

MEMORANDUM

TO: Senator *file*
FROM: Joe
DATE: October 9, 1979
RE: Patent Provisions in the Gasohol Motor Fuel Act of 1979
cc: Kevin, Mary, Linda, Tom, Eve, Jim, Bob, Ann M., Leg(2), Ind. Dept.

Eve informed me that you were cosponsoring the Church gasohol bill (the Gasohol Motors Fuels Act) which went in Thursday, October 4, in the form of an amendment to S. 932. Eve also asked me to look over the patent provisions in the bill.

I think that there are some serious problems with these provisions. Basically anything that was invented under loan guarantees from the government would be retained by the agencies. This is an even worse patent policy than the ones that led you to introduce S. 414 because there would not necessarily be any federal money involved in this research.

This patent provision creates a whole new precedent giving agencies enormous powers to retain possibly important inventions even when no agency money had been involved in their discovery. Just by participating in this program a business could find itself losing important patent rights even if it fully repaid the loan without any help from the government. I think that it is very likely that important inventions will be made when gasohol is produced on a larger scale. During World War II when we geared up for large-scale alcohol production there were a number of discoveries made which led to much more efficient production within a few short years. If the government is allowed to retain title to this type of inventions the result could be very detrimental to the commercial use of gasohol. The problems that you encountered with the Tsao process are a good indication of what happens when the agencies get involved in patent negotiations.

As you know from our hearings there have been some serious problems with the Department of Energy about their inability to deliver new products to the marketplace from their research. DOE also has one of the lowest percentages of small business involvement in their R and D programs of any agency because of their patent policies. You have already expressed your belief that one of the most promising uses of gasohol would be on the local level and I think that the harsh patent provisions in the Church bill will be very hard on the small and medium sized businesses who really might need loan guarantees in order to undertake such projects. I frankly do not think that there is any justification for taking any patent rights for a loan guarantee program even from big businesses.

It might be possible to modify this section so that the government could only retain title to those patents where the company had defaulted on their loans and the government had to intervene. Without such a modification this bill is directly opposed to your previous patent positions.

I am sure that you could generate a lot of support from the business community if you decide to amend this patent program. You could make a very strong case for such a change and cite this as another example of promising innovations being threatened by red tape.