

April 20, 2004

Honorable Don Nickles
Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested, CBO has prepared a cost estimate for S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004, as introduced on April 7, 2004. The bill would establish the Asbestos Injury Claims Resolution Fund (Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. The fund would be financed by levying assessments on certain firms. Based on a review of the major provisions of the bill, CBO estimates that enacting S. 2290 would result in direct spending of \$71 billion for claims payments over the 2005-2014 period and additional revenues of \$57 billion over the same period. Including outlays for administrative costs and investment transactions of the Asbestos Fund, CBO estimates that operations of the fund would increase budget deficits by \$13 billion over the 10-year period. The estimated net budgetary impact of the legislation is shown in Table 1.

S. 2290 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold (\$60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private-sector mandates in S. 2290 would well exceed the annual threshold established in UMRA (\$120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

TABLE 1. ESTIMATED BUDGETARY IMPACT OF S. 2290

	By Fiscal Year, in Billions of Dollars									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
Claims and Administrative Expenditures of the Asbestos Fund										
Estimated Budget Authority	*	18.5	12.8	12.9	5.3	5.3	5.3	5.2	5.0	4.9
Estimated Outlays	*	7.5	10.7	14.6	9.8	7.6	5.3	5.3	5.2	5.0
Investment Transactions of the Asbestos Fund										
Estimated Budget Authority	5.4	2.0	-4.8	-3.3	0	0	0	0	0	0
Estimated Outlays	5.4	2.0	-4.8	-3.3	0	0	0	0	0	0
Total Direct Spending										
Estimated Budget Authority	5.4	20.6	8.0	9.6	5.3	5.3	5.3	5.2	5.0	4.9
Estimated Outlays	5.4	9.5	5.9	11.3	9.8	7.6	5.3	5.3	5.2	5.0
CHANGES IN REVENUES										
Collected from Bankruptcy Trusts ^a	1.0	0	0	4.6	0	0	0	0	0	0
Collected from Defendant Firms	3.3	2.8	2.8	2.8	2.7	2.7	2.7	2.7	2.7	2.6
Collected from Insurers	2.7	7.5	2.2	1.6	1.6	1.6	1.6	1.6	1.6	1.6
Total Revenues	7.0	10.3	5.0	9.0	4.4	4.3	4.3	4.3	4.3	4.3
Estimated Net Increase or Decrease (-) in the Deficit from Changes in Revenues and Direct Spending										
	-1.5	-0.8	1.0	2.3	5.5	3.2	1.0	1.0	0.9	0.8

NOTES: Numbers in the table may not add up to totals because of rounding.

* = less than \$50 million.

CBO estimates that by 2014 the Asbestos Fund under S. 2290 would have a cumulative debt of around \$15 billion. Borrowed funds would be used during this period to pay claims and would later be repaid from future revenue collections of the fund. We estimate that interest costs over that period would exceed \$2.5 billion, and CBO's projections of the fund's balances reflect those costs. However, they are not shown in this table as part of the budgetary impact of S. 2290 because debt service costs incurred by the government are not included in cost estimates for individual pieces of legislation.

- a. Cash and financial assets of the bankruptcy trusts have an estimated value of about \$5 billion. The federal budget would record the cash value of the noncash assets as revenues when they are liquidated by the fund's administrator to pay claims.

Major Provisions

Under S. 2290, a fund administrator would manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of the legislation. Claims by private individuals would be processed and evaluated by the fund and awarded compensation as specified in the bill. The administrator would be authorized to invest surplus funds and to borrow from the Treasury or the public—under certain conditions—to meet cash demands for compensation payments. Finally, the bill contains provisions for ending the fund’s operations if revenues are determined to be insufficient to meet its obligations.

S. 2290 is similar in many ways to S. 1125. A more detailed discussion of the fund’s operations and the basis for CBO’s estimates of the cost of compensation under these bills is provided in our cost estimate for S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003, which was transmitted to the Senate Judiciary Committee on October 2, 2003.

Budgetary Impact After 2014

CBO estimates that S. 2290 would require defendant firms, insurance companies, and asbestos bankruptcy trusts to pay a maximum of about \$118 billion to the Asbestos Fund over the 2005-2031 period. Such collections would be recorded on the budget as revenues.

We estimate that, under S. 2290, the fund would face eligible claims totaling about \$140 billion over the next 50 years. That projection is based on CBO’s estimate of the number of pending and future asbestos claims by type of disease that would be filed with the Asbestos Fund, as presented in our cost estimate for S. 1125. While the projected number of claims remains the same, differences between the two bills result in higher projected claims payments under S. 2290. The composition of those claims and a summary of the resulting costs is displayed in Table 2.

Although CBO estimates that the Asbestos Fund would pay more for claims over the 2005-2014 period than it would collect in revenues, we expect that the administrator of the fund could use the borrowing authority authorized by S. 2290 to continue operations for several years after 2014. Within certain limits, the fund’s administrator would be authorized to borrow funds to continue to make payments to asbestos claimants, provided that forecasted revenues are sufficient to retire any debt incurred and pay resolved claims. Based on our estimate of the bill’s likely long-term cost and the amount of revenues likely to be collected from defendant firms, insurance companies, and certain asbestos bankruptcy trust

funds, we anticipate that the sunset provisions in section 405(f) would have to be implemented by the Asbestos Fund’s administrator before all future claimants are paid. Those provisions would allow the administrator to continue to collect revenues but to stop accepting claims for resolution. In that event, and under certain other conditions, such claimants could pursue asbestos claims in U.S. district courts.

