on the interest rate. The sensitivity is not there, if we are trying to get information from various bond counsels on this.

He is putting forth argumentation that sustains a philosophical position when he talks of subsidies. If we are going to subsidize anything, we want to subsidize cheap power. What we have been subsidizing with these IDPs are football stadiums and the like in addition to any other worthwhile municipal activity.

But the capriciousness of the two-county rule is just not valid. They can oppose it on other grounds but they should not, and I hope that this committee -- I hope you will stick by your guns to really obviate that two-county rule one and for all. If we want to shrink down IDPs, let us at least do it through a nondiscriminatory fashion to the numbers of governmental entities involved.

The Chairman: I just hope that we can agree on something here because keep in mind we are trying to get the genii inside of the bottle here.

Senator Byrd has a situation that, if applied to what he wants to do, is not going to wreck these figures. But if we extend the Byrd amendment to where anybody who wants to build a generating plant can do so with tax-exempt bonds, that will exceed what everything on the whole sheet shows.

We have to find some way of containing costs while still trying to accommodate the problems of the Senators.

Senator Chafee: Is it not possible for us to stick to the Byrd proposition here rather than getting into a whole consideration of industrial development bonds and throwing out the entire statute and broadening it, and all of that?

It seems to me if we could just wrestle with this one problem, that is enough, because we have a very full menu here.

The Chairman: That is what we are trying to do.

Senator Gravel: I thought we were trying to get cheap energy in this country? I thought that was the purpose of this bill?

The bottle, you may not be getting aware, Mr. Chairman, is getting bigger every day, with the recent increases in the price of energy. The fact that you now have international spot that is going for $40 a barrel, that bottle is going to be a jug in about another day. Let's fill the jug.

The Chairman: Senator, I do not think we are going to be able to write a bill that you will entirely like. I assume you are going to vote against the bill anyway. But we are trying to get that so the majority of us can vote for it.

Senator Bentsen: May I ask a question, Mr. Chairman?

The Chairman: Do you have anything more to say, Mr. Lubick?

Mr. Lubick: No.

Basically we would like to exclude -- I recognize the problem that Senator Byrd has had. We have been trying to see if we could not handle it administratively in a number of ways. We have no problem with this project. We think it is a good project, and a desirable project. It is taking solid waste and turning it into something useful and productive. We have no problem with the subjective.

I think Senator Byrd has been perhaps the leader on this committee in restraining the use of tax-exempt bonds to finance private matters and he has been trying to preserve the position of the state and local governments in this area. So I think our area of agreement is overwhelmingly large.

Our one problem is, if we start cutting into this rule that allows the financing of generators beyond what is permitted today, we have some very serious revenue consequences, we have some very serious efficiency consequences, very serious problems for the equity of the tax system.

The Chairman: Mr. Bentsen?

Senator Bentsen: Let me ask a question. When we are talking about Section 103 of the tax code, there you have tax-exempt financing for the conversion of solid waste into steam and that apparently takes it up through that point right there.

Is there any intention on the part of IRS or Treasury to try to change it at that point and move back to an earlier point?

I want to know if you are going to continue to be able to do as you can under Section 103, use tax-exempt bonds up to there, or are you going to retreat from that position?

I am not asking for any more than you are doing now. I am just concerned if you are going to cut back.

Mr. Lubick: The problem that you are alluding to is under the present regulation, Senator Bentsen, that so long as the processing facility is one that is processing solid waste there is no problem. It is my understanding that there have been technological breakthroughs that have been made so that the processing facility may turn the heap of garbage called biomass there into something that is no longer.

Mike has garbage going out into the incinerator, and what comes out of the garbage in some of the systems now is a marketable product, something like lignite, for which there is a market, and can be sold.

Under the regulations, as they exist now, that is no longer waste. Therefore, the facility is permitted to be financed with tax-exempt bond as long as it is dealing with waste.

If the facility has advanced technologically to the point where it is a processing facility and the product that comes out is no longer garbage, but something that is salable, then the Service, under the regulations, takes the position that that is the end of the waste part of it.

Senator Bentsen: That is my concern, Mr. Chairman. They are cutting back.

Mr. Lubick: They are not cutting back.

Senator Bentsen: If I may now, I do not mind if you have a facility where the product that would be a marketable product nevertheless is committed totally to the creation of steam, so you allow them to use whatever technology is developed.

But I think that if it stays in that stream to become steam then it ought to still qualify and it ought not try to deter advances in technology.

Senator Bradley: I concur with the Senator from Texas. What you are doing is penalizing advancement. If you produce garbage and you burn it crudely, that is all right. You can get tax-exempt financing for it. But if you produce a more processed fuel that is a better fuel you cannot get the taxes and financing.

I think that penalizes what we are trying to do here, which is to relieve our dependence on foreign sources and a more effective energy source would do that more effectively.

I really also question the revenue effect that you have conveyed to the Committee, over a billion dollars, and would like you to break that down as to how many plants that would be assumed to be built over a ten-year period.

Mr. Lubick: I have the revenue estimate from the staff.

The Chairman: Is that your estimate, a billion dollars, Mr. Shapiro?

Mr. Lubick: It includes the turbines and generators.

Mr. Shapiro: The major part of that estimate is not Senator Byrd's proposal up to the turbine. It is the use of the turbines everywhere.

Senator Bradley: Yes.

My question is, how many plants does that assume will be built, how many turbines? How did they reach the figure?

Mr. Shapiro: They tell me over twenty.

Senator Bradley: Over twenty in the next ten years.

You know I have a study that ws done by Payne-Weber and Jackson which is involved in this business of financing these facilities. They estimate that the maximum amount in the next ten to thirteen years is $229 million.

Mr. Lubick: The maximum what?

Senator Bradley: The maximum revenue loss that you will have over the next ten to thirteen years. That assumes that you will have about twenty plants. That assumes twenty plants. I would like for you to break it down.

I assume that the revenue loss is the difference between the tax that you would have on taxable bonds versus the tax-exempt bonds.

Mr. Shapiro: We just received those numbers this morning. We have not had a chance to look through their methodology.

Senator Bradley: What methodology was used, then to arrive at this?

Senator Bentsen: How about this, to try to take care of Mr. Lubick's concern here on a marketable product suddenly being developed because of an advance in technology. Suppose we say that all of that marketable product has to be committed to the creation of that stream, so that you have not let it get out of the stream of what you are trying to do with it, or what you would have done with it?

Mr. Lubick: That would be not good, but not bad. I understand your problem. You do not want to discourage advancing technology. You do not want to hold them back and have an incentive to hold it in the garbage stage, rather than in the lignite stage.

Senator Talmadge: If I may ask a question at that point, I assume that the concern that you have, Mr. Lubick ---if this is it I can concur in the concern.

You do not want to encourage some private utility, or municipality, for that matter, to go into the business of producing electrical power and using its municipal tax-exempt in competition with a private utility.

I assume a municipal rate would be now 7 or 8 percent and a private power company would be what, 12 percent?

Mr. Lubick: There has been about a three point spread.

Senator Talmadge: I can understand that concern. I would not want Atlanta, Georgia to go into the power business and sell power throughout the state of Georgia myself, because if they did it would put the Georgia Power Company completely out of business because the biggest cost of a public utility, of course, is the interest rates.

Is it not possible, if I understand the situation that Senator Byrd is interested in, you have eight county and municipal governments that want to do something about garbage, which is what we all want to do. And when they make that garbage they want to convert it into steam and further into electrical power.

I understand that the sole customer is going to be the United States Navy. Whatever benefit is going to be derived from this tax exemption is going to be from the government itself. Is that correct, Senator Byrd?

Senator Byrd: That is correct.

Let me read this statement just given to me by the Executive Director of this new facility. We are prohibited from selling power to the general public by our air emission permit fro EPA, so all this damn electricity will be sold to the United States Navy.

If the United States Navy cannot utilize this facility, then they will come to the Congress for a $99 million appropriation to build their own facility.

Senator Talmadge: It seems to me that our staff could draft this in a way that it would not permit the abuse that you fear, Mr. Lubick. If you had your technicians working on that.

We are not going to have abuse if the government is the only beneficiary. Either the local governments, or the Federal government.

I can understand how you could have an abuse if you turned these people loose against all the private industry in Virginia and had a differential in the interest rate costs at play, but you do not have that here, and it seems to me the whole thing can be solved by the drafting language.

