



U.S. Congressman

**Nick Rahall***WORKING FOR WEST VIRGINIANS*

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## **ABANDONED MINE RECLAMATION BILL CLEARS HOUSE**

*Rahall Heralds Vote As Victory For Appalachian Region*

WASHINGTON, D.C. -- The House of Representatives today, by a 281 to 63 vote approved U.S. Rep. Nick J. Rahall's (D-WV) legislation to extend the Abandoned Mine Reclamation Program, often referred to as the coal industry's version of "Superfund."

"This legislation represents a legacy of concern over the plight of the people of the Appalachian Region, and those in mining regions of the Nation as a whole, whose lives are affected on a daily basis by the health, safety and environmental hazards associated with abandoned mine lands," Rahall stated.

In 1977, when Congress enacted the Surface Mining Control and Reclamation Act imposing new and stringent regulations governing coal mining and reclamation operations, it also established an Abandoned Mine Reclamation Fund financed by a fee assessed on every ton of coal mined to foster the reclamation of lands previously left in an abandoned and inadequate reclamation status. States like West Virginia annually receive grants from the Fund to undertake reclamation projects. While \$3 billion will have been raised by the program's 1992 expiration, in the absence of reauthorizing legislation billions of dollars worth of health and safety threatening type projects will remain unfunded.

"If there is anybody who questions the need for this legislation, who doubts whether these hazards exist, and who fails to understand the threat they present, then I would urge you to travel to the hills and hollows of the Appalachian Region," Rahall said during debate on the House Floor. "Inhale the foul fumes from burning refuse piles. Try to drink the water from streams running red. Worry about your children tumbling down an old open mine shaft. Experience the threat to your home from subsidence and landslides. Simply look upon the faces of the people. You will see what I have on so many occasions."

The measure, H.R. 2095, would extend the program through the year 2007 and authorize a number of new initiatives. Chief among them, according to Rahall, is the legislation's explicit recognition of the severe public health hazard associated with water supplies contaminated by abandoned coal mine workings. In many areas of the Appalachian Region, groundwater resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines.

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"In my view, when abandoned mines have degraded groundwater quality or depleted groundwater quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety and the general welfare is self-evident. For this reason, my bill authorizes the States to use a portion of their annual grants for water supply projects," Rahall noted.

In addition, H.R. 2095 acknowledges the need to engage in the comprehensive abatement and treatment of acid mine drainage. Thousands of miles of Appalachian streams and countless watersheds have been degraded, and the biologic life destroyed, by acid mine drainage. According to Rahall: "I believe that the long-term impact of this problem on the quality of life, on wildlife and on recreation is devastating and have attempted to fashion a new initiative aimed at leveraging the use of abandoned mine reclamation funds to combat acid mine drainage."

The bill also seeks to refocus the program's resources to combating the most high priority problem areas, such as by supplementing a state's annual grant award with additional funds until it completes all of its high-priority, public health and threatening, abandoned coal mine reclamation projects. In addition, the legislation would strengthen the emergency program, aimed at providing a rapid response to life-threatening situations, by requiring that associated priority sites be addressed at the same time the emergency project is undertaken. West Virginia, with the largest inventory of priority sites, would be the major beneficiary of these initiatives.

Finally, H.R. 2095 would bolster the Rural Abandoned Mine Program (RAMP) which serves a distinctive purpose, and addresses slightly different problems, than what is undertaken by the states through their Abandoned Mine Reclamation Program grants. Working through local Soil Conservation Districts, the Soil Conservation Service undertakes RAMP projects in cooperation with the affected landowner. Moreover, unlike projects funded under either the state or federal Abandoned Mine Reclamation Program, with RAMP the landowner is often the contractor who voluntarily agrees to the reclamation and plays a major role in project planning.

The bill now goes to the Senate where it will be referred to the Committee on Energy and Natural Resources.



**ABANDONED MINE RECLAMATION ACT OF 1989  
H.R. 2095**

**BACKGROUND**

**Abandoned Mine Reclamation Fund**

The Abandoned Mine Reclamation Fund was established by Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to address public health, safety and environmental problems resulting from past coal mining practices. In effect, the Abandoned Mine Reclamation Fund and the programs it supports (commonly referred to as the AML program) is the coal industry's equivalent to the "Superfund."