TABLE 2. SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARDS UNDER S. 2290

	<u>Initial 10-Year Period</u>		<u>Life of Fund</u>	
	<u>Number of Claims</u>	<u>Cost (in billions of dollars)</u>	<u>Number of Claims</u>	<u>Cost of Claims (in billions of dollars)</u>
Claims for Malignant Conditions	59,000	36	127,000	82
Claims for Nonmalignant Conditions	627,000	17	1,230,000	36
Pending Claims	<u>300,000</u>	<u>22</u>	<u>300,000</u>	<u>22</u>
Total	986,000	75	1,657,000	140

Major Differences in the Estimated Costs of Claims Under S. 1125 and S. 2290

You also requested that CBO explain the major differences between our cost estimates for S. 1125 and S. 2290. On March 24, 2004, in a letter to Senator Hatch, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation and an assumed later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling \$123 billion over the lifetime of the Asbestos Fund (about 50 years).

Three factors account for the difference between the estimated cost of claims under S. 1125 and that under S. 2290 (see Table 3):

- The award values specified in S. 2290 are higher for certain types of diseases. That difference would add about \$11 billion to the cost of claims, CBO estimates.

- Under S. 2290, most asbestos claims could not be settled privately once the bill is enacted. In contrast, under S. 1125, asbestos claims could continue to be settled by private parties between the date of enactment and the date when the Asbestos Fund is fully implemented; defendant firms could credit any payments made during that period against required future payments to the fund. Consequently, CBO estimates that the fund created by S. 2290 would face about \$5 billion in claims that, under S. 1125, we anticipate would be settled privately.
- S. 2290 specifies that administrative expenses of the program would be paid from the fund. Under S. 1125, in contrast, administrative costs would be appropriated from the general funds of the Treasury. That difference would increase costs to the fund by about \$1 billion over its lifetime.

In the limited time available to prepare this estimate, CBO has not evaluated the differences between the two bills in administrative procedures. Under S. 2290, the Asbestos Fund would be operated by the Department of Labor rather than the U.S. Court of Federal Claims. This and other differences between the two bills could affect the cost of administration, the timing and volume of claims reviewed, and the rate of approval for claims payments.

TABLE 3. DIFFERENCES IN ESTIMATED CLAIMS AGAINST THE ASBESTOS FUND UNDER S. 1125 AND S. 2290

	<u>In Billions of Dollars</u>
Estimated Cost of Asbestos Claims Under S. 1125	123
Added Costs Due to Higher Award Values Under S. 2290	11
Additional Claims Not Privately Settled After Enactment Under S. 2290	5
Administrative Costs Under S. 2290 ^a	<u>1</u>
Total Estimated Claims Against the Fund Under S. 2290	140

a. Under S. 1125 administrative costs would be appropriated from the general fund of the Treasury.

Major Differences in Estimated Revenue Collections Under S. 1125 and S. 2290

CBO estimates that the Asbestos Fund under S. 2290 would be limited to revenue collections of about \$118 billion over its lifetime, including contingent collections. CBO has not estimated the maximum amount of collections that could be obtained under S. 1125, but they could be greater than \$118 billion under certain conditions. In our cost estimate for S. 1125, we concluded that revenue collections and interest earnings were likely to be sufficient to pay the estimated cost of claims under that bill. That is not the case for S. 2290.

Over the first 10 years of operations, we estimate that revenue collections under S. 1125 would exceed those under S. 2290 by \$7 billion. Thus, under S. 2290 we estimate that there would be little interest earnings on surplus funds and that the Asbestos Fund would need to borrow against future revenues to continue to pay claims during the first 10 years of operations.

Estimates of the Cost of Resolving Asbestos Claims Are Uncertain

Any budgetary projection over a 50-year period must be used cautiously, and as we discussed in our analysis of S. 1125, estimates of the long-term costs of asbestos claims likely to be presented to a new federal fund for resolution are highly uncertain. Available data on illnesses caused by asbestos are of limited value. There is no existing compensation system or fund for asbestos victims that is identical to the system that would be established under S. 1125 or S. 2290 in terms of application procedures and requirements, medical criteria for award determination, and the amount of award values. The costs would depend heavily on how the criteria would be interpreted and implemented. In addition, the scope of the proposed fund under this legislation would be larger than existing (or previous) private or federal compensation systems. In short, it is difficult to predict how the legislation might operate over 50 years until the administrative structure is established and its operations can be studied.

One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for nonmalignant injuries. CBO estimates that about 15 percent of individuals with nonmalignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by \$10 billion. Small changes in other assumptions—

including such routine variables as the future inflation rate—could also have a significant impact on long-term costs.

Intergovernmental and Private-Sector Mandates

S. 2290 would impose an intergovernmental mandate that would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. In addition, the bill contains private-sector mandates that would:

- Prohibit individuals from bringing or maintaining a civil action alleging injury due to asbestos exposure;
- Require defendant companies and certain insurance companies to pay annual assessments to the Asbestos Fund;
- Require asbestos settlement trusts to transfer their assets to the Asbestos Fund;
- Prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; and
- Prohibit certain health insurers from denying or terminating coverage or altering any terms of coverage of a claimant or beneficiary on account of participating in the bill's medical monitoring program or as a result of information discovered through such medical monitoring.

S. 2290 contains one provision that would be both an intergovernmental and private-sector mandate as defined in UMRA. That provision would provide the fund's administrator with the power to subpoena testimony and evidence, which is an enforceable duty.

CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold (\$60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private-sector mandates in S. 2290 would well exceed the annual threshold established in UMRA (\$120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), who can be reached at 226-2860,

Honorable Don Nickles
Page 8

Melissa Merrrell (for the impact on state, local, and tribal governments), who can be reached at 225-3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226-2960.

Sincerely,

Douglas Holtz-Eakin
Director

cc: Honorable Kent Conrad
Ranking Member

Honorable Bill Frist
Majority Leader

Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary

Honorable Patrick J. Leahy
Ranking Democratic Member