Mr. Lubick: That may be. I am not entirely clear on the facts. It seems to me if all the electricity generated were to be used in one place, then you would be within the local furnishing rule and you would be exempt.

If we take the fact that the United States is a customer out as a determining factor, up to that line that Mike has drawn would be protected under the facility portion.

Also, I have been handed a slip of paper that indicates maybe they are going to hook into the national power grid. Maybe that is why they cannot qualify under the local furnishing rule and if that is so, and we break that line and we have a different problem, the problem that you were concerned about, Senator Talmadge, if they are furnishing power to the national power grid --

Senator Talmadge: Could that not be handled in the drafting language?

Mr. Lubick: If we limit them to the one customer, it seems to me maybe you are all right. I do not know that that is satisfatory.

Senator Talmadge: Is it satisfatory, Senator Byrd, or not?

Senator Byrd: I would prefer if you could make it 90 percent. That would be preferable. But I think the 100 percent might be satisfactory, but the 90 percent certainly would be.

Mr. Lubick: The 90 percent again leaves you with 10 percent. You have breached the rule.

I would have difficulty with that.

Senator Byrd: You have no difficulty with 100 percent?

Mr. Lubick: I have a heck of a lot less.

Senator Byrd: What?

Mr. Lubick: Much less.

Senator Byrd: I agree with you philosophically on tax-exempt bonds where doctors use tax-exempt bonds to put up an office building. I do not think that ought to be permitted.

I was in a community where a savings and loan, which made a million dollars last year, put up a building with tax-exempt bonds, I do not approve of that. But we are talking about municipalities trying to get rid of their urban waste, mainly garbage, and they want to turn that garbage into energy, ~~and~~ It seems to me that we ought to encourage that rather than discourage it.

Mr. Lubick: I think we have agreed to you on that. We are up to Mike's line that takes care of turning the garbage into energy. Now we have a separate problem which is what qualifies under the local furnishing of electricity rule that applies to the turbines and generators?

I have been given to understand that was not your problem. That was 30 other people's problems that were represented by the smae outfit, but I had understood that that was not your problem.

Senator Byrd: I would be glad to modify this and make it where it can be utilized only by one customer, the Federal government, or a state or local government.

Senator Bentsen: Let me understand that that does not violate the present rights of Section 103. I want to be sure.

Mr. Lubick: Your problem would be solved if you keep the line at the steam, even if the garbage becomes marketable garbage.

Senator Bentsen: That is right. To take care of your concern that you have a marketable product before the steam, if all of that marketable product is committed to the creation of the steam, then you have not changed what you are doing other than trying to take advantage of what technology you can to do it cheaper.

Mr. Lubick: I am concerned about the use of tax-exempt financing to subsidize a commercial activity, but I recognize the line that you want to draw and I think that that is one that you can contain.

Senator Bentsen: I would like, Mr. Chairman, if we can, to insure that Section 103 is not changed to th first marketable product if that marketable produt is totally committed to the creation of steam, as it presently is, that that not be changed.

Senator Byrd: That is a good point.

The Chairman: You can live with that, I take it?

Mr. Lubick: That is a wound, but not a mortal one.

Senator Bradley: Mr. Chairman, would the Senator clarify what about in those facilities prospectively that would use in the generation of steam part coal and part resource-derived fuel.

Would a part of that boiler be eligible for tax-exempt, the part that uses resource-derived fuel, because there are processes that use the mixture?

Senator Bentsen: I do not know. I do not know what the IRS regulation is on that.

Mr. Lubick: I confess I do not either.

The Chairman: Can we understand?

Mr. Lubick: Senator Bentsen, I am informed there is a 65 percent rule. 65 percent garbage is what is required; 35 percent coal.

Senator Bentsen: I am not trying to violate whatever the rules are now. I just do not want to step back because of technology.

If all of the product is utilized for the creation of steam, I would like to see that preserved. I think that meets his principle objection.

The Chairman: Can we agree to the Bentsen amendment?

Those in favor of that, say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: The ayes have it.

Now, Senator Byrd proposes to modify his amendment, as I understand it, to apply where the power is only used by state and local governments, and Federal.

Senator Byrd: Federal, state and local.

The Chairman: Can you live with that?

Mr. Lubick: Do I understand that for the solid waste disposl exception you are drawing this line. For the local furnishing of electrical energy, you are saying, if the power is consumed by a state and local government or a Federal government then that is still local furnishing, but I assume it cannot be resold?

When you say taken by the government, they do not go off into the business and sell it all over the place?

Senator Byrd: You would have to take that up with the United States Navy. I guess you could control them.

Mr. Lubick: No, sir.

Senator Gravel: You cannot sell to a citizen of Virginia who might live in any one of those counties and might be in the middle of the area. He would have to buy his power from some distant source. It would be curious to see how you are going to go through the grid with little scissors and cut the lines so that the power comes from the source.

This plant will not even be able to get into your energy grid, electrical grid, for that part of the state or that part of the country. Otherwise, you are commingling the energy.

Mr. Lubick: I wanted to raise that problem. I do not think we wanted to open this up to the general furnishing of electrical energy, because I think that is a very serious breach. That is what provides the revenue loss.

The Chairman: Senator, you are going to have a problem politically. Again, we are back to people on one side of the street paying one rate and the people on the other side of the street paying another rate.

Mr. Lubick: I do not think that would be.

Senator Gravel: If you live right across from the military base, you are going to pay one power rate. If you are a military person living on the military base, you are going to pay another rate for your power. Those two people are going to the same Officer's Club at night and compare utility bills. Come on.

Senator Bradley: Mr. Chairman I do not want to belabor this. Let me just say one more thing.

I have yet to hear the rationale for the revenue costs that you have purported. It seems to me if the revenue cost is not significant then it is a question of, is there a principle to be violated here and I really do not think so. You are talking about a tax-exempt status granted for about a decade and in that period of time, how many plants are going to be built and how significant is this tax-exempt status going to be to the growth of the solid waste refuge-derived energy industry and if you look at the other hurdles that you have to overcome in order to be competitive that you are not going to have a big revenue loss. They have to get the so-called tipping fees up much higher than they are now, what the municipals pay to dump the garbage. They have to be able to sell their fuels at a much higher price than it is now. They have to be able to sell the recyclable materials at a much higher price.

This is the kind of insignificant assistance in the promotion of solid waste energy, and I think it comes down to a question of revenue, if it is a dramatic revenue effect. I agree with the Chairman.

But if it is not a dramatic revenue effect, I do not see why you do not go ahead and offer it for a decade.

Mr. Lubick: On the revenue effect, we will have to let the revenue estimators explain how they got it. I understand it is a very significant revenue effect, but I also think there is a very serious principle here.

When you go beyond the processing of the solid waste and you are getting into the financing of generators and turbines that are the same generators and turbines that are the same generators and turbines that are used to generate electricity that is fueled by oil or gas or what have you and that is a major breach in the use of tax-exempt financing, to provide general utility services.

Supposing the solid waste, for some reason, develops to be uneconomical and we convert it to have the steam generated by coal.

What happens? The bonds are still out there and exempt. I think you have some very serious problems when you are financing those things that are not permitted today.

Senator Byrd: This proposal that you would approve would include the whole, entire facility provided that the product was used by a governmental unit and was not resold.

Mr. Lubick: That seems to me to qualify today under the law today. That is local furnishing.

Senator Byrd: If that is the case, there would be no objection to writing that into this law then.

Mr. Lubick: If it is the case.

Senator Byrd: Anyway, you favor that. You would not oppose that proposal is what I am getting at.

Mr. Lubick: Well, Senator, I would like to reflect on that a little bit.

Senator Byrd: The beneficiaries are the Federal governments or local governments.

Mr. Lubick: If it is still the local furnishing, I have no problem with that. That is the law today.

Senator Byrd: Well, Mr. Chairman, could we vote on the proposal as modified, namely that the tax-exempt status would apply to the entire facility provided that the product was sold only to a governmental unit, whether it would be Federal, state or local and provided it was not resold.

The Chairman: Provided it is not resold. All right. Let's vote.

All in favor, say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: The ayes have it.

Senator Byrd: Senator Bentsen and Senator Ribicoff vote aye by proxy.