Only areas abandoned prior to the date of enactment of SMCRA, where there is no continuing reclamation responsibility by any person under state or federal law, are eligible for reclamation under Title IV. Funding of reclamation projects is subject to a priority schedule. For example, "priority 1" projects concern those which involve the protection of public health, safety, general welfare and property from extreme danger of the adverse effects of coal mining practices. "Priority 3" projects, on the other hand, concern environmental problems associated with past coal mining practices which do not necessarily constitute a public health or safety threat.

The Fund, administered by the Secretary of the Interior through the Office of Surface Mining Reclamation and Enforcement (OSMRE), is financed by a reclamation fee assessed on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress. The authority to collect the reclamation fee expires on August 3, 1992, 15 years after the date of enactment of SMCRA.

The Fund is divided into the state/tribal and Secretarial shares with each state or Indian tribe with a federally approved reclamation program (generally referred to as "program" or "primacy" states) entitled to 50 percent of the reclamation fees collected from coal operators within the state or tribe. Annually, these states receive reclamation project construction grants and administrative grants from their share of the Fund. States are also authorized to use up to \$3 million of their state share funds to establish state coal mine subsidence insurance programs, and, deposit 10 percent of their annual grants into special interest-bearing state funds for use after the year 1992.

The Secretarial share of the Fund is allocated among a number of federal programs such as emergency projects (involving sudden and life-threatening situations which demand immediate attention), high-priority reclamation projects in states and



tribes without federally approved reclamation programs (referred to as "non-program" states), the Rural Abandoned Mine Program administered by the Secretary of Agriculture through the Soil Conservation Service, and the Small Operators Assistance Program which provides financial assistance to coal operators who produce less than 100,000 tons per year to help defray certain costs associated with the permitting process. Remaining funds are distributed to program states under an allocation formula. At present, 23 states and three tribes have approved abandoned mine reclamation programs.

Non-coal abandoned mine reclamation projects can be undertaken in only two instances. Program states and tribes can utilize state or tribal share monies to reclaim an abandoned non-coal mine site if the request is made by the state governor or tribal head and the project represents a public health and safety hazard. Moreover, once a program state or tribes certifies it has completed the reclamation of all eligible abandoned coal mine projects, it can then use the full amount of its state or tribal share for abandoned non-coal mine land reclamation projects. To date, only Wyoming has made this certification.

### **Need for Legislation**

Since 1977, when the Abandoned Mine Reclamation Fund was established as part of the Surface Mining Control and Reclamation Act, many of the scars left over from past mining practices--the moonscapes, the burning refuse piles and old mine shafts--have been reclaimed. Lands are being contoured, revegetated and brought back to productive uses. The Abandoned Mine Reclamation Program has been a success, and has served to mitigate numerous health, safety and environmental hazards faced by people living in the coal mining regions of this Nation.

However, while progress has been made the inventory of unreclaimed high priority public health and safety threatening abandoned coal mine sites is still overwhelming. Moreover, little has been done to address the threats posed by old non-coal "hardrock" mine workings.

The need for H.R. 2095, as amended, is premised on the large inventory of abandoned coal mine reclamation projects which would not be addressed after the obligation of reclamation fees received through the August 3, 1992, expiration date for fee collection. The Office of Surface Mining Reclamation and Enforcement estimates that over \$4 billion worth of high priority abandoned coal mine reclamation projects would go unfunded. This estimate does not include the entire scope of the abandoned coal mine land situation as the National AML Inventory, maintained by the agency, is based almost entirely on priority 1 and 2 sites.

A representative of the Appalachian Coalition for Abandoned Mine Land



Reclamation, during an April 18, 1989, hearing held by the Subcommittee on Mining and Natural Resources stated the need for reauthorizing legislation in these terms:

"If this law is allowed to run its course without extension, there will be many thousands of acres left unreclaimed in almost all coal mining states, with many safety and health hazards remaining exposed to our rural citizens. These abandoned coal mine sites will continue to be used for all kind of wastes. Streams will continue to be polluted from acid drainage."