The Chairman: The ayes have it. The amendment is agreed to.

Now, what is your estimate, Mr. Shapiro. You are saying provided it is only used to be sold to governmental units and not to be resold?

Mr. Shapiro: Our estimate, on Senator Byrd's case, is approximately $3 million a year, somewhere about $30 million to $35 million over an eleven-year period.

The Chairman: All right. That is good.

Senator Bradley: Mr. Chairman, do we want to address this question of the larger areas now, just to get a revenue estimate?

What is the revenue estimate?

The Chairman: What is your revenue estimate?

Mr. Shapiro: That is still being computed. Our people are calling back to the office right now to get the computation.

Senator Bradley: Can we come back to it later?

The Chairman: We can talk about it later on.

I would think that the logical compromise on the Nelson part would be just to take the part that the Senator -- let me suggest this. I would suggest that the logical compromise on the Nelson proposal would be just to take the part that the Senator from Wisconsin is suggesting. I do not believe we could afford to take the part that goes beyond that, but the part that Senator Nelson was suggesting would increase the cost from $964 million we are looking at up to $1.4 billion.

I wish we could go beyond that, but I think if we go beyond that we are, again, in a real problem with the budget figures.

Senator Gravel: The problem there, Mr. Chairman, if you take an underdeveloped area like the state of Alaska which has probably more sites than any other place in the country that you are just locking them out because Senator Nelson's proposal only goes to existing sites.

Maybe you want to do that, but I just want you to know that is what you are doing.

The Chairman: I understand. What I am suggesting, that leaves out locations in Louisiana that I would like to have in there. At the same time, I think that everybody who represents a state --

Senator Gravel: I do not think Louisiana is underdeveloped.

The Chairman: I am sorry you brought the subject up. I am well aware of a couple of situations in Louisiana where they would like to expand the Nelson amendment to include theirs. If I do, we are going to have to have at least ten states represented, maybe twenty on the committee represented, who would have a case for a new location in their states.

If we get involved in that, that gets us up into another $1.5 billion. I just do not think we can afford it.

I am willing to vote on your part of it, but I do not think we can afford that.

Senator Gravel: I am really laboring under a misapprehension then. I thought that what we were doing was making decisions on affirmative things and then go to a reconciliation where we vote on everything.

I certainly would have misgivings over voting for the heat pumps and other things, credits, when maybe it is better to go to hydro. It is going to be cheaper in the long run in the United States. Better for the people. It is a renewable resource. We talk about hydro facility, hydro collector. I do not know if photovoltaic is a better approach to the solar problem than hydro.

You keep making the point that we are putting the genii in the bottle. We have not even finished defining the genii and all of a sudden we are saying that everything we agreed to before is in the bottle when it is my feeling -- and I think maybe it is the feeling of others; I would like to have other views on it -- that we have not made a firm decision on everything else, that what we are going to do is take a reconciliation and go back at it.

Otherwise, we may have other things that have been tentatively approved that even do not even come to the marginal benefit of something that we are talking about now, but because it was done earlier that we are locked into that.

The Chairman: Senator, you know, we can vote on just anything, anything you want to vote on. We will certainly vote on your part of it.

Let's vote on the Gravel thing.

Senator Gravel: No, Senator Ribicoff and I are preparing an amendment that we want to offer together and it will be an amendment either to Senator Nelson -- you can vote on Senator Nelson's and then we will come in with an amendment that Senator Ribicoff and I thinks is worthwhile.

We can take the amount of energy that is produced by nuclear, the combustion turbine and conventional hydropower and increase that much more energy in this country with the underdeveloped hydrocapacity we have. That capacity after the bonds are paid off forty years from now, the cost of energy goes down to 10 percent of what it does before.

Your heat pumps, your other devices, your coal gassification and all of that is going to continue to rise and here, again, I would like to show this chart to my colleagues.

If you take a 50-year period and you just chart it out on the dotted line and then you take costs on the vertical line -- let's say $1 billion, $2 billion, $3 billion, in the first period of construction the cost goes up ---normal inflation. After that, after the hydro facility is in place, the line does not continue to go up like it does for coal gassification or any other kind of energy production. The line then flattens out because the only increase in inflation that takes place is in the operation of the dam which is 10 percent of the total cost.

And then when the dam is paid off at the end of 40 years, the cost of producing energy goes down to 10 percent of the whole, from 100 percent it goes down to 10 percent.

Then what we could do in this country is place a major part of this country on hydro, small hydro, and with minimum environmental impact and we refuse to do that, because we have already got in the bottle the part of the genii to do a whole host of these other things that cost $4.6 billion, to raise the credit, or 50 percent, and extend it to the year 2000.

It does make sense to make those kinds of trade-offs.

The Chairman: All we are talking about right now, we are just voting on the Nelson amendment. If you wnat to offer as a substitute, or an amendment to it, we will vote on that, now. Otherwise, you can offer it later on.

Senator Gravel: That is fine. I do not want to offer it. I just wanted to make that point, and I will prepare a chart to show our colleagues.

The Chairman: Let's vote on the Nelson amendment. Those in favor of the Nelson proposal, say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: All right. We will go to $1.4 billion, then, for the hydroelectric.

Senator Nelson: Does that include those provisions as I proposed them and read them yesterday?

The Chairman: That is what you are suggesting, yes, sir. We went along with you on that.

Senator Nelson: All right.

The Chairman: I would take it that tentatively we will agree to these other items that were suggested that would include the tar sands, shale oil and geopressurized. Unless there is objection, we will agree to that.

Senator Chafee: You are on page 2, Mr. Chairman.

The Chairman: Page 2, all right.

Senator Durenberger: Mr. Chairman, may I ask a clarifying question on item seven? On the van pooling extension, did we cover both Sections 46 and 47 by extending this coverage to third parties?

Mr. Shapiro: This is the regular investment credit. What we are doing is in the present law right now applies only to vans that are used by employers. That is being expanded to take that provision and allow the extra investment credit to be used when it is done by the employees, or third party.

Whatever is in present law is expanded so it is just not limited to employers.

Senator Durenberger: Thank you.

The Chairman: Now, as of now, we are not including these other items which have been suggested at one time or another which at one time or another has been agreed upon. We will reserve the right of anyone who wants to bring it back up.

That would limit us then to an overall total of $15.5 billion.

What about the Talmadge amendment? Was that agreed to or not?

Mr. Stern: The vote at the moment is ten ayes, four nays.

The Chairman: I assume it will be agreed to, so if you add that to the 15447 you have down here, you have $500 million for the Nelson amendment and you add $286 million here. Then you add the Byrd amendment. That is not much there.

What did you estimate that would be, about $30 million?

Mr. Shapiro: $800 million.

Senator Boren: I want to bring up cogeneration of natural gas.

The Chairman: Let's see what we have.

Mr. Shapiro: What you agreed to today, as we understand it, adds $800 million.

The Chairman: $800 million. That adds $800 million to the 15.447 so it gets up to about $16.247 billion.

Now, let's hear about cogeneration.

Senator Boren: I would like to again move that we include existing natural gas projects in the cogeneration credit. I talked to Senator Ribicoff -- it was originaly the Ribicoff-Packwood amendment. Originally they had included -- I talked to Senator Ribicoff and Senator Packwood and they both agreed that it should be included and they did yesterday after the meeting asked the American Gas Association to contact their member companies that are cogenerating, that are natural gas users, that are cogenerating.

They came with a range of estimates following this survey, with the companies saving the least amount of energy saving about 5 percent and the company in New York which was saving the most was saving 20 percent. So there was a significant savings through the cogeneration. I think it could be included otherwise.

Boilers in our part of the country will never be able to have savings attached to them.

The Chairman: Is that the item here on page 5? How much?

Mr. Shapiro: That is a $50 million item. It goes to 1982. The question was never really a revenue cost on that particular item.

The Chairman: What is the revenue?

Mr. Shapiro: Cogeneration, number five.

Senator Boren: Existing natural gas only.

Mr. Shapiro: Adding $50 million of existing natural gas where the staff proposal said it is only non-oil and gas burning facilities.

Senator Boren would like to amend that to include existing natural gas cogeneration.

The Chairman: What is the long-term cost?

Mr. Shapiro: $50 million is the total from 1980 to 1982. The provision terminates in 1982.

Senator Boren: A total of $50 million.

The Chairman: The whole program?

Mr. Shapiro: The whole program.

The Chairman: That is not much.

All in favor, then, of that suggestion, say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: All right. That will be added.

All right.

We hope that we can settle for that. If so, I think we are in good shape.

Mr. Shapiro: Senator Matsunaga is sick tody and will not be here and you asked at the beginning about his proposal. His revised proposal that he has agreed to would allow a $3 production credit for producers of energy from solid, agricultural byproducts, agriucltural waste.

The credit would be measured by the number of btu's equal to the energy equipment of a barrel of oil produced from the initial processing stage. He would make this production credit available for energy produced between 1980 and 1984 and then the facilities are placed in service after September 30, 1978. The revenue effect that we have for this particular proposal would be less than $5 million a year, so for each of those years it would be about $20 million to $25 million.

The Chairman: You do not see any serious problems with that? That will not break the Treasury, will it?

Mr. Lubick: I do not think so, Mr. Chairman.

Senator Chafee: Is there a phase-out.

Mr. Lubick: The same phase-out as the other credits.

Senator Chafee: As the price of oil rises?

Mr. Shapiro: That is right.

The Chairman: All in favor, say aye.

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: Senator Deconcini wrote me about a matter. I do not have it. I wish I had brought it with me. Would you remind me to find out what it was, to check into that item he was concerned about?

Hopefully we can consider it in the Committee. He mentioned it to me a couple of times. I had it in my pocket yesterday, but I forgot to bring it up.

Before we are through with this, I would like to urge that his proposition be considered.

Now, I am not asking for an affirmative vote on these items over here, these alternatives. If somebody wants to bring them up, they can bring them up.

Senator Wallop: Mr. Chairman, I have one issue I want to bring up on the first page. The place-in-service rule that the committee has recommended, I would like to persuade the committee -- this is number nine on the business investment energy credits, affirmative commitments item nine.

We did not discuss a placed-in-service criteria when we adopted the amendment. I would like to make a case to the committee that there is no cost in not having it except -- and there is real cost, I think, in having it by way of discouraging people and by way of putting them into a position wherein, in 1989, they are held hostage to labor disputes or a supplier dispute over the cost over supplying material.

There is no cost to not having it. I would like to make a case -- it does not do anything, because we require already that they make an affirmative commitment, 50 percent of the price of the permanent commitment has to be by 1985.

I would like to hear if the staff really feels it is justified.

Mr. Shapiro: Why the staff put it this way, it is a committee decision. It does not have any direct revenue consequences.

In the Energy Act last year, the additional investment energy credit, additional 10 percent credit was available only through the end of 1982. In that act, there was not a sufficient bonding contracting rule. Those companies getting onstream, but could not finish by 1982.

It was very expensive and required many years.

Therefore, Senator Wallop has proposed to have a firm commitment rule which the Committee agreed to which is a version of what we usually have in the investment credit, or changes which is the bonding contract rule.

When a proision terminates, if a company had agreed to enter into an arrangemet to do something, then they would not be cut out as long as there was a binding commitment at the time the Congress terminated.

What Senator Wallop is proposing is something similar in addition to these investment energy credits. One of the points the staff added in bringing it back was to say, all right, if you, by 1982 when the provision terminated, you would be allowed to get that additional investment credit, a total of 20 percent, 10 percent plus the additional 10 percent, for property where the engineering studies have been completed and production permits applied to by 1982.

That is the first step to show you have made arrangements to begin construction.

Second, where there are binding contracts for construction of at least 50 percent of the cost of the property by 1985.

The third part, where Senator Wallop is questioning the property placed in service by 1990. The reason for the property being placed in service by 1990 was to encourage them to do it sooner.

The point is, you would have more energy savings if you provide this firm commitment, but if they place the property in service sooner, the concern Senator Wallop raises in some of these projects, they are very complex and require a great deal of engineering and studies and permits and it may take a lot of time and some red tape that may not be their fault. Delays may occur.

Along by 1988, 1990, right before they get willing to terminate and they may be cut out. That is a legitimate concern.

You just have to balance out whether you want the 1990 date in there as incentive for them to move faster or to relieve the pressure on them knowing they will have that regardless.

I am assuming they will do anything they can to speed up the process. In any event, a possible fallback is to say they will get the credit on the basis of what they had done up to 1990 in any event, which means they know they have that and if they can show that things beyond their control have not occurred, then the Congress may want to amend that later.

Senator Wallop: Is that not in essence what we have now? They do not get any credit after 1990 anyway the way the amendment is drafted? That is why I say there is no revenue loss.

What worries me about where we are going, if somebody feels like they are in a project that might take them nine years, eleven years, to bring them right up to the edge of that thing and they feel there is a worry and they might have to go into a recapture position, they may not commit to it at all. That is the risk on the other side, that we do not get the energy segment because people are reluctant to commit.

The Chairman: Could I just ask you, I regret to say that someone pushed for something to me while this was going on and diverted my attention.

Would you mind just cluing in what this is again, Mr. Shapiro? I am sorry? My attention was diverted.

Mr. Shapiro: In the act last year --

The Chairman: Where are we on this list.

Mr. Shapiro: Number nine.

The Chairman: Number nine.

Senator Wallop: Business energy investment credit.

Mr. Shapiro: Page 1.

The Chairman: The first page, number nine. You are talking about affirmative commitments to allow credits which otherwise expire on December 31, 1982 for construted property where engineering studies have been completed and construction permits have been applied for by September 31, 1982. Building contracts or construction of at least 50 percent of cost of property by December 31, 1985.

Property placed in service by December 31, 1990.

Is that what we are talking about?

Senator Wallop: Yes.

What I am saying is the placed-in-serice rule is probably destructive to at least part of the energy savings. There is no revenue effect to it because, in any event, the credit stops in 1990 and I do not think there is a point of wide dissension between us, but if we have these people comitting to these problems between now and 1982 and they are affirmative commitments, binding contracts by 1985.

A lot of people in longterm projects are simply not going to commit if they think there is a recapture provision and they can be held hostage in the last year or two to labor disruptions, suppliers and blackmail and that kind of thing.

Mr. Shapiro: Let me state the problems with what Senator Wallop is suggesting.

The reason the staff put a 1990 date there was to provide an incentive to encourage these projects to come onstream as soon as possible, knowing it does take time, and for them to start today and move as quickly as they can to try to complete it.

The problem here that Senator Wallop is addressing, it is to provide incentive where at the same time, if there is any risk, they may not complete it. Then they may decide they do not want to go through with it.

Senator Wallop is suggesting -- what you can do as a compromise in between there, as I understand him, is to say, you get it in 1990. That is the cut off. It means to the extent that --

Senator Wallop: The work you have completed. The rest of it, you are on your own.

Mr. Shapiro: Right.

In a sense, it keeps the 1990 date as a target. If you complete by 1990, you get it all. At the very least, they know what they will get, what they have completed up to 1990. That seems to be a fair way to deal with the problem that we had and to accommodate the concern that Senator Wallop has.

The Chairman: To what extent does that change your revenue estimates?

Senator Wallop: None, Mr. Chairman.

Mr. Shapiro: The only effect would be after 1990. I do not think it would have any effect.

Senator Wallop: The only effect, which is totally unpredictable, if they became subject to recapture provisions, you do not know how many projects would be involved that did not make it in the nick of time of 1990.

I doubt that it would be a very significant amount of money.

The Chairman: Well, is there any objection to that? Without objection, it is agreed to.

Senator Dole?

Senator Dole: On number ten on petroleum coke, I think you are familiar with that particular issue. This is number ten, page seven of the business credits, that allow facilities which use petroleum coke to be eligible for the 10 percent energy credit, the 10 percent regular credit and accelerated method of depreciation.

I think Mr. Shapiro has the background information we are talking about. I have the material.

Mr. Shapiro: The problem here, in the Energy Act last year, the Congress gave an additional 10 percent credit for a certain type of energy product which uses a fuel other than petroleum products, so you are trying to give incentive to encourage the use of fuels other than petroleum, and that was the new energy 10 percent credit.

What the committee did do, what the Congress did do, however, is to deny the regular investment credit as well as accelerated depreciation for certain boilers which used the petroleum product as fuel. That is where the petroleum coke comes in, so in addition to this petroleum coke's not getting the additional energy credit, it was denied the existing investment tax credit, the existing 10 percent credit, plus any accelerated depreciation methods.