In addition, the General Accounting Office estimates there are approximately \$100 million worth of "interim program" abandoned sites in West Virginia and Pennsylvania alone. These sites were left in an unreclaimed condition during the period immediately following the enactment of the Surface Mining Control and Reclamation Act and prior to the promulgation of final federal implementing regulations. Testimony has also been presented to the Committee which indicates there are over 31,000 acres of unreclaimed land at more than 800 mining sites in 16 states where the mining company was affected by a surety bankruptcy during the "interim" program period.

While there is no comprehensive national inventory for abandoned non-coal mined lands, the General Accounting Office in an April 1988 report conservatively estimated that approximately 281,581 acres of abandoned non-coal "hardrock" mines on federal lands in the western states (not including abandoned hardrock mines on state and private lands) exist, with an estimated reclamation cost of \$284 million. The Bureau of Mines, in a 1982 report, estimated that only 8 percent of the 508,000 acres mined for metallic minerals (e.g. copper and iron ore) have been reclaimed and 27% of the 2,353,000 acres mined for nonmetallic minerals (e.g. sand, stone and gravel) have been reclaimed.

## **OVERVIEW OF LEGISLATION**

### **Allocation of the Fund**

The legislation maintains the basic allocation of funds pursuant to current law. Under H.R. 2095, as amended, 50 percent of the reclamation fees collected in a state or tribe with a federally approved abandoned mine reclamation program would continue to be allocated to the state or tribe of fee origination. The remaining 50 percent of reclamation fees collected would continue to be dedicated to the Secretary's discretionary share of the Abandoned Mine Reclamation Fund for federal programs. However, the legislation provides for the Secretarial share to be augmented by interest authorized to accrue to the unappropriated balance in the entire Fund.

It should be noted that the term "allocated" is used in the bill to earmark legislated percentages of the Fund for specific purposes, with the use of the allocation



limited solely to the authorized purpose. When the term "authorized to be expended" is used in the bill, funds may be used by the Secretary for an authorized purpose as needed, the difference being there is no percentage of the Fund specifically earmarked for that purpose. Both allocations and expenditures are subject to appropriations.

### ***State and Tribal Share***

As under current law, the legislation provides for the state and tribal share of the Fund to be used by states and Indian tribes with approved abandoned mine reclamation programs for reclamation construction projects and to defray the administrative costs of their programs.

Current law also authorizes a state to deposit 10 percent of its state share funding on an annual basis into a special trust fund established by the state for the purpose of undertaking reclamation projects after 1992, the year in which the current law authorization for the collection of the reclamation fee expires. The legislation maintains this provision, but changes the date to 2007, the new expiration date for fee collections. In addition, the bill would authorize a state, at its option, to establish an acid mine drainage abatement and treatment fund with the 10 percent deposit instead of maintaining it for use after 2007. The purpose of this special fund would be to enable the state to undertake comprehensive acid mine drainage abatement and treatment projects within qualified watersheds. The bill makes no change to the current law provision authorizing a state to use up to \$3 million of its state share funds to establish state coal mine subsidence insurance programs.

The legislation, while placing a 30 percent cap on the amount of state share funds that could be used to undertake eligible projects relating to contaminated water supplies, specifically authorizes the states to address these situations where the contamination predominantly, but not fully, occurred as a result of coal mining practices which occurred prior to the date of enactment of the Surface Mining Control and Reclamation Act of 1977. These types of utility projects would be undertaken as they relate to the priorities set forth in the law. This comports with current Office of Surface Mining Reclamation and Enforcement policy, with the exception that under present law the contamination must be shown to have occurred entirely prior to August 3, 1977.

### ***Secretarial Share***

Under the bill, after the allocation of the state and tribal shares, the remaining amounts in the Fund (the Secretary's share of the reclamation fees plus all interest which would accrue to unappropriated balances in the Fund as authorized by the legislation) would be made available for a number of current federal Title IV programs: the Rural Abandoned Mine Program (RAMP) administered by the Soil Conservation Service, the Small Operators Assistance Program (SOAP), emergency reclamation



projects, reclamation projects in states without approved abandoned mine reclamation programs, federal administrative costs and for the purpose of providing an additional allocation of funds to states and tribes with approved abandoned mine reclamation programs as a supplement to their state share grants.