The suggestion Senator Dole has is it would treat petroleum coke as a petroleum product and make it eligible for not only the regular investment credit and accelerated depreciation, which was taken away from it last year, but also the additional tax credit.

There is some question as to whether or not the use of petroleum coke is something that is inefficient and should not be used.

The revenue costs of Senator Dole's initial proposal was to add the entire petroleum coke to the existing law with the regular credit and the additional energy credit. That would be $919 million over the eleven-year period. We compromised at that, to allow the existing credit, the regular investment credit and accelerated depreciation, give them back what was taken away last year, however, not to extend the Energy Tax Credit, the additional credit, which keeps them on par where they would have been if they had not passed it last year with regard to the regular treatment.

That revenue effect is $560 million, so it is a little more than half approximately. It is a version of a compromise.

Senator Dole: Either that, or keep this package as I suggest, extended through '82, '83. Make some determination whether it has any impact. That would reduce the cost significantly. That would be even less cost.

Mr. Shapiro: The way this revenue estimate is right now, it would be the energy credit, the additional 10 percent credit through 1982 and the regular ---that would include any transitional rule or problems they may have that were just agreed in the firm commitment rule. Also, the regular 10 percent credit plus the accelerated depreciation, which would be continued through 1990.

Senator Dole: That is the way it is written out?

Mr. Shapiro: That is the way it is out. That is what the $900 million revenue estimate is.

Senator Dole: I know Mr. Lubick wants to endorse it.

Mr. Lubick: We think the compromise suggested by Bob is a reasonable way out of the problem. We would endorse it in giving them back the credit and accelerated depreciation taken away.

We are concerned with the fact that this is a product that competes with coal and it is an oil-derived product. Therefore, we would suggest that you not extend the additional credit.

The Chairman: Why do we not take the compromise that was suggested and just take it through 1985. That way you hold the figures.

Senator Dole: If you take the compromise --

Mr. Lubick: We give them permanently the regular credit and accelerated depreciation not limited to '85.

Senator Dole: That is how much total?

Mr. Shapiro: Approximately $560 million.

Senator Dole: For a ten-year period?

Mr. Shapiro: Yes. That would give it to them permanently, not ten years. It would just take away. We would eliminate what was taken away from them last time. They would not be limited to 1990.

The Chairman: When they were limited, when they limited last time, what was the basis upon which they were limited, taken away from them.

Mr. Shapiro: Congress was trying to provide incentives for those boilers that use alternative sources of fuel, fuel other than oil and gas and their derivatives. As a disincentive for those who used oil and gas types of fuel, Congress said, you do not get the regular investment credit or the accelerated depreciation. In other words, the Congress says we are not going to give you the incentives to do what we are trying to get you off of, off of oil and gas and onto alternative sources. So if you use an alternative source of fuel, coal, nuclear or any type of fuel, then Congress is going to give you not only the regular credit but an additional 10 percent credit as an incentive to get into these areas and to try to make that gap by the Congress saying the idea is not to give an incentive to use oil and gas so you denied the existing investment credit, plus denying accelerated depreciation, because you did not want to use any incentives to use oil and gas.

The Chairman: This particular product you are talking about right here, it would go to waste if you did not use it.

Mr. Shapiro: As we understand, this is for some years as a simple form of derivative. The question is, it is available for fuel, not necessarily wasting the oil. Therefore, the question has been raised whether or not it should be denied the existing 10 percent credit. That is what the compromise is, to give them the existing 10 percent credit that was taken away, to allow them to use accelerated depreciation, in other words which was taken away, but not to give them the additional 10 percent energy credit.

The Chairman: What is your suggestion?

Mr. Lubick: I agree with Bobby's suggestion. It primarily is exposed to Japan where they do not have the same environment restrictions. I might add, incidentally, that pitch is in the same situation as petroleum coke. The same sort of by-product derivative that probably should be included on the same basis.

Senator Dole: What is the rationale for denying the energy tax credit?

Mr. Lubick: Basically, it is a petroleum source of fuel and in the alternative source, we are trying to encourage use of things of other than petroleum derivatives. This is all petroleum based. Therefore, we want to encourage, through the alternative source credit, we want to have an affirmative credit to encourage other types of fuel, and that is not this.

Senator Dole: At least I am advised that domestic use of petroleum coke could displace imports of more expensive oil. It affects refineries ---at least, these refineries that produce petroleum coke in California, Colorado, Delaware, Illinois, Indiana, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, New Jersey, Ohio, Texas, Utah, Virginia, Wsahington and Wyoming.

I am just trying to determine, in my own mind, all we would be doing is giving what was taken away in the first place through the compromise. It is described -- I think the thrust of my amendment would be to describe, specificlaly define petroleum coke as an alternate substance which would make it --

at least I would like to make it eligible for the 10 percent investment credit and the supplemental energy credit.

It is consistent with the regulatory provisions of the Power Plant Industrial Fuel Use Act of 1978 which defines petroleum coke as a permissible alternate fuel.

So I do not know why we now want to limit that.

Mr. Lubick: Basically, Senator, the purpose of the alternative energy grant was to encourage alternatives to petroleum-derived products like coal and the others. I agree with you, there is no reason to take away in this particular case the regular investment credit. Again, there is no reason to give it a special subsidy.

It is economically viable and is being used today.

Senator Heinz: Mr. Chairman?

The Chairman: Yes, sir.

Senator Heinz: As I understand it, petroleum coke is a byproduct of petroleum?

The Chairman: Right.

Senator Heinz: Therefore, what we would be doing if we gae both the regular tax credit and the energy tax credit is to subsidize, in effect, the use of petroleum, and we are trying to do the opposite.

This is not cheap, as I understand it. This is $500 million.

Senator Dole: If you had the energy credit and the investment tax credit and the accelerated depreciation over a ten-year period it is about $900 million but they are suggesting a compromise that does not do anything but give back what they probably should have had in the first place, which would cut that cost in half.

Senator Heinz: Which is the investment credit?

Senator Dole: Right, and the depreciation. They would remove the energy tax credit.

The Chairman: Senator Durenberger?

Senator Durenberger: I can only speak for one refiner, but to go to Senator Heinz's question and to Mr. Lubick's comment, the one major refiner in Minnesota that is producing petroleum coke as a byproduct obviously would benefit from the restoration of the accelerated depreciation and the investment tax credit, but without the energy credit going to someone else in this country who would buy that coke.

They are exporting all of their coke, so it is a matter of whether you want to encourage domestic energy users to use coke in addition to coal or some other product.

The Chairman: Let me ask you, they would get this whether they used it here or used it abroad, would they not under this proposal?

Mr. Lubick: The user would get the credit, if you erected a facility for its use in the United States.

Senator Durenberger: The user gets the energy credit, not the producer?

Mr. Lubick: That is correct.

The Chairman: Here is what I am trying to figure out about this thing. I do not understand it too well.

I have a letter here about I have had some explanation.* Do I understand this, that they are producing the product now? It is being produced?

Mr. Lubick: It is what is left over, sludge at the bottom. The pitch.

Senator Dole: That is being exported.

The Chairman: As I understand it, the refinery takes the oil, whatever they have got -- it might be heavy stuff ---they take out all the gasoline and the lighter parts that they can and they finally get down to the bottom of the barrel with the residue they have got left. That is the stuff that the have left on their hands to try to figure out some way to do something with that.

So they think that they can burn it, as I understand. Now, making some kind of coke out of it.

Now, as I understand it, they cannot use it in this country unless they do quite a few things that do apply to environmental laws. They ship it out to get what they can somewhere else.

Obviously, the person over there is not getting any tax benefit from us for using it. They are denied, as I understand it, the tax credits that they would otherwise have because they are producing this product. Is that it?

Mr. Lubick: Someone in this country, a person who built a facility to use petroleum, coke or pitch, does not even get the regular investment credit or the regular accelerated depreciation. That was taken away because we did not want to encourage construction of facilities for the use of oil petroleum products.

Mr. Shapiro: Let me add one more thing. We are not talking about the investment credit going to the petroleum coke. It is the boilers that use the coke, it is the equipment that uses it, and any pollution control equipment.

So it is the fact that the coke is used in the boilers that raised the question.

What Congress wanted to do in 1978 was to have boilers use alternative sources of fuel. What you took away was any type of tax incentive for the use of a boiler that uses oil or gas.

What they have come in now, they have said that petroleum coke, since it is a byproduct, and the sludge on the bottom, that you should not take the incentive away from that because that is the part that would not be used.

It has nothing to do with the fact that maybe it is exported somewhere else. It is the U.S. companies that buy boilers, that use the coke. That is the problem.

If you have an existing boiler, there is no problem. You are not buying anything. If you have to use anti-pollution control equipment on it, you would not get it, but any purchasers you already have in place, the fact that you use petroleum coke would not affect that plant at all.

It is the purchase of a boiler in the future, or the use of pollution control equipment -- purchase of pollution control equipment in the future. When you would use petroleum coke in that boiler, that is what would cause the problem.

The Chairman: I am glad you explained that. I still do not understand it, but I am nearer to understanding it than I was before.

As I understand it, here we have a product that we can be using here in the United States which we are exporting and the suggestion is that we should be permitted to use it here and it can be used here, if you are not discriminating against the product. Is that what it amounts to?

Mr. Lubick: We are suggesting that you remove the impediment to its use, which is if you build a facility to use it, you are denied the investment credit and accelerated depreciation. That would discourage somebody from building such a facility and building some other kind. That is the impediment that was placed last year.

We are suggesting that be removed.

The second question is whether we go beyond that and give them a positive spur to use it by giving them an extra credit.

We are suggesting that is not appropriate because these alternative energy credits were designed to encourage the use of nonpetroleum products, coal --

Senator Heinz: Mr. Chairman, why do we not remove the impediment?

The Chairman: Well, I think if we go beyond that, we are going to have a fight out there on the Floor to sustain it. Maybe we would be better off just to do the part the Treasury is willing to go along with?

You are estimating ---the Treasury estimate is -- to remove the impediment which would cost $560 million in revenue. That would assume that there will be some facilities constructed and there will be some use made of it, right?

Mr. Lubick: That is correct, Senator.

The Chairman: They would be better off than they are now. A split the difference type of proposition, Senator.

Senator Dole: I am not quarreling with the Treasury. I just want to make certain that we are doing something that will be productive and whether we could achieve it with this compromise.

Certainly I do not have any desire to add additional tax credits. Maybe Mr. Shapiro could give us some guidance on that.

The Chairman: We would not have some $560 million estimate down here if you did not think that they were going to build about half as much as they would build otherwise, would you not?

Mr. Shapiro: The impression is that it would be used in industrial places. There has been a lot of interest in having this. Therefore, they would want to have the boilers that would use this product.

Let me make sure I give you an estimate right.

I may have given an estimate that was misleading before.

The $560 million is to allow the regular investment credit and the accelerated depreciation methods as a permit. That is the estimate that goes to 1990.

To go on with what Senator Dole is focusing on right now, the additional investment credit, the additional 10 percent through 1982 would add between $75 million and $100 million more. We are talking about $75 million or $100 million more. That goes through 1982.

Senator Chafee: He is not asking for that.

Senator Dole: I am asking for that. You are not talking about $919 million. You are talking about an additional --

Mr. Shapiro: That $919 million was the 1990 date and did not take into account that the additional investment credits expire. The $919 million estimate was inaccurate.

Senator Dole: I wonder if I could accept the compromise and offer the other as an amendment. If I lost, I would not lose the whole thing.

The Chairman: Let's vote on this part of it, the part that the Treasury is recommending.

All in favor of it, say aye?

(A chorus of ayes)

The Chairman: Opposed?

(No response)

The Chairman: The ayes have it.

All right, now.

Senator Dole: Now I want to vote on what is left.

The Chairman: Those in favor, say aye.

Senator Dole: All we are talking about is $75 million through 1982, an energy tax credit that represents 20 states, 12 of which are represented on this committee.

The Chairman: Those in favor, say aye?

(A chorus of ayes)

The Chairman: Opposed, no?

(A chorus of nays)

The Chairman: A show of hands. Those in favor, raise your hands.

(A show of hands)

The Chairman: Those opposed?

(A show of hands)

The Chairman: I think we are going to have a roll call vote on that.

Senator Dole: We can do that now.

The Chairman: Go ahead and call the roll. We will check the absentees.

Mr. Stern: Mr. Talmadge?

(No response)

Mr. Stern: Mr. Ribicoff?

(No response)

Mr. Stern: Mr. Byrd?

(No response)

Mr. Stern: Mr. Nelson?

(No response)

Mr. Stern: Mr. Gravel?

(No response)

Mr. Stern: Mr. Bentsen?

(No response)

Mr. Stern: Mr. Matsunaga?

(No response)

Mr. Stern: Mr. Moyunihan?

(No response)

Mr. Stern: Mr. Baucus?

(No response)

Mr. Stern: Mr. Boren?

Senator Boren: Aye.

Mr. Stern: Mr. Bradley?

Senator Bradley: Aye.

Mr. Stern: Mr. Dole?

Senator Dole: Aye.

Mr. Stern: Mr. Packwood?

Senator Packwood: No.

Mr. Stern: Mr. Roth?

Senator Dole: Aye by proxy.

Mr. Stern: Mr. Danforth?

Senator Danforth: No.

Mr. Stern: Mr. Chafee?

Senator Chafee: No.

Mr. Stern: Mr. Heinz?

Senator Heinz: No.

Mr. Stern: Mr. Wallop?

Senator Wallop: Aye.

Mr. Stern: Mr. Durenberger?

Senator Durenberger: Aye.

Mr. Stern: Mr. Chairman?

The Chairman: Aye.

Senator Gravel: Aye.

Mr. Stern: Mr. Gravel, aye.

Mr. Lubick: Are you including pitch with petroleum coke? It is essentially the same.

Senator Dole; Do you support that pitch?

The Chairman: The yeas are eight, the nays are four. The absentees will record themselves.

Senator Heinz: Mr. Chairman, when the Committee was considering the stripper oil exemption for independent producers, we apparently did something that I do not think we intended to do.

There are about a dozen small retailers or refiners I am thinking of one specific thing that Quaker State Refinery Company in Pennsylvania and others around the country. Because they retail under the law or cut out of the independent stripper 1,000 barrels a day independent exemption.

The reason for this is more technical than I can fully explain and Jack Nutter, I think, is in a position to explain how he did it and why we did it.

It seems to me, just talking about the substance of the issue, it does not make a lot of sense to give a stripper exemption to the independents of a thousand barrels a day on the one hand simply because some little guy is integrated forward into marketing and beat the majors,, which I gather is something we encourage composition that we should turn around and say you are getting a Catch-22 situation. You can not have any of the stripper exemption.

So what my amendment would do would be to allow retailers which is the right definition, I am told, to qualify for exactly the same stripper exemption that we voted, so long as no refinery run exceeds 50,000 barrels on any day during the year.

Does Mr. Nutter want to explain any of the technical details?

Mr. Nutter: What the Committee agreed to on the independent stripper exemption tied into the Tax Code which allowed only the exemption for independent producers and under that definition, if you have any retailing capacity of over $5 million you are excluded from that exemption and we have heard from some companies that do have some stripper production and own retail outlets but do not operate them. They would like to be considered for the exemption.

The Chairman: The problem about that is when we open that up you might get into a whole can of worms. I see everybody down at the Treasury, as well as the staff, nodding on that.

After we did that, I know that we found, well, here is some fellow who had a filling station and he was caught and nobody had any idea that that was the case and we started to get that one straightened out.

Let me ask you, did we not get into -- we struggled with that for a long time, did we not? It seems to me we will get involved in the whole thing all over again if we started this.

Mr. Shapiro: The decision of the Congress to call back the percentage depletion it made available to independent producers, and you struggled with a definition as to who are independent producers and you worked out a definition that was debated very heavily on the Floor and in the Conference and it has been discussed several times since then, that that definition has been used.

Subsequent to that, every time it comes up to anything making the distinction between majors and independents,using the definition that Congress has worked out on perentage depletion, when you make a decision to exempt the first 1,000 barrels or production of stripper oil for independent producers, the Committee decision was to use the same definition as has been used for percentage depletion because that has been agreed to by the Congress.