However, H.R. 2095 as amended would make several changes to current policy governing the use of the Secretary's share of the Fund. (It should be noted that many of the proposed legislative changes are to current policy, rather than law, since existing Title IV is largely silent on many of the particulars of the program which have evolved through rulemaking and policy.) Perhaps the major change made by the bill is the earmarking of funds for RAMP by allocating 20 percent of the amount available to the Secretary on an annual basis for the program. Current law provides for "up to one-fifth" of the amount in the Fund to be transferred to the Soil Conservation Service for RAMP. However, the provision is without substance in that it does not earmark a firm amount of the Fund.

The bill would also allocate 40 percent of the amount available to the Secretary on an annual basis for the purpose of providing a supplemental allocation to states and tribes with approved abandoned mine reclamation programs and which have not completed all of their high-priority public health and safety related projects (referred to as "priority 1 and 2" projects).

The legislation would also authorize the use of up to 10 percent of the Secretary's share of the Fund to reclaim certain mine sites abandoned after the enactment of SMCRA. Under the provision, the use of these funds would be limited to sites left unreclaimed during the "interim" federal regulatory period immediately after enactment of the SMCRA, and only in instances where both the coal operator and surety company went bankrupt. Further, funds under the provision could only be used for "priority 1 and 2" equivalent sites.

The final provision of the legislation relating to the allocation of the Fund provides for a minimum allocation of \$2 million annually to states and Indian tribes with approved abandoned mine reclamation programs which have not completed their "priority 1 and 2" sites.

### **Certification Program**

The legislation would maintain, albeit in a much more detailed fashion and with certain modifications, the current law authority which provides for a state or Indian tribe with a federally approved abandoned mine reclamation program to certify the completion of all abandoned coal mine reclamation projects and then direct its state or tribal share funds toward alleviating problems caused by all other types of mining.



## **Reclamation Fees**

The bill would reauthorize the collection of the current reclamation fees (35 cents per ton of surface mined coal, 15 cents per ton of deep mined coal and 10 cents per ton for lignite) through September 30, 2007. Once a state or Indian tribe certifies to the Secretary the completion of all abandoned coal mine projects (or the Secretary on his own motion in consultation with a state or tribe makes the certification), after public notice and comment, the reclamation fees in the state or tribe would be reduced by approximately 50 percent (18 cents per ton for surface mined coal, 10 cents per ton for deep mined coal and 5 cents per ton for lignite). The bill stipulates that reclamation fees could not be modified until after 1992. In addition, the Secretary could not concur with a certification as it relates to the modified fees if, upon a motion made by another state or tribe within the same region as the state or tribe seeking the modified fees, the Secretary determines that the modified fees would result in a significant competitive disadvantage in the production and marketing of coal for the state or tribe which made the motion.

## **Abandoned Minerals and Mineral Materials Mine Reclamation Fund**

The legislation would establish, as a new subtitle to Title IV of the Surface Mining Control and Reclamation Act of 1977, an Abandoned Minerals and Mineral Materials Mine Reclamation Fund administered by the Secretary of the Interior acting through the Director of the Office of Surface Mining. The Fund would consist of the federal share of receipts from the sale of mineral materials on public lands pursuant to the Materials Act of 1947, and such other amounts as may be appropriated. Authority for the Fund would terminate on September 30, 2007.

The purpose of the Fund would be to provide for the reclamation and restoration of land and water resources adversely affected by past minerals and mineral materials mining. Eligible lands, waters and facilities, and the priorities in which they would be addressed, would be similar to those applicable under the certification provisions of the abandoned coal mine reclamation program.

Amounts from the Fund would be allocated on an annual priority basis to eligible states, including through cooperative agreements between eligible states and the Bureau of Land Management, Forest Service and National Park Service, directly to these federal entities and to non-eligible states. A state would be determined as being eligible to receive grants if it has developed an inventory of eligible abandoned minerals and material materials mine lands and waters within its borders and a state abandoned minerals and mineral materials mine reclamation program, or an existing abandoned mine reclamation program, approved by the Secretary.



## **Miscellaneous Provisions**

Fund objectives: The bill would focus the objectives of the Fund on projects relating to the protection of public health and safety, and the environment, from the adverse effects of coal mining practices. Facilities, such as water supply projects, would be undertaken in the order as they relate to these objectives.

Emergency program: The bill requires that any "priority 1 and 2" projects associated with an emergency program site be undertaken at the same time as the emergency program expenditures are made.

Pre-certification non-coal sites: Current law allows for expenditures to be made for non-coal abandoned reclamation mine sites prior to the completion of all abandoned coal mine projects under the "voids and tunnels" provision (section 409) if the reclamation work is certified by the state or Indian tribe as needed to protect public health and safety. The bill fine-tunes current law by defining public health and safety within the context of a "priority 1" equivalent project and by limiting expenditures of funds for eligible non-coal sites affected by pre-1977 mining.

Inventory: The bill would provide specific statutory authority for the current abandoned mine land inventory used by the Office of Surface Mining Reclamation and Enforcement and the states, and limit the use of the inventory for planning purposes and to assist in the certification process.

Fee compliance: The bill would provide specific statutory authority to support the Office of Surface Mining Reclamation and Enforcement's reclamation fee compliance program as well as slightly expand the items which are required to be reported to the agency by coal operators in their current quarterly fee statement.

Small Operators Assistance Program: Current law limits assistance under this program to coal operators who produce less than 100,000 tons of coal per year. The bill would raise the tonnage limit to 300,000 tons of coal per year.

Environmental standards: The bill requires the Secretary to establish environmental standards for abandoned coal mine reclamation projects.



## COMMITTEE VIEWS

This legislation represents the continuation of a legacy which has its roots in Title IV of the landmark Surface Mining Control and Reclamation Act of 1977. This is a legacy of concern over the plight of the people of the Appalachian Region, and those in mining regions of the Nation as a whole, whose lives are affected on a daily basis by the health, safety and environmental hazards associated with abandoned mine lands.

The primary reason for H.R. 2095, as amended, is to continue reclamation fee collections for a period beyond 1992 in order to provide the resources necessary for the reclamation of abandoned coal mine lands. While the bill maintains much of the current law's basic structure, such as the Act's commitment to state primacy in dealing with abandoned mine problems, it would make a number of improvements to the existing program. Perhaps the most noteworthy is the legislation's focusing of the Fund's resources to combating the most high priority problem areas.

While the Committee chose to retain the state/tribal and Secretarial shares of the Abandoned Mine Reclamation Fund so that program states and tribes would continue to be assured of receiving a basic allocation (reflecting the area from which revenues are being derived), under the bill the Secretarial share would be concentrated to a greater extent toward combating the highest priority abandoned coal mine reclamation projects regardless of their location and the geographic source of fee collections.

The bill seeks to accomplish this goal in a number of ways. It would allocate 40 percent of the Secretarial share of the Fund to be redistributed by formula to program states and tribes until they complete all of their "priority 1 and 2" abandoned coal mine reclamation projects. The legislation would also bolster the emergency program by requiring that associated "priority 1 and 2" sites be addressed at the same time the emergency project is undertaken. Further, provision is made to insure that program states which continue to have "priority 1 and 2" projects receive a minimum yearly allocation from the Fund. In addition, the Secretarial share of the Fund would continue to be used for the reclamation of high-priority abandoned coal mine lands in states and on Indian lands where the state or tribe does not have an approved abandoned mine reclamation program.

The collection of a national reclamation fee and its allocation in this manner addresses one of the basic problems the Surface Mining Control and Reclamation Act sought to correct in the first place. This is the inequity that can arise, both in terms of coal industry competition and environmental protection, in the absence of uniform regulatory treatment. Without a national Abandoned Mine Reclamation Program it is highly unlikely that all states would have the wherewithal to establish their own abandoned coal mine reclamation programs even where the need may be great. This scenerio gives rise to the possibility that the coal industry in a given state would pay a reclamation fee and abandoned mine sites in that state be reclaimed, while the industry in a neighboring state would pay nothing and the hazards from abandoned



mine sites in that state would continue unabated. In order to be effective, reclamation responsibility must be spread throughout the industry.

This legislation also proposes a number of new initiatives.