The proposal now would be to amend that definition to allow certain retailers to qualify as long as they did not have a refinery run that exceeds 50,000 barrels a day.

That would open up the question as to independent producers. We do not know how much revenue total would be involved in that. We do not know all that would be covered under this amendment. It could be significant.

Senator Heinz: Could you explain why that is? We are just talking about the stripper invention, not talking about percentage depletion. Why are we concerned that there will be a significant revenue effect here?

Mr. Shapiro: It would be more oil that would be covered under the exemption that was not when the Committee made its estimate.

Senator Heinz: Help me on this.

When the revenue estimates were calculated, was it assumed that the ten or eleven little refineries would not be part of that revenue base?

Mr. Shapiro: We assumed -- that is right. We are using the same definition of independent producer that is in the statute now for percentage depletion.

Senator Heinz: What is the revenue effect of this?

Mr. Shapiro: The revenue effect of this --

Senator Heinz: Of what I am proposing.

Mr. Shapiro: We are not clear yet.

Senator Heinz: A little bit? In the tens of millions of dollars?

Mr. Shapiro: A rough guess is it could be a couple of hundred million a year -- I am sorry. A couple of hundred million over an eleven-year period.

Senator Heinz: It is in the millions of dollars, not a huge item.

Mr. Shapiro: It is not a huge item for any particular year. It amounts over the eleven-year period. We do not know the full extent of it.

Senator Heinz: It is not in the billions of dollars?

Mr. Shapiro: No.

Senator Heinz: Not even in the hundreds.

Mr. Shapiro: Not for any particular year.

The Chairman: The trouble is, once you open this up, no matter where you try to move that line -- and everybody, for everyone that you take care of, you have five above that who come charging in and say, hold on one minute. That is not fair. If you are going to exempt this fellow, you ought to do the same thing for me. If you are going to maintain a line, you are going to be in real trouble.

Senator Heinz: Let me ask one more question.

When the Congress was dealing with entitlements and a variety of other related price issues going back to '74, was there not special consideration given to little refiners, independent refiners, so that they, in effect, were not put out of business by some of the things that we do?

Mr. Shapiro: There was what was referred to as a small refiners bill. It is a special provision they got under the entitlements program. It still exists right now, as long as you have price controls, until they expire. Then you no longer would have entitlements.

Senator Heinz: What is going to happen to the extent that we have that small refiners' bias? That is going to be eliminated as we phase out of price controls.

Mr. Shapiro: That is correct.

Senator Heinz: What is the definition of a small refiner?

Mr. Shapiro: Less than 175,000 barrels a day of production.

Senator Heinz: I guess what I am after is something that is even smaller than those small refiners that we gave a break to earlier, which is 50,000, not 175,000 and maybe I am missing something but it just seems to me, if it has been important to have kind of a break for the small refiners up until now, that we should not just turn our back on them just because --

Mr. Shapiro: There are several aspects. First of all, when the small refiner's bias was brought up, that has nothing to do with this committee. It is not under this committee's jurisdiction. That is where you are dealing with a small refiner.

Senator Heinz: Everything has to do with this committee's jurisdiction.

Mr. Shapiro: Somewhere along the way it is touched upon.

At any rate, what you are referring to is not necessarily a small refiner. The small refiner, as such, would not get nothing out of this amendment. In fact, the refiner happens to have oil production and wants the exemption for stripper oil as an independent producer.

The fact that it is a refinery is not the significant fact. It is tied in with your amendment because they do retailing, but they should not be considered to be an independent producer for purposes of the Committee's exemption because of the fact that they have retailing, not because they are a refiner.

Senator Heinz: That is right.

Mr. Shapiro: To the extent there is a small refiner's bias, that is the problem. It is more than this particular provision.

Senator Heinz: I understand that. It is just that earlier it seems we did not have any precedent for anything like this and I wanted to correct that impression, that there is some precedent for taking into account special circumstances.

The special circumstance here, as you correctly point out, there is retailing involved.

Mr. Shapiro: If you are using an analogy here that you are talking about a refinery that has to have oil production you will have all the other refiners coming around who do not have oil production who are getting hurt by the entitlements and wanting something because of this.

I am saying I am not sure of the fact that it has refining capacity.

Senator Heinz: It is true, if we vote for anything in this committee, the rest of the world will be wanting something, too.

Mr. Shapiro: It is the fact that they have production at this point, not the fact that they are a refinery.

I think the Committee should view this by the fact they have oil production. That is the fact, not the fact that they are a refinery and that they deserve this.

Senator Heinz: I do not sense a lot of sympathy for these little guys. I would hope the Committee would think about it a little bit, a little harder. Maybe we can find out some way that will solve the problem of opening the barn door and having hordes of horses running through it.

The Chairman: Why do we not think about it at least over the noon recess, or maybe overnight until tomorrow? Maybe somebody can figure some way. We might be able to help those people without getting into something that would cause others that they would be discriminated against.

Mr. Shapiro: You can handle Senator Heinz's case. What he has is an independent, otherwise independent, producer who happens to have some retailing who would not be eligible for the stripper exemption. The question is, does the Committee want to make that type of independent eligible for the stripper exemption because of the fact that they do some retailing.

What Senator Heinz is using in the refinery capacity to show how small they are, but it is not the argument that they do the refining that makes them eligible, but the fact that that is the means to show how small they are.

The Chairman: I would like to suggest that we not vote on that at this point. Let's let the Committee study this some and see if there is a way we might work it out. If there is a way we might accommodate what the Senator is trying to do that would not involve anymore than we have to involve.

I just do not want to get involved anymore. I would like to accommodate the Senator, if we can, without getting into a lot of problems. I would like to see if we could limit that narrowly to something we could ilve with and not bring in a lot of other people.

Mr. Shapiro: For purposes of the press release, now, is it appropriate to say that the Committee has approved everything on the recomendations except the modifications you have made, which means that any future action you would take, it would just be modifications to early decisions or new items.

Senator Dole: On the whole thing.

Mr. Shapiro: You have done residential already. That was yesterday.

The Chairman: What he is suggesting, Senator Gravel wants to bring up this matter about Alaska, but can we agree that we will agree to limiting except in the areas where we have agreed to make some changes that are under consideration, but we will agree that these items where we have, in effect, reduced the cost of this program will stand, unless the Committee wants to reconsider it.

Please understand that does not lock you out. You can bring it back up again if you want to.

Senator Heinz: Mr. Chairman, I would like to bring up an issue relating to coal and alcohol later this afternoon.

Does Senator Chafee have one he would like to bring up now?

The Chairman: Yes, sir.

Senator Chafee: This is separate from the residential and business.

Senator Dole: Maybe we should finish this.

Senator Chafee: I would like to talk about the formula again, if I might.

Senator Bradley: Mr. Chairman, I have a residential item if this is an appropriate time.

The Chairman: Let's see if we can agree to this. He is just talking about for the purposes of his press report. Please understand anything we can do can be reconsidered. You can change it if the majority wants to do it. We can do what we want to do.

For the purpose of the press report, for other than the matters that have been mentioned here, for example, if the Senator wants to bring up the alcohol matter that applies to coal and we have this pending amendment that Senator Heinz brought up, we are going to talk about the Bradley matter. But other than the matters that have been mentioned here that we have accepted, the Committee suggestion that we limit our tax credits in the fashion suggested in this pamphlet here.

Mr. Shapiro: Pages one and two, the business items, the items you have not talked about so far, one, two, three, six, seven, eight, twelve through seventeen. In other words, those would be accepted. The others have been modified. To the extent the Committee has voted, you have agreed to those.

The Chairman: Without objection, agreed.

Now, as I understand it, somebody could come in here -- just fully contemplate that this does not lock anybody out. Somebody can come in and say hold on just a minute, you made a mistake. I did not agree to this and I want to bring this matter up again.

But as of now, at least for the time being, that is where we stand.

Now, can we dispose of this Bradley thing here? It seems to me as if we could dispose of it reasonably promptly and then we could turn to the other matter.

Senator Bradley: Mr. Chairman as you recall, I explained the residential energy efficiency program to the Committee and at the bottom of the explanation was a tax credit that applied to utilities that had experienced a net revenue reduction due to conservation which basically results from their inability to resell the saved units of energy for enough revenue to make up for what their loss was from the savings that resulted from reduced consumption.

This would be phased in. It is not a significant amount of money. It is somewhat difficult, at this stage, to set the exact figure because it is triggered only in the event the

Residential Energy Efficiency Plan is adopted and it is planned to be phased in over a period of years -- certainly over a period of two years ---and it will be in a test mode, a phased-in mode.

So this is the proposal. It is difficult to estimate revenues on it.

The Chairman: What can you tell us about that, Mr. Shapiro?

Mr. Shapiro: We do not have a revenue estimate for the reason that Senator Bradley indicated and that is that it requires spending programs -- that is it requires approval of other committees which would have the spending programs. And until you know what would be approved and the extent of the program, there is no way you could have a revenue estimate, so as of now we do not have one, and would not be able to have one.

The Chairman: The other committees would have most of the jurisdiction, but what you are talking about is a tax credit that would be a part of an experimental plan to see what can be done about insulating homes.

Senator Bradley: That is correct.

The Chairman: You do not have in mind any major cost items.

Senator Bradley: It is my judgment that it would be modest. It is my judgment that the plan is self-financing.

The Committee could also reconsider at a later date if it proved not to be so, but my judgment is that it would not be a significant item.

The Chairman: As I understand it, what the Senator wants as much as anything else is just for the Committee to give its approval to the concept, to the idea, and we will try to work it out later on.

Senator Bradley: That is correct.

The Chairman: All in favor say aye?

(A chorus of ayes)

The Chairman: Opposed, no?

(No response)

The Chairman: The ayes have it.

Senator Chafee: Mr. Chairman, yesterday we approved the Nelson formula dealing with the distribution to the low-income people and I do not know whether everybody has a copy of this, dated October 18th, but if you look at the formula on the back page, page 4, some of the results --

The Chairman: I do not have it at all.

Senator Chafee: Some of the results are startling and I guess it comes about obviously from the formula which gave weight to low income energy household consumption. That was a factor. It was not based solely on degree days.

But, Mr. Chairman, if you look down -- just take, for instance, Connecticut and Alaska are about the same. Alaska is 356, Connecticut is 359 -- more than Alaska.

The Chairman: What page?

Senator Chafee: I am on page 4.

Going down, to show some of the startling differences, the second item is Alaska, 356, which is the payment per household. There is a 120 minimum, but let's set that aside at the moment.

Connecticut is 359, so Connecticut gets more than Alaska.

Then you get down to Massachusetts, which is actually north of Connecticut and it is $224 and New Hampshire is $501. New Hampshire is by far the highest. Unusual.

It just seems to me, Mr. Chairman, regardless of what states are holding primaries that this is extraordinarily skewed.

For example, Utah gets more than Massachusetts, considerably more.

Senator Dole: It is colder there.

Senator Chafee: Well, maybe it is. I do not know. But just the states that I know, for some peculiar reason, as I say, Connecticut gets considerably more than Massachusetts.

I just call your attention to this formula, and I do not know what we can do now, but certainly I do not think this is the result that we were seeking.

The Chairman: Suppose you discuss this for a moment, Mr. Stern, and tell us what this is.

Mr. Stern: Mr. Todd from the Department of Health, Education and Welfare supervised the computer run that resulted in this table and perhaps he can explain the individual anomalies. What we asked be done was to run Senator Nelson's formula with this minimum benefit and then simply divide the allocation by state based on the number of recipient per state, which is what the Committee decision was, and this is the result, and perhaps he can explain why the differential between those states that are close to each other.

Mr. Todd: I will try.

I think the main reason is that some states have a higher number of transfer recipients relative to the size of their population and even, in many cases, relative to the size of their poor population. The allocation formula that was given to me yesterday, half of it uses total population and half of it uses the low income population, but the monies that are then received by the state are divided up among their transfer recipients, so states which have high ratios of transfer recipients to their total population end up having smaller payment amounts.

I think if you imagine two states side by side that were the same size, with the same number of poor people, the same number of heating degree days, and the same energy expenditures, if one of those two states had twice as many recipients of AFDC, food stamps and SSI, their payment levels would be only half as large, given the instructions that I was given as to how to prepare these tables.

Senator Chafee: Well, Mr. Chairman, I can just see us running into a buzz saw on this thing, coming to the Floor with a proposal that gives Florida as much as the District of Columbia, for example.

Somehow, I do not think the result should be that if you got twice as many people in your state on AFDC that therefore those eligible receive half as much. That is just not what we are seeking here.

The Chairman: Well, we can talk about it.

Now, I, at some point, suggested that we ought to consider having a minimum payment in each state and I believe the District of Columbia is one of those that benefitted from the minimum payment, is it not?

Mr. Stern: That is correct, although they were fairly close to the minimum, anyway. The minimum payment is not really a problem in what Senator Chafee is suggesting. That affects a small number of states and it is not the differential that he is talking about here.

The Chairman: You are talking about the wide discrepancy --

Senator Chafee: That is primarily the thing, Mr. Chairman. For a poor family in Hawaii to get the same amount as a poor family in the District of Columbia, where it is obviously much colder, does not make much sense, in my judgment.

I will set that aside. I am not saying I am giving up on that, but really I am pointing to these great discrepancies that exist in states that are side by side.

The Chairman: If anybody has a complaint in the District of Columbia, I do not think that the complaint would have as much to do with the minimum as it does with the fact that in Virginia they get $206, in Maryland they get $208, and here in the District of Columbia, that was formed out of Virginia and Maryland coming in with a minimum of $120.

Mr. Stern: What it amounts to, Mr. Chairman, is that there are really a lot of welfare recipients in the District of Columbia and therefore the amount of money that the District of Columbia gets under the formula is spread among more people.

The Chairman: The reason you get such a wide discrepancy is that for a state that had a relatively low number of welfare recipients and a relatively small number of people with food stamps, those states get bigger payments because the money is spread among a smaller number of people, while states that have a very big welfare load get a lower payment because you have more people drawing against the state's allocation?

Mr. Stern: That is correct.

While Senator Nelson's formula does take into account to some extent as a factor the number of low-income people in the state, it does not relate to the number of people actually receiving welfare, so if you have rather more welfare recipients, the same amount of money would be spread thinner.

Senator Dole: We went back and looked at the formula we had which is based on how cold it gets, and also food stamp population and we would like to compare those numbers. We did ours in $1.5 billion as compared to $2 billion.

Let's just take the District of Columbia. Under the Nelson approach they would be $120; under our proposal, $245. We had a minimum of $100, which could be easily escalated to $120, or ten dollars a month, which is the Nelson minimum, and still provide more flexibility.

But in nearly every case -- look at members on this Committee, Oklahoma, Oregon, Pennsylvania, Rhode Island, New York, New Jersey, Montana, Missouri, Georgia, Delaware, Alaska, Wisconsin, Virignia do better under our proposal because it is based on what we consider to be the true test -- how cold it gets -- plus the relative standing of the person involved.

It seems to me we ought to go back and change the Nelson formula to recommend that it be two-thirds weighted to degree days and one-third to energy expenditures.

Senator Chafee: Somehow, any formula deals with doing it by states and then dividing up the poor among the states so if you are unfortunate enough to live in a state where there are lots of poor you come out worse than in a state where there are few poor, it seems to me the poor in similar circumstances throughout the country should receive the same amount based on how cold it is, not based on whether they are fortunate enough to live in a state that does not seem to have many poor people around.

It is the net result, Mr. Chairman. I know we cannot fix this up before lunch, but it just seems to me that this really has to be reviewed.

The Chairman: That is what we meet for. I did not see this presentation until I came to the committee today and we will take a look at it and we will review it. That is why you prepare documents, so you can study them.

I would like to see, may I say, the suggestion that Senator Dole had.

Mr. Stern: Mr. Chairman, in any case, we did have some issues. The reason we had this paper prepared was we did have some other issues to bring back on this subject so we could hope the Committee could deal with it once you finish the business tax credits.

Senator Chafee: I appreciate that everything is not in concrete yet, and that is why I raised it now. Mr. Todd, as I understand it, has some ways of fixing this up. I do not know whether now is the time to start it, or after lunch? Later on, I guess.

The Chairman: The Committee will recess, to reconvene at 2:30.

(Thereupon, at 12:25 the committee recessed, to reconvene at 2:30 this same day.)

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