First, the bill would provide additional resources to combat abandoned coal mine hazards by enabling interest to accrue to unappropriated amounts in the Abandoned Mine Reclamation Fund and by strengthening reclamation fee compliance. The Office of Surface Mining Reclamation and Enforcement estimates that based on an unappropriated Fund balance of \$217 million, over \$19 million would accrue in interest over the course of a year.

Second, the legislation explicitly recognizes the severe public health hazard associated with water supplies contaminated by abandoned coal mine workings. In many areas of the Appalachian Region, groundwater resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines. The Committee strongly believes that when abandoned mines have degraded groundwater quality or depleted groundwater quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety and the general welfare is self-evident.

Third, H.R. 2095 as amended acknowledges the need to engage in the comprehensive abatement and treatment of acid mine drainage. Thousands of miles of Appalachian streams and countless watersheds have been degraded, and the biologic life destroyed, by acid mine drainage. The Committee believes that the long-term impact of this problem on the quality of life, on wildlife and on recreation is devastating and has attempted to fashion a new initiative aimed at leveraging the use of abandoned mine reclamation funds to combat acid mine drainage.

Fourth, the bill seeks to address high-priority sites abandoned immediately after enactment of the 1977 Act prior to the promulgation of final implementing regulations. Tens of thousands of acres of land which were mined during the "interim" program period remain unreclaimed due to the dual bankruptcies of the mining companies and their insurers, creating a new generation of abandoned mines unforeseen by the original law. In many instances, the public health and safety threat posed by these areas exceed those of eligible but lower-priority pre-August 3, 1977, sites.

Fifth, H.R. 2095 as amended would keep faith with the law's unfulfilled commitment to provide adequate resources for the Rural Abandoned Mine Program (RAMP). This program serves a distinctive purpose, and addresses slightly different problems than what is undertaken by the states through their Abandoned Mine Reclamation Program grant allocations. Working through local Soil Conservation Districts, the Soil Conservation Service undertakes RAMP projects in full cooperation with the affected landowner. Moreover, unlike projects funded under either the state or federal Abandoned Mine Reclamation Program, with RAMP the landowner is often



the contractor who voluntarily agrees to the reclamation and plays a major role in project planning. It is the Committee's intent with this legislation that by providing a clear allocation of the Abandoned Mine Reclamation Fund for RAMP, the financial resources available to this program will be dramatically increased.

Finally, through a new Subtitle B to Title IV, the bill recognizes that abandoned non-coal mines can pose the same types of health, safety and environmental hazards as do abandoned coal mines. The bill would establish an Abandoned Minerals and Mineral Materials Mine Reclamation Fund in an effort to provide the necessary authorization from which the federal government and the states can build towards a more viable abandoned non-coal mine land reclamation effort in the future.

In fashioning this legislation, the Committee was faced by many competing state interests, premised upon their regional perspectives.

With H.R. 2095, the Committee has sought to fashion a bill based upon the premises that there is a continuing need for abandoned mine reclamation efforts, that this must be a national program, and that in light of the diverse and parochial self-interests of the states there must be some compromises among them.

### **LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATIONS**

H.R. 2095 was introduced on April 25, 1989, by Rep. Nick J. Rahall. As amended and reported by the Committee, H.R. 2095 includes provisions of H.R. 538, introduced on January 19, 1989, by Rep. Frank McCloskey; H.R. 1315 introduced on March 8, 1989, by Rep. Chris Perkins; and, H.R. 2604, introduced on June 13, 1989, by Rep. Ben Nighthorse Campbell.

The Subcommittee on Mining and Natural Resources conducted an oversight hearing on the Abandoned Mine Reclamation Program on April 18, 1989. On May 16, 1989, the Subcommittee conducted a legislative hearing on H.R. 538, H.R. 1315 and H.R. 2095. A legislative hearing on H.R. 2604 was held by the Subcommittee on July 1, 1989. On July 27, 1989, the Subcommittee recommended H.R. 2095, as amended, to the full Committee by a roll call vote of 5 yeas to 3 nays. The Committee on Interior and Insular Affairs ordered the bill reported, as amended, on September 13, 1989, by a roll call vote of 27 yeas to 11 nays. The Committee recommends approval of H.R. 2095, as amended, by the House.